



# Exemptions Guidance: ~~Transitioning to~~ HAR Chapter 11-200.1

## 1. Introduction

The purpose of this document is to help agencies with: understanding the provisions of ~~the new~~ Hawai'i Administrative Rules (HAR) ~~Chapter Title~~ 11, ~~Chapter~~ --200.1, Environmental Impact Statement (EIS) Rules; transitioning agency exemptions lists ~~under HAR Title 11, Chapter 200~~ (~~known as the "1996 Rules"~~); preparing exemption notices; and filing lists of exemption notices with the Office of ~~Planning and Sustainable Development~~ (OPSD) Environmental ~~Quality Control~~ Review Program (ERP/OEQC). This document presumes the reader is familiar with the EIS process, the ~~OEQC, ERP~~ and the ~~Environmental~~ ~~Advisory Council~~ (Council).

HAR Chapter 11-200.1 took effect on August 9, 2019, ~~ten days after Governor Ige signed them on July 30~~. Readers may review the rules and rationale here: <https://planning.hawaii.gov/erp/rules-update/> <http://oeqc2.doh.hawaii.gov/Laws-UPDATE-AND-PERHAPS-DELETE-REFERENCE-TO-RATIONALE>

## 2. Background

Hawai'i Revised Statutes (HRS) Section 343-6 ~~previously~~ assigneds the ~~Environmental~~ Council broad powers for rulemaking to implement the environmental review process. ~~Well, the EAC decided to give that up~~. Pursuant to Act 152, ~~rulemaking authority was transferred to OPSD~~

This includes rules that shall "establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an environmental assessment."

### Key Points

- The ~~new~~ rules do not change the threshold for exemptions.
- The ~~new~~ rules do not change what is litigated -- whether a specific exemption is appropriate.
 

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- Exemption lists are optional and guidance.
- The ~~new~~ rules create a Part 1 for *de minimis* actions and a Part 2 for actions able to be exempted.
- Exemptions lists are to be checked with the Council every 7 years.
- ~~There is an expedited procedure for only reorganizing an exemption list into Part 1 and 2.~~

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- *De minimis* actions are exemptions that do not need an exemption notice or publication.
- Part 2 exemptions are treated the same as under the 1996 ~~R~~ rules.
- The ~~new~~ rules require agencies to compile actions that are not *de minimis* but exempted (i.e., List of Exemption Notices) and submit the List to ~~OEQC-ERP~~ to publish in ~~the issue of each 8<sup>th</sup> issue of The Environmental Notice (Notice)~~ published on the 8th of each month.

In updating the rules in 2019, the Council revised the exemption process in response to agency and public feedback. The sidebar lists key points to remember and are addressed in this document. The Council ~~chose not to make rules for the transition to the new process and has authorized the~~has requested OEQC-ERP to develop this guidance to assist agencies in the implementation of HAR Chapter 11-200.1.

~~In 2021, Act 152 was enacted [TEXT TO BE SENT BY ERP]~~In the legislative session of 2021, Act 152 (HB 1318) was passed, and the responsibilities, duties, and obligations of Office of Environmental Quality Control (OEQC) and Environmental Council was transferred from Department of Health (DOH) to Department of Business, Economic Development, and Tourism (DBEDT), within the Office on Planning and Sustainable Development (OPSD). This change renamed the OEQC to the ERP and the EC to the EAC. However, this Act removed the EAC's rulemaking authority and changed this responsibility to the OPSD Director. It also amended the ability for an applicant to appeal nonacceptance of an environmental impact statement to the Environmental Court.

### 4.3. Exemptions Overview

HAR Chapter 11-200.1 updates the exemption process to (1) clarify which actions an agency undertakes could be considered *de minimis* versus needing an exemption notice filed; (2) rename the exemption “classes” to “general types” and revise the general types (including adding a provision for affordable housing, discussed below); (3) obtain Council concurrence on the exemptions lists on a regular basis; and (4) increase timely public access to information about exemptions.

The Council reorganized the exemptions provisions in HAR Section 11-200-8 into three sections under HAR Chapter 11-200.1, Subchapter 8, Exempt Actions, List, and Notice Requirements.

