Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 1206

[Document Number AMS–FV–14–0047]

Mango Promotion, Research, and Information Order; Section 610 Review

AGENCY: Agricultural Marketing Service, Department of Agriculture.

ACTION: Notice of regulatory review and request for comments.

SUMMARY: This document announces the Agricultural Marketing Service's (AMS) plans to review the Mango Promotion, Research, and Information Order (Order). The review will be conducted under criteria contained in Section 610 of the Regulatory Flexibility Act (RFA).

DATES: Comments must be received by August 19, 2014.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments may be submitted on the Internet at: *http://www.regulations.gov* or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915; facsimile (202) 205–2800; or electronic mail: *Jeanette.Palmer@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: The Order (7 CFR part 1206) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425).

The Order became effective on November 3, 2004. It is administered by the National Mango Board (Board) with oversight by the U.S. Department of Agriculture (USDA). The program is financed by an assessment of three quarters of a cent per pound on first handlers and importers of 500,000 pounds or more of mangos annually. The Order specifies that first handlers are responsible for submitting assessments to the Board on a monthly basis and maintaining records necessary to verify their reporting. Importers are responsible for paying assessments on mangos imported for consumption in the United States through the U.S. Customs and Border Protection. The purpose of the Order is to carry out an effective, continuous, and coordinated program of promotion, research, and information designed to strengthen mangos' competitive position, and to maintain and expand the domestic market for mangos.

The Board is composed of 18 members as follows: 8 Importers; 2 domestic producers; 1 first handler; and 7 foreign producers. Nominations for importer, domestic producer, and first handler members are solicited by importers, domestic producers, and first handlers, respectively. Nominations for foreign producer members are solicited from foreign producers and foreign producer associations. Members are appointed to the Board by the Secretary of Agriculture and serve a term of three years.

The AMS published in the **Federal Register** on March 24, 2006, (71 FR 14827) its plan to review certain regulations, including the mango program, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. According to the schedule published in 2006, this notice and request for comments is made for the Order.

The purpose of the review is to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the Act) to minimize the impacts on small entities. AMS will consider the following factors: (1) The continued need for the Order; (2) the nature of complaints or comments received from the public concerning the Order; (3) the complexity of the Order; (4) the extent to which the Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local regulations; and (5) the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order.

Written comments, views, opinions, and other information regarding the Order's impact on small businesses are invited.

Dated: June 16, 2014.

Rex A. Barnes,

Associate Administrator.

[FR Doc. 2014–14398 Filed 6–19–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 50

[145D0102DM DS61400000 DLSN00000.000000 DX.61401]

RIN 1090–AB05

Procedures for Reestablishing a Government-to-Government Relationship With the Native Hawaiian Community

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Advance notice of proposed rulemaking; solicitation of comments.

SUMMARY: The Secretary of the Interior (Secretary) is considering whether to propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community, to more effectively implement the special political and trust relationship that Congress has established between that community and the United States. The purpose of this advance notice of proposed rulemaking (ANPRM) is to

solicit public comments on whether and how the Department of the Interior should facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. In this ANPRM, the Secretary also announces several public meetings in Hawaii and several consultations with federally recognized tribes in the continental United States to consider these issues.

DATES: Comments must be submitted on or before August 19, 2014.

ADDRESSES: You may submit comments on this ANPRM by any of the methods listed below.

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.

2. *U.S. mail, courier, or hand delivery:* Office of the Secretary, Department of the Interior, Room 7329, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John Strylowski, Office of the Secretary, telephone (202) 208–3071 (not a toll-free number), *john_strylowski @ios.doi.gov*.

SUPPLEMENTARY INFORMATION:

Public Comment

Please direct all comments to Regulation Identifier Number 1090–AB05. The Department of the Interior intends to include all comments received in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the Department of the Interior will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the Department of the Interior without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the Department of the Interior recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the Department of the Interior cannot read your comment due to technical difficulties and cannot contact you for clarification, the Department of the Interior may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses.

The Secretary is considering whether to propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. We are interested in hearing from leaders and members of the Native Hawaiian community and of federally recognized tribes in the continental United States. We also welcome comments and information from the State of Hawaii and its agencies, other government agencies, and other members of the public.

To be most useful, and most likely to inform decisions on the content of a potential administrative rule, comments should:

—Be specific;

—Be substantive;

—Explain the reasoning behind the comments; and

—Address the issues outlined in the ANPRM.

For the purpose of this ANPRM, we are seeking input solely on questions related to a potential administrative rule to facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. Because promulgating a rule would not (1) alter the fundamental nature of the political and trust relationship established by Congress between the United States and the Native Hawaiian community, (2) authorize compensation for past wrongs, or (3) have any direct impact on the status of the Hawaiian home lands, we are not seeking comments on those topics.

Furthermore, at this time, we are not seeking comments on what the contents of a reorganized Native Hawaiian government's constitution or other governing document (if one were adopted) might include, how that Native Hawaiian government might be structured, or what powers that Native Hawaiian government might exercise.

