

ADMINISTRATIVE RULES FAQS

Generally:

What are Administrative Rules and why are they important?

Every state agency has administrative rules, which govern departmental operations. The rules that govern DHHL are known as Title 10, Hawaii Administrative Rules.

Why is DHHL amending its rules?

DHHL is proposing changes to existing rules and proposing new rules for several reasons. Every State agency should update their administrative rules regularly. Rules need to be consistent with State law and should be current so that the agency can improve service, programs, and operations.

The Department is also initiating the proposed changes in direct response to beneficiary feedback received over the years. This administration has made a commitment to take the necessary steps to update DHHL's Administrative Rules in response to our beneficiaries.

Finally, the Department intends to do rulemaking on a regular basis as a best practice. The plan is to roll out a few rules at a time. This proactive process will help beneficiaries because:

1. Beneficiaries will have the opportunity to receive the information about the rule in advance.
2. Beneficiaries can easily submit comments and participate by:
 - Attending a beneficiary consultation meeting
 - View and download the information from the DHHL website at <http://dhhl.hawaii.gov/dhhlrules>
 - Request a copy of the proposed rules from your District Office or the main office located in Kapolei, Oahu.
 - Mail your comments to the main office in Kapolei.

Attendance at beneficiary consultation meetings is optional, however, beneficiaries can still participate in the process. Refer to the "How can I participate?" section below.

What are the amendments being proposed?

The Department has many rules to consider and will review them over time. The Department is beginning the process by focusing on three main topics and some "housekeeping."

1. Genetic Testing: As a result of a lawsuit, DHHL is under legal obligation to adopt a rule that addresses using genetic testing in the application process.
2. Subsistence Agricultural Lots: This conversation dates back to the 1999. The subsistence ag lot is in response to beneficiary demand; more and more beneficiaries want this type of opportunity. The proposal is part of a larger effort to revive the ag program and put beneficiaries on the land. It is also expected to help address the ag waitlist, which is the longest waitlist on every island except O'ahu.
3. Transfer of Homestead Leases: This proposal would impact only (a) "vacant lots;" (b) "unimproved lots;" and (c) undivided interests. It is a consistent concern among beneficiaries and commissioners when no financial investment is made by a lessee who

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then profits off of the trust and another beneficiary by selling a lease to a vacant or unimproved lot, or undivided interest.

4. There are also proposed changes that we are calling “housekeeping.” Most of these changes are technical, like adding commas, but several make changes that would help the Department run more efficiently and effectively.

What about all the other changes that beneficiaries have suggested over the years?

The Department is committed to addressing as many rules as possible during this administration.

How long will this process take?

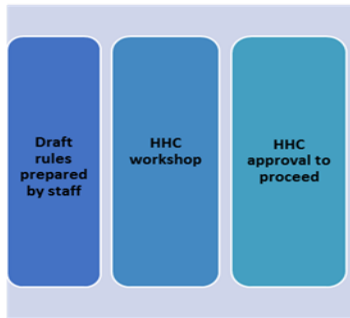
It’s possible that the process can take up to two years.

What is the process and why does it take so long?

The substance of the process really begins with beneficiary consultation. Once consultation is complete the Department will consider the comments received, report to the Commission, and possibly make changes to the proposal. Then we begin the State’s rulemaking process, known as Chapter 91. This part of the process includes a public comment period and approvals by the attorney general and governor. Here is a flow chart that illustrates the rulemaking process that the Department will follow. You can also find this on the DHHL website.

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*SBRRB is the Small Business Regulatory Review Board

How can I participate?

Here are some of the ways you can get involved and join the conversation. Attend any statewide beneficiary consultation meeting from late October to early December 2015.

Beneficiary Consultation Schedule

All meetings scheduled to run from 6:00 - 8:30 p.m.

