

VERMONT ATTORNEY GENERAL'S OFFICE

CONSUMER FRAUD RULE (CF) 111

REGULATION OF PROPANE

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Effective January 1, 2012

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CF 111.01. Prohibited Acts

It shall constitute an unfair and deceptive trade act and practice in commerce under 9 V.S.A. § 2453(a) for a seller of propane to violate this rule.

CF 111.02. Definitions

For the purpose of this rule:

(a) "75-25 rule" means a method of allocating funds received from a consumer who:

(1) is a cash-on-delivery consumer;

(2) has a delinquency;

(3) makes a cash payment for propane to be delivered. A seller may deliver no less propane than can be purchased with 75% of the cash payment and may apply no more than

25% of the cash payment toward the delinquency. The seller may require that the 75% cover a minimum delivery. Any allowable fees required for the delivery are not subject to this rule and may be collected in full by the seller prior to delivery.

(b) “Cash-on-delivery” or “COD” means an account or bill for which payment is expected at or prior to the time of delivery.

(c) “Consumer” means any person who purchases propane, for consumption and not for resale, through a meter or has propane delivered to one or more storage tanks of 2000 gallons or less.

(d) “Credit” means an account or bill for which payment is expected after the time of delivery.

(e) “Delinquency” means failure of the consumer to make payments in full for a valid bill within 20 days of the postmark date of that bill, or by a due date at least 20 days after mailing or delivery of the bill, which date shall be written on the bill and which shall control in the absence of a postmark.

(f) “Disconnection” or “disconnect” means a deliberate refusal to deliver propane, or a deliberate interruption or disconnection of service by a seller to a consumer previously receiving service from the seller. Non-delivery to a COD account for which payment has not been made as agreed in advance of or at the time of delivery shall not be considered a disconnection under this rule.

(g) “Fee” means any amount charged or billed by a seller to a consumer for propane service, other than for the cost of propane or taxes on propane.

(h) “Fee Disclosure Form” means a form prescribed by the Attorney General’s Office, pursuant to 9 V.S.A. 2461b, after consultation with representatives of the propane industry.

(i) “Heating season” means the time period from November 1st until April 15th of each year.

(j) “Occupant” means a resident of a dwelling, authorized as such by the property owner or tenant, who is an end user of the propane provided by a seller to a consumer.

(k) “Payment” means receipt, at the seller’s business office or authorized payment agency, of funds in the manner required by the seller.

(l) “Physician’s certificate” means a written statement by a duly licensed health care provider certifying that disconnection of propane service to a dwelling during the heating season would cause serious harm to the health of an occupant of the dwelling. The certificate shall be considered valid and in force for 30 days from the date of the certificate, or the length of time specified in the certificate, whichever is longer.

(m) “Propane” means liquefied petroleum gas or LPG.

(n) “Seller” means a retail distributor of propane.

(o) “60 days notice” means notice given to the consumer on a Fee Disclosure Form which clearly and conspicuously indicates the fee increase or new fee.

(p) “Standard contractual terms” means the terms that a seller customarily includes in its consumer contracts or “terms and conditions”. No contract for propane services shall contain any provision which conflicts with the obligations and remedies established under 9 VSA § 2461b, or any rule or regulation promulgated under that section, and any conflicting provision shall be unenforceable and void.

CF 111.03. Disclosure of Prices, Fees, and Terms of Service

(a) Upon the request of an individual, a seller shall promptly disclose, over the telephone or in writing, the price or prices of its propane and the fees that are applicable to the consumer based on stated usage and other pertinent information.

(b) Prior to the establishment of propane service, a seller shall provide to the consumer its terms of propane service and an Initial Fee Disclosure Form (FDF). An initial FDF issued to a potential consumer upon inquiry or to a new consumer when establishing service must list all of the Seller’s fees, their amounts and the length of time that each amount will remain in effect, except that:

(1) any fee for the termination of service must remain in effect for one year and may not be greater than the price of labor and materials required to terminate service; and

(2) any fee with no stated duration shall remain in effect for one year.

