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**Background Document on
Proposed Regulations by
Massachusetts Environmental Policy Act (MEPA) Office**

MEPA Regulations at 301 CMR 11.00 et seq.

September 2021

**Regulatory Authority:
M.G.L. c. 30, §§ 61 to 62I**

Summary

The Massachusetts Environmental Policy Act (MEPA) Office within the Executive Office of Energy and Environmental Affairs (EEA) is proposing to amend its regulations at 301 C.M.R. 11.00 et seq. These amendments seek to implement new requirements under Sections 55-60 of Chapter 8 of the Acts of 2021: *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy* (the “Climate Roadmap Act” or “the Act”). The amendments also reflect modest updates to MEPA filing and circulation requirements.

Background

The MEPA program, originally enacted in 1972, requires projects for which action is needed by an “Agency” to undergo an environmental review process prior to the taking of such action. As stated in MEPA regulations, the purpose of the MEPA program is to “provide meaningful opportunities for public review of the potential environmental impacts of Projects for which Agency Action is required, and to assist each Agency in using (in addition to applying any other applicable statutory and regulatory standards and requirements) all feasible means to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable.” 301 C.M.R. 11.01(1)(a); see also M.G.L. c. 30, § 61 (general purpose); id. §§ 61-62 & 301 C.M.R. 11.02 (relevant definitions).

MEPA regulations establish certain “review thresholds,” which “identify categories of Projects or aspects thereof, of a nature, size or location that are likely, directly or indirectly, to cause Damage to the Environment.” 301 C.M.R. 11.01(2)(b)1. Provided an Agency Action is required, the review thresholds determine the level of review required as follows: (i) a project that meets or exceeds an “ENF” threshold must file an Environmental Notification Form (ENF) for public review, and must undergo additional review if the Secretary of EEA so requires in his or her discretion; and (ii) a project that meets or exceeds a “mandatory EIR” threshold must file an ENF for public review, and subsequently must file one or more mandatory Environmental Impact Reports (EIRs) for public review. An ENF filing undergoes 30-day review period (with 20 days for public comment), while each EIR is subject to a 37-day review period (with 30 days for public comment). See M.G.L. c. 30, §§ 62A-62C.

For projects undertaken by, or seeking financial assistance from, an Agency, the Scope of EIR review is broad, and encompasses all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment. For projects undertaken by private proponents for which financial assistance is not sought, the Scope of EIR review is generally limited to the subject matter of required permits. See M.G.L. c. 30, § 62A; see also 301 CMR 11.01(2)(a)-(b).

On March 26, 2021, Governor Baker signed into law the Climate Roadmap Act, which enacted a new definition of “Environmental Justice Population” (hereinafter “EJ Population”) for purposes of enhancing public involvement and analysis of impacts during the MEPA review process. The new statutory definition of “EJ Population” includes four categories of neighborhoods (defined as census blocks) with certain demographic characteristics based on income level, minority status, and English language proficiency. In turn, Section 60 of the Act provides that, “[t]o enable the public to assess the impact of proposed projects that affect their environment, health

and safety through the [MEPA] project review process . . . , the [S]ecretary [of EEA] shall provide opportunities for meaningful public involvement” by EJ populations.

In addition to requiring enhanced public involvement opportunities, Section 57 of the Climate Roadmap Act requires that EIRs submitted for MEPA review include statements regarding the public health impacts, in addition to environmental impacts, of projects, as well as measures proposed to minimize any anticipated environmental and public health damage. Section 58 further requires that an EIR is required for any project that is “likely to cause Damage to the Environment” and is located within 1 mile of an EJ population (or 5 miles if the project impacts air quality). The EIR must contain an assessment of any “existing unfair or inequitable environmental burden and related public health consequences impacting the [EJ] population from any prior or current private, industrial, commercial, state, or municipal operation or project that has damaged the environment.” If the assessment indicates that an EJ population is subject to an existing unfair or inequitable environmental burden or related health consequence, the EIR shall identify any: “(i) environmental and public health impact from the proposed project that would likely result in a disproportionate adverse effect on such population; and (ii) potential impact or consequence from the proposed project that would increase or reduce the effects of climate change on the environmental justice population.” The Climate Roadmap Act requires that the Secretary of EEA promulgate regulations to implement Sections 57 and 58 within 180 days of the Act’s effective date.

Description of Proposed Amendments

The proposed amendments to 301 C.M.R. 11.01 et seq. serve to implement the mandates imposed on the MEPA review process under the Climate Roadmap Act, and to make modest updates to MEPA filing and circulation requirements. A more detailed description of the proposed changes follows below.

I. Climate Roadmap Act Requirements

The following amendments are proposed to implement the requirements of Sections 55-60 of the Climate Roadmap Act.

