State of Hawai‘i Environmental Council
Tuesday, October 3, 2017, 10:00 AM - 3:00 PM
Leiopapa A Kamehameha Bldg.,
Room 1500, 235 S. Beretania St, Honolulu, Hawaii 96813

1. Call to order, roll call and quorum, introductions

2. Review and approval of prior meeting minutes
   a. Meeting held on September 5, 2017

3. 2017 Annual Report – Status Update

4. Review and discussion of proposed revisions to Hawai‘i Administrative Rules
   Chapter 11-200, Environmental Impact Statement Rules.
   a. Discussion will be based on the working draft Version 0.2 (available at:
      http://oeqc2.doh.hawaii.gov/Laws/v0.2-2017-09-05-Rules-Revisions.pdf)
   b. See Attachment A for correspondence received as of September 26,
      2017 (additional correspondence received after September 26, 2017
      will be distributed at the meeting).

5. Adjournment

Note: The Council will recess for lunch from approximately 12:00 – 12:45.

Note: Public comments will be accepted on each agenda item prior to voting or
completion of the agenda item.

Note: The Council may go into an executive session on an agenda item for one of the
permitted purposes listed in Section 92-5(a), Hawaii Revised Statutes ("HRS"), without
noticing the executive session on the agenda where the executive session was not
anticipated in advance. The executive session may only be held, however, upon an
affirmative vote of two-thirds of the members present, which must also be the
majority of the members to which the board is entitled. The reason for holding the
executive session shall be publicly announced and the vote of each member on the
question of holding a meeting closed to the public shall be recorded and entered into
the minutes of the meeting. HRS Sections 92-4, 92-5(a) and 92-7(a).
Working Draft of Proposed Revisions to Hawai‘i Administrative Rules Title 11 Department of Health Chapter 200 Environmental Impact Statement Rules

Version 0.2 September 5, 2017

Prepared with the assistance of the Office of Environmental Quality Control (OEQC).

Version 0.2 is a revision of Version 0.1 that incorporates feedback from Environmental Council (EC) members and the general public.

Background

The current Hawai‘i Administrative Rules (HAR) Title 11 Department of Health (DOH) Chapter 200 Environmental Impact Statements (“HAR Chapter 11-200”) were promulgated and compiled in 1996. An amendment to add an exemption class for the acquisition of land for affordable housing was added in 2007, although it has not been compiled with the rest of the rules.

On July 27, 2017, the EC Permitted Interaction Group submitted Version 0.1 to the EC for its consideration in rulemaking to update HAR Chapter 11-200. Refer to Version 0.1 for additional background information. The EC approved Version 0.1 on August 8, 2017 to be its baseline document and to serve as a foundation for consulting with affected agencies and the general public. The EC approval concluded the work of the Permitted Interaction Group.

Version 0.2 is intended to be a discussion document. The EC anticipates preparing a Version 0.3 in October 2017 that could potentially become the proposed draft for which it conducts formal public hearings to adopt into rules.

How to Read Version 0.2

Versions 0.1 and 0.2 use a “Ramseyer-lite” style of formatting to indicate proposed changes to HAR Chapter 11-200. Text with an underline is language proposed to be added to the rules. Text with a strikethrough is language proposed for removal from the rules. A footnote accompanies the proposed change to provide context.

In addition, Version 0.2 introduces yellow highlighting. Yellow highlighting indicates changes made in Version 0.2. These changes include changes to proposed revisions in Version 0.1 as well as new changes to the existing rules that were not proposed in Version 0.1. Also, Version 0.2 may have multiple footnotes following a given change. These footnotes are separated by a forward slash (“/”) to help distinguish the different footnotes.
Major Topics Addressed in Version 0.2

Version 0.2 proposes changes affecting almost every section of HAR Chapter 11-200. In addition to the numerous revisions to modernize grammar and enhance readability (“housekeeping”), the following major topics are addressed in Version 0.2:

- Clarifying definitions and aligning them with statutory definitions.
- Incorporating cultural practices in accordance with Act 50 (2000).
- Updating requirements and procedures to publish in the OEQC periodic bulletin (i.e., The Environmental Notice).
- Aligning the “triggers” requiring environmental review for agencies and applicants with statutory language.
- Clarifying the environmental review process as it applies to states of emergency and emergency actions.
- Clarifying roles and responsibilities of proposing agencies and approving agencies in the environmental review process.
- Revising the requirements and procedures for creating exemption lists and exempting actions from further environmental review.
- Modernizing submittals, deadlines, comment and response, and distribution to recognize electronic communication.
- Revising the comment and response requirements and procedures for environmental assessments (EAs) and environmental impact statements (EISs).
- Clarifying style standards for EAs and EISs, including when an action is a program or a project.
- Clarifying significance criteria thresholds for determining whether to issue an exemption notice, Finding of No Significant Impact (FONSI), or EIS Preparation Notice (EISPN).
- Clarifying requirements and procedures for directly preparing an EIS instead of an EA.
- Revising requirements for conducting scoping meetings following an EISPN.
- Clarifying content requirements for Draft and Final EISs.
- Revising procedures for appealing non-acceptance to the EC.
- Revising procedures for joint federal-state environmental review.
- Revising the requirements and procedures for determining when to do a Supplemental EIS, including aligning the requirements with statute and case law.
- Adding a retroactivity section for actions that have already completed environmental review or are undergoing review at the time the rules would be enacted.
1 Proposed §11-200-XX Retroactivity
2 §11-200-30 Severability
3 Note

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HAR Chapter 11-200 Environmental Impact Statement Rules

Subchapter 1 Purpose

§11-200-1 Purpose

Chapter 343, Hawaii Revised Statutes, (HRS)\(^1\), establishes a system of environmental review at the state and county levels which shall ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations. The purpose of this chapter is to provide agencies and persons with procedures, specifications and criteria and definitions of statewide application.

Environmental assessments and environmental impact statements are meaningless without the conscientious application of the environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies and applicants shall ensure that EAs and EISs are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action prior to decision making\(^4,5\).


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\(^1\) Housekeeping.
\(^2\) Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
\(^3\) Increases clarity.
\(^4\) Emphasizes that the EIS process is to occur before committing to a particular course of action.
\(^5\) Moved up from section 11-200-14 to emphasize that the full environmental review process should be conscientiously applied in order to be meaningful.
#001

Posted by Anonymous on 09/08/2017 at 5:42pm
Good and needed statement. Mahalo
Agree: 0, Disagree: 0

#002

Posted by Anonymous on 09/19/2017 at 8:51pm
Suggest putting some standard on what "earliest opportunity" means. Otherwise it is an area of challenge no matter when the statements are prepared in the development process.
Agree: 0, Disagree: 0

#003

Posted by Anonymous on 09/19/2017 at 8:49pm
Question
What does "as a whole" mean?
Agree: 0, Disagree: 0
Subchapter 2 Definitions and Terminology

§11-200-2 Definitions and Terminology

As used in this chapter:

"Acceptance" means a formal determination of acceptability that the document required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental impact statement (EIS), adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement as prescribed by section 11-200-23. Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with chapter 343, HRS, and this chapter. A determination of acceptance is required prior to implementing or approving the action.

"Accepting authority" means the final official or agency that determines the acceptability of the EIS document makes the determination that a final EIS required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an EIS.

"Action" means any program or project to be initiated by an agency or applicant.

"Addendum" means an attachment to a draft environmental assessment EA or draft environmental impact statement EIS, prepared at the discretion of the proposing agency, or applicant, or approving agency, and distinct from a supplemental EIS statement, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft environmental assessment EA or the draft environmental impact statement EIS already filed with the office.

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6 Housekeeping. Removes redundant language.
7 Housekeeping.
8 Removes redundant language containing a subset of the requirements for an EIS to reduce uncertainty that other EIS sections may not apply because they are omitted in the definition.
9 Removes “final” because it does not contribute additional meaning to the definition.
10 Housekeeping.
11 Clarifies that the role of the accepting authority is about to determine the acceptability of a final EIS.
12 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
13 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
14 Clarifies that the approving agency does not always prepare the EA or EIS.
15 Removes redundant language. An EIS is by definition a statement.
16 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

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#004

Posted by robinknox on 09/25/2017 at 1:16pm

Agree: 0, Disagree: 0
"Agency" means any department, office, board, or commission of the state or county
government which is part of the executive branch of that government.

"Applicant" means any person who, pursuant to statute, ordinance, or rule, officially
requests approval from an agency for a proposed action.

"Approval" means a discretionary consent required from an agency prior to actual
implementation of an action. Discretionary consent means a consent, sanction, or
recommendation from an agency for which judgment and free will may be exercised by the
issuing agency, as distinguished from a ministerial consent. Ministerial consent means a
consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed
by law or rule without the use of judgment or discretion.

"Approving agency" means an agency that issues an approval prior to actual implementation
of an applicant action, determines the need for an EA or EIS, and issues the exemption,
FONSI, or acceptance determination. The approving agency may be also the accepting
authority for an applicant final EIS.

"Concurrence" means the discretionary consent of the council to an agency exemption list.

"Council" or "EC" means the environmental council.

"Cumulative impact" means the impact on the environment results from the
incremental impact of the action when added to other past, present, and reasonably foreseeable
future actions regardless of what agency or person undertakes such other actions. Cumulative
impacts can result from individually minor but collectively significant actions taking place over a
period of time.

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17 Stylistic change because a "person" as defined by the rules is not always a human.
18 Does not add meaning to sentence so removing the word.
19 Remove "discretionary consent" from the definition and made it a standalone
definition that mirrors the statute.
20 Does not add meaning to sentence so removing the word.
21 Approving agencies are only in the case of applicants.
22 The approving agency makes the decision about level of review and if the applicant has satisfied HRS
Chapter 343.
23 Clarifies that the approving authority is always the accepting authority for applicants.
24 In the case of applicants, the approving agency is also the accepting authority. This adds clarification to
the definition.
25 Adds a definition for the council's concurrence of agency exemption lists. Concurrence is discretionary
because it is up to the council to be satisfied with the agency exemption list. The discretionary consent is
not an approval because it does not apply to a specific project action.
Should this sentence be reordered: determines the need for..., issues the exemption... or issues an approval prior to implementation....?

Agree: 0, Disagree: 0

Agree with deletion since I couldn’t figure out what the text meant.
Agree: 0, Disagree: 0
“Discretionary consent” means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed by law or rule without the use of judgment or discretion.

"Draft environmental assessment" means the environmental assessment EA submitted by a proposing agency or an approving agency for public review and comment when that agency anticipates a negative declaration finding of no significant impact (FONSI) determination.

"Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological effects (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic effects, social effects, or health effects, whether primary, secondary, or cumulative, immediate or delayed. Effects may also include those effects resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

“EIS public scoping meeting” means a meeting open to the public held by the proposing agency or applicant, or their representative, within the thirty-day public consultation period described in section 11-200-15, inviting the participation of those agencies, citizen groups, and individuals reasonably believed to be potentially affected by the proposed action (including those who might not be in accord with the proposed action), to assist the preparing party in determining the range of actions, alternatives, impacts, and proposed mitigation measures to be considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS. Suggestions made at the EIS public scoping meeting are considered to be advisory and not mandatory.

"Emergency action" means an action to prevent or mitigate loss or damage to life, health, property, or essential public services in response to a sudden unexpected occurrence demanding such immediate action, a project or program that normally would be subject to chapter 343, HRS, but is not because of a state of emergency declared by the governor.
#007

Posted by Anonymous on 09/08/2017 at 5:54pm
Very important deletion.
Agree: 0, Disagree: 0

#008

Posted by Anonymous on 09/08/2017 at 5:53pm
Good addition.
Agree: 0, Disagree: 0

#009

Posted by Anonymous on 09/20/2017 at 3:14pm
Comment
Specify general location of meeting to be held. e.g. in the community where project will be completed.
Agree: 0, Disagree: 0
"Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by a proposed action, including land, human and animal communities, health, air, water, minerals, flora, fauna, ambient noise, and objects of historic, cultural, or aesthetic significance.

"Environmental assessment" or "EA" means a written evaluation to determine whether an action may have a significant environmental effect, that serves to provide sufficient evidence and analysis to determine whether an action may have a significant environmental effect. It, together with a FONSI, an EA satisfies chapter 343, HRS, when no EIS is necessary, and facilitates preparation of an EIS when no EIS is determined to be necessary and the Chapter 343, HRS, may be satisfied without an EA when, based on an agency's judgment and experience, the agency concludes that the proposed action may have a significant effect on the environment and therefore proceeds directly to or authorizes an applicant to proceed directly to the preparation of an EIS.

"Environmental impact" means an effect of any kind, whether immediate or delayed, on any component of the environment.

"Environmental impact statement", "statement", or "EIS" means an informational document prepared in compliance with chapter 343, HRS, and this chapter and which fully complies with subchapter 7 of this chapter. The initial statement filed for public review shall be referred to as the draft environmental impact statement and shall be distinguished from the final environmental impact statement, which is the document that has incorporated the public's comments and the responses to those comments. The final environmental impact statement is the document that shall be evaluated for acceptability by the accepting authority.

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Annotations:
32 Clarifies that "environment" also includes "health". The items in this list correspond with the definition of "effects", which includes "health".
33 Adds "cultural" to the definition of "environment" to align the definition with Act 50 (2000).
34 Adds common abbreviation for use throughout the rules.
35 Adds to the statutory definition to emphasize that an EA needs to provide sufficient evidence to make a significance determination rather than merely an assertion or lengthy analysis.
36 Stylistic change to increase readability.
37 Stylistic change to increase readability.
38 Stylistic change to increase readability.
39 Clarifies when an EIS is required by inserting verb "determined". Agencies specifically make "determinations" that EISs are either necessary or not necessary (e.g., FONSI).
40 Clarifies that an EA is not always required prior to beginning preparation of an EIS.
41 Deletes because the definition is unnecessary. Combining the definitions of "effect" and "environment" provides more clarity than this definition.
42 Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.
43 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
44 Unnecessary language so recommend removing.
"EIS preparation notice" or "EISP" or "preparation notice" means a determination based on an environmental assessment that the subject action may have a significant effect on the environment and, therefore, will require the preparation of an environmental impact statement EIS, based on either an EA or an agency’s judgment and experience that the proposed action may have a significant effect on the environment and therefore authorizes the preparation of an EIS without first requiring an EA.

"Exempt classes of action" means exceptions from the requirements of chapter 343, HRS, to prepare environmental assessments, for a class of actions, based on a determination by the proposing agency or approving agency that the class of actions will probably have a minimal or no significant effect on the environment.

"Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a public government action, or the agency with the power of approval, in the case of a private action, when it has determined that the proposed project is an exempt or emergency project action.

"Final environmental assessment" means either the environmental assessment EA submitted by a proposing agency or an approving agency following the public review and comment period for the draft environmental assessment EA and in support of either a FONSI or a preparation notice determination, or the environmental assessment submitted by a proposing agency or an approving agency subject to a public consultation period when such an agency clearly determines at the outset that the proposed action may have a significant effect and hence will require the preparation of a statement.
Question (continued)....it will be helpful for the various agencies?

Agree: 0, Disagree: 0

Comment

Agree: 0, Disagree: 0

Question

Would it be possible to formalize a sample exemption notice so this can be used by agencies and also if submitted to OEQC for publication in the bulletin it will?

Agree: 0, Disagree: 0
“Finding of no significant impact” or “FONSI” means a determination by an agency based on an EA that an action not otherwise exempt does will not have the potential for a significant effect on the environment and therefore does not require the preparation of an EIS. A FONSI is required prior to implementing or approving the action.

“Impacts” means the same as “effects”.

“Issue date” means the imprinted on the periodic bulletin required by section 343-3, HRS.


“Negative declaration” or “finding of no significant impact” means a determination by an agency based on an environmental assessment that a given action not otherwise exempt does not have a significant effect on the environment and therefore does not require the preparation of an EIS. A negative declaration is required prior to implementing or approving the action.

“Office” means the office of environmental quality control.

“Periodic bulletin” means the document required by section 343-3, HRS, and published by the office.

“Person” includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an agency.

“Power generating facility” means:

1. A new, fossil-fueled, electricity-generating facility, where the electrical output rating of the new equipment exceeds 5.0 megawatts; or
2. An expansion in generating capacity of an existing, fossil-fueled, electricity-generating facility, where the incremental electrical output rating of the new equipment exceeds 5.0 megawatts.

57 Removes and adds language to align definition with chapter 343, HRS.
58 Removes and adds language to align definition with chapter 343, HRS.
59 Moves the language for the deleted “Negative declaration” into alphabetical order under “FONSI”.
60 Adds a reference for anyone looking up the word “impacts” to direct them to the word “effects.”
61 Adds common abbreviation for use throughout the rules.
62 Moves the language for the deleted “Negative declaration” into alphabetical order under “FONSI”.
63 Adds definition from HRS § 343-2.
#013

Posted by Anonymous on 09/20/2017 at 3:08pm
Comment
It's hard to tell when reading the document the words that are not capitalized have a definition (e.g. office)
Agree: 0, Disagree: 0

#014

Posted by Anonymous on 09/20/2017 at 3:05pm
Comment
e.g. "Periodic Bulletin" means the document required by section 343-3, HRS, and published by the Office.
Agree: 0, Disagree: 0

#015

Posted by Anonymous on 09/20/2017 at 3:06pm
Comment
See example "Periodic Bulletin"
Agree: 0, Disagree: 0

#016

Posted by Anonymous on 09/20/2017 at 3:02pm
Comment
Any item in the document that contains a definition should have capital first letters. (e.g. Issue Date, Periodic Bulletin) This way when reading the document the reader knows that this paired words contain a definition and have been set. In the document the words should also match this (e.g. Office should be capitalized), which will make reading and connecting the definition to the word a lot easier.
Agree: 0, Disagree: 0
"Preparation notice," or "EIS preparation notice," or "EISPN" means a determination based on an environmental assessment that the subject that an action may have a significant effect on the environment and, therefore, will require the preparation of an environmental impact statement EIS, based on either an EA or an agency’s judgment and experience that the proposed action may have a significant effect on the environment and therefore authorizes the preparation of an EIS without first requiring an EA.

"Primary impact," or "primary effect," or "direct impact," or "direct effect" means effects that are caused by the action and occur at the same time and place.

A "programmatic EIS" or "PEIS" is an EIS that assesses the environmental impacts of: (1) a number of separate actions in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of actions contemplated by a single agency or applicant; (3) separate actions having generic or common impacts; (4) an entire program or plan having wide application or restricting the range of future alternative policies or projects, including new or significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single project or program over a large geographic area.

"Proposing agency" means any state or county agency that proposes an action under chapter 343, HRS.

"Secondary impact," or "secondary effect," or "indirect impact," or "indirect effect" means effects that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include a growth-inducing effects and other effects related to induced changes in the pattern of

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64 Housekeeping.
65 Adds common abbreviation for use throughout the rules.
66 Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.
67 Moved entire definition up under “E” because “EISPN” is used more frequently than “preparation notice”.
68 Adds a definition to go along with new sections on how to do environmental review for an action that is a “program”. Most environmental review focuses on projects. By providing language on for a programmatic look environmental review, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the tension trade-off between earliest practicable time with project specificity.
69 This definition is deleted in order to present an alternative approach that does not require creating multiple new sections nor specifically defining “programmatic EIS”, but rather provides more specificity in the on requirements for EAs and EISs as to the differing level of detail needed for projects and programs.
70 Added definition because the term is used frequently throughout the rules.
71 Grammar change to singular to mirror the definition of effect or impact as a singular object.
72 Stylistic change reflect changes made to previous sentence.

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land use, population density or growth rate, and related effects on air and water, and other natural systems, including ecosystems.

"Significant effect" or "significant impact" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals and guidelines as established by law, or adversely affect the economic welfare or social welfare, or cultural practices of the community and State, or are otherwise set forth in section 11-200-12 of this chapter.

"Substantial commencement" means that an applicant has reached the stage where its last approval has been granted and has advanced to the point where financial commitments are in place and scheduled and design is essentially complete, or, for government programs, an agency action for which an approval is not required, the project or program has advanced to the point where financial commitments are in place and scheduled and design is essentially complete.

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73 Housekeeping.
74 Housekeeping.
75 Housekeeping.
76 Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding “cultural practice.”
77 Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding “cultural practice.”
78 Updates language to match Act 50 (2000) on cultural practices. Act 50 (2000) added “cultural practices” to the list of adverse effects that could constitute “significance”. “Of the community and State” is language from chapter 343, HRS, that Act 50 (2000) also added to the definition of “significant effect”.
79 Housekeeping.
80 Clarifies the distinction between applicant actions and government actions.
81 Increases readability.
82 As defined in section 343-2, HRS, an approval is a discretionary consent.
83 Removes introduction of new term “government”, and replaces with synonym “agency”. Further clarifies that this definition applies to both programs and projects.
84 Global edit changing word order of “project or program” to “program or project” to align with the definition of “action” in section 343-2, HRS.
85 Definition is proposed to help clarify when an action has progressed sufficiently to no longer require examination for supplemental environmental review. This language draws on other statutes and case law.

In the context of district boundary changes under section 205-4, HRS, the Hawaii Supreme Court has held that substantial commencement occurred when, in accordance with its representations to the Land Use Commission, a developer had begun constructing homes, and had expended more than $20 million dollars. DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC., 339 P.3d 685, 688 (Haw. 2014).
“Supplemental statement EIS” means an additional environmental impact statement updated EIS prepared for an action for which a statement an EIS was previously accepted, but which has yet to progress to substantial commencement and since acceptance the action, circumstances, or anticipated impacts have changed substantively in size, scope, intensity, use, location, or timing, among other things.

“Wastewater treatment unit” means any plant or facility used in the treatment of wastewater.88

Subchapter 3 Periodic Bulletin

§11-200-3 Periodic Bulletin

(a) The office shall inform the public through the publication of a periodic bulletin of the following:

1. Notices filed by agencies of the availability of environmental assessments (EAs) and appropriate addendum documents for review and comments;
2. Notices filed by agencies of determinations that statements (EISs) are required or not required;
3. The availability of statements (EISs), supplemental statements (EISs) and appropriate addendum documents for review and comments;
4. The acceptance or non-acceptance of statements (EISs); and
5. Other notices required by the rules of the council.

(b) The bulletin shall be made available to any person upon request. Copies of the bulletin shall also be sent to the state library system and other depositories or clearinghouses.

(e) The bulletin shall be issued on the eighth and twenty-third days of each month. All agencies and applicants submitting exemption notices, draft environmental assessments (EAs), negative declarations (FONSIs), preparation notices (EISPNs), environmental impact statements (EISs), acceptance or non-acceptance determinations, addenda, supplemental statements (EISs), supplemental preparation notices (EISPNs), revised documents, withdrawals, and other notices required to be published in the bulletin shall submit such documents or notices to the office before the close of business eight four working days prior to the issue date. In case the deadline falls on a state holiday or nonworking day, the deadline shall be the next working business day.

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89 Although an applicant prepares the EA, it is the approving agency that files a notice of availability of the EA with the office.
90 This rule is no longer required as the periodic bulletin is available to everyone electronically and no paper copies are produced by the office.
91 Housekeeping. Renumbers paragraphs.
92 Aligns with section 11-200-8.
93 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
94 OEOC does not need eight business days anymore to prepare the periodic bulletin anymore.
95 Housekeeping. For computing time see section 1-29, HRS.
96 Housekeeping.
97 Housekeeping.
Question
Will the proposed revisions allow for neighbor island submittals postmarked before the close of business on the due date to be considered for publication? I believe that the office allowed this past practice at one time. Note the use of "postmarked" throughout this draft of the rules with respect to business days and/or calendar days?
Agree: 0, Disagree: 0
All submittals to the office for publication in the bulletin shall be accompanied by a completed informational form which provides whatever information the office needs to properly notify the public. The information requested may include the following: the title of the action; the islands affected by the proposed action; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates or other geographic data; applicable permits, including discretionary approvals requiring preparation of the document under chapter 343, HRS; whether the proposed action is an agency or an applicant action; a citation of the applicable federal or state statutes requiring preparation of the document; the type of document prepared; the names, addresses and contact persons as applicable of the accepting authority, the proposing agency, the approving agency, the applicant, and the consultant; and a brief narrative summary of the proposed action which provides sufficient detail to convey the full impact of the proposed action to the public.

The office may provide recommendations to the agency or applicant responsible for the environmental assessment EA or EIS regarding any applicable administrative content requirements set forth in this chapter.

The office may, on a space available basis, publish other notices not specifically related to chapter 343, HRS.


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98 Clarifies that OEQC may ask for geographic data such as that included in a standard GIS shapefile file. The existing rules already allows for this but this language is to make it clearer.

99 Clarifies that the agency is required to identify the specific discretionary approval that requires an applicant to go through environmental review.

100 Clarifies that the office may also provide recommendations regarding administrative content requirements to applicants preparing EAs and EISs.

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Subchapter 4 Responsibilities

§11-200-4 Identification of Approving Agency and Accepting Authority

(a) Whenever an agency proposes an action, the final authority to accept a statement an EIS shall rest with:

(1) The governor, or an the governor’s authorized representative, whenever an action proposes the use of state lands or the use of state funds or, whenever a state agency proposes an action within section 11-200-6(b);

or

(2) The mayor, or an the mayor’s authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

In the event that an action involves state and county lands, state and county funds, or both state and county lands and funds, the governor or the governor’s authorized representative shall have authority to accept the EIS.

(b) Whenever an applicant proposes an action, the authority for requiring an EA or statements EIS, and for making a determination regarding any required EA, and accepting any required statements EIS that have been prepared shall rest with the approving agency initially receiving and agreeing to process the request for an approval. With respect to EISs, the approving agency is also called the accepting authority.

101 Expand the content of this section to also identify the agency with responsibility in cases of EAs.

102 Removes the word “final” because it does not add to the meaning of the sentence anymore.

103 Housekeeping.

104 Housekeeping.

105 Housekeeping.

106 Housekeeping.

107 Housekeeping.

108 Makes clear that “state and county” funds are meant.

109 Makes clear that “state and county” lands and funds are meant.

110 Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and funds. This language is modified from the original language in section 11-200-23.

111 Adds EAs to the identification of which agency has responsibility. Note that this change also means that the OEQC is explicitly empowered to determine the agency in situations involving EAs, whereas existing language is that the OEQC is explicitly empowered for situations involving EISs and implicitly for situations involving EAs.

112 Adds EAs to the identification of which agency has responsibility. Language is phrased so that the agency can make a FONSI or EISP determination.

113 Housekeeping. Clarifies that the “agency” is called the “approving agency.”

114 Housekeeping.

115 Clarifies that the approving agency is the accepting authority for applicants.
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Subchapter 5 Applicability

§11-200-5  Agency Actions

(a) For all proposed agency actions which are not exempt as defined in section 11-200-8, the proposing agency shall assess at the earliest practicable time the significance of potential impacts of its actions, including the overall, cumulative impact in light of related past, present, and reasonably foreseeable actions in the area affected and further actions contemplated.

(b) The applicability of chapter 343, HRS, to specific agency proposed actions is conditioned by the agency's proposed use of state or county lands or funds. Therefore, when an agency proposes to implement an action to use state or county lands or funds, it shall be subject to the provisions of chapter 343, HRS, and this chapter.

(c) Use of state or county funds shall include any form of funding assistance flowing from the State or a county, and use of state or county lands includes any use (title, lease, permit, easement, licenses, etc.) or entitlement to those lands.

(d) For agency actions, chapter 343, HRS, exempts from applicability any feasibility or planning study for possible future programs or projects which the agency has not approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a proposal, it shall consider environmental factors and available alternatives and disclose these in any future assessment or subsequent statement. If, however, the planning and feasibility studies involve testing or other actions which may have a significant impact on the environment, an environmental assessment or subsequent statement shall be prepared.
Any amendment to existing county general plans, however denominated, which may include but not be limited to development plans, or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation, requires an environmental assessment EA or EIS. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.)

In the event that the governor declares a state of emergency pursuant to chapter 127A, HRS, the governor has authority to suspend laws, including chapter 343, HRS. In such an event, the proposing agency shall file an exemption notice in its records that the emergency action was undertaken pursuant to a specific emergency proclamation. If the emergency action has not substantially commenced within sixty days of the emergency proclamation, the action will be subject to chapter 343, HRS.

In the event of a sudden unexpected emergency causing or likely to cause loss or damage to life, health, property, or essential public service, but for which a declaration of a state of emergency pursuant to chapter 127A, HRS has not been made, an agency may undertake an emergency action without conducting environmental review under chapter 343. An emergency action undertaken without environmental review may still be subject to the public’s right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS, and shall be initiated within one hundred and twenty days of the agency’s decision to carry out the action or from the date the public becomes aware of the action, whichever is later.


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140 Housekeeping.  
141 Housekeeping.  
142 Direct-to-EIS is also an option.  
143 States the name of the statute for emergency proclamations.  
144 Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.  
145 Ensures that the exclusion from chapter 343, HRS, are related to the declared emergency by requiring substantial commencement of the action within sixty days of the emergency proclamation. Under chapter 127A-14(d), HRS, a state of emergency automatically terminates after sixty days. Supplemental emergency proclamations would re-start the sixty day count.  
146 Provides an avenue for agencies to undertake emergency actions (e.g., cutting a firebreak) absent a governor declared state of emergency and provides safeguards to avoid abuse, including clearly defined circumstances in which the emergency action may be initiated and the requirement to produce an exemption notice after the fact. An agency decision to undertake an emergency action without environmental review may be subject to judicial review.
#018

Posted by Anonymous on 09/20/2017 at 2:36pm
Comment
item (g) addresses my question on this. Sorry
Agree: 0, Disagree: 0

#019

Posted by Anonymous on 09/20/2017 at 2:34pm
Question
Does only the governor have this authority or County Mayors have this authority also?
Agree: 0, Disagree: 0
§11-200-6 Applicant Actions

(a) Chapter 343, HRS, shall apply to persons who are required to obtain an agency approval prior to proceeding with:

(1) Implementing actions which are either located in certain specified areas or contain certain specified elements or components; or

(2) Actions that require certain types of amendments to existing county general plans.

The approving agency that initially received and agreed to process the request for approval shall require the applicant to prepare an EA of the proposed action at the earliest practicable time to determine whether an EIS is likely to be required; provided that if the approving agency determines, through its judgment and experience, that an EIS is likely to be required, the approving agency may authorize the applicant to choose not to prepare an EA and instead prepare an EIS that begins with the preparation of an EISPN.

(b) Chapter 343, HRS, establishes certain categories of action which require the agency processing an applicant's request for approval to prepare an environmental assessment, the applicant to prepare an EA. There are seven geographical categories, five proposal elements, and two administrative categories.

(1) The seven geographical categories are:

(A) The use of state or county lands;
(B) Any use within any land classified as conservation district by the state land use commission under chapter 205, HRS;
(C) Any use within the shoreline area as defined in section 205A-41, HRS;
(D) Any use within any historic site as designated in the national register or the Hawaii Register of Historic Places.

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147 Acknowledges the "project" type triggers (e.g., waste-to-energy facility).
148 Replaces the suggested term "element" with the term "component" to clarify that the activities need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.
149 Housekeeping. (Missing underlining in v0.1.)
150 Adopts language from Act 172 (2012) for direct-to-EIS and that the applicant has the responsibility to prepare the document.
151 Housekeeping. (Missing strikethrough in v0.1.)
152 Housekeeping.
153 Reflects reorganization of "helicopter facility" to a component category.
154 Reflects reorganization of "helicopter facility" to a component category.
155 Acknowledges the "project" type triggers (e.g., waste-to-energy facility).
156 Aligns language with "categories" used in previous sentence and uses the term "component" to clarify that the activities in this category need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.
157 Reflects reorganization of "helicopter facility" to a component category.
158 Adds specificity.
(E) Any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";

(F) Any reclassification of any land classified as conservation district by the state land use commission under chapter 205, HRS; and

(G) The construction of a new, or the expansion or modification of an existing helicopter facilities facility within the State which by way of their activities may affect: any land classified as conservation district by the state land use commission under chapter 205, HRS; the shoreline area as defined in section 205A-41, HRS; or, any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of Historic Places; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which is under consideration for placement on the National Register or the Hawaii Register of Historic Places.

(2) The five proposal elements component categories are:

(A) Wastewater treatment unit, except an individual wastewater system or wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;

(B) Waste-to-energy facility;

(C) Landfill;

(D) Oil refinery; or

(E) Power-generating facility.

(F) The construction of a new, or the expansion or modification of an existing helicopter facilities facility within the State that by way of their activities may affect: any land classified as conservation district by the state land use commission under chapter 205, HRS; the shoreline area as defined in section 205A-41, HRS; or, any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of Historic Places; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which is under consideration for placement on the National Register or the Hawaii Register of Historic Places.
in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 96-665, or chapter 6E, HRS of Historic Places; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which that is under consideration for placement on the National Register or the Hawaii Register of Historic Places.

(23) The two administrative categories are:

(A) Any amendment to existing county general plans, however denominated, which may include but are not limited to, development plans or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.); and

(B) The use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies.


Housekeeping. Unnecessary specificity.

Moves “helicopter facility” content into subsection (2), “component categories” because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.

