

**MassDEP Discussion Draft Regulation
Emissions Reporting Requirements for Heating Fuel Suppliers
for Stakeholder Comment Only**

MARCH 2023

This discussion draft document includes “straw” detailed regulatory requirements for heating fuel suppliers to calculate and report emissions based on the quantity of fuel delivered for combustion in buildings in Massachusetts. Please note that this is not a draft for formal public hearing or formal comment; MassDEP will need to complete a formal rulemaking process to require reporting, including additional opportunities for oral and written comment.

This discussion draft includes requirements that:

- Companies that deliver heating fuels to buildings in Massachusetts must report to MassDEP each calendar quarter the emissions that will result from combustion of those fuels:
 - Covered heating fuel suppliers include natural gas utilities, and companies that deliver liquid distillate fuel and propane for combustion in buildings.
 - Emissions are calculated by multiplying fuel quantities by fuel-specific emissions factors specified in the regulation.
 - Reporting must be based on documentation of actual deliveries in Massachusetts.
 - The regulation includes the following streamlining options for heating fuel suppliers:
 - Heating fuel suppliers that only supply fuel covered by the regulation may calculate their emissions based on fuel disbursement data compiled by storage facilities instead of on individual deliveries to homes and businesses located in Massachusetts.
 - MassDEP may adjust the quarterly reporting schedule to reduce the administrative burden on heating fuel suppliers during January.
 - Heating fuel suppliers can authorize any individual to submit information on their behalf; for example, a company could designate an accountant that they employ for other purposes to submit their emissions data.
- Storage facilities in the United States that ship heating fuel to Massachusetts are required to report fuel shipment data to MassDEP each month:
 - These companies are not required to report emissions; instead, this data will be used by MassDEP to track and verify compliance and may also be used by certain fuel suppliers for their emissions calculations.
 - MassDEP may also request data from other companies that hold records of fuel shipments.
 - Shipments of diesel fuel must be reported if the fuel is disbursed to a heating fuel supplier or to a storage facility in Massachusetts.
- The reporting requirements would take effect in September 2023, beginning with a registration requirement for any heating fuel supplier that delivered heating fuel earlier in 2023.

MassDEP is particularly interested in comments that may improve the efficiency and verifiability of reporting by making reporting requirements consistent with existing required or industry-standard reporting or recordkeeping requirements, such as practices related to shipping documents that might allow MassDEP to impose reporting requirements on larger wholesale suppliers instead of smaller companies that only deliver fuel directly to buildings in Massachusetts. Stakeholders are also asked to confirm that the emissions factors included in the discussion draft regulatory text are appropriate for their fuels.

310 CMR 7.77 Heating Fuel Emissions Reporting Requirements [DISCUSSION DRAFT]

(1) Purpose. The purpose of 310 CMR 7.77 is to implement reporting and verification requirements for greenhouse gas emissions from combustion of heating fuels and to monitor and ensure compliance with the reporting provisions of M.G.L. c. 21N.

(2) Definitions. The terms used in 310 CMR 7.77: *Heating Fuel Emissions Reporting Requirements* are defined in 310 CMR 7.77(2) and in 310 CMR 7.00: *Definitions*. Where a term is defined in 310 CMR 7.00: *Definitions* and 310 CMR 7.77, the definition in 310 CMR 7.77 shall apply.

CO₂ emissions. Metric tons of CO₂ released to the atmosphere from the combustion of heating fuel as calculated pursuant to 310 CMR 7.77(5)(d)3.e. based on the quantity of heating fuel delivered for consumption in Massachusetts.

CO₂ emissions data report. The quarterly report that each heating fuel supplier shall submit to the Department pursuant to 310 CMR 7.77(5).

Conservative missing data parameter. A data element substituted for missing data and known to result in reported CO₂ emissions that are at least as large as the amount of CO₂ emissions that actually occurred. For example, if the fuel quantity for a delivery is not known because it is not legible on a delivery ticket or because there is a discrepancy between records, a conservative missing data parameter for the fuel volume could be the maximum volume of fuel that can be stored at the delivery location.

