



Rules of
Department of Natural Resources
Division 140—Division of Energy
Chapter 8—Certification of Renewable Energy and
Renewable Energy Standard Compliance Account

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Title 10—DEPARTMENT OF NATURAL RESOURCES

Division 140—Division of Energy

Chapter 8—Certification of Renewable Energy and Renewable Energy Standard Compliance Account

10 CSR 140-8.010 Certification of Renewable Energy and Renewable Energy Standard Compliance Account

PURPOSE: This rule implements provisions of the Proposition C initiative petition passed by Missouri voters on November 4, 2008, collectively known as the "Renewable Energy Standard," found in section 393.1025, RSMo et seq.

(1) Definitions. For the purpose of this rule—

(A) Commission—the Missouri Public Service Commission;

(B) Department—the Missouri Department of Natural Resources;

(C) Electric utility—a regulated Missouri electrical corporation as defined in section 386.020, RSMo;

(D) Professional forester—same as in 142.028.1.(4), RSMo;

(E) Renewable energy credit or REC—a tradable certificate as defined by section 393.1025(5), RSMo, that one (1) megawatt-hour of electricity has been generated from eligible renewable energy sources;

(F) Renewable energy generation facility or facility—the facility where electrical energy was generated by an eligible renewable energy resource; and

(G) Renewable energy resources—electrical energy as defined by section 393.1025(5), RSMo, and which is eligible to be issued a renewable energy credit (REC).

(2) Eligible Renewable Energy Resources.

(A) Eligible Renewable Energy Resources. The electricity must be derived from one (1) of the following types of renewable energy resources or technologies, as defined in section 393.1025(5), RSMo:

1. Wind;

2. Solar thermal sources or solar photovoltaic cells and panels;

3. Dedicated crops grown for energy production—herbaceous and woody crops that are harvested specifically for energy production in a sustainable manner;

4. Cellulosic agricultural residues—organic matter remaining after the harvesting and processing of agricultural crops. They include—

A. Field residues, which are organic

materials left on agricultural lands after the crops have been harvested, such as stalks, stubble, leaves, and seed pods; and

B. Process residues, which are organic materials left after the crops have been processed into a usable resource, such as husks, seeds, and roots;

5. Plant residues—the residues of plants that would be converted into energy, that otherwise would be waste material;

6. Clean and untreated wood—non-hazardous wood 1) that has not been chemically treated with chemical preservatives such as creosote, pentachlorophenol, or chromated copper arsenate; and 2) that does not contain resins, glues, laminates, paints, preservatives, or other treatments that would combust or off-gas, or mixed with any other material that would burn, melt, or create other residue aside from wood ash.

A. Eligible clean and untreated wood may include, but is not necessarily limited to, the following sources:

(I) Forest-related resources, such as pre-commercial thinnings waste, slash (tree tops, branches, bark, or other residue left on the ground after logging or other forestry operations), brush, shrubs, stumps, lumber ends, trimmings, yard waste, dead and downed forest products, and small diameter forest thinnings (twelve inches (12") in diameter or less);

(II) Non-chemically treated wood and paper manufacturing waste, such as bark, trim slabs, scrap, shavings, sawdust, sander dust, and pulverized scraps;

(III) Vegetation waste, such as landscape waste or right-of-way trimmings;

(IV) Wood chips, pellets, or briquettes derived from non-toxic and unadulterated wood wastes or woody energy crops;

(V) Municipal solid waste, construction and demolition waste, urban wood waste, and other similar sources only if wood wastes are segregated from other solid wastes or inorganic wastes; and

(VI) Other miscellaneous waste, such as waste pellets, pallets, crates, dunnage, scrap wood, tree debris left after a natural catastrophe, and recycled paper fibers that are no longer suitable for recycled paper production.

