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**Response to Comments on
Draft Regulatory Amendments Proposed by the
Massachusetts Environmental Policy Act (MEPA) Office**

MEPA Regulations at 301 CMR 11.00 et seq.

December 10, 2021

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

Background

On October 1, 2021, notice was published in the Massachusetts Register of proposed amendments to regulations of the Massachusetts Environmental Policy Act (MEPA) Office at 301 CMR 11.00 et seq. These amendments implement new requirements under 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.

The MEPA Office held public hearings and solicited comments on the proposed amendments in accordance with M.G.L. Chapter 30A. On September 17, 2021, the MEPA Office published notice of the public hearings and public comment period in the Boston Globe, Worcester Gazette, and Springfield Republican. The MEPA Office also notified a wide range of stakeholders through its email distribution lists and additional outreach. Three public hearings were held via Zoom on October 12-13, 2021, and a fourth was added and held via Zoom on October 15, 2021. Four individuals provided comments or asked clarifying questions during the public hearings. The public comment period closed on October 20, 2021.

In addition, in September 2021, the MEPA Office formed a MEPA Advisory Committee, consisting of a variety of stakeholders that regularly engage in the MEPA review process, to provide ongoing input for this regulatory review effort. The MEPA Office appreciates the time and effort that the MEPA Advisory Committee has expended to date.¹

Response to Comments on Regulatory Amendments

The MEPA Office appreciates the comments received on draft regulatory amendments that were published in the Massachusetts Register on October 1, 2021. Written comments were received from the following individuals and organizations:

Anne McKinnon
Boston Harbor Now
Cape Cod Commission
Carley Przystac
Charles River Watershed Association
Conservation Law Foundation (with proposed redline)
Eileen Michaud
Eversource
Fore River Residents Against the Compressor Station
Massachusetts Association of Conservation Commissions
Massachusetts Rivers Alliance
Mass Audubon
Massachusetts Port Authority
Michael Toohill
NAIOP Commercial Real Estate Development Association of MA (with proposed redline)
Nathaniel Thomas
Neponset River Watershed Association

¹ Members of the MEPA Advisory Committee and summaries of past meetings can be viewed at <https://www.mass.gov/info-details/mepa-advisory-committee>.

General comments

1. **Comment:** Some comments expressed concern that the new requirements of the Climate Roadmap Act could make it harder for projects that benefit environmental justice (EJ) communities to be implemented. In particular, several comments addressed ecological restoration and other similar projects that are intended to improve environmental conditions and raised concern that the new mandates of the Climate Roadmap Act may make it more difficult for such projects to be implemented.

Response: The MEPA Office acknowledges that the Climate Roadmap Act added new requirements to the MEPA review process—including the requirement that all projects that are “likely to cause Damage to the Environment” and located within at least 1 mile of an EJ population must prepare an environmental impact report (EIR). The regulations cannot modify these requirements because they are mandated by law and cannot be waived. The Background Document on the proposed regulations prepared by the MEPA Office (the “MEPA Background Document”)² provides an explanation of the statutory language. However, as discussed below, the final regulations have been amended to provide additional streamlined project review procedures that may be followed in appropriate cases to complete the EIR process.

2. **Comment:** Some comments urged that the MEPA process serve as a vehicle for providing an overview of all relevant impacts prior to permitting, including the public health and environmental well-being of EJ populations, and that MEPA regulations should set standards for when permits would be denied.

Response: The MEPA Office acknowledges that MEPA review is intended to be a precursor to the taking of “Agency Actions” for a project, including the issuance of “Permits,” as defined in 301 CMR 11.02, and that, with the changes added by the Climate Roadmap Act, EIR review now includes consideration of public health impacts and impacts to EJ populations. MEPA review, however, does not serve as a Permit in and of itself, and it is inappropriate to use the MEPA regulations to set standards for when an Agency would deny a Permit, particularly when a number of such Permits are subject to regulations promulgated by the issuing Agencies.

EIR Procedure

3. **Comment:** Several comments raised concern about the substantial increase in EIR filings that may result from the new mandates imposed on projects located near EJ populations. Comments proposed specific procedures whereby the new EIR requirement could be satisfied in a more streamlined fashion, including the use of an “EJ Certification” that could be issued by the EEA Secretary to support acceptance of an Environmental Notification Form (ENF) as the new EIR required under Section 58 of the Climate Roadmap Act.