Housekeeping.
§11-200-7 Multiple or Phased Applicant or Agency Actions

A group of actions proposed by an agency or an applicant shall be treated as a single action when:

1. The component actions are phases or increments of a larger total undertaking and lack independent utility;¹⁷³
2. An individual project action is a necessary precedent for a larger project action;¹⁷⁴
3. An individual project action represents a commitment to a larger project action; or
4. The actions in question are essentially identical and a single statement EIS will adequately address the impacts of each individual action and those of the group of actions as a whole.


¹⁷³ Incorporates the threshold for determining improper segmentation.
¹⁷⁴ Stylistic change.
¹⁷⁵ Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.
¹⁷⁶ Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.
¹⁷⁷ Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.
§11-200-8 Exempt Classes of Action Exemption

(a) Chapter 343, HRS, states that procedures whereby specific specific\textsuperscript{179} types of actions, because they will probably have minimal or no significant effects, individually and cumulatively, on the environment,\textsuperscript{180} can be declared exempt from the preparation of an EA.\textsuperscript{181} A list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction\textsuperscript{182} or expertise as to the propriety of the exemption. Government Agency\textsuperscript{183} activities that do not rise to the level of being a project or program or project, or are ordinary functions that by their nature do not have the potential to adversely affect the environment more than negligibly, which may include, among other activities, routine repair, maintenance, purchase of supplies, and administrative actions involving personnel only, shall not be considered projects or programs or programs for the purposes of Chapter 343, HRS.\textsuperscript{184} Actions declared exempt from the preparation of an environmental assessment EA under this section are not exempt from complying with any other applicable statute or rule. The following types of projects or programs are eligible for exemption\textsuperscript{185} list represents exempt classes of action:

(1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible minor\textsuperscript{186} or no expansion or change of use beyond that previously existing;

(2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;

(3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment

\textsuperscript{178} Renames to shift focus from the “classes” (a term no longer used) to the notice.

\textsuperscript{179} Removes unnecessary language.

\textsuperscript{180} Removes unnecessary language. “Significant effects” as defined are “on the environment”.

\textsuperscript{181} Incorporates language direction directly from chapter 343, HRS.

\textsuperscript{182} Housekeeping.

\textsuperscript{183} Clarifies that agencies are the government actors contemplated in this section, as opposed to other branches of the government or the federal government.

\textsuperscript{184} Establishes a de minimis level of government activity for being considered eligible for environmental review. Chapter 343, HRS, does not define a project or program, so leaves it to agencies and the courts to decide whether a particular activity constitutes such.

\textsuperscript{185} Replaces “classes” language with “types”.

\textsuperscript{186} Replaces “negligible” with “minor” because in some cases minor operations, repairs, or maintenance can have little or no significant impact.
#020

Posted by Anonymous on 09/20/2017 at 3:26pm
Comment
Is this the section where agencies shall have their own exemption list? This is not clear and if it does should note that retro contains timeline on updates. I'm confused on where agency exemption list requirements went?
Agree: 0, Disagree: 0

#021

Posted by Anonymous on 09/20/2017 at 3:17pm
Question
Why title removes Exemption Classes but text covers exemptions?
Agree: 0, Disagree: 0
and facilities and the alteration and modification of same, including, but not limited to:

(A) Single-family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if not in conjunction with the building of two or more such units;

(B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(C) Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure, if not in conjunction with the building of two or more such structures; and

(D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

(4) Minor alterations in the conditions of land, water, or vegetation;

(5) Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities which do not result in a serious or major disturbance to an environmental resource;

(6) Construction or placement of minor structures accessory to existing facilities;

(7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;

(8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii Register of Historic Places, or that are under consideration for placement on the national register or the Hawaii Register of Historic Places as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS;

(9) Zoning variances except shoreline set-back variances; and

(10) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions.

(11) Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material

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187 Counties and even different agencies within counties, measure residence area differently. This language acknowledges the difference.

188 Stylistic; mirrors provision below (B).

189 Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.

190 Adds specificity.

191 Aligns language with section 343-5(a)(8)(C), HRS.

192 Unnecessary language.

193 Housekeeping.

194 Deletes language because it is addressed at the beginning of paragraph (a).

195 Housekeeping. Renumbering this and subsequent paragraphs.

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change of use beyond that previously existing uses\textsuperscript{196} and for which the legislature has appropriated or otherwise authorized funding\textsuperscript{197}; and\textsuperscript{198}

(11) New construction of affordable housing that only has use of state or county lands or funds as the sole\textsuperscript{199} requirement for compliance with\textsuperscript{200} chapter 343, HRS, and as proposed\textsuperscript{201} is consistent with existing state urban land classification, existing county residential or mixed use zoning classification, and applicable federal, state, and county development standards.\textsuperscript{202}

(b) All exemptions under the classes types\textsuperscript{203} in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(c) Any agency, at any time, may request that a new exemption class type\textsuperscript{204} be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, HAR, environmental council rules.

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes types above\textsuperscript{205}, as long as these lists are consistent with both the letter and intent expressed in these exempt classes here\textsuperscript{206} and chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e)\textsuperscript{207} Actions that are clearly covered by an agency exemption list that has received council concurrence and do not have any potential to produce significant impacts do not

\textsuperscript{196} Clarifies what “that” refers to.
\textsuperscript{197} In 2007, the Council formally amended HAR Section 11-200-8 to add the exemption category for acquisition of land for affordable housing. The Council has not compiled the amendment to HAR Section 11-200-8 with HAR Chapter 11-200. This language incorporates and compiles the 2007 change.
\textsuperscript{198} Housekeeping.
\textsuperscript{199} Clarifies that the only trigger for compliance with chapter 343, HRS, is the use of state or county lands, not that the action only uses state or county funds or lands.
\textsuperscript{200} Stylistic change.
\textsuperscript{201} Removes ambiguity as to whether the project “as implemented” must be consistent.
\textsuperscript{202} Adds affordable housing as an exemption type, with caveats the following caveats: 1) that the only trigger is use of state or county lands or funds (other triggers would mean the exemption is not applicable) and that 2) the proposed action is consistent with existing land use controls so that it does not require going before the LUC or Planning Commissions to get a change in SLUD or zoning.
\textsuperscript{203} Housekeeping.
\textsuperscript{204} Housekeeping.
\textsuperscript{205} Housekeeping.
\textsuperscript{206} Housekeeping.
\textsuperscript{207} Inserts new paragraphs; subsequent paragraphs are renumbered.

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require documentation. Actions with no documentation may still be subject to the public’s right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS.

(f) For an action that an agency considered exempt according to the criteria in paragraph (a) but is not clearly covered by the agency’s exemption list, or is on the agency’s exemption list but that list has not received council concurrence within the past five years, the agency shall undertake a systematic analysis to determine whether the action merits exemption consistent with one or several of the types listed in paragraph (a). For such actions, the agency shall obtain the advice of outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. An action may not be segmented per section 11-200-7 so as to appear to be consistent with several types listed in paragraph (a).

(e) Each agency shall maintain records of such actions, called exemption notices, which it has found to be exempt from the requirements for preparation of an environmental assessment EA in chapter 343, HRS, and each agency shall produce the records for review upon request. The agency shall provide a means to notify and accept input from the public in a timely manner after the exemption declaration is made. An agency may request the office to publish the exemption notice in the periodic bulletin. The public’s right to judicial proceeding on the lack of an assessment under chapter 343, HRS shall commence from the date the public is notified of the exemption through the agency’s means or publication in the bulletin, whichever of the two is earliest.

208 Removes documentation obligation for agencies for activities that are just above the threshold of *de minimis* but may not require the level of consultation and documentation associated with typical projects or programs.

209 Affirms the public’s right to challenge borderline cases that may not be discovered until “the bulldozers are out” and the agency may have erred in its decision to not prepare an EA.

210 Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not received council concurrence within the past five years. The five years concurrence threshold is an incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation so that agencies can continue to use the list but with a higher burden of due diligence.

211 Reminds agencies that an action may not be broken up into smaller pieces to fit within several exemption types.

212 Housekeeping.

213 Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these as a record.

214 Requires agencies to make exemption notices publicly available either through the periodic bulletin or through their own means. Some agencies already do this by posting them to their website in a spreadsheet or in meeting minutes. This helps to close the gap between when an agency makes a determination and how the public is supposed to know, so that everyone has a clear date for when legal challenge begins and ends, without making the disclosure process overly burdensome to agencies or OEQC.

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(f) In the event the governor declares a state of emergency pursuant to chapter 127A, HRS, the governor may exempt any affected program or action from complying with this chapter. The governor has authority to suspend laws, including chapter 343, HRS. In such an event, no exemption declaration is required and the proposing agency or approving agency shall file an exemption notice in its records that the emergency action was undertaken pursuant to a specific emergency proclamation.

(ii) An emergency action that is not initiated within the period of the governor’s emergency proclamation shall no longer be considered an emergency action and therefore shall be subject to chapter 343, HRS.

(d) Each agency, through time and experience, shall develop its own list consistent with both the letter and intent expressed here and in chapter 343, HRS of specific programs or projects that the agency considers to be included within the exempt types above. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e) Each agency shall create exemption notices for actions that it has found to be exempt from the requirements for preparation of an EA. Each agency shall produce the exemption notices for review upon request by the public or an agency.

(f) Agencies shall consult on the propriety of an exemption and publish exemption notices with the office. Consultation and publication of an exemption notice is not required when:

(1) The council has concurred with the agency’s exemption list no more than seven years before the agency initiates the action or authorizes an applicant to initiate the action;

(2) The action is consistent with the letter and intent of the agency’s exemption list; and

(3) The action does not have any potential to produce significant impacts.
(g) Actions with no published exemption notice may still be subject to the public’s right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS, and shall be initiated within one hundred and twenty days of the agency’s decision to carry out the action or from the date the public becomes aware of the exemption notice, whichever is later. 222

(h) For consultation on the propriety of an exemption, an agency shall undertake an analysis to determine whether the action merits exemption consistent with one or several of the types listed in paragraph (a). The agency shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. This analysis and consultation shall be documented in the exemption notice. 223

(i) To publish an exemption notice, the agency shall submit the exemption notice to the office per section 11-200-3 for publication in the next periodic bulletin. The public’s right to a judicial proceeding on the lack of an assessment under chapter 343, HRS, shall commence from the date of publication in the notice. 224


222 Clarifies that actions with no published exemption notice may still be subject to judicial review and the time period for initiating judicial review.

223 Enunciates the requirements for consultation on the propriety of an exemption prior to determining that an action is exempt and documentation requirements of the consultation, when applicable, in the exemption notice.

224 Provides that in order to meet any requirement to “publish the exemption notice”, an agency shall submit the exemption notice to the office for publication in the bulletin. The bulletin serves as a central source for the public to receive information regarding agency determinations and other environmental review, including published exemption notices. This subsection also sets a time period for the public’s right to judicial review under chapter 343, HRS for the lack of assessment of an exempted action with a published exemption notice.
HRS § 343-7 is clear and unambiguous. Any judicial action "shall be initiated within one hundred twenty days of the agency's decision to carry out or approve the action, or, if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted within one hundred twenty days after the proposed action is started."

Any language that extends these dates clearly violates the legislature's limitation.
Agree: 0, Disagree: 0
Subchapter 6 Determination of Significance

§11-200-9 Assessment of Agency Actions and Applicant Actions

(a) For agency actions, except those actions exempt from the preparation of an environmental assessment EA pursuant to section 343-5, HRS, or section 11-200-8, the proposing agency shall:

(1) Seek, at the earliest practicable time, the advice and input of the county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals which the proposing agency reasonably believes may be affected;

(2) Identify the accepting authority pursuant to section 11-200-4 and specify what statutory conditions under section 343-5(a), HRS, require the preparation of an environmental assessment EA;

(3) Prepare an environmental assessment EA pursuant to section 11-200-10 of this chapter which shall also identify potential impacts, evaluate the potential significance of each impact, and provide a detailed study of significant impacts;

(4) Determine, after reviewing the environmental assessment EA described in paragraph (3), and considering the significance criteria in section 11-200-12, whether the proposed action warrants an anticipated negative declaration FONSI or an environmental impact statement preparation notice EISPN, provided that for an environmental impact statement preparation notice EISPN, the proposing agency shall inform the accepting authority of the proposed action;

(5) File the appropriate notice of determination (anticipated negative declaration FONSI or environmental impact statement preparation notice EISPN in accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the completed informational form referenced in section 11-200-3(d), and four copies of the supporting environmental assessment EA (a draft environmental assessment EA for the anticipated negative declaration FONSI or a final environmental assessment EA for the environmental impact statement).

225 Housekeeping.
226 Housekeeping.
227 Housekeeping.
228 Housekeeping.
229 Housekeeping.
230 Housekeeping.
231 Housekeeping.
232 Housekeeping.
233 OEQC only needs one copy, not four.
preparation notice EISPN, when applicable\textsuperscript{234}) with the office in accordance with sections 11-200-3, 11-200-11.1, 11-200-11.2, and other applicable sections of this chapter;  
(6) Distribute Circulate\textsuperscript{235}, concurrently with the filing in paragraph (5), the draft environmental assessment EA to other agencies having jurisdiction or expertise as well as citizen groups and individuals which the proposing agency reasonably believes may be affected;  
(7) Deposit, concurrently with the filing in paragraph (5), one paper\textsuperscript{237} copy of the draft environmental assessment EA at the nearest state library in each county in which the proposed action is to occur and one paper copy at the Hawaii Documents Center\textsuperscript{238};  
(8) Receive and respond to public comments in accordance with:  
\begin{enumerate}  
\item[(A)] section 11-200-9.1 for draft environmental assessment EAs for anticipated negative declaration FONSI determinations; or  
\item[(B)] section 11-200-15 for environmental assessments EAs for preparation notices EISPNs.  
\end{enumerate}  
For draft environmental assessment EAs, the proposing agency shall revise the environmental assessment EA to incorporate public comments as appropriate, and append copies of comment letters and responses in the environmental assessment EA (the draft environmental assessment EA as revised, shall be filed as a final environmental assessment EA as described in section 11-200-11.2); and  
(9) As appropriate, issue either a negative declaration FONSI determination\textsuperscript{239} or an environmental impact statement preparation notice EISPN pursuant to the requirements of section 11-200-11.2, provided that for preparation notice EISPNs determinations\textsuperscript{240}, the proposing agency shall proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

\textsuperscript{234} Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.  
\textsuperscript{235} The term “distribution” is the section heading of § section 11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.  
\textsuperscript{236} Housekeeping.  
\textsuperscript{237} Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.  
\textsuperscript{238} Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.  
\textsuperscript{239} Removes redundant term “definition” as a FONSI is by definition a determination.  
\textsuperscript{240} Housekeeping.  
\textsuperscript{241} An EISPN is by definition a determination.
(b) For applicant actions, except those actions excluded from the preparation of an environmental assessment EA pursuant to section 343-5, HRS, or those actions which the approving agency declares exempt pursuant to section 11-200-8, the approving agency shall:

(1) Require the applicant, at the earliest practicable time, to seek the advice and input of the lead county agency responsible for implementing the county’s general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals which the approving agency reasonably believes to be affected;

(2) Require the applicant to provide whatever information the approving agency deems necessary to complete the preparation of an environmental assessment prepare an EA in accordance with section 11-200-10.

(3) Within thirty days from the date of receipt of the applicant's completed request for approval to the approving agency:
   (A) prepare an environmental assessment pursuant to section 11-200-10; and
   (B) determine, after reviewing the environmental assessment and considering the significance criteria in section 11-200-12 whether the proposed action warrants an anticipated negative declaration or an environmental impact statement preparation notice;

   require the applicant to prepare a draft EA pursuant to section 11-200-10;

   4.3 4.3 Determine, after reviewing the draft EA and considering the significance criteria in section 11-200-12, whether the proposed action warrants an anticipated FONSI or an EISPN.

   File the appropriate notice of determination (anticipated negative declaration FONSI or environmental impact statement preparation notice EISPN in accordance with section 11-200-11.1 or 11-200-11.2), the completed

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242 Clarifies that there is a distinction between exclusion by statute and exemption under section 11-200-8.

243 Narrows the language to focus on the EA on the content requirements.

244 This language is unnecessary because agencies no longer prepare EAs on behalf of applicants. The remaining language is redundant with the provisions that follow in this section and therefore the entire paragraph is being deleted.

245 Housekeeping (renumbering).

246 Shifts the focus of preparation to the applicant per Act 172 (2012).

247 Removes the thirty-day requirement for an approving agency to prepare, review, and issue an anticipated FONSI or EISPN. Instead, makes the agency tell the applicant within thirty days of receipt of a request for approval which course of environmental review the applicant is to take.

248 Inserts a new paragraph for the agency to decide whether an anticipated FONSI or EISPN is appropriate. Subsequent paragraphs are renumbered.

249 Housekeeping (renumbering).

250 Makes this step explicit; it was not stated before but it the step that occurs between the draft EA stage and filing an anticipated FONSI.

251 Housekeeping (renumbering).
potential amendments to HAR Chapter 11-200, environmental impact statements

informational form referenced252 in section 11-200-3(d)253 and four copies of the supporting environmental assessment EA (a draft environmental assessment EA for the anticipated negative declaration FONSI or a final environmental assessment EA for the environmental impact statement preparation notice EISPN, when applicable254) with the office in accordance with sections 11-200-3, and 11-200-11.1, or 11-200-11.2, and other applicable sections of this chapter255;

6.5 Distribute Circulate256, or require the applicant to distribute circulate258, concurrently with the filing in paragraph (4), the draft environmental assessment EA to other agencies having jurisdiction or expertise as well as citizen groups and individuals which the approving agency reasonably believes to be affected;

6.6 Deposit or require the applicant to deposit, concurrently with the filing in paragraph (4), one paper260 copy of the draft environmental assessment EA at the nearest state library in each county in which the proposed action is to occur and one paper copy at the Hawaii Documents Center261;

6.7 Receive public comments, transmit copies of public comments to the applicant and require Require the applicant to receive and respond to public comments, all in accordance with section 11-200-9.1 for draft environmental assessment EA, or 11-200-15 for preparation notices EISPNs and their associated final environmental assessment EA. For draft environmental assessment EA, the approving agency shall require the applicant: (A)263 to provide revise the draft EA with264 whatever information the approving agency deems necessary in accordance with section 11-200-10265 to

252 Housekeeping.
253 Housekeeping.
254 Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.
255 Adds language to ensure that other sections are fulfilled as well.
256 Housekeeping (renumbering).
257 Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.
258 Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.
259 Housekeeping (renumbering).
260 Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.
261 Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.
262 Housekeeping (renumbering).
263 Breaks up the paragraph so that the three requirements for the applicant are easier to read.
264 Housekeeping.
265 Emphasizes that the final EA content should still meet the EA content requirements as set forth in section 10.

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revise the draft environmental assessment to inform its determination for a FONSI or EISPN, taking into account comments on the draft EA; and, to incorporate comments as appropriate; and, to include copies of comment letters and the applicant's responses. The revised draft environmental assessment EA, as revised, shall be filed as a final environmental assessment EA as described in section 11-200-11.2; and, As appropriate, issue a negative declaration FONSI determination or an environmental impact statement preparation notice EISPN with appropriate notice of determination thereof pursuant to section 11-200-11.2 within thirty days from the end of the thirty-day public comment period of receiving information required for delivery to the approving agency pursuant to paragraph 8. For preparation notice EISPN determinations, the approving agency shall proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

(c) For agency or applicant actions, the proposing agency or the applicant approving agency, as appropriate, shall analyze or cause to be analyzed in the EA a reasonable range of alternatives, in addition to the proposed action in the environmental assessment EA.

(d) For agency or applicant actions, if the agency determines, through its judgment and experience, that an EIS is likely to be required, the agency may choose not to prepare an EA, or authorize the applicant to choose not to prepare an EA, as applicable, and

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266 Housekeeping. Removes redundant language.
267 Emphasizes that the point of revisions to the final EA is to move toward a decision on a FONSI or EISPN based on the content and draft EA comments.
268 Housekeeping.
269 Changes the sentence from a parenthetical statement to a standalone sentence.
270 Changes the sentence from a parenthetical statement to a standalone sentence.
271 Changes the sentence from a parenthetical statement to a standalone sentence.
272 Removes redundant language. A FONSI is defined as a determination in section 11-200-2.
273 Removes inadvertent strikethrough.
274 Housekeeping (renumbering).
275 Paragraphs renumbered.
276 Clarifies that the alternatives to be examined are done so in the environmental assessment, not independent of it, and that the agency directs the applicant to analyze alternatives in an applicant-prepared EA, as provided for in Act 172, (2012). Inserts the term reasonable to emphasize that not all possible alternatives are required to be analyzed.
277 Removes unnecessary language to increase clarity that both an analysis of the action and an analysis of alternatives to the action must be included in the EA.

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instead shall prepare or shall cause to be prepared\textsuperscript{278} an EIS that begins with an\textsuperscript{EISPN}.\textsuperscript{279}

\textsuperscript{278} Clarifies that an agency may cause the EIS to be prepared rather than preparing it on its own.

\textsuperscript{279} Incorporates language from Act 172 (2012) allowing agencies to bypass preparing the environmental assessment and instead prepare an EIS beginning with the EISPN. Also allows agencies to authorize applicants to bypass the environmental assessment, should the applicant desire, and instead prepare an EIS beginning with the EISPN.
§11-200-9.1 Public Review & Response Requirements for Draft Environmental Assessments for Anticipated Negative Declaration Finding of No Significant Impact
Determinations & Addenda to Draft Environmental Assessments

(a) This section shall apply only if a proposing agency or an approving agency applicant has completed the draft EA requirements of section 11-200-9(a), paragraphs (1), (2), (3), (4), (5), and (6) for agencies, or section 11-200-9(b), paragraphs (1), (2), (3), (4), (5) and (6) for applicants, as appropriate.

(b) The period for public review and for submitting written comments for both agency actions and applicant actions shall begin as of the initial issue date that notice of availability of the draft environmental assessment EA was published in the periodic bulletin and shall continue for a period of thirty days. Unless mandated otherwise by statute, for agency actions and applicant actions, the period for public review and for submitting written comments shall commence from the date of notice of availability of the draft EA is initially issued in the periodic bulletin and shall continue for a period of thirty calendar days. Written comments sent to the proposing agency or approving agency applicant, whichever is applicable, with a copy of the comments to the applicant, if applicable, or proposing agency, shall be received by or postmarked to the proposing agency or approving agency applicant, within the thirty-day period. Any

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Housekeeping.

Reflects change that the applicant, rather than the approving agency, prepares the EA.

Reflects change that the applicant, rather than the approving agency, prepares the EA.

These paragraphs refer to requirements for agencies preparing an EA through distributing and filing the Draft EA.

These paragraphs refer to requirements for applicants preparing an EA through distributing and filing the Draft EA.

Housekeeping. (v0.1 omitted strikethrough)

Acknowledges that the public review period may be altered for certain actions by statute.

Measures time consistently in the process. Adds clarity regarding how to count days (distinguishes from working days) and that the publication date is counted as day zero.

Stylistic change.

Reflects change that the applicant, rather than the approving agency, prepares the EA. Global change.

Clarifies that applicants are not always involved and when not involved, no copy of the comments need to be sent to the applicant.

Redundant; the proposing agency is already as identified as receiving comments.

Stylistic change.

Reflects change that the applicant, rather than the approving agency, prepares the EA.
comments outside of the thirty-day period need not be considered or responded to in the final EA. However, for a proposed site for a new correctional facility or for the expansion of an existing correctional facility, pursuant to section 353-16.35, HRS, the period for public review and submitting written comments thirty-day period shall be a sixty-day period days.295/296

For agency actions, the proposing agency shall respond in writing to all comments received or postmarked during the thirty-day statutorily mandated review period, incorporate comments into the final EA as appropriate, and append the comments and responses in to the final environmental assessment EA. Each response shall be sent directly to the person commenting, with copies of the response also sent to the office. If a number of comments are identical or very similar, the proposing agency may group the comments and prepare a single standard response for each group. When grouping comments, the agency must include each name of the commentor along with the grouped response. One representative copy of comments that are identical or very similar may be included in the final EA rather than reproducing each individual comment. All individual comments and representative copies of identical or very similar comments must be appended to the final EA regardless of whether the agency believes the comments merit individual discussion in the body of the final EA. 303

294 Stylistic change.
295 Incorporates the public comment period and time limit from HRS § 353-16.35.
296 Removes the language specific to correctional facilities. There are several instances in the HRS that require adjustments to the environmental review process. OEQC guidance will alert the public to these differences in process.
297 Acknowledges that some statutes may modify the public review and comment period.
298 Acknowledges that other statutes may require comment periods of varying lengths.
299 Clarifies that the comments are included in the final EA.
300 Housekeeping.
301 Housekeeping.
302 Provides that comments that are very similar or identical do not need to be individually responded or included in the final EA. The agency may respond to the issues raised in the comments as a group so long as the individuals who raised the issues are acknowledged. The aim of this provision is to reduce the burden on agencies to reproduce very similar or identical comments received en mass and to focus responses on the issues raised by comments rather than on responding to individual commentors.
303 Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

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(d) For applicant actions, the applicant shall respond in writing to all comments received or postmarked during the thirty-day review period and the approving agency shall incorporate or comments into the final EA as appropriate, and append the comments and responses to the final EA. If a number of comments are identical or very similar, the applicant may group the comments and prepare a single standard response for each group. When grouping comments, the applicant must include each name of the commentor along with the grouped response. The comments must be attached to the final EA regardless of whether the approving agency believes the comments merit individual discussion in the body of the final EA. Each response shall be sent directly to the person commenting with a copy to the office. A copy of each response shall be sent to the approving agency for its timely preparation of a determination and notice thereof pursuant to sections 11-200-9(b) and 11-200-11.1 or 11-200-11.2.

(e) An addendum document to a draft environmental assessment EA shall reference the original draft environmental assessment EA it attaches to and shall comply with all applicable public review and comment requirements set forth in sections 11-200-3 and 11-200-9.

Proposed §11-200-XX Environmental Assessment Style

(a) In developing the draft and final EA, proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, of the EA. The scope of the EA may vary with the scope of the proposed action and its impact. Data and analyses in an EA shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. An EA shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the EA, including cost benefit analyses and reports required under other legal authorities.

(b) The level of detail in an EA may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to actions constituted of: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project over a large geographic area. An EA for these types of actions may be broader and more general than an EA for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. Analysis may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EA and that are proposed to be carried out in conformance with the conditions and mitigation measures presented in the EA may require no or limited further review. ³¹³

³¹³ Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to begin environmental review with project specificity. This paragraph, along with the proposed amendments to 11-200-19, Environmental Impact Style and proposed amendments to section 11-200-13, replaces the proposed Programmatic EIS sections in v0.1 and the contemplated Programmatic EA section as discussed at the council meeting August 22, 2017.
In preparing any EA, care shall be taken to concentrate on important issues and to ensure that the EA remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference.  


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314 Mirrors subsection (c) in section 11-200-19, Environmental Impact Style.
§11-200-10 Contents of an Environmental Assessment

The proposing agency or approving agency applicant shall prepare any draft or final environmental assessment EA of each proposed for any action not exempt under section 11-200-8 and determine whether the anticipated effects constitute a significant effect in the context of chapter 343, HRS, and section 11-200-12. The environmental assessment EA shall contain, but not be limited to, the following information:

1. Identification of applicant or proposing agency;
2. Identification of approving agency, if applicable;
3. Identification of agencies, citizen groups, and individuals consulted in preparing the assessment;
4. General description of the action’s technical, economic, social, cultural and environmental characteristics;
5. Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
6. Identification and summary analysis of impacts and alternatives considered;
7. Proposed mitigation measures;
8. Agency determination or, for final EAs, or draft environmental assessments EAs only, an anticipated determination for draft EAs;
9. Findings and reasons supporting the agency determination or anticipated determination;
10. Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared;
11. List of all permits and approvals (State, federal, county) required and identification of which are considered to be discretionary; and

315 Removes “approving agency” and replaces with “applicant” because an applicant, rather than an agency, is the one who will prepare the EA.
316 Housekeeping.
317 Stylistic change.
318 Clarifies that only actions that are not otherwise exempt under section 11-200-8 require an EA.
319 Uses more accurate time consistent with language in the rules. Uses more accurate language (“preparing” rather than “making”) that is consistent with language in the rules.
320 Aligns provision with content requirement of a draft EIS under section 11-200-17(e).
321 Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood to mean a lengthy discussion. It means that the impact discussion section should identify an impact and provide a detailed discussion detailed enough sufficient to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.
322 Stylistic change to improve clarity.
323 Housekeeping. Moves the word required from the end of the clause to before the word “permits”.
324 Adds identification of approvals that are considered discretionary. This helps to inform why an applicant is undergoing chapter 343, HRS review, and when a proposed action has reached “substantial commencement” for the purposes of a supplemental EIS.
#024

Posted by Naaupo on 09/15/2017 at 7:04pm

Question
Since applicants now prepare EAs, should this not be edited to reflect this, by deleting this as content requirement?
Agree: 0, Disagree: 0
(12) Written comments and responses to the comments received pursuant to the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15, and statutorily prescribed public review periods.

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(c), 343-6)

§11-200-11 REPEALED.

[R AUG 31 1996]

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325 Housekeeping.
§11-200-11.1 Notice of Determination for Draft Environmental Assessments

(a) After preparing an environmental assessment draft EA, and reviewing any public and agency comments, if any, and applying the significance criteria in section 11-200-12, if the proposing agency or the approving agency anticipates that the proposed action is not likely to have a significant effect, it shall issue a notice of determination which shall be an anticipated negative declaration FONSI subject to the public review provisions of section 11-200-9.1.

(b) The proposing agency or approving agency shall also file such notice and supporting draft EA with the office as early as possible after the determination is made pursuant to and in accordance with section 11-200-9, and the requirements in subsection (cd) along with four copies of the supporting environmental assessment.

In addition to the above, the anticipated negative declaration determination for any applicant action shall be mailed to the requesting applicant by the approving agency. For applicant actions, the approving agency shall also send the anticipated FONSI to the applicant.

(bc) The office shall publish notice of availability of the draft environmental assessment EA for the anticipated negative declaration FONSI in the periodic bulletin following the date of receipt by the office in accordance with section 11-200-3.

328 Housekeeping. Breaks out three conditions into three items and capitalizes each of the numbered items to make the language clearer.
327 Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.
329 Housekeeping. Specifies draft EA.
330 Housekeeping.
331 Removes redundant language. An anticipated FONSI is defined as a "determination".
332 Removes redundant language.
333 Housekeeping. Renumbering of all subsequent paragraphs of this section.
334 Housekeeping.
335 Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.
336 Housekeeping.
337 Housekeeping.
338 Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.
339 Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).
The notice of an anticipated FONSI determination shall indicate include in a concise manner:

(1) Identification of the applicant or proposing agency;
(2) Identification of the approving agency or accepting authority;
(3) Brief description of the proposed action;
(4) Determination of the anticipated FONSI;
(5) Reasons supporting the anticipated FONSI determination;
(6) Name, title, contact information, including the email address, physical address, and phone number of a contact person an individual representative of the proposing agency or applicant who may be contacted for further information.

When an agency withdraws a document, determination, or both pursuant to its rules, the agency shall submit to the office a written letter informing the office of withdrawal and the rationale for the withdrawal. The office shall publish notice of agency withdrawals in accordance with section 11-200-3.

[Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)
§11-200-11.2 Notice of Determination for Final Environmental Assessments

(a) After: 354

(1) preparing Preparing, or causing to be prepared, 355 a final environmental assessment EA,

(2) reviewing Reviewing any public and agency comments, if any, and

(3) applying Applying the significance criteria in section 11-200-12,

the proposing agency or the approving agency shall issue one of the following notices: a notice of determination for an EISPN or FONSI in accordance with section 11-200-9(a) or 11-200-9(b), and file the notice with the office addressing the requirements in subsection (c), along with four copies of the supporting final environmental assessment, 360 provided that in addition to the above, all notices of determination for any applicant action shall be mailed to the requesting applicant by the approving agency: 361

(b) Environmental impact statement preparation notice EISPN. If the proposing agency or approving agency determines that a proposed action may have a significant effect, it shall issue a notice of determination which shall be an environmental impact statement preparation notice EISPN and such notice shall be filed as early as possible after the determination is made pursuant to and in accordance with section 11-200-9. 363

(c) Negative declaration FONSI. If the proposing agency or approving agency determines that a proposed action is not likely to have a significant effect, it shall issue a notice of determination which shall be a negative declaration FONSI, and the proposing agency or approving agency shall file such notice with the office as early as possible after the determination is made pursuant to and in accordance with section 11-200-9. 365

354 Housekeeping. Breaks out three conditions into three items and capitalizes each of the numbered items to make the language clearer.

355 Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

356 Housekeeping.

357 Housekeeping.

358 Removes redundant language. A FONSI and EISPN are by definition “determinations.”

359 Clarifies which of two determinations is to be issued.

360 Removes unnecessary language on final EA filing requirements.

361 This requirement is now addressed in the new proposed paragraph D.

362 Housekeeping. Renumbering of all subsequent paragraphs of this section.

363 Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

364 Housekeeping.

365 Removes this language from the paragraph and adds it as part of the new proposed paragraph D.
(d) The proposing agency or approving agency shall file the notice and the supporting final EA with the office as early as possible after the determination is made in accordance with section 11-200-9, addressing the requirements in subsection (f). For applicant actions, the approving agency shall send the notice of determination for an EISPN or FONSI to the applicant.

(b) The office shall publish the appropriate notice of determination in the periodic bulletin following receipt of the documents in subsection (a) by the office in accordance with section 11-200-3.

