



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

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## **Response to Comment on Proposed Amendments to:**

### **310 CMR 7.71 Reporting of Greenhouse Gas Emissions**

**November 22, 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**

## Background and Purpose

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. On December 29, 2008, MassDEP adopted 310 CMR 7.71 to comply with the large stationary facility reporting requirements the GWSA. 310 CMR 7.71 was previously amended in 2009, 2012, 2017, and 2022. 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 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. Regulatory amendments to add heating fuel suppliers reporting requirements to 310 CMR 7.71 were proposed in January 2024, and are now being finalized.

Additional information about the proposed amendments, including a Technical Support Document (TSD) published with the proposal can be found at <https://www.mass.gov/regulations/310-CMR-700-air-pollution-control#proposed-amendments-public-comment>. This document summarizes and responds to comments that were received during the public comment period. After considering the comments received, MassDEP is finalizing the amendments with minor clarifying changes shown in the redline version of the regulation posted with this response to comments document.

## Public Comment Process

MassDEP held two public hearings and solicited oral and written comments on the proposed amendments to 310 CMR 7.71 in accordance with M.G.L. Chapter 30A. On January 5, 2024, MassDEP published in two newspapers, the Boston Globe and the Worcester Telegram & Gazette, notice of the public hearing and public comment period on the proposed amendments. The public hearing notice was also published in the Massachusetts Register on January 5, 2024, and interested parties were notified via electronic and postal mail. The public hearings were held virtually on February 6, 2024, at 10:00 AM and 6:00 PM, and the public comment period closed on February 23, 2024. A list of commenters is included at the end of this response to comments document. A technical support document was published on the website referenced above to provide commenters with detailed information about the rationale for the proposed amendments and other relevant background information.

# Comments and Responses

## Clarifications

1. **Comment:** For natural gas, what entities would be required to report? (APGA, Keegan Werlin LLP, NGA)

**Response:** The language that determines which entities need to report their sales of fuel is in the definition of “heating fuel supplier” which reads, in part, “Any person that on or after July 1, 2024, is (or was) an owner of heating fuel at the time such fuel is (or was) delivered for consumption as heating fuel in Massachusetts.” Each supplier of natural gas registered with The Massachusetts Department of Public Utilities (DPU) will be required to report fuel that was sold to their customers. To the extent that the Local Distribution Companies (LDCs) are selling fuel directly to end use customers, the LDCs will be required to report emissions associated with those sales.

2. **Comment:** MassDEP should clarify the meaning of destination address in 310 CMR 7.71(5)(c)3.o. (CITGO)

**Response:** The destination or delivery address that should be included in the report is the address listed on the bill of lading or other shipping documents or records in possession of the heating fuel storage facility is the destination address. If no specific destination address is listed, N/A may be reported for this data element.

3. **Comment:** Why is diesel fuel listed as a heating fuel? (R. Jim McDonald Inc.)

**Response:** Since diesel fuel can be used as a heating fuel in an oil heating system, diesel fuel is required to be reported if it is delivered to a location where it may be combusted as heating fuel.

4. **Comment:** Why are motor gasoline, compressed natural gas, and liquified natural gas not heating fuels? (R. Jim McDonald Inc.)

**Response:** MassDEP is not aware of significant use of these fuels as heating fuels in the Commonwealth.

5. **Comment:** Why are building owners included in the definition of heating fuel suppliers? (MEMA)

**Response:** Building owners are only included in the definition of heating fuel supplier to clarify the reporting responsibility in the rare case that a building owner takes ownership of fuel before it is delivered to a building. In such cases, the building owner would be considered a heating fuel supplier with respect to that fuel.

6. **Comment:** The definitions of disbursed to Massachusetts is unclear. (MEMA)

**Response:** In general, fuel is considered disbursed to Massachusetts when it leaves a fuel storage facility for a destination within Massachusetts. The detailed reporting requirements for disbursements are included in 310 CMR 7.71(5)(c). These requirements reference the shipping documents issued by storage facilities as the basis for determining the destination of the fuel.

7. **Comment:** MassDEP should clarify who is responsible for reporting in the case of fuel suppliers that have an on-site storage facility that serves downstream heating fuel suppliers, known as “through put” facilities. (Buckeye, CITGO, MEMA)

**Response:** 310 CMR 7.71(5)(b)2. requires emissions reporting based on fuel that is “delivered for consumption as heating fuel in Massachusetts.” Therefore, in this scenario, the downstream heating fuel suppliers would be required to report the emissions. However, the storage facility operator would be subject to fuel shipment data reporting requirements.