Rather, we are seeking comments solely on five threshold questions:

- Should the Secretary propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community?
- Should the Secretary assist the Native Hawaiian community in reorganizing its government, with which the United States could reestablish a government-to-government relationship?
- If so, what process should be established for drafting and ratifying a reorganized Native Hawaiian government's constitution or other governing document?
- Should the Secretary instead rely on the reorganization of a Native Hawaiian government through a process established by the Native Hawaiian community and facilitated by the State of Hawaii, to the extent such a process is consistent with Federal law?
- If so, what conditions should the Secretary establish as prerequisites to Federal acknowledgment of a government-to-government relationship with the reorganized Native Hawaiian government?

In addition to receiving comments through the Federal eRulemaking Portal, U.S. mail, courier services, and hand delivery, we will conduct a series of public meetings on the islands of Hawaii, Kauai, Lānai, Maui, Molokai, and Oahu, and a series of in-person consultations with federally recognized tribes in the continental United States. We will announce locally the time and place of each meeting and will give public notice of each tribal consultation. At these meetings and consultations, we will accept both oral and written communications. We strongly encourage Native Hawaiian organizations and federally recognized tribes in the continental United States to hold their own meetings to develop comments on the issues outlined in this ANPRM, and to share the outcomes of those meetings with us.

All of the citations listed in this ANPRM will be available on the Department of the Interior's Office of Native Hawaiian Relations' Web site at *http://www.doi.gov/ohr/.*

Background

The United States has a unique political and trust relationship with federally recognized tribes across the country, as set forth in the United States Constitution, treaties, statutes, Executive Orders, administrative regulations, and judicial decisions. The Federal government's relationship with these tribes is guided by a trust responsibility—a long-standing, paramount commitment to protect their unique rights and ensure their well-being, while respecting their tribal sovereignty. In recognition of that special commitment—and in fulfillment of the solemn obligations it entails—the United States, acting through the Department of the Interior, has developed processes to help tribes in the continental United States to reorganize their governments and to establish government-to-government

relationships with the United States. Strong tribal governments have proved critical to tribes' capacity to exercise their inherent sovereign powers and sustain prosperous and resilient Native American communities. And, although we must not ignore the history of mistreatment and destructive policies that have done great harm to so many tribal communities, it is undeniable that the government-to-government relationships between tribes and the United States that have flourished during the last half century, in the current era of tribal self-determination, have been enormously beneficial not only to Native Americans but to *all* Americans. Yet the benefits of the government-to-government relationship have long been denied to one place in our Nation, even though it is home to one of the world's largest indigenous communities: Hawaii.

Over many decades, Congress has enacted more than 150 statutes recognizing and implementing a special political and trust relationship with the Native Hawaiian community. Among other things, these statutes create programs and services for members of the Native Hawaiian community that are in many respects analogous to, but separate from, the programs and services that Congress has enacted for federally recognized tribes in the continental United States. But during this same period, the United States has not partnered with Native Hawaiians on a government-to-government basis, at least partly because there has been no formal, organized Native Hawaiian government since 1893, when the United States helped overthrow the Kingdom of Hawaii.

In recent years, the Department has increasingly heard from Native Hawaiians who assert that their community's opportunities to thrive would be significantly bolstered by reorganizing a sovereign Native Hawaiian government that could engage the United States in a government-to-government relationship, exercise inherent sovereign powers of self-governance and self-determination, and enhance the implementation of programs and services that Congress has created specifically to benefit the Native Hawaiian community.

We would now like to hear from leaders and members of the Native Hawaiian community and of federally recognized tribes in the continental United States about whether, and how, the Department should facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. Meaningful consultation and collaboration with both the Native Hawaiian community and the federally recognized tribes in the continental United States will be essential to the Department in developing any policy regarding potential reestablishment of a government-to-government relationship with the Native Hawaiian community. *See* Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, 74 FR 57881 (Nov. 5, 2009). And as stated above, we also welcome comments and information from the State of Hawaii and its agencies, other government agencies, and other members of the public.

The Relationship Between the United States and the Native Hawaiian Community

At the time of the first documented encounter between Native Hawaiians and Europeans in 1778, ''the Native Hawaiian people lived in a highly organized, self-sufficient subsistence social system based on a communal land tenure system with a sophisticated language, culture, and religion.'' 20 U.S.C. 7512(2); *accord* 42 U.S.C. 11701(4). Although the indigenous people shared a common language, ancestry, and religion, the eight islands were governed by four independent chiefdoms until 1810, when the islands were unified under one Kingdom of Hawaii. *See Rice* v. *Cayetano,* 528 U.S. 495, 500–01 (2000).