Deliver for consumption as heating fuel in Massachusetts or Deliver to Massachusetts. Deliver heating fuel to a home, building, or other facility in Massachusetts for combustion in a furnace, boiler, water heater, cooking stove, or any similar device that combusts fuel to produce heat.

Department. The Massachusetts Department of Environmental Protection.

Designated Representative. The natural person who is authorized by the owners and operators of a heating fuel supplier or heating fuel storage facility to represent and legally bind the owners and operators in matters pertaining to 310 CMR 7.77.

Disburse. With respect to a heating fuel storage facility, to cause the physical removal of fuel from the facility by a means of transport other than pipeline or waterborne vessel.

Disburse to Massachusetts. Disburse heating fuel to any destination in Massachusetts, as reflected in the records of a storage facility or in a shipping document issued at the time of disbursement.

Fuel shipment data report. The monthly report that each storage facility shall submit to the Department in accordance with 310 CMR 7.77(6).

Heating fuel or fuel. Natural gas, liquid distillate fuel, propane, or any similar, substitute, or blended liquid or gaseous fuel that can be combusted in a furnace, boiler, water heater, cooking stove, dryer, 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 utilities, 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, provided that 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 heating fuel supplier for consumption as heating fuel in Massachusetts is not a heating fuel storage facility.

Identification number. The federal tax identification number, employer identification number (EIN), or other unique number, as specified by the Department.

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

Owner. An entity that owns a heating fuel supplier or heating fuel storage facility or, in relation to heating fuel, an entity that holds an ownership interest in the fuel.

Quarter. One of the four three-month periods that make up a calendar year, i.e., January through March, April through June, July through September, or October through December.

Person. Any individual, public or private partnership, association, firm, syndicate, company, trust, corporation, department or instrumentality of the federal or state government, political subdivision of the commonwealth, authority, bureau, agency, law enforcement agency, fire fighting agency, or any other entity recognized by law as the subject of rights and duties.

Successor owner or operator. An entity that becomes the subsequent owner or operator of a heating fuel supplier or heating fuel storage facility after the date of initial registration in accordance with 310 CMR 7.77(4)(a).

(3) Applicability.

(a) Heating fuel suppliers shall be subject to the CO₂ emissions reporting requirements of 310 CMR 7.77(4) and (5).

(b) Operators of heating fuel storage facilities shall be subject to the fuel shipment data reporting requirements of 310 CMR 7.77(4) and (6).

(c) Beginning 30 days after receipt of notice by the Department pursuant to 310 CMR 7.77(6)(a)6., any entity that possesses shipping documents that document the shipment of heating fuels in Massachusetts shall be subject to the fuel shipment data reporting requirements of 310 CMR 7.77(6) for the time period specified in the notice.

(d) Demonstration of Non-Applicability. If the Department has determined that an entity not registered pursuant to 310 CMR 7.77(4)(a) may be subject to 310 CMR 7.77, the Department may require from an entity a certified statement demonstrating that it is not subject to the requirements of 310 CMR 7.77.

(e) Cessation of Reporting Requirements due to Zero CO₂ Emissions. Heating fuel suppliers subject to 310 CMR 7.77 may qualify for cessation of the emissions reporting requirements of 310 CMR 7.77(5) if CO₂ emissions that such entities are required to report by 310 CMR 7.77(5) are equal to zero metric tons for two consecutive years. Heating fuel suppliers shall meet all the requirements of 310 CMR 7.77 until approved for cessation pursuant to 310 CMR 7.77(3)(e). If its CO₂ emissions that are required to be reported under 310 CMR 7.77(5) absent approval of cessation exceed zero metric tons for any day after it qualifies for cessation, the heating fuel supplier shall again become subject to all the requirements of 310 CMR 7.77 starting the first day of such non-zero CO₂ emissions.

