



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

100 Cambridge Street Suite 900 Boston, MA 02114 • 617-292-5500

Maura T. Healey
Governor

Kimberley Driscoll
Lieutenant Governor

Rebecca L. Tepper
Secretary

Bonnie Heiple
Commissioner

Background Information and Technical Support Document for Amendments to:

310 CMR 7.71 Reporting of Greenhouse Gas Emissions

January 2024

Regulatory Authority:

**M.G.L. c. 21A, §§ 2, 8, and 16
M.G.L. c. 21N and
M.G.L. c. 111, §§ 2C and 142A – 142E**

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.
TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

I. SUMMARY

The Massachusetts Department of Environmental Protection (MassDEP) is proposing amendments to 310 CMR 7.71: *Reporting of Greenhouse Gas Emissions* that would:

- Implement registration and greenhouse gas (GHG) emissions reporting requirements for companies selling and distributing heating fuels to homes and businesses in Massachusetts, including suppliers of natural gas, fuel oil, and propane.
- Implement a reporting requirement for fuel storage facilities.

The new requirements would monitor and ensure compliance with the emissions reporting provisions of M.G.L. c. 21N for GHG emissions from combustion of heating fuels and implement the reporting needed to support a Massachusetts Clean Heat Standard (CHS).

II. BACKGROUND

In 2008, Chapter 298 of the Acts of 2008, An Act Establishing the Global Warming Solutions Act (GWSA), was signed into law to address the challenges of climate change. In 2021, Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy (Climate Roadmap Act or CRA), was signed into law amending the GWSA. The GWSA, partially codified at M.G.L. c. 21N (as amended by the CRA), requires MassDEP to “monitor and regulate emissions of greenhouse gasses with the goal of reducing those emissions.” The CRA, among other things, amended the GWSA’s definition of “Greenhouse gas emissions source” to clarify that in regards to the regulation of emissions “a person or entity that sells or distributes transportation fuels, heating fuels, or electricity may be considered to be the source of greenhouse gas emissions from the use, distribution, consumption, combustion, or sale of such fuels.”

The CRA clarified MassDEP’s authority to collect emissions and other data from a wide range of sources, including companies selling or distributing heating fuels (i.e., heating fuel suppliers) and heating fuel storage facilities. Collecting the information proposed in these amendments will allow MassDEP to better quantify the emissions from heating fuels being used in the Commonwealth, and to assist with monitoring and enforcing compliance with the GWSA, in order to further the goals of emissions reductions required by that law. In particular, this data collection will allow MassDEP to include and monitor information about sources of heating fuel emissions in its public GHG emissions registry, which currently includes detailed emissions data for several hundred stationary facilities and retail electricity sellers.¹

The proposed reporting requirements would also support development and implementation of a CHS. The CHS concept was first introduced in the Massachusetts Clean Energy and Climate

¹ See <https://www.mass.gov/lists/massachusetts-greenhouse-gas-ghg-reporting-program-data>. The information proposed for reporting under these amendments is most similar to the reporting that is currently required of retail electricity sellers, in that retail electricity sales is a competitive energy supply business that is subject to public release of emissions information that is closely correlated with their sales.

Plan for 2025 and 2030 (2025/2030 CECP)² and was subsequently endorsed by the Massachusetts Clean Heat Commission (CHC).³ The Massachusetts Clean Energy and Climate Plan for 2050 (2050 CECP)⁴ adopts the framework for a Clean Heat Standard (CHS) as laid out in the CHC's Final Report. The proposed amendments would support implementation of a CHS by collecting and monitoring emissions data that could be used to calculate compliance obligations.

In the spring of 2023, as part of an ongoing stakeholder process to inform development of a CHS, MassDEP posted a "straw" discussion draft version of the proposed reporting requirements for initial public input.⁵ MassDEP then reached out to businesses that would be impacted by the proposed amendments by sending flyers to more than 1,500 business that MassDEP had identified as potential heating fuel suppliers and storage facility operators, conducted targeted outreach to trade groups, and met with several heating fuel suppliers at their request. Additionally, MassDEP sent an email to a list of more than 1,900 contacts that have previously expressed interest in similar or related programs managed by MassDEP.

