

Transitioning to HAR Chapter 11-200.1 Environmental Impact Statement Rules

Hawai'i Congress of Planning Officials, Maui, September 13, 2019



Discussion

- Principles/
Background
- Milestones
- Documents
- Rules Structure
- Highlights



Photo by [Jeff Wallace](#) CC



“[T]he quality of the environment is as important to the welfare of the people of Hawaii as is the economy of the State. The legislature further finds that the determination of an **optimum balance between economic development and environmental quality** deserves the most thoughtful consideration, and that the **maintenance of the optimum quality of the environment deserves the most intensive care.**”

– HRS § 341-1, Environmental Quality Control Purpose

OEQC and EC Statutes and Rules

HRS §341-3	Establishes both OEQC and EC (and Environmental Center)
HRS §341-4	OEQC Director powers and duties
HRS §341-6	EC functions (rulemaking)
HRS §343-6	EC rulemaking authority
HAR §11-201 -16 through -20	EC rulemaking proceedings



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Mahina Tuteur

Guiding Principles

- Modernize government
- Be consistent with statutes
- Bring greater alignment to statute, case law, and practice
- Increase clarity of process and requirements
- Look to NEPA where it makes sense to do so
- Solve real problems



Milestones	Dates
Governor announced intent to sign rules and target date	May 7 (Tue)
Filing deadline for last bulletin under HAR Chapter 11-200 (8 work days before publication)	July 29 (Mon)
Governor signs HAR Chapter 11-200.1; file with the Office of the Lieutenant Governor	July 30 (Tue)
Last bulletin under HAR Chapter 11-200	Aug 8 (Thu)
HAR Chapter 11-200.1 takes effect (10 calendar days from filing with the Lieutenant Governor)	Aug 9 (Fri)
Under HAR Chapter 11-200.1, filing deadline for publication in the first bulletin:	
Grandfathered EAs and EISs (8 work days)	Aug 12 (Mon)
New EAs and EISs (5 work days)	Aug 15 (Thu)
First bulletin under HAR Chapter 11-200.1	Aug 23 (Fri)



Rules Transition August Milestones

SUN	MON	TUE	WED	THU	FRI	SAT
	29 Deadline for Aug 8 <i>Env</i> <i>Notice</i>	30 Gov Signs HAR 11-200.1	31	1	2	3
4	5	6	7	8 Last <i>Notice</i> of 1996 Rules	9 HAR 11-200.1 Takes Effect	10
11	12 Deadline for Aug 23 <i>Notice</i> (Grandfathered)	13	14	15 Deadline for Aug 23 <i>Notice</i> (New)	16	17
18	19	20	21	22	23 First <i>Notice</i> of 2019 Rules	24
25	26	27 Deadline for Sep 8 <i>Notice</i> (Grandfathered)	28	29	30 Deadline for Sep 8 <i>Notice</i> (New)	31

Rules Transition Sept Milestones

SUN	MON	TUE	WED	THU	FRI	SAT
1	2	3	4	5	6	7
Second Notice of 2019 Rules; 1 st with List of Exemption Notices 8	9	10	Deadline for Sep 23 Notice (Grandfathered) 11	12	13	14
15	Deadline for Sep 23 Notice (New) 16	17	18	19	20	21
22	Sep 23 Notice 23	24	25	Deadline for Oct 8 Notice (Grandfathered) 26	27	28
29	30	Deadline for Oct 8 Notice (New)				



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.



V2.0 HAR Chapter 11-200.1 Files

- Rules Standard Format
- Rules Ramseyer Format (same as standard format with minor technical formatting changes)
- Rules Rationale
 - Appendix 1 Ramseyer Unofficial Format 96 -> 1.0 -> 2.0
 - Appendix 2 Ramseyer Unofficial Format 96 -> 2.0
- Environmental Council Annual Report article:
http://oeqc2.doh.hawaii.gov/EC_Reports/EC-Annual-Report-2018.pdf#page=7
- OEQC Rules Update Overview
<http://health.hawaii.gov/oeqc/rules-update/>



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 ~~[[Seek]~~ **seek** **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 ~~[which]~~ **that the proposing agency or [applicant] approving agency** reasonably believes ~~[to]~~ may be affected.
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Chapter 11-200.1 Subchapters

1. Purpose
2. Definitions
3. Computation of Time
4. Filing and Publication in the Periodic Bulletin
5. Responsibilities
6. Applicability
7. Determination of Significance
8. Exempt Actions, List, and Notice Requirements
9. Preparation of Environmental Assessments
10. Preparation of Environmental Impact Statements
11. National Environmental Policy Act
12. Retroactivity and Severability



V2.0 HAR Chapter 11-200.1

Highlights

- Clarifying decision making and roles
- Clarifying significance criteria; sea-level rise, GHGs
- Modernizing submittals and deadlines
- Standardizing how to start from an EIS Prep Notice
- Clarifying programs versus projects for EAs and EISs
- Responding to comments in EAs and EISs
- Conducting joint federal-state environmental review
- Retroactivity and transition to new rules



Agencies and Authorities

- **Proposing/Determining Agency** – The agency that proposes the action also decides on the level of review and satisfactory completion of the process
- **Approving Agency** – The agency that initially received and agreed to process the request from an applicant
- **Accepting Authority** – this term is used for EISs, never for EAs. For agency actions, it is the Governor or Mayor; for applicant actions, the approving agency
- The Governor or Mayor can designate an authorized representative to be the accepting authority
- For EAs, the Governor and mayors are not involved



Environment – 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.

Significant effect – 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 as established by law, or
- adversely affect the economic welfare, social welfare, or cultural practices of the community and State.



Effects may include:

- ecological effects (e.g., natural resources, the components, structures, and functioning of affected ecosystems),
- aesthetic, historic, cultural, economic, social, or health, 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.

“Impacts” are defined to mean the same thing as “effects”.



- **Primary or direct effect** – effect that is caused by the action and occur at the same time and place.
- **Secondary or indirect effect** – 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.
- **Cumulative effect** – 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.

Significance criteria:

- (1) Irrevocably commit a natural, cultural, or historic resource;
- (2) Curtail the range of beneficial uses of the environment;
- (3) Conflict with State's environmental policies or long-term environmental goals;
- (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**.



Exemptions: Lists, Notices, and Lists of Exemption Notices

- New rules do not change threshold for exemptions
- Clarifying exemptions; CIP versus O&M
- Exemption lists are optional and guidance
- 2 parts: *de minimis* and the usual exemptions
- Update lists every 7 years with Council concurrence
- Lists of exemption notices must be submitted to the OEQC each month for publication in the 8th issue of the *Notice*
- OEQC will post lists of exemption notices to its SharePoint site and provide a link to it in the *Notice*



Exemptions: General Types

- No more “classes”, now “general types” to match the statute
- The numbering of the general types has changed
- Type 9: Acquisition of land and existing structures, including single or multi-unit dwelling units for affordable housing
- Type 10: The new construction of affordable housing

Exemption 10

- (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).



NAME (State/County of Govt Name)

First Last, (808) XXX-XX

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Guidance Guidance Guidance

- Stay informed
 - Sign up for emailed updates on the rules update page <http://health.hawaii.gov/oeqc/rules-update/>
 - Check the SharePoint site for additional materials <http://oeqc2.doh.hawaii.gov>
- Submit comments and questions directly
 - Email oeqchawaii@doh.hawaii.gov
 - Call us at 808-586-4185

