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CONSUMER HOME HEATING RIGHTS

§ 19. 1. Introduction

During the winter months home heating fuel is a necessity to Maine consumers. In Maine, sellers of home heating oil, LP gas, natural gas, electricity and firewood are held to higher legal standards than most merchants. These standards include:

A. Home Heating Oil

The Attorney General has issued Rules under the Maine Unfair Trade Practices Act¹ that regulate, from October 15 through April 30, the sale of home heating oil. These Rules give consumers the right to purchase home heating oil even if that consumer owes the dealer money.

B. LP Gas (Propane)

Pursuant to the Maine Unfair Trade Practices Act, consumers have the right to purchase home heating LP gas even if that consumer owes the dealer money.

C. Firewood

There are specific statutory protections² for purchasers of firewood. These statutes define a “cord” and require that firewood dealers provide consumers with a receipt.

D. Natural Gas & Electricity

The Maine Public Utilities Commission has issued Rules for utilities that provide natural gas or electricity. These Rules protect consumers and regulate service and prices.

Failure to follow these laws and regulations may be an unfair trade practice, in violation of 5 M.R.S.A. § 207. Intentional violations of the Unfair Trade Practices Act can result in a civil penalty of up to \$10,000. Consumers can bring private unfair trade practice action³ and receive damages or any lost money and their lawyer’s fees.

This consumer rights chapter has the following sections:

§ 19. 2. Your Rights Under The Attorney General Home Heating Oil Rules

§ 19. 3. Help With Your Fuel Bills

§ 19. 4. LP Gas (Propane)

§ 19. 5. Firewood

¹ 5 M.R.S.A. §207(2).

² 10 M.R.S.A. § 2302(1), § 2624 and § 2628.

³ 5 M.R.S.A. § 213.

§ 19. 6. Natural Gas & Electricity**§ 19. 7. Coal****§ 19. 8. Conservation Tips****§ 19. 9. Attorney General Home Heating Rules****§ 19. 2. Your Rights Under The Attorney General Home Heating Oil Rules**

Pursuant to the Maine Unfair Trade Practices Act,⁴ the Attorney General has issued Rules that regulate, *from October 15 through April 30*, the sale of home heating oil. These Rules are listed in §19.9. The following is an explanation of your rights pursuant to these Rules.

A. Delivery Rights If You Owe the Dealer Money

An oil dealer cannot refuse to deliver to you even if you owe the dealer money, provided these three conditions are met:

- (1) You have cash or government guaranteed payment to pay for the oil you are requesting;
- (2) The dealer regularly serves your area; and
- (3) You request at least 20 gallons.

This does not mean that the dealer must drop everything and make an emergency delivery if you call. It does mean that, at the latest, a dealer must deliver oil to you on the next scheduled trip to your area. However, if you are an “established customer” (see below) and the dealer regularly provides emergency service or unscheduled deliveries to other established customers, the dealer must do the same for you, provided you can pay cash and you order at least 20 gallons.

If the dealer makes an *unscheduled delivery*, the dealer has the right to charge you extra. Before this charge is imposed, the dealer must tell you:

- (1) Approximately how much the extra charge will be;
- (2) The reason for the extra charge; and
- (3) When the dealer will make the next regularly scheduled delivery to your area.

The dealer’s surcharge cannot exceed the actual cost incurred by making an unscheduled delivery. If you call for immediate delivery on a day the dealer plans to be in your area anyway, the dealer cannot charge you for an unscheduled delivery.

Besides the surcharge for an unscheduled delivery, a dealer can charge you up to a \$5 penalty if you do not order at least:

- (1) 50% of your tank’s storage capacity; or
- (2) 100 gallons, whichever is less.

For example, if you have the standard 275-gallon tank you must order at least 100 gallons to avoid a penalty. Since one-half of a 275-gallon tank is 137.5 gallons, 100 gallons is sufficient in this case.

If you require an unscheduled delivery of less than the minimum delivery amount, you may be charged both a penalty and a surcharge. No other extra charges are permitted.

⁴ 5 M.R.S.A. § 207(2).

