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Response to Comments on Proposed Regulation 310 CMR 7.41

Large Entity Reporting Requirement

**REGULATORY AUTHORITY:
M.G.L. c. 111 §§142A–142E and 142K; M.G.L. c. 21N**

September 1, 2023

The Massachusetts Department of Environmental Protection (MassDEP) filed proposed new regulation 310 CMR 7.41: *Large Entity Reporting Requirement* with the Massachusetts Secretary of the Commonwealth on September 1, 2022. In accordance with the public review process requirements of Massachusetts General Laws (M.G.L.) Chapter 30A, MassDEP held a public hearing on proposed regulation 310 CMR 7.41 on October 4, 2022 and accepted public comments until October 14, 2022. Notice of the public hearing and comment period was published in the Boston Globe and the Worcester Telegram & Gazette on September 8, 2022, and in the Massachusetts Register on September 16, 2022.

Comments were received from the following:

1. Dave Robba, Ceres
2. Jennifer A. Pederson, Massachusetts Water Works Association (MWWA)
3. Clete Kus, Berkshire Regional Planning Commission (BRPC)
4. Kevin Weeks, Trucking Association of Massachusetts (TAM)
5. Kelly Shin, Green Energy Consumers Alliance
6. Veena Dharmaraj, Massachusetts Sierra Club and members of the Zero Emission Vehicles (ZEV) Coalition
7. Patrick O'Connor, National Association of Fleet Administrators (NAFA) – The Fleet Management Association
8. Paulina Muratore, Campaign Manager and Policy Advocate for Union of Concerned Scientists

MassDEP has summarized and responded to the comments below. The number or numbers following each comment refers to the commenter as listed above. MassDEP did not make any substantive changes to the final regulations based on comments received. However, MassDEP specified the reporting deadline and updated various dates as follows:

- the reporting deadline is March 1, 2024 (i.e., 6 months after regulation promulgation),
- applicability is based on the year 2022 instead of 2021, and
- the years for which information is reported were updated from 2021 to 2022, 2023 and/or 2024 as appropriate.

1. **Comment:** Several commenters expressed support for the Commonwealth's adoption of regulation 310 CMR 7.41 *Large Entity Reporting Requirement*. (1, 5, 6, 8)

Response: MassDEP appreciates the support.

2. **Comment:** Several commenters requested a reduction in the proposed reporting applicability threshold from 40 vehicles to 5 vehicles “to capture accurate fleet specific data.” (1, 5, 6, 8) Another commenter requested MassDEP “reject any calls for reducing the number of trucks within a fleet for purposes of reporting and complying with the proposed regulation” and stated they were unclear why MassDEP did not adopt the 50-truck limit that the California Air Resources Board (CARB) used if MA is following CARB's lead and the regulation is merely a “check box” for eventually adopting other CARB regulations. (4)

Response: MassDEP held two stakeholder meetings in April 2021 regarding MassDEP’s plans to adopt several CARB medium- and heavy-duty (MHD) vehicle regulations, including the Large Entity Reporting regulations. At these meetings several stakeholders suggested that MassDEP adopt a vehicle reporting applicability threshold lower than the 50-vehicle threshold used by CARB since Massachusetts has a smaller MHD vehicle fleet compared to California. In response, MassDEP proposed a 40-vehicle applicability threshold to account for the smaller MHD fleet size in Massachusetts. MassDEP has finalized the regulations with the 40-vehicle threshold because MassDEP believes lowering the reporting threshold to 5 vehicles would require many more entities to report creating a substantial reporting burden on smaller businesses. Note that the final regulation applies not only to fleet owners with 40 or more MHD vehicles, but also to those with gross annual revenues greater than \$50 million, federal, state, and local entities with at least one vehicle in its fleet, and brokers/entities that dispatch 40 or more vehicles into or throughout Massachusetts. The information received from all these entities will help capture a substantial share of trucks operating in Massachusetts reflective of the Commonwealth’s fleets.

In December 2021 MassDEP adopted CARB’s MHD Advanced Clean Trucks (ACT), Heavy-Duty Omnibus, and GHG Phase 2 regulations in 310 CMR 7.40 *Low Emission Vehicle Program*. The purpose of 310 CMR 7.41 is to collect information to assess the suitability of MHD zero-emission vehicles in multiple use cases and to inform future strategies on how to accelerate the MHD zero-emission vehicle market in Massachusetts. While 310 CMR 7.41 will support the implementation of 310 CMR 7.40 (and 310 CMR 7.41 is modeled on a part of CARB’s Advanced Clean Trucks regulation), MassDEP was not required to adopt 310 CMR 7.41 in conjunction with, nor make 310 CMR 7.41 identical to, CARB’s regulation.

