

DEPARTMENT OF HEALTH

Repeal of Chapter 11-200 and Adoption of
Chapter 11-200.1
Hawaii Administrative Rules

December 18, 2018

SUMMARY

1. Chapter 11-200, Hawaii Administrative Rules, entitled "Environmental Impact Statement Rules", is repealed.

2. Chapter 11-200.1, Hawaii Administrative Rules, entitled "Environmental Impact Statement Rules", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11


DEPARTMENT OF HEALTH

CHAPTER 200

ENVIRONMENTAL IMPACT STATEMENT RULES

REPEALED

§§11-200-1 to 11-200-30 Repealed. [R AUG - 9 2019]

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 200.1

ENVIRONMENTAL IMPACT STATEMENT RULES

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Historical note: This chapter is based substantially upon chapter 11-200. [Eff 12/6/85; am and comp 8/31/96; am 12/17/2007; R **AUG - 9 2019**]

SUBCHAPTER 1

PURPOSE

§11-200.1-1 Purpose. (a) Chapter 343, Hawaii Revised Statutes (HRS), establishes a system of environmental review at the state and county levels that 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 regarding the contents of exemption notices, environmental assessments (EAs), and environmental impact statements (EISs), and criteria and definitions of statewide application.

(b) Agencies and applicants shall ensure that exemption notices, EAs, and EISs are prepared at the earliest practicable time. 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.

(c) Exemption notices, EAs, and EISs 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. In preparing any exemption notice, EA, or EIS, proposing agencies and applicants are to make every effort to:

- (1) 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 document;
- (2) Concentrate on important issues and to ensure that the document remains essentially self-contained, capable of being understood by the reader without the need for undue cross-reference; and
- (3) Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-1, 343-6)

SUBCHAPTER 2

DEFINITIONS

§11-200.1-2 Definitions. As used in this chapter:

"Acceptance" means a formal determination that the document required to be filed pursuant to chapter 343, HRS, fulfills the requirements of an EIS, as prescribed by section 11-200.1-28. 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.

"Accepting authority" means, in the case of agency actions, the respective governor or mayor, or their

authorized representative, and in the case of applicant actions, the agency that initially received and agreed to process the request for an approval, that makes the determination that the EIS fulfills the requirements for acceptance.

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

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

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

"Applicant" means any person that, 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 implementation of an action.

"Approving agency" means an agency that issues an approval prior to implementation of an applicant action.

"Council" means the environmental council.

"Cumulative impact" means the impact on the environment that 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 the other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

"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 based upon a given set of facts, as prescribed by law without the use of judgment or discretion.

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

"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, whether immediate or delayed. Effects may also include those effects resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

"EIS preparation notice", "EISPN", or "preparation notice" means a determination that an action may have a significant effect on the environment and, therefore, will require the preparation of an 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.

"EIS public scoping meeting" means a meeting in which agencies, citizen groups, and the general public assist the proposing agency or applicant 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.

"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 the immediate action.

"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 that serves to provide sufficient evidence and analysis to determine whether an action may have a significant effect.

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

"Exemption list" means a list prepared by an agency pursuant to subchapter 8. The list may contain in part one the types of routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring further chapter 343, HRS, environmental review. In part two, the list may contain the types of actions the agency finds fit into the general types of action enumerated in section 11-200.1-15.

"Exemption notice" means a notice produced in accordance with subchapter 8 for an action that a proposing agency or approving agency on behalf of an applicant determines to be exempt from preparation of an EA.

"Final environmental assessment" means either the EA submitted by a proposing agency or an approving agency following the public review and comment period for the draft EA and in support of either a FONSI or 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 will not have a significant effect on the environment and therefore does not require the preparation of an EIS.

"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 of 1969, Public Law 91-190, 42 U.S.C. sections 4321-4347, as amended.

"Office" means the office of environmental quality control.

"Periodic bulletin" or "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.

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

"Program" means a series of one or more projects to be carried out concurrently or in phases within a general timeline, that may include multiple sites or geographic areas, and is undertaken for a broad goal or purpose. A program may include: 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; separate projects having generic or common impacts; an entire plan having wide application or restricting the range of future alternative policies or actions, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; implementation of multiple projects over a long time frame; or implementation of a single project over a large geographic area.

"Project" means a discrete, planned undertaking that is site and time specific, has a specific goal or purpose, and has potential impact to the environment.

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

"Secondary impact", "secondary effect", "indirect impact", or "indirect effect" means an effect that is caused by the action and is later in time or farther removed in distance, but is still reasonably foreseeable. An indirect effect may include a growth-inducing effect and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, 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, adversely affect the economic welfare, social welfare, or cultural practices of the community and State, or are otherwise set forth in section 11-200.1-13.

"Supplemental EIS" means an updated EIS prepared for an action for which an EIS was previously accepted, but which has since changed substantively in size, scope, intensity, use, location, or timing, among other things.

"Trigger" means any use or activity listed in section 343-5(a), HRS, requiring environmental review.

Unless defined in this section, elsewhere within this chapter, or in chapter 343, HRS, a proposing agency or approving agency may use its administrative rules or statutes that they implement to interpret undefined terms.

[Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

SUBCHAPTER 3

COMPUTATION OF TIME

§11-200.1-3 Computation of time. The time in which any act prescribed or allowed by this chapter, order of the council, or by applicable statute, is computed by excluding the first day and including the last. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or state holiday, in which case the last day shall be the next business day. [Eff **AUG - 9 2019**]
(Auth: HRS §§1-29, 8-1, 343-6) (Imp: HRS §§1-29, 8-1, 343-6)

SUBCHAPTER 4

FILING AND PUBLICATION IN THE PERIODIC BULLETIN

§11-200.1-4 Periodic bulletin. (a) The periodic bulletin shall be issued electronically on the eighth and twenty-third days of each month.

(b) When filed in accordance with section 11-200.1-5, the office shall publish the following in the periodic bulletin to inform the public of actions undergoing chapter 343, HRS, environmental review and the associated public comment periods provided here or elsewhere by statute:

- (1) Determinations that an existing exemption, FONSI, or accepted EIS satisfies chapter 343, HRS, for a proposed action;
- (2) Exemption notices and lists of actions an agency has determined to be exempt;
- (3) Draft EAs and appropriate addendum documents for public review and thirty-day comment period, including notice of an anticipated FONSI;
- (4) Final EAs, including notice of a FONSI, or an EISPN with thirty-day comment period and notice of EIS public scoping meeting, and appropriate addendum documents;

§11-200.1-4

- (5) Notice of an EISPN with thirty-day comment period and notice of EIS public scoping meeting, and appropriate addendum documents;
- (6) Evaluations and determinations that supplemental EISs are required or not required;
- (7) Draft EISs, draft supplemental EISs, and appropriate addendum documents for public review and forty-five day comment period;
- (8) Final EISs, final supplemental EISs, and appropriate addendum documents;
- (9) Notice of acceptance or non-acceptance of EISs and supplemental EISs;
- (10) Republication of any chapter 343, HRS, notices, documents, or determinations;
- (11) Notices of withdrawal of any chapter 343, HRS, notices, documents, or determinations; and
- (12) Other notices required by the rules of the council.