1. Any heating fuel supplier that has met the cessation requirements set forth in 310 CMR 7.77(3)(e) may submit an application to the Department requesting approval to cease its reporting requirements under 310 CMR 7.77(5).

a. Such application shall include the following information in a format prescribed by the Department:

- i. The reason for the reduction of CO₂ emissions to zero and whether the reduction to zero is expected to be temporary or permanent.
- ii. Certification that the Massachusetts fuel supplier has met the cessation requirements for the past two consecutive years.
- iii. Other information required by the Department.

b. The Department may require submission of additional information relevant to the determination and shall make a determination on such application in its discretion.

2. Heating fuel suppliers that are approved for cessation of reporting requirements under 310 CMR 7.77(5) shall keep records as required under 310 CMR 7.77(4)(b) covering the time period that they were subject to the reporting requirements of 310 CMR 7.77(5).

(4) Standard Requirements for Heating Fuel Suppliers and Operators of Storage Facilities.

(a) Registration Requirement.

1. Heating fuel suppliers and storage facility operators shall register in accordance with 310 CMR 7.77(4)(a)2. by September 1, 2023 or within 30 days after becoming a heating fuel supplier or storage facility operator, whichever is later.

2. Each heating fuel supplier and storage facility operator shall register a designated representative in accordance with 310 CMR 7.77(4)(d) and submit a complete certificate of representation in accordance with 310 CMR 7.77(4)(d)4.

(b) Recordkeeping and Reporting Requirements.

1. Recordkeeping. Unless otherwise provided, each heating fuel supplier and storage facility operator shall keep in its possession, custody, and control each of the following documents for a period of five years from the date the document is created.

a. Copies of all certificates of representation for the designated representative and all documents that demonstrate the accuracy of the information submitted in accordance with 310 CMR 7.77(4)(d)2. and 4., provided that the certificates and documents shall be retained beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

b. Copies of all submissions and all records made or required under 310 CMR 7.77.

c. Copies of all documents used to complete any submission under 310 CMR 7.77 or to demonstrate compliance with the requirements of 310 CMR 7.77, provided that all material received, reviewed, or generated to prepare a submission under 310 CMR 7.77 shall be retained for five years from submission of the report or notification.

(c) Liability and Responsibility Of Owners, Operators, and Successor Owners and Operators.

1. Any provision of 310 CMR 7.77 that applies to a heating fuel supplier or storage facility operator (including a provision applicable to the designated representative) shall also apply to all owners and operators of the heating fuel supplier or storage facility.

2. Any provision of 310 CMR 7.77 that applies to a heating fuel supplier or storage facility operator (including a provision applicable to the designated representative) shall also apply to any successor owner or operator of the heating fuel supplier or storage facility.

3. When a successor owner or operator becomes the owner or operator of heating fuel supplier or storage facility pursuant to 310 CMR 7.77(4)(c)2., the prior owner and operator are required to provide to the successor owner or operator all records necessary to comply 310 CMR 7.77 and the successor owner and operator shall obtain such records immediately upon becoming subject to 310 CMR 7.77. Any successor owner or operator shall immediately inform MassDEP of any delay in providing such records, and, if applicable, may be subject to the conservative missing data parameter requirements of 310 CMR 7.77(5)(c), (d)3.f., and (6)(c)16.

(d) Authorized Designated Representative.

1. Assigning an Authorized Designated Representative. The owner and operator of a heating fuel supplier or heating fuel storage facility shall authorize one designated representative to act on behalf of the heating fuel supplier or storage facility operator with regard to all matters under 310 CMR 7.77.

2. Responsibilities of Designated Representative. The designated representative shall be responsible for submitting and updating electronically all of the following:

a. The name, address, email address, and telephone number of the designated representative;

b. A list of the owner(s) and operator(s) of the heating fuel supplier or storage facility operator;

c. Quarterly CO₂ emissions data reports or monthly fuel shipment data reports;

d. The name, address, email address, and telephone number of any persons authorized to make any submissions pursuant to 310 CMR 7.77(4)(d)3;

e. Any other reports, documents, or information requested by the Department.