B. Ineligible clean and untreated wood may include, but is not necessarily limited to, the following sources:

(I) Post-consumer wastepaper;

(II) Wood from old growth forests (one hundred fifty (150) years old or older); and

(III) Unsegregated solid waste;

7. Methane from landfills, wastewater treatment, or agricultural operations. Agricultural operations are defined as 1) the growing or harvesting of aquatic plants or agricultural crops grown in soil; or 2) the raising of animals for the purpose of making a profit, providing a livelihood, or conducting agricultural research or instruction. Wastewater treatment is defined as physical, chemical, biological, and mechanical procedures applied to an industrial or municipal discharge or to any other sources of contaminated water to remove, reduce, or neutralize contaminants;

8. Hydropower, not including pumped storage, that does not require a new diversion or impoundment of water and that each generator has a nameplate rating of ten megawatts (10 MW) or less. If an improvement to an existing hydropower facility does not require a new diversion or impoundment of water and incrementally increases the nameplate rating of each generator, up to ten megawatts (10 MW) per generator, the improvement qualifies as an eligible renewable energy resource;

9. Fuel cells using hydrogen produced by one (1) of the above-named renewable energy resources. RECs based on generating electricity in fuel cells from hydrogen derived from an eligible energy resource are eligible for compliance purposes only to the extent that the energy used to generate the hydrogen did not create RECs;

10. Products from thermal depolymerization or pyrolysis of waste material. Waste materials are specifically segregated materials from a waste stream for the purpose of producing energy or that are capable of producing energy. Pyrolysis is a thermochemical process through which organic matters are decomposed at elevated temperatures in an oxygen-deficient atmosphere into useful energy forms. Thermal depolymerization is the thermal decomposition (hydrous pyrolysis process) of organic compounds heated to high temperatures in the presence of water resulting in liquid oil; or

11. Other sources of energy, not including nuclear, that may become available after November 4, 2008, and are certified as eligible renewable energy resources as provided in section (3) of this rule.

(3) Additions to Eligible Renewable Energy Resources.

(A) The department may certify new types of renewable energy resources in addition to those listed as eligible in section 393.1025(5), RSMo, if the department determines the following to be true:



1. The generation technology under review was not commercially available in Missouri prior to November 4, 2008;

2. The generation technology is not based on nuclear fission or nuclear fusion; and

3. There is no undue adverse air, water, or land use impacts, including impacts associated with the gathering of generation feedstocks.

(B) The department will publish in the *Missouri Register* new types of renewable resources it certifies as eligible pursuant to section 393.1025(5), RSMo.

(C) The department hereby certifies the following new type of renewable resource:

1. Biofuels derived from biologically-based liquid fuels through an emulsion process.

(4) Certification of Renewable Energy Generation Facilities and Environmental Impact.

(A) The department shall publish and maintain a list of certified renewable energy generation facilities.

(B) Utilities that either own, or have contracted with, renewable energy generation facilities included on the list shall be required to provide a copy to the department of the completed *Annual RES Compliance Report* filed with the commission, pursuant to section 393.1030, RSMo, to verify the validity of information gathered during the certification review process. The copy will be provided to the department concurrent with the filing of the *Annual RES Compliance Report* with the commission.

(C) Certification Review Process.

1. Certification reviews will be conducted by the department for renewable energy generation facilities upon application.

2. The certification review shall consider the eligibility of energy sources used by the facility to generate electricity. A determination will be made by the department as to whether the generation has caused or will cause undue adverse air, water, or land use impacts, including impacts associated with the gathering of generation feedstocks.

3. The certification review process may be initiated by an electric utility or by a facility by submitting an application for certification to the department. The department shall consider all such applications for certification and shall conduct a certification review process in response to all properly completed petitions. An application for certification must include:

A. A detailed technical description of energy sources, including fuel type, technolo-

gy, and expected operating specifications, used by the facility to generate electricity and their conformity with the eligible renewable energy resources listed in section (2) and additional renewable energy resources certified by the department pursuant to section (3);

B. If any amount of fossil fuel is used in the generation process, a description of agreements or systems in place that assure sufficient data will be available to determine the portion of electrical output attributable to only the renewable energy resource;

C. An assessment of the facility's air, water, or land use impacts, including impacts associated with the gathering of generation feedstocks. An assessment shall include, but is not limited to, demonstrating compliance with permits and agricultural and forestry best management practices, such as the "Missouri Woody Biomass Harvesting—Best Management Practices Manual" guidelines published by the Missouri Department of Conservation, found online at: <http://mdc4.mdc.mo.gov/Documents/18043.pdf>, if applicable, and verification of compliance from a Missouri professional forester, if applicable. This assessment shall also include information concerning any applications for approvals or permits, or reviews or investigations by governmental entities with regard to environmental impacts;

D. The application for certification shall also state the following:

(I) That the electric utility or facility will obtain and/or maintain all applicable environmental permits required by the department;