(c) When filed in accordance with this subchapter, the office shall publish other notices required by statute or rules, including those not specifically related to chapter 343, HRS.

(d) The office may, on a space or time available basis, publish other notices not specifically related to chapter 343, HRS. [Eff **AUG - 9 2019**] (Auth: HRS §§341-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-6)

§11-200.1-5 Filing requirements for publication and withdrawal. (a) Anything required to be published in the bulletin shall be submitted electronically to the office before the close of business five business days prior to the issue date, which shall be the issue date deadline.

(b) All submittals to the office for publication in the bulletin shall be accompanied by a completed informational form that 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 for applicants, the approval requiring chapter 343, HRS, environmental review; whether the proposed action is an agency or an applicant action; a citation to the applicable

federal or state statutes requiring preparation of the document; the type of document prepared; the names, addresses, email addresses, phone numbers 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 that provides sufficient detail to convey the impact of the proposed action to the public.

(c) The office shall not accept untimely submittals or revisions thereto after the issue date deadline for which the submittal was originally filed has passed.

(d) In accordance with the agency's rules or, in the case of an applicant EA or EIS, the applicant's judgment, anything filed with the office may be withdrawn by the agency or applicant that filed the submittal with the office. To withdraw a submittal, the agency or applicant shall submit to the office a written letter informing the office of the withdrawal. The office shall publish notice of withdrawals and the rationale in accordance with this subchapter.

(e) To be published in the bulletin, all submittals to the office shall meet the filing requirements in subsections (a) to (c) and be prepared in accordance with this chapter and chapter 343, HRS, as appropriate. The following shall meet additional filing requirements:

- (1) When the document is a draft EA with an anticipated FONSI, the proposing agency or approving agency shall:
 - (A) File the document and determination with the office;
 - (B) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the draft EA at the nearest state library in each county in which the proposed action is to occur and one paper copy with the Hawaii Documents Center; and
 - (C) Distribute, or require the applicant to distribute, concurrently with its publication, the draft EA to other agencies having jurisdiction or expertise as well as citizen groups and individuals that the proposing agency or approving agency reasonably believes to be affected;
- (2) When the document is a final EA with a FONSI, the proposing agency or approving agency shall:

- (A) Incorporate, or require the applicant to incorporate, the FONSI into the contents of the final EA, as prescribed in sections 11-200.1-21 and 11-200.1-22;
 - (B) File the final EA and the incorporated FONSI with the office; and
 - (C) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the final EA with the Hawaii Documents Center;
- (3) When the document is a final EA with an EISPN, the proposing agency or approving agency shall:
- (A) Incorporate, or require the applicant to incorporate, the EISPN into the contents of the final EA, as prescribed in sections 11-200.1-21, 11-200.1-22, and 11-200.1-23;
 - (B) File the incorporated EISPN with the final EA with the office; and
 - (C) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the final EA with the Hawaii Documents Center;
- (4) When the notice is an EISPN without the preparation of an EA, the proposing agency or approving agency shall:
- (A) File the EISPN with the office; and
 - (B) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the EISPN at the nearest state library in each county in which the proposed action is to occur and one paper copy with the Hawaii Documents Center;
- (5) When the document is a draft EIS, the proposing agency or applicant shall:
- (A) Sign and date the draft EIS;
 - (B) Indicate that the draft EIS and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in subchapter 10;
 - (C) File the draft EIS with the accepting authority and the office simultaneously;

- (D) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the draft EIS at the nearest state library in each county in which the proposed action is to occur and one paper copy with the Hawaii Documents Center; and
- (E) Submit to the office one true and correct copy of the original audio file, at standard quality, of all oral comments received at the time designated within any EIS public scoping meeting for receiving oral comments;
- (6) When the document is a final EIS, the proposing agency or applicant shall:
 - (A) Sign and date the final EIS;
 - (B) Indicate that the final EIS and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in subchapter 10; and
 - (C) File the final EIS with the accepting authority and the office simultaneously;
- (7) When the notice is an acceptance or non-acceptance of a final EIS, the accepting authority shall:
 - (A) File the notice of acceptance or non-acceptance of a final EIS with the office; and
 - (B) Simultaneously transmit the notice to the proposing agency or applicant;
- (8) When the notice is of the withdrawal of an anticipated FONSI, FONSI, or EISPN, the proposing agency or approving agency shall include a rationale of the withdrawal specifying any associated documents to be withdrawn;
- (9) When the notice is of the withdrawal of a draft EIS or final EIS, the proposing agency or applicant shall simultaneously file the notice with the office and submit the notice with the accepting authority; and
- (10) When the submittal is a changed version of a notice, document, or determination previously published and withdrawn, the submittal shall be

filed as the "second" submittal, or "third" or "fourth", as appropriate. Example: A draft EIS is withdrawn and changed. It is then filed with the office for publication as the "second draft EIS" for the particular action.

[Eff **AUG - 9 2019**] (Auth: HRS §§343-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-6)

§11-200.1-6 Republication of notices, documents, and determinations. (a) An agency or applicant responsible for filing a chapter 343, HRS, notice, document, or determination may file an unchanged, previously published submittal in the bulletin provided that the filing requirements of this subchapter and any other publication requirements set forth in this chapter or chapter 343, HRS, are satisfied.

(b) When the publication of a previously published chapter 343, HRS, notice, document, or determination involves a public comment period under this chapter or chapter 343, HRS:

- (1) The public comment period shall be as required for that notice, document, or determination pursuant to this chapter or chapter 343, HRS, or as otherwise statutorily mandated (for example, publication of an unchanged draft EIS initiates a forty-five day public comment period upon publication in the bulletin); and
- (2) Any comments received during the comment period must be considered in the same manner as set forth in this chapter and chapter 343, HRS, for that notice, document, or determination type, in addition to comments received in any other comment period associated with the publication of the notice, document, or determination.