3. Delegation by Designated Representative. A designated representative may delegate his or her authority to make any submission by submitting a certificate of representation to MassDEP that includes the information specified at 310 CMR 7.77(4)(d) 2.d. and signing the following certification statement: "I certify any report, document, or information submitted by any person identified by me as authorized to submit reports, documents, and information under 310 CMR 7.77 shall be deemed a submission by me."

4. Certification of Representation. The owner or operator of a heating fuel supplier or storage facility shall submit to the Department a complete certificate of representation that identifies the designated representative acting on behalf of the owner and operator. The submission shall be on a form prescribed by the Department, and shall include, but not be limited to, the following information:

- a. Identification of the heating fuel supplier or storage facility and any related information that the Department may request, such as physical locations, business addresses, information about storage tanks and vehicles, and information about d/b/a company names;
- b. The name of the designated representative;
- c. The address, email address, and telephone number of the designated representative at the time of submission of the Certificate of Representation;
- d. A list of the owner(s) and operator(s) of the heating fuel supplier or storage facility at the time of submission of the Certificate of Representation;
- e. The following certification statements by the designated representative.
 - i. "I certify I was selected as the designated representative by an agreement binding on the heating fuel supplier or storage facility operator."
 - ii. "I certify that I have all the necessary authority to carry out my duties and responsibilities under 310 CMR 7.77 on behalf of the heating fuel supplier or storage facility operator and that the heating fuel supplier, storage facility operator, and all owners and operators thereof, shall be fully bound by my representations, actions, inactions, or submissions;"
- f. The signature of the designated representative and the date signed; and
- g. If applicable, a notice of delegation listing persons authorized to make submissions pursuant to 310 CMR 7.77 at the time of submission of the Certificate of Representation, including the following:
 - i. The name, address, email address, and telephone number of such persons.
 - ii. The following certification statement by the designated representative. "I agree that any submission to the Department or its agent that is by a natural person identified in this notice of delegation shall be deemed to be an electronic submission by me. I certify that the heating fuel supplier or storage facility owner shall be fully bound by any such submission."

5. Certification of Reports, Documents, and Information. All reports, documents, and information submitted to the Department under 310 CMR 7.77 must be signed and attested to by the designated representative and shall include the following statement: "I certify that I have personally examined the information that I am submitting and I am familiar with the information submitted and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that tThe information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

(5) CO₂ Emissions Reporting Requirements for Heating Fuel Suppliers.

(a) General. Heating fuel suppliers shall calculate CO₂ emissions and submit CO₂ emissions data reports to the Department.

(b) Fuel Included in CO₂ Emissions Calculations. Each heating fuel supplier shall calculate CO₂ emissions under 310 CMR 7.77(5)(d) based on the amount of fuel delivered for consumption as heating fuel in Massachusetts, as follows:

1. A supplier of natural gas shall include all natural gas sales, as reported to the Department of Public Utilities.
2. Any other heating fuel supplier shall include all fuel deliveries, as documented on delivery tickets required by M.G.L. c. 94, § 303F, except that a heating oil supplier that only delivers fuel for consumption as heating fuel in Massachusetts may choose to utilize fuel shipment data reported by a storage facility in lieu of delivery tickets as the source of fuel data.

(c) Non-submitted CO₂ Emissions Data Reports. When a heating fuel supplier fails to submit a CO₂ emissions data report as required under 310 CMR 7.77(5), the Department may, in addition to any enforcement action taken as a result, develop an assigned CO₂ emissions level for the Massachusetts fuel supplier based on any information that the Department deems relevant, including, but not limited to, conservative missing data parameters, the operations of the supplier during the quarter covered by the report, any previous CO₂ emissions data reports submitted by the supplier, the CO₂ emissions calculation methodology in 310 CMR 7.77(5)(d)3.e., any submissions to other agencies, and any information reported under 310 CMR 7.77, for estimating the quantity of CO₂ emissions that should have been reported. The Department will notify the heating fuel supplier of its determination of an assigned CO₂ emissions level and the basis for the determination.