8. **Comment:** 310 CMR 7.71(5)(b)2.b.i. and ii. need clarification. (MEMA) The definition of heating fuel should be clarified to exclude any products designated as transportation fuel, including diesel fuel. (CITGO)

**Response:** Deliveries of fuel oil and propane are subject to the ticketing requirements of M.G.L. c. 94, § 303F. For companies that may be delivering fuel to Massachusetts and another jurisdiction or for uses other than heating or cooking, only the delivered fuel subject to the ticketing requirement is required to be reported in emissions reports. Based on this comment, 310 CMR 7.71(5)(b)2.b.ii. has been removed to clarify that reporting is based on the amount of fuel sold subject to the ticketing requirement of M.G.L. c. 94, § 303F. Some fuels may be used as a heating fuel and for other uses, and in order to ensure compliance with emissions reporting portion of the regulation, dyed distillate fuels that are delivered to locations other than a filling station must be reported.

## General Comments

9. **Comment:** Compliance with this regulation will be time consuming and complex and impose a significant administrative burden. (Buckeye, CITGO, Global, JaySan, MEMA, PGANE) There are many small retail operations, often referred to as ‘cash on delivery’ or ‘one truck operators’ that will have a difficult time complying with these regulations. (PGANE, Sack Energy, Keegan Werlin LLP) Companies should not be required to calculate emissions, and should only need to report the number of gallons delivered in Massachusetts. (PGANE) The requirements will impose a significant administrative burden on fuel suppliers that will result in higher fuel costs. “Low-and moderate-income residents, including environmental justice communities and those receiving fuel assistance through the state’s Low Income Home Energy Assistance Program, will be especially hard hit.” (APGA, Keegan Werlin LLP, MEMA) MassDEP should have leniency and abundant communication during the formative years of the reporting program. (Global)

**Response:** MassDEP is developing an electronic reporting system that will streamline reporting and calculate emissions based on reported fuel quantities. In addition, MassDEP will provide training and compliance assistance during the first several years of reporting, likely with the assistance of a contractor with appropriate expertise and experience. This will reduce the compliance burden for companies, including small businesses. In addition, technical support will be available for companies that need assistance with complying with the regulations. Therefore, although minor administrative costs are anticipated, no significant economic impacts are anticipated.

- 10. Comment:** Biogenic emissions should not be included in energy sector emissions totals. (APGA Keegan Werlin LLP, NGA) The regulation does not provide credit for biogenic fuels. (Keegan Werlin LLP, Vanguard Renewables, RNG Coalition) Biofuels should be treated as carbon neutral. (RNG Coalition) Biogenic emissions from combustion of renewable natural gas should be reported separately. (APGA, AstraZenica, Form Letter, Global, Keegan Werlin LLP, NGA, RNG Coalition)

**Response:** The combustion of any hydrocarbon fuel results in the emission of CO<sub>2</sub> at the point of combustion, regardless of fossil or biogenic status. Collecting fossil and biogenic emissions together is consistent with how emissions data is collected and published under the stationary GHG reporting program in 310 CMR 7.71(4). 310 CMR 7.71(5)(b)4.c.vii. provides for separate reporting of biogenic emissions, if known, and MassDEP can use this information to determine and publish reported fossil and biogenic emissions. The regulation does not require separate reporting of biogenic emissions in every case because the biofuel content of fuel may not always be known to the fuel supplier that is required to report emissions.

- 11. Comment:** Are biofuels blended with heating oil considered as part of the total amount of sold heating fuel? (Buckeye)

**Response:** Reporting requires the total amount of fuel sold, regardless of fossil or biogenic status. For emissions reporting, the amount of biomass fuel, if known, is reported under 310 CMR 7.71(5)(b)4.c.vii. For fuel shipment reporting, the amount of biomass fuel, if known, is captured under 310 CMR 7.71(5)(c)3.i.

- 12. Comment:** The regulation does not account for lifecycle GHG emissions. (APGA, RNG Coalition, Keegan Werlin LLP, NGA) DEP should allow for carbon offsets or crediting of biofuels. (AstraZenica, Global, NRG, RNG Coalition, Vanguard) GHG emissions reporting could be made more consistent with requirements that apply to retail sellers of electricity under 310 CMR 7.75, including reporting of environmental attributes. (APGA, Keegan Werlin LLP, NGA)

**Response:** This regulation is focused on point source emissions from the combustion of heating fuels. Lifecycle emissions, offset crediting, and reporting of environmental attributes are outside of the scope of this regulation.

