

# Decision

## Decision with final guidance on further validation of NDRHI/RTFO interaction by biomethane producers when submitting biomethane claims

<b>Publication date:</b>	2 November 2021	<b>Contact:</b>	Renewable Heat Team
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On 17 June 2021 we published a consultation seeking stakeholder views on proposed changes to our administration of the Non-Domestic Renewable Heat (NDRHI) scheme to provide us with further assurance from registered biomethane producers about their interaction with the Department for Transport's (DfT's) Renewable Transport Fuel Obligation (RTFO). It followed amendments to the Renewable Heat Incentive (RHI) Scheme Regulations, laid on 25 January 2021, which came into force on 1 April 2021.

The consultation also included draft guidance for our proposed, preferred process for receiving this validation.

This document summarises stakeholder responses to the consultation, which closed for comment on 30 July 2021, and states Ofgem's response and final administrative decision. Where relevant, we also explain where we were unable to incorporate suggestions made.

Final guidance for producers is also provided, at **Appendix 1**.

Please note the consultation focused on our proposed administration of the regulatory changes. Any enquiries about NDRHI policies should be directed to the Department for Business, Energy and Industrial Strategy (BEIS) at [www.beis.gov.uk](http://www.beis.gov.uk).

The administrative decisions set out in this document will apply from 1 April 2022.

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## 1. Introduction

### **Context and related publications**

1.1. Our [consultation](#)<sup>1</sup> followed the Government's most recent amendments to the Renewable Heat Incentive (RHI) regulations<sup>2</sup>; the relevant amendment came into force on 1 April 2021.

1.2. These amended regulations introduced a new legal obligation for Ofgem to ensure that a payment is not made where the same proportion of eligible biomethane being claimed for under the NDRHI has also received support through the Department for Transport's (DfT's) Renewable Transport Fuel Obligation (RTFO)<sup>3</sup>. Any such dual subsidy would amount to a double-claim.

1.3. Specifically, new regulation 32A(2) of the RHI regulations states that: "*No periodic support payments may be made to the participant in respect of any proportion of biomethane injected in a quarterly period where an RTF certificate has been issued under the Renewable Transport Fuel Obligations Order 2007 in respect of that proportion of biomethane.*"

1.4. The regulatory change brought the NDRHI scheme in line with existing RTFO rules<sup>4</sup>, which state that fuel supported through the RTFO cannot also be counted towards another renewable energy obligation or support scheme.

1.5. Since April 1 2021, producers have been required to provide a self-declaration with their quarterly NDRHI claims about their interaction with the RTFO, as detailed in NDRHI Guidance, Volume 2, Ongoing Obligations<sup>5</sup>. This quarterly declaration requirement continues.

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<sup>1</sup> <https://www.ofgem.gov.uk/publications/ndrhi-consultation-and-draft-guidance-proposed-further-validation-ndrhi-rtfo-interaction-biomethane-producers>

<sup>2</sup> [The Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme \(Amendment\) Regulations 2021 \(legislation.gov.uk\)](#)

<sup>3</sup> 'Interaction with the Renewable Transport Fuel Obligation', regulation 32A.-(2) [The Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme \(Amendment\) Regulations 2021 \(legislation.gov.uk\)](#)

<sup>4</sup> Renewable Transport Fuel Obligations Order 2007 16(2)(a)(ii) <https://www.legislation.gov.uk/uksi/2007/3072/article/16>. (Fuel cannot be counted towards another renewable energy obligation or support scheme.)

<sup>5</sup> [NDRHI Guidance Vol2. Final Jan 2021 \(ofgem.gov.uk\)](#)

1.6. The six-question consultation sought views from industry and the wider sector on our proposed introduction of a further level of validation: namely **an independent, annual audit requirement** for all registered biomethane producers claiming NDRHI payments. This third-party audit would validate their interaction with the RTFO - which issues its support through Renewable Transport Fuel Certificates (RTFCs) – and provide us with the further assurance we now need.

1.7. Within the consultation we also sought feedback on our preferred process for receiving this further validation. We proposed the audited information be submitted as a new, separate section within the Annual Sustainability Audit Report, an existing and ongoing NDRHI requirement for all biomethane producers on the scheme. We also shared draft guidance for producers on a proposed approach for supplying the interaction evidence.

1.8. In addition, we asked whether both the Annual Sustainability Audit and an NDRHI/RTFO interaction audit could be provided by the same auditor to streamline reporting; if industry would prefer an RTFO audit to be submitted as a standalone report; and if stakeholders thought the further assurance we now need could be provided through an alternative process altogether.

1.9. When considering our administration of this proposed change, we were keen to align our processes with documents currently used by producers and wider industry to meet their existing obligations against double-claiming under the NDRHI<sup>6</sup> and the RTFO<sup>7</sup>, and which could be used as supporting evidence.

1.10. A list of related publications to this document appears below:

**NDRHI: Consultation and draft guidance on proposed further validation of NDRHI/RTFO interaction by biomethane producers:**

<https://www.ofgem.gov.uk/publications/ndrhi-consultation-and-draft-guidance-proposed-further-validation-ndrhi-rtfo-interaction-biomethane-producers>

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<sup>6</sup> NDRHI, Guidance Volume 2, 'Ongoing obligations and payments', Chapter 13, section 13.8. [NDRHI Guidance Vol2. Final Jan 2021 \(ofgem.gov.uk\)](#)

<sup>7</sup> [RTFO Guidance Part One](#), Process guidance

**The Renewable Heat Incentive Scheme Regulations 2018 (as amended):**

[The Renewable Heat Incentive Scheme Regulations 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

**NDRHI: Ongoing obligations and payments’, Chapter 13, section 13.8:**

[NDRHI Guidance Vol2. Final Jan 2021 \(ofgem.gov.uk\)](https://www.ofgem.gov.uk)

**NDRHI: Sustainability Audit Guidance for Participants and Auditors**

[Renewable Heat Incentive: Sustainability Audit Guidance for Participants and Auditors \(ofgem.gov.uk\)](https://www.ofgem.gov.uk)

**BEIS: ‘The Non-Domestic Renewable Heat Incentive: Ensuring a sustainable scheme’ Government Response to consultation, January 2021**

[Non-Domestic Renewable Heat Incentive: ensuring a sustainable scheme - government response to consultation \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

**The Renewable Transport Fuel Obligations Order 2007 (as amended):**

[The Renewable Transport Fuel Obligations Order 2007 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

**Department for Transport RTFO Process Guidance Part One):**

[RTFO Guidance Part One](https://www.gov.uk)

## **The response and our decision-making process**

1.11. We received four written consultation responses in total from industry stakeholders. A list of respondents can be found at Appendix 2.