- Section 15 describes the general types of actions eligible for exemption (formerly called “classes” in the 1996 Rules).
- Section 16 discusses exemption lists.
- Section 17 discusses exemption notices.

### 5.4. General Exemption Types

Section 11-200.1-15 replaces Section 11-200-8(a)-(c). Section 11-200.1-15 provides the general types of actions eligible for exemption. It incorporates the standard for declaring actions exempt provided in Section 343-6(2), HRS.

An action is eligible for exemption if it will probably individually and cumulatively have minimal or no significant effects, but the exemption is inapplicable if the cumulative impact is significant or it might normally have insignificant effects but may be significant in a particularly sensitive environment.

Section 11-200.1-15 replaces the language from the 1996 Rules regarding “classes of actions”. The Council reasoned that Chapter 343, HRS, does not use the term “classes” and therefore the term has the potential to cause confusion. HAR Chapter 11-200.1 instead uses the statutory “general types”.

#### Key Points

- Exemptions are declared for individual actions based on the general types in Section 15.
- Exemptions are inapplicable when there (1) are significant cumulative impacts or (2) may be significant impacts in a particularly sensitive environment.
- Examples of sensitive environments include:
  - Flood plain
  - Tsunami zone
  - Sea level rise exposure area (NEW!)
  - Erosion-prone area
  - Beach
  - Geologically hazardous land
  - Estuary
  - Fresh water
  - Coastal waters
  - Wetlands
- The declaration of an exemption is documented in an **exemption notice**.
- *De minimis* actions do not require exemption notices but agencies may choose to prepare them, in which case they would consult and include on the list of exemption notices also.
- The term “classes of action” has been replaced with “general types of actions” to match the statute’s language.

The general types of actions eligible for exemption include:

- (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

**Note for (1):** HAR Chapter 11-200.1 replaces “negligible” with “minor” and removes “or no” before “expansion or change”. Activities that are “negligible” and require “no expansion” and “no change” are ~~now~~ considered *de minimis* and should be reflected in Part 1 of the agency’s exemption list.

**Note for (3)(A):** HAR Chapter 11-200.1 recognizes that agencies measure residence area differently and directs the proposing agency or approving agency to apply its own measurement approach.

**Note for (5):** HAR Chapter 11-200.1 incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.

- (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:

**Note for (10):** HAR Chapter 11-200.1 does not define affordable housing, leaving it to agencies to apply the standard from their respective affordable housing requirements.

- (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;

**Note for (10)(A):** The affordable housing exemption only applies when one or both of these two triggers apply. The first trigger keeps the focus on the involvement of the state or county to support affordable housing development where the only reason someone would undergo environmental review is because government is providing funding or land. The second trigger is because Waikiki is a developed, urbanized area that already meets the other criteria listed below. The presence of other triggers such as use within a shoreline (including a Waikiki shoreline) or conservation district would make this exemption not applicable.

- (B) As proposed conforms with the existing state urban land use classification;

**Note for (10)(B):** The exemption only applies to actions on land that has already been classified by the State Land Use Commission as Urban. If the proposed action involves land classified as Agriculture, Conservation, or Rural, or includes a boundary amendment to change the classification to Urban, then the exemption is not applicable.

- (C) As proposed is consistent with the existing county zoning classification that allows housing; and

**Note for (10)(C):** This applies to land that has already been zoned by the county to a zoning classification that allows for housing, recognizing that each county has unique zoning regimes. For purposes of HRS Chapter 201H, Chapter 343 precedes Chapter 201H decision making, so the analysis of whether the county zoning classification allows housing precedes the Chapter 201H zoning waiver request. The specific zoning classification only has to allow housing and is agnostic to specific floor-area ratios (FAR), however too much variance from a given FAR may be considered to have potential for significant impact and thereby render the exemption not applicable.

- (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).

**Note for (10)(D):** This provision ties the exemption explicitly to the significance criteria for environmentally sensitive areas. It is not meant to refer to building/design variances *per se*, such as parking requirements. If the action requires a shoreline setback variance, the exemption is inapplicable. This exception alleviates pressure on environmentally sensitive areas such as in sea level rise exposure areas and erosion-prone areas.

Note that the numbering for the general types in HAR Section 11-200.1-15 is slightly different from the numbering in the 1996 Rules.