The initial stakeholder engagement process generated many comments from a variety of stakeholders, including more than a dozen heating fuel suppliers (including suppliers of natural gas, heating oil, and propane). Most stakeholders addressed the CHS concept in general; those comments are outside the scope of this rulemaking. One category of comments on the CHS concept that has some relevance to this rulemaking are comments that address the eligibility of alternative fuels such as hydrogen and biofuels for a future CHS; the proposed amendments allow heating fuel suppliers to separately report emissions from combustion of biofuels in a manner that could support biofuel crediting in a future CHS. Few commenters directly addressed the reporting requirements, and those that did focused on the administrative burden on smaller heating oil suppliers. MassDEP has extensive experience regulating businesses of all sizes and will draw on this experience to implement a simple and efficient reporting process.

Please note that MassDEP may propose compliance fees for heating fuels suppliers subject to 310 CMR 7.71, but any such fees would be proposed in a separate rulemaking and are not subject to public comment at this time.

III. DESCRIPTION OF THE PROPOSED REGULATION

The proposed regulation:

- A. Defines terms relevant to the proposed regulation.

² <https://www.mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2025-and-2030>

³ Additional information about the CHS, including the ongoing stakeholder process to support program design, is available on MassDEP's CHS web page at <https://www.mass.gov/info-details/massachusetts-clean-heat-standard>. That web page includes links and specific references to relevant sections of the CECPs and the CHC's final report.

⁴ <https://www.mass.gov/doc/2050-clean-energy-and-climate-plan/download>

⁵ The discussion draft was labelled 310 CMR 7.77, but the new requirements are being proposed in MassDEP's existing 310 CMR 7.71: Reporting of Greenhouse Gas Emissions. The reason for this change from the discussion draft is to clarify that this proposal pertains only to reporting requirements. Note that, in this rulemaking, MassDEP is only seeking comment on aspects of 310 CMR 7.71 related to adding heating fuel reporting requirements; any changes to the existing requirements for facilities are beyond the scope of this rulemaking.

- B. Establishes applicability standards and a process for cessation of reporting requirements.
- C. Establishes standard requirements for heating fuel suppliers and operators of storage facilities including (a) registration requirements, (b) recordkeeping and reporting requirements, (c) responsibilities of owners, operators, and successor owners or operators, and (d) authorization of designated representatives.
- D. Establishes requirements for reporting of CO₂ emissions data for heating fuel suppliers for natural gas, heating oil, and propane.
- E. Establishes requirements for reporting of fuel shipment data from heating fuel storage facilities.
- F. General Changes to 310 CMR 7.71

The proposed regulations are described in detail below and are included in the proposed regulatory text. MassDEP welcomes comment on all aspects of this proposal, but is not seeking comment on the other existing sections of 310 CMR 7.71.

A. Definitions

The proposed amendments add seventeen (17) defined terms relevant to the regulation. Several foundational definitions are included below.

CO₂ emissions. For the purpose of CO₂ emissions data reports, metric tons of CO₂ released to the atmosphere from the combustion of heating fuel as calculated pursuant to [the amended regulation] based on the quantity of heating fuel delivered for consumption in Massachusetts.

Heating fuel. Natural gas, liquid distillate fuel (including heating oil and kerosene), propane, or any similar, substitute, or blended liquid or gaseous fuel that can be combusted in a furnace, boiler, or any similar device that combusts fuel to produce heat. For the purpose of reporting shipments, diesel fuel and propane are considered to be heating fuels, and gasoline and compressed and liquified natural gas are not considered to be a heating fuel.

Heating fuel supplier. Any person that on or after January 1, 2023, is (or was) an owner of heating fuel at the time such fuel is (or was) delivered for consumption as heating fuel in Massachusetts. Heating fuel suppliers include natural gas suppliers, suppliers of propane and liquid distillate heating fuel, and any building owner or other entity that is an owner of heating fuel at the time such fuel is delivered for consumption as heating fuel in Massachusetts.

Heating fuel storage facility or storage facility. A storage and distribution facility located in the United States from which heating fuel is disbursed to Massachusetts. A storage and distribution facility that is used exclusively by a heating fuel supplier for the sole purpose of filling trucks that will deliver fuel owned by the same heating fuel supplier for consumption as heating fuel in Massachusetts is not a heating fuel storage facility.

