

**Legislative Regulation  
Review Committee**

2011-011

Department of Consumer Protection

**HEATING FUEL CONTRACTS**

STATE OF CONNECTICUT  
**REGULATION**

of the  
**DEPARTMENT OF CONSUMER PROTECTION**  
(NAME OF AGENCY)

Concerning  
**HEATING FUEL CONTRACTS**  
(SUBJECT MATTER OF REGULATION)

(NEW) **Section 1.** The Regulations of Connecticut State Agencies are hereby amended by adding sections 16a-23n-1 through 16a-23n-7, inclusive, as follows:

**16a-23n-1. Definitions.** As used in this chapter:

- (1) "Associated Equipment" means a gas regulator, gas line, sacrificial anode, interconnecting hardware and such other equipment necessary for the installation and operation of a propane tank.
- (2) "Capped Price Plan" means an agreement where the cost to the Consumer of Heating Fuel shall not increase above a specified price per gallon and the Consumer shall pay less than the specified price under circumstances specified in such contract.
- (3) "Cash" means legal tender, certified or cashier's check, commercial money order, or their equivalent. Cash also includes a guaranteed payment on behalf of the Consumer by a government or community action agency, provided there is no discount taken for the charge as billed.
- (4) "Commissioner" means the Commissioner of Consumer Protection.
- (5) "Consumer" shall mean a direct purchaser of Heating Fuel from a Heating Fuel Dealer as the primary source of fuel for residential heating and/or domestic hot water to one or more dwelling unit(s) within a structure having not more than four dwelling units.
- (6) "Estimate" means a good faith determination by a Heating Fuel Dealer based upon, but not limited to the Heating Fuel Dealer's prior sales of Heating Fuel, customer base size, expected sales, outstanding delivery obligations, and other factors impacting the amount of Heating Fuel the Heating Fuel Dealer is obligated to deliver or the total amount of funds the Heating Fuel Dealer is likely to receive pursuant to all Guaranteed Price Plans entered into by such Dealer with Consumers.
- (7) "Forward Contract" means an agreement between two parties to buy or sell an asset at a certain future time for a certain price.
- (8) "Futures Contract" means a standardized, transferable, exchange-traded agreement that requires delivery of Heating Fuel at a specified price on a specified future date.
- (9) "Gallons" means an accepted unit of measure consisting of 231 cubic inches, for all liquid or gaseous Heating Fuels subject to modifications allowed under Section 43-42 of the Connecticut General Statutes.

- (10) "Guaranteed Price Plan" also known as "guaranteed plan" "fixed price," "buy ahead," "pre-buy," "pre-bought," "pre-paid," "full price," "lock in," "capped," "price cap," or other similar terminology, when used to describe a contract, means a type of contract offering Heating Fuel at a guaranteed future price or at a maximum future price.
- (11) "Heating Fuel" means any fuel used as the primary source of residential heating and/or domestic hot water including, but not limited to, petroleum products as defined in Chapter 250 of the Connecticut General Statutes.
- (12) "Heating Fuel Dealer" or "Dealer" means any individual or group of individuals, firm, partnership, corporation, co-op and/or limited liability company offering the retail sale of Heating Fuel to a Consumer.
- (13) "Heating Oil" means predominantly a liquefied petroleum product at ambient temperatures, sold as a commodity, as the primary source of residential heating and/or domestic hot water, including products known as #2 oil (heating oil), #1 oil (kerosene), #4 oil, bio fuels, or any bio fuel blended with conventionally refined fossil fuel commodities. Heating oil, biomass fuels and biomass fuel blends shall meet the requirements set forth in American Society for Testing and Materials ("ASTM") Standard 396, as amended from time to time.
- (14) "Lessee" means a natural person who rents personal property under a Consumer rental agreement.
- (15) "Lessor" means a Heating Fuel Dealer who regularly provides the use of property through Consumer lease agreements and to whom rental is paid at a fixed interval or intervals for the use of the property.
- (16) "Maintain" means retention of the balance, measured in gallons or other accepted units of measure, of Heating Fuel that remains to be delivered to Consumers who are party to a Guaranteed Price Plan contract.
- (17) "Physical Supply Contract" means an agreement for wet barrels or gallons of Heating Fuel that has been secured by the Heating Fuel Dealer.
- (18) "Propane" or "Liquefied Petroleum Gas (LPG)" means a petroleum product that meets ASTM specification D1835, as amended from time to time, composed predominantly of any of the following hydrocarbons or mixtures thereof: propane, propylene, butanes (normal butane or isobutane), and butylenes, intended for use, among other things, as a fuel for residential heating.
- (19) "Surety Bond" means a bond issued by a licensed insurance company or banking institution as surety for a Dealer obligating the surety to the Commissioner in a sum certain in guaranty of the full and faithful performance by the Dealer of Guaranteed Price Plan contracts entered into pursuant to this Chapter.