Throughout the nineteenth century and until 1893, the United States ''recognized the independence of the Hawaiian Nation,'' ''extended full and complete diplomatic recognition to the Hawaiian Government,'' and entered into several treaties with the Hawaiian monarch. 42 U.S.C. 11701(6); *accord* 20 U.S.C. 7512(4); *see Rice,* 528 U.S. at 504 (citing treaties and conventions that the two countries signed in 1826, 1849, 1875, and 1887). But during that same period, westerners became ''increasing[ly] involve[d] . . . in the economic and political affairs of the Kingdom,'' leading to the overthrow of the Kingdom in 1893 by a small group of non-Hawaiians, aided by the United States Minister to Hawaii and the Armed Forces of the United States. *Rice,* 528 U.S. at 501, 504–05. After the overthrow, the Republic of Hawaii ceded its land to the United States, and Congress passed a joint resolution annexing the islands in 1898. *See id.* at 505. The Hawaiian Organic Act, enacted in 1900, established the Territory of Hawaii, placed ceded lands under United States control, and directed that proceeds from the lands be used to benefit the inhabitants of Hawaii. Act of Apr. 30, 1900, ch. 339, 31 Stat. 141.

By 1919, the decline in the Native Hawaiian population—by some estimates from several hundred thousand in 1778 to only 22,600—led the Secretary to recommend to Congress that land be set aside to help Native Hawaiians reestablish their traditional way of life. *See* H.R. Rep. No. 839, 66th Cong., 2d Sess. 4 (1920); 20 U.S.C. 7512(7). This recommendation resulted in enactment of the Hawaiian Homes Commission Act (HHCA), which designated approximately 200,000 acres of land for homesteading by Native Hawaiians. Act of July 9, 1921, ch. 42, 42 Stat. 108; *see also Rice,* 528 U.S. at 507 (HHCA's stated purpose was ''to rehabilitate the native Hawaiian population'') (citing H.R. Rep. No. 839, at 1–2).

When Hawaii was admitted to the Union in 1959, Congress vested authority in the State to administer HHCA lands subject to certain limitations. 73 Stat. 4 (1959). Congress also placed additional lands into a trust to be managed by the State for purposes that included ''the betterment of the conditions of native Hawaiians, as defined in the [HHCA], as amended.'' *Id.* at 6. Congress further detailed the Secretary's responsibilities with respect to the HHCA lands and the HHCA itself in the Hawaiian Home Lands Recovery Act, 109 Stat. 357 (1995).

Since Hawaii's admission to the Union, Congress has enacted dozens of statutes on behalf of Native Hawaiians pursuant to the United States' recognized political relationship and trust responsibility. Congress has:

- Established special Native Hawaiian programs in the areas of health care, education, loans, and employment. *See,* e.g., Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701–11714; Native Hawaiian Education Act, 20 U.S.C. 7511–7517; Workforce Investment Act of 1998, 29 U.S.C. 2911; Native American Programs Act of 1974, 42 U.S.C. 2991–2992.
- Enacted statutes to preserve Native Hawaiian culture, language, and historical sites. *See,* e.g., 16 U.S.C. 396d(a); Native American Languages Act, 25 U.S.C. 2901–2906; National Historic Preservation Act of 1966, 16 U.S.C. 470a(d)(6).
- Extended to the Native Hawaiian people many of ''the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities'' by classifying Native Hawaiians as ''Native Americans'' under numerous Federal statutes. 42 U.S.C. 11701(19); *see,* e.g., American Indian Religious Freedom Act, 42 U.S.C. 1996–

1996a. *See generally* 20 U.S.C. 7512(13) (noting that ''[t]he political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States, as evidenced by the inclusion of Native Hawaiians'' in many statutes); *accord* 114 Stat. 2968–69 (2000); 114 Stat. 2874–75 (2000).

In a number of enactments, Congress has expressly identified Native Hawaiians as ''a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago,'' 42 U.S.C. 11701(1); *accord* 20 U.S.C. 7512(1), with whom the United States has a ''special'' ''trust'' relationship, 42 U.S.C. 11701(15), (16), (18), (20); 20 U.S.C. 7512(8), (10), (11), (12).

In 1993, Congress enacted a joint resolution to acknowledge the 100th anniversary of the overthrow of the Kingdom of Hawaii and to offer an apology to Native Hawaiians. 107 Stat. 1510 (1993). In that Joint Resolution, Congress acknowledged that the overthrow of the Kingdom of Hawaii thwarted Native Hawaiian efforts to exercise their rights to ''self-determination'' and ''inherent sovereignty,'' and stated that ''the Native Hawaiian people are determined to preserve, develop, and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.'' *Id.* at 1512–13; *see also* 20 U.S.C. 7512(20). In light of those findings, Congress ''express[ed] its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people.'' 107 Stat. 1513 (1993).

Following a series of hearings and meetings with the Native Hawaiian community in 1999, the U.S. Departments of the Interior and Justice issued ''From Mauka to Makai: The River of Justice Must Flow Freely,'' a report on the reconciliation process between the Federal government and Native Hawaiians. The report recommended as its top priority that ''the Native Hawaiian people should have self-determination over their own affairs within the framework of Federal law.'' Department of the Interior and Department of Justice, *From Mauka to Makai* 4 (2000).