[Eff **AUG - 9 2019**] (Auth: HRS §§341-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-5, 343-6)

SUBCHAPTER 5

RESPONSIBILITIES

§11-200.1-7 Identification of approving agency and accepting authority. (a) Whenever an agency proposes an action, the authority to accept an EIS shall rest with:

- (1) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or state funds or whenever a state agency proposes an action under section 11-200.1-8; 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.

(b) For agency actions involving 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 final authority to accept the EIS. In cases involving only county funds or lands, the mayor of the respective county or the mayor's authorized representative shall have final authority to accept the EIS.

(c) Whenever an applicant proposes an action, the authority for requiring an EA or EIS, making a determination regarding any required EA, and accepting any required EIS shall rest with the approving agency that initially received and agreed to process the request for an approval. With respect to EISs, this approving agency is also called the accepting authority.

(d) If more than one agency 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 chapter 343, HRS, the agencies involved shall consult with one another to determine which agency is responsible for compliance. In making the decision, the agencies shall take into consideration, including but not limited to, the following factors:

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

- (5) In the case of an action with proposed use of state or county lands or funds, which agency has the most land or funds involved in the action.
- (e) If 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 after applying the criteria in subsection (d) these agencies are unable to agree as to which agency has the responsibility for complying with chapter 343, HRS, the office, after consultation with the agencies involved, shall apply the same considerations in subsection (d) to decide which agency is responsible for compliance.
- (f) The office shall not serve as the accepting authority for any agency or applicant action.
- (g) The office may provide recommendations to the agency or applicant responsible for the EA or EIS regarding any applicable administrative content requirements set forth in this chapter. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 6

APPLICABILITY

§11-200.1-8 Applicability of chapter 343, HRS, to agency actions. (a) Chapter 343, HRS, environmental review shall be required for any agency action that includes one or more triggers as identified in section 343-5(a), HRS.

- (1) Under section 343-5(a), HRS, 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, license, etc.) or entitlement to those lands.
- (2) Under section 343-5(a), HRS, any feasibility or planning study for possible future programs or projects that the agency has not approved, adopted, or funded are exempted from chapter 343, HRS, environmental review. 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 EA or EIS.

(b) When an agency proposes an action during a governor-declared state of emergency, the proposing agency shall document 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.

(c) 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 has not been made, a proposing agency undertaking an emergency action shall document in its records that the emergency action was undertaken pursuant to a specific emergency and shall include the emergency action on its list of exemption notices for publication by the office in the bulletin pursuant to section 11-200.1-17(d) and subchapter 4.

[Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-9 Applicability of chapter 343, HRS, to applicant actions. (a) Chapter 343, HRS, environmental review shall be required for any applicant action that:

- (1) Requires one or more approvals prior to implementation; and
- (2) Includes one or more triggers identified in section 343-5(a), HRS.
 - (A) Under section 343-5(a), HRS, 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, license, etc.) or entitlement to those lands.
 - (B) Under section 343-5(a)(1), HRS, actions involving agricultural tourism under section 205-2(d)(11) or section 205-4.5(a)(13), HRS, are subject to environmental review when the respective county requires environmental review under an ordinance adopted pursuant to section 205-5(b), HRS.

(b) Chapter 343, HRS, does not require environmental review for applicant actions when:

(1) Notwithstanding any other law to the contrary, for any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway, that secondary action shall be exempt from this chapter; provided that the applicant for the primary action shall submit documentation from the appropriate agency confirming that no further discretionary approvals are required.

(2) As used in this subsection:

"Discretionary consent" means an action as defined in section 343-2, HRS; or an approval from a decision-making authority in an agency, which approval is subject to a public hearing. "Infrastructure" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements. "Primary action" means an action outside of the highway or public right-of-way that is on private property.

"Secondary action" means an action involving infrastructure within the highway or public right-of-way. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-5.5, 343-6) (Imp: HRS §§343-5, 343.5.5, 343-6)

§11-200.1-10 Multiple or phased actions. A group of actions shall be treated as a single action when:

- (1) The component actions are phases or increments of a larger total program;
- (2) An individual action is a necessary precedent to a larger action;
- (3) An individual action represents a commitment to a larger action; or

- (4) The actions in question are essentially identical and a single EA or EIS will adequately address the impacts of each individual action and those of the group of actions as a whole.

[Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6)
(Imp: HRS §343-6)

§11-200.1-11 Use of prior exemptions, findings of no significant impact, or accepted environmental impact statements to satisfy chapter 343, HRS, for proposed actions. (a) When an agency is considering whether a prior exemption, FONSI, or an accepted EIS satisfies chapter 343, HRS, for a proposed action, the agency may determine that additional environmental review is not required because:

- (1) The proposed action was a component of, or is substantially similar to, an action that received an exemption, FONSI, or an accepted EIS (for example, a project that was analyzed in a program EIS);
- (2) The proposed action is anticipated to have direct, indirect, and cumulative effects similar to those analyzed in a prior exemption, final EA, or accepted EIS; and
- (3) In the case of a final EA or an accepted EIS, the proposed action was analyzed within the range of alternatives.

(b) When an agency determines that a prior exemption, FONSI, or an accepted EIS satisfies chapter 343, HRS, for a proposed action, the agency may submit a brief written determination explaining its rationale to the office for publication pursuant to section 11-200.1-4 and the proposed action may proceed without further chapter 343, HRS, environmental review.

(c) When an agency determines that the proposed action warrants environmental review, the agency may submit a brief written determination explaining its rationale to the office for publication pursuant to section 11-200.1-4 and the agency shall proceed to comply with subchapter 7.

(d) Agencies shall not, without careful examination and comparison, use past determinations and previous EISs to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously

accepted EISs. Further, when previous determinations and previous EISs are considered or incorporated by reference, they shall be substantially relevant to the action being considered. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 7

DETERMINATION OF SIGNIFICANCE

§11-200.1-12 Consideration of previous determinations and accepted statements. A proposing agency or applicant may incorporate information or analysis from a relevant prior exemption notice, final EA, or accepted EIS into an exemption notice, EA, EISPN, or EIS, for a proposed action whenever the information or analysis is pertinent and has logical relevancy and bearing to the proposed action (for example, a project that was broadly considered as part of an accepted program EIS may incorporate relevant portions from the accepted program EIS by reference). [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-13 Significance criteria. (a) In considering the significance of potential environmental effects, agencies shall consider and evaluate the sum of effects of the proposed action on the quality of the environment.

