

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

Arkansas Department of Environmental Quality (ADEQ) by and
through the Arkansas Pollution Control and Ecology Commission

DEPARTMENT/AGENCY (APC&EC)

DIVISION Office of Land Resources (OLR)

DIVISION DIRECTOR Kevin White, Associate Director

CONTACT PERSON Kevin White, Associate Director, Office of Land Resources

ADDRESS 5301 Northshore Drive, North Little Rock, Arkansas

PHONE NO. 501-682-0962 FAX NO. 501-682-0565 EMAIL white@adeq.state.ar.us

NAME OF PRESENTER AT COMMITTEE MEETING Kevin White

PRESENTER EMAIL white@adeq.state.ar.us

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Regulation No. 36: Tire Accountability Program

The proposed permanent amendments simplify the name of the program to the Tire Accountability Program (TAP); provide comprehensive program administration information in compliance with Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, to include provisions for permitting, licensing, enforcement, and beneficial uses; remove preliminary implementation dates and deadlines that reference 2017; add references to new or renamed forms; and make minor revisions to include correcting typographical, grammatical, formatting, and stylistic errors throughout the emergency regulation.

2. What is the subject of the proposed rule?

3. Is this rule required to comply with a federal statute, rule, or regulation?

Yes ☐

No ☒

If yes, please provide the federal rule, regulation, and/or statute citation.

N/A

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes ☐

No ☒

If yes, what is the effective date of the emergency rule? N/A

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☐

5. Is this a new rule? Yes ☐ No ☒

If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes ☐ No ☒

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq.

7. What is the purpose of this proposed rule? Why is it necessary?

The purpose of this regulation is to provide for the administration of the new Tire Accountability Program. It is necessary because the General Assembly made substantial changes to the current program and transferred the current waste tire program to the new program Tire Accountability Program.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.adeg.state.ar.us/regs/draft_regs.aspx

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: February 27, 2018

Time: 2 p.m.

Commission Room

ADEQ Headquarters

5301 Northshore Drive

Place: North Little Rock, AR 72118

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

March 15, 2018

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

June 15, 2018

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. The Arkansas Pollution Control and Ecology Commission (APC&EC) is exempt from the definition of "agency" under the Administrative Procedure Act. (See Ark. Code Ann. § 25-15-202(2)(C)). However, laws concerning the promulgation of regulations by the APC&EC do require public notice, a copy is attached.
13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). The Arkansas Pollution Control and Ecology Commission (APC&EC) is exempt from the definition of "agency" under the Administrative Procedure Act. (See Ark. Code Ann. § 25-15-202(2)(C)). Filing with the Secretary of State does not occur until after legislative review and final APC&EC adoption.
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. None anticipated.



February 5, 2018

Ms. Marty Garrity, Executive Secretary
Arkansas Legislative Council
Room 315, State Capitol Building
Little Rock, AR 72201

**Re: Emergency Rulemaking for Arkansas Pollution Control and Ecology Commission
Regulation No. 36: Used Tire Recycling and Accountability Program**

Dear Ms. Garrity:

The Arkansas Department of Environmental Quality (ADEQ), by and through the Arkansas Pollution Control and Ecology Commission (APC&EC), is seeking review and approval from the Executive Subcommittee of Legislative Council pursuant to Ark. Code Ann. § 10-3-309(d) for a second emergency rulemaking for the new Used Tire Recycling and Accountability Program mandated to be implemented on and after January 1, 2018, by Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*

As you know, the APC&EC rulemaking process is exempt from the definition of “agency” under the Arkansas Administrative Procedure Act (AAPA). (*See* Ark. Code Ann. § 25-15-202(2)(C)). The law governing the APC&EC rulemaking process is different than the AAPA. The APC&EC emergency rulemaking is effective for up to one hundred eighty (180) days, and there is no limit on successive rulemaking. (*See* Ark. Code Ann. §§ 8-4-202(e) and 8-9-414 and APC&EC Reg. 8.807.)

To summarize the history of this regulation, the new Regulation No. 36 was initially promulgated as an emergency rulemaking after APC&EC adoption and the Executive Subcommittee of Legislative Council’s subsequent approval effective September 8, 2017. On January 26, 2018, the APC&EC initiated the permanent rulemaking process to provide comprehensive program administration information in compliance with Act 317 of 2017 to include provisions for permitting, licensing, enforcement, and beneficial uses, as well as the imposition, collection, and remittance of special revenue from fees associated with the new law. The Governor’s Office and APC&EC have authorized ADEQ to proceed with the second emergency rulemaking.