Response: The MEPA Office acknowledges that an increase in EIR filings is likely due to the mandatory phrasing in the Climate Roadmap Act that an EIR “shall be required” for certain projects near EJ populations. As explained in the MEPA Background Document, Section 58 of

² Available at <https://www.mass.gov/service-details/information-about-upcoming-regulatory-updates>.

the Act applies to projects that are “likely to cause Damage to the Environment,” which is a phrase used in MEPA regulations to describe the MEPA review thresholds that determine the level of MEPA review required. See 301 CMR 11.01(2)(b)1., 11.03. In practice, this means that projects that are subject to MEPA jurisdiction and meet or exceed one or more “ENF review thresholds,” for which an ENF filing is required and any EIR was formerly required at the discretion of the EEA Secretary, will on a going forward basis be required to submit an EIR if located in the designated geographic areas around EJ populations, *i.e.*, within 1 mile of an EJ population, or within 5 miles of an EJ population if the project impacts air quality. The MEPA Office estimates that more than 80% of new project filings in 2020-21 triggered ENF-only review thresholds, meaning that many future projects will be required to submit an EIR after the effective date of the regulations because they are located in the designated geographic areas around EJ populations.

As shown in the list of regulatory changes below, the final regulations have been amended to include expanded options for streamlined reviews in instances where a Proponent demonstrates, among other things, that a project will not materially exacerbate any existing unfair or inequitable environmental burden or related public health consequence impacting an EJ population and that it will not result in a disproportionate adverse effect or an increased climate change effect on an EJ population. If these conditions are anticipated to be met, the Proponent will have the option to submit a proposed EIR at the same time as an expanded ENF filing, along with a request that the Secretary publish the proposed EIR in the subsequent Environmental Monitor without change and issue a final Certificate following an additional public comment period. The Secretary shall retain the discretion to deny such requests and issue a Scope for a Draft EIR. This new procedure is called a “rollover EIR.”

Consistent with current practice, all projects will continue to have the additional option of submitting an expanded ENF filing together with a request that a Scope be issued for a Single EIR, in lieu of following the typical two-step Draft and Final EIR process. The final regulations do not permit an option whereby the Secretary would accept the initial ENF/EIR filing as the Final or Single EIR without any additional comment period.

4. Comment: Some comments suggested that “Environmental Justice Principles,” as defined in Section 56 of the Climate Roadmap Act (amending M.G.L. c. 30, § 62), be integrated into “Section 61 findings” that are currently required by M.G.L. c. 30, § 61 for EIR projects, and that the Secretary’s Certificate include: (i) a finding that Environmental Justice Principles have been considered; and (ii) a directive that Section 61 Findings shall be incorporated into all required Permits for the project. Other commenters proposed that a separate document titled, “Environmental Justice Considerations,” be issued by Agencies together with (but separate from) their Section 61 Findings.

Response: Section 60 of the Act (adding new M.G.L. c. 30, § 62K) requires that the Secretary “consider the environmental justice principles, as defined in section 62, in making any policy or determination, or taking any action relating to a [MEPA] project review . . . , to reduce the potential for unfair or inequitable effects upon an environmental justice population.” It further requires the Secretary to issue a parallel directive to EEA agencies, which the Secretary has done through a revision of EEA’s Environmental Justice Policy.³

³ <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>.

In order to ensure that the Secretary and EEA agencies are able to fully consider Environmental Justice Principles during MEPA review, the final regulations include language (at 301 CMR 11.01(1)(b)) requiring MEPA review to be conducted in a manner that provides adequate disclosures regarding environmental justice concerns so that the Secretary and EEA agencies can carry out the statutory mandate set forth in the Climate Roadmap Act. The final regulations also state (at 301 CMR 11.01(4)(b)) that the Secretary must consider Environmental Justice Principles in deciding whether an EIR is adequate. Indeed, Section 58 of the Act helps ensure that Environmental Justice Principles are considered during the MEPA review process by requiring an EIR to analyze whether an EJ Population is subject to an existing “unfair or inequitable” environmental burden, and whether “disproportionate adverse effects” or increased effects of climate change may result from the additional impacts of the project. This analysis should inform a judgment on whether the project will further Environmental Justice Principles by promoting the meaningful involvement of EJ populations and reducing the potential for unfair or inequitable effects.