(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 impacts, and the proposed mitigation measures. In most instances, an action shall be determined to have a significant effect on the environment if it may:

- (1) Irrevocably commit a natural, cultural, or historic resource;
- (2) Curtail the range of beneficial uses of the environment;

- (3) Conflict with the State's environmental policies or long-term environmental goals established by law;
 - (4) Have a substantial adverse effect on the economic welfare, social welfare, or cultural practices of the community and State;
 - (5) Have a substantial adverse effect on public health;
 - (6) Involve adverse secondary impacts, such as population changes or effects on public facilities;
 - (7) Involve a substantial degradation of environmental quality;
 - (8) Be individually limited but cumulatively have substantial adverse effect upon the environment or involves a commitment for larger actions;
 - (9) Have a substantial adverse effect on a rare, threatened, or endangered species, or its habitat;
 - (10) Have a substantial adverse effect on air or water quality or ambient noise levels;
 - (11) Have a substantial adverse effect on or be likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, sea level rise exposure area, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;
 - (12) Have a substantial adverse effect on scenic vistas and viewplanes, during day or night, identified in county or state plans or studies; or
 - (13) Require substantial energy consumption or emit substantial greenhouse gases.
- [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6)
(Imp: HRS §§343-2, 343-6)

§11-200.1-14 Determination of level of environmental review. (a) For an agency action, through its judgment and experience, a proposing agency shall assess the significance of the potential impacts of the action to determine the level of environmental review necessary for the action.

(b) For an applicant action, within thirty days from the receipt of the applicant's complete request for approval to the approving agency, through its judgment and experience, an approving agency shall assess the significance of the potential impacts of the action to determine the level of environmental review necessary for the action.

(c) If the proposing agency or approving agency determines, through its judgment and experience, that the action will individually and cumulatively probably have minimal or no significant effects, and the action is one that is eligible for exemption under subchapter 8, then the proposing agency or the approving agency in the case of an applicant may prepare an exemption notice in accordance with subchapter 8.

(d) If the proposing agency or approving agency determines, through its judgment and experience that the action is not eligible for an exemption, then the proposing agency shall prepare, or the approving agency shall require the applicant to prepare, an EA beginning with a draft EA in accordance with subchapter 9, unless:

- (1) In the course of preparing the draft EA, the proposing agency or approving agency determines, through its judgment and experience that the action may have a significant effect and therefore require preparation of an EIS, then the proposing agency may prepare, or the approving agency may authorize the applicant to prepare, an EA as a final EA to support the determination prior to preparing or requiring preparation of an EIS in accordance with subchapter 10; or
- (2) The proposing agency or approving agency determines, through its judgment and experience that an EIS is likely to be required, then the proposing agency may choose to prepare, or an approving agency may authorize an applicant to prepare, an EIS in accordance with subchapter 10, beginning with preparation of an EISPN.

[Eff **AUG - 9 2019** (Auth: HRS §§343-5, 343-6)
(Imp: HRS §§343-5, 343-6)

SUBCHAPTER 8

EXEMPT ACTIONS, LIST, AND NOTICE REQUIREMENTS

§11-200.1-15 General types of actions eligible for exemption. (a) Some actions, because they will individually and cumulatively probably have minimal or no significant effects, can be declared exempt from the preparation of an EA.

(b) Actions declared exempt from the preparation of an EA under this subchapter are not exempt from complying with any other applicable statute or rule.

(c) The following general types of actions are eligible for exemption:

- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor 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 facilities or structures and installation of new, small equipment or facilities and the alteration and modification of the equipment or facilities, 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 individuals or fewer 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 that do not result in a serious or major disturbance to an environmental resource;
- (6) Demolition of structures, except those structures that are listed on the national register or Hawaii Register of Historic Places;
- (7) Zoning variances except shoreline setback variances;
- (8) Continuing administrative activities;
- (9) 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 previously existing uses, and for which the legislature has appropriated or otherwise authorized funding; and
- (10) New construction of affordable housing, where affordable housing is defined by the controlling law applicable for the state or county proposing agency or approving agency, that meets the following:
 - (A) Has the use of state or county lands or funds or is within Waikiki as the sole triggers for compliance with chapter 343, HRS;
 - (B) As proposed conforms with the existing state urban land use classification;
 - (C) As proposed is consistent with the existing county zoning classification that allows housing; and
 - (D) As proposed does not require variances for shoreline setbacks or siting in an environmentally sensitive area, as stated in section 11-200.1-13(b) (11).

(d) All exemptions under subchapter 8 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.

(e) Any agency, at any time, may request that a new exemption 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. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-16 Exemption lists. (a) Each agency, through time and experience, may develop its own exemption list consistent with both the letter and intent expressed in this subchapter and in chapter 343, HRS, of:

- (1) Routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring chapter 343, HRS, environmental review. Examples of routine activities and ordinary functions may include, among others: routine repair, routine maintenance, purchase of supplies, and continuing administrative activities involving personnel only, nondestructive data collection, installation of routine signs and markers, financial transactions, personnel-related matters, construction or placement of minor structures accessory to existing facilities; interior alterations involving things such as partitions, plumbing, and electrical conveyances; and
- (2) Types of actions that the agency considers to be included within the exempt general types listed in section 11-200.1-15.

(b) An agency may use part one of its exemption list, developed pursuant to subsection (a)(1), to exempt a specific activity from preparation of an EA and the

requirements of section 11-200.1-17 because the agency considers the specific activity to be de minimis.

(c) An agency may use part two of its exemption list, developed pursuant to subsection (a)(2), to exempt from preparation of an EA a specific action that the agency determines to be included under the types of actions in its exemption list, provided that the agency fulfills the exemption notice requirements set forth in section 11-200.1-17 and chapter 343, HRS.

(d) These exemption lists and any amendments to the exemption lists shall be submitted to the council for review and concurrence no later than seven years after the previous concurrence; provided that in the event the council is unable to meet due to quorum when a concurrence for an agency exemption list is seven years or older, the agency may submit a letter to the council acknowledging that the existing exemption list is still valid. Upon attaining quorum, the council shall review the exemption list for concurrence. The council may review agency exemption lists periodically. [Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-17 Exemption notices. (a) Each agency shall create an exemption notice for an action that it has found to be exempt from the requirements for preparation of an EA pursuant to section 11-200.1-16(a)(2) or that an agency considers to be included within a general type of action pursuant to section 11-200.1-15. An agency may create an exemption notice for an action that it has found to be exempt from the requirements for preparation of an EA pursuant to section 11-200.1-16(a)(1) or that an agency considers to be a routine activity and ordinary function within the jurisdiction or expertise of the agency that by its nature does not have the potential to individually or cumulatively adversely affect the environment more than negligibly.