(cf) The notice of determination for a FONSI shall indicate in a concise manner:

1. Identification of the applicant or proposing agency;
2. Identification of the approving agency or accepting authority;
3. Brief description of the proposed action;
4. Determination; and
5. Reasons supporting the determination; and
6. Name, title, contact information, including the email address, physical address, and phone number of a contact person an individual representative of the proposing agency or applicant who may be contacted for further information.

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366 Housekeeping. (v0.1 omitted underlining)
367 Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.
368 Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).
369 Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in section 11-200-15.
370 Housekeeping.
371 Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.
372 Housekeeping.
373 Housekeeping.
374 Housekeeping.
375 Housekeeping.
376 Housekeeping.
377 Modernizes the requirements to include email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.
378 Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.
379 Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.
The notice of determination for an EISPN shall be prepared pursuant to section 11-200-15.380

(dg) When an agency withdraws a document, determination, or both381 pursuant to its382 rules, the agency shall submit to the office a written letter informing the office of its withdrawal. The office shall publish notice of agency withdrawals in accordance with section 11-200-3.

[Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)

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380 Refers to the EISPN section of the rules for what to include in an EISPN. This addresses direct-to-EIS concerns for the EISPN so that no matter how one arrives at an EIS, the content requirement of the EISPN is identical.

381 Clarifies that an agency may withdraw a document (i.e., FEA) as well as being able to withdraw a determination (i.e., EISPN or FONSI).

382 Clarifies that the withdrawal is pursuant to the agency’s own rules rather than the EC’s rules; determinations rest with the agency and are made pursuant to that agency’s rules, procedures, and practices.
§11-200-12 Significance Criteria

(a) In considering the significance of potential environmental effects, agencies shall consider the sum of effects on the quality of the environment, and shall evaluate the overall and cumulative effects of an action.

(b) In determining whether an action may have a significant effect on the environment, the agency shall consider every phase of a proposed action, the expected consequences, both primary and secondary, and the cumulative as well as the short-term and long-term effects of the action. In most instances, an action shall be determined to have a significant effect on the environment if it is likely to:

1. Involves an irrevocable commitment to loss or destruction of any natural or cultural resource;
2. Curtails the range of beneficial uses of the environment;
3. Conflicts with the state's long-term environmental policies or long-term environmental goals and guidelines as expressed in chapter 344, HRS, or other laws, and any revisions thereof and amendments thereto; court decisions, or executive orders;
4. Substantially affects public health;
5. Substantially affects the economic welfare, or social welfare, or cultural practices of the community or State;

While section 5 of chapter 345, HRS, provides that an EIS is required for an action that “may” have a significant effect, the Supreme Court of Hawaii has interpreted the word “may” to mean “likely”. For example, in Kepoo v. Kane, 106 Hawaii 270, 289, 103 P.3d 939, 958 (2005) the Court held that the proper inquiry for determining the necessity of an EIS is whether the proposed action will “likely” have a significant effect on the environment.

Housekeeping. (Makes each item read grammatically from the revised lead in language “is likely to”) and revises language to match the definition of “significant effect” in Section 343-2, HRS.

Reinserts language regarding loss or destruction of cultural resources.

Revises language to match the definition of “significance” in Section 343-2, HRS.

Revises language to match the definition of “significant effect” in Section 343-2, HRS.

Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.

Revises language to match the definition of “significance” in Section 343-2, HRS. Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.

Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.
(6) *Involves* secondary adverse\(^{394}\) impacts, such as population changes or effects on public facilities;

(7) *Involves* a substantial degradation of environmental quality;

(8) Is individually limited but cumulatively has considerable substantial adverse\(^{395}\) effect upon the environment or involves a commitment for larger actions;

(9) *Substantially affects* Have a substantial adverse effect on\(^{396}\) a rare, threatened, or endangered species, or its habitat;

(10) *Detrimentally affects* Have a substantial adverse effect on\(^{397}\) air or water quality or ambient noise levels;

(11) *Affects* Have a substantial adverse effect on\(^{398}\) or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;

(12) *Substantially affects* Have a substantial adverse effect on\(^{399}\) scenic vistas and viewplanes identified in county or state plans or studies; or,

(13) *Requires* Require substantial energy consumption.


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\(^{394}\) Retains the focus on secondary impacts and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

\(^{395}\) Retains the focus on “considerable effects” through the synonym “substantial effects” and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

\(^{396}\) Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

\(^{397}\) Revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS and maintains uniformity with the threshold of “substantially adverse” used in this section.

\(^{398}\) Revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

\(^{399}\) Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.
§11-200-13 Consideration of Previous Determinations and Accepted Statements

(a) Chapter 343, HRS, provides that whenever an agency proposes to implement an action or receives a request for approval, the agency may consider and, when applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement is required, such as exemption notices, FONSIs, and EISPNs, EAs, and previously accepted statements.

(b) Previous determinations, EAs, and previously accepted statements may be incorporated into an exemption notice, EA, EISPN, or EIS, by applicants and agencies whenever the information contained therein is pertinent to the decision at hand and has logical relevancy and bearing to the proposed action being considered.

(c) Agencies and applicants shall not, without considerable pre-examination and comparison, use past determinations, EAs, and previously accepted statements to apply to the action at hand. The proposed action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations, EAs, and previously accepted statements. Further, when previous determinations, EAs, and previous statements are considered or incorporated by reference, they shall be substantially similar to and relevant to the proposed action then being considered.

Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

§11-200-14 General Provisions

(a) Chapter 343, HRS, directs that in both agency and applicant actions where Environmental Impact Statements (EISs) are required, the proposing agency or applicant shall prepare the EIS, submit it for review and comments, and revise it, taking into account all critiques and responses. Consequently, the EIS process involves more than the preparation of a document; it involves the entire process of research, discussion, preparation of a statement, and review. The EIS process shall involve at a minimum:

1. Identifying environmental concerns,
2. Conducting no fewer than one EIS public scoping meeting in the area affected by the proposed action,
3. Obtaining various relevant data,
4. Conducting necessary studies,
5. Receiving public and agency input,
6. Evaluating alternatives, and
7. Proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts.

(b) To encourage early thorough and informed review of the EIS, the office shall develop a distribution list of persons and agencies with jurisdiction or expertise in certain areas relevant to various actions and make it available to the proposing agency or applicant.

An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies shall ensure that statements EISs are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action prior to decision making.

Question
Please clarify area. Does it mean meet with the community of the affected area?
Agree: 0, Disagree: 0
§11-200-15 Consultation Prior to Filing a Draft Environmental Impact Statement

(a) An EISPN, including one resulting from an agency authorizing the preparation of an EIS without first requiring an EA, shall indicate in a concise manner:

(1) Identification of the proposing agency or applicant;
(2) Identification of the accepting authority;
(3) The determination to prepare an EIS;
(4) Reasons supporting the determination to prepare an EIS;
(5) A description of the proposed action and its location;
(6) A description of the affected environment and include regional, location, and site maps;
(7) Possible alternatives to the proposed action;
(8) The proposing agency’s or applicant’s proposed scoping process, including when and where the EIS public scoping meeting or meetings will be held;
(9) The name, title, contact information, including the email address, physical address, and phone number of a contact person an individual representative of the proposing agency or applicant who may be contacted for further information.

(ab) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies noted in section 11-200-10(10), and other citizen groups, and concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end, agencies and applicants shall endeavor to develop a fully acceptable draft EIS prior to the time the draft EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns. At the discretion of the proposing agency or an applicant, a public scoping meeting to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth addressing the scope of the draft EIS may shall be held within the thirty-day public review and comment period in subsection 422 Creates a new paragraph and rennumbers subsequent paragraphs.
423 Distinguishes “the determination” from other determinations, such as a FONSI.
424 Distinguishes “the determination” from other determinations, such as a FONSI.
425 Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.
426 Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.
427 Housekeeping.
428 Clarifies that the document is a draft EIS.
429 Clarifies that the document is a draft EIS.
430 Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the scope of the draft EIS should be.
(bc) Provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d).  

(bc) Upon publication of a preparation notice an EISPN in the periodic bulletin, agencies, groups, or individuals shall have a period of thirty days from the initial issue publication date in which to request to become a consulted party and to make written comments regarding the environmental effects of the proposed action. Upon written request by the consulted party and upon good cause shown, the approving agency or accepting authority may extend the period for comments for a period not to exceed thirty additional days.  

(cd) Upon receipt of the request, the proposing agency or applicant shall provide the consulted party with a copy of the environmental assessment or requested portions thereof and the environmental impact statement preparation notice EISPN. Additionally, the proposing agency or applicant may provide any other information it deems necessary. The proposing agency or applicant may also contact other agencies, groups, or individuals which it feels may provide pertinent additional information.  

(de) Any substantive written comments received by the proposing agency or applicant pursuant to this section shall be responded to in writing and as appropriate, incorporated into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS

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431 Housekeeping.  
432 Shifts the focus to written comments submitted during the EISPN phase and public scoping meeting to add clarity to the comment submitted and removes the preparer’s interpretation recording of individual oral comments.  
433 Clarifies that thirty-day time period begins upon publication of the EISPN;  
434 Removes the requirement for an individual to become a consulted party in order to engage directly in providing and receive public documents and determinations related to the proposed action. All documents and determinations are now published online and available through the office’s website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. The requirement to become a consulted party to request an extension to the comment period has been removed.  
435 Clarifies that the days are in addition to the first thirty-day period;  
436 Allows the approving agency or accepting authority, with good cause, to extend the comment period on its own initiative or at the request of another party. Removes the requirement for a person to become a consulted party in order to request an extension to the comment period;  
437 Removes the requirement to provide a copy because the EISPN is available online to anyone at any time.  
438 All documents and determinations are now published online and available through the office’s website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. A proposing agency or applicant does not require authorization from these regulations in order to consult with or share documents with outside parties.  
439 Removes threshold of “substantive” and clarifies that all written comments received by the proposing agency or applicant must be responded to in writing.  
440 Adds written as a requirement for being responded to and reproduced in the draft EIS.
with the approving agency or accepting authority. Letters submitted which contain no comments on the project but only serve to acknowledge receipt of the document do not require a written response. Acknowledgement of receipt of these items must be included in the final environmental assessment or final statement draft EIS. If a number of written comments are identical or very similar, the proposing agency or applicant may group the comments and prepare a single standard response for each group. The name of each commentor shall be included with the grouped response. One representative copy of identical or very similar comments may be included rather than reproducing each comment.

(f) A written summary of oral comments made at any EIS public scoping meetings identifying those persons or agencies that provided oral comments shall be included in the draft EIS prior to the filing of the draft EIS with the approving agency or accepting authority.

(g) A list of those persons or agencies who were consulted with prior to filing the draft EIS and had no comment shall be included in the draft EIS in a manner indicating that no comment was provided.

#026

Posted by Anonymous on 09/20/2017 at 2:53pm

Comment

For written comments provided during the scoping meeting, they shall be included and have a response in the draft EIS.

Agree: 0, Disagree: 0

#027

Posted by Anonymous on 09/20/2017 at 2:25pm

Comment

Each individual comment should be included in the draft EIS, but a general response to all similar comments would be sufficient. Including all comments will leave out less confusion and individuals are less likely to feel ignored and demand their specific comment included in the draft.

Agree: 0, Disagree: 0

#028

Posted by Anonymous on 09/20/2017 at 2:28pm

Comment

Sign-in sheet shall be included in the EIS for all meetings.

Agree: 0, Disagree: 0

#029

Posted by Anonymous on 09/20/2017 at 2:27pm

Comment

A sign-in sheet shall be mandatory identifying individuals first and last name. All other personal information should be redacted.

Agree: 0, Disagree: 0
§11-200-16  Content Requirements

For draft and final EISs, the environmental impact statement shall contain an explanation of the environmental consequences of the proposed action, pursuant to as required in section 11-200-17. The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible reasonably foreseeable consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, a statement an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.


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449 Clarifies that Section 11-200-16 applies to both draft and final EISs.
450 Explicitly connects section 11-200-16 and section 11-200-17.
451 Replaces “relevant and feasible” with “reasonably foreseeable,” a phrase in line with NEPA, with more case history law, and federal guidance to provide clarity on the desired standard.

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§11-200-17  Content Requirements; Draft Environmental Impact Statement

(a) The draft EIS, at a minimum, shall contain the information required in this section.

(b) The draft EIS shall contain a summary sheet which concisely discusses the following:

1. Brief description of the action;
2. Significant beneficial and adverse impacts (including cumulative impacts and secondary impacts);
3. Proposed mitigation measures;
4. Alternatives considered;
5. Unresolved issues; and
6. Compatibility with land use plans and policies, and listing of permits or approvals;
7. A list of relevant documents, including EAs and EISs, used to identify potential segmentation or cumulative impacts.

(c) The draft EIS shall contain a table of contents.

(d) The draft EIS shall contain a separate and distinct section that includes a statement of the purpose and need for the proposed action.

(e) The draft EIS shall contain a program or project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:

1. A detailed map (preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps, or Floodway Boundary Maps as applicable) and a related regional map;
2. Statement of objectives of the proposed action;
3. General description of the action’s technical, economic, social, cultural, and environmental characteristics;

452 Housekeeping.
453 This list is meant to help readers be aware that the proponent considered other actions that may be relevant from the perspective of segmentation or cumulative impacts and thereby be able to bring other documents to the attention of the proponent or decision maker. The list could be included in references, which is already a content requirement.
454 “Statement” is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.
455 Clarifies that the proposed action could be either a program or a project.
456 “Statement” is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.
457 Adds “cultural” to the characteristics, in line with Act 50 (2000).
(4) Use of public state or county funds or lands for the action;
(5) Phasing and timing of the action;
(6) Summary of technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public; and
(7) Historic perspective.

(f) The draft EIS shall describe in a separate and distinct section reasonable alternatives which could attain the objectives of the action regardless of cost, in sufficient detail to explain why they were rejected and, for alternatives that were eliminated from detailed study, a brief discussion of the reasons for eliminating them. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks of the action. Examples of alternatives include:

(1) The alternative of no action;
(2) Alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts;
(3) Alternatives related to different designs or details of the proposed actions which would present different environmental impacts;
(4) The alternative of postponing action pending further study; and,
(5) Alternative locations for the proposed project action.

In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative. For alternatives that were eliminated from detailed study, the section shall contain a brief discussion of the reasons for not studying those alternatives.

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458 Aligns language with section 11-200-12.
459 Housekeeping.
460 Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
461 Clarifies that all alternative actions, only those that are considered by the proposing agency or applicant to be “reasonable” need to be rigorously explored and objectively evaluated.
462 Housekeeping.
463 Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
464 Clarifies that not all alternative actions, only those that are considered by the proposing agency or applicant to be “reasonable” need to be rigorously explored and objectively evaluated.
465 Clarifies that the effects, costs, and risks are related to the action.
466 Clarifies that alternative locations should be included for both programs and projects.

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alternatives in detail. For any agency actions, the discussion of alternatives shall include, where relevant, those alternatives not within the existing authority of the agency.

(g) The draft EIS shall include a description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site (including natural or human-made resources of historic, cultural, archaeological, or aesthetic significance); specific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions. Proposing agencies and applicants shall also identify, where appropriate, population and growth characteristics of the affected area, and any population and growth assumptions used to justify the proposed action, and determine any secondary population and growth impacts resulting from the proposed action and its alternatives. In any event, it is essential that the sources of data used to identify, qualify, or evaluate any and all environmental consequences be expressly noted in the draft EIS.

(h) The draft EIS shall include a statement description of the relationship of the proposed action to land use and resource plans, policies, and controls for the affected area. Discussion of how the proposed action may conform or conflict with objectives and specific terms of approved or proposed land use and resource plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the statement draft EIS shall describe the extent to which the agency or applicant has reconciled its proposed action with the plan, policy, or control, and the reasons why the agency or applicant has decided to proceed, notwithstanding the absence of full reconciliation. The draft EIS shall also contain a list of necessary approvals, required for the action, from governmental agencies, boards, or commissions or other similar groups having jurisdiction. The status of each identified approval shall also be described.

Stylistic changes to enhance readability and incorporate language from NEPA’s 40 CFR 1502.14(a). Clarifies that both programs and projects are referred to. Adds “cultural” in line with Act 50 (2000). Clarifies that both programs and projects in the regional shall be considered. Parallels use of “proposed” later in the sentence and distinguishes this “action” from “action” used previously in this paragraph. Housekeeping. Housekeeping. Removes the word “statement” which is a technical word in chapter 343, HRS, that refers to an EIS. Uses “description” similar to other paragraphs. Includes natural resource plans such as water management plans. Includes natural resource plans such as water management plans. Clarifies that this applies to draft EISs.
i) The draft EIS shall include a statement of the probable impact of the proposed action on the environment, and impacts of the natural or human environment on the project action, which shall include consideration of all phases of the action and consideration of all consequences on the environment, including direct and indirect effects. The interrelationships and cumulative environmental impacts of the proposed action and other related projects shall be discussed in the draft EIS. It should be realized that several actions, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may well stimulate or induce secondary effects. These secondary effects may be equally important as, or more important than, primary effects, and shall be thoroughly discussed to fully describe the probable impact of the proposed action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation shall be made of the effects of any possible change in population patterns or growth upon the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the proposed action constitutes a direct or indirect source of pollution as determined by any governmental agency, necessary data regarding these impacts shall be incorporated into the EIS. The significance of the impacts shall be discussed in terms of subsections (j), (k), (l), and (m).

(j) The draft EIS shall include in a separate and distinct section a description of the relationship between local short-term uses of humanity’s environment and the maintenance and enhancement of long-term productivity. The extent to which the proposed action involves trade-offs among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the proposed action forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action.

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479 Removes the word “statement,” which is a technical word in chapter 343, HRS, that refers to an EIS. Emphasizes that an analysis is important for the impact discussion.
480 Clarifies that this sentence applies to both projects and programs.
481 Stylistic change to increase readability.
482 Housekeeping.
483 Clarifies that both projects and programs should be considered.
484 Housekeeping. (v0.1 omitted strikethrough)
485 Housekeeping.
486 Housekeeping.
487 Clarifies what the data should be about.

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(k) The draft EIS shall include in a separate and distinct section a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. Identification of unavoidable impacts and the extent to which the action makes use of non-renewable resources during the phases of the action, or irreversibly curtails the range of potential uses of the environment shall also be included. The possibility of environmental accidents resulting from any phase of the action shall also be considered. Agencies shall avoid construing the term “resources” to mean only the labor and materials devoted to an action. “Resources” also means the natural and cultural resources committed to loss or destruction by the action. “Resources” shall be construed to also mean the natural and cultural resources irreversibly and irretrievably committed to the action and not only to the labor and materials committed to the action.

(l) The draft EIS shall address all probable adverse environmental effects which cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy such as that including those found in chapters 128D (Environmental Response Law), 205A (Coastal Zone Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D (Water Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F (Noise Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste Recycling), 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used Oil), 342L (Underground Storage Tanks), 342N, 342P (Asbestos and Lead), and 344 (State Environmental Policy) HRS, shall be included, including those effects discussed in other actions subsections of this paragraph section which are adverse and unavoidable under the proposed action must be addressed in the draft EIS. Also, the rationale for proceeding with a proposed action, notwithstanding unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental effects of the proposed action. The statement EIS shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects.

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488 Clarified the language so that everyone, not just agencies, understand the use of the term “resources”.
489 Housekeeping.
490 Repealed.
491 Provides titles of each chapter referenced.
492 Housekeeping.
493 Clarifies that all probable adverse and unavoidable effects of the proposed action within this section, among others, must be included.
494 Housekeeping. Replaces “shall be included”, which was deleted in v0.1.
The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts, including provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the action plan to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. The draft EIS shall include, where possible and appropriate, specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken.

The draft EIS shall include a separate and distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to commencement of the action, or what overriding reasons there are for proceeding without resolving the issues.

The draft EIS shall include a separate and distinct section that contains a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the statement, and the identity of the persons, firms, or agency preparing the statement, by contract or other authorization, shall be disclosed.

The draft EIS shall include a separate and distinct section that contains:

1. Reproductions of all substantive written comments and responses made during the consultation process thirty-day consultation period pursuant to section 11-200-15, and responses to those comments and a summary of any EIS public scoping meetings. If a number of comments are identical or very similar, the proposing agency may group the comments and prepare a single standard response for each group. The name of each commentor shall be included with the grouped response. One representative copy of identical or very similar comments may be included rather than reproducing each comment.

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495 Housekeeping.
496 Removes redundant language.
497 Housekeeping.
498 Changes reference to “any” mitigation measure process that may result from the analysis.
499 Aligns language throughout sentence to reference “issues” rather than “issues” and “problems”.
500 Introduces subsections to increase clarity.
501 Distinguishes the process for including written comments from the process of including oral comments received at a public EIS scoping meeting. Summaries of EIS public comment periods are now addressed in subsection (p)(2).
502 Aligns language with section 11-200-9.1 that reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

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A summary of oral comments made at any EIS public scoping meetings that identifies those persons or agencies that provided oral comments. A list of those persons or agencies who were consulted and had no comment shall be included in the draft EIS in a manner indicating that no comment was provided.

#030

Posted by Anonymous on 09/20/2017 at 2:29pm
Comment
Or any handouts
Agree: 0, Disagree: 0

#031

Posted by Anonymous on 09/20/2017 at 2:29pm
Comment
And agenda shall be included.
Agree: 0, Disagree: 0
§11-200-18  Content Requirements; Final Environmental Impact Statement

The final EIS shall consist of:

1. The draft EIS prepared in compliance with section 11-200-17, as revised to incorporate substantive comments received during the consultation and review processes;
2. Reproductions of all letters written comments received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held during the consultation and review processes; provided that if a number of written comments are identical or very similar, one representative copy of identical or very similar comments may be included rather than reproducing each comment;
3. A list of persons, organizations, and public agencies commenting on the draft EIS;
4. The responses of the applicant or proposing agency to each substantive question, comment, or recommendation written comments received in the review and consultation processes, provided that if a number of written comments are identical or very similar, the proposing agency or applicant may group the comments and prepare a single standard response for each group. The name of each commentor shall be included with the grouped response;

507 Connects this section with the previous section content requirements.
508 Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.
509 Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.
510 Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.
511 Aligns language with the EISPN and draft EIS requirements.
512 Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.
513 Place “proposing agency” before “applicant”.
514 Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.
515 Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.
516 Housekeeping.
(5) A written summary of oral comments made at any public hearings identifying those persons or agencies that provided oral comments;

(6) A list of those persons or agencies who were consulted with in preparing the final EIS and had no comment shall be included in the final EIS in a manner indicating that no comment was provided; and

(57) The text of the final EIS which shall be written in a format that allows the reader to easily distinguish changes made to the text of the draft EIS.

§11-200-19   Environmental Impact Statement Style  

(a) In developing the draft and final EIS, preparers proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail of the statement EIS. The scope of the statement EIS may vary with the scope of the proposed action and its impact. Data and analyses in a statement EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. Statements An EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement EIS, including cost benefit analyses and reports required under other legal authorities. 

(b) The level of detail in an EIS may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to actions constituted of: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project over a large geographic area. An EIS for these types of actions may be broader and more general than an EIS for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. It may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EIS and that are proposed to be carried

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521 Adding a new paragraph requires adding paragraph identifiers.
522 Clarifies that this section applies to draft and final EISs.
523 Removes introduction of a new term and replaces it with terms used consistently in the regulations, “proposing agencies and applicants”.
524 Global edit to reduce confusion regarding the meaning of “public”.
525 Removes “detail” because “detail” is already discussed as being commensurate with the potential for impact.
526 Change “project or program” to “program or project”.

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out in conformance with the conditions and mitigation measures presented in the EIS may require no or limited further review.  

(c) In preparing any EIS, care shall be taken to concentrate on important issues and to ensure that the statement remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference.

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)]

527 Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address programs or projects at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to beginning assessment with project specificity. This paragraph, along with the proposed section 11-200-XX, Environmental Assessment Style and proposed amendments to section 11-200-13, Replaces the proposed Programmatic EIS sections in v0.1.

528 Stylistic change to provide more clarity.

529 Housekeeping.

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§11-200-20  Filing of an Environmental Impact Statement

(a) The proposing agency or applicant shall file the original (signed) draft EIS with the accepting authority, along with a minimum number of copies determined by the accepting authority. Simultaneously, a minimum number of four copies of the draft EIS shall be filed with the office.

(b) The proposing agency or applicant shall file the original (signed) final EIS with the accepting authority, along with a minimum number of copies determined by the accepting authority. Simultaneously, four copies of the final EIS shall be filed with the office.

(c) An EIS may be filed at any time at the office by the proposing agency or applicant in accordance with section 11-200-3.

(d) The office shall be responsible for the publication of the notice of availability of the draft and final EIS in its bulletin.


530 Removes “original, signed” as it does not make sense for digital documents.
531 Removes minimum number of copies requirement as it does not make sense for digital documents.
532 OEQC only needs one copy, not four.
533 Removes “original, signed” as it does not make sense for digital documents.
534 Removes minimum number of copies requirement as it does not make sense for digital documents.
535 OEQC only needs one copy, not four.
536 Removes the paragraph because the language is unnecessary.
537 Renumbers the paragraph.
538 Removes “original, signed” as it does not make sense for digital documents.
539 Incorporates requirement for the office to publish the notice of availability of the draft and final EIS from section 11-200-21, Distribution, which is proposed to be deleted.
#032

Posted by Anonymous on 09/19/2017 at 3:41am
Comment
Proposing that another section be added such as (e) stating that Draft and Final EIS copies are to be submitted in pdf formats that are UNSECURED.
Reasoning: in the review in past EIS copies that were formatted with a SECURED setting, it prevented adequate and reasonable access to the document during the commenting period. For example, when the document is secured, it prevents someone from printing certain pages or from cutting and pasting certain sections that we want to comment upon. Instead, an individual has to re-type the entire sections in their comments.
Agree: 0, Disagree: 0
§11-200-21  Distribution

The office shall be responsible for the publication of the notice of availability of the EIS in its bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with jurisdiction or expertise in certain areas relevant to various actions) and make it available to the proposing agency or applicant, and a list of public depositories, which shall include public libraries, where copies of the statements shall be available, and to the extent possible, the proposing agency or applicant shall make copies of the EIS available to individuals requesting the EIS. The office’s distribution list may be developed cooperatively among the applicant or proposing agency, the accepting authority, and the office; provided that the office shall be responsible for determining the final list. The applicant or proposing agency shall directly distribute the required copies to those on the distribution list after the office has verified to the applicant or proposing agency the accuracy of the distribution list. For final statements, the agency or applicant shall give the commentor an option of requesting a copy of the final EIS or portions thereof.


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540 Deletes section because, due to the availability of the bulletin online, it is no longer necessary to specify the distribution process in such detail and to require distribution of paper copies of draft and final EISs. The remaining provisions are proposed to be incorporated in pertinent sections of the regulations. The requirement for the office to distribute the draft and final EIS has been moved to section 11-200-20, Filing, and the requirement for the office to produce and make available a distribution list has been slightly modified and moved to subsection (b) in section 11-200-14, General Provisions.

541 Removes the requirement for proposing agencies or applicants to verify a distribution list with the office. Electronic distribution of the documents and online availability of a distribution list developed by the office meet the objectives of this requirement more efficiently.

542 Removes outdated depositories requirement as all documents and determinations are available online to anyone.

543 Removes unnecessary language. The EIS will primarily be made available electronically, whereas “copies” implies a paper version.

544 Housekeeping.

545 Removes outdated requirement to provide the commenter with an option to request the document or a portion of it as all documents and determinations are available online to anyone.

546 Modernizes the distribution process. The office is required under chapter 343 to produce and distribute the bulletin. This process is now electronic and all published environmental review documents and determinations are available freely online. Because information is now available online, the concern that agencies and members of the public would not have notice of or access to the documents without a hard copy of the documents is no longer applicable.
Comment
In accordance with the LRB style manual include - REPEALED at the end of Line 1.

Also add [R xxx/xx/2018] at the end of line 17.
Agree: 0, Disagree: 0
§11-200-22 Public Review of Environmental Impact Statements and Addenda to Draft Environmental Impact Statements

Public Review and Response Requirements for Draft EISs and Addenda

(a) Public review shall not substitute for early and open discussion with interested persons and agencies concerning the environmental impacts of a proposed action. Review of the draft EIS shall serve to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives.

(b) The period for public review and for submitting written comments shall commence as of from the date that notice of availability of the draft EIS is initially issued in the periodic bulletin and shall continue for a period of forty-five days. Written comments to the approving agency or accepting authority, whichever is applicable, with a copy of the comments to the applicant or proposing agency, shall be received or postmarked to the approving agency or accepting authority, within said forty-five-day period. Any comments outside of the forty-five day comment period need not be considered or responded to.

(c) The proposing agency or applicant shall respond in writing to the comments received or postmarked during the forty-five-day review period and incorporate the comments and responses in the final EIS. The response to comments shall include:

1. Point-by-point discussion of the validity, significance, and relevance of comments; and

2. Discussion as to how each comment was evaluated and considered in planning the proposed action preparing the final EIS.

The response shall endeavor to resolve conflicts, inconsistencies, or concerns. Response letters reproduced in the text of the final EIS The response shall indicate

547 Rephrases title so that it is clearer that the whole section is about draft EISs.
548 Housekeeping.
549 Clarifies that the document is a draft EIS.
550 Housekeeping.
551 Place “proposing agency” before “applicant”.
552 Housekeeping.
553 Clarifies that the forty-five days is for the comment period.
554 Stylistic change to increase readability.
555 Removes phrase because the response must be in the final EIS, which is written.
556 Focus on how the comment is addressed in the final EIS rather than just action.
557 Removes language because individual response letters are no longer required to be sent to individual commentors, but the final EIS should indicate which changes to the document were made in the response to comments section, without having to reproduce entire sections of changed content verbatim.
verbatim changes that have been made to the text of the draft EIS. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project action\textsuperscript{558} to mitigate anticipated impacts or objections, etc.). In particular, the issues raised when the applicant’s or proposing agency’s or applicant’s\textsuperscript{559} position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions. If a number of comments are identical or very similar, the proposing agency or applicant may group the comments and prepare a single standard response for each group. The comments must be attached to the final EIS regardless of whether the agency or applicant believes they merit individual discussion in the body of the final EIS.\textsuperscript{560}

(d) An addendum document\textsuperscript{561} to a draft environmental impact statement EIS shall reference the original draft environmental impact statement EIS to which it attaches\textsuperscript{562} and comply with all applicable filing, public review, and comment requirements set forth in subchapter 7.\textsuperscript{563}

\textsuperscript{558} Provides clarity that revisions may be made to a project or a program.
\textsuperscript{559} Place “proposing agency’s” before “applicant’s”.
\textsuperscript{560} Because the responses are included in the final EIS, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome and without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a, and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.
\textsuperscript{561} Removes the word document as it is unnecessary.
\textsuperscript{562} Housekeeping.
\textsuperscript{563} Housekeeping.
§11-200-23  Acceptability

(a) Acceptability of a statement final EIS shall be evaluated on the basis of whether the statement final EIS, in its completed form, represents an informational instrument which fulfills the definition of an EIS intent and provisions of chapter 343, HRS, and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

(b) A statement final EIS shall be deemed to be an acceptable document by the accepting authority or approving agency only if all of the following criteria are satisfied:

(1) The procedures for assessment, consultation process, review, and the preparation and submission of the statement EIS, from proposal of the action to publication of the final EIS have all been completed satisfactorily as specified in this chapter;

(2) The content requirements described in this chapter have been satisfied; and

(3) Comments submitted during the review process have received responses satisfactory to the accepting authority, or approving agency, and have been appropriately incorporated into the statement final EIS, and comments and responses have been appended to the final EIS.

(c) For actions proposed by agencies, the proposing agency may request the office to make a recommendation regarding the acceptability or non-acceptability of the EIS. In all cases involving state funds or lands, the governor or an authorized representative shall have final authority to accept the EIS. In cases involving only county funds or lands, the mayor of the respective county or an authorized representative shall have final authority to accept the EIS. The accepting authority shall take prompt measures to determine the acceptability or non-acceptability of the proposing agency’s statement EIS. In the event that the action involves both state and county lands or state or county funds, or both state and county lands and state and

564 Clarifies that the document is a final EIS.
565 Clarifies that the document is a final EIS.
566 Clarifies that the document is a final EIS.
567 Clarifies that the document is a final EIS.
568 Clarifies that the EIS must meet all applicable elements of environmental review.
569 Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.
570 Clarifies that the document is a final EIS.
571 Distinguishes comments responded to and resulted in changes to the final EIS and ensuring comments and responses are appended to the document.
572 Housekeeping.
573 Housekeeping.
574 Housekeeping.
county funds the governor or an authorized representative shall have final authority to accept the EIS.

Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate accepting authority with both the proposing agency and the office. For any non-accepted EIS, the notice shall contain specific findings and reasons for non-acceptance. The office shall publish notice of the determination of acceptance or non-acceptance in the periodic bulletin in accordance with section 11-200-3. Acceptance of a required statement shall be a condition precedent to the use of state or county lands or funds in implementing the proposed action.