B. Established Customers

You can become an established customer of any oil dealer serving your area by making your *next two* oil purchases from that dealer. Once you have become an established customer, the dealer must give you the same service given other established customers. For example, if the dealer offers established customers immediate service in an emergency, the dealer must offer you the same.

Moreover, a dealer cannot charge you a price different from what other established customers are charged unless the dealer has a good reason. In addition, the dealer may not have different credit policies for similar customers without good reason. For example, you cannot be denied credit just because you receive money from a public assistance program. You could be denied credit, however, because your monthly public assistance income is less than the amount the dealer requires of all credit customers.

C. Credit Denial

If your credit application is denied, the dealer must:

- (1) Inform you within four business days or within two days of receiving a Credit Bureau report; and
- (2) Tell you why, in writing, if you ask.

If your credit is terminated or altered, the dealer must:

- (1) Give you 5 days' notice before the change; and
- (2) Explain why, in writing, if you ask him.

If you need oil during this 5-day notice period and want to buy it on credit, the dealer has to sell you only enough oil on credit to last you through the remainder of the 5-day period. Even if you lose your credit, you can still be a cash customer.

If the dealer quotes you an oil price, that is the price at which the oil must be delivered, *unless* the dealer specifically tells you the price is subject to change. In that case, you will be charged according to the dealer's price on the day the oil is actually delivered to you.⁵

D. Heating Oil Orders

You are guaranteed the price quoted by the dealer unless the dealer specifically communicates to you that the quoted price is subject to change and that the price the person will pay is the dealer's price on the day the oil is actually delivered.

§ 19. 3. Help With Your Fuel Bills

Many oil dealers offer payment plans. This may be a convenient and affordable way to spread your winter oil bills over the year. Be sure to compare prices offered by different dealers and read all the details of any budget plan.

The Federal Fuel Assistance Program administered by the Maine State Housing Authority provides states with fuel assistance money to distribute to residents who need help with fuel bills. Eligibility is determined by the program's income guidelines. To find out if you qualify or to apply for assistance, call your nearest Community Action Agency (*see* Chapter 30, Consumer Assistance Resources) or the Maine State Housing Authority (toll free 1-800-452-4668). In an emergency, your town or city, local

⁵ See *New Hampshire v. J.C. Oliver Enterprises, Inc.*, 00-E-0004 (Belknap Superior Court, August 4, 2000 (Perkins, J.)).

church and civic groups may also be able to help.

A. Heating Oil Buyer's Tips

- (1) Watch the fuel level on your tank and call a reasonable time in advance to request delivery. Avoid costly emergency deliveries.
- (2) Compare prices. When you get a price quote from an oil dealer, ask whether the price quoted "today" will still be the price you pay when your oil is delivered.
- (3) Labor is expensive! Before calling your oil dealer for service, check the following things:
- (4) Check your thermostat setting. Make sure it's not clogged with dust! (If you have a clock thermostat, make sure it's set correctly.)
- (5) Make sure all electrical switches are "ON."

Press the reset button on your furnace. This button, it's usually red, may be on your burner control box on the chimney or on the burner itself.

CAUTION: If you push the reset button and the furnace runs only a minute or so, DO NOT RESET IT AGAIN. Call your oil dealer.

- (6) Check your fuse box or electrical panel for blown fuses or tripped circuit breakers.
- (7) Check the boiler water level if you have a steam heat system. If the water on the boiler gauge glass is low, open the water feed line valve until the correct level is reached. Close the water valve tightly.
- (8) Don't let your furnace run dry. This could cause damage to your furnace that would be expensive to repair.

§ 19. 4. LP Gas (Propane)

The Attorney General's Home Heating Oil Rules set forth unfair trade practice principles that also apply to Maine dealers who deliver LP gas for heating.

A. Delivery Rights If You Owe the Dealer Money

The Attorney General considers it an unfair trade practice to refuse to supply LP gas or any other heating fuel during the winter months to cash customers. This rule applies even if the customer owes the dealer money. If the customer has cash to prepay or has made payment arrangements through the Home Energy Assistance Program (HEAP), the dealer must deliver.