(b) To declare an exemption prior to implementing an action, an agency shall undertake an analysis to determine whether the action merits exemption pursuant to section 11-200.1-15 and is consistent with one or several of the general types listed in section 11-200.1-15 or the agency's exemption list produced in accordance with section 11-200.1-16, and whether significant cumulative impacts or particularly sensitive environments would make the

exemption inapplicable. An agency shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise on the propriety of the exemption. This analysis and consultation shall be documented in an exemption notice.

(c) Each agency shall electronically provide its exemption notices for review upon request by the public or an agency, and shall submit a list of exemption notices that the agency has created to the office for publication in the bulletin on the eighth day of each month pursuant to subchapter 4. [Eff. **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 9

PREPARATION OF ENVIRONMENTAL ASSESSMENTS

§11-200.1-18 Preparation and contents of a draft environmental assessment. (a) A proposing agency shall conduct, or an approving agency shall require an applicant to conduct, early consultation seeking, 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 that the proposing agency or approving agency reasonably believes may be affected.

(b) The scope of the draft EA may vary with the scope of the proposed action and its impact, taking into consideration whether the action is a project or a program. Data and analyses in a draft EA shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. A draft EA shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the draft EA, including cost-benefit analyses and reports required under other legal authorities.

(c) The level of detail in a draft EA may be more broad for programs or components of a program for which site-specific impacts are not discernible, and shall be

more specific for components of the program for which site-specific, project-level impacts are discernible. A draft EA for a program may, where necessary, omit evaluating issues that are not yet ready for decision at the project level. Analysis of the program 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.

(d) A draft EA shall contain, but not be limited to, the following information:

- (1) Identification of the applicant or proposing agency;
- (2) For applicant actions, identification of the approving agency;
- (3) List of all required permits and approvals (state, federal, and county) and, for applicants, identification of which approval necessitates chapter 343, HRS, environmental review;
- (4) Identification of agencies, citizen groups, and individuals consulted in preparing the draft EA;
- (5) General description of the action's technical, economic, social, cultural, historical, and environmental characteristics;
- (6) Summary description of the affected environment, including suitable and adequate regional, location, and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, United States Geological Survey topographic maps, or state sea level rise exposure area maps;
- (7) Identification and analysis of impacts and alternatives considered;
- (8) Proposed mitigation measures;
- (9) Proposing agency or approving agency anticipated determination, including findings and reasons supporting the anticipated FONSI, if applicable; and
- (10) Written comments, if any, and responses to the comments received, if any, and made pursuant to the early consultation provisions of subsection (a) and statutorily prescribed public review periods. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-19 Notice of determination for draft environmental assessments. (a) After:

- (1) Preparing, or causing to be prepared, a draft EA;
- (2) Reviewing any public and agency comments; and
- (3) Applying the significance criteria in section 11-200.1-13,

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 an anticipated FONSI subject to the public review provisions of section 11-200.1-20.

(b) The proposing agency or approving agency shall file the notice of anticipated FONSI and supporting draft EA with the office as early as possible in accordance with subchapter 4 after the determination is made pursuant to and in accordance with this subchapter and the requirements in subsection (c). For applicant actions, the approving agency shall also send the anticipated FONSI to the applicant.

(c) The notice of an anticipated FONSI shall include in a concise manner:

- (1) Identification of the proposing agency or applicant;
- (2) For applicant actions, identification of the approving agency;
- (3) A brief description of the action;
- (4) The anticipated FONSI;
- (5) Reasons supporting the anticipated FONSI; and
- (6) The name, title, email address, physical address, and phone number of an individual representative of the proposing agency or approving agency who may be contacted for further information.

[Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6)
(Imp: HRS §§343-5, 343-6)

§11-200.1-20 Public review and response requirements for draft environmental assessments. (a) This section

shall apply only if a proposing agency or an approving agency anticipates a FONSI determination for a proposed action and the proposing agency or the applicant has completed the draft EA requirements of sections 11-200.1-18 and 11-200-19.

(b) Unless mandated otherwise by statute, the period for public review and for submitting written comments shall

be thirty days from the date of publication of the draft EA in the bulletin. Written comments shall be received by or postmarked to the proposing agency, or in the case of applicants, to either the approving agency or applicant within the thirty-day period. Any comments outside of the thirty-day period need not be responded to nor considered in the final EA.

(c) For agency actions, the proposing agency shall, and for applicant actions, the applicant shall: respond in the final EA in the manner prescribed in this section to all substantive comments received or postmarked during the statutorily mandated review period, incorporate comments into the final EA as appropriate, and include the comments and responses in the final EA. In deciding whether a written comment is substantive, the proposing agency or applicant shall give careful consideration to the validity, significance, and relevance of the comment to the scope, analysis, or process of the EA, bearing in mind the purpose of this chapter and chapter 343, HRS. Written comments deemed by the proposing agency or applicant as non-substantive and to which no response was provided shall be clearly indicated.

(d) Proposing agencies and applicants shall respond in the final EA to all substantive comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:

- (1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable topic areas with the commenter identified in each applicable topic area. All comments, except those described in subsection (e), must be appended in full to the final EA; or
- (2) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response for each comment letter submitted. All comments, except those described in subsection (e), must either be

included with the response or appended in full to the final EA.

(e) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:

(1) The response may be grouped under subsection (d)(1) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or

(2) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final EA;

provided that, if a commenter adds a distinct substantive comment to a form letter or petition, that comment must be responded to pursuant to subsection (d).

(f) In responding to substantive written comments, proposing agencies and applicants shall endeavor to resolve conflicts or inconsistencies in information and address specific environmental concerns identified by the commenter, providing a response that is commensurate with the substantive content of those comments. The response shall describe the disposition of significant environmental issues raised (for example, the response may point to revisions to the proposed action to mitigate anticipated impacts or objections raised in the comment, or may refute all or part of the comment). In particular, the issues raised when the proposing agency's or applicant's 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. The response shall indicate changes that have been made to the text of the draft EA.

(g) An addendum document to a draft EA shall reference the original draft EA it attaches to and shall comply with all applicable filing, public review, and comment requirements set forth in subchapters 4 and 9.