(c) A contract with a consumer for propane service issued after January 1, 2010 shall contain no other fees than have been included on a Fee Disclosure Form provided to the consumer.

(d) After establishing service, a seller may increase a fee or add a new fee only by issuing an Existing Customer Fee Disclosure Form. An Existing Customer FDF:

(1) is effective no sooner than the later of 60 days after the seller mails or delivers the notice to the consumer, and the day after the expiration date set out in the Initial FDF; and

(2) whenever issuing an FDF after service has been established, the seller shall include all the then-current fees and their amounts; and

(3) must clearly and conspicuously distinguish, through increased font size, bolding, or highlighting, the changed fee from the fees which are unchanged from the most recent

FDF provided to the consumer.

CF 111.04. Credit Practices

(a) A seller may deny a credit application, or reduce or otherwise restrict the terms of a consumer's credit arrangement, only if the seller:

(1) notifies the consumer in writing of the nature of, reasons for, and consequences of, the denial or change (including the impact on propane delivery and/or assessment of fees). The notification shall be mailed or delivered within 10 days of the date of the denial or change, or within 10 days of the date the seller receives a report from a credit bureau on which it is basing the denial or change; and

(2) affords the consumer an opportunity to provide a written or oral response to the denial or change within 15 days of the date the seller mails or delivers its notice, to which the seller must mail or deliver a reply within 10 days of receipt of the consumer's response, setting forth the reasons for any continued denial or change.

(b) Changes to credit status shall become effective no sooner than 15 days from the date of the notice of change issued to the consumer, or upon satisfaction of the requirements in subsections (a)(1) and (2) of this section, whichever is later.

(c) Except as provided in CF 111.06(a)(2), a seller that changes a consumer's credit status from credit terms to cash-on-delivery shall not make continued propane service contingent upon immediate payment in full for any remaining balance due for propane delivered under the previous credit terms, but may require payments toward the balance under the 75-25 rule.

(d) Nothing in this section shall prohibit a seller from transacting a cash sale propane delivery with an applicant for credit during the time periods set out in subsections (a) and (b) of this section using the method of payment and payment allocation authorized in CF 111.06.

(e) No more than 30 days following a propane delivery or service, unless payment has already been received, a seller shall mail or deliver to the consumer an invoice or statement clearly and conspicuously itemizing the amount of propane delivered, the per-gallon price of the propane, the total amount due (including any fees), and the date payment is due. If the seller delivers the invoice or statement other than by mailing or handing it directly to the consumer, it shall place the document in a secure and conspicuous location on the consumer's premises.

(f) No seller shall bill or collect from anyone other than the consumer any amount for goods or services provided to the consumer, except that the seller may bill or collect from a governmental or private agency or other person who has voluntarily agreed to make such payment.

111.05. Security Deposits

- (a) A seller may require a security deposit only if the seller extends credit to the consumer.
- (b) A seller shall not require a security deposit in excess of two-twelfths (2/12) of the consumer's estimated annual bill.
- (c) A seller shall accept a reasonable payment plan for security deposits.
- (d) A seller shall refund, within 14 days of disconnection of service, a consumer's security deposit with accrued interest less accrued charges for propane or accrued fees.

CF 111.06. Cash Sales

(a) As provided in subdivisions 1 through 3 below, a seller shall deliver propane to a consumer in its geographic service area, according to the seller's standard contractual terms, if the consumer is ready, willing and able to make, in a manner determined by the seller, payment in advance or at the time of delivery.

(1) If the seller has delivered propane to, or has accepted payment from, a consumer within the previous eight months and the consumer has a delinquency for fees or past propane deliveries, the seller may not deny service, but may require cash-on-delivery and apply cash payments in accordance with the 75-25 rule.

(2) If a seller has not delivered propane to, or accepted payment from a consumer within the previous eight months, the seller may require payment, in full or in part, of any outstanding balance due.

(3) If the consumer is serviced by a meter connected to a bulk tank, the seller may require payment for a minimum delivery for a metered account as set out in CF 111.08(c) in advance of the monthly payment cycle. The seller shall notify the consumer no less than 10 days in advance of the amount due and the date the payment is due. Any deficit or credit shall be applied to the next payment.