Nānākuli, O‘ahu - Monday, November 2, 2015

Nānāikapono Elementary School Cafeteria
89-153 Mano Ave., Wai‘anae, HI 96792

Waimea, Hawai‘i - Monday, November 9, 2015

DHHL West Hawai‘i District Office - Kūhiō Hale
64-756 Māmalahoa Hwy., Kamuela, HI 96743

Keaukaha, Hawai‘i - Tuesday, November 10, 2015

Keaukaha Elementary School Cafeteria
240 Desha Ave., Hilo, HI 96720

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Kaua'i - Monday, November 23, 2015

King Kaumuali'i Elementary School Cafeteria
4380 Hanamā'ulu Rd., Līhu'e, HI 96766

Papakōlea, O'ahu - Tuesday, November 24, 2015

Stevenson Middle School Cafeteria
1202 Prospect St., Honolulu, HI 96822

Maui - Monday, November 30, 2015

Paukūkalo Community Center
655 Kaumuali'i St., Wailuku, HI 96793

Moloka'i - Tuesday, December 1, 2015

Lanikeha Community Center
2200 Farrington Hwy., Ho'olehua, HI 96729

Kapolei, O'ahu - Monday, December 7, 2015

Hale Pono'i
94-5420 Kapolei Parkway, Kapolei, HI 96707

Waimanalo, Oahu – Thursday, December 10, 2015

Blanche Pope Elementary School Cafeteria
41-133 Huli St., Waimanalo, HI 96795

Additional ways to participate:

1. View and download the information from the DHHL website at <http://dhhl.hawaii.gov/dhhlrules>
2. Request a copy of the proposed rules from your District Office or the main office located in Kapolei, Oahu.
3. Email your comments to rules.dhhl.rules@hawaiianhomelands.org.
4. Mail your comments to the main office in Kapolei at:
Department of Hawaiian Home Lands
DHHL Administrative Rules
91-5420 Kapolei Parkway
Kapolei, HI 96707

The amendment proposal is really long. How do I know where to start?

The comparison chart below details the three topics that will be the focus at beneficiary consultation meetings. You can get this document at any of the beneficiary consultations from

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late October through December 2015 or you can get the complete document, which includes all the proposed changes at www.DHHL.hawaii.gov.

Section	Current Rule	Proposed Rule	Reason for Change	Beneficiary Impact
10-3-2.2 Genetic tests	None.	New rule. Would allow for the acceptance of the results of voluntary genetic tests as part of the application process.	To make it possible for more applicants to potentially qualify by allowing for submittal of genetic test results that may establish parentage. As part of a settlement agreement, the department agreed to promulgate a rule regarding the treatment of genetic test results in the application process. The department's recommendation is to accept the results of voluntary genetic tests as a final option in the application process.	+ benefits applicants and potential applicants.
10-3-26 Residence permitted on agricultural and pastoral lot	Provides that a lessee may reside on an ag or pastoral lot.	Would require residence on ag awards of 1.0 acres or less. Would maintain current rule for ag awards of more than 1.0 acres.	This revision responds to beneficiary interest in "subsistence ag" awards, which would require residence on the lot. This revision also helps to manage department costs to develop infrastructure on ag properties.	+ benefits beneficiaries interested in subsistence ag sized lots and rural lifestyle by making the "subsistence ag" lot an option. +/- benefits beneficiaries interested in larger ag lots may benefit because the "subsistence ag" lot is the beginning of a larger ag program <u>but</u> the "subsistence ag" lot may also mean that fewer large ag lots become available.
10-3-36 Transfer of homestead leases	Provides that with the approval of the commission, a homestead lease may be transferred to anyone qualified. Also provides that the transferee must use or occupy within a specific time period.	Would allow transfer of undivided interests, and leases to lots that are vacant or undeveloped only by gift or succession.	This revision responds to the unfair profit realized by the sale of a lease when the lessee has not made a similar financial investment in the lot.	+ benefits applicants, potential applicants, and potential transferees because it levels the field so that transferees of leases to vacant or undeveloped lots and undivided interests get the same value that the lessee received from the department. - lessees of undivided interests, undeveloped lots, and vacant lots would not be able to sell the lease. = no change for lessees of developed lots.

How does the chart help me?

The chart provides the following information:

1. It describes the current rule AND the proposed rule.
2. It provides the reason for the change.
3. It describes the anticipated impact on beneficiaries.

How can I tell which proposals are most important to me?

It's important for you to understand all of the proposed rules and the impacts. In addition to the comparison chart above, we encourage you to review all the available information and, if you want to, provide your feedback to the proposed rules.