[Eff **AUG - 9 2019**] (Auth: HRS §§343-3, 343-5, 343-6)
(Imp: HRS §§343-3, 343-5, 343-6)

§11-200.1-21 Contents of a final environmental assessment. A final EA shall contain, but not be limited to, the following information:

- (1) Identification of applicant or proposing agency;
- (2) For applicant actions, identification of the approving agency;
- (3) Identification of agencies, citizen groups, and individuals consulted in preparing the EA;
- (4) General description of the action's technical, economic, social, cultural, historical, 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, United States Geological Survey topographic maps, or state sea level rise exposure area maps;
- (6) Identification and analysis of impacts and alternatives considered;
- (7) Proposed mitigation measures;
- (8) The agency determination and the findings and reasons supporting the determination;
- (9) List of all required permits and approvals (state, federal, and county) and, for applicants, identification of which approval necessitates chapter 343, HRS, environmental review; and
- (10) Written comments, if any, and responses to the comments received, if any, pursuant to the early consultation provisions of section 11-200.1-18(a), and statutorily prescribed public review periods in accordance with section 11-200.1-20.
[Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6)
(Imp: HRS §§343-5, 343-6)

§11-200.1-22 Notice of determination for final environmental assessments. (a) After:

- (1) Preparing, or causing to be prepared, a final EA;
- (2) Reviewing any public and agency comments; and
- (3) Applying the significance criteria in section 11-200.1-13,

the proposing agency or the approving agency shall issue a notice of a FONSI or EISPN in accordance with subchapter 9,

and file the notice with the office in accordance with subchapter 4. For applicant actions, the approving agency shall issue a determination within thirty days of receiving the final EA.

(b) 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 a FONSI.

(c) If the proposing agency or approving agency determines that a proposed action may have a significant effect, it shall issue an EISPN.

(d) The proposing agency or approving agency shall file in accordance with subchapter 4 the notice and the supporting final EA with the office as early as possible after the determination is made, addressing the requirements in subsection (e). For applicant actions, the approving agency shall send the notice of determination for an EISPN or FONSI to the applicant.

(e) The notice of a FONSI shall indicate in a concise manner:

- (1) Identification of the proposing agency or applicant;
- (2) For applicant actions, identification of the approving agency;
- (3) A brief description of the proposed action;
- (4) The determination;
- (5) Reasons supporting the determination; and
- (6) The name, title, email address, physical address, and phone number of an individual representative of the proposing agency or approving agency who may be contacted for further information.

(f) The notice of determination for an EISPN shall be prepared pursuant to section 11-200.1-23.

[Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 10

PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

§11-200.1-23 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) List of all required permits and approvals (state, federal, and county) and, for applicants, identification of which approval necessitates chapter 343, HRS, environmental review;
- (4) The determination to prepare an EIS;
- (5) Reasons supporting the determination to prepare an EIS;
- (6) A description of the proposed action and its location;
- (7) A description of the affected environment, including regional, location, and site maps;
- (8) Possible alternatives to the proposed action;
- (9) The proposing agency's or applicant's proposed scoping process, including when and where any EIS public scoping meeting will be held; and
- (10) The name, title, email address, physical address, and phone number of 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, including the county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur and agencies having jurisdiction or expertise, as well as those citizen groups, and concerned individuals that the accepting authority reasonably believes to be affected. 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.

(c) Upon publication of an EISPN in the periodic bulletin, agencies, citizen groups, or individuals shall have a period of thirty days from the initial publication date to make written comments regarding the environmental effects of the proposed action. With explanation, the accepting authority may extend the period for comments for a period not to exceed thirty additional days. Written comments and responses to the substantive comments shall be included in the draft EIS pursuant to section 11-200.1-24.

For purposes of the EIS public scoping meeting, substantive comments shall be those pertaining to the scope of the EIS.

(d) No fewer than one EIS public scoping meeting addressing the scope of the draft EIS shall be held on the island or islands most affected by the proposed action, within the public review and comment period in subsection (c). The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the EIS public scoping meeting shall be audio recorded. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200.1-24 Content requirements; draft environmental impact statement. (a) The draft EIS, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed action and shall discuss all reasonably foreseeable consequences of the action. In order that the public can be fully informed and that the accepting authority can make a sound decision based upon the full range of responsible opinion on environmental effects, an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

(b) The scope of the draft EIS may vary with the scope of the proposed action and its impact, taking into consideration whether the action is a project or a program. Data and analyses in a draft EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. A draft EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the draft EIS, including cost-benefit analyses and reports required under other legal authorities.

(c) The level of detail in a draft EIS may be more broad for programs or components of a program for which site-specific impacts are not discernible, and shall be more specific for components of the program for which site-specific, project-level impacts are discernible. A draft EIS for a program may, where necessary, omit evaluating issues that are not yet ready for decision at the project level. Analysis of the program 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.

(d) The draft EIS shall contain a summary that concisely discusses the following:

- (1) Brief description of the action;
- (2) Significant beneficial and adverse impacts;
- (3) Proposed mitigation measures;
- (4) Alternatives considered;
- (5) Unresolved issues;
- (6) Compatibility with land use plans and policies, and a list of permits or approvals; and
- (7) A list of relevant EAs and EISs considered in the analysis of the preparation of the EIS.

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

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

(g) The draft EIS shall contain a description of the action that 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 (such as a United States Geological Survey topographic map, Flood Insurance Rate Maps, Floodway Boundary Maps, or state sea level rise exposure area maps, as applicable) and a related regional map;
- (2) Objectives of the proposed action;
- (3) General description of the action's technical, economic, social, cultural, and environmental characteristics;
- (4) Use of state or county funds or lands for the action;
- (5) Phasing and timing of the action;
- (6) Summary technical data, diagrams, and other information necessary to enable an evaluation of potential environmental impact by commenting agencies and the public; and
- (7) Historic perspective.

(h) The draft EIS shall describe in a separate and distinct section discussion of the alternative of no action as well as reasonable alternatives that could attain the objectives of the action. 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) Alternatives requiring actions of a significantly different nature that would provide similar benefits with different environmental impacts;
- (2) Alternatives related to different designs or details of the proposed action that would present different environmental impacts; and
- (3) Alternative locations for the proposed 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 in detail. For any agency actions, the discussion of alternatives shall include, where relevant, those alternatives not within the existing authority of the agency.

(i) 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 action site (including natural or human-made resources of historic, cultural, archaeological, or aesthetic significance); specific reference to related actions, 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, any population and growth assumptions used to justify the proposed action, and any secondary population and growth impacts resulting from the proposed action and its alternatives. The draft EIS shall expressly note the sources of data used to identify, qualify, or evaluate any and all environmental consequences.