**16a-23n-2. Heating Fuel Supply Contract Terms and Consumer Bill of Rights for Heating Fuel Customers.**

(a) Heating Fuel Dealers shall comply with all of the Consumer Bill of Rights disclosure provisions identified in this section.

(b) Prior to entering into a contract with a Consumer, every Heating Fuel Dealer shall

provide a written notice to each of its Consumers making all of the disclosures set forth in this section which shall be known as the "Consumer Bill of Rights" or the "Disclosure of Consumer Rights and Company Policies." This written notice shall be in writing and shall be printed in no less than twelve-point boldface type of uniform font.

(c) At least once each year after the first anniversary of the contract, every Heating Fuel Dealer shall provide its Consumers with an annual written notice of the Consumer Bill of Rights. A Heating Fuel Dealer may elect to satisfy its annual disclosure obligations hereunder by notifying its Consumers in writing that the Consumer Bill of Rights is posted on a publicly-available Internet website or that a copy of the Consumer Bill of Rights may also be obtained by calling the Heating Dealer's local business office. This annual written notice shall be in writing and shall be printed in no less than twelve-point boldface type of uniform font.

(d) A contract for the retail sale of Heating Fuel that contains a Guaranteed Price Plan shall be in writing, and the terms and conditions of such Guaranteed Price Plan shall be disclosed. Such disclosure shall be in plain language and shall immediately follow the language concerning the price or service that could be affected and shall be printed in no less than twelve-point boldface type of uniform font. Any data field required to be handwritten shall be completed in clear and legible writing.

(e) No Guaranteed Price Plan contract shall require any Consumer commitment to purchase Heating Fuel pursuant to the terms of such contract for a period of more than eighteen months from the effective date of the contract.

(f) The contract price of any undelivered Heating Fuel owed to the Consumer under the Guaranteed Price Plan contract, on the end date of the contract, shall be reimbursed to the Consumer not later than thirty (30) days after the end date of such contract unless the parties to such contract agree otherwise.

(g) All Guaranteed Price Plans shall provide:

- (1) The amount of funds paid by the Consumer to the Heating Fuel Dealer under such contract;
- (2) The maximum number of gallons of Heating Fuel committed by the Heating Fuel Dealer for delivery to the Consumer pursuant to such contract;
- (3) That performance of such Guaranteed Price Plan is secured by one of the two options described in section 16a-23n-3(a) of these regulations.
- (4) If Heating Fuel pricing in a Guaranteed Price Plan may fluctuate, such contract must explain the circumstances under which the price may decrease and how the price will decrease in clear and specific language.

(h) All capped price plans, and any Guaranteed Price Plan that includes the terms "cap," "capped," "maximum," "not to exceed," or any other similar terms or descriptions, shall not increase above a specified price per gallon. The contract shall state in clear and specific language how and under what circumstances the price will decrease.

