



555 12th Street NW, Suite 1001
Washington, D.C. 20004

1-800-552-5342
NFIB.com

Via email
and U.S. First Class Mail

October 21, 2025

Mark Stewart, Program Manager
Climate Change Program
Department of the Environment
1800 Washington Boulevard, Suite 730
Baltimore, MD 21230-1720

Dear Mr. Stewart:

RE: Proposed Rule: Maryland Heating Fuel Provider Reporting Program,
Published in the Maryland Register of September 19, 2025.

The National Federation of Independent Business (NFIB)¹ submits these comments in response to the Department of the Environment ("Department") proposed rule titled "Maryland Heating Fuel Provider Reporting Program," published in the Maryland Register of September 19, 2025.² For the reasons set forth below, NFIB recommends that the proposed rule be rescinded.

The proposed rule requires heating fuel providers in Maryland to provide "a quarterly . . . fuel delivery report of any heating fuel that the provider delivered for final sale or consumption in Maryland during the previous quarter."³ It imposes burdensome recordkeeping requirements on top of the preparation of the report, including the ongoing requirement to maintain five years' worth of quarterly reports, "[a]ll material

¹ NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that governments of the United States and the fifty States hear the voice of small business as they formulate public policies.

² 52:19 Md. R. 976.

³ Proposed COMAR 26.11.4.05(A).

received, reviewed, generated, or used to complete the report,” and “[a]ny additional information requested by the Department.”⁴

The Department does not have the statutory authority to force businesses to submit the required information under the proposed rule. The proposed rule also would impose significant and unnecessary reporting burdens, the costs of which will be borne by consumers, many of them small business owners. It threatens regulatory actions that it cannot take. The Department must withdraw its proposed rule to prevent the imposition of this unnecessary and unlawful burden.

1. The Proposed Rule Lacks Statutory Authority

The Department cites as statutory support a patchwork of statutes that do not give it the authority to collect the information it seeks: Environmental Article, §§1-404(b), 2-101(b), 2-103(b)(1), 2-301(a)(1), §2-1203, and 2-1204.2.

First, Environmental Article §1-404(b) is a general grant of authority to the Secretary.⁵ Environmental Article § 2-301(a)(1) allows the Department to “adopt rules and regulations for the control of air pollution in this State, including testing, monitoring, record keeping, and reporting requirements[.]” Likewise, Environmental Article § 2-103(b)(1) provides that the Department “(1) Has jurisdiction over emissions into the air and ambient air quality in this State; (2) Is responsible for monitoring ambient air quality in this State; and (3) Shall coordinate all State agency programs on ambient air quality control.”

Next, Environmental Article § 2-101(b) defines air pollution, which “means the presence in the outdoor atmosphere of any substance that is present in such quantities and is of such duration that it: (1) May be predicted with reasonable certainty to be injurious to property or to human, plant, or animal life; or (2) Unreasonably interferes with the proper enjoyment of the property of others because of the emission of odors, solids, vapors, liquids, or gases.” It is unclear why this provision was cited as authority, as the heating fuels upon which the Department is now demanding information cannot, with reasonable certainty, be said to be present in quantities that are injurious. For example, included in the proposed rule’s reporting requirements are propane and hydrogen—propane is low-emission⁶ and hydrogen does not emit greenhouse gases *at all*.⁷ Aside

⁴ Proposed COMAR 26.11.4.06(A)-(B).

⁵ “The Secretary may adopt rules and regulations to carry out the provisions of law that are within the jurisdiction of the Secretary.”

⁶ Propane Education & Research Council, *Propane and the Environment*, available at <https://propane.com/environment/myth-busting/>, last accessed Oct. 15, 2025.

⁷ Cross Conrad, Karson Taylor, and Mikaela Wells, *Is Hydrogen Energy Key to Solving the Climate Crisis?* The Regulatory Review (Jun. 8, 2024) available at <https://www.theregreview.org/2024/06/08/is-hydrogen-energy-key-to-solving-the-climate-crisis>.

from coal and natural gas, the vast majority of the 13 fuel sources on the proposed rule's list do not even rank among the major sources of carbon dioxide emissions in the United States—combined, they count for just over one percent, and excluding petroleum products, less than a percent.⁸

From these four citations, the Department is trying to argue that all the heating fuels listed in the proposed rule are air pollutants, and since the Secretary has broad authority to establish reporting requirements to manage air pollution, such rules are already permitted. However, the Department has overlooked two essential steps.