(j) The draft EIS shall include a description of the relationship of the proposed action to land use and natural or cultural 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 affected area 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.

(k) 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.

(l) The draft EIS shall include an analysis of the probable impact of the proposed action on the environment, and impacts of the natural or human environment on the 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 actions shall be discussed in the draft EIS. The draft EIS should recognize that several actions, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource actions, 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 (m), (n), (o), and (p).

(m) 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.

(n) 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.

(o) The draft EIS shall address all probable adverse environmental effects that 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 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), 342P (Asbestos and Lead), and 344 (State Environmental Policy), HRS, and those effects discussed in this section that 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 draft 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.

(p) 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, and 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, specific reference to the timing of each step proposed to be taken in any mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to ensure that the mitigation measures will in fact be taken in the event the action is implemented.

(q) 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.

(r) 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 draft EIS, and shall disclose the identity of the persons, firms, or agency preparing the draft EIS, by contract or other authorization.

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

- (1) Reproductions of all written comments submitted during the consultation period required in section 11-200.1-23;
- (2) Responses to all substantive written comments made during the consultation period required in section 11-200.1-23. Proposing agencies and applicants shall respond in the draft EIS to all substantive written comments in one of two ways, or a combination of both, so long as each



substantive comment has clearly received a response:

- (A) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable different topic areas with the commenter identified in each applicable topic area. All comments, except those described in paragraph (3), must be appended in full to the final document; or
 - (B) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response being responded to for each comment letter submitted. All comments, except those described in paragraph (3), must either be included with the response, or appended in full to the final document;
- (3) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:
- (A) The response may be grouped under paragraph (2)(A) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or
 - (B) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or

- petition shall be appended to the final document; and
- (C) Provided that, if a commenter adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to paragraph (2);
- (4) A summary of any EIS public scoping meetings, including a written general summary of the oral comments made, and a representative sample of any handout provided by the proposing agency or applicant related to the action provided at any EIS public scoping meeting;
- (5) A list of those persons or agencies who were consulted and had no comment in a manner indicating that no comment was provided; and
- (6) A representative sample of the consultation request letter.
- (t) An addendum to a draft EIS shall reference the original draft EIS to which it attaches and comply with all applicable filing, public review, and comment requirements set forth in subchapter 10. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200.1-25 Public review requirements for draft environmental impact statements. (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 from the date that notice of availability of the draft EIS is initially published in the periodic bulletin and shall continue for a period of forty-five days, unless mandated otherwise by statute. Written comments shall be received by or postmarked to the accepting authority, and in the case of applicants, to either the accepting authority or the applicant, within the forty-five-day comment period. Any comments outside of the forty-five-day comment period need not be responded to nor considered. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-26 Comment response requirements for draft environmental impact statements. (a) In accordance with the content requirements of section 11-200.1-27, the proposing agency or applicant shall respond within the final EIS to all substantive written comments received pursuant to section 11-200.1-25. In deciding whether a written comment is substantive, the proposing agency or applicant shall give careful consideration to the validity, significance, and relevance of the comment to the scope, analysis, or process of the EIS, bearing in mind the purpose of this chapter and chapter 343, HRS. Written comments deemed by the proposing agency or applicant as non-substantive and to which no response was provided shall be clearly indicated.

(b) Proposing agencies and applicants shall respond in the final EIS to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:

- (1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable topic areas with the commenter identified in each applicable topic area. All comments, except those described in subsection (c), must be appended in full to the final document; or
- (2) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response for each comment letter submitted. All comments, except those described in subsection (c), must either be included with the response or appended in full to the final document.

(c) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:

- (1) The response may be grouped under subsection (b)(1) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or
- (2) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document;

provided that if a commenter adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to subsection (d).

(d) In responding to substantive written comments, proposing agencies and applicants shall endeavor to resolve conflicts or inconsistencies in information and address specific environmental concerns identified by the commenter, providing a response that is commensurate with the substantive content of those comments. The response shall describe the disposition of significant environmental issues raised (for example, the response may point to revisions to the proposed action to mitigate anticipated impacts or objections raised in the comment). In particular, the issues raised when the proposing agency's or applicant's 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. The response shall indicate changes that have been made to the text of the draft EIS. [Eff. **AUG -9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-27 Content requirements; final environmental impact statement. (a) The final EIS, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed action and shall discuss all reasonably foreseeable consequences of the action. In order that the public can be fully informed and the accepting authority can make a sound decision based upon the full range of responsible opinion on environmental

effects, an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

- (b) The final EIS shall consist of:
 - (1) The draft EIS prepared in compliance with this subchapter, as revised to incorporate substantive comments received during the review processes in conformity with section 11-200.1-26, including reproduction of all comments and responses to substantive written comments;
 - (2) A list of persons, organizations, and public agencies commenting on the draft EIS;
 - (3) A list of those persons or agencies who were consulted in preparing the final EIS and those who had no comment shall be included in a manner indicating that no comment was provided;
 - (4) A written general summary of oral comments made at any EIS public scoping meeting; and
 - (5) The text of the final EIS written in a format that allows the reader to easily distinguish changes made to the text of the draft EIS.
- [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6)
 (Imp: HRS §§343-2, 343-5, 343-6)

§11-200.1-28 Acceptability. (a) Acceptability of a final EIS shall be evaluated on the basis of whether the final EIS, in its completed form, represents an informational instrument that fulfills the intent and provisions of chapter 343, HRS, and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

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

- (1) The procedures for assessment, consultation process, review, and the preparation and submission of the 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, including properly identifying comments as substantive and responding in a way commensurate to the comment, and have been appropriately incorporated into the final EIS.

(c) The proposing agency, applicant, or accepting authority may request the office to make a recommendation regarding the acceptability or non-acceptability of the EIS. If the office decides to make a recommendation, it shall submit the recommendation to the proposing agency, applicant, and accepting authority, as applicable. For applicant actions, the office shall submit the recommendation to the applicant and the accepting authority within the period for the accepting authority to determine the acceptability of the final EIS.

(d) The accepting authority shall take prompt measures to determine the acceptability or non-acceptability of the proposing agency's EIS.

(e) Upon acceptance or non-acceptance of the EIS:

(1) For agency actions, a notice shall be filed by the 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 subchapter 4. 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.

(2) For applicant actions, the accepting authority shall:

(A) Notify the applicant of its determination, and provide specific findings and reasons. The accepting authority 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.

(B) 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 for a period not

to exceed fifteen days. The request shall be made to the accepting authority in writing. 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 granted merely for the convenience of the accepting authority. If the accepting authority fails to make a determination of acceptance or non-acceptance of the EIS within thirty days of the receipt of the final EIS, then the statement shall be deemed accepted.