(i) When a Consumer complaint against a Heating Fuel Dealer is being mediated and/or investigated by the Department of Consumer Protection or Attorney General's Office, the Heating Fuel Dealer, where the Dealer owns the tank and has exclusive fill requirements, may not deny the Consumer deliveries of Heating Fuel from the period October 1<sup>st</sup> through March

31<sup>st</sup> because of the existence of the complaint, mediation and/or investigation, provided the Heating Fuel Dealer remains the Consumer's exclusive supplier of Heating Fuel and the Consumer is ready, willing and able to pay the lawful price for Heating Fuel in Cash upon delivery.

(j) Written contracts for the retail sale of Heating Fuel and/or lease of equipment that call for an automatic renewal of the contract or lease are not valid unless the written contract complies with Chapter 296a and Chapter 739 of the Connecticut General Statutes.

Notwithstanding any other provision, no Guaranteed Price Plan for the retail purchase of Heating Fuel for residential heating may include any clause that calls for automatic renewal of the contract.

(k) Dealers shall display their name and its HOD registration number as it appears on its annual registration issued by the Department of Consumer Protection and any "trading as name" in the Consumer Bill of Rights Disclosure that it provides to a Consumer prior to entering into a contract with that Consumer pursuant to section 16a-23n-2(b) of these regulations.

(l) Dealers shall display their name and HOD registration number as it appears on its annual registration issued by the Department of Consumer Protection and any "trading as name" on all advertisements and other materials prepared or issued to prospective Consumers and further on Dealer's vehicles, contracts, delivery tickets, and letters.

(m) Any contract entered into with a Consumer after the effective date of these regulations for the lease of an underground propane storage tank and Associated Equipment ("Underground Tank and Associated Equipment") shall contain an option allowing the Consumer to purchase the Underground Tank and Associated Equipment for a specific price at the expiration of the first term of the contract, not later than five years after the date of commencement of the contract, or at such other times as provided in such contract, which option may be conditioned upon the Consumer executing a mutually acceptable equipment sales agreement.

### **16a-23n-3. Securing of Supply. Supply Reporting Requirements.**

(a) No Heating Fuel Dealer shall enter into any Guaranteed Price Plan unless that Heating Fuel Dealer has either:

(1) Obtained and maintained Heating Fuel Futures or Forwards Contracts, physical supply contracts or other similar commitments, the total amount of which allow such Dealer to purchase, at a fixed price, heating oil or propane gas in an amount not less than eighty per cent of the maximum number of gallons or amount that such Dealer is committed to deliver pursuant to all Guaranteed Price Plans entered into by such Dealer with Consumers in Connecticut, or

(2) Obtained and maintained a surety bond in an amount not less than fifty per cent of the total amount of funds paid to the Dealer by Consumers or that the Dealer estimates will be paid to the Dealer by Consumers pursuant to all Guaranteed Price Plans entered into by such Dealer with Consumers in Connecticut.

(b) Such Dealer shall be considered to have violated this section if the Dealer has calculated and relied upon an estimate pursuant to Section 16a-23n(c) of the Connecticut General

Statutes but has not obtained Futures or Forwards Contracts, physical supply contracts or other similar commitments, or the amount of the surety bond, in an amount representing the difference between any estimate calculated by said Dealer and such total amount of Futures or Forwards Contracts, physical supply contracts or other similar commitments, or the amount of the surety bond required by Section 16a-23n(c) of the Connecticut General Statutes, within five business days of a Guaranteed Price Plan entered into by such Dealer with a Consumer in Connecticut.

(c) Such Dealer shall maintain such total amount of Futures or Forwards Contracts, physical supply contracts or other similar commitments, or the amount of the surety bond required by this section for the period of time for which such Guaranteed Price Plans are effective, except that the total amount of such Futures or Forwards Contracts, physical supply contracts or other similar commitments, or the amount of the surety bond may be reduced during such period of time to reflect any amount of Heating Fuel already delivered to and paid for by the Consumer.

