



FACT SHEET: HEPA VS. NEPA

DISTINCTIONS BETWEEN THE FEDERAL NATIONAL ENVIRONMENTAL POLICY ACT AND THE HAWAI'I ENVIRONMENTAL POLICY ACT PROCESS

This fact sheet is designed to identify differences between the Federal [National Environmental Policy Act](#) (NEPA) process requirements from the [Hawai'i Environmental Policy Act](#) (HEPA), codified as Chapter 343, Hawai'i Revised Statutes. When a proposed NEPA action that takes place in the State of Hawai'i, it may require compliance with HEPA as well as NEPA. As a result, for example, Federal practitioners need to understand how HEPA compares and contrasts with NEPA in order to streamline the process of complying with the requirements of both jurisdictions. Hawai'i Administrative Rules (HAR) require agencies of the executive branch of State of Hawai'i or county governments (hereinafter referred to as "State" agencies) to coordinate and cooperate with federal agencies where possible to achieve concurrent documents and reviews and avoid duplication and delay.

This document contains only the basic information and is intended to serve as a springboard for discussion with the Hawai'i 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 and streamlined.

INTRODUCTION TO HEPA

HEPA requires that State agencies 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, an environmental review process will integrate the review of environmental concerns with existing planning processes of both the State and county governments (hereinafter referred to as "State" agencies - as opposed to "Federal" agencies, for purposes of discussion). The HEPA process also alerts decision makers to significant environmental effects that may result from the implementation of certain actions." HRS 343-1. Since 1974, HEPA has mandated that its process be in one of three ways for any of the thirteen "triggers" described in the paragraph below and mentioned in the OEQC's Guide to the Implementation and Practice of HEPA. Actions that do not fall under one of the thirteen triggers are excluded by statute from the HEPA process. Any action that is not excluded by statute must undergo the HEPA environmental review process.

As noted above, there are three ways that a project can be cleared of the HEPA process (assuming there are no appeals). One, a State agency can determine that the action is exempt from the requirement to prepare an Environmental Assessment (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 environmental impact statement (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

Both statutes are designed to facilitate informed decision-making and environmental review. For those accustomed to using NEPA, it is helpful to see the differences between the NEPA and HEPA terms and procedural requirements. Table 1.1 illustrates the specific differences between HEPA's Hawai'i Administrative Rules (HAR) Title 11, Chapter 200, and Hawaii Revised Statutes (HRS) Chapter 343 and NEPA's 40 CFR Parts 1500-1508.



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<p>Categorical Exclusion, 40 CFR 1508.4, 40 CFR 1507.3</p>	<p>Exempt Classes of Action, HAR 11-200-8. HEPA Exempt Classes of Action are authorized by statute (HRS 343-6) and implemented by administrative rule HAR 11-200-8 where there is a stipulation that allows agencies to “develop its own list of specific types of actions which fall within the exempt classes.” HAR 11-200-8(d)</p>
<p>The NEPA process begins when the agency determines that there is a major federal action.</p>	<p>The HEPA process begins when an applicant or an agency proposes an action that is one the thirteen triggers described in HRS 343-5(a).</p>
<p>Environmental Assessment (EA), 40 CFR 1508.9, 40 CFR 1501.3</p> <div style="text-align: center;">  </div>	<p>Environmental Assessment (EA), HAR 11-200-9 The HEPA EA process can result either in a FONSI or a determination that an EIS is required, in which case an EIS Preparation Notice (EISPN) would result.</p> <ul style="list-style-type: none"> • Early consultation process in HAR 11-200-9 enables a proposing/approving agency to determine the action track. • Draft EA is published for 30-day public review and comment period with Anticipated FONSI determination. HAR 11-200-9.1 • Final EA with FONSI determination addresses comments to the DEA and incorporates relevant information. • There is a 30-day challenge period to the FONSI determination. • The content requirements for an EA are listed in HAR 11-200-10 • One of the considerations under HEPA is the effects on the cultural resources/practices of the community. See, 2012 Technical Guidance, pp. 11-13.
<p>Finding of No Significant Impact (FONSI), 40 CFR 1508.13</p>	<p>Finding of No Significant Impact (FONSI), HRS 343-2, HAR 11-200-11.2(a)(2)</p>



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<p>Notice of Intent, 40 CFR 1508.22</p>	<p>EIS Preparation Notice, HRS 343-2, Act 172-2012, HAR 11-200-11.2</p> <p>The EIS Preparation Notice determination can be supported by an EA or by an agency’s judgment and experience, Act 172-2012, HRS 343-5(b) and (e)</p>
<p>Draft Environmental Impact Statement (DEIS), 40 CFR 1502, 40CFR 1508.11 The NEPA process includes two public comment periods: a 45-day period for the Draft EIS and one for the FEIS, below.</p>	<p>Draft Environmental Impact Statement (DEIS), HRS 343-2, HAR 11-200-17 (45-day comment period cannot be extended).</p> <p>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 HAR 11-200-22(b) statutory comment period after OEQC publishes notice of a Draft EIS in its periodic bulletin (also known as the Environmental Notice).</p>
<p>Final Environmental Impact Statement (FEIS), 40 CFR 1502, 40 CFR 1508.11, the next comment period is for 30-days prior to issuance of a record of decision on a FEIS.</p>	<p>Final Environmental Impact Statement (FEIS), HRS 343-2, HAR 11-200-18. There is no comment period after the FEIS</p>
<p>Record of Decision, 40 CFR 1505.2</p> <ul style="list-style-type: none"> • Mitigations are enforceable. 	<p>Acceptance, HRS 343-2, HAR 11-200-23</p> <ul style="list-style-type: none"> • Mitigations in the EIS are for disclosure purposes to the permitting agencies who may incorporate the relevant mitigation in the permit conditions. • There is no statutory shelf life for an EA or an EIS but a Supplemental EIS is required under certain conditions pursuant to HAR 11-200-26.

It is important to restate that while these two processes are similar, HEPA has different content requirements and procedural requirements. It is also important to note that while terms used may sound similar (*environmental assessment, significance, etc.*), they derive from very different laws and may vary in meaning. When speaking about HEPA or NEPA in the same document, these similar sounding terms should be qualified (e.g., *significance* (HEPA) in contrast to *significance* (NEPA)). In all cases, Federal agencies cannot directly submit document to the OEQC for the HEPA process. A state or county agency must be involved as a partner (Agency Action) or as a permitting agency (Applicant Action). Not complying with this part of the HEPA process can lead to serious delays in a project.

While there still remain many challenges to using both processes, such as coordinating the public review and comment period, the OEQC is available to offer guidance.

It should also be known that agencies in Hawaii are required by statute to cooperate with federal agencies “to the fullest extent possible.” Documents that comply with NEPA have to complete an additional process under HEPA, unless the EA or EIS is processed simultaneously as a NEPA/HEPA joint document. [HAR 11-200-25](#).



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CONTACT INFORMATION AND RESOURCES

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- Hawai'i OEQC Website: <http://health.hawaii.gov/oeqc/>
- Other Resources:
HEPA Administrative Rules: http://files.hawaii.gov/luc/docs/har_11_200.pdf
HEPA Statute: http://dlnr.hawaii.gov/occl/files/2013/07/hrs_343.pdf
Hawai'i OEQC Guide to the Implementation and Practice of the Hawaii Environmental Policy Act:
<http://goo.gl/LZmGCy>