1.12. We also held a stakeholder engagement webinar during the consultation period, on 15 July 2021. The event included an opportunity for industry to ask questions, provide comments and offer feedback.

1.13. Following the closure of the consultation window, on 30 July 2021, all responses and views, (including those raised at the stakeholder event) were considered.

1.14. This decision document outlines our final position on the policy area detailed in the consultation.

1.15. The following chapters consider each consultation question in turn. Where appropriate we have included one or more of the questions within a section. Each section summarises

stakeholder responses, followed by Ofgem’s response and the decision on our final administration.

1.16. Please note, some respondents duplicated points within some of their answers. We have therefore included responses at what we believe to be the most relevant sections.

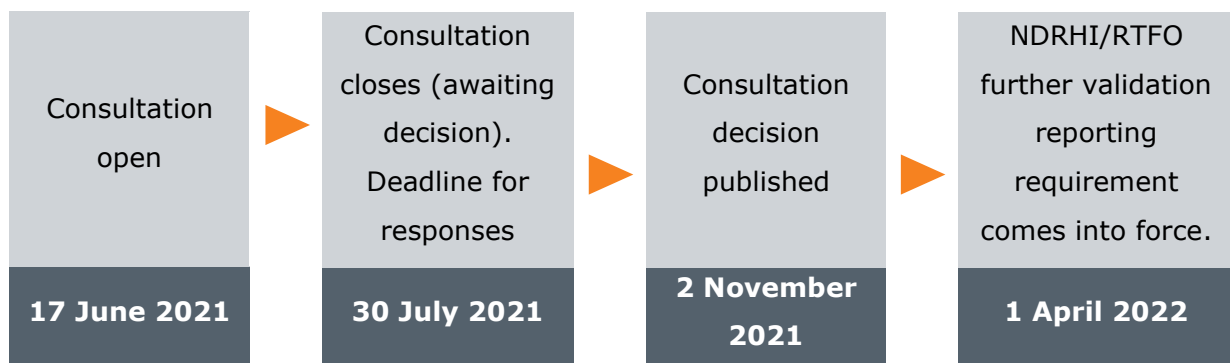
1.17. There was also a ‘general feedback’ question in the consultation, (Question 6). Once again, where possible, we have also incorporated this feedback into the most appropriate sections, although some responses, relating to our general administration, can be found at Chapter 6.

1.18. In developing our final decision on the submission of further assurance of NDRHI/RTFO interaction by registered biomethane producers, we have carefully considered all the points raised by respondents, even if they are not specifically mentioned in this document.

1.19. Our final guidance can be found at Appendix 1 and reflects our final administrative approach.

1.20. *Figure 1*, below, outlines our decision-making stages.

*Figure 1*



## **Your feedback**

1.21. We believe that consultation is at the heart of good policy development and are keen to receive your comments about this report.



1.22. We'd also like to receive your answers to the six questions below:

1. Do you have any comments about the overall quality of this document?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Are its conclusions balanced?
5. Did it make reasoned recommendations?
6. Any further comments?

Please send any general feedback comments to the Renewable Heat Team at [RenewableHeat@ofgem.gov.uk](mailto:RenewableHeat@ofgem.gov.uk)

## 2. Further assurance via an annual, independent audit

### Section summary

In our consultation we proposed that, following changes to the RHI regulations, effective from April 1 2021, an annual, independent audit be submitted to provide further validation for our assurance processes of NDRHI/RTFO interaction by registered biomethane producers. This audit would be in addition to the self-declaration forms currently submitted by producers with their periodic data claims each quarter.

### Question 1:

What are your views on our proposal to require annual, independently assured, audit information as further validation of NDRHI/RTFO interaction by biomethane producers? Please give your reasons and indicate whether you claim, or intend to claim, on both the NDRHI and the RTFO schemes, and/or whether you supply anyone with biomethane that claims on the RTFO.

## **Requirement for an annual ISAE 3000 audit**

### **Summary of responses**

2.1. Overall, stakeholder feedback was largely supportive of our need to introduce an independent, annual audit requirement to validate NDRHI/RTFO interaction by registered biomethane producers in order to avoid dual subsidy claims. The audit report would be in accordance with the requirements of limited assurance engagements, as prescribed in **ISAE 3000 (revised)<sup>8</sup> or equivalent<sup>9</sup>**.

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<sup>8</sup> More information on ISAE 3000 (revised) appears in our Sustainability Audit Guidance, Chapter 2, 'Auditing Requirements' section: [Renewable Heat Incentive: Sustainability Audit Guidance for Participants and Auditors \(ofgem.gov.uk\)](https://www.ofgem.gov.uk)

<sup>9</sup> At the time of writing, Ofgem is not aware of any equivalent standards. Should the operator and their auditor wish to make use of one, they should contact Ofgem in advance for confirmation of its acceptability.

- 2.2. However some key concerns were raised, with all respondents questioning how those producers not claiming RTFO could prove this to an auditor, as well as how much they could reasonably be expected to know about the chain of custody of a consignment of their gas after it had been sold.
- 2.3. One stakeholder did welcome the greater assurance and transparency an independent audit on NDRHI/RTFO interaction could provide to producers and to the biomethane market in general.
- 2.4. However, another asked if those producers who were unlikely to see any financial benefit in claiming RTFO support - whether by switching from claiming NDRHI altogether in any quarter, or splitting a quarterly claim between the two (as allowed under the amended RHI regulations on proportional claims since April this year<sup>10</sup>) - could instead 'formally opt out' of any RTFO audit requirement for a considerable, fixed period of time. They suggested these participants could issue an 'RTFO opt-out declaration', ultimately saving on time and money, both for themselves and also Ofgem.