For actions proposed by applicants requiring approval from an agency, the applicant or accepting authority, which is the approving agency, may request the office to make a recommendation regarding the acceptability or non-acceptability of the statement EIS. If the office decides to make a recommendation, it shall submit the recommendation to the applicant and the approving agency within the thirty-day period requiring an approving agency to determine the acceptability of the final EIS and described in section 343-5(c), HRS. Upon acceptance or non-acceptance by the approving agency, the agency shall notify the applicant of its determination, and provide specific findings and reasons. The agency shall also provide a copy of this determination to the office for publication in the periodic bulletin. Acceptance of the required EIS shall be a condition precedent to approval of the request and commencement of the proposed action. An approving agency shall take prompt measures to determine the acceptability or non-acceptability of the applicant’s statement. The agency shall notify the applicant and the office of the acceptance or non-acceptance of the final EIS within thirty days of the final EIS submission to the agency, provided that the thirty-day period may, at the request of the applicant, be extended at the request of the applicant for a period not to exceed fifteen days. The request shall be made to the accepting authority in writing.

575 Provides clarity that “state and county” applies to both funds and lands.
576 Clarifies cases situations where a proposed action has mixed state and county lands or funds or both lands and funds.
577 Housekeeping.
578 Breaks the paragraph up to enhance readability. Subsequent paragraphs renumbered.
579 Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.
580 Removes the “thirty-day” so that the office may also submit its recommendation during an extended acceptance period should the applicant and accepting authority agree to extend the acceptance period.
581 Unnecessary language.
582 Housekeeping.
583 Redundant when read with the following sentence that sets forth a timeline.
584 Clarifies that the thirty days counts from the date the agency receives the final EIS from the applicant; not when the office publishes the final EIS in the periodic bulletin.
585 Housekeeping.
586 Housekeeping.

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Upon receipt of an applicant's written request for an extension of the thirty-day acceptance period, the accepting authority shall notify the office and applicant in writing of its decision to grant or deny the request. The notice shall be accompanied by a copy of the applicant's request. An extension of the thirty-day acceptance period shall not be allowed merely for the convenience of the accepting authority. In the event that the agency fails to make a determination of acceptance or non-acceptance of the statement EIS within thirty days of the receipt of the final EIS, then the statement shall be deemed accepted.

A non-accepted EIS may be revised by a proposing agency or applicant. The revision shall take the form of a revised draft EIS document which shall fully address the inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, acceptance or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by sections 11-200-20, 11-200-21, 11-200-22, and 11-200-23 for an EIS submitted for acceptance. In addition, the revised draft EIS and the subsequent revised final EIS shall be evaluated for acceptability on the basis of whether it satisfactorily addresses the findings and reasons for non-acceptance.

A proposing agency or applicant may withdraw an EIS by simultaneously sending a letter written notification to the office and to the accepting authority informing the office of the proposing agency's or applicant's withdrawal. Subsequent resubmittal of the EIS shall meet all requirements for filing, distribution, publication, review, acceptance, and notification as a new draft EIS.

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587 Connects to the previous sentence, clarifying that the request shall be made in writing.
588 Mirrors language within the provision.
589 Housekeeping.
590 Housekeeping.
591 Housekeeping.
592 Proposed to be deleted.
593 Added revised final EIS as the next step following a revised draft EIS.
594 Requires the office and accepting authority to be notified of the withdrawal at the same time.
595 Removes the requirement for a letter and simply requires written notification, such as by email.
596 Includes the accepting authority (i.e., approving agency, governor, or mayor, or delegated authority).
597 Clarifies that the agency withdrawing the proposal is the proposing agency.
598 Replaces “new” with “draft” to clarify at which stage the withdrawn EIS resumes.
Subchapter 8 Appeals

§11-200-24  Appeals to the Council

An applicant, within sixty days after a non-acceptance determination by the approving agency under section 11-200-23 of a statement a final EIS by an agency, may to choose to appeal the non-acceptance to the council, which within thirty six days of receipt of the appeal, shall notify the applicant of its determination to affirm the approving agency’s non-acceptance or to reverse it. The council chairperson shall include the appeal on the agenda of the council meeting immediately following the chairperson’s receipt of the appeal. The council shall be deemed to have received the appeal on the date of the meeting for which the appeal is agendized. In any affirmation or reversal of an appealed non-acceptance, the council shall provide the applicant and the agency with specific findings and reasons for its determination. The agency shall abide by the council’s decision. An applicant may seek judicial review of the council’s determination under chapter 91, HRS. Pursuing an appeal by council does not abrogate an applicant’s option under section 343-7(c), HRS, to bring judicial action.


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599 Housekeeping.
600 Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.
601 Clarifies that the document is a final EIS.
602 Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.
603 “Choose to appeal” emphasizes that this appeal pathway is optional, not mandatory.
604 Removes this language as unnecessary. An applicant may appeal to the council or accept the decision of the agency.
605 Because the Council regularly meets monthly, obtaining quorum and executing all responsibilities under HAR Chapter 11-201 is extremely difficult to accomplish within 30 days.
606 Clarifies the Council’s determination.
607 Connects receipt of the notice to appeal under chapter 343-5(e), HRS, with the timing of the next Environmental Council meeting.
608 Clarifies that chapter 343, HRS, requires agencies, but not applicants, to abide by the council’s decision regarding acceptance or non-acceptance of an EIS. Under section HAR section 11-201-26, the council’s procedural rules, appeals must be conducted as contested case hearings, enabling the applicant to seek judicial review of the council’s decision under chapter 91-14, HRS.
609 Clarifies that applicants may still pursue judicial remedies by directly going to court at any time, even while appealing in front of the council. This provision is in case the Council is unable to obtain quorum after an applicant appeals to the council.
610 Judicial review of the appeal is now addressed in the previous sentence.

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Subchapter 9 National Environmental Policy Act

§11-200-25 National Environmental Policy Act Actions:
Applicability to Chapter 343, HRS

When the situation occurs where a certain action will be subject both to the National Environmental Policy Act of 1969 (Public Law 91-190, as amended by Public Law 94-52 and Public Law 94-83; 42 U.S.C. §§ 4321-4347) and chapter 343, HRS, the following shall occur:

(1) The applicant or agency, upon discovery of its proposed action being subject to both chapter 343, HRS, and the National Environmental Policy Act NEPA, shall notify the responsible federal agency, the office, and any agency with a definite interest in the action (as prescribed by chapter 343, HRS) of the situation.

(2) Where a federal agency determines that the proposed action is exempt from review under the NEPA, the determination does not automatically constitute an exemption for the purposes of this chapter. In such cases, state and county agencies remain responsible for compliance with this chapter. However, the federal exemption may be considered in the state or county agency determination.

(3) Where a federal agency issues a FONSI and concludes that an statement EIS is not required under the NEPA, the determination does not automatically constitute compliance with this chapter. In such cases, state and county agencies remain responsible for compliance with this chapter. However, the federal FONSI may be considered in the state or county agency determination.

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Housekeeping.
Housekeeping.
Housekeeping.
Housekeeping.

The NEPA uses "exemption" and "exclusion" (along with "categorical") both interchangeably and in specific ways, depending on the federal agency. The use of "exempt" here is meant to capture "exemption" and "exclusion" under NEPA where NEPA is found to apply but an EA or EIS is not required. Where NEPA does not apply by federal statute is not relevant to chapter 343, HRS.

States that federal categorical exemptions do not automatically result in HEPA exemptions under chapter 343, HRS. State and county agencies must still make a determination that the action is exempt, requires an EA, or may proceed directly to preparing an EIS.

Clarifies that a federal agency may issue a FONSI for its purposes, but a state or county agency may still require an EA or EIS for its purposes, or issue an exemption based on the federal FONSI so long as the state or county agency has considered NEPA-specific content requirements, either through the federal FONSI or through its own judgment and experience.

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(24) The National Environmental Policy Act NEPA requires that draft EISs be prepared by the responsible federal agency. In the case of actions for which an EIS pursuant to the NEPA has been prepared by the responsible federal agency, the draft and final federal EISs may be submitted to comply with this chapter, so long as the federal EIS satisfies the EIS content requirements of this chapter and is not found to be inadequate under the NEPA by a court; by the council on environmental quality (CEQ) (or is at issue in pre-decision referral to CEQ) under the NEPA regulations; or by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 41 U.S.C. 1857. The responsible federal agency’s supplemental EIS requirements shall apply in the cases in place of this chapter’s supplemental EIS requirements.

(5) When the responsibility of preparing an EIS is delegated to a state or county agency, this chapter shall apply in addition to federal requirements under the National Environmental Policy Act NEPA. The office and state or county agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. This cooperation, to the fullest extent possible, shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling the requirements so that one document shall comply with all applicable laws. Where the NEPA process requires earlier or

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618 Housekeeping.
619 Language is applicable to draft and final.
620 Housekeeping.
621 Based on Massachusetts’ statutory language that federally-prepared EISs are sufficient for the purposes of Chapter 343. The goal is to allow a federal EIS to meet this chapter’s requirements provided it addresses this chapter’s content requirements. In this case, state and county agencies can provide the information to the federal preparer for inclusion in its document rather than the state or county agency preparing a second document.
622 Housekeeping.
623 Housekeeping.
624 Adds a clause from State of Washington WAC Administrative Code to ensure that the federally-prepared statement meets federal standards for quality.
625 Housekeeping.
626 Clarifies that in the case of joint documents, the preparation of any supplemental documentation would be due to federal requirements and that HEPA supplemental requirements would not apply.
627 Separated the existing language into two paragraphs; one about when a federal agency prepares the EIS and one about when a federal agency delegates the responsibility to a state or county agency.
628 Housekeeping.
629 Provides clarity that state or county agencies are referred to here, as opposed to federal agencies also discussed in this section.
more stringent public review and processing, that process shall satisfy this chapter so that duplicative consultation or review do not occur.\textsuperscript{630}

(36) In all actions where the use of state land or funds is proposed, the final statement EIS shall be submitted to the governor or an authorized representative. In all actions when the use of county land or funds is proposed and no use of state land or funds is proposed\textsuperscript{631}, the final statement EIS shall be submitted to the mayor, or an authorized representative. The final statement EIS in these instances shall first be accepted by the governor or mayor (or an authorized representative), prior to the submission of the same to the Environmental Protection Agency or\textsuperscript{632} responsible federal agency.

(47) Any acceptance obtained pursuant to paragraphs (1) to (3) this section\textsuperscript{633} shall satisfy chapter 343, HRS, and no other statement EIS for the proposed action shall be required.

\textsuperscript{630} Addresses, for example, situations where a federal agency’s regulations may require a public scoping meeting prior to publishing a Notice of Intent to prepare an environmental impact statement and under chapter 343, HRS, the same action would also require a public scoping after the publication of an EISPN. This clause reduces the burden on the proposing agency or applicant to conduct two public scoping meetings.

\textsuperscript{631} Clarifies the condition that requires the mayor or the mayor’s authorized representative to be the accepting authority.

\textsuperscript{632} Clarifies that it is the responsible federal agency issuing the acceptance to reduce confusion about the role of the Environmental Protection Agency in these circumstances.

\textsuperscript{633} Changes language to “this section” instead of the enumerated paragraphs because existing paragraphs have been rearranged and additional paragraphs have been added.
Proposed New Subchapter X Programmatic EISs

Proposed §11-200-XX Programmatic Environmental Impact Statements

(a) Proposing agencies may prepare a PEIS on the adoption of a comprehensive plan prepared in accordance with relevant laws. Impacts of individual actions proposed to be carried out in conformance with these adopted plans and regulations and the thresholds or conditions identified in the PEIS may require no or limited further review.

(b) Approving agencies may allow applicants to prepare a PEIS on the adoption of a comprehensive plan prepared in accordance with relevant laws. Impacts of individual actions proposed to be carried out in conformance with these adopted plans and regulations and the thresholds or conditions identified in the PEIS may require no or limited further review.

(c) Upon acceptance of a final programmatic PEIS:

(1) If a PEIS evaluates project-level issues such as precise project footprints or specific design details, no further compliance with this chapter is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the PEIS.

(2) Further chapter 343, HRS, environmental review must be prepared if a subsequent proposed action was not addressed in the PEIS or the subsequent proposed action exceeds the thresholds evaluated in the PEIS, and the subsequent action may have a significant impact on the environment. Further review may be in the form of an EIS, EA, or exemption, for specific components of the proposal.

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634 Provides directions on when environmental review covers a program-type of action. Focus is on EISs and when analysis is sufficient versus when further, project-level review is warranted.

635 Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.

636 Housekeeping.
Proposed §11-200-XX Content Requirements; Draft
Programmatic Environmental Impact Statement

(a) The content requirements for a PEIS shall be the same as those for an EIS set forth in subchapter 7, with the understanding that the level of detail in a PEIS may be less than that of a project-level EIS. The level of detail in a PEIS must be sufficient to allow informed choice among planning-level alternatives and to develop broad mitigation strategies. A PEIS should examine the interaction among proposed projects or plan elements, and assess the cumulative effects. Like a project-level EIS, a PEIS also includes an examination of alternatives.

(b) The PEIS may be broader and more general than a project-level EIS and omit evaluating project-level issues that are not yet ready for decision at the planning level, or it may evaluate project-level issues such as precise project footprints or specific design details.

(c) A PEIS should discuss the logic and rationale for the choices advanced. It may also include an assessment of specific impacts, if such details are available, and specific mitigation measures. It may be based on conceptual information in some cases. It may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.

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637 Adds direction on content for a programmatic EIS. Acknowledges that a programmatic EIS may not have the same level of detail as a project-specific EIS.
638 Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.
639 Uses consistent language to distinguish between project-level EISs and program level EISs.
640 Housekeeping.
641 Increases readability.
Subchapter 10 Supplemental Statements

§11-200-26 Supplemental EIS General Provisions

(a) A statement An EIS that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and timing of the action, among other things. A statement An EIS that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no other supplemental statement EIS for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location or timing, among other things. If there is any change in any of these characteristics which may have a significant effect, the original statement that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental statement shall be prepared and reviewed as provided by this chapter. unless:

(1) The project has changed substantively in the following characteristics: size, scope, use, location or timing, among other things, which may have a significant effect; or

(2) New information indicating significant effects, which was not known and could not have been known at the time the EIS was accepted as complete, becomes available.

(b) In the case of newly discovered information, the decision to require preparation of a supplemental EIS must be based on the following criteria:

(1) The information can be from any source.

(2) The information must be newly discovered. It cannot be information that could have been included in comments filed in the original draft EIS or final EIS.

(3) The information must be important, indicating probably significant environmental impacts.

(4) The information must not have been addressed in the prior EIS, or must have been inadequately addressed.

(c) As long as there is no change in a proposed action or new information indicating significant effects resulting in individual or cumulative impacts not originally disclosed,

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642 Clarifies in the title that this is about supplemental EISs (to distinguish it this section from those regarding regular EISs and programmatic EISs).

643 Restores original SEIS section language.

644 Reproduces the language from the definition and above paragraph, pairing it with item 2.

645 Adds a change in knowledge as a potential reason to require a supplemental EIS.

646 Housekeeping.

647 Adds qualifications to what can be considered new knowledge so that not any change in knowledge could can be used as a reason to require a supplemental EIS.

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the statement EIS associated with that action shall be deemed to comply with this chapter.

§11-200-27  **Supplemental EIS**[^648] Determination of Applicability

The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental statement EIS is required. If a period of five years has elapsed since the acceptance of the final EIS, and the project or program or project[^649] has not substantially commenced, the approving agency shall formally re-evaluate the need for a supplemental statement EIS and make a determination of whether a supplemental statement EIS[^650] is required. A written summary of this evaluation and the[^651] determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental statements EISs whenever the proposed action for which a statement EIS was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental statement EIS shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

[^648]: Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

[^649]: Changes “project or program” to “program or project” to be consistent with the definition of action.

[^650]: Housekeeping. This is a global edit throughout the document to make the language consistent with the definition of “Supplemental EIS”.

[^651]: Sets a default five-year period for agencies to take a look at whether a supplemental EIS may or may not be required, but also puts a boundary limit on when that period is no longer relevant but setting “substantial commencement” as a point where supplemental EISs may no longer be required. A definition for substantial commencement is proposed in section 11-200-2.

[^652]: Housekeeping.
#034

Posted by Anonymous on 09/20/2017 at 2:46pm
Comment
Written summary should not be required to be published in bulletin. Summary should be kept with agency only. 
Agree: 0, Disagree: 0

#035

Posted by Anonymous on 09/20/2017 at 2:44pm
Comment
Disregard this comment. Sorry 
Agree: 0, Disagree: 0

#036

Posted by Anonymous on 09/20/2017 at 2:42pm
Comment
Five years seems kind of short because after acceptance of EIS usually design begins and this can take years. How was this timeline determined? The agency should have the sole discretion to reevaluation and provide if necessary a supplemental EIS. 
Agree: 0, Disagree: 0
§11-200-28  **Supplemental EIS**\(^{653}\) **Contents**

The contents of the supplemental statement EIS shall be the same as required by this chapter for the EIS and may incorporate by reference unchanged material from the same; however, in addition, it shall fully document the proposed changes from the original EIS, including changes in ambient conditions or available information that have a bearing on a proposed action or its impacts, the positive and negative aspects of these changes, and shall comply with the content requirements of section 11-200-16 as they relate to the changes.

\[^{653}\) Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).
\textbf{§11-200-29} \textbf{Supplemental EIS$^{654}$ Procedures}

The requirements of the thirty-day consultation, filing public notice,\textsuperscript{655} distribution, the forty-five-day public review, comments and response, and acceptance procedures, shall be the same for the supplemental statement \textit{EIS} as is prescribed by this chapter for an EIS.

\footnote{Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).}
\footnote{Stylistic change to increase readability.}

Proposed §11-200-XX  

Retroactivity

(a) The rules shall apply immediately upon taking effect.

(b) Hawaii Administrative Rules (HAR) chapter 11-200 (1996) shall continue to apply to environmental review of agency and applicant actions which began prior to the adoption of HAR chapter 11-200 (2018), provided that:

(1) For EAs, if the draft EA was submitted to the office for publication and published by the office prior to the adoption of HAR chapter 11-200 (2018) and has not received a determination within a period of five years from the implementation of HAR chapter 11-200 (2018), then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200 (2018). All subsequent environmental review, including an EISPN must comply with HAR chapter 11-200 (2018).

(2) For EISs, if the EISPN or the draft EIS was submitted to the office for publication and published by the office prior to the adoption of HAR chapter 11-200 (2018) and the final EIS has not been accepted within five years from the implementation of HAR chapter 11-200 (2018), then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200 (2018).

(3) A judicial proceeding regarding the proposed action shall not count towards the five-year time period.

(c) Any exemption notice, FONSI, acceptance, or SEIS determination made in compliance with HAR chapter 11-200 (1996) will continue to be governed by HAR 11-200 (1996).

(d) All exemptions issued after adoption of HAR chapter 11-200 (2018) must comply with HAR chapter 11-200 (2018), provided that existing exemption lists may be used for a period of five years after the adoption of HAR chapter 11-200 (2018), after which time the agency must revise its list and seek concurrence from council.  

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656 Proposes a new section on when the revised rules take effect and how the revised rules apply to actions that have already completed the environmental review process or undergoing it at the time the revised rules take effect.

657 Provides a period of time for agencies to update their exemption lists from “classes” to “types” of action.
#037

Posted by Anonymous on 09/20/2017 at 3:22pm
Comment
Specific sections in each items should identify a section in the above document to link the retro sections to...its confusing because this is a entire new section that stands alone but its hard to connect the dots.
Agree: 0, Disagree: 0

#038

Posted by Anonymous on 09/20/2017 at 3:24pm
Comment
Is this in reference to 11-200-8?
Agree: 0, Disagree: 0

#039

Posted by Anonymous on 09/20/2017 at 3:21pm
Comment
This is confusing, is this exemption types? There should be a reference where in the above sections this is pointed to.
Agree: 0, Disagree: 0

#040

Posted by Anonymous on 09/20/2017 at 2:57pm
Comment
What happens if agency does not revise exemption list after 5 years? Would their outdated list become null? Please clarify.
This timeline seems short. Some agencies have never completed a list and/or updated the original list.
Agree: 0, Disagree: 0
Subchapter 11 Severability

§11-200-30  Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are declared to be severable.


Note

Historical Note: Chapter 11-200, HAR, is based substantially on the Environmental Impact Statement Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]


Amendment in 2007 to section 11-200-8 to include an exemption class for affordable housing. It has not been compiled.
Working Draft of Proposed Revisions to Hawai‘i
Administrative Rules Title 11 Department of Health
Chapter 200 Environmental Impact Statement Rules

Version 0.2 September 5, 2017

Prepared with the assistance of the Office of Environmental Quality Control (OEQC).

Version 0.2 is a revision of Version 0.1 that incorporates feedback from Environmental Council (EC) members and the general public.

Background
The current Hawai‘i Administrative Rules (HAR) Title 11 Department of Health (DOH) Chapter 200 Environmental Impact Statements (“HAR Chapter 11-200”) were promulgated and compiled in 1996. An amendment to add an exemption class for the acquisition of land for affordable housing was added in 2007, although it has not been compiled with the rest of the rules.

On July 27, 2017, the EC Permitted Interaction Group submitted Version 0.1 to the EC for its consideration in rulemaking to update HAR Chapter 11-200. Refer to Version 0.1 for additional background information. The EC approved Version 0.1 on August 8, 2017 to be its baseline document and to serve as a foundation for consulting with affected agencies and the general public. The EC approval concluded the work of the Permitted Interaction Group.

Version 0.2 is intended to be a discussion document. The EC anticipates preparing a Version 0.3 in October 2017 that could potentially become the proposed draft for which it conducts formal public hearings to adopt into rules.

How to Read Version 0.2
Versions 0.1 and 0.2 use a “Ramseyer-lite” style of formatting to indicate proposed changes to HAR Chapter 11-200. Text with an underline is language proposed to be added to the rules. Text with a strikethrough is language proposed for removal from the rules. A footnote accompanies the proposed change to provide context.

In addition, Version 0.2 introduces yellow highlighting. Yellow highlighting indicates changes made in Version 0.2. These changes include changes to proposed revisions in Version 0.1 as well as new changes to the existing rules that were not proposed in Version 0.1. Also, Version 0.2 may have multiple footnotes following a given change. These footnotes are separated by a forward slash (“/”) to help distinguish the different footnotes.
Major Topics Addressed in Version 0.2

Version 0.2 proposes changes affecting almost every section of HAR Chapter 11-200. In addition to the numerous revisions to modernize grammar and enhance readability ("housekeeping"), the following major topics are addressed in Version 0.2:

- Clarifying definitions and aligning them with statutory definitions.
- Incorporating cultural practices in accordance with Act 50 (2000).
- Updating requirements and procedures to publish in the OEQC periodic bulletin (i.e., The Environmental Notice).
- Aligning the “triggers” requiring environmental review for agencies and applicants with statutory language.
- Clarifying the environmental review process as it applies to states of emergency and emergency actions.
- Clarifying roles and responsibilities of proposing agencies and approving agencies in the environmental review process.
- Revising the requirements and procedures for creating exemption lists and exempting actions from further environmental review.
- Modernizing submittals, deadlines, comment and response, and distribution to recognize electronic communication.
- Revising the comment and response requirements and procedures for environmental assessments (EAs) and environmental impact statements (EISs).
- Clarifying style standards for EAs and EISs, including when an action is a program or a project.
- Clarifying significance criteria thresholds for determining whether to issue an exemption notice, Finding of No Significant Impact (FONSI), or EIS Preparation Notice (EISPN).
- Clarifying requirements and procedures for directly preparing an EIS instead of an EA.
- Revising requirements for conducting scoping meetings following an EISPN.
- Clarifying content requirements for Draft and Final EISs.
- Revising procedures for appealing non-acceptance to the EC.
- Revising procedures for joint federal-state environmental review.
- Revising the requirements and procedures for determining when to do a Supplemental EIS, including aligning the requirements with statute and case law.
- Adding a retroactivity section for actions that have already completed environmental review or are undergoing review at the time the rules would be enacted.
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HAR Chapter 11-200 Environmental Impact Statement Rules

Subchapter 1 Purpose

§11-200-1 Purpose

Chapter 343, Hawaii Revised Statutes, (HRS)\(^1\), establishes a system of environmental review at the state and county levels which shall ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations. The purpose of this chapter is to provide agencies and persons with procedures, specifications of regarding the contents of environmental assessments and environmental impact statements, and criteria and definitions of statewide application.

Environmental assessments and environmental impact statements are meaningless without the conscientious application of the environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies and applicants shall ensure that EAs and EISs are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action prior to decision making.\(^4\)\(^5\)

\(^{1}\) Housekeeping.
\(^{2}\) Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
\(^{3}\) Increases clarity.
\(^{4}\) Emphasizes that the EIS process is to occur before committing to a particular course of action.
\(^{5}\) Moved up from section 11-200-14 to emphasize that the full environmental review process should be conscientiously applied in order to be meaningful.
Subchapter 2 Definitions and Terminology

§11-200-2 Definitions and Terminology

As used in this chapter:

"Acceptance" means a formal determination of acceptability, that the document required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental impact statement (EIS), adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement as prescribed by section 11-200-23. Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with chapter 343, HRS, and this chapter. A determination of acceptance is required prior to implementing or approving the action.

"Accepting authority" means the final official or agency that determines the acceptability of the EIS document makes the determination that a final EIS required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an EIS.

"Action" means any program or project to be initiated by an agency or applicant.

"Addendum" means an attachment to a draft environmental assessment EA or draft environmental impact statement EIS, prepared at the discretion of the proposing agency or approving agency, and distinct from a supplemental EIS statement, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft environmental assessment EA or the draft environmental impact statement EIS already filed with the office.

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6 Housekeeping. Removes redundant language.
7 Housekeeping.
8 Removes redundant language containing a subset of the requirements for an EIS to reduce uncertainty that other EIS sections may not apply because they are omitted in the definition.
9 Removes “final” because it does not contribute additional meaning to the definition.
10 Housekeeping.
11 Clarifies that the role of the accepting authority role is about to determine the acceptability about of a final EIS.
12 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
13 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
14 Clarifies that the approving agency does not always prepare the EA or EIS.
15 Removes redundant language. An EIS is by definition a statement.
16 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
"Agency" means any department, office, board, or commission of the state or county government which is part of the executive branch of that government.

"Applicant" means any person who, pursuant to statute, ordinance, or rule, officially requests approval from an agency for a proposed action.

"Approval" means a discretionary consent required from an agency prior to actual implementation of an action. Discretionary consent means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed by law or rule without the use of judgment or discretion.

"Approving agency" means an agency that issues an approval prior to actual implementation of an applicant action, determines the need for an EA or EIS, and issues the exemption, FONSI, or acceptance determination. The approving agency may be the accepting authority for an applicant final EIS.

"Concurrence" means the discretionary consent of the council to an agency exemption list.

"Council" or "EC" means the environmental council.

"Cumulative impact" means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

17 Stylistic change because a "person" as defined by the rules is not always a human.

18 Does not add meaning to sentence so removing the word.

19 Remove "discretionary consent" from the definition and made it a standalone definition that mirrors the statute.

20 Does not add meaning to sentence so removing the word.

21 Approving agencies are only in the case of applicants.

22 The approving agency makes the decision about level of review and if the applicant has satisfied HRS Chapter 343.

23 Clarifies that the approving authority is always the accepting authority for applicants.

24 In the case of applicants, the approving agency is also the accepting authority. This adds clarification to the definition.

25 Adds a definition for the council’s concurrence of agency exemption lists. Concurrence is discretionary because it is up to the council to be satisfied with the agency exemption list. The discretionary consent is not an approval because it does not apply to a specific project action.
“Discretionary consent” means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed by law or rule without the use of judgment or discretion.\(^{26}\)

"Draft environmental assessment" means the environmental assessment EA submitted by a proposing agency or an approving agency for public review and comment when that agency anticipates a negative declaration finding of no significant impact (FONSI)\(^{27}\) determination.

"Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological effects (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic effects, social effects, or health effects, whether primary, secondary, or cumulative, immediate or delayed\(^{28}\). Effects may also include those effects resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

“EIS public scoping meeting” means a meeting open to the public held by the proposing agency or applicant, or their representative, within the thirty-day public consultation period described in section 11-200-15, inviting that invites the participation of those agencies, citizen groups, and individuals reasonably believed to be potentially affected by the proposed action (including those who might not be in accord with the proposed action), to assist the preparing party in determining the range of actions, alternatives, impacts, and proposed mitigation measures to be considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS. Suggestions made at the EIS public scoping meeting are considered to be advisory and not mandatory.\(^{29}\)

"Emergency action" means an action to prevent or mitigate loss or damage to life, health, property, or essential public services in response to a sudden unexpected occurrence demanding such immediate action. a project or program that normally would be subject to chapter 343, HRS, but is not because of a state of emergency declared by the governor.\(^{30}/31\)

\(^{26}\) Definition removed from “approval” and made standalone. Mirrors HRS § section 343-2, HRS, language and expands on ministerial definition (which is existing language in HAR § section 11-200-2).

\(^{27}\) Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

\(^{28}\) Incorporates the language from the definition of “environmental impact” which is proposed for deletion.

\(^{29}\) Removes language unnecessary to the definition of “EIS public scoping meeting” that creates doubts about the value of participating in the the EIS scoping meeting process.

\(^{30}\) Redefines an emergency action to be an action undertaken during a particular emergency proclamation issued by the governor.

\(^{31}\) Re-inserting language that was deleted in v0.1 and moving distinction between actions taken in response to an emergency without a governor’s proclamation of a state of emergency and actions taken during a governor proclaimed state of emergency in section 11-200-5, Agency Actions.
"Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by a proposed action, including land, human and animal communities, health, air, water, minerals, flora, fauna, ambient noise, and objects of historic, cultural, or aesthetic significance.

"Environmental assessment" or "EA" means a written evaluation to determine whether an action may have a significant environmental effect. It serves to provide sufficient evidence and analysis to determine whether an action may have a significant environmental effect. Together with a FONSI, an EA satisfies chapter 343, HRS, when no EIS is necessary, and facilitates preparation of an EIS when no EIS is determined to be necessary and the Chapter 343, HRS, may be satisfied without an EA when, based on an agency's judgment and experience, the agency concludes that the proposed action may have a significant effect on the environment and therefore proceeds directly to or authorizes an applicant to proceed directly to the preparation of an EIS.

"Environmental impact" means an effect of any kind, whether immediate or delayed, on any component of the environment.

"Environmental impact statement," "statement," or "EIS" means an informational document prepared in compliance with chapter 343, HRS, and this chapter and which fully complies with subchapter 7 of this chapter. The initial statement EIS filed for public review shall be referred to as the draft environmental impact statement EIS and shall be distinguished from the final environmental impact statement EIS, which is the document that has incorporated the public's comments and the responses to those comments. The final environmental impact statement EIS is the document that shall be evaluated for acceptability by the respective accepting authority.

32 Clarifies that "environment" also includes "health". The items in this list correspond with the definition of "effects", which includes "health".
33 Adds "cultural" to the definition of "environment" to align the definition with Act 50 (2000).
34 Adds common abbreviation for use throughout the rules.
35 Adds to the statutory definition to emphasize that an EA needs to provide sufficient evidence to make a significance determination rather than merely an assertion or lengthy analysis.
36 Stylistic change to increase readability.
37 Stylistic change to increase readability.
38 Stylistic change to increase readability.
39 Clarifies when an EIS is required by inserting verb "determined". Agencies specifically make "determinations" that EISs are either necessary or not necessary (e.g., FONSI).
40 Clarifies that an EA is not always required prior to beginning preparation of an EIS.
41 Deletes because the definition is unnecessary. Combining the definitions of "effect" and "environment" provides more clarity than this definition.
42 Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.
43 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
44 Unnecessary language so recommend removing.
"EIS preparation notice",45 or "EISPN",46 or "preparation notice" means a determination based on an environmental assessment that the subject action may have a significant effect on the environment and, therefore, will require the preparation of an environmental impact statement EIS, based on either an EA or an agency’s judgment and experience that the proposed action may have a significant effect on the environment, and therefore authorizes the preparation of an EIS without first requiring an EA.48

"Exempt classes of action" means exceptions from the requirements of chapter 343, HRS, to prepare environmental assessments, for a class of actions, based on a determination by the proposing agency or approving agency that the class of actions will probably have a minimal or no significant effect on the environment.52

"Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a public government action, or the agency with the power of approval, in the case of a private action, when it has determined that the proposed project is an exempt or emergency project action.54

"Final environmental assessment" means either the environmental assessment EA submitted by a proposing agency or an approving agency following the public review and comment period for the draft environmental assessment EA and in support of either a FONSI or a preparation notice an EISPN55 determination; or the environmental assessment submitted by a proposing agency or an approving agency subject to a public consultation period when such an agency clearly determines at the outset that the proposed action may have a significant effect and hence will require the preparation of a statement.56

45 Housekeeping.
46 Adds common abbreviation for use throughout the rules.
47 Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.
48 Adds the direct-to-EIS pathway to the definition of an EISPN.
49 Removes unnecessary language describing the process of making an EISPN determination while preserving the meaning of the definition.
50 Although an applicant may also proceed directly to an EIS, it must first be authorized to do so by the accepting agency based on the agency’s judgment and experience chapter 343-5(e), HRS.
51 Moved under "E" because EISPN is used more frequently than "preparation notice".
52 Removes the definition because the concept of “classes of actions” is removed in section 11-200-8.
53 Global change that clarifies that “public” refers to “government” actions. “Public” is used throughout the regulations to refer to the general citizenry.
54 Aligns with defined term “emergency action”.
55 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.
56 Chapter 343, HRS, now provides for a direct to EIS pathway when based on an agency’s judgment and experience, the agency concludes that the proposed action may have a significant effect on the environment. The agency may then directly proceed to an EIS, or in the case of an applicant, may authorize an applicant to proceed directly to the preparation of an EIS. For both proposing agencies and applicants, the EIS preparation begins with an EISPN.
“Finding of no significant impact” or “FONSI” means a determination by an agency based on an
EA that an action not otherwise exempt does will not have the potential for a significant
effect on the environment and therefore does not require the preparation of an EIS. A FONSI is
required prior to implementing or approving the action.

