



OFFICE OF ENVIRONMENTAL QUALITY CONTROL

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August 19, 2020

TO: Executive Agencies of the State and County Governments

FROM: Keith Kawaoka, Acting Director
Office of Environmental Quality Control

Ron Terry, Chair, Committee on Exemptions
Environmental Council

SUBJECT: Exemption Procedures under Chapter 343, Hawai'i Revised Statutes

As we outlined in our letter to you in September 2019, new administrative rules for the State's Environmental Impact Statement (EIS) process, which are now contained in Hawai'i Administrative Rules (HAR) Chapter 11-200.1, came into effect on August 9, 2019.

Among many other changes, in Section 11-200.1-16, the new rules explicitly outline two types of exemptions and the procedures that an agency follows for each. Part 1 actions conducted by your agency are generally *de minimis*, and do not require formal actions. Part 2 actions are generally exempt and require an exemption notice subject to consultation, documentation and OEQC publication, but no Environmental Assessment (EA). As before, agencies must always consider for each action whether there are special circumstances in terms of sensitive environments or cumulative impacts that would disqualify the particular action from exemption.

The new rules also continue to provide for the development by an agency of an Exemption List, which is guidance that each agency may choose to prepare for itself and then obtain Council concurrence on. It contains typical agency actions within general exemption types such as administrative and personnel actions, maintenance, repair, replacement and single, small new facilities, both Part 1 and Part 2

As the Director of OEQC and the Exemption Committee Chairperson, we are writing to ask you again to consider reorganizing your Exemption List to conform more closely to the current rules, and, if you lack a list or your list is potentially outdated and/or incomplete, to create or update your list at the same time by submitting it to the Environmental Council for concurrence, pursuant to HAR Section 11-200.1-16.

Maintaining your Exemption List in a current, accurate form should greatly assist your agency in determining which types of actions conducted by your agency are generally *de minimis* (Part 1) and do not require formal action, and which actions require consultation, documentation, and OEQC publication (Part 2). Reorganizing and updating your Exemption List would be beneficial to the operations of your agency, because it would provide daily guidance on important decisions related to complying with the State's EIS law and rules, and also provide a process for public review and confidence that your agency is making appropriate decisions.

Several agencies, including the State Department of Land and Natural Resources, the County of Kaua'i Department of Water, and the City and County of Honolulu Department of Design and Construction, have already started and in some instances finished the process. Emma Yuen, who coordinated DLNR's list reorganization, stated that "OEQC's new rules have allowed DLNR to revise its exemption list in a way that significantly streamlines our ability to be in compliance with Chapter 343."

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The new rules provide agencies with concurred lists seven years to update their lists into the format of the new rules and seek Council concurrence. Agencies with concurred lists who have consulted with the Council within the past seven years and are seeking only to reorganize their list to be consistent with the Part 1 and Part 2 sections can seek an expedited Council review for concurrence. It would be to your agency's advantage to determine which situation you are in and what would provide the most benefit for your agency workload.

Please see the attached guidance on updating your agency's Exemption List and the exemption process. Please take advantage of this opportunity to optimize your Exemption List so that you may conform with the intent of the new rules and optimize your operations. If you have any questions, please contact OEQC at oeqchawaii@doh.hawaii.gov or 808-586-4185. Thank you.

Attachment