### **Ofgem's response**

- 2.5. The issues raised at 2.2 are addressed, along with other similar consultation feedback regarding audit documentation, at Chapter 4, in **Ofgem's response**.
- 2.6. This response sets out in detail how, even where producers are claiming NDRHI and have no intention of claiming RTFO themselves, they are injecting and selling their gas to another party, or parties, who may or may not claim RTFO. Therefore, there is still a need to demonstrate they have the contractual arrangements in place to ensure that the right information (ie that NDRHI has already been claimed on their gas) is passed down the chain.
- 2.7. With regards to fixed-term 'opt-out' self-declarations by those producers who do not intend to claim RTFO during a certain period, such statements (as with the quarterly self-declarations on NDRHI/RTFO interaction that producers are obliged to provide<sup>11</sup>),

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<sup>10</sup> [The Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme \(Amendment\) Regulations 2021 \(legislation.gov.uk\)](#)

<sup>11</sup> [NDRHI Guidance Vol2. Final Jan 2021 \(ofgem.gov.uk\)](#)

would still not provide the independent validation we now require under the new regulatory changes. (More details on the types of documentation and evidence that an auditor could use to validate a biomethane producer's interaction with the NDRHI and RTFO is provided in Chapter 4 of this Decision document, and also in Chapter 2 of the final guidance, at Appendix 1.) Ofgem has a responsibility to put in place robust checks to ensure that producers are meeting their obligations and that **all biomethane** claimed against the NDRHI does not then go on to be claimed against the RTFO.

### **Final administrative approach**

- 2.8. Ofgem will introduce a new requirement for **all registered biomethane producers** to provide an annual, independent audit (ISAE 3000 [revised] or equivalent) regarding their NDRHI/RTFO interaction [and will dovetail this with the annual sustainability audit reporting process].
- 2.9. This requirement will take effect from 1 April 2022 and is an additional administrative requirement falling under Regulation 43(t) of the [NDRHI Regulations].
- 2.10. **Please note:** Producers must submit an RTFO audit, as outlined above, in order to ensure their continued compliance with NDRHI scheme regulations. Failure to do so may result in the temporary withholding of periodic support payments, and we may decide to permanently withhold, reduce or recover payments where there has been a material or repeated failure to comply with ongoing obligations.

### 3. Submission of an NDRHI/RTFO interaction audit

#### **Section summary**

These questions sought industry views about how an annual, independently assured audit on NDRHI/RTFO interaction could be submitted. We asked for feedback both on our preferred option - that it be submitted with, but as a separate section of, the existing Annual Sustainability Audit requirement – as well as whether stakeholders would prefer it be submitted as a standalone report. We were also keen to hear whether a new RTFO audit could be dealt with by the same auditor.

#### **Questions 2 and 3:**

What are your views on submitting annual, independently assured, audit information on NDRHI/RTFO interaction as a section of the existing Annual Sustainability Audit? Do you think this should be provided as a standalone report instead? Please provide reasons for your answer/s.

Are you aware of any reason why an auditor could not assess the proposed additional requirements, and do you think both the current sustainability reporting requirement and the proposed RTFO interaction section could be provided by the same auditor? Please provide reasons for your answer/s.

### **Interaction audit as a section of the existing Annual Sustainability Audit**

#### **Summary of responses**

3.1. Overall, stakeholders were in support of adding any NDRHI/RTFO interaction reporting requirement for registered biomethane producers to the existing Annual Sustainability Audit, and there were no strong views as to whether it should be submitted as a standalone report instead.

3.2. Supporters of the proposals noted that the preferred method seemed the most cost-effective and that it made sense for auditors to assess both the existing [sustainability] requirements and the new requirements on NDRHI/RTFO interaction at the same time, thereby necessitating just one submission and review process.

3.3. However, concerns were reiterated again, (as noted at 2.2) about the evidence that those producers not claiming RTFO support could provide, as well as the limits to what producers could be expected to know once their gas leaves their custody.

3.4. One stakeholder added that, in light of these concerns, it was difficult to know if keeping the two reports separate would be preferable, or whether, there would need to be a longer response time allowed for both.

3.5. Another had no strong views on whether the RTFO audit should be submitted as a separate section within the Annual Sustainability Audit. They accepted that, where a biomethane producer expects the gas they inject into the grid to be divided between NDRHI and RTFO, there would clearly be “a significant overlap between the systems to keep track of sustainability and overall mass balance” – thereby making it sensible to submit a report covering such interactions at the same time as the Annual Sustainability Audit.

3.6. On using the same auditor for both requirements, respondents generally felt this to be a feasible and sensible approach – subject to further clarification about what an auditor could reasonably assess regarding non-RTFO claims and chains of custody.

3.7. Auditing a custody chain, added one respondent, could require an analysis of contracts that might require a different skillset. However, another believed that the availability of evidence and documentation was likely to prove the main auditing challenge, rather than the qualifications of any auditor.

### **Ofgem’s response**

3.8. **Ofgem’s response** to 3.3, also appears in Chapter 4.

3.9. Most consultation respondents said that one auditor submitting both audit reports at the same time seemed like a sensible way forward.

3.10. The submission of an NDRHI/RTFO audit report as a section of the existing Annual Sustainability Audit requirement also aligns with our preferred option, as stated in our consultation document of 17 July 2021<sup>12</sup>.

3.11. Having both requirements submitted via the Annual Sustainability Audit at the same time, would streamline processes for both producers and Ofgem. Submission of the RTFO report will therefore align with a producer's existing submission dates for their Annual Sustainability Audit.