This requirement to sell to cash customers applies when the propane is being sold for consumption in a properly installed, approved LP gas heating appliance which is used *as the primary source* to heat the interior of a building which is the person's principal residence.

A variation on this refusal to deliver fuel occurs when a dealer refuses to make a *small delivery*. If a dealer establishes an unreasonably high minimum delivery requirement, the dealer is also in violation of the Maine Unfair Trade Practices Act. A reasonable approach for dealers would be to establish as a minimum, the smallest amount of product that will supply the total connected BTU load under existing climatic conditions. As a guideline for a minimum delivery requirement, we would suggest whatever is the larger of the following amounts:

- (1) 50 gallons; or
- (2) 50% of the total ASME system or 50% of the ICC/DOT equipment installation.

The principle that cash customers must be served does not mean, however, that a dealer must make a free, unscheduled delivery. The dealer should deliver on the next regularly scheduled route. If it is a “run-out” situation, due to something other than the dealer’s fault, a special delivery charge that reflects the additional costs may be collected.

B. Discrimination Among Consumers

LP gas dealers must also be cautious not to discriminate. The dealer may not discriminate unfairly among customers with respect to any of the following services:

- (1) Sales of LP gas or LP gas prices;
- (2) Minimum charges for special deliveries;
- (3) Minimum deliveries; and
- (4) Equipment installation and service.

C. Fair Credit Practices

A dealer must adhere to the prohibitions against discrimination in the Federal Equal Credit Opportunity Law. For example, it is unlawful for any creditor to discriminate on the basis of race, color, religion, national origin, ancestry, sex, marital status, or age or because all or part of the applicant’s income derives from any public assistance program.

The right to purchase heating fuel on credit is crucial during the winter months. The dealer should notify his customers promptly when credit is being denied or suspended. He should be ready to give to each customer his reasons for denial or suspension in writing. When suspending credit, he must be certain to give them reasonable, advance notice so that they can make other arrangements.

These unfair trade practice standards apply during the winter months (October 15 to April 30). If they are violated without good reason, both the Attorney General and the injured consumer can bring legal actions.

D. LP Gas Buyer’s Tips

If you get a quote from a dealer for the price of LP gas “today,” then that is the price you should pay. The exception to this is if the dealer *specifically* tells you that the price is subject to change and it will depend on the dealer’s price on the day of delivery.

§ 19. 5. Firewood

Firewood is a substantial supplier of our energy needs. Mainers burn nearly one million cords of wood each year. A lot of people are buying wood, a lot of people are selling it, and a lot of buyers are filing complaints about those sales.

Maine law prohibits the use of confusing terms in the sale of firewood such as “rack,” “pile” and “truckload” since such terms are undefined and subject to various meanings. Maine law does provide two definitions of a *cord*; one for a stacked cord, the other for a loose thrown cord.

A. Stacked Cord

A **stacked or standard cord**⁶ is a measure of **wood, bark and air**: 4 feet wide, 4 feet high and 8 feet long, or its equivalent, containing 128 cubic feet when the wood is ranked and well stowed. “Ranked and well stowed” means that pieces of wood are placed in a row, with individual pieces touching and parallel to each other, and stacked in a compact manner. Any voids that will

⁶ 10 M.R.S.A. §2302(1)(A).

accommodate a stick, log or bolt of average dimensions to those in that pile must be deducted from the measured volume.

B. Loose Thrown Cord

Maine law also defines a **loose thrown cord**⁷ as: “Fuel wood, when sold loose and not ranked and well stowed, shall be sold by the cubic foot or loose cord, unless other arrangements are made between the buyer and seller. When sold by the loose cord, the wood in any cord shall average either 12 inches, 16 inches, or 24 inches in length. When so sold, the volume of the cord shall be: a cord of wood 12 to 16 inches in length shall mean the amount of wood, bark and air contained in a space of 180 cubic feet; and a cord of wood 24 inches in length shall mean the amount of wood, bark and air contained in a space of 195 cubic feet.”