11.01: General provisions

- 11.01(1)(a), (d): Proposed amendments to these subsections incorporate the general directive in Section 60 of the Climate Roadmap Act (enacting new M.G.L. c. 30, § 62K) that the Secretary shall consider “Environmental Justice Principles” in conducting MEPA reviews of projects. These amendments also affirm a commitment to providing meaningful opportunities for public involvement by EJ Populations.
- 11.01(1)(a), (d); (2)(a); 4(c): The addition of the phrase “public health impacts” to these subsections reflect the directive in Section 57 of the Climate Roadmap Act (amending M.G.L. c. 30, § 62B) that EIRs submitted to the MEPA Office address public health impacts, in addition to environmental impacts, of projects. The specific subsections related to the Scope of EIRs and “Section 61 Findings” issued by Agencies under M.G.L. c. 30, § 61 are revised to require a finding that all feasible measures have been taken to avoid, or if unavoidable, to minimize environmental “and related public health impacts.”

11.02: Definitions

- *New* definitions of “Environmental Benefits,” “Environmental Burden,” “Environmental Justice Population,” “Environmental Justice Principles,” and “Neighborhood” have been added from Section 60 of the Climate Roadmap Act. Technical amendments were made to the definition of “Damage to the Environment” to align with statutory language.

11.05: ENF content

- *New* 11.05(4)(d): This new subsection addresses the requirements of Section 60 of the Climate Roadmap Act, which provides that new projects filing with the MEPA Office shall state in the ENF form whether project impacts are reasonably likely to negatively affect EJ Populations within 1 mile, or within 5 miles if the project will impact air quality; if so, the project must provide opportunities for meaningful public involvement by such populations. This subsection defines “impacts air quality” to mean that a project meets or exceeds “air thresholds” at 301 CMR 11.03(8)(a)-(b) or generates 150 or more new average daily trips (adt) of diesel vehicle traffic over a duration of 1 year or more. If the project is determined to be reasonably likely to have negative effects within a 1-mile or 5-mile radius of the project, the project proponent will be required to provide meaningful opportunities for public involvement by EJ Populations within such geographical areas. In conducting such outreach activities, the proponent will be required to comply with the MEPA Public Involvement Protocol for EJ Populations, as it may be amended from time to time.
- 11.05(7): Proposed amendments to this subsection clarify that an expanded ENF filing may contain additional information related to assessment of impacts on EJ Populations, in accordance with new 301 CMR 11.07(6)(n) when seeking permission to file a Single EIR. Additional references to “public health impacts” are added to this subsection for the reasons stated on p. 3 above.

11.06: ENF Review and Decision

- *New* 11.06(7)(b): Proposed amendments to this subsection incorporate the new requirement in Section 58 of the Climate Roadmap Act that all projects that are “likely to cause Damage to the Environment” and are located within 1 mile, or 5 miles if the project will impact air quality, of EJ Populations must submit an EIR. Because MEPA review thresholds are defined as categories of projects or aspects thereof that are “likely, directly or indirectly, to cause Damage to the Environment,” 301 C.M.R. 11.01(2)(b)1., the new EIR requirement is applied to those projects that meet or exceed MEPA review thresholds (and are otherwise subject to MEPA jurisdiction). The plain language meaning of “[EIR] shall be required” from the Climate Roadmap Act is applied to require an EIR for such projects, provided they are located within the designated geographical areas near EJ populations. This subsection again defines “impacts air quality” to mean that a project meets or exceeds “air thresholds” at 301 CMR 11.03(8)(a)-(b) or generates 150 or more new average daily trips (adt) of diesel vehicle traffic over a duration of 1 year or more. The EIR must contain all the content in 301 CMR 11.07(6)(n), in addition to any other elements specified by the Secretary in the Scope. This subsection also defines the requirements of EIRs in the event the Secretary fails to issue an ENF Certificate with a corresponding Scope.

- 11.06(7)(a), (8), (9): Additional references to “public health impacts” are added to these subsections related to the Scope for EIRs for the reasons stated on p. 3 above.

11.07: EIR Preparation and Filing

- 11.07(3)-(6): Additional references to “public health impacts” are added to these subsections related to the Scope for EIRs and Proposed Section 61 Findings, for the reasons stated on p. 3 above.
- *New* 11.07(6)(n): This new subsection describes the content of an EIR that is required under *new* 301 CMR 11.06(7)(b) because a project is located within 1 mile, or 5 miles if the project will impact air quality, of EJ Populations. Consistent with Section 58 of the Climate Roadmap Act, such content must contain an assessment of “any existing unfair or inequitable Environmental Burden and related public health consequences” impacting the EJ Population, as well as a description of the project’s impacts and their potential to cause “disproportionate adverse” effects, or to increase or reduce the effects from climate change, on EJ Populations. This subsection requires analysis of alternatives and measures to avoid, minimize, and mitigate to the greatest extent practicable potential environmental and public health impacts so as to prevent disproportionate adverse effects, or an increase in the effects of climate change, on EJ Populations, together with associated Section 61 Findings and response to comments. This subsection clarifies that the EIR Scope and Section 61 Findings shall not be subject to the subject matter limitations in 301 CMR 11.06(9)(b) and 301 CMR 11.12(5)(c), to the extent such Scope and Section 61 Findings relate to an assessment of impacts on EJ Populations.