### **Final administrative approach**

3.12. All biomethane producers will be required to submit an independently assured, audit report on their NDRHI/RTFO interaction as a separate section of the existing Annual Sustainability Audit requirement. It is a producer's preference as to whether they use the same, or different, auditors for each requirement.

**Please note:** Failure to supply the RTFO section will delay the Annual Sustainability Audit process as a whole, and may result in delayed or non payments.

3.13. More details on the NDRHI/RTFO interaction audit submission process can be found in our final guidance on NDRHI/RTFO interaction validation, at Appendix 1.

3.14. As this new requirement will take effect from 1 April 2022, those producers who are due to submit their Annual Sustainability Audit reports before this date will not be required to complete an RTFO audit section until their next Annual Sustainability Audit submission.

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<sup>12</sup> <https://www.ofgem.gov.uk/publications/ndrhi-consultation-and-draft-guidance-proposed-further-validation-ndrhi-rtfo-interaction-biomethane-producers>

## 4. Audit documentation

### **Section summary**

This question related to the types of documentation and evidence that an auditor could use to validate a biomethane producer's interaction with the NDRHI and RTFO - including assurance for Ofgem that they were meeting their obligations under the NDRHI scheme by passing information about NDRHI claims down the custody chain. Registered producers are already required to hold evidence, both about the biomethane claimed for under the NDRHI and any gas supplied to a shipper, trader or supplier. Chapter 2 of our consultation document, at 'Evidence Summary', suggested a range of documentation that producers might be able to supply to an auditor in order for them to provide this assurance, including any contractual third-party agreements.

### **Question 4:**

What documentation and/or evidence would you be able to provide to an independent auditor to demonstrate that dual claiming for the same biomethane is not taking place?

## **Providing evidence of scheme interaction**

### **Summary of responses**

4.1. This area of the consultation, both the question and the draft guidance, received the most stakeholder responses and featured some very detailed feedback.

4.2. **Three key concerns** emerged, which included: how non-RTFO claimants could demonstrate they had not sought RTFO support; the extent of knowledge we expected a producer to have about the chain of custody relating to their biomethane; and the actual availability of sufficiently robust, documentary evidence. Overall, while respondents appreciated the reasons behind our need to receive independent assurance of producer



interaction with the NDRHI and the RTFO, along with the importance of tracking sustainability information back to a biomethane plant, they all requested more clarification on these three areas.

4.3. One respondent, who stated they had no intention of ever claiming on the RTFO, said they were “struggling” to propose how they could provide “meaningful evidence” of this - other than by providing confirmation via a quarterly “poll” of the “usual suspects”, such as senior managers of procurement and finance. They said being asked to prove non-interaction, was effectively being asked to “prove a negative”. Such interaction evidence would be far easier for those producers splitting claims between the NDRHI and the RTFO to provide, they said, as a summation of claims could be compared to a producer’s overall production/export data.

4.4. Another added that, based on their understanding, the majority of NDRHI biomethane producers were not looking to claim RTFCs for the gas they inject, making it essential that a “light-touch” approach regarding verification be taken in such cases.

4.5. We note the points raised at 4.3 and 4.4, and in other similar responses, and offer further clarification on these issues in **Ofgem’s response** at 4.12 and 4.13, below.

4.6. Two other stakeholders raised concerns about sections 2.13, 2.16 and 2.18 of our draft guidance within the [consultation](#)<sup>13</sup>. They expressed concerns about how producers could be “routinely” expected to assure us about any claims for support subsequently made on a consignment of gas once it leaves their custody and enters into a chain of ownership with another party or parties. While this is most likely to be a short chain between only a producer and gas shipper, they said, there were nevertheless a range of potential models.

**4.7. It appears that the draft guidance we produced has not been well understood and in some cases has been misinterpreted. We offer further clarification on this area in 4.14 to 4.17 of Ofgem’s response, below, and will update our final guidance accordingly to ensure these points are clearer.**

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<sup>13</sup> <https://www.ofgem.gov.uk/publications/ndrhi-consultation-and-draft-guidance-proposed-further-validation-ndrhi-rtfo-interaction-biomethane-producers>

4.8. A further response asked whether we could provide a definitive list of acceptable, relevant evidence. We address this at 4.19 and 4.20 of **Ofgem's response**, below.

4.9. Another respondent stated that, given the inherent differences between the NDRHI and the RTFO schemes, there should be "a clear understanding of acceptable margins of error in the interaction between them". There may be, they added "occasions where differences of interpretation are possible". This issue is addressed at 4.21, below.

4.10. Regarding allocating consignments between schemes, one respondent asked whether there was any flexibility as to which gas consignments could waive the right to receive NDRHI support, in favour of the RTFO - allowing a producer to claim RTFCs where this was in their financial interests, (i.e. claims on fuel from wastes/residues, would attract a greater number of RTFCs). This is not allowed under the NDRHI scheme and the point is addressed in more detail at 4.22, below.

4.11. Clarity regarding 2.12 of the Evidence Summary in the draft guidance which reads, "the report should show annual volume figures for NDRHI and RTFO claims", was also requested, as "neither RHI periodic support payments nor RTFCs are claimed on a volume basis". This point is addressed at 4.23 of **Ofgem's response**, below, with our final guidance updated, at 2.14.

### **Ofgem's response**

4.12. An auditor should be able to access evidence and/or documentation demonstrating whether a biomethane producer has:

- i) claimed RHI support for their gas
- ii) had gas not claimed for on RHI and that has been sold on - allowing an RTFO claim by another party
- iii) split a claim for support between the RHI and RTFO, and by what proportion.

4.13. We recognise some producers may never claim RTFO support, making it relatively simple for an auditor to evidence this through injection data, and applicable contracts or agreements with the first party stipulating that RHI had been claimed on the gas.

4.14. We also recognise that producers who sell on gas to another party may not be able to present evidence about the whole contractual chain relating to that gas, or the activity of any other parties within that chain. For this reason, auditors will need to check the sale documentation between the first two parties in the contractual chain: the biomethane

producer and the first trading counterparty. This contractual documentation must provide the auditor assurance that a producer is meeting their NDRHI scheme obligations by stipulating any NDRHI claim and sustainability information relating to the consignment being sold. The scheme obligations clearly state that Ofgem may not make payment if an RTFC has been issued for the same consignment of gas<sup>14</sup>. This documentation should therefore provide assurance to an auditor that a producer is taking all reasonable steps against dual claims on their gas.