CF 111.07. Third-Party Payments

When a seller contracts with a governmental or private agency to make a delivery to a consumer, it shall deliver the full amount of the propane paid for by the agency and shall not require any minimum delivery or security deposit.

CF 111.08. Minimum Delivery

(a) A seller shall not require a consumer with a tank capacity of less than 250 gallons to make a minimum purchase of more than 100 gallons at a time or more than the total capacity of the consumer's existing tank, whichever is less.

(b) If the lowest tank capacity of any single tank serving a dwelling is 250 gallons or greater, the following minimum deliveries shall be allowed, but only if the seller offers and allows the consumer to enter into a reasonable payment plan or reasonable yearly budget plan:

- 250 gallon tank—125 gallon minimum
- 325 gallon tank—175 gallon minimum
- 500 gallon tank—225 gallon minimum
- 1,000 gallon tank—300 gallon minimum.

(c) If a consumer is on a meter connected to a bulk tank, the minimum delivery amount shall be no more than the amount of propane used in that dwelling in the corresponding month of a recent year, or the best estimate of usage if previous usage cannot be determined or usage conditions have changed.

(d) A seller shall not require a consumer to purchase a minimum number of gallons of propane per year, except as part of a guaranteed price plan.

CF 111.09. Fees

(a) If not prohibited by this rule, a seller may collect a fee:

- (1) when the amount of the fee is disclosed in a written contract or FDF; or
- (2) when the amount of the fee has not been previously disclosed in a written contract or FDF as long as the fee does not conflict with a written contract and only after 60 days' notice on an FDF issued in compliance with CF 111.03.

(b) (1) A fee does not conflict with a written contract if:

- (A) there is no written contract;
- (B) the written contract is more than six years old;
- (C) the contract is silent with respect to the fee;
- (D) the contract has language that permits the addition or amendment of fees; or
- (E) there is an amount and duration for the fee in the contract or FDF, but the duration has expired or was disclosed as "variable."

(2) A fee does conflict with a written contract if:

- (A) there is a lesser fixed amount for the fee in the contract, there is no language in the contract permitting a fee change, and the contract is less than six years old;
- or

(B) the fee is prohibited by the terms of the contract.

(c) No fee may be increased or added during the term of a guaranteed price plan that specifies a penalty to the consumer for early termination.

(d) For immediate service or repair, a seller with a written contract issued prior to January 1, 2010, without a related contract term may collect a fee for immediate service or repair only if the seller gives written or oral notice of the fee prior to providing the service.

(e) A seller shall require a delivery fee only when the consumer requests that delivery be made outside of normal business hours or outside of a normally scheduled delivery to the consumer's geographic area. In such case, a reasonable fee may be collected if the seller makes reasonable efforts to avoid consumers' having to incur special delivery fees and provides timely oral or written information on options for delivery and their costs.

(f) A seller shall not misrepresent the nature of any fee, nor collect from a consumer:

(1) any "governmental," "regulatory," "environmental," or other similar fee. This section does not limit the per-gallon price charged by sellers or prohibit collection of any tax allowable under Vermont law;

(2) a minimum usage fee;

(3) a fee for propane that is not actually delivered to a consumer;

(4) when the propane storage tank has been located on the consumer's premises for 12 months or more, regardless of ownership of the premises, a fee related to termination of propane service, including a fee:

(A) to remove the seller's storage tank from the premises;

(B) to pump out or restock propane; or

(C) to terminate service;

(5) when the consumer has received propane service from the seller for less than 12 months, a fee related to termination of service that exceeds the price of labor and materials disclosed on a Fee Disclosure Form or in a contract;

(6) a tank rental fee for any period of time after the service has been disconnected by the seller or the consumer has notified the seller that the seller's equipment is no longer connected;

(7) any amounts for the repair of equipment or for any special trip related to the repair if equipment owned by a seller malfunctions through no fault of a consumer or other

person authorized to be on the premises;

(8) a delivery fee if the seller fails to make a delivery through no fault of the consumer and the consumer runs out of propane as a result; or

(9) a fee, the basis of which is not compliant with any applicable statute or rule.