Operator. A person, including an owner, having operational control of a facility, heating fuel storage facility, or a heating fuel supplier.

Owner.

- (a) A person that owns a facility, heating fuel supplier, or heating fuel storage facility; or
- (b) In relation to heating fuel, a person that holds an ownership interest in the fuel.

B. Applicability

Heating fuel suppliers and heating fuel storage facility operators are both required to comply with the standard requirements found in the Applicability section of the proposed amendments. Heating fuel suppliers are required to comply with the emissions reporting requirements for heating fuel suppliers in the proposed amendments (Section C of this document), while heating fuel storage facility operators are required to submit the fuel shipment data reports in the proposed amendments (Section D of this document).

The proposed amendments also provide a pathway for heating fuel suppliers that are no longer delivering heating fuels to cease the reporting requirements of the proposed regulations. If a reporting entity demonstrates for a period of two years that they are no longer delivering fuels in Massachusetts, resulting in reports of zero CO₂ emissions, that entity may cease reporting CO₂ emissions data. It also includes a non-applicability process for an entity that can demonstrate that it should not be subject to the regulation.

C. Standard Requirements for Heating Fuel Suppliers and Storage Facilities Operators

The proposed amendments would require heating fuel suppliers and storage facility operators to register with MassDEP.⁶ Heating fuel suppliers and storage facility operators would be required to register by December 1, 2023, or within 30 days of becoming a heating fuel supplier or storage facility operator. The purpose of this registration requirement is to allow MassDEP to track the entities subject to the reporting requirements under the proposed amendments. Each heating fuel supplier and storage facility operator would also be required to identify an authorized designated representative responsible for keeping their business information updated with MassDEP and serving as a point of contact for MassDEP. Designated representatives have the option of identifying a designee that would act in their place in regard to signing and submitting reports. The registration provision also allows MassDEP to request information that may assist in identification of a heating fuel supplier or storage facility, such as “any related information that MassDEP may request, such as physical locations, business addresses, information about storage tanks and vehicles, and information about d/b/a company names.”

This section of the proposed amendments also describes the recordkeeping requirements for each heating fuel supplier or heating fuel storage facility operator. Copies of submissions and all records made or required under the proposed amendments, and copies of all documents used to complete any submissions under the amendments, must be retained for a period of 5 years. Copies of certificates of representation must be maintained until a new certificate of representation is submitted that designates a changed designated representative.

⁶ An electronic reporting system will be used to streamline reporting.

This section of the proposed amendments also outlines the responsibilities of owners, operators, and successor owners or operators. This provision requires that when any successor owner or operator becomes the owner or operator of a heating fuel supplier or heating fuel storage facility, the prior owner or operator provide all documentation required to comply with the proposed amendments.

D. Requirements for reporting of CO₂ emissions data for heating fuel suppliers

This section of the proposed amendments requires that heating fuel suppliers submit quarterly emissions data to MassDEP. These entities are required to report emissions from the following sources:

- Natural gas sales reported to the Department of Public Utilities
- Heating oil or propane sales as documented on the delivery tickets required by M.G.L c. 94 § 303F or, if applicable, information from a storage facility

Each heating fuel supplier is required to submit reports to MassDEP on a calendar quarterly basis, within 30 days of the close of the previous quarter (e.g., a report with emissions from fuels supplied in January, February, and March must be submitted no later than April 30). The contents of the report must include, but are not limited to:

- Heating fuel supplier name and identification number
- Quarter covered by the report
- Whether the report is a resubmittal
- Name of designated representative or delegated person submitting report
- Metric tons of CO₂ resulted from the combustion of all fuel delivered for consumption as heating fuel in Massachusetts during the quarter
 - o Inputs used to calculate the metric tons of CO₂, which may include fuel quantity and emissions factor (as specified in the proposed amendments)
- Quantity of emissions that were calculated with a conservative missing data parameter, and an explanation of the inputs that used a conservative missing data parameter
- The amount and type of fuel that is not a fossil fuel, if known

Please note: the first quarterly submission will be due April 30, 2024, for the first quarter of calendar year 2024 (covering January – March 2024).