First, the Department's authority for the proposed rule hinges on whether the heating fuels listed are "present in such quantities" in the atmosphere and "[are] of such duration" that they "may be predicted with reasonable certainty" to be "injurious" to life or property—in other words, whether they are air pollutants under § 2-101(b). But none of the cited statutes provide proof that the listed heating fuels meet the statutory conditions to be considered air pollutants. And likewise, none of the cited statutes give the Department the explicit authority to designate the listed heating fuels as air pollutants. Absent such authority, the Department cannot impose a new reporting requirement concerning delivery of heating fuels.

Second, even if the Department can prove that the listed heating fuels are air pollutants for purposes of § 2-101(b), it does not follow that the mere delivery of heating fuels is an activity of the type that the Department has the authority to regulate. Indeed, § 2-301(a)(1) provides the Secretary with the authority to "adopt rules and regulations for the control of air pollution," not for the transportation of materials that may or may not ever be released into the air. Neither does § 2-103(b)(1) provide support—it only provides "jurisdiction over emissions into the air and ambient air quality." The text of this provision only grants the Department a very limited level of authority over the actual release of pollutants into the air, not unlimited authority over heating fuels generally to include their transportation.

The statutory authority upon which the Department depends further collapses with the inclusion of Environment Article §§ 2-1203 and 2-1204.2.

⁸ United States Energy Information Administration, *Frequently Asked Questions, How much of U.S. carbon dioxide emissions are associated with electricity generation? Table: CO2 emissions by U.S. electric power sector by source, 2022*, available at <https://www.eia.gov/tools/faqs/faq.php?id=77&t=8>, last accessed Oct. 14, 2025. See also United States Energy Information Administration, *Monthly Energy Review, Environment, Table 11.6: Electric power sector*, (November 2023), available at <https://www.eia.gov/totalenergy/data/monthly/pdf/sec11.pdf>.

Environment Article §2-1203⁹ requires the Department to review and publish an inventory of greenhouse gas emissions, which it has been doing since 2011. Nowhere does this provision give the Department the authority to forcibly collect the information it seeks here, which the Department has never collected or used in previous inventories. In the Background section of the proposed rule, the Department claims that collecting this new information will “improve and refine data used to support the Department’s triennial Statewide GHG Emissions Inventory” and notes that the inventory “is required by Environment Article §2-1203, Annotated Code of Maryland.”¹⁰ The implication is that the statute requires the Department to include the information it seeks to gather via the proposed rule in its inventory. But it is misleading to suggest that heating fuel providers are compelled by Environment Article §2-1203 to give the Department the requested information, or that the Department must gather it to comply with the statute—Environment Article §2-1203 requires neither. It provides no basis for the proposed rule.

Environment Article § 2-1204.2 states simply that “The State shall achieve net-zero statewide greenhouse gas emissions by 2045.” This provision provides no guiding principles or authorizations with which to enable agency action. The legislature may *require* the State to achieve net-zero emissions, but it does not give the Department any *authority* consistent with that lofty goal, and thus, § 2-1204.2 cannot provide a foundation for the proposed rule.

None of the cited statutes provide the legal support that the Department needs to promulgate the proposed rule. Neither can the Department rely on the Governor’s Executive Order (EO) 01.01.2024.1 to undertake actions for which it has no statutory authorization. In the absence of authority, the proposed rule must be withdrawn.

2. The Proposed Rule Ignores Near-Certain Costs for Small Business Owners

Not only does the proposed rule lack the statutory authority necessary for its promulgation, but it also fails to estimate the costs associated with its new reporting requirement.

First, the Department dismisses the notion that reporting entities will bear any cost in being forced to file a detailed quarterly report with the State. The proposed rule claims that “there is a minimal economic impact upon heating fuel providers,” as they “routinely report non-tax-exempt fuel sales to the Comptroller, the federal government, and potentially other entities.”¹¹ But this undercuts, rather than supports, the Department’s argument. Fuel providers already file numerous reports—adding one more to the list will create new costs: reviewing the requirements; retaining legal counsel to ensure

⁹ Environment Article §2-1203 provides, in relevant part: “(b) The Department shall review and publish an updated statewide greenhouse gas emissions inventory for calendar year 2011 and for every third calendar year thereafter.”