In 2000, in *Rice* v. *Cayetano,* while addressing aspects of the legal status of Native Hawaiians under one provision of Hawaii state law, the Supreme Court assumed, without deciding, that the United States ''may treat the native Hawaiians as it does the [organized] Indian tribes.'' 528 U.S. at 518–19. *Rice* involved a distinctive state law that limited the right to vote for the trustees of the state Office of Hawaiian Affairs to ''Hawaiians,'' defined as ''any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.'' Haw. Rev. Stat. 10–2 (1993). The Court invalidated that state-law provision on the ground that, rather than implementing a political classification designed to promote the self-governance of a quasi-sovereign tribal entity, it used a racial classification in violation of the Fifteenth Amendment, which prohibits States from denying or abridging United States citizens' right to vote on account of race or color. *See Rice,* 528 U.S. at 514, 518–22.

In recent statutes, Congress has again recognized that ''Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands.'' 114 Stat. 2968 (2000); *see also id.* at 2966; 114 Stat. 2872, 2874 (2000); 118 Stat. 445 (2004). Congress has consistently enacted programs and services expressly and specifically for the Native Hawaiian community that are, in many respects, analogous to, but separate from, the programs and services that Congress has enacted for federally recognized tribes in the continental United States. As Congress has explained, it ''does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous peoples of a once sovereign nation as to whom the United States has established a trust relationship.'' 114 Stat. 2968 (2000).

Although Congress has repeatedly acknowledged its special political and trust relationship with the Native Hawaiian community since the overthrow of the Kingdom of Hawaii more than a century ago, the Federal government has not maintained a government-to-government relationship with the Native Hawaiian community as an organized, sovereign entity. Reestablishing a government-to-government relationship with a reorganized sovereign Native Hawaiian government that has been acknowledged by the United States could enhance Federal agencies' ability to implement the established relationship between the United States and the Native Hawaiian community, while strengthening the self-determination of Hawaii's indigenous people and facilitating the preservation of their language, customs, heritage, health, and welfare.

The Federal government has long consulted with Native Hawaiians under several Federal statutes, including the National Historic Preservation Act of 1966, 16 U.S.C. 470a(d)(6)(B), 470h–2(a)(2)(D); the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002(c)(2); and the Hawaiian Home Lands Recovery Act, 109 Stat. 360 (1995). And for decades, Native Hawaiians have sought to formally reorganize a government through a community- or State-facilitated process. In recent years, there have been calls from the Native Hawaiian community for the Federal government to ''assist with the creation of a Native Hawaiian [governing] entity'' to address the legal status of the community and to reestablish a government-to-government relationship, in part to more effectively implement the special political and trust relationship between the United States and the Native Hawaiian community. Department of the Interior & Department of Justice, *From Mauka to Makai* 17 (2000).

In 2001, a group of Native Hawaiian individuals and organizations brought suit challenging Native Hawaiians' exclusion from the Department's acknowledgment regulations (25 CFR part 83), which establish a uniform process for Federal acknowledgment of Indian tribes. The Ninth Circuit upheld the geographic limitation in the part 83 regulations, concluding that there was a rational basis for the Department to distinguish between Native Hawaiians and tribes in the continental United States, given the history of separate congressional enactments regarding the two groups and the unique history of Hawaii. The Ninth Circuit also noted the question whether Native Hawaiians ''constitute one large tribe . . . or whether there are, in fact, several different tribal groups.'' *Kahawaiolaa* v. *Norton,* 386 F.3d 1271, 1283 (9th Cir. 2004). The court expressed a preference for the Department to apply its expertise to ''determine whether native Hawaiians, or some native Hawaiian groups, could be acknowledged on a government-to-government basis.'' *Id.*

Also in 2004, Congress authorized the Department's Office of Native Hawaiian Relations to discharge the Secretary's responsibilities for matters related to the Native Hawaiian community. *See* 118 Stat. 445–46 (2004).

Legislation has been proposed in Congress to reorganize a single Native Hawaiian governing entity to which the United States could relate on a

government-to-government basis. In 2010, during the Second Session of the 111th Congress, nearly identical Native Hawaiian government reorganization bills were passed by the House of Representatives by a bipartisan vote of 245 to 164 (H.R. 2314), reported favorably by the Senate Committee on Indian Affairs (S. 1011), and strongly supported by the Administration (S. 3945). In a letter to the Senate concerning S. 3945, the Secretary and the Attorney General stated: ''Of the Nation's three major indigenous groups, Native Hawaiians—unlike American Indians and Alaska Natives—are the only one that currently lacks a government-to-government relationship with the United States. This bill provides Native Hawaiians a means by which to exercise the inherent rights to local self-government, self-determination, and economic self-sufficiency that other Native Americans enjoy.'' 156 Cong. Rec. S10990, S10992 (Dec. 22, 2010).

The 2010 House and Senate bills provided that the Native Hawaiian government ''shall be vested with the inherent powers and privileges of self-government of a native government under existing law,'' including the inherent powers ''to determine its own membership criteria [and] its own membership'' and to negotiate and implement agreements with the United States or with the State of Hawaii. The bills would have required protection of the civil rights and liberties of Natives and non-Natives alike, as guaranteed in the Indian Civil Rights Act of 1968, 25 U.S.C. 1301 et seq., and would have barred the Native Hawaiian government and its members from conducting gaming activities under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., or other authority. The bills further would have provided that the Native Hawaiian government and its members would *not* be eligible for Federal Indian programs and services unless Congress had expressly declared them eligible. And S. 3945 expressly left untouched the privileges, immunities, powers, authorities, and jurisdiction of federally recognized tribes in the continental United States.