Firewood dealers usually deliver loose thrown cords. The volume of a loose thrown cord can best be measured in a container, i.e., a truck. Once a loose thrown cord is stacked it should measure somewhere between 115 and 124 cubic feet per cord.

C. Written Receipts

Maine law requires firewood dealers to give you a receipt⁸ for any sale of more than \$20. The receipt must include:

- (1) Buyer’s and seller’s names and addresses;
- (2) Date delivered;
- (3) Quantity of wood delivered (and quantity upon which the price is determined if different from the amount delivered);
- (4) Price (please note: sellers cannot misrepresent the price of the wood nor represent the price in any way that would mislead the buyer);⁹
- (5) Description of wood (*e.g.*, 50% red oak, rest mixed hardwood); and
- (6) Statement of quality (*e.g.*, dry or seasoned).

Insist upon a receipt. In case a dispute arises, it may be valuable evidence of what the dealer promised to deliver.

D. Wood Buyer’s Tips

Shop for wood as you would for any product. Compare prices, type and quality of wood offered, its seasoning, and delivery date.

Try to get your wood as far ahead of when you expect to use it as possible. Ideally, wood should be seasoned at least one year before burning. To allow for maximum drying, stack your wood so that plenty of air circulates through and around it. Cover the wood loosely, but don’t let the cover hang over the sides and block air circulation. As a practical matter, firewood to be properly seasoned should dry for at least a full three summer months, and even then wood at the bottom of the stack could still be green. The Forest Service reports that it is a common consumer fraud to claim firewood is seasoned, even though the wood has more than 25% moisture content.

Before paying top dollar for wood from conventional wood dealers, consider some less expensive sources:

- (1) Saw mill and lumberyard scraps may be available free or at a nominal price.

⁷ 10 M.R.S.A. § 2302(1)(A-2).

⁸ 10 M.R.S.A. § 2624.

⁹ 10 M.R.S.A. § 2622.

- (2) Portions of state and national parks are sometimes open to the public to clear deadwood and diseased trees. Check with the park ranger before collecting this wood.
- (3) If you think your wood dealer has not provided you with the correct amount of wood, or misrepresented the wood as “seasoned,” you can request assistance in measuring your cord from the Bureau of Weights and Measures, Department of Agriculture, 287-3841. Be sure to have a receipt from the dealer stating how much wood was sold to you. If you’ve been shorted, the Bureau will help you get your money back.

§ 19. 6. Natural Gas And Electricity

The Maine Public Utilities Commission (PUC) regulates utilities that provide electricity or natural gas. The PUC’s job is to protect the rights of all rate payers and to ensure that utilities provide adequate service at fair prices.

A. Payments

Pay your bill as soon as you can. If you pay after the “due date” on the bill (at least 25 days), you may be charged a late fee. If you pay by mail, your bill is considered paid on the day the company receives your payment. If you pay in person, your bill is considered paid on the day you pay it.

B. Payment Plans

If you can’t pay your bill in full, ask the utility for a payment plan. This payment plan must consider your ability to pay and your previous payment history. Most plans require you to pay weekly or monthly installment payments plus future bills within 30 days of the postmark. If you break a payment plan the utility can send you a 3-day disconnect notice which requires you to pay your overdue amount in full. Utilities may renegotiate a plan if you have a good reason for wanting the plan changed.

C. Low Income Help

Electric and natural gas companies must offer low-income customers special payment plans to spread out payment of winter bills. These special payment plans may allow low income customers to pay less than their current month’s bill during the winter; those customers then pay the outstanding portion of their winter bills during the summer by the following November 1st.

Low-income customers may be able to get help paying their bills. Utilities should refer you to the right agency in your community. *See* Chapter 30 in this Guide, § 30.2, “Community Action Agencies” and “Emergency Help.”

Telephone companies might offer special reductions of your monthly bill if you qualify for one or more of these programs: Food Stamps, Medicaid, AFDC, TANF, Supplemental Social Security (SSI or gold check) or Fuel Assistance (HEAP).