(d) CO₂ Emissions Data Report Contents and Mechanism for Heating Fuel Suppliers.

1. General. Heating fuel suppliers shall submit CO₂ emissions data reports required under 310 CMR 7.77(5) to the Department shall follow the procedures specified in 310 CMR 7.77(5)(d) when calculating and reporting CO₂ emissions.

2. Schedule. Each heating fuel supplier shall submit a CO₂ emissions data report for each quarter, including any quarter for which it has no reportable CO₂ emissions. The CO₂ emissions data report shall be submitted no later than the last day of the month following the quarter covered by the report (e.g., the report covering January, February, and March shall be submitted by the last day of April). In order to reduce the administrative burden on heating fuel suppliers during the month of January, the Department may delay the deadline for submitting the report covering October, November, and December by three months until the last day of April.

3. Content of Quarterly CO₂ Emissions Data Report. Each CO₂ emissions data report for a quarter shall include, but is not limited to, the following information in a format prescribed by the Department:

- a. Heating fuel supplier name and identification number.
- b. Quarter covered by the report.
- c. Whether the report is a resubmittal.
- d. Name of the designated representative or delegated person submitting the report.
- e. Metric tons of CO₂ emissions from combustion of all fuel delivered for consumption as heating fuel in Massachusetts during the quarter, as specified for the heating fuel supplier in 310 CMR 7.77(5)(b), including:

- i. Total quarterly CO₂ emissions from the combustion of heating fuel, with CO₂ emissions calculated as the product of the quantity of fuel and the applicable CO₂ emission factor in 310 CMR 7.77(5)(d)3.e.ii.(iii).
 - ii. Any inputs used to calculate CO₂ emissions including, for each fuel, as specified under 310 CMR 7.77(5)(b):
 - (i) Whether the fuel is natural gas, liquid distillate fuel, or propane.
 - (ii) The amount of heating fuel, with natural gas reported in units of standard cubic feet and liquid distillate fuel and propane reported in units of gallons.
 - (iii) The CO₂ emissions factor, which shall be:
 - 1. For natural gas, 0.05444 metric tons of CO₂ per standard cubic foot.
 - 2. For liquid distillate fuel, 0.01021 metric tons of CO₂ per gallon.
 - 3. For propane, 0.0057 metric tons of CO₂ per gallon
 - (iv) If the fuel is not natural gas, liquid distillate fuel, or propane, then the CO₂ emission factor shall be the emissions factor specified in 310 CMR 7.77(5)(d)3.e.ii.(iii) that the fuel is most similar to, can be blended with, or can substitute for.
 - f. Quantity of metric tons of CO₂ emissions under 310 CMR 7.77(5)(d)3.e. whose calculation used a conservative missing data parameter, and an explanation of the specific inputs that used a conservative missing data parameter.
 - g. The amount of heating fuel that is not a fossil fuel, if known, and any additional information about that portion of the fuel that the Department may request or that the heating fuel supplier wishes to provide. Such information may include, but is not limited to, the amount of the CO₂ emissions calculated pursuant to 310 CMR 7.77(5)(d)3.e. that are attributable to each such fuel and information about how the fuel was produced. The Department may request any such information that is retained by the heating fuel supplier or communicated to or by the heating fuel supplier to any other party, but the heating fuel supplier is not required to implement any new data collection or testing procedures to comply with 310 CMR 7.77(5)(d)3.g.
4. Certification. Each CO₂ emissions report shall include a signed and dated certification statement provided by the designated representative of the heating fuel supplier as required in 310 CMR 7.77(4)(d)5.

(6) Fuel Shipment Data Reporting Requirements, Content, and Mechanism for Heating Fuel Storage Facilities.