4.15. We are therefore not expecting all producers to have knowledge of the entire custody chain, (although where a producer is involved in various stages of the custody chain of their gas, they should share this evidence with their auditor), nor are we asking producers to prove anything they cannot reasonably be expected to prove.

4.16. All producers should be able to demonstrate that they have informed us as to whether they have claimed 100% NDRHI on a gas consignment, or any proportion on the RTFO, and that they have informed any trading party they have dealt with of any support claimed on the gas. In short, we expect participants to 'prove a positive', i.e. that they are meeting their ongoing NDRHI scheme obligations.

4.17. **Please note:** The timings of an RHI claim and a subsequent sale is not sufficient assurance. It is feasible that an RHI payment could be delayed for some reason, and that an RTFO claim could be made by another party and processed in the interim.

4.18. **Our final guidance, at Appendix 1, reflects the above clarifications.**

4.19. In terms of providing a definitive inventory of acceptable, relevant evidence, we do not intend to provide an exhaustive list of documents that could be used as assurance for an external auditor. With regards to stakeholder feedback requesting we specify a list of voluntary schemes or registries, the same approach applies, as it is the information and evidence contained within a scheme's documentation that may be of use to an auditor, rather than the specific scheme itself. It is also for the auditor to decide on which evidence they use in order to satisfy their assurance requirements.

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4.20. However, we believe the details provided above, at 4.12 to 4.16, together with clarifications within our final guidance at Appendix 1, (where we have also taken note of feedback regarding the terminology used regarding voluntary schemes and industry-led green gas certificates) should provide the further guidance requested. The final guidance also retains the indicative list of examples of evidence and documentation that appeared in our draft guidance which, although not exhaustive, should also prove helpful to an auditor.

4.21. The regulations do not provide for a margin of error and we are therefore unable to provide one; the wording contained in Regulation 32A does not include a de minimis provision. All NDRHI claims, including, split claims, are bound by this.

4.22. Regarding any flexibility for producers to split their consignments between schemes, it should be noted that splitting consignments is not permitted under NDRHI scheme rules. The NDRHI apportions gas formation by the percentage of feedstock make-up from total biogas yield. We would use the same approach in the case of NDRHI and RTFO interaction. Therefore, if 50% of total gas is waste and 50% is product, then the NDRHI claim must be for 50% waste and 50% product.

4.23. Regarding feedback on our use of the wording "annual volume figures", we have clarified the point in our Evidence Summary, at 2.17 in the final guidance, to read: "Producers are required to hold evidence both about the biomethane claimed for under the NDRHI, and/or gas supplied to a shipper, trader or supplier. This should be provided to the auditor for their report and show the annual amount claimed for against the NDRHI and, if applicable, the amount claimed against - or that could go on to be claimed against - the RTFO via RTFCs during the same period."

### **Final administrative approach**

4.24. We will require an RTFO audit report to follow the approach on evidence and documentation, margin of error and allocation of consignments as set out in our above response and in our final guidance (at Appendix 1).

## 5. Other audit evidence

### **Section summary**

We were keen to hear of any other ways of evidencing NDRHI/RTFO interaction by biomethane producers that stakeholders could suggest, besides the approaches and examples shared in our consultation document. This included any other potential sources of evidence. Several ideas were put forward, as detailed below.

### **Question 5**

Can you suggest any different approaches that could be taken to evidence NDRHI/RTFO interaction by biomethane producers? Please provide reasons for your answer/s.

## **Suggested evidence / alternative solutions**

### **Summary of responses**

5.1. The 'Evidence Summary' section, within Chapter 2 of the draft guidance in our consultation includes a suggested – though not exhaustive - list of potential evidence and documentation that producers could supply to their auditor. However, we were keen to hear of any other ways interaction between the NDRHI and the RTFO could be evidenced.

5.2. One stakeholder expanded on the use of meter readings and, specifically, the types of readings that might be used. These included those submitted to the Gas Distribution Network, to Ofgem for RHI support and those provided to the DfT for RTFC claims. However, the respondent did note that, as the NDRHI and RTFO use different data measurements for the energy content of gas injected, readings would need to be adjusted accordingly during the audit process. The use of volumetric data over energy values was their stated preference.

5.3. Another respondent offered detailed feedback setting out a range of information which might potentially be available to producers in various different scenarios. This included injection evidence, documentation from voluntary schemes and industry-led green gas registries and also RTFO public reports published by the DfT. Another stakeholder

agreed that documentation from voluntary schemes and industry-led green gas registries could play an important role in demonstrating that biomethane is not double-claimed.

5.4. Two stakeholders mentioned that RTFO assurance should include verifying GEMINI data, as this would provide robust documentation on the injected total. These values could then be matched to Ofgem's BEES (Biomethane Energy Eligibility Summary) spreadsheet, as used for quarterly NDRHI claims and Eligible Heat Output values in the NDRHI register. (Please see **Ofgem's response** at 5.7.)

5.5. Finally, several respondents called for Ofgem to seek a data-sharing approach with the DfT as a preferable alternative for reconciling NDRHI/RTFO interaction by producers. Just because there were considerable differences between the schemes themselves and their administration processes, this should not rule out a data-check solution, they stated. As a minimum, this could verify non-RTFO claimers, said one, while another added that although the scenarios (mentioned at 5.3) should enable auditors to offer a "suitable level of assurance against dual claims", in the absence of evidential RTFO data from the DfT's ROS, it was not possible to "completely rule out dual claims".

Now would be a good time to pursue such an arrangement, they believed, as ROS was undergoing development. In addition, as of January 2022, RTFCs issued for biomethane in the UK will also require an RHI installation number, thereby making any data checks easier. (Please see **Ofgem's response** at 5.8.)

