

Responsiveness Summary to the Proposed Biomass Renewable Energy Standard Rule

Introduction

The purpose of this document is to provide readers with a summary of the public comments that were received during the Public Comment Period for the proposed Biomass Renewable Energy Standard (RES) rule. The proposed rule was filed on June 4, 2021, with the Vermont Secretary of State and the public comment period closed on July 30, 2021. Two public hearings were held on July 16, 2021 and July 23, 2021 with both in-person and remote options available. Twenty-nine comments were received via email and at the two public hearings held in July 2021.

Public Comments were received, reviewed, and summarized by the Agency of Natural Resource's (ANR) Department of Forests, Parks & Recreation (FPR) staff.

This document organizes comments by theme and includes a response from FPR. Where edits were made to the proposed rule in response to comments, this is clearly stated.

- 1. Public comment theme:** The use of an efficiency standard for projects that would also have to receive a permit from the Vermont Air Quality & Climate Division is redundant and burdensome.

Response to comments: Because successful receipt of an air quality permit necessitates a high-quality project, we agree that this is a reasonable edit to the proposed rule. The rule will be adjusted to accommodate air quality permits in lieu of a minimum efficiency standard. The following new language in underlined text has been added to Section 6.2 of the Rule to provide two pathways for meeting the Biomass RES:

To meet the renewability standard for the purposes of Chapter 89 of Title 30 of the Vermont Statutes Annotated, wood-fired appliances shall either receive a permit to construct from the Vermont Air Quality & Climate Division, or meet the minimum performance requirements set forth in Table 1. The Table 1 performance requirements apply to all wood fuel types, including cordwood, wood pellets, green wood chips, dry wood chips.

- 2. Public comment theme:** The timing of the proposed Biomass Renewable Energy Standard (RES) is at odds with the concurrent work happening on the Climate Action Plan (CAP) and Comprehensive Energy Plan (CEP). Some commenters suggested that the rule be postponed until after those documents are finalized.

Response to comments: FPR acknowledges the overlapping timing and understands the perception of a conflict. However, after careful consideration and discussion with ANR Staff working on the Climate Action Plan and Comprehensive Energy Plan, FPR has concluded that because the statutory responsibility and focus of this rule is forest health, the proposed approach to how the Biomass RES is written would be the same regardless of the outcome of the CAP or CEP. FPR has not made changes to the rule regarding these comments.

- 3. Public comment theme:** The efficiency standards are unachievable for steam powered heat and Combined Heat and Power (CHP) systems.

Response to comments: FPR acknowledges this as an oversight and that many systems necessitate steam for process heat or distribution and that steam systems run very cleanly but with a lower efficiency than hydronic or hot air systems. FPR believes that accepting an Air Quality & Climate Division permit to construct in lieu of an efficiency standard addresses this comment. See response to Public Comment Theme #1 and the associated rule changes above.

- 4. Public comment theme:** Commenter seeks clarification on whether district energy systems count towards Tier III requirements and how the proposed efficiency standards would apply.

Response to comments: Yes, district energy projects that provide heat and displace fossil fuels would count towards Tier III requirements. ANR acknowledges that this sort of project does not fit the standardized efficiency standards established in the proposed rule and will amend the rule to reflect the fact that district energy projects are capturing waste heat, and thus are outside of any efficiency standard. Section 6.2, Table 1 has been amended to add new language and a new category for District Energy Systems as follows:

<u>District Energy System (DES)</u>	<u>DES that capture waste heat from an existing installation are fully eligible</u>
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- 5. Public comment theme:** Concern that the proposed standards for Tier II projects could be interpreted as the minimum standards for future Tier I projects. Request that additional clarifying language be added to emphasize that the Tier II standards are only intended to apply to Tier II.

Response to comments: Tier I is outside of the legislative authority provided to the Commissioner of the Department of Forests, Parks & Recreation in Act 56, 10 VSA §2751. Additionally, Section 4 of the proposed rule clearly states that the applicability of the rule is to Tier III and Tier II projects (see below). Therefore, FPR believes additional language to be unnecessary and outside of our scope and no change will be made to the rule.

SECTION 4: Applicability

The Biomass Renewability Energy Standard applies to all utilities that: offer incentives on wood-fired appliances as part of their Tier III programming; or all generation from biomass electric generation facilities; or combined heat and power (CHP) facilities that utilities claim towards their Tier II requirements.

- 6. Public comment theme:** The proposed rule is out of compliance with the Global Warming Solutions Act (GWSA) because it does not include a full Life Cycle Analysis (LCA).

Response to comments: The requirement to consider the increase or decrease in greenhouse gas emissions in decision-making procedures, 578 (c), predates the GWSA and is included as a standard part of the Administrative Procedure Act (APA) filing forms and rulemaking process. Therefore, the APA requirement did not contemplate the GWSA or conducting a full LCA for each rule filing. Additionally, after discussions with ANR staff, FPR has determined it is not reasonable to interpret the APA requirement to include a requirement that a full LCA should be required as part of every decision due to the complex and variable nature of the practice. Finally, ICAR approved the APA filing forms as completed. FPR has not changed the rule or the APA filing forms.

- 7. Public comment theme:** The Department of Forests, Parks, and Recreation lacks the authority to create the proposed rule because the rulemaking authorization for Act 56 expired on July 2, 2016.

Response to comments: FPR disagrees with this interpretation of Act 56 and 10 VSA §2751 that the Department no longer has legislative authority to adopt the Biomass Renewability Standard since it did not adopt the rule by July 1, 2016. 10 VSA §2751 clearly states that “The Commissioner shall adopt rules that set renewability standards for forest products used to generate energy by distributed renewable generation and energy transformation projects within the RES...” This is mandatory, not discretionary. If the Legislature had intended for its mandate to expire upon July 1, 2016, it would have clearly stated such in a sunset provision in Act 56 and 10 VSA § 2751. It did not and the Department must interpret the statute as written which not only provides the authority to adopt these Biomass Renewability Standards Rules, but mandates the Department to adopt such rules.

- 8. Public comment theme:** The proposed rule fails to establish siting standards for future Tier II projects.

Response to comments: While the proper siting of biomass Tier II projects is an important topic, it is outside the scope of the authority given to the Commissioner in Act 56, 10 VSA §2751.

- 9. Public comment theme:** Biomass energy is not carbon neutral.

Response to comments: The carbon impact of biomass energy is a complex topic that varies dramatically from one scenario to another. Regardless, it is outside the scope of this rule and the authority given to FPR by the legislature. The purpose of the Biomass Renewable Energy Standard is to promote the sustainable use of forest resources and to ensure long-term forest health and sustainability through harvesting and procurement of biomass. Sustainable use of forest resources and renewability, i.e., forest health, is the focus of the rule, not carbon neutrality. No change to the rule will be made.

- 10. Public comment theme:** Power generating facilities require very large amounts of biomass which cannot be supplied over long periods without serious negative consequences to forests.

Response to comments: To avoid negative consequences to forests, the proposed strategy bans material coming from forest to non-forest conversion and relies on the standards established in the Use Value Appraisal (UVA) program to promote sustainable harvesting and procurement of biomass, and thus to promote and protect forest health. No changes to the rule will be made.