

FACT SHEET

INTRODUCING FEDERAL NATIONAL ENVIRONMENTAL POLICY ACT PRACTITIONERS TO THE HAWAI‘I ENVIRONMENTAL POLICY ACT PROCESS

This fact sheet is designed to familiarize Federal [National Environmental Policy Act](#) (NEPA) practitioners with the [Hawai‘i Environmental Policy Act](#) (HEPA). When a proposed NEPA action also requires compliance with HEPA, it is critical that these practitioners familiarize themselves with HEPA and understand how HEPA compares to and contrasts with NEPA.

Both statutes are designed to facilitate informed decision-making and environmental review. This fact sheet compares HEPA, Hawai‘i Revised Statutes (HRS) Chapter 343, and the resulting [Hawai‘i Administrative Rules \(HAR\) Title 11 Chapter 200.1](#) with CEQ’s Regulations for Implementing the Procedural Provisions of NEPA, [40 CFR Parts 1500-1508](#) (see Table 1.1 below).

This fact sheet only provides basic information and is intended to serve as a springboard for discussion with [Environmental Review Program](#) (ERP) (within the Office of Planning and Sustainable Development) staff when proposed projects trigger both Federal and State environmental review requirements. Project proponents are strongly encouraged to contact ERP in the early stages of project planning so that Federal and State environmental review processes, if applicable, can be appropriately aligned.

Introduction

HEPA requires State and county agencies to consider the impact of certain actions on the environment because “humanity’s activities have broad and profound effects upon the interrelations of all components of the environment, [and] an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions.” [HRS 343-1](#). HEPA mandates the completion of an environmental assessment (EA) for any of the instances or “triggers” identified in [HRS 343-5 \(a\)](#) and as explained in [2012 Guide to the Implementation and Practice of HEPA](#) (Section 1.6). The EA is used to determine whether the proposed action may require an environmental impact statement (EIS), based on thirteen administrative criteria for significance set out in [HAR 11-200.1-13](#). However, an agency may determine, through its judgment and experience, that a proposed action is likely to require an EIS and opt not to prepare an EA before preparing an EIS (or authorize an applicant to do the same). [HRS 343-5 \(b\) and \(e\)](#). The triggers for the HEPA process and the criteria for significance are described in the [2012 Guide to the Implementation and Practice of HEPA](#) (Sections 1.6 and 1.7).

Actions that do not fall under one of the HEPA triggers and those that are expressly excluded by statute are not subject to the HEPA process. In addition, ten general types of actions eligible for exemption listed in [HAR 11-200.1-15](#) may not be subject to a detailed HEPA review unless their cumulative impact in the same place is significant, or unless an action with normally

insignificant impacts may be significant in a particularly sensitive environment. [HAR 11-200.1-15 \(d\)](#).

There are three ways that an action can fulfill the HEPA process (assuming there are no appeals):

- 1) A State or county agency can determine the action is exempt from the requirement to prepare an EA; or
- 2) A State or county agency can conduct, or require an applicant to conduct, an EA and determine that an action has a Finding of No Significant Impact (FONSI); or
- 3) If a State or county agency determines an EIS is required, either the Governor/county Mayor, or the approving agency will determine if the final EIS (FEIS) is acceptable under HEPA.

Key Points of Comparison

Table 1.1 below compares NEPA and HEPA terms and procedural requirements.

| NEPA | HEPA |
|---|--|
| Categorical Exclusion (CE), 40 CFR 1508.1(e) , 40 CFR 1501.4 | HEPA General Types of Actions eligible for exemption are authorized by HRS 343-6 and implemented by administrative rules, HAR 11-200.1, Subchapter 8 , where there is a stipulation that allows an agency to develop its own list of specific types of actions that fall within the general types, HAR 11-200.1-16 . |
| Environmental Assessment (EA), 40 CFR 1508.1(j) , 40 CFR 1501.5 | Environmental Assessment (EA), HAR 11-200.1 Subchapter 9 |
| Finding of No Significant Impact (FONSI), 40 CFR 1508.1(q) , 40 CFR 1501.6 | Finding of No Significant Impact (FONSI), HRS 343-2 , HAR 11-200.1-22 |
| Notice of Intent, 40 CFR 1508.1(aa) | Preparation Notice/EIS Preparation Notice, HRS 343-2 , HAR 11-200.1-23 ; see HRS 343-5(b) and (e) |
| Draft Environmental Impact Statement (DEIS), 40 CFR 1502 , 40 CFR 1508.1(l) | Draft Environmental Impact Statement (DEIS), HRS 343-2 , HAR 11-200.1-24 |
| Final Environmental Impact Statement (FEIS), 40 CFR 1502 , 40 CFR 1508.1(l) | Final Environmental Impact Statement (FEIS), HRS 343-2 , HAR 11-200.1-27 |
| Record of Decision, 40 CFR 1505.2 | Acceptance, HRS 343-2 , HAR 11-200.1-28 . |