“Impacts” means the same as “effects”.

"Issue date" means the date imprinted on the periodic bulletin required by section 343-3, HRS.

"National Environmental Policy Act" or “NEPA” means the National Environmental Policy Act

"Negative declaration" or “finding of no significant impact” means a determination by an agency
based on an environmental assessment that a given action not otherwise exempt does not have
a significant effect on the environment and therefore does not require the preparation of an EIS.
A negative declaration is required prior to implementing or approving the action.

"Office" means the office of environmental quality control.

"Periodic bulletin" means the document required by section 343-3, HRS, and published by the
office.

"Person" includes any individual, partnership, firm, association, trust, estate, private corporation,
or other legal entity other than an agency.

“Power generating facility” means:

1. A new, fossil-fueled, electricity-generating facility, where the electrical output
rating of the new equipment exceeds 5.0 megawatts; or

2. An expansion in generating capacity of an existing, fossil-fueled, electricity-
generating facility, where the incremental electrical output rating of the new
equipment exceeds 5.0 megawatts.

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57 Removes and adds language to align definition with chapter 343, HRS.
58 Removes and adds language to align definition with chapter 343, HRS.
59 Moves the language for the deleted “Negative declaration” into alphabetical order under “FONSI”.
60 Adds a reference for anyone looking up the word “impacts” to direct them to the word “effects”.
61 Adds common abbreviation for use throughout the rules.
62 Moves the language for the deleted “Negative declaration” into alphabetical order under “FONSI”.
63 Adds definition from HRS § 343-2.

v0.2-2017-09-05-Rules-Revisions
"Preparation notice," or "EIS preparation notice," or "EISPN," means a determination based on an environmental assessment that the subject that an action may have a significant effect on the environment and, therefore, will require the preparation of an environmental impact statement EIS, based on either an EA or an agency’s judgment and experience that the proposed action may have a significant effect on the environment and therefore authorizes the preparation of an EIS without first requiring an EA.

"Primary impact," or "primary effect," or "direct impact," or "direct effect" means effects which are caused by the action and occur at the same time and place.

A "programmatic EIS" or "PEIS" is an EIS that assesses the environmental impacts of: (1) a number of separate actions in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of actions contemplated by a single agency or applicant; (3) separate actions having generic or common impacts; (4) an entire program or plan having wide application or restricting the range of future alternative policies or projects, including new or significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single project or program over a large geographic area.

"Proposing agency" means any state or county agency that proposes an action under chapter 343, HRS.

"Secondary impact," or "secondary effect," or "indirect impact," or "indirect effect" means effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include a growth-inducing effect and other effects related to induced changes in the pattern of

64 Housekeeping.
65 Adds common abbreviation for use throughout the rules.
66 Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.
67 Moved entire definition up under "E" because "EISPN" is used more frequently than "preparation notice".
68 Adds a definition to go along with new sections on how to do environmental review for an action this is a "program". Most environmental review focuses on projects. By providing language on for a programmatic look environmental review, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the tension trade-off between earliest practicable time with project specificity.
69 This definition is deleted in order to present an alternative approach that does not require creating multiple new sections nor specifically defining "programmatic EIS", but rather provides more specificity if the on requirements for EAs and EISs as to the differing level of detail needed for projects and programs.
70 Added definition because the term is used frequently throughout the rules.
71 Grammar change to singular to mirror the definition of effect or impact as a singular object.
72 Stylistic change reflect changes made to previous sentence.
land use, population density or growth rate, and related effects on air, and water, and other natural systems, including ecosystems.

"Significant effect" or "significant impact" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the state’s environmental policies or long-term environmental goals and guidelines as established by law, or adversely affect the economic welfare, or social welfare, or cultural practices of the community and State, or are otherwise set forth in section 11-200-12 of this chapter.

“Substantial commencement” means that a project or program action has reached the stage where its last approval has been granted and has advanced to the point where financial commitments are in place and scheduled and design is essentially complete, or, for government programs, an agency action for which an approval is not required, the project or program program or project has advanced to the point where financial commitments are in place and scheduled and design is essentially complete.

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73 Housekeeping.
74 Housekeeping.
75 Housekeeping.
76 Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding “cultural practice.”
77 Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding “cultural practice.”
78 Updates language to match Act 50 (2000) on cultural practices. Act 50 (2000) added “cultural practices” to the list of adverse effects that could constitute “significance”. “Of the community and State” is language from chapter 343, HRS, that Act 50 (2000) also added to the definition of “significant effect”.
79 Housekeeping.
80 Clarifies the distinction between applicant actions and government actions.
81 Increases readability.
82 As defined in section 343-2, HRS, an approval is a discretionary consent.
83 Removes introduction of new term “government”, and replaces with synonym “agency”. Further clarifies that this definition applies to both programs and projects.
84 Global edit changing word order of “project or program” to “program or project” to align with the definition of action in section 343-2, HRS.
85 Definition is proposed to help clarify when an action has progressed sufficiently to no longer require examination for supplemental environmental review. This language draws on other statutes and case law.

In the context of district boundary changes under section 205-4, HRS, the Hawaii Supreme Court has held that substantial commencement occurred when, in accordance with its representations to the Land Use Commission, a developer had begun constructing homes, and had expended more than $20 million dollars. DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC., 339 P.3d 685, 688 (Haw. 2014).
"Supplemental statement EIS" means an additional environmental impact statement updated
EIS\textsuperscript{86} prepared for an action for which a statement an EIS was previously accepted, but which
has yet to progress to substantial commencement and since acceptance the action,
circumstances, or anticipated impacts have\textsuperscript{87} changed substantively in size, scope, intensity,
use, location, or timing, among other things.

“Wastewater treatment unit” means any plant or facility used in the treatment of wastewater.\textsuperscript{88}

\textsuperscript{86} Housekeeping.
\textsuperscript{87} Incorporates substantial commencement into the definition and emphasizes that changes can apply to
the proposed action, the environment, or knowledge (ties to supplemental sections).
\textsuperscript{88} Adds definition from HRS § section 343-2, HRS.
Subchapter 3 Periodic Bulletin

§11-200-3 Periodic Bulletin

(a) The office shall inform the public through the publication of a periodic bulletin of the following:

(1) Notices filed by agencies of the availability of environmental assessments EAs and appropriate addendum documents for review and comments;

(2) Notices filed by agencies of determinations that statements EISs are required or not required;

(3) The availability of statements EISs, supplemental statements EISs and appropriate addendum documents for review and comments;

(4) The acceptance or non-acceptance of statements EISs; and

(5) Other notices required by the rules of the council.

(b) The bulletin shall be made available to any person upon request. Copies of the bulletin shall also be sent to the state library system and other depositories or clearinghouses.

(c) The bulletin shall be issued on the eighth and twenty-third days of each month. All agencies and applicants submitting exemption notices, draft environmental assessments EAs, negative declarations FONSIs, preparation notices EISPNs, environmental impact statements EISs, acceptance or non-acceptance determinations, addenda, supplemental statements EISs, supplemental preparation notices EISPNs, revised documents, withdrawals, and other notices required to be published in the bulletin shall submit such documents or notices to the office before the close of business four days prior to the issue date. In case the deadline falls on a state holiday or non-working non-business day, the deadline shall be the next working business day.

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89 Although an applicant prepares the EA, it is the approving agency that files a notice of availability of the EA with the office.

90 This rule is no longer required as the periodic bulletin is available to everyone electronically and no paper copies are produced by the office.

91 Housekeeping. Renumbers paragraphs.

92 Aligns with section 11-200-8.

93 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

94 OEQC does not need eight business days anymore to prepare the periodic bulletin anymore.

95 Housekeeping. For computing time see section 1-29, HRS.

96 Housekeeping.

97 Housekeeping.
(d) All submittals to the office for publication in the bulletin shall be accompanied by a completed informational form which provides whatever information the office needs to properly notify the public. The information requested may include the following: the title of the action; the islands affected by the proposed action; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates or other geographic data; applicable permits, including discretionary approvals requiring preparation of the document under chapter 343, HRS; whether the proposed action is an agency or an applicant action; a citation of the applicable federal or state statutes requiring preparation of the document; the type of document prepared; the names, addresses and contact persons as applicable of the accepting authority, the proposing agency, the approving agency, the applicant, and the consultant; and a brief narrative summary of the proposed action which provides sufficient detail to convey the full impact of the proposed action to the public.

(e) The office may provide recommendations to the agency or applicant responsible for the environmental assessment EA or EIS regarding any applicable administrative content requirements set forth in this chapter.

(f) The office may, on a space available basis, publish other notices not specifically related to chapter 343, HRS.


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98 Clarifies that OEQC may ask for geographic data such as that included in a standard GIS shapefile file. The existing rules already allows for this but this language is to make it clearer.

99 Clarifies that the agency is required to identify the specific discretionary approval that requires an applicant to go through environmental review.

100 Clarifies that the office may also provide recommendations regarding administrative content requirements to applicants preparing EAs and EISs.
Subchapter 4 Responsibilities

§11-200-4 Identification of Approving Agency and Accepting Authority

(a) Whenever an agency proposes an action, the final authority to accept a statement an EIS shall rest with:

(1) The governor, or the governor’s authorized representative, whenever an action proposes the use of state lands or the use of state funds or whenever a state agency proposes an action within section 11-200-6(b);

or

(2) The mayor, or the mayor’s authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

In the event that an action involves state and county lands, state and county funds, or both state and county lands and funds, the governor or the governor’s authorized representative shall have authority to accept the EIS.

(b) Whenever an applicant proposes an action, the authority for requiring an EA or statements EIS, and for making a determination regarding any required EA, and accepting any required statements EIS that have been prepared shall rest with the approving agency initially receiving and agreeing to process the request for an approval. With respect to EISs, the approving agency is also called the accepting authority.

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101 Expand the content of this section to also identify the agency with responsibility in cases of EAs.
102 Removes the word “final” because it does not add to the meaning of the sentence anymore.
103 Housekeeping.
104 Housekeeping.
105 Housekeeping.
106 Housekeeping.
107 Housekeeping.
108 Makes clear that “state and county” funds are meant.
109 Makes clear that “state and county” lands and funds are meant.
110 Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and funds. This language is modified from the original language in section 11-200-23.
111 Adds EAs to the identification of which agency has responsibility. Note that this change also means that the OEQC is explicitly empowered to determine the agency in situations involving EAs, whereas existing language is that the OEQC is explicitly empowered for situations involving EISs and implicitly for situations involving EAs.
112 Adds EAs to the identification of which agency has responsibility. Language is phrased so that the agency can make a FONSI or EISPN determination.
113 Housekeeping. Clarifies that the “agency” is called the “approving agency.”
114 Housekeeping.
115 Clarifies that the approving agency is the accepting authority for applicants.
(c) In the event that there is more than one agency that is proposing the action or, in the case of applicants, more than one agency has jurisdiction over the action, and these agencies are unable to agree as to which agency has the responsibility for complying with section 343-5(e) chapter 343, HRS, the office, after consultation with the agencies involved, shall determine which agency is responsible for compliance. In making the determination, the office shall take into consideration, including, but not limited to, the following factors:

1. The agency with the greatest responsibility for supervising or approving the action as a whole;
2. The agency that can most adequately fulfill the requirements of chapter 343, HRS, and this chapter;
3. The agency that has special expertise or greatest access to information relevant to the action's implementation and impacts; and
4. The extent of participation of each agency in the action.

(d) The office shall not serve as the accepting authority for any proposed agency or applicant action.

Subchapter 5 Applicability

§ 11-200-5 Agency Actions

(a) For all proposed agency actions which are not exempt as defined in section 11-200-8, the proposing agency shall assess at the earliest practicable time the significance of potential impacts of its actions, including the overall, cumulative impact in light of related past, present, and reasonably foreseeable actions in the area affected and further actions contemplated.

(b) The applicability of chapter 343, HRS, to specific agency proposed actions is conditioned by the agency's proposed use of state or county lands or funds. Therefore, when an agency proposes to implement an action to use state or county lands or funds, it shall be subject to the provisions of chapter 343, HRS, and this chapter.

(c) Use of state or county funds shall include any form of funding assistance flowing from the State or a county, and use of state or county lands includes any use (title, lease, permit, easement, licenses, etc.) or entitlement to those lands.

(d) For agency actions, chapter 343, HRS, exempts from applicability any feasibility or planning study for possible future programs or projects which the agency has not approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a proposal, it shall consider environmental factors and available alternatives and disclose these in any future assessment EA or subsequent statement EIS. If, however, the planning and feasibility studies involve testing or other actions which may have a significant impact on the environment, then an environmental assessment EA or EIS shall be prepared.

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126 Global change removing "proposed" before or modifying "action" unless "proposed" is necessary within the context of the sentence or provision to provide clarity.

127 Housekeeping.

128 Housekeeping.

129 Housekeeping.

130 Housekeeping. Removed words to eliminate redundancy.

131 Housekeeping.

132 Clarifies what is considered as part of a cumulative impact analysis. Language is drawn from NEPA, 40 CFR 1508.7.

133 Replaces "region" with "area affected" to tie the geographic nexus to the potential impacts.

134 Removes "further actions contemplated" because it is captured in the language of "reasonably foreseeable."

135 Housekeeping. Redundant language.

136 Housekeeping.

137 Housekeeping.

138 Housekeeping.

139 Acknowledges direct-to-EIS pathway.
(e) Any amendment to existing county general plans, however denominated, which may include but not be limited to development plans, or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation, requires an environmental assessment EA or EIS. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.)

(f) In the event that the governor declares a state of emergency pursuant to chapter 127A, HRS, the governor has authority to suspend laws, including chapter 343, HRS. In such an event, the proposing agency shall file an exemption notice in its records that the emergency action was undertaken pursuant to a specific emergency proclamation. If the emergency action has not substantially commenced within sixty days of the emergency proclamation, the action will be subject to chapter 343, HRS.

(g) In the event of a sudden unexpected emergency causing or likely to cause loss or damage to life, health, property, or essential public service, but for which a declaration of a state of emergency pursuant to chapter 127A, HRS has not been made, an agency may undertake an emergency action without conducting environmental review under chapter 343. An emergency action undertaken without environmental review may still be subject to the public’s right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS, and shall be initiated within one hundred and twenty days of the agency’s decision to carry out the action or from the date the public becomes aware of the action, whichever is later.

§11-200-6 Applicant Actions

(a) Chapter 343, HRS, shall apply to persons who are required to obtain an agency approval prior to proceeding with:

(1) Implementing actions which are either located in certain specified areas or contain certain specified components; or

(2) Actions that require certain types of amendments to existing county general plans.

The approving agency that initially received and agreed to process the request for approval shall require the applicant to prepare an EA of the proposed action at the earliest practicable time to determine whether an EIS is likely to be required; provided that if the approving agency determines, through its judgment and experience, that an EIS is likely to be required, the approving agency may authorize the applicant to choose not to prepare an EA and instead prepare an EIS that begins with the preparation of an EISPN.

(b) Chapter 343, HRS, establishes certain categories of action which require the agency processing an applicant’s request for approval to prepare an environmental assessment the applicant to prepare an EA. There are seven geographical categories, five proposal elements component categories, and two administrative categories.

(1) The seven geographical categories are:

(A) The use of state or county lands;

(B) Any use within any land classified as conservation district by the state land use commission under chapter 205, HRS;

(C) Any use within the shoreline area as defined in section 205A-41, HRS;

(D) Any use within any historic site as designated in the national register or Hawaii Register of Historic Places.

147 Acknowledges the “project” type triggers (e.g., waste-to-energy facility).
148 Replaces the suggested term “element” with the term “component” to clarify that the activities need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.
149 Housekeeping. (Missing underlining in v0.1.)
150 Adopts language from Act 172 (2012) for direct-to-EIS and that the applicant has the responsibility to prepare the document.
151 Housekeeping. (Missing strikethrough in v0.1.)
152 Housekeeping.
153 Reflects reorganization of “helicopter facility” to a component category.
154 Reflects reorganization of “helicopter facility” to a component category.
155 Acknowledges the “project” type triggers (e.g., waste-to-energy facility).
156 Aligns language with “categories” used in previous sentence and uses the term “component” to clarify that the activities in this category need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.
157 Reflects reorganization of “helicopter facility” to a component category.
158 Adds specificity.
(E) Any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";

(F) Any reclassification of any land classified as conservation district by the state land use commission under chapter 205, HRS; and

(G) The construction of a new, or the expansion or modification of an existing helicopter facilities facility within the State which that by way of their activities may affect: any land classified as conservation district by the state land use commission under chapter 205, HRS; the shoreline area as defined in section 205A-41, HRS; or, any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of Historic Places; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which that is under consideration for placement on the National Register or the Hawaii Register of Historic Places.

(2) The five component categories are:

(A) Wastewater treatment unit, except an individual wastewater system or wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;

(B) Waste-to-energy facility;

(C) Landfill;

(D) Oil refinery; or

(E) Power-generating facility.

(F) The construction of a new, or the expansion or modification of an existing helicopter facilities facility within the State that by way of their activities may affect: any land classified as conservation district by the state land use commission under chapter 205, HRS; the shoreline area as defined in section 205A-41, HRS; or, any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of Historic Places; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which that is under consideration for placement on the National Register or the Hawaii Register of Historic Places.

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159 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

160 Housekeeping.

161 Housekeeping.

162 Housekeeping.

163 Housekeeping. Unnecessary specificity.

164 Deletes and moves "helicopter facility" content into subsection (2), "component categories" because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.

165 Reflects reorganization of "helicopter facility" to a component category.

166 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

167 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

168 Housekeeping.

169 Housekeeping.
in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of Historic Places; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which that is under consideration for placement on the National Register or the Hawaii Register of Historic Places.  

(23) The two administrative categories are:  
(A) Any amendment to existing county general plans, however denominated, which may include, but are not be limited to, development plans, or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.); and  
(B) The use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies.  


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170 Housekeeping. Unnecessary specificity.  
171 Moves “helicopter facility” content into subsection (2), “component categories” because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.  
172 Housekeeping.
§11-200-7 Multiple or Phased Applicant or Agency Actions

A group of actions proposed by an agency or an applicant shall be treated as a single action when:

1. The component actions are phases or increments of a larger total undertaking and lack independent utility;173
2. An individual project action is a necessary precedent for a larger project action;175
3. An individual project action represents a commitment to a larger project action; or
4. The actions in question are essentially identical and a single statement EIS will adequately address the impacts of each individual action and those of the group of actions as a whole.


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173 Incorporates the threshold for determining improper segmentation.
174 Stylistic change.
175 Replaces "project" with "action" because it could be an individual program or project that is part of a larger program or project.
176 Replaces "project" with "action" because it could be an individual program or project that is part of a larger program or project.
177 Replaces "project" with "action" because it could be an individual program or project that is part of a larger program or project.
§11-200-8 Exempt Classes of Action Exemption

Notices

(a) Chapter 343, HRS, states that procedures whereby specific types of actions, because they will probably have minimal or no significant effects, individually and cumulatively, on the environment, can be declared exempt from the preparation of an EA. A list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. Government Agency activities that do not rise to the level of being a project or program or project, or are ordinary functions that by their nature do not have the potential to adversely affect the environment more than negligibly, which may include, among other activities, routine repair, maintenance, purchase of supplies, and administrative actions involving personnel only, shall not be considered projects or programs for the purposes of Chapter 343, HRS. Actions declared exempt from the preparation of an environmental assessment EA under this section are not exempt from complying with any other applicable statute or rule. The following types of projects or programs are eligible for exemption list represents exempt classes of action:

(1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;

(2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;

(3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment
and facilities and the alteration and modification of same, including, but not limited to:

(A) Single-family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if not in conjunction with the building of two or more such units;

(B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(C) Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure, if not in conjunction with the building of two or more such structures; and

(D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

(4) Minor alterations in the conditions of land, water, or vegetation;

(5) Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities which do not result in a serious or major disturbance to an environmental resource;

(6) Construction or placement of minor structures accessory to existing facilities;

(7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;

(8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii Register of Historic Places, or that are under consideration for placement on the national register or the Hawaii Register of Historic Places, as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS;

(9) Zoning variances except shoreline set-back variances; and

(10) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions.

(11) Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material

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187 Counties and even different agencies within counties, measure residence area differently. This language acknowledges the difference.
188 Stylistic; mirrors provision below (B).
189 Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.
190 Adds specificity.
191 Aligns language with section 343-5(a)(8)(C), HRS.
192 Unnecessary language.
193 Housekeeping.
194 Deletes language because it is addressed at the beginning of paragraph (a).
195 Housekeeping. Renumbering this and subsequent paragraphs.
change of use beyond that previously existing uses, and for which the legislature has appropriated or otherwise authorized funding, and

(11) New construction of affordable housing that only has use of state or county lands or funds as the sole requirement for compliance with chapter 343, HRS, and as proposed is consistent with existing state urban land classification, existing county residential or mixed use zoning classification, and applicable federal, state, and county development standards.

(b) All exemptions under the classes types in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(c) Any agency, at any time, may request that a new exemption class type be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, HAR, environmental council rules.

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes types above, as long as these lists are consistent with both the letter and intent expressed in these exempt classes here and chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e) Actions that are clearly covered by an agency exemption list that has received council concurrence and do not have any potential to produce significant impacts do not

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196 Clarifies what “that” refers to.

197 In 2007, the Council formally amended HAR Section 11-200-8 to add the exemption category for acquisition of land for affordable housing. The Council has not compiled the amendment to HAR Section 11-200-8 with HAR Chapter 11-200. This language incorporates and compiles the 2007 change.

198 Housekeeping.

199 Clarifies that the only trigger for compliance with chapter 343, HRS, is the use of state or county lands, not that the action only uses state or county funds or lands.

200 Stylistic change.

201 Removes ambiguity as to whether the project “as implemented” must be consistent.

202 Adds affordable housing as an exemption type, with caveats: 1) that the only trigger is use of state or county lands or funds (other triggers would mean the exemption is not applicable) and that 2) the proposed action is consistent with existing land use controls so that it does not require going before the LUC or Planning Commissions to get a change in SLUD or zoning.

203 Housekeeping.

204 Housekeeping.

205 Housekeeping.

206 Housekeeping.

207 Inserts new paragraphs; subsequent paragraphs are renumbered.
require documentation.\textsuperscript{208} Actions with no documentation may still be subject to the public’s right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS.\textsuperscript{209}

(f) For an action that an agency considered exempt according to the criteria in paragraph (a) but is not clearly covered by the agency’s exemption list, or is on the agency’s exemption list but that list has not received council concurrence within the past five years, the agency shall undertake a systematic analysis to determine whether the action merits exemption consistent with one or several of the types listed in paragraph (a).\textsuperscript{210} For such actions, the agency shall obtain the advice of outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. An action may not be segmented per section 11-200-7 so as to appear to be consistent with several types listed in paragraph (a).\textsuperscript{211}

(e g) Each agency shall maintain records of such actions, called exemption notices,\textsuperscript{212} which it has found to be exempt from the requirements for preparation of an environmental assessment EA in chapter 343, HRS, and each agency shall produce the records for review upon request. The agency shall provide a means to notify and accept input from the public in a timely manner after the exemption declaration is made. An agency may request the office to publish the exemption notice in the periodic bulletin. The public’s right to judicial proceeding on the lack of an assessment under chapter 343, HRS shall commence from the date the public is notified of the exemption through the agency’s means or publication in the bulletin, whichever of the two is earliest.\textsuperscript{213}

\textsuperscript{208} Removes documentation obligation for agencies for activities that are just above the threshold of de minimis but may not require the level of consultation and documentation associated with typical projects or programs.

\textsuperscript{209} Affirms the public’s right to challenge borderline cases that may not be discovered until “the bulldozers are out” and the agency may have erred in its decision to not prepare an EA.

\textsuperscript{210} Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not received council concurrence within the past five years. The five years concurrence threshold is an incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation so that agencies can continue to use the list but with a higher burden of due diligence.

\textsuperscript{211} Reminds agencies that an action may not be broken up into smaller pieces to fit within several exemption types.

\textsuperscript{212} Housekeeping.

\textsuperscript{213} Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these as a record.

\textsuperscript{214} Requires agencies to make exemption notices publicly available either through the periodic bulletin or through their own means. Some agencies already do this by posting them to their website in a spreadsheet or in meeting minutes. This helps to close the gap between when an agency makes a determination and how the public is supposed to know, so that everyone has a clear date for when legal challenge begins and ends, without making the disclosure process overly burdensome to agencies or OEQC.
In the event the governor declares a state of emergency pursuant to chapter 127A, HRS, the governor may exempt any affected program or action from complying with this chapter, has authority to suspend laws, including chapter 343, HRS. In such an event, no exemption declaration is required and the proposing agency or approving agency shall file an exemption notice in its records that the emergency action was undertaken pursuant to a specific emergency proclamation.

An emergency action that is not initiated within the period of the governor’s emergency proclamation shall no longer be considered an emergency action and therefore shall be subject to chapter 343, HRS.

Each agency, through time and experience, shall develop its own list consistent with both the letter and intent expressed here and in chapter 343, HRS of specific programs or projects that the agency considers to be included within the exempt types above. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

Each agency shall create exemption notices for actions that it has found to be exempt from the requirements for preparation of an EA. Each agency shall produce the exemption notices for review upon request by the public or an agency.

Agencies shall consult on the propriety of an exemption and publish exemption notices with the office. Consultation and publication of an exemption notice is not required when:

1. The council has concurred with the agency’s exemption list no more than seven years before the agency initiates the action or authorizes an applicant to initiate the action;
2. The action is consistent with the letter and intent of the agency’s exemption list; and
3. The action does not have any potential to produce significant impacts.

States the name of the statute for emergency proclamations.
Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.
Narrows the risk of an emergency proclamation being a free-for-all by removing actions that did not start during the emergency proclamation from being covered by the emergency proclamation.
Deletes subsections (d) - (i) and reorganizes content to increase readability.
Requires an agency to create an exemption list and submit the list to the council for review and concurrence. Lists may include both programs and projects.
Requires an agency to create exemption notices, to maintain the exemption notices on file, and to produce the exemption notices on request. Exemption notices should be prepared prior to undertaking an action, except in the case of an emergency action under section 11-200-5.
Requires an agency to consult on the propriety of the exemption and to publish the exemption notice, including documentation of the consultation, in the bulletin. Provides an exception to the consultation and
(g) Actions with no published exemption notice may still be subject to the public’s right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS, and shall be initiated within one hundred and twenty days of the agency’s decision to carry out the action or from the date the public becomes aware of the exemption notice, whichever is later.  

(h) For consultation on the propriety of an exemption, an agency shall undertake an analysis to determine whether the action merits exemption consistent with one or several of the types listed in paragraph (a). The agency shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. This analysis and consultation shall be documented in the exemption notice.  

(i) To publish an exemption notice, the agency shall submit the exemption notice to the office per section 11-200-3 for publication in the next periodic bulletin. The public’s right to a judicial proceeding on the lack of an assessment under chapter 343, HRS, shall commence from the date of publication in the notice.

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222 Clarifies that actions with no published exemption notice may still be subject to judicial review and the time period for initiating judicial review.  
223 Enunciates the requirements for consultation on the propriety of an exemption prior to determining that an action is exempt and documentation requirements of the consultation, when applicable, in the exemption notice.  
224 Provides that in order to meet any requirement to “publish the exemption notice”, an agency shall submit the exemption notice to the office for publication in the bulletin. The bulletin serves as a central source for the public to receive information regarding agency determinations and other environmental review, including published exemption notices. This subsection also sets a time period for the public’s right to judicial review under chapter 343, HRS for the lack of assessment of an exempted action with a published exemption notice.
Subchapter 6 Determination of Significance

§11-200-9  Assessment of Agency Actions and Applicant Actions

(a) For agency actions, except those actions exempt from the preparation of an environmental assessment EA pursuant to section 343-5, HRS, or section 11-200-8, the proposing agency shall:

(1) Seek, at the earliest practicable time, the advice and input of the county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals which that the proposing agency reasonably believes to may be affected;

(2) Identify the accepting authority pursuant to section 11-200-4 and specify what the statutory conditions under section 343-5(a), HRS, that require the preparation of an environmental assessment EA;

(3) Prepare an environmental assessment EA pursuant to section 11-200-10 of this chapter which shall also identify potential impacts, evaluate the potential significance of each impact, and provide for detailed study of significant impacts;

(4) Determine, after reviewing the environmental assessment EA described in paragraph (3), and considering the significance criteria in section 11-200-12, whether the proposed action warrants an anticipated negative declaration FONSI or an environmental impact statement preparation notice EISPN, provided that for an environmental impact statement preparation notice EISPN, the proposing agency shall inform the accepting authority of the proposed action;

(5) File the appropriate notice of determination (anticipated negative declaration FONSI or environmental impact statement preparation notice EISPN) in accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the completed informational form referenced in section 11-200-3(d), and four copies of the supporting environmental assessment EA (a draft environmental assessment EA for the anticipated negative declaration FONSI or a final environmental assessment EA for the environmental impact statement

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225 Housekeeping.
226 Housekeeping.
227 Housekeeping.
228 Housekeeping.
229 Housekeeping.
230 Housekeeping.
231 Housekeeping.
232 Housekeeping.
233 OEQC only needs one copy, not four.
preparation notice EISPN, when applicable\textsuperscript{234}) with the office in accordance with sections 11-200-3, 11-200-11.1, 11-200-11.2, and other applicable sections of this chapter;

(6) Distribute Circulate\textsuperscript{235}, concurrently with the filing in paragraph (5), the draft environmental assessment EA to other agencies having jurisdiction or expertise as well as citizen groups and individuals which that the proposing agency reasonably believes to may\textsuperscript{236} be affected;

(7) Deposit, concurrently with the filing in paragraph (5), one paper\textsuperscript{237} copy of the draft environmental assessment EA at the nearest state library in each county in which the proposed action is to occur and one paper copy at the Hawaii Documents Center\textsuperscript{238};

(8) Receive and respond to public comments in accordance with:
(A) section 11-200-9.1 for draft environmental assessments EAs for anticipated negative declaration FONSI determinations; or
(B) section 11-200-15 for environmental assessments EAs for preparation notices EISPNs.

For draft environmental assessments EAs, the proposing agency shall revise the environmental assessment EA to incorporate public comments as appropriate, and append copies of comment letters and responses in the environmental assessment EA (the draft environmental assessment EA as revised, shall be filed as a final environmental assessment EA as described in section 11-200-11.2); and

(9) As appropriate, issue either a negative declaration FONSI determination\textsuperscript{239} or an environmental impact statement preparation notice EISPN pursuant to the requirements of section 11-200-11.2, provided that for preparation notice EISPNs determinations\textsuperscript{241}, the proposing agency shall proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

\textsuperscript{234} Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.

\textsuperscript{235} The term “distribution” is the section heading of § section 11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

\textsuperscript{236} Housekeeping.

\textsuperscript{237} Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.

\textsuperscript{238} Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.

\textsuperscript{239} Removes redundant term “definition” as a FONSI is by definition a determination.

\textsuperscript{240} Housekeeping.