## 6.5. Exemption Lists

Section 11-200.1-16 replaces Section 11-200-8(d). The new section separates the exemption list into two sections: Part (1) for *de minimis* actions (i.e., routine operations and maintenance, ongoing administrative activities, and other similar items); and Part (2) for actions that fall within the general types in Section 15 but are not necessarily *de minimis*.

An action is not automatically exempt from environmental review if it is on an exemption list. Agencies must still consider whether the individual action will have a significant effect.

An exemption list is a list of the types of actions an agency considers to not rise to the level of requiring further environmental review. It is a guidance document that agencies use to communicate to agency staff and the public the types of actions that could be exempt from further environmental review. Because agencies engage in different activities, each agency generally finds it useful to prepares its own exemption list.

HAR Chapter 11-200.1 requires agencies who choose to have an exemption list to consider in advance what activities the agency considers to be *de minimis* to include in Part 1 of the exemption list. By including *de minimis* actions in the exemption list, an agency can alert staff to situations where an activity might be in the gray area of a project or program for the purposes of Chapter 343, HRS, but perhaps not rising to the level of requiring further environmental review.

For example, ~~De minimis~~ actions such as, but not limited to, repainting buildings, fixing plumbing, or purchasing office supplies presumptively do not require documentation (i.e., an exemption notice) or consultation. ~~Many of these activities (e.g., repainting buildings, fixing plumbing, purchasing office supplies) are already exemptible by agencies because they fall under one or more of the classes in the 1996 Rules.~~

### Key Points

- There is a difference between an “exemption list” and a “list of exemption notices”:
  - The **exemption list** is guidance that an agency may choose to prepare for itself and then obtains Council concurrence on. It contains the typical things agencies do that fall under the general exemption types. This existed under HAR Chapter 11-200.
  - The **list of exemption notices** is a compilation of exemption notices issued by an agency in a given month and submitted to the ~~ERP~~OEQC for publication in the next month’s 8<sup>th</sup> edition of the *Notice* published on the 8th of the month. This is a ~~new~~ requirement in HAR Chapter 11-200.1.
- Agencies with concurred lists have seven years to update their lists into the format of the new rules and seek Council concurrence.
- Agencies with concurred lists or that have consulted with the Council within the past seven years and are seeking to only reorganize their list to be consistent with the Part 1 and Part 2 sections under HAR Chapter 11-200.1 can seek ~~an expedited~~ Council review for concurrence.
- Agencies are not required prepare its own exemption list, which is simply a guidance document. Ultimately, all exemptions must be consistent with the Rules

After the adoption of HAR Chapter 11-200.1 in 2019, agencies ~~were given~~ have seven years to reorganize and update their exemption lists to comply with the rules (see HAR Section 11-200.1-32).

However, the Council and ~~OEQC-ERP~~ recommend agencies to transition their lists sooner rather than later.

~~The Council has set up an expedited process for obtaining Council concurrence for agencies wishing to reorganize their lists into the Part 1 and Part 2 categories, without making changes to what is on the list. The Council offers this expedited process to agencies that have obtained Council concurrence within the last seven years or checked in with the Council on their list.~~

## **8.6. How to Transition an Exemption List – Reorganization or Update?**

An agency that would like to transition its exemption list are recommended to follow the steps outlined below.

### **Step 1. Determine whether your agency has an exemption list.**

Agency does not have an exemption list: An agency that does not have an exemption list is not required to prepare one. It must issue individual exemption declarations documented on exemption notices pursuant to HAR Section 11-200.1-15 and -17, then submit those each month to the ~~OEQC-ERP~~ for publication. This applies to both exemptions that would qualify both under Part 1 and Part 2. Proceed to Step 2.

Agency has an exemption list: An agency with an existing exemption list must update its exemption lists to comply with the ~~new 2019~~ requirements under HAR Section 11-200.1-16. Exemption lists that have received concurrence prior to August 9, 2019 may be used for a period of seven years, during which time the agency must revise its list and obtain concurrence from the Council in conformance with HAR Chapter 11-200.1. Proceed to Step 3.