CF 111.10. Delinquency Payment Agreements

(a) Except as provided in CF 111.11(c), the seller shall offer and a consumer may enter into a reasonable Delinquency Payment Agreement to satisfy any delinquency that is the subject of a Notice of Intent to Disconnect that has been issued to the consumer.

(b) The seller shall mail or deliver in writing to the consumer:

(1) the specific terms of the agreement, including the amount, frequency and dates due for payments from the consumer, and

(2) the actions the seller may take should the consumer fail to uphold the terms of the agreement.

(c) For credit consumers, any Delinquency Payment Agreement shall consider:

(1) the amount of the delinquency,

(2) the consumer's ability to pay, and

(3) the circumstances that caused the delinquency.

(d) For cash-on-delivery consumers, a Delinquency Payment Agreement may require no greater amount paid towards the delinquency than would be allowed under the 75-25 rule.

CF 111.11. Disconnection of Service

(a) A seller shall only disconnect propane service without the consent of the consumer if:

(1) there is a delinquency for charges for propane or fees for leak or pressure test, safety check, restart of equipment, after-hours delivery, special trip for delivery, and meter read;

(2) the entire delinquency is not more than two years old;

(3) the consumer or occupant uses propane as a primary source of heat and the amount

of the delinquency which is less than two years old is not less than \$60.00 and is not fewer than 60 days past due;

(4) the consumer has been given an opportunity to enter into a reasonable Delinquency Payment Agreement to pay the delinquency.

(b) A seller may proceed with disconnection:

(1) after the seller has mailed or delivered a Notice of Intent to Disconnect in compliance with CF 111.13 at least 14 days, but not more than 30 days, prior to the disconnection.

(2) if the disconnection will not occur on the last day of the week that the seller's offices are open with personnel available to enter into a Delinquency Payment Agreement.

(3) between the hours of 7:30 A.M. and 2:00 P.M. of the business days specified on a Notice of Intent to Disconnect. The seller may disconnect service after 2:00 P.M. only if the seller has available, for at least 3 hours following the time of disconnection, personnel authorized and able to reconnect service and enter into Delinquency Payment Agreements on behalf of the seller.

(4) if the individual making the disconnection has immediately informed an adult occupant in each dwelling unit affected by the disconnection that propane service is being disconnected or, if no adult occupant is present in any such dwelling unit, has left on the premises, in a conspicuous and secure place as close as possible to the access to the dwelling unit, a notification advising that propane service has been disconnected and what the occupant has to do to have service restored.

(5) during the heating season if the seller has complied with CF 111.12.

(6) if the consumer has failed to abide by the terms of a Delinquency Payment Agreement and the seller has complied with subsection (c) of this section.

(c) If a consumer has failed to abide by the terms of a reasonable Delinquency Payment Agreement pursuant to a previous Notice of Intent to Disconnect, and the seller has already complied with CF 111.12 and 111.13, the seller may disconnect in accordance with this rule after:

(1) a Notice of Intent to Disconnect is delivered in person to the consumer at least 72 hours prior to disconnection; or

(2) a Notice of Intent to Disconnect is mailed by deposit in a United States post office at least five business days prior to disconnection.

(d) This section shall not apply to any disconnection made necessary for reasons of the immediate health or safety of the consumer or the general public.

CF 111.12. Heating Season Disconnections

(a) No seller may disconnect service to any residential consumer who uses propane as the primary source of heat during the heating season, unless, in addition to complying with all other requirements of this rule, the seller has complied with this section.

(b) The seller shall make reasonable attempts to give the consumer actual oral notice of the information required to be in the Notice of Intent to Disconnect under CF 111.13. If actual oral notice has not been given in any other manner, reasonable attempts shall consist of two telephone calls made to the consumer at his or her residence. One of the telephone calls shall be made between the hours of 6:00 P.M. and 9:00 P.M. on a business day if the consumer has not been reached during the day.

