



MEPA REGULATORY REVIEW

September 2021

Public Comments Due by October 20, 2021



KEY THEMES FOR REGULATORY REVIEW

- **Regulatory review effort launched in February 2021**
- **Goal is alignment with state policy and planning efforts**
 - Environmental justice
 - Climate adaptation and resiliency
 - Greenhouse gas (GHG) mitigation
- **Timing of regulatory revisions**
 - 2021: Meet December 21 statutory deadline to incorporate environmental justice requirements into regulation.
 - 2021-22: Partner with MassDEP's cumulative impact analysis (CIA) stakeholder effort and consider 2nd phase rulemaking in 2022.



MEPA OVERVIEW

- **Basic rule**
 - MEPA review needed if there is Agency Action and “review thresholds” (defined in regulation) are exceeded
- **MEPA statute (M.G.L. c. 30, s. 61 et seq.)**
 - *NEW: 2021 climate legislation (St. 2021, c. 8, ss. 57-60) requires consideration of environmental justice during MEPA review*
- **MEPA regulations (301 CMR 11.00)**
 - Review thresholds define project impacts that are “**likely to cause Damage to the Environment**”
 - “ENF” thresholds require filing of environmental notification form
 - “Mandatory EIR” thresholds require environmental impact reports



CLIMATE LEGISLATION (Section 57)

- **Modified existing provisions for Environmental Impact Reports (EIRs) submitted to the MEPA Office**
- **New requirements:**
 - A description of the **public health impact** of the proposed project
 - Include measures to minimize **public health damage**
 - Include adverse **public health consequences** that cannot be avoided



CLIMATE LEGISLATION (Section 58)

- **Added new requirements for EIRs to contain analysis of impacts on Environmental Justice (EJ) populations:**
 - EIR for projects that are **likely to cause Damage to the Environment [as defined in regulation]** and are located **within 1 mile of an EJ population or within 5 miles if the project that impacts air quality**
 - Assessment of any **existing unfair or inequitable environmental burden and related public health consequences** from any prior or current project
 - If EJ population is subject to an existing burden, the report shall identify any: (i) environmental and public health impact from the proposed project that would **likely result in a disproportionate adverse effect**; and (ii) potential impact or consequence from the proposed project that would **increase or reduce the effects of climate change** on the EJ population



CLIMATE LEGISLATION (Section 60)

- **Added new requirements for public involvement by EJ populations:**
 - Environmental notification form shall indicate if an EJ population that lacks English language proficiency within a designated geographical area is **reasonably likely to be affected negatively by the project.**
 - If a proposed project affects an EJ population, the **secretary shall require additional measures to improve public participation** by the EJ population.
 - The term **designated geographic area** shall mean an EJ population located within a distance of 1 mile of a project, unless the project affects air quality then the distance from such project shall be increased to 5 miles.



ACTIVITIES CONDUCTED TO DATE

- **Draft MEPA Public Involvement Protocol released on June 23**
 - Accepted public comments until August 9
 - Will be incorporated into M.G.L. c. 30A rulemaking effort
- **Meetings held**
 - 7/14: Two public presentations
 - 7/13-16: Small group sessions with business community, environmental/EJ groups, local/regional planning bodies
 - 7/21, 8/5, 8/6: Focus groups held
- **MEPA advisory committee**
 - Will inform MEPA regulatory review effort in 2021-22
 - Plan to meet frequently to discuss EJ topics in Sept-Oct 2021



PROPOSED REGULATORY APPROACH

- 1. Apply plain language of statute (“EIR shall be required”) for any project within 1 mile of EJ population [5 miles would be based on air quality impact, as defined in regulation].**
- 2. Define in regulation what EIR scope would contain if EIR were required based on EJ impacts, including:**
 - Assessment of “existing environmental burden”
 - Assessment of “disproportionate adverse effects” on EJ population and whether project will increase/reduce climate effects
 - Mitigation and Sec. 61 findings to the extent related to EJ impacts
- 3. Apply existing flexibility in review procedures (e.g., Single EIR, scoping).**
- 4. Incorporate public health into EIR scope and Section 61 requirements.**
- 5. Work with advisory committee to develop further guidance.**



CURRENT SCHEDULE

- **Sept. 17:** File draft regulations with Secretary of State's Office
- **Sept. 24:** First public meeting of MEPA advisory committee
- **Oct. 12-13:** Public hearings on MEPA regulations
- **Oct. 20:** End of comment period for MEPA regulations
 - Additional comment period on EJ guidance in early November
- **Nov. 26:** File final regulations with SOS
- **Dec. 10, 2021:** Official promulgation date to meet Dec. 21 deadline
- **Dec. 2021 / Jan. 2022:** Tentatively plan to issue revised GHG policy for public comment
- **2022:** Issue 2nd phase regulatory package following MassDEP's CIA stakeholder process; consider MEPA climate resiliency policy



WAYS TO PARTICIPATE

- Attend Oct. 12-13 public hearings and submit comments by Oct. 20, 2021 at MEPA-regs@mass.gov.
- Attend public meetings of the MEPA advisory committee: <https://www.mass.gov/info-details/mepa-advisory-committee>.
- Send blank email to subscribe-mepa_reg_review@listserv.state.ma.us to receive ongoing alerts.
- Updates will be posted at MEPA website at <http://mass.gov/service-details/information-about-upcoming-regulatory-updates>.