¹⁰ 52:19 Md. R. 976, “Background” section, para. 4.

¹¹ *Id.* at “Economic Summary” section, para. 1.

compliance; compiling data that has never before been sought; formatting and submitting the report; conducting a “conservative missing data parameter” in order to estimate missing data¹² as well as documentation and support for those estimates;¹³ voluminous recordkeeping requirements that could require additional IT systems or staff;¹⁴ and hiring additional employees for assistance with all of the above. Any of the above will result in costs for reporting entities, especially for small businesses.

Small businesses are uniquely harmed by new recordkeeping and reporting requirements, because much of their regulatory compliance is done in-house. 64 percent of small businesses do their own bookkeeping,¹⁵ and about half of small businesses likewise do their own payroll, financial paperwork, and recordkeeping.¹⁶ For the average business, regulatory compliance accounts for “between 1.3 and 3.3 percent of its total wage bill.”¹⁷ To hoist another reporting and recordkeeping burden on small businesses is inadvisable, and runs counter to the Department’s claim that “[t]he proposed action has minimal or no economic impact on small businesses.”¹⁸

The costs of reporting will not be borne solely by fuel providers, but by consumers. Small businesses as consumers are already struggling with energy costs. In a 2024 NFIB survey, small businesses listed “Cost of Natural Gas, Propane, Gasoline, Diesel, Fuel Oil” as their 6th most pressing problem, up 13 points from 2020.¹⁹ “Electricity Costs” is listed at number 10, for an increase of 6 points.²⁰ The Department, with this new reporting requirement, will increase energy costs at a time when they are already rising and becoming a serious problem for small businesses.

¹² Proposed COMAR 26.11.4.05 (A)(1)(c)(iii).

¹³ Proposed COMAR 26.11.4.05 (B)(1).

¹⁴ See proposed COMAR 26.11.4.06.

¹⁵ NFIB Research Center, *NFIB National Small Business Poll Tax Complexity and the IRS* (2017), <https://tinyurl.com/yc2snjvu>.

¹⁶ NFIB Research Center, *NFIB National Small Business Poll Business Structure* (2004), <https://tinyurl.com/5dy54jv6>.

¹⁷ National Bureau of Economic Research, *Tracking the Cost of Complying with Government Regulation* (Feb. 1, 2023), available at <https://www.nber.org/digest/20232/tracking-cost-complying-government-regulation?page=1&perPage=50>.

¹⁸ 52:19 Md. R. 976, “Economic Impact on Small Businesses” section.

¹⁹ NFIB Research Center, *Small Business Problems & Priorities* (Oct. 2024), page 9, available at https://nfib.com/wp-content/uploads/2024/10/2024-Small-Business-Problems-Priorities.pdf?_gl=1*j00hul*_gcl_au*MTU2MTA2Mzg1Ni4xNzQ0OTc5ODEw.

²⁰ *Id.*

3. The Proposed Rule Threatens Businesses with Harsher Regulations Without a Legal Basis

The proposed rule includes a carrot and a stick: the Department says that it “is considering a future clean heat standard regulation that could include early action credits based on data submitted under this chapter,” and immediately thereafter says that “[r]eporting inaccuracies may have regulatory impacts in the future.”²¹ In other words, businesses will benefit from early action credits if everyone complies, and if they don’t, the Department will bring the full weight of regulation upon them.

Fortunately, the Department does not have the legal footing to deliver on this barely veiled threat. The federal Energy Policy and Conservation Act (EPCA) expressly preempts State and local laws that conflict with federal standards “concerning the energy efficiency [or] energy use” of gas appliances,²² including through agency-imposed heat standards. The Department cannot impose regulatory burdens upon the public if it does not get the data it desires—the EPCA will provide a ceiling and prevent that from happening. If the Department in the future obtains the requisite authority to promulgate a reporting rule, it should not include this paragraph.

Conclusion

NFIB appreciates the opportunity to comment on the proposed rule. We recommend that the Department withdraw it to ease reporting burdens and keep energy costs low for small business owners, as well as to ensure that the Department remains within the bounds of the authority entrusted to it by the Maryland legislature.

Sincerely,



Elizabeth A. Milito, Esq.
Vice President and Executive Director,
NFIB Small Business Legal Center

²¹ 52:19 Md. R. 976, “Background” section, para. 3.

²² 42 U.S.C. §§ 6297(c), 6316(b)(2)(A).