### **Step 2. Consider whether your agency requires an exemption list.**

Agency chooses to create an exemption list: Agencies are recommended to prepare exemption lists if they regularly engage in actions that may require environmental review. Agencies should consider whether they regularly engage in the types of actions listed under HAR Section 11-200.1-15. Proceed to Step 3.

Agency chooses to not create an exemption list: If an agency determines that it does not regularly engage in actions that require environmental review, it does not have to take any further action on an exemption list. They are still required to prepare exemption notices and timely publish those with the ~~OEQC-ERP~~ for individual actions they may choose to declare exempt. This applies to both exemptions that would qualify both under Part 1 and Part 2. Proceed to Step 10.

**Step 3. Decide to only reorganize the exemption list or update/create an exemption list.**

The Council recommends that agencies promptly reorganize their lists into the Part 1 and Part 2 format so that they may obtain the greatest value of having an exemption list and engage the public on what the agency considers to be *de minimis*.

To help distinguish what is effectively a “moving around” of existing content, the Council refers to this as a “reorganization” in contrast to an “update” which would be adding, revising, or removing content on the exemption list.

Agencies with an exemption list that the Council concurred or reviewed more than seven years ago or agencies with a recent concurrence but seek to add/remove content: The Council requests agencies go through the Council’s ~~more usual~~ procedure for concurrence. Proceed to Step 4.

Agencies with a concurrence or review in the past seven years and are only reorganizing their lists: The Council recommends following the below steps until engaging with the Council. ~~At that point, agencies will follow a more expedited procedure by engaging with the Exemption Committee Chair and the OEQC Director as described below.~~ Proceed to Step 4.

**Step 4. Compile a list of *de minimis* actions.**

*De minimis* actions include routine activities and ordinary functions that do not have the potential to affect the environment more than negligibly. HAR Section 11-200.1-16(a) provides the following examples *de minimis* actions:

- Routine repair;
- Routine maintenance;
- Purchase of supplies;
- 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.

Agencies reorganizing or updating their list can identify existing items as *de minimis*. Proceed to Step 5.



**Step 5. Compile a list of types of actions eligible for exemption under general types of actions as listed in HAR Section 11-200.1-15.**

Agencies should identify on their existing or new exemption list the types of actions eligible for exemption under HAR Section 11-200.1-15 to include in Part 2. Generally, most items on the list are expected to fall into Part 2. Proceed to Step 6.

**Step 6. Obtain input from stakeholders, including other agencies.**

Agencies are recommended to obtain input from other appropriate ~~parties permitting agencies~~ on their proposed exemption list. Candidates could be sister agencies within the same jurisdiction, ~~permitting agencies~~, scientists and researchers, non-profit and trade industry organizations, community groups, and other stakeholders that regularly interact with the agency and are knowledgeable about its mission and regular work. Proceed to Step 7.

**Step 7. Submit exemption list to the Environmental ~~Advisory~~ Council.**

After preparing the proposed exemption list, the agency submits it to the ~~OEQC-ERP~~ and the Council via ~~dbedt.opsd.erp@hawaii.gov oeqchawaii@doh.hawaii.edu~~. Agencies should indicate any proposed changes in Ramseyer or similar format.

Agencies with a recent concurrence and only reorganizing their exemption list: The Council has authorized the Exemption Committee Chair ~~and the OEQC Director~~ to review the proposed reorganized list, provide feedback ~~through one more meeting with the Exemption Committee~~, and upon agreement with the agency, publish the proposed reorganized exemption list in the next issue of the *Notice* and receive comments for ~~30-15~~ days. Proceed to Step 8.

Agencies updating their exemption list or have an exemption list with concurrence or review more than seven years ago: The Council recommends its usual procedure for concurrence—submit the list to the Exemption Committee Chair for posting on the agenda of the next Exemption Committee ~~meeting~~, meet with the Exemption Committee with the proposed revisions, discuss the changes, and if necessary, continue to meet with the Exemption Committee. The Exemption Committee will then make a recommendation to the Council to review the list and request the ~~ERP~~OEQC to publish it for public comment. The Council Chair will add the item to the next agenda for the Council to discuss at its next meeting. If the Council agrees, it will request the ~~OEQC-ERP~~ to publish the proposed exemption list in the next issue of the *Notice* and receive comments for ~~30-15~~ days. Proceed to Step 8.