\textsuperscript{241} An EISPN is by definition a determination.
(b) For applicant actions, except those actions exempt from the preparation of an environmental assessment EA pursuant to section 343-5, HRS, or those actions which the approving agency declares exempt pursuant to section 11-200-8, the approving agency shall:

(1) Require the applicant, at the earliest practicable time, to seek the advice and input of the lead county agency responsible for implementing the county’s general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals which the approving agency reasonably believes to be affected;

(2) Require the applicant to provide whatever information the approving agency deems necessary to complete the preparation of an environmental assessment prepare an EA in accordance with section 11-200-10,

Within thirty days from the date of receipt of the applicant’s complete request for approval to the approving agency:

(A) prepare an environmental assessment pursuant to section 11-200-10; and

(B) determine, after reviewing the environmental assessment and considering the significance criteria in section 11-200-12 whether the proposed action warrants an anticipated negative declaration or an environmental impact statement preparation notice;

require the applicant to prepare a draft EA pursuant to section 11-200-10;

Determine, after reviewing the draft EA and considering the significance criteria in section 11-200-12, whether the proposed action warrants an anticipated FONSI or an EISPN;

File the appropriate notice of determination (anticipated negative declaration FONSI or environmental impact statement preparation notice EISPN in accordance with section 11-200-11.1 or 11-200-11.2), the completed

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242 Clarifies that there is a distinction between exclusion by statute and exemption under section 11-200-8.
243 Narrows the language to focus on the EA on the content requirements.
244 This language is unnecessary because agencies no longer prepare EAs on behalf of applicants. The remaining language is redundant with the provisions that follow in this section and therefore the entire paragraph is being deleted.
245 Housekeeping (renumbering).
246 Shifts the focus of preparation to the applicant per Act 172 (2012).
247 Removes the thirty-day requirement for an approving agency to prepare, review, and issue an anticipated FONSI or EISPN. Instead, makes the agency tell the applicant within 30 thirty days of receipt of a request for approval which course of environmental review the applicant is to take.
248 Inserts a new paragraph for the agency to decide whether an anticipated FONSI or EISPN is appropriate. Subsequent paragraphs are renumbered.
249 Housekeeping (renumbering).
250 Makes this step explicit; it was not stated before but it the step that occurs between the draft EA stage and filing an anticipated FONSI.
251 Housekeeping (renumbering).
informational form referenced\(^{252}\) in section 11-200-3(d)\(^{253}\) and four copies of the supporting environmental assessment EA (a draft environmental assessment EA for the anticipated negative declaration FONSI or a final environmental assessment EA for the environmental impact statement preparation notice EISPN, when applicable\(^{254}\)) with the office in accordance with sections 11-200-3, 11-200-11.1, or 11-200-11.2, and other applicable sections of this chapter\(^{255}\); concurrent with the filing in paragraph (4), the draft environmental assessment EA to other agencies having jurisdiction or expertise as well as citizen groups and individuals which the approving agency reasonably believes to be affected;

Deposit or require the applicant to deposit, concurrently with the filing in paragraph (4), one paper\(^{256}\) copy of the draft environmental assessment EA at the nearest state library in each county in which the proposed action is to occur and one paper copy at the Hawaii Documents Center\(^{261}\); Receive public comments, transmit copies of public comments to the applicant and require the applicant to receive and respond to public comments, all in accordance with section 11-200-9.1 for draft environmental assessment EA, or 11-200-15 for preparation notices EISPNs and their associated final environmental assessment EA. For draft environmental assessment EA, the approving agency shall require the applicant:

- to provide revise the draft EA with whatever information the approving agency deems necessary in accordance with section 11-200-10\(^{265}\) to

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252 Housekeeping.
253 Housekeeping.
254 Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.
255 Adds language to ensure that other sections are fulfilled as well.
256 Housekeeping (renumbering).
257 Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.
258 Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.
259 Housekeeping (renumbering).
260 Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.
261 Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.
262 Housekeeping (renumbering).
263 Breaks up the paragraph so that the three requirements for the applicant are easier to read.
264 Housekeeping.
265 Emphasizes that the final EA content should still meet the EA content requirements as set forth in section 10.
revise the draft environmental assessment to inform its determination for a FONSI or EISPN, taking into account comments on the draft EA; to incorporate comments as appropriate; and, to include copies of comment letters and the applicant’s responses.

The revised draft environmental assessment EA, as revised, shall be filed as a final environmental assessment EA as described in section 11-200-11.2; and

As appropriate, issue a negative declaration FONSI determination or an environmental impact statement preparation notice EISPN with appropriate notice of determination thereof pursuant to section 11-200-11.2 within thirty days from the end of the thirty-day public comment period of receiving information required for delivery to the approving agency pursuant to paragraph 8.

For preparation notice EISPN determinations, the approving agency shall proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

(c) For agency or applicant actions, the proposing agency or the applicant approving agency, as appropriate, shall analyze or cause to be analyzed in the EA a reasonable range of alternatives, in addition to the proposed action in the environmental assessment EA.

(d) For agency or applicant actions, if the agency determines, through its judgment and experience, that an EIS is likely to be required, the agency may choose not to prepare an EA, or authorize the applicant to choose not to prepare an EA, as applicable, and

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266 Housekeeping. Removes redundant language.
267 Emphasizes that the point of revisions to the final EA is to move toward a decision on a FONSI or EISPN based on the content and draft EA comments.
268 Housekeeping.
269 Changes the sentence from a parenthetical statement to a standalone sentence.
270 Changes the sentence from a parenthetical statement to a standalone sentence.
271 Housekeeping (renumbering).
272 Removes redundant language. A FONSI is defined as a determination in section 11-200-2.
273 Removes inadvertent strikethrough.
274 Paragraphs renumbered.
275 Changes the deadline from 30 days after the close of the public comment period to 30 days after receipt of the final EA.
276 Clarifies that the alternatives to be examined are done so in the environmental assessment, not independent of it, and that the agency directs the applicant to analyze alternatives in an applicant-prepared EA, as provided for in Act 172, (2012). Inserts the term reasonable to emphasize that not all possible alternatives are required to be analyzed.
277 Removes unnecessary language to increase clarity that both an analysis of the action and an analysis of alternatives to the action must be included in the EA.
instead shall prepare or shall cause to be prepared\textsuperscript{278} an EIS that begins with an EISPN.\textsuperscript{279}

\textsuperscript{278}Clarifies that an agency may cause the EIS to be prepared rather than preparing it on its own.

\textsuperscript{279}Incorporates language from Act 172 (2012) allowing agencies to bypass preparing the environmental assessment and instead prepare an EIS beginning with the EISPN. Also allows agencies to authorize applicants to bypass the environmental assessment, should the applicant desire, and instead prepare an EIS beginning with the EISPN.
§11-200-9.1 Public Review & Response Requirements for Draft Environmental Assessments for Anticipated Negative Declaration Finding of No Significant Impact\textsuperscript{280} Determinations & Addenda to Draft Environmental Assessments

(a) This section shall apply only if a proposing agency or an approving agency applicant\textsuperscript{281} anticipates a negative declaration FONSI determination for a proposed action and that agency or applicant\textsuperscript{282} has completed the draft EA requirements of section 11-200-9(a), paragraphs (1), (2), (3), (4), (5), (6) and (7) for agencies\textsuperscript{283}, or section 11-200-9(b), paragraphs (1), (2), (3), (4), (5) and (6) for applicants\textsuperscript{284}, as appropriate.

(b) The period for public review and for submitting written comments for both agency actions and applicant actions shall begin as of the initial issue date that notice of availability of the draft environmental\textsuperscript{285} assessment EA was published in the periodic bulletin and shall continue for a period of thirty days. Unless mandated otherwise by statute\textsuperscript{286}, for agency actions and applicant actions, the period for public review and for submitting written comments shall commence from the date of notice of availability of the draft EA is initially issued in the periodic bulletin and shall continue for a period of thirty calendar days. Written comments sent\textsuperscript{287} to the proposing agency or approving agency applicant\textsuperscript{288}, whichever is applicable, with a copy of the comments to the applicant, if applicable\textsuperscript{289} or proposing agency\textsuperscript{290}, shall be received by\textsuperscript{291} or postmarked to the proposing agency or approving agency applicant\textsuperscript{292}, within the thirty-day period. Any

\textsuperscript{280} Housekeeping.

\textsuperscript{281} Reflects change that the applicant, rather than the approving agency, prepares the EA.

\textsuperscript{282} Reflects change that the applicant, rather than the approving agency, prepares the EA.

\textsuperscript{283} These paragraphs refer to requirements for agencies preparing an EA through distributing and filing the Draft EA.

\textsuperscript{284} These paragraphs refer to requirements for applicants preparing an EA through distributing and filing the Draft EA.

\textsuperscript{285} Housekeeping. (v0.1 omitted strikethrough)

\textsuperscript{286} Acknowledges that the public review period may be altered for certain actions by statute.

\textsuperscript{287} Measures time consistently in the process. Adds clarity regarding how to count days (distinguishes from working days) and that the publication date is counted as day zero.

\textsuperscript{288} Stylistic change.

\textsuperscript{289} Reflects change that the applicant, rather than the approving agency, prepares the EA. Global change.

\textsuperscript{290} Clarifies that applicants are not always involved and when not involved, not copy of the comments need to be sent to the applicant.

\textsuperscript{291} Redundant; the proposing agency is already as identified as receiving comments.

\textsuperscript{292} Stylistic change.

\textsuperscript{293} Reflects change that the applicant, rather than the approving agency, prepares the EA.

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comments outside of the thirty-day period need not be considered or responded to nor considered in the final EA. However, for a proposed site for a new correctional facility or for the expansion of an existing correctional facility, pursuant to section 353-16.35, HRS, the period for public review and submitting written comments thirty-day period shall be a sixty-day period days.

(c) For agency actions, the proposing agency shall respond in writing to all comments received or postmarked during the thirty-day statutorily mandated review period, incorporate comments into the final EA as appropriate, and append the comments and responses into the final environmental assessment EA. Each response shall be sent directly to the person commenting, with copies of the response also sent to the office. If a number of comments are identical or very similar, the proposing agency may group the comments and prepare a single standard response for each group. When grouping comments, the agency must include each name of the commentor along with the grouped response. One representative copy of comments that are identical or very similar may be included in the final EA rather than reproducing each individual comment. All individual comments and representative copies of identical or very similar comments the must be appended to the final EA regardless of whether the agency believes the comments merit individual discussion in the body of the final EA.

294 Stylistic change.
295 Integrates the public comment period and time limit from HRS § 353-16.35.
296 Removes the language specific to correctional facilities. There are several instances in the HRS that require adjustments to the environmental review process. OEQC guidance will alert the public to these differences in process.
297 Acknowledges that some statutes may modify the public review and comment period.
298 Acknowledges that other statutes may require comment periods of varying lengths.
299 Clarifies that the comments are included in the final EA.
300 Housekeeping.
301 Housekeeping.
302 Provides that comments that are very similar or identical do not need to be individually responded or included in the final EA. The agency may respond to the issues raised in the comments as a group so long as the individuals who raised the issues are acknowledged. The aim of this provision is to reduce the burden on agencies to reproduce very similar or identical comments received en masse and to focus responses on the issues raised by comments rather than on responding to individual commentors.
303 Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.
(d) For applicant actions, the applicant shall respond in writing to all comments received or postmarked during the thirty-day review period and the approving agency shall incorporate or comments into the final EA as appropriate, and append the comments and responses in the final environmental assessment EA. If a number of comments are identical or very similar, the applicant may group the comments and prepare a single standard response for each group. When grouping comments, the applicant must include each name of the commentor along with the grouped response. The comments must be attached to the final EA regardless of whether the approving agency believes the comments merit individual discussion in the body of the final EA. Each response shall be sent directly to the person commenting with a copy to the office. A copy of each response shall be sent to the approving agency for its timely preparation of a determination and notice thereof pursuant to sections 11-200-9(b) and 11-200-11.1 or 11-200-11.2.

(e) An addendum document to a draft environmental assessment EA shall reference the original draft environmental assessment EA it attaches to and shall comply with all applicable public review and comment requirements set forth in sections 11-200-3 and 11-200-9.


304 The applicant prepares the document, and so therefore has the responsibility to incorporate the comments and responses into the document.

305 Clarifies that the comments are incorporated into the final EA.

306 Housekeeping.

307 Housekeeping.

308 Ensures that each individual who submits a comment, even when it is in the form of a pre-printed postcard or letter that may be grouped with other identical or very similar comments, can verify that the individual’s comment was received and responded to.

309 Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments.

310 Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

311 Under Act 192 (2012), applicants prepare their own documents, so the timely preparation requirement is no longer applicable.

312 Housekeeping. (v0.1 omitted strikethrough)
Proposed §11-200-XX Environmental Assessment Style

(a) In developing the draft and final EA, proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, of the EA. The scope of the EA may vary with the scope of the proposed action and its impact. Data and analyses in an EA shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. An EA shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the EA, including cost benefit analyses and reports required under other legal authorities.

(b) The level of detail in an EA may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to actions constituted of: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project over a large geographic area. An EA for these types of actions may be broader and more general than an EA for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. Analysis may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EA and that are proposed to be carried out in conformance with the conditions and mitigation measures presented in the EA may require no or limited further review.\textsuperscript{313}

\textsuperscript{313} Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to begin environmental review with project specificity. This paragraph, along with the proposed amendments to 11-200-19, Environmental Impact Style and proposed amendments to section 11-200-13, replaces the proposed Programmatic EIS sections in v0.1 and the contemplated Programmatic EA section as discussed at the council meeting August 22, 2017.
(c) In preparing any EA, care shall be taken to concentrate on important issues and to ensure that the EA remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference.\textsuperscript{314}

§11-200-10  Contents of an Environmental Assessment

The proposing agency or approving agency applicant shall prepare any draft or final environmental assessment EA of each proposed for any action not exempt under section 11-200-8 and determine whether the anticipated effects constitute a significant effect in the context of chapter 343, HRS, and section 11-200-12. The environmental assessment EA shall contain, but not be limited to, the following information:

1. Identification of applicant or proposing agency;
2. Identification of approving agency, if applicable;
3. Identification of agencies, citizen groups, and individuals consulted in preparing the assessment;
4. General description of the action's technical, economic, social, cultural and environmental characteristics;
5. Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
6. Identification and summary analysis of impacts and alternatives considered;
7. Proposed mitigation measures;
8. Agency determination for final EAs, or draft environmental assessments EAs only, an anticipated determination for draft EAs;
9. Findings and reasons supporting the agency determination or anticipated determination;
10. Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared;
11. List of all required permits and approvals (State, federal, county) required and identification of which are considered to be discretionary; and

315 Removes “approving agency” and replaces with “applicant” because an applicant, rather than an agency, is the one who will prepare the EA.
316 Housekeeping.
317 Stylistic change.
318 Clarifies that only actions that are not otherwise exempt under section 11-200-8 require an EA.
319 Uses more accurate language (“preparing” rather than “making”) that is consistent with language in the rules.
320 Aligns provision with content requirement of a draft EIS under section 11-200-17(e).
321 Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood to mean a lengthy discussion. It means that the impact discussion section should identify an impact and provide a detailed discussion detailed enough sufficient to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.
322 Stylistic change to improve clarity.
323 Housekeeping. Moves the word required from the end of the clause to before the word “permits”.
324 Adds identification of approvals that are considered discretionary. This helps to inform why an applicant is undergoing chapter 343, HRS review, and when a proposed action has reached “substantial commencement” for the purposes of a supplemental EIS.
(12) Written comments and responses to the comments received pursuant to the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15, and statutorily prescribed public review periods.

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(c), 343-6)

§11-200-11 REPEALED.

[R AUG 31 1996]

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325 Housekeeping.
§11-200-11.1 Notice of Determination for Draft Environmental Assessments

(a) After preparing, or causing to be prepared, an environmental assessment a draft EA, and reviewing any public and agency comments, if any, and applying the significance criteria in section 11-200-12, if the proposing agency or the approving agency anticipates that the proposed action is not likely to have a significant effect, the proposing agency or approving agency shall issue a notice of determination which shall be an anticipated negative declaration FONSI subject to the public review provisions of section 11-200-9.1.

(b) The proposing agency or approving agency shall also file such the notice and supporting draft EA with the office as early as possible after the determination is made pursuant to and in accordance with section 11-200-9, and the requirements in subsection (cd) along with four copies of the supporting environmental assessment.

In addition to the above, the anticipated negative declaration determination for any applicant action shall be mailed to the requesting applicant by the approving agency. For applicant actions, the approving agency shall also send the anticipated FONSI to the applicant.

(bc) The office shall publish notice of availability of the draft environmental assessment for the anticipated negative declaration FONSI in the periodic bulletin following the date of receipt by the office in accordance with section 11-200-3.

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326 Housekeeping. Breaks out three conditions into three items and capitalizes each of the numbered items to make the language clearer.
327 Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.
328 Housekeeping. Specifies draft EA.
329 Housekeeping.
330 Housekeeping.
331 Removes redundant language. An anticipated FONSI is defined as a "determination".
332 Removes redundant language.
333 Housekeeping. Renumbering of all subsequent paragraphs of this section.
334 Housekeeping.
335 Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.
336 Housekeeping.
337 Housekeeping.
338 Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.
339 Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).
The notice of an anticipated FONSI determination shall indicate in a concise manner:

1. Identification of the applicant or proposing agency or applicant;
2. Identification of the approving agency or accepting authority;
3. Brief description of the proposed action;
4. Determination of the anticipated FONSI;
5. Reasons supporting the anticipated FONSI determination; and
6. Name, title, contact information, including the email address, physical address, and phone number of a contact person an individual representative of the proposing agency or applicant who may be contacted for further information.

When an agency withdraws a document, determination, or both pursuant to its rules, the agency shall submit to the office a written letter informing the office of its withdrawal and the rationale for the withdrawal. The office shall publish notice of agency withdrawals in accordance with section 11-200-3.

[Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)
§11-200-11.2 Notice of Determination for Final Environmental Assessments

(a) After preparing, or causing to be prepared, a final environmental assessment EA, the proposing agency or the approving agency shall issue one of the following notices of determination for an EISPN or FONSI in accordance with section 11-200-9(a) or 11-200-9(b), and file the notice with the office addressing the requirements in subsection (c), along with four copies of the supporting final environmental assessment.

(1b) Environmental impact statement preparation notice EISPN. If the proposing agency or approving agency determines that a proposed action may have a significant effect, it shall issue a notice of determination which shall be an environmental impact statement preparation notice EISPN and such notice shall be filed as early as possible after the determination is made pursuant to and in accordance with section 11-200-9.

(2c) Negative declaration FONSI. If the proposing agency or approving agency determines that a proposed action is not likely to have a significant effect, it shall issue a notice of determination which shall be a negative declaration FONSI, and the proposing agency or approving agency shall file such notice with the office as early as possible after the determination is made pursuant to and in accordance with section 11-200-9.

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354 Housekeeping. Breaks out three conditions into three items and capitalizes each of the numbered items to make the language clearer.

355 Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

356 Housekeeping.

357 Housekeeping.

358 Removes redundant language. A FONSI and EISPN are by definition “determinations”.

359 Clarifies which of two determinations is to be issued.

360 Removes unnecessary language on final EA filing requirements.

361 This requirement is now addressed in the new proposed paragraph D.

362 Housekeeping. Renumbering of all subsequent paragraphs of this section.

363 Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

364 Housekeeping.

365 Removes this language from the paragraph and adds it as part of the new proposed paragraph D.
(d) The proposing agency or approving agency shall file the notice and the supporting final EA with the office as early as possible after the determination is made in accordance with section 11-200-9, addressing the requirements in subsection (f). For applicant actions, the approving agency shall send the notice of determination for an EISPN or FONSI to the applicant.

(be) The office shall publish the appropriate notice of determination in the periodic bulletin following receipt of the documents in subsection (a) by the office in accordance with section 11-200-3.

(ef) The notice of determination for a FONSI shall indicate in a concise manner:

1. Identification of the applicant or proposing agency;
2. Identification of the approving agency or accepting authority;
3. Brief description of the proposed action;
4. Determination and reasons supporting the determination; and
5. Name, title, contact information, including the email address, physical address, and phone number of a contact person who may be contacted for further information.

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366 Housekeeping. (v0.1 omitted underlining)
367 Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.
368 Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).
369 Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in section 11-200-15.
370 Housekeeping.
371 Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.
372 Housekeeping.
373 Housekeeping.
374 Housekeeping.
375 Housekeeping.
376 Housekeeping.
377 Modernizes the requirements to include email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.
378 Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.
379 Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.
The notice of determination for an EISPN shall be prepared pursuant to section 11-200-15.380

(dg) When an agency withdraws a document, determination, or both381 pursuant to its the agency’s382 rules, the agency shall submit to the office a written letter informing the office of its withdrawal. The office shall publish notice of agency withdrawals in accordance with section 11-200-3.

[Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)

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380 Refers to the EISPN section of the rules for what to include in an EISPN. This addresses direct-to-EIS concerns for the EISPN so that no matter how one arrives at an EIS, the content requirement of the EISPN is identical.

381 Clarifies that an agency may withdraw a document (i.e., FEA) as well as being able to withdraw a determination (i.e., EISPN or FONSI).

382 Clarifies that the withdrawal is pursuant to the agency’s own rules rather than the EC’s rules; determinations rest with the agency and are made pursuant to that agency’s rules, procedures, and practices.
§11-200-12 Significance Criteria

(a) In considering the significance of potential environmental effects, agencies shall consider the sum of effects on the quality of the environment;\textsuperscript{383} and shall evaluate the overall and cumulative effects of an action.

(b) In determining whether an action may have a significant effect on the environment, the agency shall consider every phase of a proposed action, the expected consequences, both primary and secondary, and the cumulative as well as the short-term and long-term effects of the action. In most instances, an action shall be determined to have a significant effect on the environment if it is likely to:\textsuperscript{384}

(1) Involves an irrevocable commitment to loss or destruction of any natural or cultural resource Irrevocably commits commit\textsuperscript{385} a natural or cultural\textsuperscript{386} resource\textsuperscript{387};

(2) Curtails Curtail the range of beneficial uses of the environment;\textsuperscript{388}

(3) Conflicts Conflict with the state’s long-term environmental policies or long-term environmental\textsuperscript{389} goals and guidelines as expressed in chapter 344, HRS, or other laws,\textsuperscript{390} and any revisions thereof and amendments thereto, court decisions, or executive orders;\textsuperscript{391}

(4) Substantially Adversely affects Have a substantial adverse effect on\textsuperscript{392} the economic welfare, or social welfare, or cultural practices\textsuperscript{393} of the community or State;

(5) Substantially affects Have a substantial adverse effect on\textsuperscript{394} public health;

\textsuperscript{383} Housekeeping.
\textsuperscript{384} While section 5 of chapter 345, HRS, provides that an EIS is required for an action that “may” have a significant effect, the Supreme Court of Hawaii has interpreted the word “may” to mean “likely”. For example, in Kepoo v. Kane, 106 Hawaii 270, 289, 103 P.3d 939, 958 (2005) the Court held that the proper inquiry for determining the necessity of an EIS is whether the proposed action will “likely” have a significant effect on the environment.
\textsuperscript{385} Housekeeping. (Makes each item read grammatically from the revised lead in language “is likely to”) and revises language to match the definition of “significant effect” in Section 343-2, HRS.
\textsuperscript{386} Reinserts language regarding loss or destruction of cultural resources.
\textsuperscript{387} Revises language to match the definition of “significance” in Section 343-2, HRS.
\textsuperscript{388} Revises language to match the definition of “significance significant effect” in Section 343-2, HRS.
\textsuperscript{389} Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.
\textsuperscript{390} Revises language to match the definition of “significance” in Section 343-2, HRS. Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.
\textsuperscript{391} Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.
\textsuperscript{392} Revises language to match the definition of “significance” in Section section 343-2, HRS. Statutory language was amended by Act 50 (2000) to include cultural practices as part of significance.
\textsuperscript{393} Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.
(6) Involves secondary adverse \textsuperscript{394} impacts, such as population changes or effects on public facilities;

(7) Involves a substantial degradation of environmental quality;

(8) Is individually limited but cumulatively has considerable substantial adverse \textsuperscript{395} effect upon the environment or involves a commitment for larger actions;

(9) Substantially affects a rare, threatened, or endangered species, or its habitat;

(10) Detrimentally affects air or water quality or ambient noise levels;

(11) Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;

(12) Substantially affects scenic vistas and viewplanes identified in county or state plans or studies; or,

(13) Requires substantial energy consumption.


\textsuperscript{394} Retains the focus on secondary impacts and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

\textsuperscript{395} Retains the focus on “considerable effects” through the synonym “substantial effects” and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

\textsuperscript{396} Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

\textsuperscript{397} Revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS and maintains uniformity with the threshold of “substantially adverse” used in this section.

\textsuperscript{398} Revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

\textsuperscript{399} Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.
§11-200-13  Consideration of Previous Determinations and Accepted Statements

(a) Chapter 343, HRS, provides that whenever an agency proposes to implement an action or receives a request for approval, the agency may consider and, when applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether an EIS is required, such as exemption notices, FONSIs, and EISPNs, EAs, and previously accepted statements EIS EISs.

(b) Previous determinations EAs and previously accepted statements EISs may be incorporated into an exemption notice, EA, EISPN, or EIS, by applicants and agencies whenever the information contained therein is pertinent to the decision at hand and has logical relevancy and bearing to the proposed action being considered.

c) Agencies and applicants shall not, without considerable pre-examination and comparison, use past determinations EAs and previous statements EISs to apply to the action at hand. The proposed action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations EAs and previously accepted statements EISs. Further, when previous determinations EAs and previous statements EISs are considered or incorporated by reference, they shall be substantially similar to and relevant to the proposed action then being considered.

Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

§11-200-14 General Provisions

(a) Chapter 343, HRS, directs that in both agency and applicant actions where statements EISs are required, the proposing agency or applicant preparing party shall prepare the EIS, submit it for review and comments, and revise it, taking into account all critiques and responses. Consequently, the EIS process involves more than the preparation of a document; it involves the entire process of research, discussion, preparation of a statement, and review. The EIS process shall involve at a minimum:

1. Identifying environmental concerns,
2. Conducting no fewer than one EIS public scoping meeting in the area affected by the proposed action,
3. Obtaining various relevant data,
4. Conducting necessary studies,
5. Receiving public and agency input,
6. Evaluating alternatives, and
7. Proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts.

(b) To encourage early thorough and informed review of the EIS, the office shall develop a distribution list of persons and agencies with jurisdiction or expertise in certain areas relevant to various actions and make it available to the proposing agency or applicant.

An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies shall ensure that statements EISs are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action prior to decision making.

§11-200-15 Consultation Prior to Filing a Draft
Environmental Impact Statement

(a) An EISPN, including one resulting from an agency authorizing the preparation of an EIS without first requiring an EA, shall indicate in a concise manner:

1. Identification of the proposing agency or applicant;
2. Identification of the accepting authority;
3. The determination to prepare an EIS;
4. Reasons supporting the determination to prepare an EIS;
5. A description of the proposed action and its location;
6. A description of the affected environment and include regional, location, and site maps;
7. Possible alternatives to the proposed action;
8. The proposing agency’s or applicant’s proposed scoping process, including when and where the EIS public scoping meeting or meetings will be held;
9. The name, title, contact information, including the email address, physical address, and phone number of a contact person, an individual representative of the proposing agency or applicant who may be contacted for further information.

(b) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies noted in section 11-200-10(10), and other citizen groups, and concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end, agencies and applicants shall endeavor to develop a fully acceptable draft EIS prior to the time the draft EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns. At the discretion of the proposing agency or an applicant, a public scoping meeting to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth addressing the scope of the draft EIS may shall be held within the thirty-day public review and comment period in subsection

422 Creates a new paragraph and renumbes subsequent paragraphs.
423 Distinguishes “the determination” from other determinations, such as a FONSI.
424 Distinguishes “the determination” from other determinations, such as a FONSI.
425 Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.
426 Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.
427 Housekeeping.
428 Clarifies that the document is a draft EIS.
429 Clarifies that the document is a draft EIS.
430 Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the scope of the draft EIS should be.
(bc) provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d).

Upon publication of an EISPN in the periodic bulletin, agencies, groups, or individuals shall have a period of thirty days from the initial publication date in which to request to become a consulted party and to make written comments regarding the environmental effects of the proposed action. Upon written request by the consulted party and upon good cause shown, the approving agency or accepting authority may extend the period for comments for a period not to exceed thirty additional days.

Upon receipt of the request, the proposing agency or applicant shall provide the consulted party with a copy of the environmental assessment or requested portions thereof and the environmental impact statement preparation notice EISPN. Additionally, the proposing agency or applicant may provide any other information it deems necessary. The proposing agency or applicant may also contact other agencies, groups, or individuals which it feels may provide pertinent additional information.

Any substantive comments received by the proposing agency or applicant pursuant to this section shall be responded to in writing and as appropriate, incorporated into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS.

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431 Housekeeping. Shifts the focus to written comments submitted during the EISPN phase and public scoping meeting to add clarity to the comment submitted and removes the preparer’s interpretation recording of individual oral comments.
432 Clarifies that thirty-day time period begins upon publication of the EISPN.
433 Removes the requirement for an individual to become a consulted party in order to engage directly in providing and receive public documents and determinations related to the proposed action. All documents and determinations are now published online and available through the office’s website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. The requirement to become a consulted party to request an extension to the comment period has been removed.
434 Clarifies that the days are in addition to the first thirty-day period.
435 Allows the approving agency or accepting authority, with good cause, to extend the comment period on its own initiative or at the request of another party. Removes the requirement for a person to become a consulted party in order to request an extension to the comment period.
436 Removes the requirement to provide a copy because the EISPN is available online to anyone at any time.
437 All documents and determinations are now published online and available through the office’s website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. A proposing agency or applicant does not require authorization from these regulations in order to consult with or share documents with outside parties.
438 Removes threshold of “substantive” and clarifies that all written comments received by the proposing agency or applicant must be responded to in writing.
439 Adds written as a requirement for being responded to and reproduced in the draft EIS.
with the approving agency or accepting authority. Letters submitted which contain no comments on the project but only serve to acknowledge receipt of the document do not require a written response. Acknowledgement of receipt of these items must be included in the final environmental assessment or final statement draft EIS. If a number of written comments are identical or very similar, the proposing agency or applicant may group the comments and prepare a single standard response for each group. The name of each commentor shall be included with the grouped response. One representative copy of identical or very similar comments may be included rather than reproducing each comment.

(f) A written summary of oral comments made at any EIS public scoping meetings identifying those persons or agencies that provided oral comments shall be included in the draft EIS prior to the filing of the draft EIS with the approving agency or accepting authority.

(g) A list of those persons or agencies who were consulted with prior to filing the draft EIS and had no comment shall be included in the draft EIS in a manner indicating that no comment was provided.


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441 Removes final EA requirement because a final EA may not have been prepared.
442 Replaces final EIS with draft EIS, mirroring the previous sentence.
443 Mirrors language inserted regarding written comments in Section 11-200-17(p) addressing voluminous and repetitive comments.
444 Specifies that a summary of the oral comments made at any EIS public scoping meeting must be provided in the draft EIS.
445 Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of the public scoping meeting (or meetings).
446 Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments.
447 Addresses how proposing agencies and applicants should include oral comments received during the public scoping meeting required under this section into the draft EIS. This language mirrors the way oral comments received on the Draft EIS are to be included in Final EIS.
448 Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.
§11-200-16  Content Requirements

For draft Draft and final EISs, The environmental impact statement the document\(^{449}\) shall contain an explanation of the environmental consequences of the proposed action, pursuant to as required in section 11-200-17\(^{450}\). The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible reasonably foreseeable\(^{451}\) consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, a statement an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

\([\text{Eff 12/6/85; am and comp AUG 31 1996}] (\text{Auth: HRS §343-5, 343-6}) (\text{Imp: HRS §343-2, 343-5, 343-6})\)

\(^{449}\) Clarifies that Section section 11-200-16 applies to both draft and final EISs.

\(^{450}\) Explicitly connects section 11-200-16 and section 11-200-17.

\(^{451}\) Replaces “relevant and feasible” with “reasonably foreseeable,” a phrase in line with NEPA, with more case history law, and federal guidance to provide clarity on the desired standard.
§11-200-17 Content Requirements; Draft Environmental Impact Statement

(a) The draft EIS, at a minimum, shall contain the information required in this section.

(b) The draft EIS shall contain a summary sheet which briefly and concisely discusses the following:

   (1) Brief description of the action;
   (2) Significant beneficial and adverse impacts (including cumulative impacts and secondary impacts);
   (3) Proposed mitigation measures;
   (4) Alternatives considered;
   (5) Unresolved issues; and
   (6) Compatibility with land use plans and policies, and listing of permits or approvals; and
   (7) A list of relevant documents, including EAs and EISs, used to identify potential segmentation or cumulative impacts.

(c) The draft EIS shall contain a table of contents.

(d) The draft EIS shall contain a separate and distinct section that includes a statement of purpose and need for the proposed action.

(e) The draft EIS shall contain a program or project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:

   (1) A detailed map (preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps, or Floodway Boundary Maps as applicable) and a related regional map;
   (2) Statement of objectives Objectives of the proposed action;
   (3) General description of the action's technical, economic, social, and environmental characteristics;

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452 Housekeeping.
453 This list is meant to help readers be aware that the proponent considered other actions that may be relevant from the perspective of segmentation or cumulative impacts and thereby be able to bring other documents to the attention of the proponent or decision maker. The list could be included in references, which is already a content requirement.
454 “Statement” is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.
455 Clarifies that the proposed action could be either a program or a project.
456 “Statement” is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.
457 Adds “cultural” to the characteristics, in line with Act 50 (2000).
(4) Use of public state or county\textsuperscript{458} funds or lands for the action;

(5) Phasing and timing of the\textsuperscript{459} action;

(6) Summary of technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public; and

(7) Historic perspective.

(f) The draft EIS shall describe in a separate and distinct section \textit{reasonable}\textsuperscript{460} alternatives which could attain the objectives of the action regardless of cost, in sufficient detail to explain why they were rejected\textsuperscript{461} and,\textsuperscript{462} for alternatives that were eliminated from detailed study, a brief discussion of the reasons for eliminating them\textsuperscript{463},\textsuperscript{464}. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions.\textsuperscript{465} Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks of the action\textsuperscript{466}. Examples of alternatives include:

(1) The alternative of no action;

(2) Alternatives requiring actions of a significantly different nature \textit{which} would provide similar benefits with different environmental impacts;

(3) Alternatives related to different designs or details of the proposed actions \textit{which} would present different environmental impacts;

(4) The alternative of postponing action pending further study; and,

(5) Alternative locations for the proposed \textit{project action}\textsuperscript{467}. In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative. \textit{For alternatives that were eliminated from detailed study, the section shall contain a brief discussion of the reasons for not studying those}.