### **Ofgem's response**

5.6. We would like to thank all those respondents who suggested further ways of evidencing NDRHI/RTFO interaction and hope it may be of further assistance to stakeholders.

5.7. With regards to the feedback concerning GEMINI data, at 5.4, it is important to note that any audit evidence provides assurance regarding NDRHI/RTFO interaction. The use of GEMINI data is an extremely useful tool to see the total gas injected, however this data alone would not allow us to see if some of that total had been used in duplicate claims. We have, however, added this data source to our list of potential evidence, in Chapter 2 'Evidence Summary' of our final guidance, at Appendix 1.

5.8. We agree that data sharing with the DfT on NDRHI/RTFO interaction is an important administrative option to pursue. We engage regularly with DfT and welcome DfT's decision to make the submission of RHI installation numbers a mandatory requirement for the issue

of RTFCs for UK biomethane from January 2022. We will continue to investigate options of checking and verifying data across the two schemes despite their inherent differences. These differences include: the potential for different parties to claim an RTFO subsidy for the same gas; payment timeframes; units of measurement and (as outlined earlier in this document) potential issues around tracking the custody chain.

However, it should be noted that while data sharing could prove a useful tool to identify instances where a double claim has occurred, it does not demonstrate the producers have in place robust processes to manage this issue. At this time, we will still require up-front, third-party assurance that producers are meeting their obligations by taking all reasonable steps to avoid dual claims on their gas.

### **Final administrative approach**

5.9. Where appropriate, we have added the further NDRHI/RTFO evidence sources suggested by stakeholders to our list in the 'Evidence Summary' section of Chapter 2 of our final guidance, which can be found at Appendix 1.

5.10. We will continue to work with the DfT to seek to establish a robust system of data sharing, as further verification of NDRHI/RTFO interaction.

## 6. General administration

### **Section summary**

We provided an opportunity for respondents to submit additional comments regarding the clarity of our consultation and the draft guidance for our proposed administration of NDRHI/RTFO interaction. Some have been addressed at an earlier stage in this decision document, others are highlighted below.

### **Question 6**

Do you have any additional comments you would like to add?

## **Additional feedback**

### **Summary of responses**

6.1. Respondents noted Ofgem should use clear and consistent terminology regarding wholesale gas markets, voluntary scheme documents e.g. ISCC, and the activity of green gas registries e.g. GGCS. Where there is any uncertainty on the correct terminology, they should consult with industry to create a shared understanding.

6.2. In order for the new requirements to work smoothly, respondents said that auditors must be given clear, specific and objective criteria to assess against. One pointed to how the initial introduction of sustainability reporting for the NDRHI and other support schemes adopted a 'principles-based' approach, and that it took several years before a common understanding emerged between Ofgem and those providing reports.

6.3. Other responses flagged the complexity of some processes, including the role of Guarantees of Origin (GoO).

6.4. Some stakeholders also said that Ofgem should be aware of equivalent schemes to the RTFO in other countries, for example the Netherlands and Germany, where UK biomethane production may be eligible to be rewarded.



### **Ofgem's response**

6.5. This decision document has strived to respond to the key concerns raised in all the feedback to our consultation.

6.6. We welcome and appreciate the efforts made by stakeholders to engage with us on RTFO interaction with the NDRHI, specifically the new regulatory changes introduced earlier this year, and would welcome further engagement with stakeholders on these issues.

6.7. In terms of equivalent biomethane support schemes in other countries, the NDRHI regulations specifically point to the RTFO regarding split-claiming, which thereby demonstrates the extent of Ofgem's obligations regarding its administration in this area. The RTFO regulations state that claims cannot be made for gas already claimed for within the UK or EU on government schemes.

### **Final administrative approach**

6.8. We recognise the importance of providing consistent terminology and clear processes to support both producers and confidence in the industry. Please also refer to our response at 4.20.

6.9. We will continue to liaise and engage with the biomethane industry on issues relating to our new administrative processes and the operation of the biomethane market itself.

6.10. Ofgem's NDRHI administration processes do not require it to consider schemes in other nations.

## Appendix 1

# Guidance for biomethane producers on providing further validation of NDRHI/RTFO interaction

### 1. Introduction

#### Purpose of document

1.1. This guidance describes the process to be followed by biomethane producers claiming quarterly NDRHI support, and their auditors, when presenting additional evidence of NDRHI/RTFO interaction as a section of their Annual Sustainability Audit Report.

#### Legislation

- 1.2. You should read this document alongside Volume 2: 'Ongoing Obligations and Payments', of our NDRHI guidance<sup>15</sup>, and our Renewable Heat Incentive: Sustainability Audit Guidance for Participants and Auditors<sup>16</sup>, which contain more details on the applicable legislation and obligations in this area.
- 1.3. Biomethane producers claiming for quarterly support under the NDRHI must comply with all relevant requirements and ongoing obligations specified in the RHI Regulations<sup>17</sup>. Ongoing obligations are outlined in Volume 2 of Ofgem's 'Ongoing Obligations and Payments' guidance for NDRHI participants.
- 1.4. These obligations state (at Chapter 13, sections 13.6 to 13.10), that whilst dual participation on the RTFO scheme and the NDRHI scheme is supported under the NDRHI Regulations, Ofgem may not make a periodic support payment in respect of any proportion of biomethane injected in a quarterly period where a Renewable Transport Fuel Certificate (RTFC) has been issued under the Renewable Transport Fuel Obligations (RTFO) Order 2007<sup>18</sup> for that proportion of biomethane.