**Step 8. Consider revisions in response to agency and public comments.**

When the ~~OEQC-ERP~~ publishes the proposed changes to the exemption list, the ~~OEQC-ERP~~ will direct the public and agencies to submit comments directly to the agency and to the ~~OEQC-ERP~~ for transmittal to the Exemption Committee.

Agencies are requested to respond to any comments received. Agencies are requested to copy the ~~OEQC-ERP~~ and Council on their responses to comments, using the ~~ERP OEQC~~ email. Proceed to Step 9.

**Step 9. Meet with the Environmental ~~Advisory~~ Council.**

Agencies are requested to meet with the Council to resolve any outstanding issues with the exemption list or the agency's responses. The proposed exemption list, along with responses to comments and revisions, should be sent to the ~~ERPOEQC~~ for transmittal to the Council Chair and the Exemption Committee Chair.

The Council Chair and the Exemption Committee Chair will add the item to their respective next agendas for discussion at their next meetings. The Exemption Committee will meet with the agency first to discuss the changes, may propose revisions, and if necessary, request the agency to continue to meet with the Exemption Committee. The Exemption Committee may then make a recommendation to the Council to concur with the agency's list. The Council Chair will add the item to the next agenda for the Council to discuss at its next meeting. The Council may also propose revisions, and if necessary, request the agency to continue to meet with the Exemption Committee or the Council. Once the Council concurs, the transition (reorganization or update) is considered complete for seven years from the date of the Council meeting. The ~~ERPOEQC~~ will work with the agency to finalize any edits, date the exemption list concurrence date to the date of the Council meeting, publish the final concurred exemption list in the *Notice*, and post it to the ~~ERPOEQC~~ website. Proceed to Step 10.

**Step 10. Prepare exemption notices as needed.**

Agencies, with or without an exemption list, declaring other than a *de minimis* action are required to prepare an exemption notice, pursuant to HAR Section 11-200.1-17(d), that describes the action to be taken and includes the responses from agencies and individuals consulted in determining whether the action should be exempt. These notices are required to be kept on file at the agency and made available to the public electronically upon request. In addition, a list of all exemption actions, other than *de minimis* actions, must be electronically transmitted to the ~~ERPOEQC~~ monthly in the list of exemption notices for publication in the *Notice*.

Table 1. Comparison of Exemption Requirements.

Rules		Exemption List	Exemption Notice	List of Exemption Notices
<del>Old</del> 1996 Rules (HAR Section 11-200-8)		Under Classes: Types of actions that will probably have minimal or no significant effect on the environment	Required. Kept on file and made available upon request.	N/A.
New-Current Rules (HAR Sections 11-200.1 -15, -16, -17)	Part 1	<i>De Minimis</i> : Routine activities and ordinary functions that do not have the potential to affect the environment more than negligibly.	Not required, but is optional.	Not included, but if exemption notice prepared, then is included.
	Part 2	Under General Types: Types of actions eligible for exemption under HAR Section 11-200.1-15 that will have minimal or no significant effects on the environment.	Required. Kept on file and made available electronically upon request.	Included.

## **9.7. Exemption Notices and Lists of Exemption Notices**

HAR Section 11-200.1-17 replaces Section 11-200-8(a) and (e). While HAR Section 11-200-8 required exemption records (i.e., exemption notices) to be kept on file and produced upon request, the new rules require the exemption notice to be provided electronically such as via email or online link to the record upon request.

This ~~new~~ section also requires agencies to provide a list of the exemptions ~~notices it~~ issued ~~for the prior month to~~ for the OEQC-ERP to publish in the *Notice* on the 8<sup>th</sup> of each month. The list of exemption notices is due to the OEQC-ERP on the standard submittal deadline, which ~~under the new rules~~ is five (5) working days before the publication date. Typically, this means the list of exemption notices, to be timely submitted for publication on the 8<sup>th</sup> of the month, must be submitted on or about the 1<sup>st</sup> of the month. See ~~[ERP TO INSERT LINK]~~ Attachment 1 for the ERP's homepage for the current year's publication schedule and submittal deadlines, ~~for 2019~~. ~~[ERP TO UPDATE LANGAUGE TO REFER TO SPECIFIC PAGE]~~