(II) That the facility is and will remain in substantial compliance with all federal and state air, water, and land environmental laws, regulations, and rules, and that the applicant will report to the department any instance in which the applicant or any member of its board of directors or principals is determined by any administrative agency or any court in connection with any judicial proceeding to be in noncompliance with any federal or state air, water, and land environmental laws, regulations, and rules, such report to be submitted within ten (10) working days following such determination;

(III) That the electric utility applicant will timely file its *Annual RES Compliance Report* with the commission pursuant to section 393.1030.2(3), RSMo;

(IV) That the utility will submit additional information that the department may require for its review of the facility's energy sources and environmental impact

with appropriate provision for confidentiality of sensitive information; i.e., protection of energy information pursuant to section 640.155, RSMo;

(V) That contracts for the acquisition of renewable energy resources shall provide for release of information to the department with appropriate provision for confidential treatment of any sensitive information, such as pursuant to section 640.155, RSMo; and

(VI) To grant or obtain for the department access to facility sites and records for the purpose of verifying statements made in the petition; and

E. A statement signed by a designated official of the electric utility or renewable energy generation facility attesting that "I have personally examined the information submitted herein by [name of electric utility or renewable energy generation facility], I attest that this information is accurate and complete and that I am authorized to make this statement on behalf of [name of utility or facility]."

4. On completion of its review, the department shall certify the facility if all requirements herein have been met. The department may deny certifying the facility if those requirements are not met or for reasons stated in subparagraph (4)(C)4.A. The department may revoke certification as provided in subparagraph (4)(C)4.B.

A. The department may deny certification if the application is deficient or if the department finds—

(I) That the energy sources and technologies used to generate electricity are not eligible renewable energy resources as set forth in section (2) or additional renewable energy resources certified by the department pursuant to section (3); or

(II) That the facility has significant and unresolved violations of existing federal or state air, water, or land environmental regulations; or

(III) That the facility has not adhered to forestry or agricultural best management practices consequently resulting in undue adverse air, water, or land use impacts, and that agreement cannot be reached on actions that the utility or generation facility will undertake that are sufficient to offset or mitigate the adverse impacts.

B. Any of the following actions may result in revocation of certification as an eligible renewable energy generation facility:

(I) Falsification of or failure to disclose any required information in the application for certification;



(II) Failure to remain in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment;

(III) A significant increase in adverse environmental impacts resulting from electric generation at the renewable energy generation facility;

(IV) Failure to disclose information on a confidential basis that is essential for verifying the facility's compliance with requirements for certification as an eligible renewable generation facility;

(V) Re-marketing or reselling of REC(s) after it has been sold to an electric utility; or

(VI) Failure to obtain and/or maintain all applicable environmental permits required by the department.

5. A renewable energy generation facility which is denied certification or whose certification is revoked by the department shall not be eligible for use to meet the Renewable Energy Standard requirements in section 393.1030, RSMo, until such time as the facility has been certified or recertified by the department.

6. The public may file a complaint asking the department to conduct a revocation review of a certified renewable energy generation facility. The complaint must list alleged violation(s) by the facility, the facility's name, date of violation(s), types of violation(s), and the address of the facility.

(5) Renewable Energy Standard Compliance Account.

(A) The department shall establish a Renewable Energy Standard Compliance Account (compliance account) whose funds shall be disposed as set forth in this section.

(B) Funds remitted to the department as a result of utilities' failure to comply with the Renewable Energy Standard as provided in subsection 393.1030.2.(2), RSMo, shall be deposited into the compliance account and shall be used to purchase a sufficient number of renewable energy credits to offset the deficit in RECs. Funds deposited in the compliance account in excess of the funds required for the purchase of RECs to offset the deficit in RECs shall be used by the department solely for renewable energy and energy efficiency projects.

(C) Beginning in 2012, the department shall prepare an annual report on the transfer and disposition of funds in the compliance account. The report shall include a listing of RECs purchased using compliance account funds and the electric utilities on whose

behalf the RECs were purchased using compliance account funds. The report shall be completed by June 30 and shall cover activities of the preceding calendar year. If any pertinent information is considered confidential, a version of the report disclosing the confidential information shall be submitted to the commission and a report without the confidential information shall be made available to the public.

AUTHORITY: section 393.1030, RSMo Supp. 2011. Original rule filed June 14, 2010, effective Jan. 30, 2011. Amended: Filed Feb. 29, 2012, effective Aug. 30, 2012.*

**Original authority: 393.1030, RSMo 2007, amended 2008, 2010.*