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**INTRODUCING FEDERAL NATIONAL ENVIRONMENTAL POLICY ACT PRACTITIONERS TO
THE HAWAII ENVIRONMENTAL POLICY ACT PROCESS**

This fact sheet is designed to familiarize Federal [National Environmental Policy Act](#) (NEPA) practitioners with the [Hawaii 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, [Hawaii Revised Statutes \(HRS\) Chapter 343](#), and the resulting [Hawaii Administrative Rule \(HAR\) Title 11 Chapter 200](#) 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 [Hawaii Office of Environmental Quality Control](#) (OEQC) staff when proposed projects trigger both Federal and State environmental review requirements. Project proponents are strongly encouraged to contact OEQC 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 agencies to consider the impact of governmental 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 in [OEQC’s Guide to the Implementation and Practice of HEPA 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 11-200-12](#). However, an agency may, through its judgment and experience, determine 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 fully described in [OEQC’s Guide to the Implementation and Practice of HEPA 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, exempt classes of action listed in HAR 11-200-8 are not subject to the HEPA process 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 11-200-8\(b\)](#). Agencies also may ask the OEQC



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Environmental Council to add exemption classes or develop their “own list of specific types of actions which fall within the exempt classes.” [HAR 11-200-8\(c\) and \(d\)](#).

There are three ways that a project can be cleared of the HEPA process (assuming no appeals). One, a State agency can determine the action is exempt from the requirement to prepare an EA. Two, a State agency can conduct an EA and determine that an action has a Finding of No Significant Impact (FONSI). Lastly, if an EIS is required by a State agency, either the Governor/county Mayor, or the approving agency can determine the final EIS (FEIS) to be acceptable under HEPA.

Key Points of Comparison

Table 1.1 below compares NEPA and HEPA terms and procedural requirements set forth by the OEQC.

NEPA	HEPA
	HEPA Exempt Classes of Action are authorized by HRS 343-6 and implemented by administrative rules, HAR 11-200-8 , where there is a stipulation that allows an agency to “develop its own list of specific types of actions which fall within the exempt classes.” HAR 11-200-8(d) .
Categorical Exclusion, 40 CFR 1508.4 , 40 CFR 1507.3	
Environmental Assessment (EA), 40 CFR 1508.9 , 40 CFR 1501.3	Environmental Assessment (EA), HAR 11-200-9 , HAR 11-200-10
Finding of No Significant Impact (FONSI), 40 CFR 1508.13	Finding of No Significant Impact (FONSI), HRS 343-2 , HAR 11-200-11.2(a)(2)
Notice of Intent, 40 CFR 1508.22	Preparation Notice/EIS Preparation Notice, HRS 343-2 , HAR 11-200-11.2 ; see HRS 343-5(b) and (e)
Draft Environmental Impact Statement (DEIS), 40 CFR 1502 , 40 CFR 1508.11	Draft Environmental Impact Statement (DEIS), HRS 343-2 , HAR 11-200-17
Final Environmental Impact Statement (FEIS), 40 CFR 1502 , 40 CFR 1508.11	Final Environmental Impact Statement (FEIS), HRS 343-2 , HAR 11-200-18
Record of Decision, 40 CFR 1505.2	Acceptance, HRS 343-2 , HAR 11-200-23 .



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The bullets below provide a general comparison of processes:

- While NEPA applies to Federal actions described in [40 CFR 1508.18](#), HEPA provides 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 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 11-200-9\(a\)](#). A State or county agency must be involved as a partner (Agency Action) or as a permitting agency (Applicant Action). OEQC may review the significance determination and advise the agency of any potential conflicts of interest. [HRS 343-5\(c\)](#). For applicant actions that trigger HEPA review and require agency approval, the agency receiving and agreeing to process the request for approval must require an applicant to provide the necessary information, and the approving agency must prepare an EA and determine whether an EIS is required. [HRS 343-5\(e\)](#); [HAR 11-200-9\(b\)](#).
- One of the specific considerations under HEPA is the effects of a proposed action on the cultural practices of the community, see [HRS 343-2](#).
- Under HEPA, mitigations in the EIS are for disclosure purposes to the permitting agencies who may incorporate the relevant mitigation in the permit conditions.
- The HEPA EA process can result either in a Finding of No Significant Impact (FONSI) or an Environmental Impact Statement Preparation Notice (EISPN) determination.
- The HEPA process includes two public comment periods: a 30-day administrative consultation period after the OEQC publishes notice of an EISPN; and a 45-day statutory comment period after OEQC publishes notice of a Draft EIS in its periodic bulletin (also known as The Environmental Notice). [HAR 11-200-15\(b\)](#) and [11-200-22\(b\)](#). Unlike under NEPA, there is no review period under HEPA and consequently no option for a public comment period on a Final EIS. 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 11-200-23\(d\)](#). Acceptance 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 an action 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 action proposes only to use county lands or funds. [HRS 343-5\(d\)](#).
- 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, which need not be the final decision-making body or approving agency for the request. [HRS 343-5\(e\)](#).
- State agencies that comply with NEPA have to complete an additional process under HEPA unless the EA or EIS is processed simultaneously as a joint NEPA/HEPA document. The statute requires cooperation with federal agencies “to the fullest extent possible.” [HRS 343-5\(h\)](#), [HAR 11-200-25\(2\)](#).
- The challenge with a joint NEPA/HEPA document is the coordination of the public review and comment period, and the additional time needed for early consultation. It is



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also important to highlight the content requirements specific to HEPA, [HAR 11-200-10 and 11-200-17](#), in a joint EA/EIS; 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 11-200-26](#). NEPA requirements for supplementing a draft or final EIS are found at [40 CFR 1502.9\(c\)](#).

Contact Information and Resources

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