(f) A non-accepted EIS may be revised by a proposing agency or applicant. The revision shall take the form of a revised draft EIS 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 subchapters 4 and 10 for an EIS submitted for acceptance. In addition, 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.

(g) A proposing agency or applicant may withdraw an EIS by simultaneously sending a 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 draft EIS.

[Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-29 Appeals to the council. An applicant, within sixty days after a non-acceptance determination by the accepting authority under section 11-200.1-28 of a

final EIS, may appeal the non-acceptance to the council, which within the statutorily mandated period after receipt of the appeal, shall notify the applicant appealing of its determination to affirm the accepting authority's non-acceptance or to reverse it. The council chairperson shall include the appeal on the agenda of the next council meeting following receipt of the appeal. In any affirmation or reversal of an appealed non-acceptance, the council shall provide the applicant and the accepting authority with specific findings and reasons for its determination. The accepting authority shall abide by the council's decision. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-30 Supplemental environmental impact statements. (a) 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. An EIS that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no supplemental 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 EIS that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental EIS shall be prepared and reviewed as provided by this chapter. As long as there is no change in a proposed action resulting in individual or cumulative impacts not originally disclosed, the EIS associated with that action shall be deemed to comply with this chapter.

(b) The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental EIS is required. This determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental EISs whenever the proposed action for which an EIS was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental 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 will not be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

(c) The contents of the supplemental 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 subchapter 10 as they relate to the changes.

(d) The requirements of the thirty-day consultation, public notice filing, 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.

[Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 11

NATIONAL ENVIRONMENTAL POLICY ACT

§11-200.1-31 National environmental policy act actions: applicability to chapter 343, HRS. When a certain action will be subject both to the National Environmental Policy Act of 1969 (NEPA), as amended (P.L. 91-190, 42 U.S.C. sections 4321-4347, as amended by P.L. 94-52, July 3, 1975, P.L. 94-83, Aug. 9, 1975, and P.L. 97-258 section 4(b), Sept. 13, 1982) 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 NEPA, shall notify the responsible federal entity, the office, and any agency with a definite interest in the action (as prescribed by chapter 343, HRS).

- (2) When a federal entity determines that the proposed action is exempt from review under the NEPA, this determination does not automatically constitute an exemption for the purposes of this chapter. In these 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) When a federal entity issues a FONSI and concludes that an EIS is not required under the NEPA, this determination does not automatically constitute compliance with this chapter. In these 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.
- (4) The NEPA requires that EISs be prepared by the responsible federal entity. In the case of actions for which an EIS pursuant to the NEPA has been prepared by the responsible federal entity, the draft and final federal EIS may be submitted to comply with this chapter, so long as the federal EIS satisfies the EIS content requirements of this chapter, including cultural impacts, and is not found to be inadequate under the NEPA: by a court; by the Council on Environmental Quality (or is at issue in pre-decision referral to Council on Environmental Quality) under the NEPA regulations; or by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, title 41 United States Code section 7609.
- (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 NEPA. The office and state or county agencies shall cooperate with federal entities to the fullest extent possible to reduce duplication between federal and state requirements. This cooperation, to the fullest extent possible, shall include joint EISs with concurrent public review and processing at both levels of government. Where federal law has 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.

- (6) Where the NEPA process requires earlier or more stringent public review, filing, and distribution than under this chapter, that NEPA process shall satisfy this chapter so that duplicative consultation or review does not occur. The responsible federal entity's supplemental EIS requirements shall apply in these cases in place of this chapter's supplemental EIS requirements.
 - (7) In all actions where the use of state land or funds is proposed, the final EIS shall be submitted to the governor or the 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, the final EIS shall be submitted to the mayor, or the authorized representative. The final EIS in these instances shall first be accepted by the governor or mayor (or the authorized representative), prior to the submission of the same to the responsible federal entity.
 - (8) Any acceptance obtained pursuant to this section shall satisfy chapter 343, HRS, and no other EIS for the proposed action shall be required.
- [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6)
 6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 12

RETROACTIVITY AND SEVERABILITY

§11-200.1-32 Retroactivity. (a) This chapter shall apply immediately upon taking effect, except as otherwise provided below.

(b) Chapter 11-200 shall continue to apply to environmental review of agency and applicant actions which began prior to the adoption of chapter 11-200.1, provided that:

- (1) For EAs, if the draft EA was published by the office prior to the adoption of this chapter and has not received a determination within a period of five years from the implementation of this chapter, then the proposing agency or applicant must comply with the requirements of this chapter. All subsequent environmental review, including an EISPN must comply with this chapter.
- (2) For EISs, if the EISPN was published by the office prior to the adoption of this chapter and the final EIS has not been accepted within five years from the implementation of this chapter, then the proposing agency or applicant must comply with the requirements of this chapter.
- (3) A judicial proceeding pursuant to section 343-7, HRS, shall not count towards the five-year time period.

(c) Exemption lists that have received concurrence under chapter 11-200 may be used for a period of seven years after the adoption of this chapter, during which time the agency must revise its list and obtain concurrence from the council in conformance with this chapter.

[Eff **AUG - 9 2019**] (Auth: HRS §343-6) (Imp: HRS §343-6)

§11-200.1-33 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. [Eff **AUG - 9 2019**] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-6, 343-8)

DEPARTMENT OF HEALTH

The repeal of chapter 11-200 and the adoption of chapter 11-200.1, Hawaii Administrative Rules, on the Summary page dated December 18, 2018, was adopted on December 18, 2018, following public hearings held on Oahu (May 21, 2018), Hawaii (May 22, 2018), Molokai (May 24, 2018), Kauai (May 29, 2018), Lanai (May 30, 2018), and Maui (May 31, 2018), after public notice was given in the Honolulu Star-Advertiser, The Garden Island, West Hawaii Today, Hawaii Tribune Herald, The Maui News (published April 20, 2018), and The Molokai Dispatch (published April 25, 2018).

The repeal of chapter 11-200 and the adoption of chapter 11-200.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.



PUANANIONAONA P. THOENE,
Chair, Environmental Council



DR. BRUCE S. ANDERSON,
Director, Department of Health

APPROVED:



DAVID Y. IGE
Governor
State of Hawaii

Dated: 07-30-2019

APPROVED AS TO FORM:



EDWARD G. BOHLEN
Deputy Attorney General

Filed

LIEUTENANT GOVERNOR'S
OFFICE

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