

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 140—Division of Energy
Chapter 8—Certification of Renewable Energy and
Renewable Energy Standard Compliance Account

ORDER OF RULEMAKING

Pursuant to Section 536.016, RSMo., the Department of Natural Resources adopts a rule as follows:

10 CSR 140-8.010 is adopted

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 15, 2010 (Volume 35, Number 14 MoReg (Pages 1013–1060). Those sections and subsections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No public hearing was held on this proposed rule, and the public comment period ended August 14, 2010. The Department of Natural Resources (Department) received five (5) written comments.

[ONLY MDR's RESPONSES TO MoFRAC's COMMENTS ARE REPORTED HERE.]

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COMMENT #4: Missouri Forest Resources Advisory Council (MoFRAC)

Question 1: Mr. Scott Brundage with MoFRAC questions why the proposed rule does not specify how a renewable energy resource, defined in Section 393.1025(5), RSMo., meets the criteria of being renewable. Mr. Brundage then gave an example about a hydropower facility that goes dry. **RESPONSE:** By definition, any energy source defined in Section 393.1025(5), is a renewable resource. The statute does not provide that any renewable criteria must be met. Mere inclusion in the definition under Section 393.102(5), RSMo., is sufficient to classify the energy source as a renewable energy resource. A hydropower facility is a renewable resource by definition, regardless of its water supply level.

Question 2: Mr. Brundage questioned if the proposed rule, subsection (2)(A)6.A.(I), requires sustainable forestry harvesting practices, as it appears to require for agriculture in subsection (2)(A)3 of the proposed rule. **RESPONSE:** Subsection (2)(A)3 of the proposed rule applies to both herbaceous and non herbaceous crops as it regards their harvesting in a sustainable manner. This includes forest products.

Question 3: Mr. Brundage also commented on the lack of federal and state regulations regarding wood harvesting and that the state's forestry best management practice guidelines are voluntary and thus, not enforceable. Additionally, the Department does not define undue adverse air, water, or land impacts. **RESPONSE:** The Department reiterates its position as previously stated in the Department's response to Mr. Lutz of KCP&L and Companies Comment #1, Question 5.

Question 4: Mr. Brundage raised concerns about the harvesting of woody biomass and the length of time it takes harvesting to become carbon neutral. RESPONSE: The enacting legislation does not require that the harvesting of renewable energy resources be carbon neutral. The Department cannot prohibit the gathering of forest feedstocks for use as a renewable energy resource because it is clearly authorized under Section 393.1025(5), RSMo.

Question 5: Mr. Brundage is critical of the proposed rule regarding what he believes to be excessive use of “self verification” by the electrical generating facility for certification purposes and states that the Missouri Department of Conservation should act as a third party evaluator for forest-related harvesting activities. RESPONSE: The requirement that a Missouri professional forester review woody biomass electric generating facilities’ feedstock acquisition methods is an adequate verification criterion.

Question 6: Finally, Mr. Brundage questions if the proposed rule allows for adequate challenges to the Department’s certification of a generating facility. RESPONSE: (4)(C)6. of the proposed rule allows the public to challenge any certification approved by the Department. All applications and supporting documents, as well as the Department’s decisions to certify, refuse to certify or decertify facilities, shall be public records, if they do not come within an exception to the Open Records/Sunshine Law. The Department will consider challenges to the certification of a facility or requests for decertification within the scope of its authority under the statute.

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[END OF REPORTED COMMENTS.]