(d) Each Heating Fuel Dealer who enters into Guaranteed Price Plan(s) shall notify the Commissioner within five business days if the total amount of such secured Futures or Forwards Contract(s), physical supply contract(s) or other such similar commitments held by the Dealer is less than eighty per cent of the maximum number of gallons or amount that such Dealer is committed to deliver and/or if the amount of any surety bond(s) is less than fifty per cent of the total amount of funds paid to the Dealer by Consumers, pursuant to all such Guaranteed Price Plan entered into, renewed or extended by such Dealer or that such Dealer estimates it is committed to deliver pursuant to all of its Guaranteed Price Plans entered into with Connecticut Consumers respectively. The Commissioner shall prescribe the form in which such information shall be reported.

(e) Each business or person from which a Heating Fuel Dealer has secured a Futures Contract, a physical supply contract or other similar commitment pursuant to this section or who provides a bond pursuant to this section shall notify the Commissioner, in writing, of the cancellation of such contract, other similar commitment or of the cancellation of such bond not later than three business days after such cancellation.

**16a-23n-4. Delivery Charges.**

No Heating Fuel Dealer shall sell at retail Heating Fuel to be used as the primary source of residential heating and/or domestic hot water, without placing the unit price, clearly indicated as such, the total number of units sold and the amount of any delivery surcharge allowed in section 16a-22b of the Connecticut General Statutes in a conspicuous place on the delivery ticket given to the purchaser or an agent of the purchaser at the time of delivery. No Heating Fuel Dealer may bill or otherwise attempt to collect from any purchaser of Heating Fuel an amount which exceeds the unit price multiplied by the total number of units stated on the delivery ticket, plus the amount of any delivery surcharge allowed in section 16a-22b of the Connecticut General Statutes stated on the ticket.

**16a-23n-5. HOD Registration Requirements. Disclosure of Affiliated Companies.**

Each person, firm or corporation seeking registration as a home heating oil or propane gas dealer

shall apply annually for a certificate of registration with the Department of Consumer Protection on forms prescribed by the Commissioner. Each person, firm or corporation that engages in the retail sale of Heating Fuel, including co-op, agent, or broker for other Heating Fuel dealer sales, shall apply annually for a certificate of registration. No federally established heating assistance agency shall be required to register. Such form shall require the Dealer to disclose all affiliated companies registered with the Department of Consumer Protection that are under common ownership or have interlocking boards of directors. The Commissioner shall require all applicants for registration as a home heating oil or propane gas dealer to provide evidence of general liability insurance coverage and insurance to cover any potential environmental damage due to fuel oil spills or propane gas leaks caused by such applicant as a registered dealer which coverage shall be not less than one million dollars. Each registered dealer shall provide the department with evidence of each renewal of or change to such insurance coverage not later than five days after such renewal or change during the period of registration, which renewal or change shall meet the requirements of this subsection.

**16a-23n-6. Contract Requirements, Electronic Signature.** The requirement that contracts be in writing pursuant to section 16a-23n of the Connecticut General Statutes and these regulations may be satisfied telephonically by a person, firm or corporation selling at retail fuel oil or propane gas, only if such person, firm or corporation:

(a) Has provided to the consumer prior to any telephonic communication all terms and conditions of the contract, in writing, except for the contract duration, the unit price and the maximum number of units covered by the contract;

(b) Employs an interactive voice response system or similar technology which provides the consumer with the contract duration, the unit price and the maximum number of units covered by the contract, to complete the contract;

(c) Retains, in a readily retrievable format, a recording of the consumer affirmation to each such term and condition for the period of the contract;

(d) Sends the consumer a letter confirming the consumer's agreement to such terms and conditions with a written copy of the terms and conditions agreed to; and

(e) Retains a copy of each such letter.