D. Disconnection

The utility may disconnect your service if you fail to pay a deposit or a bill, fail to keep a written payment plan, tamper with your meter, or somehow obtain service without paying for it.

The company will usually give you a 14-day disconnection notice, but it may give you as little as 3 days notice in certain cases. No notice will be given if the disconnection is because of a dangerous condition or the customer has stolen service. Disconnection cannot happen on a Friday, a weekend, a legal holiday, the day before a holiday, or any day the office is closed.

In the past, utilities needed PUC approval before disconnecting customers in the winter months (November 15 through April 15). Beginning in 1990, however, two Maine utilities (Bangor Hydro-Electric and Maine Public Service) were allowed to disconnect customers in some circumstances *without* PUC approval during the winter months. These procedures were enacted in order to stimulate the receipt of financial assistance before unpaid electric bills get too high. No customer can be disconnected *if* the customer enters into a long-term payment plan and *if* the customer complies with the long-term payment plan.

E. Medical Emergencies

Even if you have an overdue bill, you have a right to service if you or a member of your household is seriously ill. Ask your doctor to call the utility or call yourself if you can't get a doctor right away. The utility may require a letter from your doctor. The utility will not disconnect for up to 30 days, with renewal up to 90 days. But you still have to pay the bill.

F. Landlord/Tenant

A utility cannot automatically disconnect tenants at the request of the landlord or if the landlord fails to pay a bill in the landlord's name. The utility must first give tenants an opportunity to assume responsibility for future service. The utility cannot require tenants to pay the landlord's overdue bill.¹⁰

G. Disconnect When Service Provided by Landlord

In cases where the landlord assumes responsibility for utilities, a disconnect cannot occur until the utilities company notifies the tenant and allows the tenant the opportunity to assume responsibility for future service. Tenants cannot be forced to pay utility charges which are the landlord's responsibility. Any tenant assuming responsibility for future service, and paying the utility, may deduct the amount paid from any amount due the landlord.¹¹

If the landlord agrees to provide heat for the residence, Maine law requires that:

- (1) The landlord maintains an indoor temperature which is not so low as to be injurious to the health of occupants not suffering from abnormal medical conditions;
- (2) The residence's heating facilities must be capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit; and
- (3) The heating facilities are operated so as to protect the building equipment and systems from freezing.¹²

H. Consumer Complaints

The Consumer Assistance Division (CAD) of the Maine Public Utilities Commission has specially trained staff to assist customers in resolving their complaints with utilities. The Commission analyzes customer complaints and uses them as signals to determine where problems may exist and whether utilities are following State laws and the Commission's rules.

Before you contact the CAD for assistance you must contact the utility and give the utility a chance to resolve the problem. Call the utility at the telephone number listed on the bill or disconnection notice. The utility is required by law to work with you to try to resolve the problem. If necessary ask to speak with a manager or supervisor.

The utility should investigate your complaint and contact you regarding the results of their investigation within a reasonable time. The utility should try in good faith to settle your dispute. For

¹⁰ 14 M.R.S.A. § 6024-A, 35-A M.R.S.A. §§ 704-706.

¹¹ 14 M.R.S.A. § 6024-A; 35-A M.R.S.A. §§ 704-706.

¹² 14 M.R.S.A. § 6021(6).

example, if you cannot pay your bill in full, the utility should give you a chance to make an installment payment arrangement.

If the utility response does not satisfy you, call or write the CAD. The PUC will ask the utility for a copy of its record on your complaint and review it. The PUC will halt disconnection while this review takes place, but you must call or write it before the disconnection date stated on your disconnection notice.

Consumer Assistance Division
Maine Public Utilities Commission
242 State Street
18 State House Station
Augusta, Maine 04333-0018
Tel: 207-287-3831 or 1-800-452-4699

The Consumer Assistance Division receives a large number of calls so you may not be able to get through right away, but keep trying. You may also hear a taped message when you call asking that you leave your name and phone number. Please do as the tape instructs you and CAD will get back to you as soon as possible.