**13. Comment:** Certain information collected by this program may be considered confidential business information, potentially consisting of trade secrets, including information about companies' customer base. (Buckeye, CITGO, Global, JaySan, MEMA, PGANE) Releasing fuel sales data could compromise the integrity of the fuel market. (Form Letter)

**Response:** MassDEP has experience collecting, publishing, and utilizing data submitted by companies in compliance with environmental regulations.<sup>1</sup> On an individual basis, companies may submit a request for confidentiality under 310 CMR 3.00: *Access to and Confidentiality of Department Records and Files* for information that the company believes may be trade secret. Please note, under M.G.L. Ch. 111 § 142B, emissions data shall not be kept confidential by MassDEP. If a request for confidentiality is granted, the information will be handled in accordance with 310 CMR 3.00. The regulation amendments do not propose to collect any information related to the number of end-use customers or end-use customer information. MassDEP considered several examples of public data releases in developing the program<sup>2</sup> and also notes that the commenter did not provide any evidence of how the release of emissions data would compromise the integrity of the fuel market. MassDEP intends to handle company-specific emissions data submitted under the new fuel supplier reporting requirements in a similar manner to other data that has been submitted under 310 CMR 7.71 since the first reporting deadline in 2010. Fuel shipment data reports do not contain emissions data.

**14. Comment:** MassDEP needs to address chemical safety and the potential release of sensitive information about hazardous materials. (JaySan Gas)

**Response:** Requirements related to chemical safety or hazardous materials are outside the scope of this regulation, which only addresses emissions for greenhouse gases.

**15. Comment:** MassDEP should provide a precise description of the legal authority for the regulation. (MEMA)

**Response:** M.G.L. c. 21N § 2 mandates MassDEP to monitor and reduce sources of greenhouse gas emissions and directs MassDEP to adopt regulations to require reporting of greenhouse gases. Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy amended the definitions of “direct emissions” and “greenhouse gas emissions source” in M.G.L. c. 21N, § 1, to include greenhouse gas emissions from heating fuels that are used, distributed, consumed, combusted, or sold into the commonwealth. Furthermore, M.G.L. c. 21N § 2 requires MassDEP to “consider, on an annual basis, requiring the expansion of reporting.”

**16. Comment:** Why are there different reporting deadlines (quarterly vs monthly) for fuel suppliers and storage facilities? (MEMA) Why is monthly reporting required for storage facilities? Monthly reporting will be burdensome and is not consistent with other reporting

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<sup>1</sup> The TSD addresses this topic and includes two examples.

<sup>2</sup> Examples include routine data publications by US EPA and company-specific gasoline sales data that is available on request from the Massachusetts Department of Revenue.

requirements. (MEMA, Buckeye, Global, CITGO) Reporting for storage facilities should be annual (Buckeye, CITGO) or quarterly. (Global, CITGO)

**Response:** Monthly reporting for storage facilities is consistent with existing fuel shipment data reporting for terminals and other fuel industry reporting requirements for federal and state taxation. Quarterly reporting for heating fuel suppliers is consistent with the reporting schedule for power plants that report emissions data to US EPA, and is less burdensome than monthly reporting.

- 17. Comment:** Is the registration requirement under 310 CMR 7.71(5)(a)(1) per operator or per facility? Can an operator with multiple locations submit a single report for each location? (CITGO)

**Response:** A storage facility operator with multiple locations must submit a registration for each location.

- 18. Comment:** Two commenters requested an extension to the comment deadline. (MEMA, PGANE)

**Response:** The comment deadline was not extended for two reasons. First, MassDEP offered sufficient time for review. The substantive requirements were first published in “discussion draft” form in April 2023, and the regulations were proposed with an extended 45-day comment period in acknowledgement of the potential need for additional time to review the detailed requirements during the winter heating season. Second, completing the comment period on schedule will help ensure that MassDEP has as much time as possible to provide training and assistance in advance of the registration deadline.

## Heating Fuel Supplier Comments

- 19. Comment:** With a quarterly reporting requirement, one of the reporting periods will be during the peak heating seasons and companies may not have resources available to dedicate to compliance. (PGANE)

**Response:** MassDEP is not making changes to the proposed reporting schedule in the final regulation, but will address this comment by providing additional compliance assistance resources in advance of the January 30 reporting deadline.

- 20. Comment:** There is no way to separate fuel usage from heating or cooking and other uses. Some companies may use fuel for uses other than space heating, water heating, or cooking. (PGANE, Sack Energy, MEMA, Keegan Werlin LLP, Global Partners LP, NGA)

**Response:** The regulation does not require reporters to differentiate the end use of delivered fuels so long as the fuels are delivered to a location where they may be used for heating or cooking.