OEQC-ERP recommends that the list of exemption notices be formatted as a table and submitted as a PDF and an Excel file using the ~~ERPOEQC~~ template or an agency's own preferred table. The table may include a link to the exemption notice kept on file at the agency's website, but the exemption notices themselves are not required to be submitted to the ~~ERPOEQC~~ with the list of exemption notices. See Attachment 2 for the template table that the OEQC-ERP recommends agencies use. An Excel version of the table is available here: [https://files.hawaii.gov/dbedt/erp/OEQC\\_Forms/List-of-Exemption-Notices-TEMPLATE-Oct-2021.xlsx](https://files.hawaii.gov/dbedt/erp/OEQC_Forms/List-of-Exemption-Notices-TEMPLATE-Oct-2021.xlsx). [http://oeqc2.doh.hawaii.gov/OEQC\\_Forms/2019-List-of-Ex-Notices-TEMPLATE.xlsx](http://oeqc2.doh.hawaii.gov/OEQC_Forms/2019-List-of-Ex-Notices-TEMPLATE.xlsx). ~~[ERP TO UPDATE THE LINK]~~

While some agencies might have multiple exemption lists based on divisions, the ~~ERPOEQC~~ requests that the list of exemption notices come from a department and that the department internally coordinate the compilation of its list of exemption notices. In the case of state attached agencies, the OEQC-ERP requests that they continue to submit each list of exemption notices by attached agency. For example, while the Hawai'i Community Development Authority (HCDA) is an attached agency to the Department of Business, Economic Development, and Tourism (DBEDT), it would still submit its own list of exemption notices under HCDA. The OEQC-ERP also requests that the agency include the name, email, and phone number of the person responsible for compiling and submitting the list.

OEQC-ERP will post the PDF format of the list of exemption notices to its SharePoint website and include a link in the *Notice*. See Attachment ~~3-2~~ for an example of how the ~~ERPOEQC~~ ~~intends to~~ presents this in the *Notice*.

## 10.8. Emergency Exemptions

HAR Chapter 11-200.1 replaced the language in HAR Section 11-200-8(f) with two provisions on emergency exemption and moves the discussion to Section 11-200.1-8(b) and (c), Applicability of Chapter 343, HRS, to Agency Actions.

Subsection (b) specifically replaces HAR 11-200-8(f). The rule requires an agency to document the emergency action it undertook and pursuant to which specific emergency declaration. The documentation must be kept on file with the agency and provided upon request, but it is not required to be included in the list of exemption notices submitted to OEQC-ERP each month. HAR Chapter 11-200.1 also requires an agency to substantially commence any action undertaken during a governor-declared emergency within the sixty (60) days of the emergency proclamation. If the agency has not undertaken the action within the 60-day period of the emergency proclamation, the agency must follow HRS Chapter 343, unless the Governor chooses to extend the emergency proclamation. The term “substantially commenced” is not defined because the intent is to provide direction to agencies to timely implement the action but not define the standard for all agencies in all situations.

Subsection (c) addresses situations where there is no gubernatorial emergency proclamation, but an agency must timely respond to an emergency and that response would fall within the scope of Chapter 343, HRS. For example, during a forest fire, an emergency firebreak may need to be cut.

The agency has a responsibility to document the exemption when it undertakes an emergency action. That documentation, like other non-published exemptions, must be available upon public request, but unlike an action undertaken during a gubernatorial emergency proclamation, it must be included in the list of exemptions required to be routinely filed with and published by OEQC-ERP.

Agencies may dedicate a specific portion of their exemption list to emergency actions such as in a Part 3 or subset under Part 1 or Part 2. Please contact OEQC-ERP if you are interested in this approach.

### Key Points

- Governor-declared emergencies (emergency proclamations) can suspend HRS Chapter 343 and HAR Chapter 11-200.1.
- For actions an agency takes during an emergency proclamation, the rules call for agencies to document that an emergency action occurred and pursuant to which proclamation. This assists with later inquiries about when an action was undertaken so that it is clear the action happened pursuant to an emergency.
- Agencies have the duration of the emergency to start the action. If the action has not started before the emergency proclamation ends, then the agency must resume the HRS Chapter 343 analysis.
- Emergency actions without a proclamation may be undertaken first and documented afterward.
- The documentation must be included in the list of exemption notices submitted to OEQC-ERP the next month.