The bills would have acknowledged the existing special political and trust relationship between Native Hawaiians and the United States, and would have established a process for reorganizing a Native Hawaiian governing entity. Some in Congress, however, expressed a preference not for recognizing a reorganized Native Hawaiian government by legislation, but for applying the Department's Federal acknowledgment process to the Native Hawaiian community. *See,* e.g., S. Rep. No. 112–251, at 45 (2012); S. Rep. No. 111–162, at 41 (2010).

The State of Hawaii, in Act 195, Session Laws of Hawaii 2011, expressed its support for reorganizing and federally recognizing a Native Hawaiian government, while also providing for state recognition of the Native Hawaiian people as ''the only indigenous, aboriginal, maoli people of Hawaii.'' Haw. Rev. Stat. 10H–1 (2013); *see* Act 195, sec. 1, Sess. L. Haw. 2011. In particular, Act 195 established a process for compiling a roll of qualified Native Hawaiians in order to facilitate the development of a reorganized Native Hawaiian governing entity by the Native Hawaiian community. *See* Haw. Rev. Stat. 10H–3–4 (2013); *id.* 10H–5 (''The publication of the roll of qualified Native Hawaiians . . . is intended to facilitate the process under which qualified Native Hawaiians may independently commence the organization of a convention of qualified Native Hawaiians, established for the purpose of organizing themselves.''); Act 195, secs. 3–5, Sess. L. Haw. 2011.

In addition, Native Hawaiian community representatives have asked the Department to provide an administrative avenue to facilitate reestablishing a government-to-government relationship between that community and the United States. Most recently, in comments on the Department's discussion draft of potential revisions to the Federal acknowledgment regulations in 25 CFR part 83, which expressly do not apply outside the continental United States, several Native Hawaiian organizations requested an analogous administrative process for the Native Hawaiian community. *See,* e.g., *http://www.bia.gov/cs/groups/xraca/documents/text/idc1-023645.pdf.*

This ANPRM seeks input on whether the Secretary should promulgate an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. The goals of the rule would be to more effectively implement the special political and trust relationship between Native Hawaiians and the United States, which Congress has long recognized, and to better implement programs and services that Congress has created to benefit the Native Hawaiian community. The rule could focus on either:

- A Federal process to assist the Native Hawaiian community in reorganizing a government; or
- Reestablishing a government-to-government relationship with a Native Hawaiian government reorganized through a process established by the Native Hawaiian community and facilitated by the State of Hawaii. This process would have to be consistent with Federal law.

Who should be eligible to participate in reorganizing a native hawaiian government?

If the Department were to proceed with an administrative rule to assist the Native Hawaiian community in reorganizing a Native Hawaiian government, the rule would not determine who ultimately would be a citizen or member of that government. For that reason, this ANPRM does **not** concern the question of how a Native Hawaiian constitution or other governing document should define a set of membership criteria. Presumably, a Native Hawaiian government would exercise its sovereign prerogative and, operating under its own constitution or other governing document, could define its membership criteria without regard to whether any person participated, or had been eligible to participate, in the government's initial reorganization (unless Federal legislation provided otherwise). *See Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49, 55–56 (1978) (holding that tribes are ''distinct, independent political communities, retaining their original natural rights in matters of local self-government,'' with the power to regulate ''their internal and social relations, . . . to make their own substantive law in internal matters'' such as membership, and ''to enforce that law in their own forums'') (citations and internal quotation marks omitted); *id.* at 72 n.32 (''A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.'').

But a Federal administrative rule concerning reorganization of a Native Hawaiian government would need to determine who can participate in the reorganization, including who would be eligible to assist in drafting a constitution or other governing document, and who would be eligible to vote in a ratification referendum. In discussing that issue, commenters may wish to consider observations made by members of the Supreme Court in *Rice v. Cayetano,* which invalidated a voting law of the State of Hawaii under the Fifteenth Amendment. *Rice,* 528 U.S. at 518–22. Concurring in the judgment, Justice Breyer, joined by Justice Souter, concluded that the voting qualification was impermissible because the state statute ''defines the electorate in a way that is not analogous to membership in an Indian tribe.'' *Id.* at 526. Justice

Breyer contrasted the state law's ''broad'' definition of ''Hawaiian''—which he noted would ''includ[e] anyone with one ancestor who lived in Hawaii prior to 1778, thereby including individuals who are less than one five-hundredth original Hawaiian (assuming nine generations between 1778 and the present)''—with membership definitions for various tribes in the continental United States, which, for example, focus on whether individuals and their parents are ''regarded as Native'' by a Native village or group to which they claim membership, or whether individuals have ''an ancestor whose name appeared on a tribal roll . . . in the far less distant past [such as 1906, 1936, 1937, or 1968, rather than 1778].'' *Id.* at 526–27 (citations and internal quotation marks omitted). While Justice Breyer acknowledged that ''a Native American tribe has broad authority to define its membership,'' in his view the voting qualification created by the State of Hawaii went ''well beyond any reasonable limit'' on the State's power to create such a definition and was ''not like any actual membership classification created by any actual tribe.'' *Id.* at 527.

