

6.4 Supplemental Environmental Impact Statements

HEPA provides that acceptance of an EIS satisfies HEPA's requirements and no further EIS is required for that action. Section 343-5(i), HRS, Section 11-200-26, HAR, in contrast requires that no further EIS is required unless the action has substantively changed "in size, scope, intensity, use, location, or timing, among other things." The rules go on to explain that if the action has changed and the change may have a "significant effect," then the EIS is no longer valid and a supplemental is required.

The Hawaii Supreme Court applied Section 11-200-26, HAR as a two-step process in *Unite Here! Local 5 v. City and County of Honolulu*, 123 Hawaii 150, 231 P.3d 423 (2010). The court first determined that the timing of the action changed. The court then considered whether a change in timing may have a significant effect. The term "may have a significant effect" applies when the record "raises substantial questions" regarding whether the project will likely have a significant effect on the environment.

A supplemental EIS should also be prepared "when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with." Section 11-200-17, HAR.

(Note that the application of Section 11-200-27 is disputed. Some interpretations of this section permit consideration of new circumstances or evidence only if the project has also changed in size, scope, location, intensity, use, or timing. The Hawaii Supreme Court did not address whether a supplemental EIS is required when there is no change in the action's size, scope, location, intensity, use or timing.)