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<sup>15</sup> [NDRHI Guidance Vol2. Final Jan 2021 \(ofgem.gov.uk\)](#)

<sup>16</sup> [Renewable Heat Incentive: Sustainability Audit Guidance for Participants and Auditors \(ofgem.gov.uk\)](#)

<sup>17</sup> The Renewable Heat Incentive Scheme Regulations 2018 (as amended): [The Renewable Heat Incentive Scheme Regulations 2018 \(legislation.gov.uk\)](#)

<sup>18</sup> The Renewable Transport Fuel Obligations Order 2007 (as amended) [The Renewable Transport Fuel Obligations Order 2007 \(legislation.gov.uk\)](#)

- 1.5. The RTFO order, administered by the Department for Transport, also states that fuel claimed under its scheme cannot be counted towards another renewable energy obligation or support scheme<sup>19</sup>.
- 1.6. If a producer receives a payment via the NDRHI for biomethane that has already received RTFO support, the relevant amount is highly likely to be recovered or offset against future payments by Ofgem. If any subsequent non-compliance with NDRHI obligations is found, Ofgem may also take enforcement action.

#### Process Overview

- 1.7. Biomethane producers must have their NDRHI feedstock information validated by an independent auditor via an Annual Sustainability Audit Report. It is the responsibility of the auditor to perform the assurance engagement and complete a written report.
- 1.8. The objective of the further validation requirement is for claimants to demonstrate, via an independent auditor, that they are complying with their legislative and regulatory obligations to prevent dual claims for their biomethane, as referenced above at sections 1.3 to 1.6.
- 1.9. This evidence (see Evidence Summary, below) should be submitted as a separate section of the Annual Sustainability Audit Report and the auditor should provide assurance as to the accuracy, reliability, and robustness of NDRHI/RTFO interaction by producers. This is necessary for effective scheme administration; it is an administrative requirement falling within Regulation 43(t) of the [NDRHI Regulations].
- 1.10. Producers will therefore submit their quarterly NDRHI claims and quarterly declaration<sup>20</sup> forms on NDRHI/RTFO interaction to Ofgem as before. Their Annual Sustainability Audit Reports, should be submitted to Ofgem by the usual process - through the RHI Register. We will be updating producers about the process for including the NDRHI/RTFO validation with the Annual Sustainability Audit, ahead of this further assurance requirement coming into force, on 1 April 2022.

**Please note:** The reporting year for the annual RTFO audit must, as with the Annual

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<sup>19</sup> Renewable Transport Fuel Obligations Order 2007, article 16(2)(a)(ii)  
<https://www.legislation.gov.uk/uksi/2007/3072/article/16>.

<sup>20</sup> NDRHI, Guidance Volume 2, 'Ongoing obligations and payments', Chapter 13, section 13.8  
[NDRHI Guidance Vol2. Final Jan 2021 \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/national-decarbonisation-roads/national-decarbonisation-roads-guidance/national-decarbonisation-roads-guidance-vol2)

Sustainability Audit it will be submitted with, correspond with the annual cycle that a participant has been on with the scheme (i.e. not the financial year).

1.11. The onus is on the producer to comply with the relevant regulatory requirements and scheme obligations concerning NDRHI/RTFO interaction and the additional audit information will give Ofgem assurance that the supplier is both carrying out the necessary activities and has suitably robust processes in place.

1.12. The producer must retain the evidence referred to in the audit for the duration of their accreditation to the NDRHI scheme.

## **2. Annual Sustainability Audit Report: additional reporting requirement on NDRHI/RTFO interaction**

2.1. As with the current Annual Sustainability Audit Report, biomethane producers should have the additional information prepared by an independent auditor in accordance with the requirements of limited assurance engagements prescribed in ISAE 3000 (revised) or equivalent<sup>21</sup>.

2.2. The producer will be responsible for appointing an auditor and agreeing an appropriate scope of work. Producers need to engage fully with their auditors and have a robust process in place to provide the additional validation of NDRHI/RTFO interaction required to be supplied with the Annual Sustainability Audit Report.

2.3. The Annual Sustainability Audit Report, complete with this additional information, should then be submitted to Ofgem by the producer, with the relevant supporting evidence.

2.4. Ofgem reserves the right to request further evidence relating to the additional information on NDRHI/RTFO interaction that is provided.

2.5. The NDRHI/RTFO audit section should include the following:

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<sup>21</sup> At the time of writing Ofgem is not aware of any equivalent standards. Should the operator and their auditor wish to make use of one, they should contact Ofgem in advance for confirmation of its acceptability.

- a) NDRHI/RTFO audit section title
- b) Auditor's details and qualifications (if different from Sustainability Audit Report)
- c) Scope of work and methodology
- d) Assurance rating
- e) Evidence summary
- f) Supporting evidence / documents
- g) Details of fraud or error prevention measures

2.6. The new section should be added to the existing Annual Sustainability Audit Report and submitted as usual to Ofgem within three months after each anniversary of the date on which the participant was first registered with the NDRHI as a producer of biomethane.

2.7. The assurance provided in the NDRHI/RTFO section by the independent auditor should adequately demonstrate to Ofgem that the producer has taken all reasonable steps to ensure that:

- a) dual claims for the same biomethane are not taking place on the NDRHI
- b) the claims can be validated

#### Auditor's details

2.8. Details should be provided about who has performed the NDRHI/RTFO interaction auditing process, including the assurance standard to which the agreed upon procedures were performed to.

2.9. It is a producer's preference as to whether they use the same, or different, auditors for the Sustainability Audit and the RTFO audit.

#### Scope of work and methodology

2.10. The report should include a review of the systems and controls the producer has in place in order for all reasonable steps to be taken to ensure all the biomethane they claim for against the NDRHI does not go on to be claimed against the RTFO.

2.11. It should also give an overview of how likely it is that the information they produce is accurate and reliable.

2.12. The auditor should describe what methodologies were used to select sample sizes and what standards these methodologies conform to.

#### Conclusions and qualifications

2.13. This includes the auditor's opinion and any qualifications to that opinion. The opinion should be expressed to a 'limited' level as defined by ISAE 3000.

2.14. In a limited assurance engagement, the opinion should be expressed in the negative form, for example for an unqualified opinion:

"Based on the work described in this report, nothing has come to our attention that causes us to believe that NDRHI periodic data claims during the period of DD/MM/YYYY to DD/MM/YYYY is not accurate, in all material respects, based on XYZ criteria."