**21. Comment:** Propane should be removed from the reporting requirements because propane is a “clean and environment-friendly fuel that can help accelerate our decarbonization efforts” and “is the primary space heating fuel in only 4.1 percent of households.” (Form Letter, PGANE)

**Response:** The final regulation retains propane reporting requirements because propane is a fossil fuel that results in GHG emissions when combusted to produce heat.

**22. Comment:** The reporting period for natural gas should be adjusted because suppliers do not receive data for some time until after the reporting deadline for a period would occur, with each timeline set by each LDC’s tariff agreement. (NRG)

**Response:** MassDEP reviewed the LDC’s tariff agreements and determined that this issue can be addressed during the implementation process without changes to the regulation.

**23. Comment:** The regulation needs to allow for the emission factors to be updated regularly and provide emission factors for additional fuels as those fuels come into use. The emission factors should be from the USEPA. (CLF, Keegan Werlin LLP).

**Response:** The emission factors are based on the chemical composition of the fuels, which does not change significantly over time. The emission factors in the proposed regulation are based on the emission factors found in Table C-1 of 40 CFR Part 98. In response to this comment, the final regulation at 310 CMR 7.71(5)(b)4.c.v.(ii) replaces the specific factors with references to 40 CFR Part 98.

## Heating Fuel Storage Facility Comments

**24. Comment:** Storage facilities do not have access to all of the information requested for monthly fuel shipment data reports (310 CMR 7.71(5)(c)3.a. through q. Some of these data elements should not be requested, and information reporting should be limited to what is readily available to heating fuel storage facilities. (Buckeye, CITGO, Global) MassDEP should clarify that quarterly CO<sub>2</sub> emissions reporting is not required for storage facilities unless requested under 310 CMR 7.71(5)(c)3.q. (CITGO)

**Response:** 310 CMR 7.71(5)(c)3. specifies that if a heating fuel storage facility does not have access to an element listed in 310 CMR 7.71(5)(c)3.a. through q., the heating fuel storage facility can list “N/A” for that element. Based on comments received, data element 310 CMR 7.71(5)(c)3.q. has been removed in the final regulation.

**25. Comment:** The regulations may result in the same fuel being reported twice. (MEMA, CITGO)



**Response:** The requirement to base emissions reporting on the Massachusetts Division of Standards' delivery ticket requirements will ensure the no emissions are reported twice. Some of this fuel may also be included in the fuel shipment reporting requirements, but this data will only be used for verification purposes and will not result in the fuel being counted twice in the emissions calculations.

**26. Comment:** Are out-of-state heating fuel storage facilities subject to the reporting requirements of 310 CMR 7.71(5)(c)? (Buckeye)

**Response:** To the extent that a storage facility located within the United States is disbursing fuel to location within Massachusetts, that storage facility is required to submit a fuel shipment data report.

**27. Comment:** The definition of "heating fuel storage facility" in 310 CMR 7.71(2) specifies that certain storage facilities are excluded if they are "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 the potentially subject storage facility required to document the status of each terminal's customers as it relates to the regulation? Does the exclusion apply to storage facilities that store fuel owned by entities that are not considered "heating fuel suppliers" but which store and load fuel via trucks that may be disbursed to Massachusetts? (Buckeye)

**Response:** A facility subject to this exclusion in the definition of "heating fuel storage facility" does not have any reporting requirements under 310 CMR 7.71(5)(c). This exclusion is for a heating fuel supplier that has storage tanks at their facility that are used only for fueling that heating fuel supplier's own vehicles for delivery.

**28. Comment:** Collecting fuel shipment data reports from multiple tiers of storage facilities will result in double counting of fuel. (CITGO, MEMA) DEP should clarify what the fuel shipment data reports will be used for. (APGA, CITGO)

**Response:** Comprehensive reporting will allow for tracking of the movement of fuel. Fuel shipment data reports will be used to ensure that there is accurate reporting from heating fuel suppliers and allow MassDEP to verify compliance with the heating fuel supplier reporting requirements.

## **Comments Regarding the Clean Heat Standard**

**29. Comment:** Several commenters submitted comments related to the Clean Heat Standard. (MEMA, NEHPBA)

**Response:** The regulation amendments are limited to emissions reporting, so MassDEP is not responding to comments on the Clean Heat Standard in this response to comments document.

In addition to the changes noted in the responses to comments above, several additional changes were made to clarify language and applicability in the final regulation.