\textsuperscript{458} Aligns language with section 11-200-12.
\textsuperscript{459} Housekeeping.
\textsuperscript{460} Incorporates language from NEPA’s 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
\textsuperscript{461} Incorporates language from NEPA’s 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
\textsuperscript{462} Housekeeping.
\textsuperscript{463} Incorporates language from NEPA’s 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
\textsuperscript{464} Stylistic changes to enhance readability and incorporate language from NEPA’s 40 CFR 1502.14(a).
\textsuperscript{465} Clarifies that not all alternative actions, only those that are considered by the proposing agency or applicant to be “reasonable” need to be rigorously explored and objectively evaluated.
\textsuperscript{466} Clarifies that the effects, costs, and risks are related to the action.
\textsuperscript{467} Clarifies that alternative locations should be included for both programs and projects.
alternatives in detail. For any agency actions, the discussion of alternatives shall include, where relevant, those alternatives not within the existing authority of the agency.

(g) The draft EIS shall include a description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site (including natural or human-made resources of historic, cultural, archaeological, or aesthetic significance); specific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions. Proposing agencies and applicants shall also identify, where appropriate, population and growth characteristics of the affected area, and any population and growth assumptions used to justify the action, and determine any secondary population and growth impacts resulting from the proposed action and its alternatives. In any event, it is essential that the sources of data used to identify, qualify, or evaluate any and all environmental consequences be expressly noted in the draft EIS.

(h) The draft EIS shall include a statement of the relationship of the proposed action to land use plans, policies, and controls for the affected area. Discussion of how the proposed action may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the draft EIS shall describe the extent to which the agency or applicant has reconciled its proposed action with the plan, policy, or control, and the reasons why the agency or applicant has decided to proceed, notwithstanding the absence of full reconciliation. The draft EIS shall also contain a list of necessary approvals, required for the action, from governmental agencies, boards, or commissions or other similar groups having jurisdiction. The status of each identified approval shall also be described.

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468 Stylistic changes to enhance readability and incorporate language from NEPA’s 40 CFR 1502.14(a).
469 Clarifies that both programs and projects are referred to.
470 Adds “cultural” in line with Act 50 (2000).
471 Clarifies that both programs and projects in the regional shall be considered.
472 Parallels use of “proposed” later in the sentence and distinguishes this “action” from “action” used previously in this paragraph.
473 Housekeeping.
474 Housekeeping.
475 Removes the word “statement,” which is a technical word in chapter 343, HRS, that refers to an EIS. Uses “description” similar to other paragraphs.
476 Includes natural resource plans such as water management plans.
477 Includes natural resource plans such as water management plans.
478 Clarifies that this applies to draft EISs.
The draft EIS shall include a statement of the probable impact of the proposed action on the environment, and impacts of the natural or human environment on the project action. This analysis shall include consideration of all phases of the action and consideration of all consequences on the environment, including direct and indirect effects. The interrelationships and cumulative environmental impacts of the proposed action and other related projects shall be discussed in the draft EIS. It should be realized that several actions, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may well stimulate or induce secondary effects. These secondary effects may be equally important as, or more important than, primary effects, and shall be thoroughly discussed to fully describe the probable impact of the proposed action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation shall be made of the effects of any possible change in population patterns or growth upon the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the proposed action constitutes a direct or indirect source of pollution as determined by any governmental agency, necessary data regarding these impacts shall be incorporated into the EIS. The significance of the impacts shall be discussed in terms of subsections (j), (k), (l), and (m).

(j) The draft EIS shall include in a separate and distinct section a description of the relationship between local short-term uses of humanity's environment and the maintenance and enhancement of long-term productivity. The extent to which the proposed action involves trade-offs among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the proposed action forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action.

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479 Removes the word "statement," which is a technical word in chapter 343, HRS, that refers to an EIS. Emphasizes that an analysis is important for the impact discussion.
480 Clarifies that this sentence applies to both projects and programs.
481 Stylistic change to increase readability.
482 Housekeeping.
483 Clarifies that both projects and programs should be considered.
484 Housekeeping. (v0.1 omitted strikethrough)
485 Housekeeping.
486 Housekeeping.
487 Clarifies what the data should be about.
The draft EIS shall include in a separate and distinct section a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. Identification of unavoidable impacts and the extent to which the action makes use of non-renewable resources during the phases of the action, or irreversibly curtails the range of potential uses of the environment shall also be included. The possibility of environmental accidents resulting from any phase of the action shall also be considered. Agencies shall avoid construing the term "resources" to mean only the labor and materials devoted to an action. "Resources" also means the natural and cultural resources committed to loss or destruction by the action. "Resources" shall be construed to also mean the natural and cultural resources irreversibly and irretrievably committed to the action and not only to the labor and materials committed to the action.

The draft EIS shall address all probable adverse environmental effects which cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy such as that found in chapters 128D (Environmental Response Law), 205A (Coastal Zone Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D (Water Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F (Noise Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste Recycling), 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used Oil), 342L (Underground Storage Tanks), 342N, 342P (Asbestos and Lead), and 344 (State Environmental Policy), HRS, shall be included, including and those discussed in other actions subsections of this paragraph section which are adverse and unavoidable under the proposed action must be addressed in the draft EIS. Also, the rationale for proceeding with a proposed action, notwithstanding unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental effects of the proposed action. The statement EIS shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects.

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488 Clarified the language so that everyone, not just agencies, understand the use of the term “resources”.
489 Housekeeping.
490 Repealed.
491 Provides titles of each chapter referenced.
492 Housekeeping.
493 Clarifies that all probable adverse and unavoidable effects of the proposed action within this section, among others, must be included.
494 Housekeeping. Replaces “shall be included”, which was deleted in v0.1.
(m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impact impacts, including provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the action plan to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. The draft EIS shall include, where possible and appropriate, specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken.

(n) The draft EIS shall include a separate and distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to commencement of the action, or what overriding reasons there are for proceeding without resolving the issues.

(o) The draft EIS shall include a separate and distinct section that contains a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the statement, and the identity of the persons, firms, or agency preparing the statement, by contract or other authorization, shall be disclosed.

(p) The draft EIS shall include a separate and distinct section that contains:

1. Reproductions of all substantive written comments and responses made during the consultation process thirty-day consultation period pursuant to section 11-200-15, and responses to those comments and a summary of any EIS public scoping meetings. If a number of comments are identical or very similar, the proposing agency may group the comments and prepare a single standard response for each group. The name of each commentor shall be included with the grouped response. One representative copy of identical or very similar comments may be included rather than reproducing each comment; and a summary of any EIS public scoping meetings is now addressed in subsection (p)(2).

495 Housekeeping.
496 Removes redundant language.
497 Housekeeping.
498 Changes reference to “any” mitigation measure process that may result from the analysis.
499 Aligns language throughout sentence to reference “issues” rather than “issues” and “problems”.
500 Introduces subsections to increase clarity.
501 Distinguishes the process for including written comments from the process of including oral comments received at a public EIS scoping meeting. Summaries of EIS public comment periods are now addressed in subsection (p)(2).
502 Aligns language with section 11-200-9.1 that reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.
(2) A summary of oral comments made at any EIS public scoping meetings that identifies those persons or agencies that provided oral comments. A list of those persons or agencies who were consulted and had no comment shall be included in the draft EIS in a manner indicating that no comment was provided.

§11-200-18 Content Requirements; Final Environmental Impact Statement

The final EIS shall consist of:

(1) The draft EIS prepared in compliance with section 11-200-17, as revised to incorporate substantive comments received during the consultation and review processes;

(2) Reproductions of all letters written comments received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held during the consultation and review processes; provided that if a number of written comments are identical or very similar, one representative copy of identical or very similar comments may be included rather than reproducing each comment;

(3) A list of persons, organizations, and public agencies commenting on the draft EIS;

(4) The responses of the applicant or proposing agency to each substantive question, comment, or recommendation written comments received in the review and consultation processes, provided that if a number of written comments are identical or very similar, the proposing agency or applicant may group the comments and prepare a single standard response for each group. The name of each commentor shall be included with the grouped response.

507 Connects this section with the previous section content requirements.
508 Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.
509 Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.
510 Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.
511 Aligns language with the EISPN and draft EIS requirements.
512 Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.
513 Place “proposing agency” before “applicant”.
514 Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.
515 Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.
516 Housekeeping.
(5) A written summary of oral comments made at any public hearings identifying those persons or agencies that provided oral comments.

(6) A list of those persons or agencies who were consulted with in preparing the final EIS and had no comment shall be included in the final EIS in a manner indicating that no comment was provided.

(57) The text of the final EIS which shall be written in a format which allows the reader to easily distinguish changes made to the text of the draft EIS.


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517 Specifies that a summary of the oral comments made at any EIS public scoping meeting or public hearing must be provided in the final EIS.

518 Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments. A list of these persons and agencies is sufficient.

519 Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.

520 Housekeeping.
§11-200-19  Environmental Impact Statement Style

(a) In developing the draft and final EIS, preparers proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail of the statement EIS. The scope of the statement EIS may vary with the scope of the proposed action and its impact. Data and analyses in a statement an EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. Statements An EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement EIS, including cost benefit analyses and reports required under other legal authorities.

(b) The level of detail in an EIS may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to actions constituted of: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project over a large geographic area. An EIS for these types of actions may be broader and more general than an EIS for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. It may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EIS and that are proposed to be carried

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521 Adding a new paragraph requires adding paragraph identifiers.
522 Clarifies that this section applies to draft and final EISs.
523 Removes introduction of a new term and replaces it with terms used consistently in the regulations, "proposing agencies and applicants".
524 Global edit to reduce confusion regarding the meaning of "public".
525 Removes "detail" because "detail" is already discussed as being commensurate with the potential for impact.
526 Change "project or program" to "program or project".
out in conformance with the conditions and mitigation measures presented in the EIS may require no or limited further review. 527

527 Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address programs or projects at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to beginning assessment with project specificity. This paragraph, along with the proposed section 11-200-XX, Environmental Assessment Style and proposed amendments to section 11-200-13, Replaces the proposed Programmatic EIS sections in v0.1.

(c) In preparing any EIS, care shall be taken to concentrate on important issues and to ensure that the statement EIS remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference.


528 Stylistic change to provide more clarity.

529 Housekeeping.
§11-200-20  Filing of an Environmental Impact Statement

(a) The proposing agency or applicant shall file the original (signed)\(^{530}\) draft EIS with the accepting authority, along with a minimum number of copies determined by the accepting authority\(^{531}\). Simultaneously, a minimum number of four copies of\(^{532}\) the draft EIS shall be filed with the office.

(b) The proposing agency or applicant shall file the original (signed)\(^{533}\) final EIS with the accepting authority, along with a minimum number of copies determined by the accepting authority\(^{534}\). Simultaneously, four copies of\(^{535}\) the final EIS shall be filed with the office.

(c) An EIS may be filed at any time at the office by the proposing agency or applicant in accordance with section 11-200-3\(^{536}\).

(d)\(^{537}\) The office shall be responsible for the publication of the notice of availability of the draft and final EIS in its bulletin\(^{539}\).


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\(^{530}\) Removes "original, signed" as it does not make sense for digital documents.

\(^{531}\) Removes minimum number of copies requirement as it does not make sense for digital documents.

\(^{532}\) OEQC only needs one copy, not four.

\(^{533}\) Removes "original, signed" as it does not make sense for digital documents.

\(^{534}\) Removes minimum number of copies requirement as it does not make sense for digital documents.

\(^{535}\) OEQC only needs one copy, not four.

\(^{536}\) Removes the paragraph because the language is unnecessary.

\(^{537}\) Renumbers the paragraph.

\(^{538}\) Removes "original, signed" as it does not make sense for digital documents.

\(^{539}\) Incorporates requirement for the office to publish the notice of availability of the draft and final EIS from section 11-200-21, Distribution, which is proposed to be deleted.
§11-200-21 Distribution

The office shall be responsible for the publication of the notice of availability of the EIS in its bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with jurisdiction or expertise in certain areas relevant to various actions) and make it available to the proposing agency or applicant, and a list of public depositories, which shall include public libraries, where copies of the statements shall be available, and to the extent possible, the proposing agency or applicant shall make copies of the EIS available to individuals requesting the EIS. The office’s distribution list may be developed cooperatively among the applicant or proposing agency, the accepting authority, and the office; provided that the office shall be responsible for determining the final list. The applicant or proposing agency shall directly distribute the required copies to those on the distribution list after the office has verified to the applicant or proposing agency the accuracy of the distribution list. For final statements, the agency or applicant shall give the commentor an option of requesting a copy of the final EIS or portions thereof.


540 Deletes section because, due to the availability of the bulletin online, it is no longer necessary to specify the distribution process in such detail and to require distribution of paper copies of draft and final EISs. The remaining provisions are proposed to be incorporated in pertinent sections of the regulations. The requirement for the office to distribute the draft and final EIS has been moved to section 11-200-20, Filing, and the requirement for the office to produce and make available a distribution list has been slightly modified and moved to subsection (b) in section 11-200-14, General Provisions.

541 Removes the requirement for proposing agencies or applicants to verify a distribution list with the office. Electronic distribution of the documents and online availability of a distribution list developed by the office meet the objectives of this requirement more efficiently.

542 Removes outdated depositories requirement as all documents and determinations are available online to anyone.

543 Removes unnecessary language. The EIS will primarily be made available electronically, whereas “copies” implies a paper version.

544 Housekeeping.

545 Removes outdated requirement to provide the commenter with an option to request the document or a portion of it as all documents and determinations are available online to anyone.

546 Modernizes the distribution process. The office is required under chapter 343 to produce and distribute the bulletin. This process is now electronic and all published environmental review documents and determinations are available freely online. Because information is now available online, the concern that agencies and members of the public would not have notice of or access to the documents without a hard copy of the documents is no longer applicable.

(a) Public review shall not substitute for early and open discussion with interested persons and agencies, concerning the environmental impacts of a proposed action. Review of the draft EIS, shall serve to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives.

(b) The period for public review and for submitting written comments shall commence as of from the date that notice of availability of the draft EIS is initially issued in the periodic bulletin and shall continue for a period of forty-five days. Written comments to the approving agency or accepting authority, whichever is applicable, with a copy of the comments to the applicant or proposing agency or applicant, shall be received or postmarked to the approving agency or accepting authority, within said the forty-five-day comment period. Any comments outside of the forty-five day comment period need not be considered or responded to.

(c) The proposing agency or applicant shall respond in writing to the comments received or postmarked during the forty-five-day review period and incorporate the comments and responses in the final EIS. The response to comments shall include:

1. Point-by-point discussion of the validity, significance, and relevance of comments; and
2. Discussion as to how each comment was evaluated and considered in planning the proposed action preparing the final EIS.

The response shall endeavor to resolve conflicts, inconsistencies, or concerns. Response letters reproduced in the text of the final EIS The response shall indicate

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547 Rephrases title so that it is clearer that the whole section is about draft EISs.
548 Housekeeping.
549 Clarifies that the document is a draft EIS.
550 Housekeeping.
551 Place "proposing agency" before "applicant".
552 Housekeeping.
553 Clarifies that the forty-five days is for the comment period.
554 Stylistic change to increase readability.
555 Removes phrase because the response must be in the final EIS, which is written.
556 Focus on how the comment is addressed in the final EIS rather than just action.
557 Removes language because individual response letters are no longer required to be sent to individual commentors, but the final EIS should indicate which changes to the document were made in the response to comments section, without having to reproduce entire sections of changed content verbatim.
verbatim changes that have been made to the text of the draft EIS. The response shall
describe the disposition of significant environmental issues raised (e.g., revisions to the
proposed project action\textsuperscript{558} to mitigate anticipated impacts or objections, etc.). In
particular, the issues raised when the applicant's or proposing agency's\textsuperscript{559} position is at variance with recommendations and objections raised in the comments
shall be addressed in detail, giving reasons why specific comments and suggestions
were not accepted, and factors of overriding importance warranting an override of the
suggestions. If a number of comments are identical or very similar, the proposing agency
or applicant may group the comments and prepare a single standard response for each
group. The comments must be attached to the final EIS regardless of whether the
agency or applicant believes they merit individual discussion in the body of the final
EIS.\textsuperscript{560}

\textbf{(d) } An addendum document\textsuperscript{561} to a draft environmental impact statement EIS shall
reference the original draft environmental impact statement EIS to which\textsuperscript{562} it attaches
and comply with all applicable filing, public review, and comment requirements set
forth in subchapter 7.\textsuperscript{563}


\textsuperscript{558} Provides clarity that revisions may be made to a project or a program.
\textsuperscript{559} Place "proposing agency's" before "applicant's".
\textsuperscript{560} Because the responses are included in the final EIS, it is not necessary to send an individual response
letter to each person who comments. The requirement to send a response to every individual person
commenting can be burdensome and without a benefit that cannot be satisfied by notifying the person via
publication of the final EA. This language is drawn from the CEQ 40 questions, #29a\textsuperscript{1} and aligns with
NEPA practice, which allows grouping of identical or similar comments and providing one response that
covers the issues raised in the identical or similar comments. Because individual responses would no
longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.
\textsuperscript{561} Removes the word document as it is unnecessary.
\textsuperscript{562} Housekeeping.
\textsuperscript{563} Housekeeping.
§11-200-23 Acceptability

(a) Acceptability of a statement final EIS shall be evaluated on the basis of whether the statement final EIS, in its completed form, represents an informational instrument which fulfills the definition of an EIS intent and provisions of chapter 343, HRS, and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

(b) A statement final EIS shall be deemed to be an acceptable document by the accepting authority or approving agency only if all of the following criteria are satisfied:

1. The procedures for assessment, consultation process, review, and the preparation and submission of the statement EIS, from proposal of the action to publication of the final EIS, have all been completed satisfactorily as specified in this chapter;
2. The content requirements described in this chapter have been satisfied; and
3. Comments submitted during the review process have received responses satisfactory to the accepting authority, or approving agency, and have been appropriately incorporated into the statement final EIS, and comments and responses have been appended to the final EIS.

(c) For actions proposed by agencies, the proposing agency may request the office to make a recommendation regarding the acceptability or non-acceptability of the EIS. In all cases involving state funds or lands, the governor or his authorized representative shall have final authority to accept the EIS. In cases involving only county funds or lands, the mayor of the respective county or his authorized representative shall have final authority to accept the EIS. The accepting authority shall take prompt measures to determine the acceptability or non-acceptability of the proposing agency’s statement EIS. In the event that the action involves both state and county lands or state or county funds, or both state and county lands and state and county funds, the accepting authority should take prompt measures to determine the acceptability or non-acceptability of the EIS.

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564 Clarifies that the document is a final EIS.
565 Clarifies that the document is a final EIS.
566 Clarifies that the EIS must meet all applicable elements of environmental review.
567 Clarifies that the document is a final EIS.
568 Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.
569 Recognizes that not all comments are incorporated into an EIS.
570 Clarifies that the document is a final EIS.
571 Distinguishes comments responded to and resulted in changes to the final EIS and ensuring comments and responses are appended to the document.
572 Housekeeping.
573 Housekeeping.
574 Housekeeping.
county funds, the governor or an authorized representative shall have final authority to accept the EIS.

Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate accepting authority with both the proposing agency and the office. For any non-accepted EIS, the notice shall contain specific findings and reasons for non-acceptance. The office shall publish notice of the determination of acceptance or non-acceptance in the periodic bulletin in accordance with section 11-200-3. Acceptance of a required statement shall be a condition precedent to the use of state or county lands or funds in implementing the proposed action.

For actions proposed by applicants requiring approval from an agency, the applicant or accepting authority, which is the approving agency, may request the office to make a recommendation regarding the acceptability or non-acceptability of the statement EIS. If the office decides to make a recommendation, it shall submit the recommendation to the applicant and the approving agency within the thirty-day period requiring an approving agency to determine the acceptability of the final EIS and described in section 343-5(c), HRS. Upon acceptance or non-acceptance by the approving agency, the agency shall notify the applicant of its determination, and provide specific findings and reasons. The agency shall also provide a copy of this determination to the office for publication in the periodic bulletin. Acceptance of the required EIS shall be a condition precedent to approval of the request and commencement of the proposed action. An approving agency shall take prompt measures to determine the acceptability or non-acceptability of the applicant’s statement. The agency shall notify the applicant and the office of the acceptance or non-acceptance of the final EIS within thirty days of the final EIS submission to the agency; provided that the thirty-day period may, at the request of the applicant, be extended at the request of the applicant for a period not to exceed fifteen days. The request shall be made to the accepting authority in writing.

Provides clarity that “state and county” applies to both funds and lands.
Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and funds.
Housekeeping.
Breaks the paragraph up to enhance readability. Subsequent paragraphs renumbered.
Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.
Removes the “thirty-day” so that the office may also submit its recommendation during an extended acceptance period should the applicant and accepting authority agree to extend the acceptance period.
Unnecessary language.
Housekeeping.
Redundant when read with the following sentence that sets forth a timeline.
Clarifies that the thirty days counts from the date the agency receives the final EIS from the applicant; not when the office publishes the final EIS in the periodic bulletin.
Housekeeping.
Housekeeping.
Upon receipt of an applicant's written request for an extension of the thirty-day acceptance period, the accepting authority shall notify the office and applicant in writing of its decision to grant or deny the request. The notice shall be accompanied by a copy of the applicant's request. An extension of the thirty-day acceptance period shall not be allowed merely for the convenience of the accepting authority. In the event that the agency fails to make a determination of acceptance or non-acceptance of the statement EIS within thirty days of the receipt of the final EIS, then the statement shall be deemed accepted.

(e) A non-accepted EIS may be revised by a proposing agency or applicant. The revision shall take the form of a revised draft EIS document which shall fully address the inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, acceptance or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by sections 11-200-20, 11-200-21, 11-200-22, and 11-200-23 for an EIS submitted for acceptance. In addition, the revised draft EIS and the subsequent revised final EIS shall be evaluated for acceptability on the basis of whether it satisfactorily addresses the findings and reasons for non-acceptance.

(fg) A proposing agency or applicant may withdraw an EIS by simultaneously sending a letter written notification to the office and to the accepting authority informing the office of the proposing agency's or applicant's withdrawal. Subsequent resubmittal of the EIS shall meet all requirements for filing, distribution, publication, review, acceptance, and notification as a new draft EIS.

Subchapter 8 Appeals

§11-200-24  Appeals to the Council

An applicant, within sixty days after a non-acceptance determination by the approving agency under section 11-200-23 of a statement a final EIS by an agency, may choose to appeal the non-acceptance to the council, which within thirty days of receipt of the appeal, shall notify the applicant of its determination to affirm the approving agency's non-acceptance or to reverse it. The council chairperson shall include the appeal on the agenda of the council meeting immediately following the chairperson's receipt of the appeal. The council shall be deemed to have received the appeal on the date of the meeting for which the appeal is agendized. In any affirmation or reversal of an appealed non-acceptance, the council shall provide the applicant and the agency with specific findings and reasons for its determination. The agency shall abide by the council's decision. Pursuing an appeal by council does not abrogate an applicant's option under section 343-7(c), HRS, to bring judicial action.


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599 Housekeeping.
600 Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.
601 Clarifies that the document is a final EIS.
602 Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.
603 "Choose to appeal" emphasizes that this appeal pathway is optional, not mandatory.
604 Removes this language as unnecessary. An applicant may appeal to the council or accept the decision of the agency.
605 Because the Council regularly meets monthly, obtaining quorum and executing all responsibilities under HAR Chapter 11-201 is extremely difficult to accomplish within 30 days.
606 Clarifies the Council's determination.
607 Connects receipt of the notice to appeal under chapter 343-5(e), HRS, with the timing of the next Environmental Council meeting.
608 Clarifies that chapter 343, HRS, requires agencies, but not applicants, to abide by the council's decision regarding acceptance or non-acceptance of an EIS. Under section HAR section 11-201-26, the council's procedural rules, appeals must be conducted as contested case hearings, enabling the applicant to seek judicial review of the council's decision under chapter 91-14, HRS.
609 Clarifies that applicants may still pursue judicial remedies by directly going to court at any time, even while appealing in front of the council. This provision is in case the Council is unable to obtain quorum after an applicant appeals to the Council.
610 Judicial review of the appeal is now addressed in the previous sentence.
Subchapter 9 National Environmental Policy Act

§11-200-25 National Environmental Policy Act Actions: Applicability to Chapter 343, HRS

When the situation occurs where a certain action will be subject both to the National Environmental Policy Act of 1969 (Public Law 91-190, as amended by Public Law 94-52 and Public Law 94-83; 42 U.S.C. §§ 4321-4347) and chapter 343, HRS, the following shall occur:

(1) The applicant or agency, upon discovery of its proposed action being subject to both chapter 343, HRS, and the National Environmental Policy Act NEPA, shall notify the responsible federal agency, the office, and any agency with a definite interest in the action (as prescribed by chapter 343, HRS) of the situation.

(2) Where a federal agency determines that the proposed action is exempt from review under the NEPA, the determination does not automatically constitute an exemption for the purposes of this chapter. In such cases, state and county agencies remain responsible for compliance with this chapter. However, the federal exemption may be considered in the state or county agency determination.

(3) Where a federal agency issues a FONSI and concludes that an statement EIS is not required under the NEPA, the this determination does not automatically constitute compliance with this chapter. In such cases, state and county agencies remain responsible for compliance with this chapter. However, the federal FONSI may be considered in the state or county agency determination.

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611 Housekeeping.
612 Housekeeping.
613 Housekeeping.
614 Housekeeping.
615 The NEPA uses "exemption" and "exclusion" (along with "categorical") both interchangeably and in specific ways, depending on the federal agency. The use of "exempt" here is meant to capture "exemption" and "exclusion" under NEPA where NEPA is found to apply but an EA or EIS is not required. Where NEPA does not apply by federal statute is not relevant to chapter 343, HRS.
616 States that federal categorical exemptions do not automatically result in HEPA exemptions under chapter 343, HRS. State and county agencies must still make a determination that the action is exempt, requires an EA, or may proceed directly to preparing an EIS.
617 Clarifies that a federal agency may issue a FONSI for its purposes, but a state or county agency may still require an EA or EIS for its purposes, or issue an exemption based on the federal FONSI so long as the state or county agency has considered HEPA-specific content requirements, either through the federal FONSI or through its own judgment and experience.
(24) The National Environmental Policy Act NEPA\(^{618}\) requires that draft\(^{619}\) statements EISs\(^{620}\) be prepared by the responsible federal agency. In the case of actions for which an EIS pursuant to the NEPA has been prepared by the responsible federal agency, the draft and final federal statements EIS may be submitted to comply with this chapter\(^{621}\) so long as the federal EIS satisfies the EIS content requirements of this chapter and is not found to be inadequate under the NEPA by a court; by the council on environmental quality (CEQ) (or is at issue in pre-decision\(^{622}/^{623}\) referral to CEQ) under the NEPA regulations; or by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 41 U.S.C. 1857.\(^{624}\) The responsible federal agency’s supplemental EIS requirements shall apply in the these\(^{625}\) cases in place of this chapter’s supplemental EIS requirements.\(^{626}\)

(5)\(^{627}\) When the responsibility of preparing an EIS is delegated to a state or county agency, this chapter shall apply in addition to federal requirements under the National Environmental Policy Act NEPA\(^{628}\). The office and state or county\(^{629}\) agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. This cooperation, to the fullest extent possible, shall include joint environmental impact statements EISs with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement EIS requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling the requirements so that one document shall comply with all applicable laws. Where the NEPA process requires earlier or

\(^{618}\) Housekeeping.

\(^{619}\) Language is applicable to draft and final.

\(^{620}\) Housekeeping.

\(^{621}\) Based on Massachusetts’ statutory language that federally-prepared EISs are sufficient for the purposes of Chapter 343. The goal is to allow a federal EIS to meet this chapter’s requirements provided it addresses this chapter’s content requirements. In this case, state and county agencies can provide the information to the federal preparer for inclusion in its document rather than the state or county agency preparing a second document.

\(^{622}\) Housekeeping.

\(^{623}\) Housekeeping.

\(^{624}\) Adds a clause from State of Washington WAC Administrative Code to ensure that the federally-prepared statement meets federal standards for quality.

\(^{625}\) Housekeeping.

\(^{626}\) Clarifies that in the case of joint documents, the preparation of any supplemental documentation would be due to federal requirements and that HEPA supplemental requirements would not apply.

\(^{627}\) Separated the existing language into two paragraphs; one about when a federal agency prepares the EIS and one about when a federal agency delegates the responsibility to a state or county agency.

\(^{628}\) Housekeeping.

\(^{629}\) Provides clarity that state or county agencies are referred to here, as opposed to federal agencies also discussed in this section.
more stringent public review and processing, that process shall satisfy this chapter so that duplicative consultation or review do not occur.\(^{630}\)

(36) In all actions where the use of state land or funds is proposed, the final statement EIS shall be submitted to the governor or an authorized representative. In all actions when the use of county land or funds is proposed and no use of state land or funds is proposed\(^{631}\), the final statement EIS shall be submitted to the mayor, or an authorized representative. The final statement EIS in these instances shall first be accepted by the governor or mayor (or an authorized representative), prior to the submission of the same to the Environmental Protection Agency or\(^{632}\) responsible federal agency.

(47) Any acceptance obtained pursuant to paragraphs (1) to (3) this section\(^{633}\) shall satisfy chapter 343, HRS, and no other statement EIS for the proposed action shall be required.

\(^{630}\) Addresses, for example, situations where a federal agency’s regulations may require a public scoping meeting prior to publishing a Notice of Intent to prepare an environmental impact statement and under chapter 343, HRS, the same action would also require a public scoping after the publication of an EISPN. This clause reduces the burden on the proposing agency or applicant to conduct two public scoping meetings.

\(^{631}\) Clarifies the condition that requires the mayor or the mayor’s authorized representative to be the accepting authority.

\(^{632}\) Clarifies that it is the responsible federal agency issuing the acceptance to reduce confusion about the role of the Environmental Protection Agency in these circumstances.

\(^{633}\) Changes language to “this section” instead of the enumerated paragraphs because existing paragraphs have been rearranged and additional paragraphs have been added.
Proposed New Subchapter X Programmatic EISs

Proposed §11-200-XX Programmatic Environmental Impact Statements

(a) Proposing agencies may prepare a PEIS on the adoption of a comprehensive plan prepared in accordance with relevant laws. Impacts of individual actions proposed to be carried out in conformance with those adopted plans and regulations and the thresholds or conditions identified in the PEIS may require no or limited further review.

(b) Approving agencies may allow applicants to prepare a PEIS on the adoption of a comprehensive plan prepared in accordance with relevant laws. Impacts of individual actions proposed to be carried out in conformance with these adopted plans and regulations and the thresholds or conditions identified in the PEIS may require no or limited further review.

(c) Upon acceptance of a final programmatic PEIS:

1. If a PEIS evaluates project level issues such as precise project footprints or specific design details, no further compliance with this chapter is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the PEIS.

2. Further chapter 343, HRS, environmental review must be prepared if a subsequent proposed action was not addressed in the PEIS or the subsequent proposed action exceeds the thresholds evaluated in the PEIS, and the subsequent action may have a significant impact on the environmental. Further review may be in the form of an EIS, EA, or exemption, for specific components of the proposal.

634 Provides directions on when environmental review covers a program type of action. Focus is on EISs and when analysis is sufficient versus when further, project-level review is warranted.

635 Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.

636 Housekeeping.
Proposed §11-200-XX Content Requirements; Draft
Programmatic Environmental Impact Statement

(a) The content requirements for a PEIS shall be the same as those for an EIS set forth in subchapter 7, with the understanding that the level of detail in a PEIS may be less than that of a project-level EIS. The level of detail in a PEIS must be sufficient to allow informed choice among planning-level alternatives and to develop broad mitigation strategies. A PEIS should examine the interaction among proposed projects or plan elements, and assess the cumulative effects. Like a project-level EIS, a PEIS also includes an examination of alternatives.

(b) The PEIS may be broader and more general than a project-level EIS and omit evaluating project-level issues that are not yet ready for decision at the planning level, or it may evaluate project-level issues such as precise project footprints or specific design details.

(c) A PEIS should discuss the logic and rationale for the choices advanced. It may also include an assessment of specific impacts, if such details are available, and specific mitigation measures. It may be based on conceptual information in some cases. It may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.

637 Adds direction on content for a programmatic EIS. Acknowledges that a programmatic EIS may not have the same level of detail as a project-specific EIS.
638 Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.
639 Uses consistent language to distinguish between project-level EISs and program level EISs.
640 Housekeeping.
641 Increases readability.
Subchapter 10 Supplemental Statements

§11-200-26 Supplemental EIS\textsuperscript{642} General Provisions

(a) A statement that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and timing of the action, among other things. A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no other supplemental statement EIS for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location or timing, among other things. If there is any change in any of these characteristics which may have a significant effect, the original statement that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental statement shall be prepared and reviewed as provided by this chapter,\textsuperscript{643} unless:

(1) The project has changed substantively in the following characteristics: size, scope, use, location or timing, among other things, which may have a significant effect; or\textsuperscript{644}

(2) New information indicating significant effects, which was not known and could not have been known at the time the EIS was accepted as complete, becomes available.\textsuperscript{645}

(b) In the case of newly discovered information, the decision to require preparation of a supplemental EIS must be based on the following criteria:

(1) The information can be from any source.

(2) The information must be newly discovered. It cannot be information that could have been included in comments filed in the original draft EIS or final EIS.

(3) The information must be important, indicating probable significant environmental impacts.