The bullets below provide a general comparison of processes:

- NEPA applies to Federal actions described in [40 CFR 1508.1\(w\)](#). HEPA allows for exemptions and applies the HEPA process when an action proposed by an agency or an applicant falls within one of the instances or “triggers” described in [HRS 343-5 \(a\)](#).
- For State or county agency actions that trigger HEPA review, the proposing agency is responsible for preparing an EA and determining whether an EIS is required. [HRS 343-5 \(b\)](#); [HAR 11-200.1-14](#). For HEPA to apply to a federal action, a State or county agency must be involved either as a partner (Agency Action) or as a permitting agency (Applicant Action).
- For applicant actions that trigger HEPA review and require agency approval, the agency initially receiving and agreeing to process the request for approval shall require the applicant to prepare an EA and shall determine whether an EIS is required. [HRS 343-5 \(e\)](#); [HAR 11-200.1-14 \(d\)](#). In certain situations, that agency can determine the action is exempt from the requirement of preparing an EA. Alternatively, the applicant can choose to prepare an EIS directly.
- One notable consideration under HEPA is the need to analyze the effects of a proposed action on the cultural practices of the community, along with various other significance criteria. [HRS 343-2](#); [HAR 11.200.1-13\(b\)\(4\)](#).
- Under HEPA, mitigations in an EA or EIS are for disclosure purposes. Permitting agencies may incorporate the relevant mitigation into their permits as conditions.
- The HEPA EA process includes one 30-day public comment period after ERP publishes notice of the draft EA. This process will result either in a Finding of No Significant Impact (FONSI) or in an Environmental Impact Statement Preparation Notice (EISPN) determination.
- The HEPA EIS process includes two public comment periods: a 30-day administrative consultation period after ERP publishes notice of an EISPN; and a 45-day statutory comment period after ERP publishes notice of a Draft EIS in its periodic bulletin (also known as *The Environmental Notice*). [HAR 11-200.1-23 \(c\)](#) and [11-200.1-2 \(b\)](#). Unlike under NEPA, there is no review period for a Final EIS under HEPA and consequently no option for a public comment period for that final document. Rather, HEPA requires acceptance or nonacceptance of a Final EIS for an applicant action within 30 days (which may be extended up to 45 days at an applicant’s request). [HRS 343-5 \(e\)](#); [HAR 11-200.1-28](#). Acceptance of a Final EIS must occur before a proposed action may be implemented or approved. [HRS 343-5 \(d\) and \(e\)](#).
- The Governor has the authority to accept a Final EIS when a State or county agency proposes to use State lands or funds or when a State agency proposes an action listed in [HRS 343-5 \(a\)](#). The mayor of the county involved has the authority to accept a Final EIS when an agency action proposes only to use county lands or funds. [HRS 343-5 \(a\)](#).
- For applicant actions, the authority to accept a Final EIS resides with the agency that initially received and agreed to process the request for approval. [HRS 343-5 \(e\)](#).
- State and county agencies that need to comply with both NEPA and HEPA are encouraged to prepare and process an EA or EIS simultaneously as a joint

NEPA/HEPA document. The statute requires cooperation with federal agencies “to the fullest extent possible.” [HRS 343-5 \(h\)](#), [HAR 11-200.1-31](#).

- A challenge with a joint NEPA/HEPA document is the coordination of the public review and comment periods, and the additional time needed for early consultation. It is also important to highlight the content requirements specific to HEPA in a joint EA or EIS, [HAR 11-200.1-21 or 11-200.1-27](#); this facilitates the review for HEPA compliance.
- There is no official “shelf life” for an EA or an EIS but a Supplemental EIS is required under certain conditions pursuant to [HAR 11-200.1-30](#). NEPA requirements for supplementing a draft or final EIS are found at [40 CFR 1502.9 \(d\)](#).

Contact Information and Resources

- Mary Alice Evans, OPSD Director
Office of Planning & Sustainable
Development
- Environmental Review Program:
235 South Beretania St., Suite 702
Honolulu, HI 96813
Website: <https://planning.hawaii.gov/erp/>
Email: dbedt.opsd.erp@hawaii.gov
Phone: (808) 586-4185