The final regulations retain, with minor changes, the provision inserted by the draft regulations at 301 CMR 11.07(6)(n) that an EIR prepared under Section 58 of the Act must include proposed Section 61 findings identifying all measures to address any identified disproportionate adverse effects, or any increase in the effects of climate change, on EJ populations. If applicable, any Agency required to issue Section 61 Findings will then need to “specif[y] any and all actions to be taken to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations.” 301 CMR 11.01(4)(c)2. These Section 61 findings would be made consistent with any subject matter limitations that may apply under 301 CMR 11.12(5)(c), and should implement additional obligations under M.G.L. c. 30, § 62K as applicable. In light of these refinements, the MEPA Office does not view as necessary new procedures or certifications that would substitute for traditional Section 61 findings, nor does it view the use of a new “Environmental Justice Considerations” document to be necessary or appropriate.

Finally, the draft regulations (at 301 CMR 11.12(1)) contained a directive that all “Participating Agencies” (defined in 301 CMR 11.02 as those “to which the Proponent has made or will make an application for a Permit, Financial Assistance, or a Land Transfer”), and Agencies directly undertaking MEPA projects, consider Environmental Justice Principles during the course of MEPA review. Because Section 11.12(1) relates to periodic reviews of agency programs rather than review of specific projects, this language has been removed and consolidated with language in Section 11.01(1)(b) to clarify the role that consideration of Environmental Justice Principles must play in the review of MEPA projects consistent with M.G.L. c. 30, § 62K.

5. Comment: Some comments objected to the addition of the phrases “related public health consequences” or “related public health impacts” in various sections of MEPA regulations related to obligations under M.G.L. c. 30, § 61. Comments assert that the Climate Roadmap Act did not amend Section 61 to explicitly require Agencies to avoid or minimize “Damage to the Environment and related public health consequences,” or to issue Section 61 findings that specifically address public health impacts or consequences.

Response: As explained in the MEPA Background Document, the addition of the phrases “related public health consequences” or “related public health impacts” were intended to implement Section 57 of the Climate Roadmap Act, which added public health impacts as a required element of all EIRs submitted to the MEPA Office. The MEPA Office acknowledges that the Act did not amend Section 61 of the MEPA statute to add reference to public health

impacts. As shown in the list of regulatory changes below, the final regulations remove the phrase “related public health consequences” or “related public health impacts” in the context of Section 61 findings but retain that language where related to the content of EIRs. The final regulations also revise 301 CMR 11.12(5) to clarify that Agencies must consider all studies, analyses and assessments contained in the EIR, including those related to public health impacts and effects on EJ populations, when issuing Section 61 findings.

Comments Related to Definitions and Clarification of Terms

6. Comment: Some commenters proposed changes or clarifications to key definitions, including “Damage to the Environment,” “Environmental Benefits,” and “Environmental Burdens.” Additional comments suggested adding definitions for “disproportionate adverse effect” and “unfair or inequitable” burden to complement the required analysis in EIRs required for projects near EJ populations. Comments suggested that “Damage to the Environment” should be amended to include effects on people, not just to natural resources, resulting from environmental damage and that Ecological Restoration or similar projects intended to improve environmental conditions could be exempted from the new EIR requirement in Section 58 of the Climate Roadmap Act, if they could be characterized as providing “Environment Benefits” and, therefore, not “likely to cause Damage to the Environment.”

Response: The MEPA Office appreciates the thoughtful suggestions for revisions to definitions. However, the MEPA Office cannot alter definitions set out in statutory language. The Act included specific definitions for “Environmental Benefits,” and “Environmental Burdens” (now codified in M.G.L. c. 30, § 62) and “Damage to the Environment” is defined in M.G.L. c. 30, § 61 and was not amended by the Act. The final regulations therefore do not revise the draft regulations with respect to these definitions. The final regulations have added a definition of “Designated Geographic Area,” which is consistent with the definition in Section 60 of the Act and clarifies obligations regarding enhancing public involvement opportunities for EJ populations. See new 301 CMR 11.05(4)(a).

The MEPA Office considered whether to amend the draft regulations to include terms that are not defined in statute, including “disproportionate adverse effect” and “unfair or inequitable.” While we agree that specific definitions may be beneficial, the MEPA Office is mindful of the fact that the new required analysis of EJ impacts in the Act is unique, and not susceptible to clear standards. It is also distinct from similar analyses required under the National Environmental Policy Act (NEPA).⁴ As noted below, the Massachusetts Department of Environmental Protection (MassDEP) is engaged in an effort to define a similar methodology for air permitting, and it is possible that the framework established for MEPA reviews may change at the conclusion of that stakeholder effort. For this reason, the MEPA Office is declining to establish definitions of “disproportionate adverse effect” and “unfair or inequitable” at this time, and will consider these definitions during our second-phase rulemaking effort in 2022.