(4) The information must not have been addressed in the prior EIS, or must have been inadequately addressed.\textsuperscript{647}

(c) As long as there is no change in a proposed action or new information indicating significant effects resulting in individual or cumulative impacts not originally disclosed,

\textsuperscript{642} Clarifies in the title that this is about supplemental EISs (to distinguish this section from those regarding regular EISs and programmatic EISs).
\textsuperscript{643} Restores original SEIS section language.
\textsuperscript{644} Reproduces the language from the definition and above paragraph, pairing it with item 2.
\textsuperscript{645} Adds a change in knowledge as a potential reason to require a supplemental EIS.
\textsuperscript{646} Housekeeping.
\textsuperscript{647} Adds qualifications to what can be considered new knowledge so that not any change in knowledge could be used as a reason to require a supplemental EIS.
the statement EIS associated with that action shall be deemed to comply with this chapter.

§11-200-27 Supplemental EIS\textsuperscript{648} Determination of Applicability

The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental statement EIS is required. If a period of five years has elapsed since the acceptance of the final EIS, and the project or program\textsuperscript{649} has not substantially commenced, the accepting authority or approving agency shall formally re-evaluate the need for a supplemental statement EIS and make a determination of whether a supplemental statement EIS\textsuperscript{650} is required. A written summary of this evaluation and the\textsuperscript{651} This determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental statements EISs whenever the proposed action for which a statement EIS was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental statement EIS shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are\textsuperscript{652} not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

\textsuperscript{648} Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

\textsuperscript{649} Changes “project or program” to “program or project” to be consistent with the definition of action.

\textsuperscript{650} Housekeeping. This is a global edit throughout the document to make the language consistent with the definition of “Supplemental EIS”.

\textsuperscript{651} Sets a default five-year period for agencies to take a look at whether a supplemental EIS may or may not be required, but also puts a boundary limit on when that period is no longer relevant but setting “substantial commencement” as a point where supplemental EISs may no longer be required. A definition for substantial commencement is proposed in section 11-200-2.

\textsuperscript{652} Housekeeping.
§11-200-28  Supplemental EIS\(^{653}\)  Contents

The contents of the supplemental statement EIS shall be the same as required by this chapter for the EIS and may incorporate by reference unchanged material from the same; however, in addition, it shall fully document the proposed changes from the original EIS, including changes in ambient conditions or available information that have a bearing on a proposed action or its impacts, the positive and negative aspects of these changes, and shall comply with the content requirements of section 11-200-16 as they relate to the changes.

\[^{653}\] Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).
§11-200-29  **Supplemental EIS** Procedures

The requirements of the thirty-day consultation, filing public notice, distribution, the forty-five-day public review, comments and response, and acceptance procedures, shall be the same for the supplemental EIS as is prescribed by this chapter for an EIS.


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654 Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

655 Stylistic change to increase readability.
Proposed §11-200-XX\(^{656}\) Retroactivity

(a) The rules shall apply immediately upon taking effect.

(b) Hawaii Administrative Rules (HAR) chapter 11-200 (1996) shall continue to apply to environmental review of agency and applicant actions which began prior to the adoption of HAR chapter 11-200 (2018), provided that:

(1) For EAs, if the draft EA was submitted to the office for publication and published by the office prior to the adoption of HAR chapter 11-200 (2018) and has not received a determination within a period of five years from the implementation of HAR chapter 11-200 (2018), then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200 (2018). All subsequent environmental review, including an EISPN must comply with HAR chapter 11-200 (2018).

(2) For EISs, if the EISPN or the draft EIS was submitted to the office for publication and published by the office prior to the adoption of HAR chapter 11-200 (2018) and the final EIS has not been accepted within five years from the implementation of HAR chapter 11-200 (2018), then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200 (2018).

(3) A judicial proceeding regarding the proposed action shall not count towards the five-year time period.

(c) Any exemption notice, FONSI, acceptance, or SEIS determination made in compliance with HAR chapter 11-200 (1996) will continue to be governed by HAR 11-200 (1996).

(d) All exemptions issued after adoption of HAR chapter 11-200 (2018) must comply with HAR chapter 11-200 (2018), provided that existing exemption lists may be used for a period of five years after the adoption of HAR chapter 11-200 (2018), after which time the agency must revise its list and seek concurrence from council.\(^{657}\)

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\(^{656}\) Proposes a new section on when the revised rules take effect and how the revised rules apply to actions that have already completed the environmental review process or undergoing it at the time the revised rules take effect.

\(^{657}\) Provides a period of time for agencies to update their exemption lists from “classes” to “types” of action.
Subchapter 11 Severability

§11-200-30 Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are declared to be severable.

Note

Historical Note: Chapter 11-200, HAR, is based substantially on the Environmental Impact Statement Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]


Amendment in 2007 to section 11-200-8 to include an exemption class for affordable housing. It has not been compiled.
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<th>PAGE</th>
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<td>19</td>
<td>11-200-6</td>
<td>14 to 16</td>
<td>Clarify revised sentence: &quot;Chapter 343, HRS establishes certain categories of action that require processing the applicant to prepare an EA.&quot; RECOMMEND: &quot;Chapter 343, HRS, establishes certain categories of action that require the applicant to prepare an EA.&quot;</td>
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<td>22</td>
<td>11-200-8 (a)</td>
<td>9 to 14</td>
<td>Clarify revised sentence: &quot;Government activities that do not rise to the level of being a project or program, or are ordinary functions that by their nature do not have the potential to adversely affect the environment more than negligibly, which may include, among other activities, routine repair, maintenance, purchase of supplies, and administrative actions involving personnel only, shall not be considered projects or programs for the purposes of Chapter 343, HRS.107.&quot; RECOMMEND: 1) Define &quot;program&quot; and 2) Define &quot;negligibly&quot;</td>
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<tr>
<td>23</td>
<td>11-200-8 (a)(8)</td>
<td>20-23</td>
<td>As revised, 11-200-8 (a)(8) states: &quot;Demolition of structures, except those structures located on any historic site as designated in the national register or Hawai'i register.&quot; RECOMMEND: The sentence should read &quot;Demolition of structures or buildings, except those eligible for or listed on the National Register of Historic Places and/or Hawai'i Register of Historic Places&quot;.</td>
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<td>22 to 24</td>
<td>11-200-8</td>
<td>General</td>
<td>RECOMMEND: Add provision for State DOD common activities: i.e. air operations on state land, simulated war games, specific training activities, grants of land acquisition, haz waste management). Basically, these are some of the major federal Categorical Exemptions (Cat Exs), which the Hawaii Army National Guard often uses and would prefer that these activities be clearly identified in the regs, and not obtained via a separate &quot;exemption notice&quot;.</td>
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<tr>
<td>25</td>
<td>11-200-8 Footnote #23</td>
<td>23 to 26</td>
<td>Footnote #23 states: Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not received council concurrence within the past five years. The five years concurrence threshold is an incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation so that agencies can continue to use the list but with a higher burden of due diligence. COMMENT: The Hawaii Army National Guard (HIARNG) via the State DOD was solicited by the Environmental Council (EC)/OEQC to provide a list of DOD's existing State EA Exemptions for continued EC concurrence. DOD's existing list of State exemptions was submitted in addition to specified additional exemptions for concurrence (The additional exemptions mirrored federal NEPA Categorical Exemptions). HIARNG requests EC response to the subject exemption concurrence requests.</td>
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<tr>
<td>33</td>
<td>11-200-9.1</td>
<td>14</td>
<td>RECOMMEND: &quot;...comments a....&quot; be &quot;... comments and .....&quot;</td>
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<td>37</td>
<td>11-200-11.1</td>
<td>28 to 29</td>
<td>Page 37, lines 28-29 (describes footnote #199), lines 32-33 (footnote #202) and lines 34-35 (footnote #203) all state that &quot;Electronic documentation can be submitted and electronic distribution is acceptable,&quot; however, this other means of submittal or distribution is not specifically stated in the referenced (footnoted) texts of provisions. RECOMMEND: Subparagraph (b) should state explicitly that electronic documentation can be submitted and electronic distribution is acceptable.</td>
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<td>40</td>
<td>11-200-11.2</td>
<td>19 to 21</td>
<td>Footnote #225: states the following: Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted. RECOMMEND: Comment: The acceptability of one (1) copy of the notice and final EA as well as acceptability of electronic document submittal should be explicitly stated in the referenced text/provision.</td>
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<td>40</td>
<td>11-200-11.2</td>
<td>22 to 23</td>
<td>Footnote #226) states that approving agencies may send their determination to the applicant directly and that electronic distribution would also be acceptable. RECOMMEND: The acceptability of electronic distribution should be stated in the referenced text/provision.</td>
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<tr>
<td>47</td>
<td>11-200-15</td>
<td>25</td>
<td>Footnote #257) states: Replaces final EIS with draft EI, mirroring the previous sentence. RECOMMEND: Should state: Replaces final EIS with draft EIS.</td>
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<tr>
<td>53</td>
<td>11-200-17</td>
<td>11</td>
<td>Should state &quot;draft&quot; EIS.</td>
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<td>57</td>
<td>11-200-20</td>
<td>General</td>
<td>Although the acceptability of electronic document submittals is implied, it should be stated explicitly in a provision of the section.</td>
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<td>65</td>
<td>subparagraph (2)</td>
<td>9 to 14</td>
<td>Proposed Section 11-200-25 National Environmental Policy Act Actions: Applicability to Chapter 343, HRS - Please see HIARNG Comments to Page 25, Footnote 23.</td>
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September 7, 2017

Mr. Scott Glenn, Director  
Office of Environmental Quality Control  
Department of Health  
235 South Beretania Street, Suite 702  
Honolulu, Hawaii 96813

Dear Mr. Glenn:

Subject: Proposed Amendments to Chapter 11-200, Hawaii Administrative Rules, Environmental Impact Statement Rules

I understand that the Hawaii Environmental Council is seeking consultation with state and county agencies regarding proposed amendments to its rules, chapter 11-200, Hawaii Administrative Rules, Environmental Impact Statement Rules and that agency comments should be directed to you. We have the following objections to the proposed amendments to section 11-200-8, Exempt Classes of Action, at items (1) – (2), below, and explain the Hawaii Department of Agriculture’s (HDOA) rationale at item (3), below.

(1) Proposed deletion of section 11-200-8(a)(10).

The draft amendment would delete exemption class (10), which reads: “Continuing administrative activities including, but not limited to purchase of supplies and personnel related actions.” (emphasis added.) Footnote 113 to this proposed deletion says the deleted language is addressed in the section’s revised paragraph (a). But that does not seem to be the case. Paragraph (a) essentially says that “administrative actions involving personnel only” are exempt from EA preparation. But paragraph (a) is otherwise silent as to what will happen to continuing administrative activities currently eligible for exemption under exemption class (10) of an agency’s exemption list, if exemption class (10) is deleted.

(2) Proposed new subsection 11-200-8(f).

Draft subsection 11-200-8(f) says that if an agency exemption list received Environmental Council concurrence more than 5 years ago, the agency “must undertake a systematic analysis to determine whether the action merits exemption consistent with one or several of the types [of activity] listed in paragraph (a)” and then the agency must “obtain the advice of outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption.” However, as discussed above, revised paragraph (a), does not address the types of agency “continuing administrative activities” that are currently eligible for exemption pursuant to earlier Environmental Council concurrence, other than those activities involving personnel. The rule

[End of Document]
section does not identify how agencies affected by the proposed 5-year sunset provision are to proceed in this regard. A copy of the proposed amendments to section 11-200-8, HAR, is attached.

(3) Keeping exemption class (10) for agency continuing administrative activities is warranted.

Eligibility for exemption remains necessary and appropriate for HDOA’s continuing administrative activities under exemption class (10). In 2008, the HDOA obtained the Environmental Council’s concurrence for HDOA Plant Industry Division’s list of exemptions from EA, which includes exemption class (10) for, among other continuing and statutorily mandated activities, Plant Quarantine Branch permitting for plant, animal, and microorganism import, subject to permit conditions that eliminate or minimize risks associated with the organism or its use. In the import review process, certain kinds of import applications routinely trigger chapter 343, HRS, review by virtue of intended use of the imported organism in a project on state or county land or that uses state or county funds. These import applications often involve University of Hawaii medical or scientific research projects or commercial or research aquaculture projects at the Natural Energy Laboratory of Hawaii Authority in Kona, and generally take place in standard laboratory settings or facilities where the risks are well understood and addressed by permit conditions tailored to eliminate or minimize risk to the environment, as recommended by advisory technical consultants with expertise in the relevant scientific subject area. These experts and outside agencies with jurisdiction also advise HDOA on the propriety of an exemption.

HDOA relies on eligibility for exemption from EA preparation, when appropriate, in processing import applications for routine type projects like those described above, as provided in exemption class (10) in HDOA Plant Industry Division’s current list of exemptions. Pursuant to the Environmental Council’s concurrence on this list of exemptions, HDOA implemented chapter 343’s requirements regarding environmental review in the Plant Quarantine Branch import review process, and we have proceeded accordingly. No explanation is given in the Environmental Council’s draft amendments for deleting exemption class (10) from the Council’s rules and eliminating eligibility for exemption from EA for the types of continuing administrative activities that exemption class (10) in HDOA’s list of exemptions currently includes. Nor do we see any recent changes to chapter 343, HRS, that authorize rule amendments to this effect.

We ask that the Environmental Council correct this problem before the proposed amendments proceed to public hearings. We may be commenting on other proposed amendments to the Council’s rules later during the rulemaking process.

Sincerely,

Scott E. Enright, Chairperson
Board of Agriculture
§11-200-8 Exempt Classes of Action Exemption Notices

(a) Chapter 343, HRS, states that procedures whereby specific types of actions, because they will probably have minimal or no significant effects, individually and cumulatively, on the environment, can be declared exempt from the preparation of an EA. A list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. Government activities that do not rise to the level of being a project or program, or are ordinary functions that by their nature do not have the potential to adversely affect the environment more than negligibly, which may include, among other activities, routine repair, maintenance, purchase of supplies, and administrative actions involving personnel only, shall not be considered projects or programs for the purposes of Chapter 343, HRS. Actions declared exempt from the preparation of an environmental assessment under this section are not exempt from complying with any other applicable statute or rule. The following types of projects or programs are eligible for exemption list represents exempt classes of action:

1. Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;
2. Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;
3. Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:

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105 Renames to shift focus from the "classes" (a term no longer used) to the notice.
106 Incorporates language direction from chapter 343, HRS.
107 Establishes a de minimis level of government activity for being considered eligible for environmental review. Chapter 343, HRS, does not define a project or program, so leaves it to agencies and the courts to decide whether a particular activity constitutes such.
108 Replaces "classes" language with "types".
109 Replaces "negligible" with "minor" because in some cases minor operations, repairs, or maintenance can have little or no significant impact.
Environmental Council Permitted Interaction Group Report
Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements

(A) Single-family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, not in conjunction with the building of two or more such units;

(B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(C) Stores, offices, and restaurants designed for total occupant load of twenty persons per structure, if not in conjunction with the building of two or more such structures; and

(D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

(4) Minor alterations in the conditions of land, water, or vegetation;

(5) Basic data collection, research, experimental management, and resource infrastructure testing and evaluation activities which do not result in a serious or major disturbance to an environmental resource;

(6) Construction or placement of minor structures accessory to existing facilities;

(7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;

(8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470; as amended, or chapter 6E, HRS;

(9) Zoning variances except shoreline set-back variances; and

(10) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions;

(14) Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material change of use beyond that previously existing, and for which the legislature has appropriated or otherwise authorized funding.
(11) New construction of affordable housing that only has use of state or county lands or funds as the requirement for undergoing chapter 343, HRS, and as proposed is consistent with existing state urban land classification, existing county residential or mixed use zoning classification, and applicable federal, state, and county development standards.\textsuperscript{118}

(b) All exemptions under the classes types\textsuperscript{118} in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(c) Any agency, at any time, may request that a new exemption class type\textsuperscript{120} be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, environmental council rules.

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes types above\textsuperscript{121}, as long as these lists are consistent with both the letter and intent expressed in these exempt classes here\textsuperscript{122} and chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e)\textsuperscript{123} Actions that are clearly covered by an agency exemption list that has received council concurrence and do not have any potential to produce significant impacts do not require documentation.\textsuperscript{124} Actions with no documentation may still be subject to the public’s right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS.\textsuperscript{125}

\textsuperscript{118} Adds affordable housing as an exemption type, with caveats the following caveats: 1) that the only trigger is use state or county lands or funds (other triggers would mean the exemption is not applicable) and that 2) the proposed action is consistent with existing land use controls so that it does not require going before the LUC or Planning Commissions to get a change in SLUD or zoning.

\textsuperscript{120} Housekeeping.

\textsuperscript{121} Housekeeping.

\textsuperscript{122} Housekeeping.

\textsuperscript{123} Housekeeping.

\textsuperscript{124} insert new paragraphs; subsequent paragraphs are renumbered.

\textsuperscript{125} Removes documentation obligation for agencies for activities that are just above the threshold of de minimis but may not require the level of consultation and documentation associated with typical projects or programs.

\textsuperscript{126} Affirms the public’s right to challenge borderline cases that may not be discovered until “the bulldozers are out” and the agency may have erred in its decision to not prepare an EA.
(f) For an action that an agency considered exempt according to the criteria in paragraph (a) but is not clearly covered by the agency's exemption list, or is on the agency's exemption list but that list has not received council concurrence within the past five years, the agency shall undertake a systematic analysis to determine whether the action merits exemption consistent with one or several of the types listed in paragraph (a). For such actions, the agency shall obtain the advice of outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. An action may not be segmented per section 11-200-7 so as to appear to be consistent with several types listed in paragraph (a).

(eg) Each agency shall maintain records of such actions, called exemption notices, which it has found to be exempt from the requirements for preparation of an environmental assessment EA in chapter 343, HRS, and each agency shall produce the records for review upon request. The agency shall provide a means to notify and accept input from the public in a timely manner after the exemption declaration is made. An agency may request the office to publish the exemption notice in the periodic bulletin. The public's right to judicial proceeding on the lack of an assessment under chapter 343, HRS shall commence from the date the public is notified of the exemption through the agency's means or publication in the bulletin, whichever of the two is earliest.

(fh) In the event the governor declares a state of emergency pursuant to chapter 127A, HRS, the governor may exempt any affected program or action from complying with this chapter, has authority to suspend laws, including chapter 343, HRS. In such an event, no exemption declaration is required and the proposing agency or approving agency

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128 Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not received council concurrence within the past five years. The five years concurrence threshold is an incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation so that agencies can continue to use the list but with a higher burden of due diligence.

127 Reminds agencies that an action may not be broken up into smaller pieces to fit within several exemption types.

129 Housekeeping.

129 Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these as a record.

130 Requires agencies to make exemption notices publicly available either through the periodic bulletin or through their own means. Some agencies already do this by posting them to their website in a spreadsheet or in meeting minutes. This helps to close the gap between when an agency makes a determination and how the public is supposed to know, so that everyone has a clear date for when legal challenge begins and ends, without making the disclosure process overly burdensome to agencies or OEQC.

131 States the name of the statute for emergency proclamations.
shall file an exemption notice in its records that the emergency action was undertaken pursuant to a specific emergency proclamation. ¹³²

(i) An emergency action that is not initiated within the period of the governor's emergency proclamation shall no longer be considered an emergency action and therefore shall be subject to chapter 343, HRS. ¹³³

¹³² Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

¹³³ Narrows the risk of an emergency proclamation being a free-for-all by removing actions that did not start during the emergency proclamation from being covered by the emergency proclamation.
September 5, 2017

Mr. Joseph Shacat  
Chairperson  
State Environmental Council  
Department of Health, State of Hawaii  
235 South Beretania Street, Suite 702  
Honolulu, HI 96813

Dear Mr. Shacat:

Subject: Proposed Revisions to Hawaii Administrative Rules (HAR) Chapter 11-200, Environmental Impact Statement Rules

Thank you for your letter dated August 15, 2017, requesting comments on the proposed revisions to HAR Chapter 11-200, Environmental Impact Statement Rules.

The Department of Health does not have any comments on the proposed rule changes.

The Department reviews all permit applications regardless if it triggers the Environmental Assessment (EA) or Environmental Impact Statement (EIS) process.

Again, thank you for the opportunity to comment.

Sincerely,

VIRGINIA PRESSLER, M.D.  
Director of Health

c: Keith E. Kawaoka, Deputy Director for Environmental Health
September 8, 2017

Via E-Mail (oehchawaii@doh.hawaii.gov)

Department of Health, State of Hawaii
State Environmental Council
Attention: Director Scott Glenn
235 South Beretania Street, Suite 702
Honolulu, Hawaii 96813

RE: Proposed Amendment and Compilation of Chapter 11-200, Hawaii Administrative Rules (“HAR”)

Dear Director Glenn and Members of the State Environmental Council (the “Council” or “EC”):

This letter is in response to the letter, dated August 15, 2017, from Joseph Shacat, Chairperson of the Council to David Lassner, President of the University of Hawaii (the “University”), in which the Council invites the University to comment on its proposed amendments to HAR Chapter 11-200 (the “Rule Changes”), specifically to baseline draft Version 0.1. We appreciate the opportunity to comment on the Rule Changes prior to the Council holding public hearings.

We understand that the EC issued a revised version of the Rule Changes (Version 0.2) on or about September 5, 2017. The University submits the following preliminary comments to Version 0.2 of the Rule Changes, with the understanding that the University might submit additional comments after we have had more of an opportunity to review Version 0.2 of the Rule Changes:

1. **UH designated as accepting/approving authority.** For agency actions, the Governor is designated as the accepting authority. For applicant actions, the approving agency is also the accepting authority. Please confirm that the University is the approving/accepting authority for applicant actions that involve the use of University lands or University funding. See HAR § 11-200-4 (Identification of Approving Agency and Accepting Authority) and HAR § 11-200-23(e) (Acceptability).

2. **Multi-jurisdictional EA, EIS.** If the proposed EA or EIS is multi-jurisdictional and involves lands owned by a state agency, please consider revising the rules to allow the state agency landowner (such as UH) to have the first option to decide whether it will assume the primary or lead role in the preparation of an EA or EIS.
3. **Exception for property disposition.** Please clarify in the Rule Changes that the requirement for an EA/EIS is only applicable before a project is to be developed on the site and not before the University is either being granted a property interest or is granting a property interest. In other words, the EA/EIS requirement would apply before the subject property is to be put to a specific use and not when the property interest is being conveyed or transferred (i.e., disposition).

4. **EA, EIS required for use of state lands.** Under HAR § 11-200-5(b), Chapter 343, HRS, applies if the agency is proposing the use of state or county lands or funds. HAR § 11-200-5(c) defines the use of state or county lands as any use (title, lease, permit, easement, licenses, etc.). HAR § 11-200-5(c) should be revised to clarify the “use” of state lands:

   “Use of state or county funds shall include any form of funding assistance flowing from the state or a county, and use of state or county lands includes any use (development or construction of a project within or upon such lands) or entitlement to those lands.”

This would help confirm that Chapter 343, HRS, was not intended to apply before the University or any other state agency or board approves the disposition, acceptance, conveyance, or transfer of an interest in state or county lands. Without such deletion or a provision clarifying that neither an EA or EIS would be required for an agency’s disposition, acceptance, conveyance, or transfer of an interest in state or county lands, a state agency (such as the University) may be required to prepare an EA or EIS before agreeing to the transfer of ownership of state or county land between agencies. A change in the agency responsible for managing and overseeing the property, in and of itself, should not trigger a requirement to prepare an EA or EIS. Our understanding is that the State would not treat the transfer of ownership of state land between state agencies (considered to be more like a change in management) to constitute a “use” of state land that would trigger the need to prepare an EA or EIS. Similarly, if the University is conveying or granting any interest in University land, this would not be considered a “use” of state land and the grantee would not be required to prepare an EA or EIS until the grantee planned to build or construct a project upon the land.

5. **Planning studies exemption.** HAR § 11-200-5(d) exempts the preparation of planning studies from the requirement to prepare an EA or EIS. To clarify the extent of the exemption, please consider expanding the scope of the exemption by revising it to read as follows: “For agency actions, chapter 343, HRS, exempts from applicability any feasibility or planning study for possible future programs or projects that the agency has not approved, adopted, and [or] funded.” See also HAR § 11-200-6(b)(3)(B) where the same change should be made.
6. **Actions with no published exemption notice may still be challenged.** Under HAR § 11-200-8(g), actions with no published exemption notice may still be subject to the public's right to a judicial proceeding on the lack of an assessment. Further, such a challenge must be initiated “within one hundred and twenty days of the agency’s decision to carry out the action or from the date the public becomes aware of the exemption notice, whichever is later.” It would be better to set a definitive time period for the challenge, such as 120 days from the date the notice of the agency’s decision not to prepare or require the preparation of an EA is published in the OEQC bulletin. To implement this, please consider revising HAR § 11-200-8(g) to read as follows: “Actions with the no published exemption notice may still be subject to the public’s right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS and shall be initiated within one hundred [and] twenty days of the date that the notice of the agency’s decision not to prepare an EA is published in the periodic bulletin.”

7. **Emergencies.** The existing EC rules expressly allow the Governor, in declaring a state of emergency, to exempt any affected program or action from complying with HRS Chapter 343. In a prior version of the Rule Changes (Version 0.1): (a) the Governor would have been required to declare the state of emergency pursuant to chapter 127A, HRS, (b) the Governor would have had the general authority to suspend laws, including chapter 343, HRS, rather than having the specific authority to exempt programs or actions from chapter 343, HRS, and (c) the proposing agency or approving agency would not be required to issue an exemption declaration or publish an exemption notice. For reasons that are not clear, the latest version of the Rule Changes (version 0.2) deleted the entire emergency provision. This emergency provision should be restored and revised to read as follows:

“In the event the governor declares a state of emergency, the governor has the authority to suspend laws, including chapter 343, HRS, and may exempt any proposed or affected program or action from complying with chapter 343, HRS. In such event: (a) no exemption declaration is required and no exemption notice need be published, (b) the proposing agency or approving agency shall file an exemption notice in its records that the exemption was granted pursuant to or under the governor’s emergency proclamation, and (c) such exemption notice and any exemption granted for any proposed or affected program or action pursuant to or under the governor’s emergency proclamation shall not be subject to appeal or challenge.”

8. **Time limits for issuance of EISPNs.** Please consider revising the first sentence in HAR § 11-200-9(a)(9) to read as follows:

“As appropriate, issue either a FONSI within thirty days of the filing of the final EA or an EISPN as early as possible after a determination is made, all pursuant to the requirements of section 11-200-11.2.”
See also HAR § 11-200-11.1(b) which indicates that the proposing or approving agency shall file the notice and supporting EA “as early as possible after a determination is made.”

9. **Significance criteria – Conflict with other laws or court decisions.** The scope of actions that could be deemed to have a significant effect on the environment seems to have expanded. According to the revised HAR § 11-200-12(b)(3) and HAR § 11-200-11-12(b)(4), an action will, in most instances, be determined to have a significant effect on the environment if it conflicts with any laws (used to be limited to conflicts with environmental policies, goals or objectives as expressed in HRS chapter 343) or court decisions (court decisions themselves can be inconsistent (e.g., between state circuits) and some court decisions are then addressed by the enactment of new or modified laws; in addition, it is unclear who makes the determination as to whether it is in conflict or what standards apply in making such determination) or has a “substantial adverse effect” on the cultural practices of the community or the state. One concern is that “cultural practices” are not defined and are necessarily limited to Native Hawaiian cultural practices. Please consider revising HAR § 11-200-12(b)(3) to delete the phrases “or other laws” and “court decisions.”

10. **Resource plans.** HAR § 11-200-17(h) was revised to include “resource plans” in addition to “land plans.” It is not clear in this context what is meant by the term “resource plans.” This needs to be more clearly defined. Perhaps it relates to prior Rule Changes that refer to an “irrevocable commitment of resources” (see HAR § 11-200-12(b)(1) and HAR § 11-200-17(k)), which defines “resources” as “natural and cultural resources irreversibly and irretrievably committed to the action and not only to the labor and materials committed to the action”). If “resource plans” are supposed to refer to natural and cultural resources, the concern is that the effort to identify and locate such resource plans for a particular area will likely extend the time needed to prepare an EIS.

11. **Appeals of non-acceptance determinations.** Under HAR § 11-200-24, non-acceptance determinations may be appealed to the EC. While the EC is obligated to make a decision in 60 days after receiving the notice of the appeal, the 60-day time period (under versions 0.1 and 0.2 of the proposed Rule Changes) does not start running until the day of the EC meeting to consider the appeal. This could significantly extend the time deadline for EC’s decision on the appeal. Please consider revising the third sentence in HAR § 11-200-24 to read as follows: “The council shall be deemed to have received the appeal on the date that the office receives the appeal notice.”

12. **Supplemental EIS.** HAR § 11-200-27 (Supplemental EIS; Determination of Applicability) requires that a supplemental EIS be prepared if 5 years has passed since the EIS was accepted and the project or program has not substantially commenced. In addition, a supplemental EIS is warranted if: (a) scope of the action has been substantially increased,
(b) the intensity of the environmental impacts will be increased, (c) mitigation measures, as originally planned, will not be implemented, or (d) “new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.” Given the time needed to obtain all of the required governmental approvals (particularly those involving discretionary approvals subject to contested case hearings), arrange the necessary financing, and complete the planning and design process, the 5-year effective period of an EIS would seem to be inadequate. Please consider extending the effective period of an EIS to at least 15-20 years.

13. **Captions, titles.** It will be easier to read and understand the Rule Changes if each subsection was given a short title or caption (see HAR § 11-200-17 (Content Requirements; Draft Environmental Impact Statement)).

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact us at 956-2211 or bymatsui@hawaii.edu.

Very truly yours,

Carrie K. S. Okinaga, Esq.
Bruce Y. Matsui, Esq.
Office of the Vice President for Legal Affairs
and University General Counsel

cc: David Lassner, President, University of Hawaii
Jan Gouveia, Vice President for Administration
Kalbert Young, Vice President for Budget & Finance/CFO
FW: HAR 11-200 Update

Hi Office of Environmental Quality Control to Christina

FYI

Regards,
Scott

From: Gyotoku, Neil [mailto:Neil.Gyotoku@hawaiicounty.gov]
Sent: Wednesday, September 6, 2017 5:17 PM
To: HI Office of Environmental Quality Control <HIOfficeofEnvironmentalQ@doh.hawaii.gov>
Subject: HAR 11-200 Update

The Office of Housing and Community Development supports the Potential Amendments to HAR Chapter 11-200, including the proposed exemption to support affordable housing for:

(11) “New construction of affordable housing that only has use of state or county lands or funds as the requirements for undergoing chapter 343, HRS, and as proposed residential or mixed use zoning classification, and applicable federal, state, and county development standards.”

Thank you.

Neil S. Gyotoku, Housing Administrator
Office of Housing and Community Development
50 Wailuku Drive, Hilo, Hawaii 96720
Phone: (808) 961-8379 / Fax: (808) 961-8685
e-mail: neil.gyotoku@hawaiicounty.gov
Dear Joseph Shacat,

Thank you for this opportunity to comment on your request dated August 15, 2017 from the Environmental Council. If possible, please add these important comments for consideration during the EIS pre-rulemaking stakeholder engagement phase.

Below are four experiential observations with suggested improvements to EIS process:

1) From my experience, there has been continuous confusion through years about what is an EA and what is an EIS, in terms of content -- this undefined discrepancy between an EA and an EIS has resulted in many lawsuits. To lessen this discrepancy, the rules must set very clear expectations to create transparency between applicant and the public.
   a. Clearly define what an EA is, in terms of content, to include a prescriptive detailed chapter-by-chapter, with subchapter Table-of-Content listings, of the content expected for an EA -- formalize the content and format so that it is always consistent and transparent. The point being that every EA should start with a common TOC listing -- variations should be based on this standard chapter outline.
   b. Similarly, define the difference between an EA document and an EIS in terms of detailed content, chapter by chapter. Clearly define any other differences between an EA and EIS.

2) There is a major difference between an onshore EA and a shoreline EA/EIS in terms of required studies and content.
   a. Define EA and EIS content requirements in a similar manner for shoreline multi-jurisdictional projects that involve near shore and off shore impacts.

3) Moreover, under current rules, lawsuits are also often filed because significant impacts and cumulative impacts are in the “eyes of the beholder.”
   a. Clearly define how to calculate significant impact for various subjects within an EA. Provide guidance on acceptable mitigation remedies.
   b. Clearly define how to calculate cumulative impact for various subjects and impact categories.

4) Environmental impacts can be categorized into four sectors: ecological, economic, political, and social. Social impacts are becoming more prevalent and dominant for large projects.
   a. Fully define categories of social impacts that should be studied and defined, as well as acceptable mitigation remedies.

Sincerely

James Buika
September 7, 2017

Mr. Joseph Shacat
Chairperson
State Environmental Council
Department of Health
State of Hawaii
235 South Beretania Street, Suite 702
Honolulu, Hawaii 96813

Dear Mr. Shacat:

Subject: Hawaii Administrative Rules Chapter 11-200 Version 0.1
Establishing Procedures, Content Requirements, Criteria and Definitions for Applying Hawaii Revised Statutes Chapter 343; the Environmental Impact Statement Law

In response to your letter dated August 15, 2017, regarding the abovementioned subject, the Honolulu Fire Department determined that there will be no significant impact to fire department services.

Should you have questions, please contact Battalion Chief Wayne Masuda of our Fire Prevention Bureau at 723-7151 or wmasuda@honolulu.gov.

Sincerely,

SOCRATES D. BRATAKOS
Assistant Chief

SDB/WM:bh