- (a) General. Operators of heating fuel storage facilities shall submit fuel shipment data reports to the Department and shall follow the procedures specified in 310 CMR 7.77(6) when submitting a fuel shipment data report for a month.
 - 1. Operators of storage facilities shall report all of their disbursements to Massachusetts in the month, including all disbursements for which the destination jurisdiction or a destination address listed on the shipping document at the time of disbursement was Massachusetts or was located in Massachusetts.
 - 2. Operators of storage facilities located in Massachusetts shall keep accurate records of all disbursements and associated shipping documents and shall report, in addition to the disbursements identified in 310 CMR 7.77(6)(a)1., any disbursements for which the destination address is not known by the operator of the heating fuel supplier.

3. Operators of storage facilities may submit fuel shipment data or a fuel shipment data report not otherwise required to be submitted under 310 CMR 7.77(6)(a)1. and 2., including to document fuel shipments that were not delivered to Massachusetts.

4. Data shall be submitted as listed on the bill of lading or other shipping document that accompanies the fuel shipment.

5. The Department may, on a case-by-case basis as necessary to ensure and verify comprehensive reporting, require submittal of fuel shipment data reports covering any specified time period from any entity that possesses shipping documents that document the shipment of heating fuels in Massachusetts, including but not limited to any heating fuel supplier or any company identified pursuant to 310 CMR 7.77(6)(c)8. through 10. The Department shall provide 30 days notice of any required submittals under 310 CMR 7.77(6)(a)6.

(b) Schedule. A storage facility operator shall submit a report for each month in which it has one or more reportable disbursements under 310 CMR 7.77(6)(a)1. or 2. but it is not required to submit such a report for a month with no such reportable disbursements. The fuel shipment data report shall be submitted by the last day of the month following the month covered by the report.

(c) Content of Monthly Fuel Shipment Data Report. Each fuel shipment data report shall include, but is not limited to, the information specified in 310 CMR 7.77(6)(c)1. through 17. for each shipment in a format prescribed by the Department. In the fuel shipment data report, if any of the information is not specified in the bill of lading, shipping document, or other storage facility operator records, "N/A" shall be reported.

1. Name and identification number of the storage facility operator submitting the fuel shipment data report.

2. Month and year covered by the report.

3. Whether the report is a resubmittal.

4. Shipping document number, date of issuance, and, for a corrected document treated as the shipping document accompanying a disbursed shipment, date that the shipping document was corrected, if different.

5. Destination jurisdiction.

6. Origination address.

7. Name and identification number of the storage facility from which the fuel was disbursed.

8. Name and identification number of the carrier transporting the fuel.

9. Name and identification number of the consignee and consignor (shipper) for the shipment.

10. Name and identification number of any other heating fuel supplier(s) listed on the shipping document.

11. Whether the shipment was dyed to denote its tax status when it was disbursed.

12. Biomass-derived content as a percent, if known.

13. Net fuel quantity in gallons.

14. Gross fuel quantity in gallons.

15. Destination address and, if applicable, identification number.

16. Identification of, and explanation for, any data elements for which a conservative missing data parameter was used.

17. If requested by the Department, the metric tons of CO₂ emissions from combustion of the fuel, calculated pursuant to 310 CMR 7.77(5)(d)3.e.
- (d) Certification. Each fuel shipment data report shall include a signed and dated certification statement provided by the designated representative of the storage facility operator, as applicable as required in 310 CMR 7.77(2)(a)5.
- (e) Shipping Document Requirement. Heating fuel suppliers and storage facilities shall ensure that shipping documents accompany shipments of heating fuel in Massachusetts, consistent with the provisions of 49 CFR 373.101.
- (7) Enforcement. The requirements of 310 CMR 7.77 shall be enforced in accordance with applicable federal and Massachusetts law, including, but not limited to the issuance of an administrative order or civil administrative penalties pursuant to M.G.L. c. 21A, § 16, 310 CMR 5.00: *Administrative Penalty*, M.G.L. c. 111, §§ 2C, 142A through 142E, and M.G.L. c. 21N, § 7(d).