The emissions factors specified in the proposed amendments are consistent with other Federal and Commonwealth emissions reporting programs. The emissions factors in the proposed amendments are:

- For natural gas, 0.05444 metric tons of CO₂ per thousand standard cubic feet (Mscf)
- For liquid distillate fuel, 0.01021 metric tons of CO₂ per gallon
- For propane, 0.0057 metric tons of CO₂ per gallon

Each fuel emissions report must be certified with a signature and date by the designated representative for each heating fuel supplier.

E. Requirements for reporting of fuel shipment data from heating fuel storage facilities

Under the proposed amendments heating fuel storage facilities would be required to submit monthly fuel disbursement data to MassDEP. This data would include information on the quantity of fuels disbursed for heating. This reporting would consist of heating fuels disbursed during the reporting month, which would include heating fuel (including any diesel fuel that is shipped to a location that is not a vehicle filling station) and propane, but not gasoline or compressed and liquified natural gas. The reports would also contain information on the origin and destination of the fuel, and carrier, consignee, consignor, and heating fuel supplier the fuel is handled by or transferred to. The report would also capture information on the amount of the fuel that is biomass-derived, if known.

Collecting information on the quantity of fuels shipped will allow MassDEP to verify compliance with the heating fuel supplier reporting requirements. Additionally, collecting information on diesel fuel shipments will allow MassDEP to monitor for taxed fuels that may be sold as heating fuels and ensure that all distillate fuels delivered for use in heating applications are captured in heating fuel supplier reporting. Reporting will be required by all storage facilities that ship fuel to Massachusetts, as documented in shipping documents provided by the storage facility at the time of shipment, including out of state storage facilities.

F. General Changes to 310 CMR 7.71

Several amendments are also proposed to the text of the current 310 CMR 7.71 regulation. These amendments introduce no new obligations or requirements for facilities reporting emissions under the existing 310 CMR 7.71 regulations and are clarifying in nature. Among these amendments is an enforcement provision, included at 310 CMR 7.71(7), which sets forth MassDEP's existing enforcement authority.

IV. IMPACTS OF PROPOSED AMENDMENTS

Economic Impacts

No significant economic impacts are anticipated from the implementation of reporting requirements on heating fuel suppliers, but minor administrative costs are anticipated. Heating fuel suppliers will be required to dedicate time to register as a heating fuel supplier, and on a quarterly basis to aggregate delivered fuel information and prepare the data for submission. MassDEP will develop an electronic registration and reporting system that will allow for reports to be submitted without physical copies, which will reduce costs of compliance. In a separate regulatory package, an annual compliance fee in accordance with 310 CMR 4.00: *Timely Action Schedule and Fee Provisions* may be implemented for this program. The proposed amendments do not alter or change any aspects of the fuels being delivered. The reporting required under the proposed amendments include calculated emissions based on fuel delivery data that is required to be recorded and retained pursuant to M.G.L. c. 94 § 303F: *Fuel oils or propane; delivery tickets; contents; use of copies; inspections; evidence; penalties*. The information required to be

submitted to MassDEP by heating fuel storage facilities is consistent with information that MassDEP believes heating fuel storage facilities are already remitting to other government agencies and should not create new recordkeeping obligations.

Impacts on Massachusetts Municipalities

Pursuant to Executive Order 145, state agencies must assess the fiscal impact of new regulations on the Commonwealth's municipalities. The proposed amendments will not affect cities or towns because there is no obligation placed on cities or towns.

Massachusetts Environmental Policy Act (MEPA)

Pursuant to 301 CMR 11.03(12) (MEPA Regulations), MassDEP is not required to file an Environmental Notification Form (ENF) regarding the proposed amendments. The proposed amendments will not reduce standards for environmental protection, nor do they reduce opportunities for public participation in review processes or public access to information generated or provided in accordance with these regulations.

V. PUBLIC HEARING AND COMMENT

MassDEP will hold a public hearing on the proposed amendments in accordance with M.G.L c. 30A and will publish a notice of the hearing and comment period at least 21 days before the public hearing. MassDEP will accept written comments for 10 days after the public hearing. The public hearing notice and proposed amendments are available on MassDEP's website at: <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>. For further information, please send inquiries to climate.strategies@mass.gov or call 781-429-9656.