

Potential 2024 Legislative Clarifications and Minor Changes for the Vermont Clean Heat Standard

As the Vermont Public Utility Commission (“Commission”) works to implement the potential Clean Heat Standard (Act 18 of 2023), it has identified several necessary and technical corrections to improve the legislation. The Commission requests that the Vermont Legislature approve the following amendments to the Clean Heat Standard and related statutes.

Clarify that only public information shall be posted to the Commission’s website.

Section 1. 30 V.S.A. § 8124(b)(4) is amended to read:

The Commission shall maintain, and update annually, a list of registered entities on its website ~~that contains the required registration information.~~

Rationale: Registrants under the Clean Heat Standard must provide various pieces of information to the Commission, some of which may constitute confidential business records under the Vermont Public Records Act, 1 V.S.A. § 317(c)(9). Therefore, the Commission would like to clarify that what it must post to its website is limited to a list of the registered entities, rather than all of the information that registrants must provide to the Commission.

Amend the timeline for designating a default delivery agent.

Section 2. 30 V.S.A. § 8125(b) is amended to read:

Appointment. The default delivery agent shall be one or more statewide entities capable of providing a variety of clean heat measures. The Commission shall designate the first default delivery agent ~~on or before June 1, 2024~~ within 180 days of the Legislature’s approval of the Clean Heat Standard rule. The designation of an entity under this subsection may be by order of appointment or contract. A designation, whether by order of appointment or by contract, may only be issued after notice and opportunity for hearing. An existing order of appointment issued by the Commission under section 209 of this title may be amended to include the responsibilities of the default delivery agent. An order of appointment shall be for a limited duration not to exceed 12 years, although an entity may be reappointed by order or contract. An order of appointment may include any conditions and requirements that the Commission deems appropriate to promote the public good. For good cause, after notice and opportunity for hearing, the Commission may amend or revoke an order of appointment.

Rationale: The current legislative timeline for the Commission to designate a default delivery agent does not provide sufficient time for stakeholders and the Commission to fully develop the scope of work, obligations, responsibilities, eligibility and evaluation criteria, and payment provisions, all of which must precede the Commission’s solicitation and vetting of candidates. Additionally, the current timeline requires applicants to apply - and the Commission to designate - a default delivery agent well before the draft rule would be finalized and before the Legislature

even considers the Commission’s rule implementing the Clean Heat Standard. Potential applicants may be hesitant to apply and invest time and resources with so much uncertainty. A later deadline will provide the Commission with more time to complete the work described above. A later deadline will also afford potential default delivery agents with greater certainty regarding the program and encourage more serious applications as a result.

Correction of scrivener’s errors.

Section 3. 30 V.S.A. § 8126(d) is amended to read:

Any order issued under ~~this chapter~~ subsection (c) of this section shall be subject to appeal to the Vermont Supreme Court under section 12 of this title, and the Commission must immediately file any orders, a redline, and clean version of the revised rules with the Secretary of State, with notice simultaneously provided to the House Committee on Environment and Energy and the Senate Committees on Finance and on Natural Resources and Energy.

Rationale: We understand that the intent of 30 V.S.A. § 8126(d) is to refer to subsection (c) of Section 8126 of Title 30 of the Vermont Statutes Annotated, which addresses the PUC’s ability to amend the rule, and not to the entire Clean Heat Standard. Any final orders issued by the Commission may be appealed to the Vermont Supreme Court under 30 V.S.A. § 12.

Section 4. Act 18 of 2023, Sec. 6(f)(5) is amended to read:

The final proposed rules shall contain the first set of annual required amounts for obligated parties as described in 30 V.S.A. § 8124(a)~~(1)~~(2). The first set of annual required amounts shall only be adopted through the rulemaking process established in this section, not through an order.

Rationale: We understand the intent of Act 18 of 2023, Sec. 6(f)(5) is to refer to 30 V.S.A. § 8124(a)(2). This edit is consistent with 30 V.S.A. § 8128(a)(1), which states that “each obligated party’s annual requirement” is determined by 30 V.S.A. § 8124(a)(2).

Provide for sharing of confidential tax information.

Section 5. 32 V.S.A. 3102(d) is amended to read:

The Commissioner shall disclose a return or return information:

(9) to the Vermont Public Utility Commission and the Vermont Department of Public Service, provided the disclosure relates to the sale of heating fuel into or in the State for auditing compliance with the Clean Heat Standard, 30 V.S.A. Chapter 94.

Rationale: This addition ensures that beyond December 31, 2024, the Commission and the Department will have access to the tax information necessary to audit whether a registered party’s registration information is accurate. The accuracy of registration information is essential

to determine whether a registered party is an obligated party as well as an obligated party's clean heat credit responsibility. In short, this tax information is necessary to ensure all heating fuel subject to the Clean Heat Standard is accounted for and regulated. Without this information the Commission will be unable to ascertain whether an obligated party's annual requirement is accurate.

Amend S.306 Effective Date

As currently drafted, S.306 would take effect on July 1, 2024. The Commission recommends that this be changed so that it would take effect upon passage.

Rationale: Multiple of the proposed changes contemplated in S.306 are time-sensitive. Given the June 1 deadline to appoint a Default Delivery Agent, the bill should be in effect prior to July 1, and preferably upon passage to provide greater certainty for stakeholders and the Commission.