If you plan to attend a beneficiary consultation, we encourage you to review the information posted on the website in advance at www.DHHL.hawaii.gov.

How will the amendments affect me?

Overall, the proposed amendments are intended to bring about positive change for the beneficiaries and the trust. How each change will impact you personally depends on your

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individual situation. The complete comparison chart on the Department’s website will give you the Department’s analysis of beneficiary impacts.

“Housekeeping:”

What are “housekeeping” amendments?

“Housekeeping” is a term we are using to describe proposed changes that are technical and grammatical, or designed to make Department processes easier for beneficiaries or more efficient. In other words, they are changes that help the Department keep a clean house.

There are a lot of housekeeping amendments. Which are the most important?

Each change is important because even technical changes add clarity, making the rule easier to understand. There are several where the proposal would change the meaning or implementation of a rule. Here’s a list of the housekeeping amendments that would provide important information or make changes to the way the Department does things:

- 10-1-2(a) Information
- 10-1-5 Definitions
- 10-2-16 Delegation of duties to the chairman
- 10-3-10(a) Requirement for current information
- 10-3-34 Building requirements
- 10-3-38 Subdivision and transfer of a portion of residential lot leasehold
- 10-3-76 Fees and charges
- 10-5-3 Suspension, waiver of rules
- 10-5-22 thru 10-5-23.1 Rulemaking procedures

Genetic testing:

What is the genetic testing proposal about?

The proposal is about using genetic test results that may help to establish who the parents are of an applicant. Sometimes people don't have complete 'Ohana information when applying for Hawaiian Home Lands. Accepting test results could help some applicants.

Is this a DNA test for ethnicity to see if someone has Hawaiian blood?

No, under the proposal, tests would only be accepted to establish parent-child relationships.

Why is DHHL proposing a rule for genetic testing?

There are a number of reasons, including:

1. It is a direct benefit for beneficiaries because it can help applicants to qualify for Hawaiian Home Lands programs.
2. The Department is under legal obligation to adopt a rule that addresses the use of genetic testing in the application process.
3. The proposed changes to the application process help to clarify what the Department does once you submit an application. Genetic testing *does not* affect how the Department reviews or qualifies an application. These rule changes would only make the process clearer for applicants.

Is genetic testing a requirement?

No, genetic testing is voluntary. It would be up to the applicant to work with an American Association of Blood Banks (AABB) accredited lab to have the test done and to have the results sent to the Department.

Is there a cost for genetic testing?

Yes, if the applicant chooses to undergo genetic testing, the applicant would have to work with and pay the lab that does the test.

If I want to have genetic testing done, what is the DHHL process?

If, after the standard application review, there is a question about qualifying blood quantum, the applicant can decide to have genetic testing done in order to continue the review process. The applicant must get the test and have the results sent to the Department. Once the results are received by the Department, the application review process can continue if the results fall within a specific range of certainty. The applicant must also submit an affidavit that says why you believe the person tested is your biological parent.

Is there anything else I should know about genetic testing?

Because the applicant is responsible for getting the test done and paying the costs, it is important to also know that the lab that does the test must be nationally accredited by the American Association of Blood Banks (AABB) and there are specific "chain of custody" safeguards to ensure the results are not tampered with or altered. There are also scientific standards about the results that are called "degrees of certainty" and "powers of exclusion" that must be met for the results to be considered by the Department.

Subsistence Ag Lots:

What are subsistence ag lots?

They are 1.0 acre or smaller ag awards that would have limited infrastructure. Subsistence lots would require a residence on the lot and allow for growing crops and/or raising small livestock.

Is DHHL taking away larger acreage ag awards?

No, larger ag awards are still possible.

What if I only want an ag lot to farm commercially?

There is no change, the award process remains the same. It all depends on the offering being made and your place on the waitlist.

I have an ag lot and have requested additional acreage, does subsistence ag mean additional acreage is no longer possible?

Additional acreage, or supplemental ag, awards may still be made. One of the proposed changes would allow a preference for additional acreage that is adjacent to an ag lessee's existing lot. This preference would require Commission approval.

I heard the subsistence ag lot is just so DHHL can eliminate the ag program and do only residential lots. Is that true?