(c) If a consumer cannot be contacted by telephone, a personal visit shall be made to the consumer's residence and oral notice given at that time. If no adult occupant is home, a Notice of Intent to Disconnect under CF 111.13 shall be left in a secure and conspicuous place; and

(d) if a dwelling affected by the proposed disconnection is not the consumer's residence, the notice required by this section shall also be delivered orally, or in person, to an adult occupant in each dwelling unit, with information on what the occupant has to do to have service restored. If no adult occupant is home, notice containing this information shall be left in a secure and conspicuous place.

CF 111.13. Notice of Intent to Disconnect

The disconnection notice shall be clearly printed and shall contain all of the following information:

(a) a statement that the consumer's account is delinquent for charges or fees for propane, leak or pressure test, safety check, restart of equipment, after-hours delivery, special trip for delivery, and meter read, including the amount of the delinquency; and

(b) a statement that the seller will disconnect propane service, including the dates and times of day when the seller will disconnect service if the consumer does not take appropriate action;

(c) the actions a consumer or occupant must take to avoid disconnection:

(1) pay the delinquency in full by a certain date;

(2) enter into a reasonable Delinquency Payment Agreement to satisfy the delinquency; or

(3) provide the seller with a physician's certificate, or notice that a certificate will be provided within 7 calendar days;

(d) the names or titles, addresses, telephone numbers and business hours of the seller representatives with whom the consumer may make any inquiry or complaint or arrange a Delinquency Payment Agreement;

(e) the amount of any fee and any security deposit required for restoration of service and notice of any change in the consumer's credit status; and

(f) if disconnection is to occur during the heating season, a list, as annually compiled by the Department of Public Service, of the names, addresses and telephone numbers of governmental and private agencies that may provide assistance to consumers in paying their propane bills.

CF 111.14. Restoration of Service

(a) If service has been disconnected, the seller shall, within 24 hours, restore service upon the consumer's request when any of the following has occurred:

(1) the cause for disconnection of service has been removed;

(2) the consumer has entered into a reasonable Delinquency Payment Agreement to satisfy the delinquency;

(3) the consumer makes a payment for delivery in accordance with CF 111.06;

(4) no delivery is required and:

(A) the consumer makes a payment for the amount of propane in the tank; or

(B) having not already defaulted on a Delinquency Payment Agreement, the consumer makes a payment for the amount of propane equal to the minimum delivery; any remaining arrearage shall be subject to a Delinquency Payment Agreement.

(b) If the dwelling that is the subject of the disconnection is not the consumer's residence, the seller shall make reasonable efforts to promptly reestablish service to the dwelling units affected by the disconnection, at the request of their respective adult occupants, subject to the seller's standard contractual terms and the 75-25 rule. Nothing in this subsection shall require a seller to restore service to an occupant who is not a consumer where the owner of the

premises independently either objects to providing service or requests that the seller's equipment be removed from the premises.

(c) Restoration of service, to the extent feasible, shall be done so as to avoid charging consumers for overtime wages or other extraordinary expenses.

CF 111.15. Termination of Service and Tank Removal

(a) When a seller disconnects or terminates service to a consumer, it shall, at the consumer's request, remove any storage tank that it owns from the consumer's premises by the latest of the following dates:

(1) 20 days from the disconnection or termination or 30 days in the case of an underground tank;

(2) 20 days from the consumer's request or 30 days in the case of an underground tank; the request must be in writing if the tank was disconnected by someone other than the seller;

(3) in the case of a cash consumer, 20 days from receipt of payment of tank removal fees allowed under section 111.09; or

(4) as soon as the weather and access to the tank allow.

(b) A seller shall cooperate reasonably with the consumer's new seller to exchange tanks, when appropriate, taking into account such factors as tank ownership, access, value, propane remaining in the tank, condition, safety and liability.