The MEPA Office further recognizes that some projects that, on balance, improve environmental conditions may be required to submit EIRs due to the manner in which “Damage to the Environment” is used in the MEPA regulations, and we will consider this issue in a second-phase rulemaking in 2022. As explained in the MEPA Background Document, MEPA review thresholds identify “categories of Projects or aspects thereof, of a nature, size or location that are

⁴ See <https://www.epa.gov/environmentaljustice/environmental-justice-and-national-environmental-policy-act>.

likely, directly or indirectly, to cause Damage to the Environment.” 301 CMR 11.01(2)(b)1. Thus, any project that meets or exceeds any MEPA review threshold is “likely to cause Damage to the Environment” even if, like Ecological Restoration or similar projects, it may improve overall environmental conditions. The fact that these projects may also provide “Environmental Benefits”⁵ as defined in the Act does not change the applicability of MEPA review, and, in turn, the new EIR requirement in Section 58 of the Act. As noted below, the MEPA Office is planning a second-phase rulemaking effort in 2022 to comprehensively review all sections of the MEPA regulations. The MEPA Office will consider proposals to amend MEPA review thresholds to address Ecological Restoration or similar projects at that time.

7. **Comment:** Other comments requested clarification of key terms used in the Climate Roadmap Act and draft regulations, including the term “insignificant” relative to destruction, damage, or impairment; “excessive” relative to noise; and “inadequate” relative to remediation of pollution. Comments suggest that temporary impacts should be excluded from consideration of “Environmental Burdens.”

Response: While the MEPA Office appreciates the need for clarity, we note that terms like “excessive noise” and “insignificant damage” are already reflected in the existing definition of “Damage to the Environment” in M.G.L. c. 30, § 61. Consistent with prior practice, the precise nature and magnitude of environmental impacts should be evaluated for each project on a case-by-case basis and measured against the ultimate standard of judging whether “all feasible measures” have been taken to avoid or minimize such impacts. Temporary impacts have long been and will continue to be considered during MEPA reviews as part of the totality of impacts to be evaluated.

Comments Related to Public Involvement Procedures and Analysis of EJ Impacts

8. **Comment:** Several comments requested clarification and additional guidance on how project proponents should promote public involvement by EJ populations. In particular, comments requested clarification of how to assess whether a project is “reasonably likely to negatively affect Environmental Justice Populations” and how a project should provide opportunities for public involvement, as set forth in *new* proposed 301 CMR 11.05(4)(a). Comments urge the MEPA Office to issue additional guidance on these topics and to incorporate such requirements into regulation, in lieu of merely incorporating by reference a separate protocol. Some comments also expressed concern that separate protocols would be finalized after the promulgation of final regulations, such that new regulatory requirements would be in place without any associated protocols or guidance.

Response: The MEPA Office acknowledges the need for further guidance to complement new regulatory requirements relative to public involvement. To that end, the MEPA Office is issuing the MEPA Public Involvement Protocol for Environmental Justice Populations (“MEPA Public Involvement Protocol”) (following a public comment period) to take effect together with the

⁵ Comments further suggest that the definition of “Environmental Benefits” focuses on “access to clean natural resources,” such as open space and recreational opportunities, and does not fully capture the benefits of Ecological Restoration or similar projects that seek to restore ecological functions and remedy past environmental damage. The MEPA Office notes that the definition of “Environmental Benefits” also references access to “air [and] water resources.” A bona fide Ecological Restoration project qualifying as such under the Wetlands Protection Act and implementing regulations at 310 CMR 10.00 could be viewed as increasing access to clean air and water resources by improving (and thereby increasing) the ecological functions of waterbodies and other natural resources.

final regulations. The MEPA Public Involvement Protocol will instruct Proponents on how to describe “negative effects” and to promote public involvement for EJ populations. The final regulations and protocol set January 1, 2022, as the first date when new project submissions will be expected to comply with new requirements.

Consistent with the recommendations in comments, the final regulations also include key components of the MEPA Public Involvement Protocol in lieu of simply incorporating the Protocol by reference. Components of the Protocol incorporated into the final regulations include the requirement that all MEPA projects located within the “Designated Geographic Area” around one or more EJ populations must undertake measures to provide meaningful opportunities for public involvement by such populations. Advance notification of projects is also required for certain projects.