In defining the persons who would be eligible to participate in any reorganization of a Native Hawaiian government, certain other legislative approaches may be instructive. For example, in the Hawaiian Homes Commission Act (HHCA), Congress exercised its trust responsibility to set aside Hawaiian home lands for homesteading by ''native Hawaiians,'' a category Congress defined as ''any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.'' Act of July 9, 1921, ch. 42, sec. 201(a)(7), 42 Stat. 108; *see id.* sec. 207, 42 Stat. 110–11. Congress later consented to amendments that would permit a lessee's spouse, child, or grandchild who is of at least 25% Native Hawaiian ancestry to acquire the lease. 100 Stat. 3143 (1986) (consenting to, *inter alia,* Act 272, Sess. L. Haw. 1982); 111 Stat. 235 (1997) (consenting to, *inter alia,* Act 37, Sess. L. Haw. 1994).

A second approach is found in the State of Hawaii's Act 195, Session Laws of Hawaii 2011, legislation designed to facilitate the reorganization of a Native Hawaiian government. As amended in 2012 and 2013, Act 195 provides that ''qualified Native Hawaiians'' can participate in reorganizing a Native Hawaiian government, where the term ''qualified Native Hawaiian'' is defined to mean an individual 18 years or older who has maintained a significant cultural connection to the Native Hawaiian community and who:

- Is determined to be a descendant of the aboriginal peoples who, before 1778, occupied and exercised sovereignty in the Hawaiian islands, the area that now constitutes the State of Hawaii;
- Is determined to be one of the indigenous native peoples of Hawaii and to be eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act of 1920, or a direct lineal descendant of that individual; or
- Meets the ancestry requirements of Kamehameha Schools or of any Hawaiian registry program of the office of Hawaiian affairs.

See Haw. Rev. Stat. 10H–3(a)(2) (2013)

The state law does not specify the documents or evidence that the Native Hawaiian Roll Commission should deem adequate to verify ancestry or to verify that an individual ''[h]as maintained a significant cultural, social, or civic connection to the Native Hawaiian community.'' *Id.* 10H–3(a)(2)(B). In a 2013 amendment, the legislature further instructed the Native Hawaiian Roll Commission to ''include in the roll of qualified Native Hawaiians all individuals already registered with the State as verified Hawaiians or Native Hawaiians through the office of Hawaiian affairs as demonstrated by the production of relevant office of Hawaiian affairs records''; those individuals do not have to certify that they have maintained a connection to the Native Hawaiian community or wish to be included in the roll of qualified Native Hawaiians. *Id.* 10H–3(a)(4).

Another possible approach is found in legislation proposed in Congress to reorganize a Native Hawaiian government. The Native Hawaiian Government Reorganization Act of 2010 contained requirements that were similar to state Act 195's requirements, as to both ancestry and cultural, social, or civic connection to the community. This Federal legislation provided considerable detail about the documentation an individual would have to provide to demonstrate both ancestry and the kinds of significant cultural, social, or civic connections that evidence an individual's membership in the political community. The legislation stated that ancestry could be verified by presenting certain types of documentary evidence of lineal descent, identifying a lineal ancestor on the Kingdom of Hawaii's 1890 Census, or producing sworn affidavits from at least two ''qualified Native Hawaiian constituents'' (for those lacking birth certificates under certain circumstances). *See* S. 3945, sec. 8(c)(1)(B)–(C), 111th Cong., 2d Sess. (2010).

The Federal legislation further provided that an individual could demonstrate a significant cultural, social, or civic connection to the Native Hawaiian community if he or she satisfied at least two of ten criteria relating to current state of residence, eligibility to be a beneficiary of programs under the Hawaiian Homes Commission Act, residence on or ownership interest in ''kuleana land,'' participation in Hawaiian language schools or programs, membership in Native Hawaiian membership organizations, and regard as Native Hawaiian by the Native Hawaiian community. *See* S. 3945, sec. 3(12)(E), 111th Cong., 2d Sess. (2010); see id. sec. 3(10)

This ANPRM seeks input on which individuals, as members of the Native Hawaiian community, should be eligible to participate in the process of reorganizing a sovereign Native Hawaiian government that could reestablish a relationship with the Federal government. The ANPRM does not seek input on the membership or citizenship criteria that the Native Hawaiian community may adopt in its constitution or other governing document; that decision belongs to the Native Hawaiian community.

Frameworks for Reorganization, Roll Preparation, and Acknowledgment

The Department's existing regulatory frameworks for reorganizing, preparing rolls for, and acknowledging Indian tribes in the continental United States may inform the analogous processes that Native Hawaiians may ultimately propose for reorganization or acknowledgment. Tribal officials have worked with these regulatory provisions for decades, and their experiences likely will be helpful in responding to this ANPRM.