3. **Comment:** Several commenters requested the reporting requirement be “not just one-time” (5, 6, 8) and to “[r]equire reporting requirements every two years to track progress on implementation of the ACT Rule” (6)

Response: MassDEP has finalized the regulation as a one-time reporting requirement. If the information received from entities does not provide enough data to inform the development of electric vehicle charging infrastructure and future strategies on how to accelerate the MHD zero-emission vehicle market in Massachusetts, MassDEP can revisit the requirement. Since the ACT provisions in 310 CMR 7.40 already contain reporting requirements, there is no need to incorporate ACT reporting requirements into 310 CMR 7.41.

4. **Comment:** One commenter asked “will this inventory be used in a cooperative manner that seeks the development of an incentive-based approach to replacing the trucking industry’s existing vehicles. ... The trucking industry in Massachusetts, which is already in a precarious position, will be adversely impacted if the DEP does not engage in a collaborative approach that provides the necessary infrastructure, financial support and availability of technology.” (4)

Response: The purpose of 310 CMR 7.41 is to collect information to assess the suitability of MHD zero-emission vehicles in multiple use cases and to inform future strategies on how to

accelerate the MHD zero-emission vehicle market in Massachusetts. Incentives may be a part of future strategies, and indeed, are currently offered through the Massachusetts Offers Rebates for Electric Vehicles Trucks (MOR-EV Trucks) Program (see <https://mor-ev.org/eligible-vehicles-trucks>). In addition, MassDEP is working with other states to implement the Multi-State Medium- and Heavy-Duty Zero-Emission Vehicle Action Plan published in July 2022 which calls for a whole of government approach to accelerating the adoption of zero-emission MHD in collaboration with all stakeholders. The Action Plan is available at <https://www.nescaum.org/documents/multi-state-medium-and-heavy-duty-zero-emission-vehicle-action-plan/>.

5. **Comment:** Several commenters requested that MassDEP make fleet information publicly available (1, 3, 6, 8) and share the data/information with the utility companies in order “to map out or project where to put in electric vehicle stations.” (7)

Response: MassDEP plans to post a summary of the data and supply the detailed data to those who request it, including utility companies.

6. **Comment:** Several commenters stated that the reporting requirement “should capture data that documents geographic distribution of air pollution hot spots in relation to MHDV” including vehicle model year, model and fuel type, EJ populations that the truck travels through, the frequency and distance of travel in the case of fixed routes, average number and duration of trips per day, origin and destination points in the case of fixed route trips and locations where trucks park for more than 2 hours per day. (6, 8) Another commenter opposed “any additional requirement to report on a truck’s specific route or, collectively, routes used by a trucking company” and stated that “the release of a company’s operations information at that level of detail would open a pandora’s box of potential legal and practical issues.” (4)

Response: MassDEP has finalized the regulation without adding additional requirements. Note that the regulation requires reporting of vehicle fuel type in 310 CMR 7.41(7)(b), vehicle distance of travel/average trip duration (miles per day) in 310 CMR 7.41(7)(b)2. and origin of trips (“vehicle home base”) in 310 CMR 7.41(7)(a). MassDEP believes that the regulation’s purpose (to collect information to assess suitability of MHD zero-emission vehicles in multiple use cases and to inform future strategies on how to accelerate the MHD zero-emission vehicle market in Massachusetts) will be met with the regulation’s requirements as proposed and finalized. MassDEP agrees that additional strategies and programs to address and mitigate emissions from MHD vehicles in overburdened communities are needed and notes that the Commonwealth has numerous efforts in this area, including prioritizing MassDEP Volkswagen Settlement and Diesel Emissions Reaction Act grants for cleaner vehicle and infrastructure in EJ areas.

7. **Comment:** A commenter requested that any vehicle operated by a Public Works Department, Public or Private Water Utility, District, Commission, or Authority, Public or Private Wastewater Utility, District, Commission, or Authority be included in the definition of Emergency Vehicle and therefore not be required to submit the one-time report required by the regulation. (2)

Response: MassDEP is not making a change to the regulation in response to this comment. While MassDEP acknowledges the critical role public works departments play in responding to water-related emergencies, these vehicles are also used in day-to-day operations such that it is important that information on these vehicles be submitted to assess the best way to develop electric vehicle charging infrastructure to accelerate the MHD ZEV vehicle market in Massachusetts for this sector.