9. Comment: Additional comments similarly requested clarification and additional guidance on how to analyze the project’s impacts on EJ populations. Comments note, in particular, the “overly broad (and unlimited from a historical perspective)” scope of the required assessment (in *new* proposed 301 CMR 11.07(6)(n)) of existing “Environmental Burdens and related public health consequences” that may be the result of “any prior or current private, industrial, commercial, state, or municipal operation or project that has caused or continues to cause Damage to the Environment.” Other comments objected to the breadth of information required under 301 CMR 11.07(7)(h). Some comments expressed concern that separate protocols would be finalized after the promulgation of final regulations, such that new regulatory requirements would be in place without any associated protocols or other guidance.

Response: The MEPA Office acknowledges the need for further guidance to complement new regulatory requirements relative to analyzing impacts on EJ populations. To that end, the MEPA Office is issuing the MEPA Protocol for Analysis of Project Impacts on Environmental Justice Populations (“MEPA Protocol for Analysis of EJ Impacts”) (following a public comment period) to take effect together with the final regulations. This Protocol help to ensure that Proponents will apply a consistent methodology across projects when conducting assessments of existing “Environmental Burdens” and the added impacts of the project. The final regulations and protocol set January 1, 2022, as the first date when new project submissions will be expected to comply with new requirements. As noted, the MEPA Office will consider during a second-phase rulemaking effort whether to add associated definitions, such as “disproportionate adverse effect” and “unfair or inequitable burden,” into MEPA regulations.

Comments Not Directly Related to Draft Regulatory Proposal

10. Comment: Some comments raised issues that are not directly related to the regulatory proposal at hand. For instance, comments advocated for incorporating EEA’s “No Net Loss Policy” into regulation to add protection to open spaces. Other comments advocated for applying new EJ protocols to past projects that have already completed MEPA review.

Response: While the MEPA Office appreciates this input, the rulemaking effort at hand is focused on implementing requirements of Sections 55-60 of the Climate Roadmap Act. The Act does not address EEA’s No Net Loss Policy, and explicitly applies new rules imposed by Sections 57-58 to projects filed after the promulgation of regulations. See St. 2021, c. 8, § 102B.

11. **Comment:** Additional comments suggested changes to regulatory provisions that were not included in the draft regulatory proposal. For instance, one comment suggested changes to “fail safe” provisions in 301 CMR 11.04, and another suggested changes to the definitions of “Replacement Project” and “Routine Maintenance” in 301 CMR 11.02. Comments request a firm commitment to engage in a second-phase rulemaking effort to review all provisions of the MEPA regulations.

Response: The MEPA Office intends to engage in a second-phase rulemaking effort in 2022, and, to that end, has committed to continuing biweekly meetings with the MEPA Advisory Committee through April 2022. MassDEP is currently engaged in a stakeholder effort to implement a parallel mandate under Sections 102C of the Climate Roadmap Act to “evaluate and seek public comment on the incorporation of cumulative impact analyses” into certain categories of air permits. Because of the potential overlap between such analyses and the evaluations required under Section 58 of the Act, the MEPA Office is partnering with MassDEP on this stakeholder effort and intends to consider any applicable analytical frameworks or methodologies that may result from MassDEP’s stakeholder effort as part of MEPA’s second-phase rulemaking effort. The MEPA Office looks forward to ongoing engagement with stakeholders as part of this effort.

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Based on the responses to comments above, the following non-technical changes have been made in the final regulations, as compared to the draft regulations.⁶

11.01: General provisions

- 11.01(1)(a)-(d), 4(b): Additional amendments to these subsections revise references to “Environmental Justice Principles” and M.G.L. c. 30, § 62K to align with statutory language and ensure that the MEPA process provides sufficient disclosures to allow consideration of Environmental Justice Principles by the Secretary and EEA agencies. Corresponding edits are made to 11.12(1), as noted below. Language in 11.01(4)(b) states that the Secretary must consider Environmental Justice Principles when deciding whether an EIR is adequate.
- 11.01(1)(a); 11.01(2); 11.01(4): Additional amendments to these subsections remove references to “related public health consequences” when referring to obligations under M.G.L. c. 30, § 61. Other subsections similarly remove references to “public health consequences” or “related public health impacts” when referring to Section 61 obligations, but also add references to “public health impacts” when referring to the content of EIRs. See New 11.05(5) (former 11.05(4)); 11.06(3), (7), (9); 11.12(5).
- 11.01(4)(c): Additional amendments to this subsection make clear that Section 61 findings must include, if applicable, “any and all actions to be taken to reduce the potential for unfair or inequitable effects upon Environmental Justice Population” to align with the statutory

⁶ Note that the “clean” and “redline” versions of 301 CMR 11.00 posted on the MEPA website on December 10, 2021 are identical to the documents filed with the Secretary of State’s Office (SOS). These documents contain several technical changes inserted by the SOS into the draft regulations, as well as edits made to those changes by the MEPA Office in the final regulations. These documents also omit sections where no amendments were proposed from the prior (May 10, 2013) version of 301 CMR 11.00.

mandate to consider Environmental Justice Principles during the course of MEPA review. Other subsections make similar amendments. See 11.07(6)(k); 11.08(8)(b); 11.12(5)(a).