I. Consumer Rights While Complaint Is Pending

A utility cannot disconnect your service while a complaint is being investigated. However, if you have a complaint concerning part of your bill, you are responsible for paying that portion of your bill which is not in dispute. If you do not pay or make an arrangement on the undisputed amounts, the utility may continue to collect or even disconnect your service once it has given proper notice.

§ 19. 7. Coal

A. Written Receipts

The same law that requires dealers to give you a receipt for bulk delivery of wood also applies to bulk delivery of coal. Whenever the dealer delivers coal in an unpackaged form in which the dealer determines and represents the quantity, the dealer must give you a written receipt stating: Both your name, the dealer's name and address, the date delivered, the quantity delivered, the price and a description of the type of coal sold. Because the quality of coal is so important to the successful operation of your stove, shop for your supply carefully.

B. Coal Buyer's Tips

- (1) Buy from established, reputable dealers.
- (2) Ask about the ash content of the coal: 8-12% is acceptable, over 12% is not. Avoid it. Lower ash content means better combustion.
- (3) Buy a small amount of coal (200 pounds or so) and try it. If it's good, order more.
- (4) Buy early.

§ 19. 8. Conservation Tips

Finally, always remember that one solution to high fuel prices is an even greater vigilance to home conservation. Here is some advice on saving:

- A. Room thermostats should be set at 65 degrees during the day and 55 degrees at night. If someone in your home is sick or elderly, setting the thermostat that low might not be advisable.

- B. Conserve hot water, insulate the tank and set the thermostat at 110 degrees.
- C. Wash clothes in cold water.
- D. Turn off the heat in rooms you are not using and close the doors of those rooms.
- E. Drapes and window shades help. At night and on cold windy days, keep the shades pulled and drapes closed to help keep heat in.
- F. Weatherstrip and caulk all leaks around doors and windows.
- G. Keep radiators clean and keep furniture away from the radiators.
- H. Have your heating system checked for operating efficiency. Try for 60-70%.
- I. Block off unused fireplaces.

§ 19. 9. Attorney General Home Heating Rules

The Attorney General has issued Rules describing unfair trade practices in the sale of residential heating oil by retail dealers. *These Rules are in effect from October 15 through April 30 of each year.* Failure to follow these Rules is *prima facie* evidence of an unfair trade practice, in violation of 5 M.R.S.A. § 207. See Chapter 3, Unfair Trade Practices.

A. Attorney General Home Heating Rules

§ 100.1 Definitions

1. “Dealer” includes all retail oil dealers who sell home heating oil for use and not for resale.
2. “Established delivery area” means the geographic area bounded by a retail dealer’s delivery routes used to service established customers.
3. “Heating oil” means number 2 oil or kerosene, sold to heat the interior of a building used as a person’s principal place of residence.
4. “Market price of heating oil” means the highest price per gallon of heating oil a dealer customarily charges his buyers in an established delivery area.
5. “Unscheduled delivery” means a delivery which causes the dealer to dispatch a truck along a delivery route he would not have otherwise taken during the day’s regular working hours.

Comment

A common example of a dealer’s market price for heating oil would be that charged a person on thirty days credit for automatic delivery to a 275-gallon tank.

For further explanation of an unscheduled delivery, see the Comment to RULE 100.6.

§ 100.2 Violations

A violation of any of the following Rules is [*prima facie* evidence of] an unfair trade practice.¹³

Comment

These rules set forth examples of acts by dealers which constitute illegal practices under the Maine Unfair Trade Practices Act. Other acts which place an unlawful burden on consumers are also prohibited under the Maine Unfair

¹³ Violation of Unfair Trade Practice Rule is *prima facie* (presumptive) evidence of a violation of 5 M.R.S.A. § 207.

Trade Practices Act even though they are not specifically included in these rules.

These rules do not relieve dealers of any obligations or duties imposed by other laws.

§ 100.3 All Established Customers Receive Dealer's Offered Services

The dealer may not discriminate unfairly among his established customers in the following areas:

- A. Heating oil sales, including requests for immediate service, or additional charges for deliveries of oil below the minimum delivery requirement of unscheduled deliveries; and
- B. Oil burner installation and service.