The Department has established a regulatory framework for members of Indian tribes to adopt new governing documents and reorganize their tribal governments. The framework includes procedures that identify eligible voters, provide notice to those voters, provide equal opportunities to participate, establish minimum participation standards to ensure that the outcome of the voting reflects the will of the majority, and provide for the Secretary's approval of the governing document. *See* 25 CFR part 81.

Federal regulations also provide a framework for the Secretary to compile rolls for some tribes for limited purposes. Those regulations provide for

public notice of the preparation of the roll, procedures for enrollment, and an opportunity to appeal adverse decisions. *See* 25 CFR parts 61 and 62.

The Department's regulatory framework for Federal acknowledgment of Indian tribes, found in 25 CFR Part 83, establishes uniform administrative standards and procedures for identifying, defining, and acknowledging those Indian groups that exist as tribes. *Id.* 83.2. The regulations require evidence of community—such as shared cultural or social activities, residence in a defined geographic area, marriages within the group, shared language, kinship systems, or ceremonies, and significant social relationships among members—and evidence of political influence, such as widespread knowledge and involvement in political processes, and leaders who take action on matters that most of the membership consider important. *Id.* 83.7(b) and (c). If these and other mandatory criteria are met, tribal existence is acknowledged. *Id.* 83.6(c) and 83.10(m). Indeed, Congress has expressly found that administrative acknowledgment under procedures set forth in a Federal regulation such as Part 83 is a valid method for recognizing an Indian tribe with which the United States can maintain a government-to-government relationship. *See* 108 Stat. 4791 (1994).

The acknowledgment of the Indian group under part 83 recognizes or reaffirms a special political and trust relationship with the United States. Here, however, the Native Hawaiian community already has a congressionally recognized special political and trust relationship with the United States, but lacks an organized governing body, a constitution, settled membership criteria, and a complete membership list, which petitioners under part 83 have. The experiences of tribes in the continental United States with part 83, like their experiences with the other parts of title 25 of the Code of Federal Regulations discussed above, nonetheless may provide useful guidance for the Native Hawaiian community. For example, the mandatory criteria in part 83 help clarify what constitutes a political community.

Given the Native Hawaiians' unique situation, one of the topics on which this ANPRM seeks input is whether and how to promulgate a distinct regulatory framework for the Native Hawaiian community, for purposes such as:

- Identifying those persons of Native Hawaiian descent who are part of the political community and should be eligible to participate in the reorganization by virtue of verifiable cultural, social, or civic connection to the Native Hawaiian community; and
- Identifying procedures for adopting a constitution or other governing document, should the Native Hawaiian community indicate that it would like to do so.

Federal Programs and Services

As described above, Congress has consistently enacted programs and services expressly and specifically for the Native Hawaiian community that are, in many respects, analogous to, but separate from, the programs and services that Congress has enacted for federally recognized tribes in the continental United States. Generally, Native Hawaiians have not been eligible for Federal Indian programs and services unless Congress expressly and specifically declared them eligible. Consistent with that approach, the Department of the Interior does not foresee that a Federal rule to facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community would alter or affect the programs and services that the United States currently provides to federally recognized tribes in the continental United States. Congress has enacted more than 150 statutes expressly affecting Native Hawaiians, and it is these laws that define the scope of Federal programs and services for Native Hawaiians.

Consultation With Federally Recognized Tribes in the Continental United States

Given that the Secretary is considering whether to propose an administrative rule to facilitate the reestablishment of a government-to-government relationship with an indigenous people, the knowledge, expertise, and input of officials from federally recognized tribes in the continental United States, including those tribes that have reorganized their own sovereign governments or have reestablished a government-to-government relationship with the United States, will be important. So, along with a series of public meetings in Hawaii, we will conduct a series of formal, in-person consultations with officials of federally recognized tribes in various regions of the continental United States during the public-comment period for this ANPRM. We will give public notice of each tribal consultation, and we will accept both oral and written communications. Tribal consultations on this ANPRM will be conducted in accordance with Executive Order 13175, 65 FR 67249 (Nov. 9, 2000); the Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, 74 FR 57881 (Nov. 9, 2009); and the Department of the Interior Policy on Consultation with Indian Tribes.

If the Department ultimately decides to issue a Notice of Proposed Rulemaking (NPRM), the NPRM's preamble will include a tribal summary impact statement that reflects comments received from tribal officials in response to this ANPRM. Publication of an NPRM also would open a second round of tribal consultation and another formal comment period to allow for further input and refinements before publishing a final rule.

Description of the Information Requested

We are particularly interested in receiving comments on the following questions relating to an administrative rule we may develop concerning the potential reestablishment of a government-to-government relationship with the Native Hawaiian community:

General Questions

1. Should the Secretary propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community?

2. What role, if any, should the Department of the Interior—exercising the authorities described in 25 U.S.C. 2, 25 U.S.C. 9, 43 U.S.C. 1457, and other statutes—play in facilitating the reestablishment of a government-to-government relationship with the Native Hawaiian community?

3. Should there be a reorganization of a Native Hawaiian government in order to reestablish and maintain a government-to-government relationship between the Native Hawaiian community and the United States?