11.02: Definitions

- A *new* definition of “Designated Geographic Area” has been added consistent with Section 60 of the Climate Roadmap Act.
- The definition of “Environmental Justice Population” has been amended to more accurately reflect the language of Section 56 of the Climate Roadmap Act and the Secretary’s authority to designate certain geographical areas as Environmental Justice Populations or determine that other geographical areas should not be so designated.

11.05: ENF content

- *New* 11.05(4)(a): This new subsection incorporates key components of the MEPA Public Involvement Protocol for Environmental Justice Populations, specifically, the requirement that all MEPA projects located within the “Designated Geographic Area” around one or more EJ populations undertake measures to provide meaningful opportunities for public involvement by those populations. This subsection also requires that any such projects seeking to file a single or rollover EIR, as well as those that meet or exceed mandatory EIR thresholds, must provide advance notification of the project, on a form determined by the MEPA Office, by no later than 45 days, and no earlier than 90 days, prior to filing the ENF. This subsection replaces former 301 CMR 11.05(4)(d), which has been removed.
- 11.05(5)(a), (d) & 11.05(7) (*former* 11.05(4)(a), (d) & 11.05(6)): Additional amendments to these subsections reflect requirements for identifying EJ populations and any negative effects on such populations as part of the ENF. These changes incorporate language included in former 301 CMR 11.05(4)(d), which has been removed.
- *New* 11.05(9): This subsection creates a new procedure by which a proponent may file a dual ENF and proposed EIR when seeking a “rollover EIR” in accordance with 301 CMR 11.06(13). Other subsections make cross-references to the new rollover EIR procedure. See 301 CMR 11.01(4)(b); 11.06(1), (3); 11.12(4).

11.06: ENF Review and Decision

- 11.06(2): Additional amendments to this subsection require the proponent to consult with the MEPA Office about appropriate measures to promote public involvement opportunities by EJ populations during MEPA site visits after the filing of the ENF.
- 11.06(7)(a)-(b): Additional amendments to these subsections consolidate the content of former 11.06(7)(b) into (7)(a), while retaining the core provision in (7)(b) that an EIR shall be required for MEPA projects within a “Designated Geographic Area” around EJ populations.
- 11.06(8) and *New* 11.06(13): Subsection 11.06(13) adds a new “rollover EIR” option, in addition to a “single EIR” option available under 11.06(8), as a way to streamline reviews for certain projects where the enumerated criteria are met. Additional criteria have been added to

existing 11.06(8) to ensure that an adequate analysis of impacts to EJ populations is provided when requesting a single EIR. A rollover EIR will not be granted unless it is clear that “no substantive issues remain to be resolved” based on the analysis provided in the dual ENF and proposed EIR filing allowed under *new* 11.05(9).

11.07: EIR Preparation and Filing

- 11.07(6)(n): Additional amendments to this subsection clarify the requirements for analyzing project impacts on EJ populations to align with the MEPA Protocol for Analyzing Impacts on EJ Populations, which is being issued to take effect together with the final regulations. These additional changes also remove language stating that “subject matter limitations” on Section 61 findings shall not apply in the context of EJ impacts.

11.12: Agency Responsibilities and Section 61 Findings

- 11.12(1): New language proposed to be added in the draft regulations, is removed as unnecessary in view of changes to 301 CMR 11.01(b) and to retain this subsection’s focus on periodic agency program review.
- 11.12(5)(a): Additional amendments to this subsection emphasize that Agencies must consider all studies, analyses and assessments contained in the EIR, including those related to public health impacts and effects on EJ populations, when issuing Section 61 findings.

11.16: Filing and Circulation

- *New* 11.16(d): This former subsection, proposed to be added in the draft regulations, is removed as unnecessary due to the addition of *new* 11.05(4)(a).

11.17: Transition Rules

- The date on which the new amendments to 301 CMR 11.00 take effect for new project filings has been changed to January 1, 2022.