~~Publication Calendar of the  
Office of Environmental Quality Control  
Periodic Bulletin, HAR Chapter 11-200.1~~

# 2019

Pursuant to Chapter 11-200.1, Hawai'i Administrative Rules (HAR), all items to be published in the periodic bulletin must be electronically submitted to the OEQC five working days prior to the publication date. For actions that have published a draft EA or EISPN on or before August 8, 2019, use the 1996 Rules Submittal Deadline column for determining the filing date for the Final EA, Draft EIS, Final EIS, Acceptance / Non-acceptance, supplemental determinations, and supplemental EISs.

1996 Rules Submittal Deadline	New Rules Submittal Deadline	Publication Date	EA or EISPN Comment 30-Day Deadline	EIS Comment 45 Day Deadline
Dec 12 Wed		Dec 23 2018 Sun	Jan 22 Tue	Feb 06 Wed
Dec 26 Wed		Jan 08 2019 Tue	Feb 07 Thu	Feb 22 Fri
Jan 10 Thu		Jan 23 Wed	Feb 22 Fri	Mar 11 Mon
Jan 29 Tue		Feb 08 Fri	Mar 11 Mon	Mar 25 Mon
Feb 12 Tue		Feb 23 Sat	Mar 25 Mon	Apr 09 Tue
Feb 26 Tue		Mar 08 Fri	Apr 08 Mon	Apr 22 Mon
Mar 13 Wed		Mar 23 Sat	Apr 22 Mon	May 07 Tue
Mar 27 Wed		Apr 08 Mon	May 08 Wed	May 23 Thu
Apr 10 Wed		Apr 23 Tue	May 23 Thu	Jun 07 Fri
Apr 26 Fri		May 08 Wed	Jun 07 Fri	Jun 24 Mon
May 13 Mon		May 23 Thu	Jun 24 Mon	Jul 08 Mon
May 29 Wed		Jun 08 Sat	Jul 08 Mon	Jul 23 Tue
Jun 12 Wed		Jun 23 Sun	Jul 23 Tue	Aug 07 Wed
Jun 25 Tue		Jul 08 Mon	Aug 07 Wed	Aug 22 Thu
Jul 11 Thu		Jul 23 Tue	Aug 22 Thu	Sep 06 Fri
Jul 29 Mon		Aug 08 Thu	Sep 09 Mon	Sep 23 Mon
Aug 12 Mon	Aug 15 Thu	Aug 23 Fri	Sep 23 Mon	Oct 07 Mon
Aug 27 Tue	Aug 30 Fri	Sep 08 Sun	Oct 08 Tue	Oct 23 Wed
Sep 11 Wed	Sep 16 Mon	Sep 23 Mon	Oct 23 Wed	Nov 07 Thu
Sep 26 Thu	Oct 01 Tue	Oct 08 Tue	Nov 07 Thu	Nov 22 Fri
Oct 11 Fri	Oct 16 Wed	Oct 23 Wed	Nov 22 Fri	Dec 09 Mon
Oct 29 Tue	Nov 01 Fri	Nov 08 Fri	Dec 09 Mon	Dec 23 Mon
Nov 13 Wed	Nov 18 Mon	Nov 23 Sat	Dec 23 Mon	Jan 07 Tue
Nov 26 Tue	Dec 02 Mon	Dec 08 Sun	Jan 07 Tue	Jan 22 Wed
Dec 11 Wed	Dec 16 Mon	Dec 23 2019 Mon	Jan 22 Wed	Feb 06 Thu
Dec 26 Thu	Dec 31 Tue	Jan 08 2020 Wed	Feb 07 Fri	Feb 24 Mon

- Section 11-200.1-4(a), HAR, establishes the publication schedule of the periodic bulletin to be on the eighth and twenty third of each month. Publication may occur on weekends and holidays.
- Section 11-200.1-5(a), HAR, establishes the submittal deadline to be five working days before the publication date. The schedule does not count holidays and non-working days. Items must be submitted before the close of business (4:30 PM) on the submittal deadline. Note: Actions that have published the Draft EA or EISPN on or before August 8, 2019 shall file pursuant to Chapter 11-200, HAR, which requires filing eight working days before publication.