**16a-23n-7. Penalties.**

(a) Any violation of the provisions of subsections (d), (e), (f), (g), or (k) of section 16a-23n-2 or any violation of section 16a-23n-3 of these regulations shall constitute an unfair trade practice pursuant to subsection (a) of section 42-110b of the Connecticut General Statutes.

(b) In accordance with the provisions of section 53a-11 of the Connecticut General Statutes, any Heating Fuel Dealer who knowingly violates the provisions of section 16a-23n-3(a) of these regulations shall have committed a class A misdemeanor.

(c) The Department of Consumer Protection may suspend or revoke any registration issued under section 16a-23 of the Connecticut General Statutes if the holder of such registration fails to respond within thirty (30) days to a request by the Department that the holder provide the Department with a written response to a consumer complaint regarding holder's work or

business. Before any such registration is suspended or revoked, such holder shall be given notice and opportunity for hearing as provided in regulations adopted by the Commissioner of Consumer Protection in accordance with the provisions of chapter 54 of the Connecticut General Statutes.

### **STATEMENT OF PURPOSE**

The purpose of these proposed regulations is to provide additional safeguards and disclosures for consumers purchasing heating fuels, including petroleum, biofuel and propane products, while helping to guaranty the delivery of fuel that has been placed under contract.

The Department believes that these provisions will help avoid confusion among consumers who are contemplating the pre-purchase of heating fuel. The regulation seeks to prevent situations where consumers have paid for fuel through a pre-buy contract, but the heating fuel dealer is unable to deliver the fuel as agreed.

The legal effect of this proposal would be to create a new regulation section that adds contract requirements for the sale of heating fuel to consumers, and adds additional requirements on heating fuel dealers to help assure the delivery of contracted fuel.

Be it known that the foregoing:

Regulations  Emergency Regulations

Are:

Adopted  Amended as hereinabove stated  Repealed

By the aforesaid agency pursuant to:

Sections 4-168, 16a-23n and 16a-23q of the General Statutes and

Section \_\_\_\_\_ of the General Statutes, as amended by Public Act No. \_\_\_\_\_ of the \_\_\_\_\_ Public Acts.

Public Act No. \_\_\_\_\_ of the \_\_\_\_\_ Public Acts.

After publication in the Connecticut Law Journal on 2/9/2010 2009 of the notice of the proposal to:

Adopt  Amend  Repeal such regulations.

(If applicable): And  the holding of an advertised public hearing on \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

WHEREFORE, the foregoing regulations are hereby:

Adopted  Amended as hereinabove stated  Repealed

Effective:

When filed with the Secretary of the State.  
(OR)

The \_\_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_\_\_.

|                     |                         |  |  |
|---------------------|-------------------------|--|--|
| In Witness Whereof: | DATE<br><u>11/24/10</u> | SIGNED (Head of Board, Agency or Commission)<br><i>Jerry Farrell</i> | OFFICIAL TITLE, DULY AUTHORIZED<br><b>COMMISSIONER</b> |
|---------------------|-------------------------|--|--|

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| Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4-169, as amended, C.G.S.:<br><u>12/30/10</u> | SIGNED<br><i>Joseph Rubin</i> | OFFICIAL TITLE, DULY AUTHORIZED<br><b>ASSOC. ATTY. GENERAL</b> |
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- Approved.
- Disapproved.
- Disapproved in part (Indicate Section Numbers disapproved only).
- Rejected without prejudice.

|  |      |   |
|--|------|---|
| By the Legislative Regulation Review Committee in accordance with Sec. 4-170, as amended, of the General Statutes. | DATE | SIGNED (Clerk of the Legislative Regulation Review Committee) |
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Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

|      |                                 |    |
|------|---------------------------------|----|
| DATE | SIGNED (Secretary of the State) | BY |
|------|---------------------------------|----|

### INSTRUCTIONS

One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.

Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.

Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.

Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capital letters and deleted language in brackets. Section 4-170 of the General Statutes.