No, larger ag awards are still possible and so are additional acreage requests. The subsistence ag option is actually part of a larger effort to revitalize the ag program. The long term vision is to design opportunities for small scale AND larger scale ag, as well as to make it easier for communities to be self-sustaining, if they choose.

Subsistence ag lots are in direct response to increasing beneficiary interest in rural living and subsistence farming. The Department also views subsistence ag as a viable and sustainable option for those beneficiaries that want to conduct agricultural activities on a smaller scale:

1. Subsistence lots provide beneficiaries with the opportunity to farm on a more manageable scale. Maintaining the additional acreage request provides the opportunity for those that decide they want to expand.
2. It will be less expensive to establish and maintain a farm on a subsistence ag lot.
3. Subsistence ag lots mean you would have an "all inclusive" lot to farm and build a home.

How does the subsistence ag award compare to the larger ag award?

For those beneficiaries interested in a rural lifestyle, the subsistence lot offers more flexibility and manageability than the current large ag offering. A large ag offering still requires:

1. A business plan approved by the department.
2. Ongoing farming activity over two-thirds of the lot, which can be very costly.

How would this impact beneficiaries on the ag waitlist?

Subsistence ag offerings would be made to beneficiaries on the ag waitlist as they become available. These offerings would increase opportunities to accept an ag award and also increase housing opportunities. This lot type is intended to help beneficiaries on the ag waitlist get on the land.

How does this impact current ag lessees?

There is no change for current ag lessees.

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Subsistence ag (continued):

How does this impact residential applicants?

If you are on both the ag waitlist and the residential waitlist, consider which offering you would prefer.

If I'm on the ag AND residential waitlists and I'm interested in the subsistence ag concept, will I lose anything?

If you decide to take advantage of the subsistence lot program, you should consider relinquishing your residential waitlist status. The reason you may want to consider this is that the subsistence ag lot essentially gives you a two-for-one because you have an ag opportunity as well as a housing opportunity all in one. It is your choice to relinquish or not but remember there are applicants who are interested in only a residential lot as well as those who are interested in only a subsistence ag lot, remaining on either list after you've accepted one offering effectively pushes another beneficiary back.

Transfer of homestead leases:

Is DHHL trying to take away my right to sell my property?

No, if you've invested in improvements on your lot, you would still be able to sell those improvements.

What is the transfer of homestead leases proposal about?

Over the years, lessees who have not built homes or made improvements on their lots have sold their leases for a substantial profit. The problem with this is that the lessee has not made any financial investment in the lease. In other words, they are attempting to get something for nothing at the expense of other beneficiaries.

How does this impact waitlist applicants?

If waitlist-ers are unaware that they can buy a lease from a lessee, they are at a disadvantage because leases are sometimes sold to native Hawaiians *who are not* on the waitlist, thereby "jumping" ahead of everyone on the waitlist.

What is a "vacant" or "unimproved" lot?

A *vacant lot* has infrastructure, meaning the Department prepared it for the lessee to build but the lessee never built anything according to the lease terms.

An *unimproved lot* does not have infrastructure but was awarded to a beneficiary so it would be used. Similar to a vacant lot, the lessee never made use of an unimproved lot, as required by the lease.

If you were to drive by one of these lots, it would look like an empty or abandoned lot. The Department is proposing new definitions that would define "vacant lot" and "unimproved lot."

Why shouldn't I be able to sell my lease even if the lot is vacant or unimproved?

The intent of the Act is to rehabilitate native Hawaiians by returning them to the land. The program does that by providing homestead leases to beneficiaries so that they can use the land for farming or as residential.

If you can't use the land or don't want to use it and have let it sit empty, you are most likely in non-compliance and should return it to the Department or give the lease to another beneficiary who can make use of it; you should not be able to make unjust profit off of another beneficiary and the trust.

If I have a house on the lot can I still sell my lease?

Yes, you can still sell what you've invested into your home or lawful structure.

If I have crops or livestock on the lot can I sell my lease?

Yes, you can sell the crops, livestock, and/or lawful improvements you made so that you could farm or ranch.

What if I want to give my lease to my child or grandchild?

Yes, you can still give your lease to a qualified family member.

What if I want to share my lease with a qualified beneficiary?

Yes, you can still add a qualified beneficiary to your lease.