## **Commenters**

### **List of Verbal Commenters**

- Keegan Werlin LLP
- Massachusetts Energy Marketers Association (MEMA)
- National Grid
- Northeast Heat, Patio & Barbecue Association (NEHPBA)
- Propane Gas Association of New England (PGANE)
- R. Jim McDonald, Inc.
- Sack Energy

### **List of Written Commenters**

- American Public Gas Association (APGA)
- AstraZeneca
- Buckeye Partners, L.P. (Buckeye)
- CITGO
- Coalition for Renewable Natural Gas (RNG Coalition)
- Conservation Law Foundation (CLF)
- Global Partners LP (Global)
- JaySan Gas
- Keegan Werlin LLP
  - Berkshire Gas Company
  - Boston Gas Company d/b/a National Grid
  - Eversource Gas Company of Massachusetts d/b/a Eversource Energy
  - Fitchburg Gas and Electric Light Company d/b/a Until
  - Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty
  - NSTAR Gas Company d/b/a Eversource Energy
- Massachusetts Energy Marketers Association (MEMA)
- Northeastern Gas Association (NGA)
  - o Holyoke Gas and Electric Department
  - o Middleborough Gas and Electric Department
  - o Wakefield Municipal Gas and Light Department
  - o Westfield Gas and Electric Light Department
- Propane Gas Association of New England (PGANE)
- Sack Energy
- Vanguard Renewables

## **Form Letter**

- Abigail Litchfield
- Adam Friedman
- Alan Friedman
- Andrew Johnson
- Anne Campbell
- Ashley Pike
- Ben Sumner
- Bracy Hood
- Bradley Collins
- Brian Messier
- Brian Weydt
- Brooke Larson
- Cameron Winter
- Carlos Silva
- Cassandra Barry
- Chad Demoranville
- Charles Clement
- Chris Kowalski
- Christopher Day
- Christopher Lane
- Christopher Prior
- Daniel Johnson
- Daniel Ochs
- David Gable
- David Johnson
- Debra Brazie
- Emma Johnson
- Eric Wyson
- Erin Johnson
- Evan Pittsley
- Frances Zerbato
- Franklin Clark
- Gary Bubier
- Gene Dziedzina
- George Ferguson
- Harry Dileo
- Jacob Ritter
- Jake Abysalh
- Jake Johnson
- James Fitzpatrick
- Janet Rosa
- Jared Santos
- Jean Driscoll

- Jean Pasquantonio
- Jeffrey Mushnick
- Jeffrey Stanton
- Jeffrey Tufts
- Jennifer Fernandes
- Jeremy Wood
- Joel Plissey
- John Dolce
- John Flaherty
- Jonathan Vandersea
- Joseph Rose
- Joseph Trefethen
- Joseph Eosco
- Joseph Sullivan
- Justin Devaney
- Kelly Surette
- Kerri Spencer
- Kevin Vierung
- Keving Boucher
- Kyle Tasse
- Laura Zide
- Laurel Little
- Laurie Pasakarnis
- Lex Johnson
- Linda Pittelli
- Lindsey Mcguire
- Lisa Conner
- Lynne Frederick
- Marino Bonilla
- Mark Jenny
- Mark Stec
- Mary Holdsworth
- Matthew Buckley
- Michael Hopsciker
- Michael Maravlias
- Michael O'Brien
- Michael Romanowicz
- Nathan Mcshinsky
- Nick Ide
- Nick Piliero
- Orlando Fernandes
- Paige Marsh
- Patricia Lasalvia
- Patrick Crowley

- Patrick Harrington
- Paul Leite
- Paul Wrigth
- Philip Viveros
- Priscilla Heimbigner
- Ralph Nichols
- Ray Otano
- Raymond Masse
- Raymond Murray
- Richard Maxstadt
- Richard O'Neil
- Robert Duffy
- Robert Gangi
- Roger Maiolini
- Russell Freeman
- Ryan Townsend
- Sabrina Cabral
- Scott Benevides
- Scott Dunn
- Scott Turner
- Scott Swensen
- Shaun Huggins
- Shawn Litchfield
- Stephan Chase
- Stephen Fraticelli
- Steve Beauregard
- Thomas Carpentier
- Thomas Douglass
- Thomas Helt
- Thomas Vangel
- Tim Kurker
- Timothy Laramée
- Tom Dagata
- Tom Lanfair
- Tony Romano
- Tony Viola
- Troy Bryce
- Warren Castonguay
- William Boudrow
- William Conboy
- William Cummings
- William Massey
- Zachary Doran