▲ ~~Comment periods for EAs is 30 days and for EISs is 45 days from the publication date. Section 11-200.1-3 sets forth how to count the days from publication. The publication date is day zero. Holidays and weekends are counted. When the deadline falls on a state holiday or non-working day, the deadline is the next working day.~~

File No.	Island	Street Address	City	ZIP Code	TMK	Applicant (as appropriate)	Exempt. HAR 11-200.1-15(c)	Action: Title & Description (92 characters MAX)	Notes	
XX-XXX	Oahu	123 Beretania	Honolulu	968XX	(X) X-X-XXX:XXX	NA	5	Sample line to show examples of completing the list	Delete this row	
<p>Use your agency's normal record tracking system so that a member of the public has a reference number.</p> <p>For the agency name at the top, use the full name of the agency instead of the abbreviation. Provide the government jurisdiction as well because county and state agencies can share the same name. Only one list per agency is submitted; do not include separate submissions by division or agency subunit.</p> <p>Examples:                      Planning Department (County of Maui)                      Department of Transportation (State of Hawai'i)</p>		<p>Enter the island, street address, city, ZIP, and TMK so that a member of the public can identify where the exempted action occurs. For TMKs, use the format: (X) X-X-XXX:XXX [(Division) Zone-Section-Plat:Parcel] separated by semicolons.</p>			<p>If the exemption was declared for an applicant action, identify the applicant.</p> <p>For the contact name on top, provide the first and last name of an individual who can be contacted by the public to assist in obtaining the desired exemption notice. Include phone number and email.</p>		<p>Identify under which general type in HAR Section 11-200.1-15(c) the agency issued the exemption. Note that the order is different from the old rules. If your agency exemption list has not been updated to reflect the new rules, be sure to identify the appropriate number under the new rules.</p>		<p>Provide a <del>succint</del><b>succinct</b> description of the exempted action so that a member of the public can accurately assess whether the action might be of interest.</p> <p>Provide additional information the agency believes will assist the public with identifying or understanding the purpose of the exemption declaration.</p> <p>For the date on the top, identify the date the list is submitted to the <del>OEQ</del><b>OEQ</b> <del>ERP</del>, which may be on or before the submittal deadline 5 business days prior to publication on the 8th of the month. For example, for publication on September 8, 20<del>24</del><b>19</b>, the date must be on or before August 30, 20<del>24</del><b>19</b>.</p>	



## Lists of Exemption Notices

Pursuant to HAR § 11-200.1-17(c), following are lists of Exemption Notices submitted by various agencies for the previous month:

### State of Hawai'i

[Department of Accounting and General Services](#)  
[Department of Agriculture](#)  
[Department of Agriculture: Agribusiness Development Corporation](#)  
[Department of Defense\\*](#)  
[Department of Education](#)  
[Department of Hawaiian Home Lands](#)  
[Department of Health\\*](#)  
[Department of Land and Natural Resources](#)  
[Department of Transportation](#)  
[Hawai'i Housing Finance and Development Corporation](#)  
[Hawai'i Public Housing Authority](#)  
[Hawai'i Tourism Authority](#)  
[Natural Energy Laboratory of Hawai'i Authority](#)  
[University of Hawai'i](#)

### County of Hawai'i

[Department of Environmental Management\\*](#)  
[Department of Parks and Recreation](#)  
[Department of Public Works](#)  
[Department of Water Supply](#)  
[Office of Housing and Community Development](#)

### County of Maui

[Department of Environmental Management](#)  
[Department of Housing and Human Concerns](#)  
[Department of Parks and Recreation](#)  
[Department of Planning](#)  
[Department of Public Works](#)  
[Department of Water Supply](#)

### City and County of Honolulu

[Board of Water Supply](#)  
[Department of Design and Construction](#)  
[Department of Environmental Services](#)  
[Department of Parks and Recreation](#)  
[Department of Planning and Permitting](#)  
[Department of Transportation Services](#)  
[Fire Department](#)

### County of Kaua'i

[Department of Parks and Recreation](#)  
[Department of Public Works](#)  
[Department of Water](#)  
[Transportation Agency](#)