CF 111.16. Refunds

(a) When terminating service to a consumer using a seller-owned tank, a seller shall refund the consumer within 20 days of the date when the seller disconnects propane service or is notified by the consumer in writing that the seller's equipment is no longer connected, whichever is earlier:

(1) the amount paid by the consumer for any propane remaining in the storage tank, less any payments due the seller from the consumer; or

(2) the amount paid by the consumer for 80 percent of the seller's best reasonable estimate of the quantity of propane remaining in the tank, less any payments due from the consumer, if the quantity of propane remaining in the storage tank cannot be determined with certainty. The seller shall refund the remainder of the amount due as soon as the quantity of propane left in the tank can be determined with certainty, but

no later than 14 days after the removal of the tank or restocking of the tank at the time of reconnection.

(b) Any refund to the consumer shall be by cash, check, direct deposit, credit to a credit card account, or in the same method or manner of payment that the consumer or a third party on the consumer's behalf, used to make payments to the seller. Unless requested by the consumer, a seller shall not provide a refund in the form of a reimbursement or credit to any account with the seller.

(c) (1) If the seller fails to mail or deliver a refund to the consumer in accordance with this section, the seller shall within one business day make a penalty payment to the consumer, in addition to the refund, of \$250.00 on the first day after the refund was due, and \$75.00 per day for each day thereafter until the refund and penalty payment have been mailed or delivered.

(2) When a penalty due will exceed the amount for which reporting is required by IRS rules, the delivery requirement for the penalty check is met once a seller has cut the penalty check and delivered to the consumer the refund check and a notice that the penalty check is available immediately upon completion of required tax documentation. A penalty check is "available immediately" if it is available at the seller's business location closest to the consumer should the consumer indicate that it will be picked up, or the seller will put the check into first class mail, postage paid, on the same day as the tax documentation is received by the seller.

(d) The seller shall accept as the written notice from the consumer required by subdivision (a), any separate written communication to the seller other than one contained on a payment instrument. The seller is considered notified by the consumer when a representative of the seller receives the notification in hand or by written electronic means, or three days after the notice is mailed by first class mail, postage paid. Receipt of written electronic notice means the consumer has sent notice electronically and:

(1) the notice was sent to an electronic location (e-mail or instant message address, facsimile or text telephone number, or other electronic media destination) provided by the seller for purposes of business communications with consumers;

(2) the consumer confirms by read-receipt that the message has been opened by the seller; or

(3) the consumer is informed by the seller that notice has been received.

CF 111.17. Privacy

(a) A seller that is required by this rule to provide a written notice, invoice or statement to a consumer or occupant, where the document will be provided at a location where one could reasonably expect unrelated persons to be present (such as the hallway of an apartment

building), shall place the document in an envelope or similar packaging, so as to protect the privacy of the communication.

(b) A seller shall not disseminate to, or solicit from, competing sellers the names of past or present consumers with delinquencies.

CF 111.18. Discrimination

A seller shall not discriminate in the provision of propane service to any person based on race, creed, color, religion, national origin, sex, ancestry, place of birth, age, physical or mental handicap, marital status, sexual orientation, gender identity, or being a recipient of public assistance.

CF 111.19. Safety

(a) No seller shall fill a tank without the permission of the tank owner.

(b) Nothing in this rule shall supersede any state law, rule or code designed to protect consumer or public safety with respect to propane. In the event of a conflict with this rule, any such law, rule or code shall take precedence to the extent of the conflict.

(c) No seller shall be required to deliver propane under this section to a consumer whose propane tank or system does not meet NFPA 54 (National Fuel Gas Code) and NFPA 58 (Storage and Handling of Liquefied Petroleum Gas Code) of the National Fire Protection Association, or where a documented safety concern exists.

CF 111.20. Effective Date for Existing Contracts

(a) Any provision of a contract that was in effect as of May 25, 2011 which specifies an amount for any fee that is prohibited by law shall remain valid and enforceable

(1) until the earlier of the date the contract provision expires or April 1, 2012, or

(2) in the case of termination of service to an underground storage tank, the earlier of:

(A) 30 days after the date the contract provision expires or as soon thereafter as weather and access to the tank allow; or

(B) April 1, 2014.