4. If a Native Hawaiian government is reorganized, under what conditions should the Secretary federally acknowledge it and thus reestablish a government-to-government relationship?

5. What features, including any within 25 CFR parts 61, 62, 81, and 83 or other regulations, should the Secretary incorporate in a proposed administrative rule addressing potential reorganization or acknowledgment of a Native Hawaiian government?

Criteria for Inclusion on the Roll of Persons Eligible To Participate in the Reorganization

6. If the Secretary were to propose a rule to assist in reorganizing a Native Hawaiian government, what should be the criteria for persons to be included

on the roll of those eligible to participate in reorganizing this government? (This roll would determine which persons are eligible to participate in reorganizing a Native Hawaiian government; it would *not* determine which persons ultimately could become members or citizens of a reorganized sovereign Native Hawaiian government.)

7. To be included on the roll, what should constitute adequate evidence or verification that a person has Native Hawaiian ancestry?

8. To be included on the roll, what should constitute adequate evidence or verification that a person has a significant cultural, social, or civic connection to the Native Hawaiian community?

9. To be included on the roll, what significance, if any, should be given to the fact that a person is potentially eligible under the Hawaiian Homes Commission Act (HHCA), Act of July 9, 1921, ch. 42, 42 Stat. 108, as amended? To the extent that this is a relevant criterion, what process should be used to identify persons who are potentially eligible under the HHCA, as amended?

The Process for Preparing a Roll of Persons Eligible To Participate in the Reorganization

10. If the Secretary were to propose a rule to assist in reorganizing a Native Hawaiian government, what should be the process for preparing a roll of persons who would be eligible to participate in reorganizing a Native Hawaiian government?

11. What role, if any, should the Secretary play in establishing, operating, or approving the process for preparing such a roll?

12. What role, if any, should be played by the Native Hawaiian Roll Commission established under Hawaii state law to prepare the Kanaiolowalu registry?

Drafting a Constitution for a Native Hawaiian Government

13. If the Secretary were to propose a rule to assist in reorganizing a Native Hawaiian government, what should be the process for drafting a constitution or other governing document for a Native Hawaiian government, and what should be the Secretary's role in providing such assistance?

14. How should the drafters of a constitution or other governing document be selected?

Ratifying and Approving a Constitution for a Native Hawaiian Government

15. If the Secretary were to propose a rule to assist in reorganizing a Native Hawaiian government, what should be the process for ratifying and approving a constitution or other governing document for a Native Hawaiian government?

16. Should there be a minimum turnout requirement for any referendum to ratify a Native Hawaiian constitution or other governing document?

17. In addition to being ratified by a majority of all qualified Native Hawaiians who participate in a ratification referendum, should a Native Hawaiian constitution or other governing document also have to be ratified by a majority of all qualified Native Hawaiians who participate in the ratification referendum and are potentially eligible under the HHCA, as amended?

18. Should the Secretary have the responsibility to approve or disapprove a Native Hawaiian constitution or other governing document? If so, what factors, if any, other than consistency with Federal law, should be considered? For example, should the Secretary's approval depend on substantive issues (e.g., the constitution's safeguards for civil rights and liberties), procedural issues (e.g., lost or destroyed ballots, wrongful denial of ballots, etc.), or both?

Federal Acknowledgment of an Already Reorganized Native Hawaiian Government

19. Should reorganization of a Native Hawaiian government occur through a process established by the Native Hawaiian community and facilitated by the State of Hawaii, rather than through a Federal process? This non-Federal process would have to be consistent with Federal law and satisfy conditions established by the Secretary as prerequisites to Federal acknowledgment. We seek views on each of the following as a potential condition for Federal acknowledgment of a Native Hawaiian government that has already been reorganized through a community-established, State-facilitated process:

- Acknowledgment by the State of Hawaii.
- A Native Hawaiian constitution (or other governing document) that—
  - Safeguards the civil rights and liberties of Natives and non-Natives alike, as guaranteed in the Indian Civil Rights Act of 1968, as amended, 25 U.S.C. 1301–1304;
  - Has been ratified by a majority vote of ''qualified Native Hawaiians,'' as defined in Haw. Rev. Stat. 10H–3(a) (2013); and
  - Has *also* (and perhaps simultaneously) been ratified by a majority vote of ''qualified Native Hawaiians'' who are potentially eligible under the HHCA, as amended.
- Any other criterion that should be included as a condition for Federal acknowledgment of an already reorganized Native Hawaiian government.

Michael L. Connor,

Deputy Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2013–0101: 4500030114]

RIN 1018–AZ77

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Revised Distinct Population Segment Boundary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the September 26, 2013, proposed revised designation of critical habitat for the contiguous U.S. distinct population segment (DPS) of the Canada lynx (*Lynx canadensis*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) and a draft environmental assessment of the proposed revised designation of critical habitat for the contiguous U.S. DPS of the Canada lynx, and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, the draft environmental assessment, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: In order to fully consider and incorporate public comment, the Service requests submittal of comments by close of business on July 21, 2014. Comments submitted electronically using the Federal eRulemaking Portal