For the purpose of this Rule, an "established customer" of a dealer includes any person whose last two heating oil purchases were made from the dealer.

Comment

This Rule sets out the principle that all established customers are entitled to equal service. For example, a person can insure emergency service or repair to his oil burner by becoming an established customer of a dealer who provides these services to his customers.

This Rule does allow the dealer to adopt such practices as surcharging for unscheduled deliveries if it is the established buyer's fault the tank went dry, but not surcharging if it is the dealer's fault.

Since 100.4 requires service for any cash customer, any person can become an "established customer" by making two cash purchases in a row from the same dealer.

§ 100.4 Required Heating Oil Sales

A dealer must sell heating oil within its established delivery area to any person who is willing and able to pay cash. The dealer must make this sale even if:

- A. The person has not paid for a past sale of heating oil; or
- B. The person is not an established customer of the dealer.

This Rule also applies if payment is to be made in certified or cashier's check, commercial money order, or their equivalent, or if a government or community action agency has guaranteed to pay on behalf of the person the cost of the heating oil sale.

When a person requests 20 gallons or more of heating oil under this Rule, the dealer must deliver the oil no later than the next scheduled delivery to the person's neighborhood.

Comment

This Rule ensures that any person ready and able to pay can receive a heating oil delivery. Further, by making two cash purchases under this Rule, any person can become an established customer of the dealer of his choice and thereby become eligible for all services that dealer provides to established customers.

§ 100.5 Minimum Delivery Requirement

A dealer is required to make scheduled deliveries of 20 gallons or more. However, for any delivery below the following amount:

A. 50% of the customer's tank; or

B. 100 gallons, whichever is less, the dealer may charge a penalty not to exceed \$5. No other penalty is permitted.

§ 100.6 Surcharge Permitted for Unscheduled Delivery

When the dealer makes an unscheduled delivery at the request of a buyer, he may add a separate charge to his price. This surcharge may not exceed the actual additional costs incurred. No other surcharge is permitted.

Prior to accepting an order for an unscheduled delivery, the dealer shall inform the buyer of the approximate amount of the surcharge, the reason for the surcharge, and when his next scheduled delivery will take place.

Comment

Under this Rule dealers must establish uniform surcharges for unscheduled deliveries. In doing so the dealer may consider such factors as extra miles traveled or overtime pay.

Examples of unscheduled deliveries include:

A. When the dealer must dispatch a truck to serve a person on a day during which he would not otherwise be in that area; or

B. When a dealer must dispatch a truck to return to an area he has already served that day.

It is *not* an unscheduled delivery when a person requests a delivery for a day on which the truck is already scheduled to be in his area.

A dealer may establish a flat rate surcharge for buyers that does not exceed his average additional costs.

§ 100.7 Price Discrimination Prohibited

A dealer may not discriminate by charging some persons a price higher than his current market price of heating oil. Except for a penalty for a delivery below the minimum delivery requirement or a surcharge for an unscheduled delivery, no other penalties or surcharges are permitted.

§ 100.8 Credit Discrimination Prohibited

A dealer must adhere to the prohibitions against discrimination in the Federal Equal Credit Opportunity Law, which is found at Title 15, 1691(a) through (c) of the United States Code Annotated and the State's Fair Credit Extension Act, which is found at Title 5, Maine Revised Statutes Annotated, §§ 4595 through 4598.

Comment

These federal and state laws detail unlawful credit discrimination. For example, it is unlawful for any creditor to discriminate on the basis of race, color, religion, national origin, ancestry, sex, marital status or age, or because all or part of the applicant's income derives from any public assistance program.

§ 100.9 Notice of Credit Rejection or Change of Terms Required

If credit is denied, the dealer must so inform the credit applicant in writing. This notice must be given within 4 business days or if a dealer uses a credit bureau, within 2 days of receiving the bureau's report. Notice shall state the reasons for denial or inform the applicant of his right to request such reasons.

If the applicant requests the reasons credit was denied, the dealer must respond within 2 business days. The dealer's response must be in writing if the applicant so requests.