2.15. There are times that it may be appropriate for the verifier to express a qualified opinion. This will be the case if the verification has brought issues to light. These issues may not be material enough to affect the verification outcome, but are nonetheless still relevant to how the audit report is prepared. A qualified opinion will be stated the same way as an unqualified opinion with the addition of "with the exception of X, Y and Z".

2.16. Reports given with qualified opinions will be carefully assessed by Ofgem, particularly if a comment recurs year after year.

#### Evidence summary

2.17. Producers are required to hold evidence both about the biomethane claimed for under the NDRHI, and/or gas supplied to shippers, traders or suppliers. This should be provided to the auditor for their report and show the annual amount claimed for against NDRHI and, if applicable, the amount claimed against – or that could go on to be claimed against – the RTFO via RTFCs during the same period.

2.18. Ofgem expects that biomethane which has been claimed for against the NDRHI would be sold with appropriate documentation provided to the buyer which confirms this. This could be one, or a combination of, documents taken together to provide detailed information regarding provenance, feedstocks and proportions claimed against

NDRHI, to be retained through the chain of custody of the biomethane, from production to end use. This is in line with the information required by the DfT for participation on the RTFO.

- 2.19. An auditor should be able to access evidence and/or documentation demonstrating whether a biomethane producer has:
- i) claimed RHI support for their gas
  - ii) had gas not claimed for on RHI and that has been sold on - allowing an RTFO claim by another party
  - iii) split a claim for support between the RHI and RTFO, and by what proportion.
- 2.20. We recognise some producers may never claim RTFO support, making it relatively simple for an auditor to evidence this through injection data.
- 2.21. We also recognise that producers who sell on gas to another party may not be able to retain or present evidence about the whole contractual chain relating to that gas, or the activity of any other parties within that chain.
- 2.22. For this reason, auditors will need to check the sale documentation between the first two parties in the contractual chain: the biomethane producer and the first trading counterparty. This contractual documentation must provide the auditor with assurance that a producer is taking reasonable steps to prevent double claiming.

Specifically the auditor should check the biomethane producer's standard contracts (or the relevant clauses therein) and/or warranties to ensure they contain the necessary clauses relating to any NDRHI claim and sustainability information in respect of the consignment being sold. The scheme obligations clearly state that Ofgem may not make payment if an RTFC has been issued for the same gas<sup>22</sup>. This documentation should therefore provide assurance to an auditor that a producer is taking all reasonable steps against dual claims on their gas.

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<sup>22</sup> 'Interaction with the Renewable Transport Fuel Obligation', regulation 32A.-(2) [The Renewable Heat Incentive Scheme Regulations 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

2.23. The auditor must also supply and verify the accuracy, reliability and robustness of any supporting evidence submitted as proof of a 'contractual supply chain' for injected biomethane purchased from a producer by suppliers, traders or shippers.

2.24. Documentation could include, but is not limited to, any combination of the following:

- a) Commercial contracts which demonstrate transactions between the producer and suppliers / traders / shippers
- b) Additional transactional agreements between the producer and suppliers / traders / shippers
- c) Supporting documentation to suppliers / traders / shippers by the producer with the sale – including documentation demonstrating the sustainable characteristics of the biomethane
- d) Documentation from voluntary schemes and industry-led green gas registries which demonstrates the proportions claimed against each scheme
- e) Documentation or correspondence from the Department for Transport (DfT) pertaining directly to the RTFO scheme
- f) Screenshots from the RTFO online system
- g) GEMINI data
- h) Please note: The accreditation of a producer with a voluntary certification scheme is not sufficient in itself – it is the information within the certificate that may be of use for an auditor's assurance purposes

2.25. We recognise that different market structures and potential trading arrangements apply. As such, we are not able to comprehensively list all the specific types of acceptable documentary evidence. However, proof of a clear contractual chain linking the biomethane producer with all the relevant parties, be they shippers, traders or suppliers, will be required in any case.

2.26. The auditor must check that specific evidence exists to demonstrate this proof. Contracts that show intent to supply are not sufficient. Contracts and invoices that evidence specific transactions after the fact are examples of acceptable evidence.

2.27. The contractual chain should provide details of the specific biomethane transactions made and should include clear evidence of quantities of gas having been traded from the point of production.



### Fraud or error prevention measures

- 2.28. The auditor should confirm that fraud prevention measures have been considered by the biomethane producer and summarise what the company does to prevent fraud.
- 2.29. The auditor should check the producer has suitably robust controls in place to reduce or prevent errors in their processes.

### **3. Ofgem validation**

- 3.1. Once the NDRHI/RTFO interaction audit section is submitted to Ofgem as part of the Annual Sustainability Audit Report, if there are any queries at this stage, either regarding validation against dual claiming or otherwise, we will email the producer asking for further information.
- 3.2. Once our review of the section is complete, we will then communicate with the biomethane producer within the usual timeframe.
- 3.3. Where Ofgem determines that a producer has received periodic support payments for the production of biomethane for which an RTFC has also been issued, we are highly likely to require the producer to repay those payments or to take the actions set out below on overpayment notices and offsetting.
- 3.4. Where a producer who is required to repay a specified sum fails to make payment in full by the date specified, Ofgem may recover any outstanding sum by offsetting it against future payments to be made to the producer, accepting a repayment from the producer, or recovering the amount as a civil debt. Repeated non-compliance may result in further enforcement action being taken.
- 3.5. However, if an overpayment to a producer has resulted from an error by Ofgem, we will seek to agree with the producer an appropriate schedule for repayment of the sum due, which may include the ability to repay the amount by instalments or through offsetting against future payments over a more extended period.
- 3.6. Where a producer considers that repayment of a previous overpayment is likely to result in significant hardship, they should contact Ofgem to discuss the position as soon as possible after receiving a notice to repay.

## Appendix 2

### List of respondents

1. The Association for Renewable Energy and Clean Technology (REA)
2. Green Gas Certification Scheme (GGCS)
3. Northumbrian Water Limited (NWL)
4. The Anaerobic Digestion and Bioresources Association (ADBA)