11.12: Agency Responsibilities and Section 61 Findings

- 11.12(1): Proposed amendments to this subsection incorporate the directive in Section 60 of the Climate Roadmap Act (enacting new M.G.L. c. 30, § 62K) that the Secretary shall direct agencies conducting project reviews or undertaking projects subject to MEPA to consider Environmental Justice Principles.
- 11.12(5): Additional references to “public health impacts” are added to this subsection related to Agency Section 61 Findings, for the reasons stated on p. 3 above.

II. MEPA Procedures

11.16: Filing and Circulation

- 11.16(1): Technical correction to the zip code for the MEPA Office.
- 11.16(2)(b), (d): Proposed amendments to these subsections add new circulation requirements to the EEA EJ Director and the Massachusetts Department of Public Health for any project within 5 miles of an EJ Population. These amendments also require compliance with circulation requirements in the MEPA Public Involvement Protocol for EJ Populations, as it may be amended from time to time. Consistent with prior practice, failure to comply with the circulation requirements in MEPA regulations may result in rejection of project filings, or an extension or repetition of the MEPA process. See 301 CMR 11.05(1), 11.07(1).

- 11.16(2)(a), (3)(a), (5)-(6): Proposed amendments to these subsections allow for electronic filing and distribution to the Secretary’s office, consistent with current practice and in anticipation of IT upgrades. Amendments to 301 CMR 11.16(3)(b) require circulation of EIRs to “each Agency from which the Project will seek Permits, Land Transfers or Financial Assistance,” consistent with current practice.

11.17: Transition Rules

- Consistent with St. 2021, c. 8, § 102B, the proposed amendments to this section state that the new requirements of the Climate Roadmap Map shall apply to any new project for which an ENF (or expanded ENF) is filed following the effective date of the amendments. Specifically, all new projects filed on or after the December 16, 2021 deadline for publication in the Environmental Monitor, as established under 301 CMR 11.15(2)(b), will be subject to the new rules.

Small Business Impact

Under the proposed amendments to 301 CMR 11.00, project proponents will need to devote additional resources for preparation of EIRs and completion of community outreach activities. Project proponents include small businesses undertaking various projects that are subject to MEPA review due to the presence of “Agency Actions.” A wide range of private entities engage in the MEPA process as project proponents, including real estate developers, nonprofit organizations, cannabis operations, and solid waste facilities. Many of these proponents may qualify as small businesses.

Municipal Impact

Municipalities participate as both project proponents and commenters in the MEPA review process. Municipalities serving as project proponents will be subject to the same impacts as those described above with respect to small businesses. Municipalities serving as commenters, including through planning boards, conservation commissions or elected officials, will benefit from the enhanced disclosure of project impacts, including environmental and public health impacts and impacts to EJ populations, that will result from these proposed amendments.

Public Participation

The MEPA regulatory review effort was launched in February 2021 with announcements on the MEPA website and the *Environmental Monitor*; general comments were solicited at that time. The MEPA Office also issued for public comment two interim protocols on EJ outreach and climate adaptation and resiliency.

Following passage of the Climate Roadmap Act, a revised MEPA Public Involvement Protocol for EJ Populations was issued for comment on June 23, 2021, and public comments were received until August 9, 2021. The MEPA Office also held public presentations and stakeholder sessions on the regulatory review effort in July and August 2021.

Based on comments and feedback received, the MEPA Office has incorporated certain provisions of the MEPA Public Involvement Protocol for EJ Populations into this M.G.L. c. 30A regulatory package, and has deferred the effective date of the protocol. In addition, the MEPA

Office has formed a MEPA advisory committee to provide ongoing stakeholder input, and intends to further revise the MEPA Public Involvement Protocol and develop additional guidance with input from the advisory committee. The MEPA Office is participating in a parallel stakeholder effort led by the Massachusetts Department of Environmental Protection (MassDEP) related to a “cumulative impacts analysis” (CIA) framework for air permitting. More information on these stakeholder engagement efforts is available on the [MEPA website](#).

Remote (virtual) public hearings on this M.G.L. c. 30A regulatory package will be held via Zoom at the following dates and times:

- October 12, 2021, 10am-12noon (register at link below)
<https://us02web.zoom.us/meeting/register/tZUvcumtqT0oHdQV7EMDBwUtxkwHY3GGbkMw>
- October 13, 2021, 1-3pm (register at link below)
https://us02web.zoom.us/meeting/register/tZwvceqgrzorE9wZ79M_MYJ-6bFk0vNJVHi4
- October 13, 2021, 6:30-8:00pm (register at link below)
https://us02web.zoom.us/meeting/register/tZlpcuyvpz4sHNes9u_GSD43I4K1hwFuj1Vn

Following public hearings, written comments will be accepted until **5:00pm on October 20, 2021** by email at MEPA-regs@mass.gov, or by mail to MEPA Office, Attn: Tori Kim, 100 Cambridge Street, Suite 900, Boston, MA 02114.

To request written language translation or oral interpretation at the public hearings, please contact MEPA-regs@mass.gov. For oral language interpretation, the request must be received at least three (3) business days prior to the public hearing date at which the interpretation is requested. To request other reasonable accommodations, please contact Melixza Esenyie, ADA and Diversity Manager at Melixza.Esenyie2@mass.gov or 617-626-1282.

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