A dealer must give 5 days advance notice of termination or alteration of credit terms and the reasons why.

If a person demands a credit oil delivery within the 5-day notice of termination period, the dealer need not sell him more oil than he needs to last through the notice period.

§ 100.10 Reasonable Exceptions to These Rules

In adhering to these Rules, a dealer may make reasonable exceptions favorable to classes of people with relatively low income, such as the elderly, recipients of public assistance, or other persons on a fixed income.

§ 100.11 Suspension Dates

These Rules will be in effect each year from October 15 through April 30.

§ 100.12 Heating Oil Orders

When a dealer quotes to a person a specific heating oil price and the person places an order, the dealer must deliver the oil at that price unless the dealer has specifically stated to the person that:

- A. The price per gallon is determined on the day the oil is actually delivered; and
- B. The price quoted on delivery day may be higher or lower than the quoted price.

Comment

This Rule insures that a person who orders oil is charged at the price quoted by the dealer unless the dealer specifically communicates to that person that the quoted price is subject to change and that the price the person will pay is the dealer's price on the day the oil is actually delivered.

B. Basis Statement

The rapid and continuing escalation of the price of heating oil, together with the increased possibility of at least temporary shortages, have created market conditions in which certain business practices place an unfair burden on many persons. Specifically:

1. Since 1976 the cost of home heating fuel has nearly doubled while the real income of persons on fixed incomes — the elderly, the poor, the disabled — has actually declined.
2. Over ninety percent of Maine homes heat with oil. Heating oil is a necessity and there is a limit to which consumers can respond to higher prices by greater conservation.
3. Many customers currently have outstanding heating oil bills and may be faced with dealers unwilling to serve them or credit terms so stringent they cannot be met.
4. Credit arrangements for home heating oil will be crucial this winter. The National Advisory on Economics reported recently that the households in the lowest 10 percent of income distribution spend more than 119 percent of after tax income on necessities. The only solution this winter for

these households if they are to have necessities — food, energy, housing, medical care — is to borrow.

5. Many consumers this winter will be unable to make the large purchases that are most efficient for oil dealers and for which dealers therefore can charge less. Thus, the person who has little money or who cannot afford to convert to a larger tank may be forced to pay even more for heat.

These Rules recognize the oil dealer's need for efficient practices while also ensuring that unrestricted market forces do not unfairly prevent customers from meeting their minimal heating needs.

C. Authority

The statutory authority under which the Attorney General promulgates these Emergency Rules is Title 5, Maine Revised Statutes Annotated, § 207 of Maine's Unfair Trade Practices Act and Title 10, Maine Revised Statutes Annotated, § 1105, which prohibits profiteering or unreasonable discrimination in such necessities as fuel oil. Specifically, § 207, sub-§ 2 of the Unfair Trade Practices Act permits the Attorney General to make rules defining unfair trade practices.

Maine's Unfair Trade Practices Act prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." This phrase is the same as that contained in the Federal Trade Commission Act, 15 United States Code, § 45, and our Maine statute states that Maine courts will be guided by the interpretations given this phrase by the Federal Trade Commission (FTC) and the federal courts. In the United States Supreme Court case of *Federal Trade Commission v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244-45 (1973) the Court stated that the FTC has described three considerations which may be looked to in determining whether a practice is "unfair."

1. Does it offend "public policy as it has been established by statutes, the common law, or otherwise?"
2. Is it "immoral, unethical, oppressive, or unscrupulous?"
3. Does it cause "substantial injury to consumers (or competitors or other businessmen)?"

Thus, as the Attorney General's findings on home heating oil make certain, such practices as refusal to serve cash customers, unduly restrictive delivery requirements, unnecessary surcharges, or unreasonable discriminatory prices or credit terms are within the Attorney General's authority to regulate. Such practices clearly meet the FTC's description of "unfair." They:

1. Violate the public policy clearly stated in the Maine statute which prohibits profiteering or unreasonable discrimination in the sale of necessities;
2. Are "oppressive" to consumers;
3. Cause a "substantial injury to consumers."