The markup draft of the permanent regulation currently before the APC&EC is the same as the markup draft that is submitted with this letter. The markup draft shows that substantial content was added concerning permitting, licensing, enforcement, and beneficial uses to make Reg. 36 a “stand-alone” regulation that does not rely upon the regulation for the old waste tire program,



APC&EC Regulation No. 14. The attached Executive Summary explains the chapter-by-chapter changes and additions to the current Reg. 36. Also attached are the completed BLR Questionnaire and Financial Impact forms.

The first emergency rulemaking will expire on March 7, 2018, and the APC&EC permanent rulemaking process cannot be completed before this time. Pursuant to APC&EC Reg. 8.807 and on behalf of the APC&EC, ADEQ seeks this second emergency rulemaking to continue statutorily required, essential program administration until the permanent rulemaking process is complete. Essential program administration includes funding the used tire programs, management of used tires, and the prevention and remediation of illegal tire dumping, all of which are necessary to prevent imminent peril to the public health and general welfare of the state.

Please let me know if you have questions or need additional information regarding this rulemaking. My direct telephone number is 501.682.0916, and my e-mail address is Robinson@adeq.state.ar.us. Thank you for your assistance in this matter.

Kindest regards,

A handwritten signature in blue ink that reads "Kelly Robinson". The signature is written in a cursive, flowing style.

Kelly Robinson

Public Information Officer
5301 Northshore Drive
North Little Rock, AR 72118

cc: Ms. Jessica Sutton, Administrator, Administrative Rules Review Section
Ms. Donna Davis, Administrative Rules Review Section

APC&EC REGULATION NO. 36:
USED TIRE RECYCLING AND ACCOUNTABILITY PROGRAM
Proposed Amendments – Executive Summary
January 12, 2018

The Arkansas Department of Environmental Quality (ADEQ) proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission (Commission) for permanent amendments to emergency Regulation No. 36 (Used Tire Recycling and Accountability Program). The proposed amendments simplify the name of the program to the Tire Accountability Program (TAP); provide comprehensive program administration information in compliance with Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, to include provisions for permitting, licensing, enforcement, and beneficial uses; remove preliminary implementation dates and deadlines that reference 2017; add references to new or renamed forms; and make minor revisions to include correcting typographical, grammatical, formatting, and stylistic errors throughout the emergency regulation. Act 317 of 2017 also establishes the Commission's authority for the rulemaking.

In addition to the changes described above made throughout the emergency Regulation 36, a summary of proposed changes by chapter include:

- **Chapter 1: General Provisions** – Changes made to this chapter include:
 - Reg. 36.101 was changed by adding subsection (C);
 - Reg. 36.102 was changed by adding subsection (A);
 - Reg. 36.106 entitled "Open Burning Prohibited" was stricken;
 - Reg. 36.107 entitled "Continuation of Permitting, Licensing, and Enforcement Authority" under Regulation No. 14 was stricken because it will no longer be necessary after this permanent rulemaking is effective
 - New Reg. 36.106 was added concerning inter-district used tire programs; and
 - New Reg. 36.107 was added concerning market development.
- **Chapter 2: Definitions** – Changes to the definition of e-manifest were made.
- **New Chapter 3: Used-Tire Programs** – Added to provide information related to the administration of used-tire programs.
- **Chapter 4: Used-Tire Program Accountability and Business Plans** – Reg. 36.403 was changed by striking subsection (B).

APC&EC REGULATION NO. 36:
USED TIRE RECYCLING AND ACCOUNTABILITY PROGRAM
Proposed Amendments – Executive Summary
January 12, 2018

- *New Chapter 5: Performance and Efficiency Evaluations* – Added for administrative guidance.
- *Chapter 6: E-Manifest System* – The current “Chapter 4: E-Manifest System” has been renumbered as Chapter 6 with additional changes to Reg. 36.602, 36.605, and Reg. 36.606.
- *Chapter 7: Tire Generators* – The current “Chapter 5: Tire Generators” has been renumbered as Chapter 7 with additions to Reg. 36.704(7).
- *Chapter 8: Rim Removal Fees* – The current “Chapter 6: Rim Removal Fees” has been renumbered as Chapter 8.
- *Chapter 9: Commercial Generators and Commercial Generator Fees* – The current “Chapter 7: Commercial Generators and Commercial Generator Fees” has been renumbered as Chapter 9.
- *Chapter 10: Persons Who Import Used Tires and Import Fees* – The current “Chapter 8: Persons Who Import Used Tires and Import Fees” has been renumbered as Chapter 10.
- *Chapter 11: Disbursements from the Used Tire Recycling Fund* – The current “Chapter 9: Disbursements from the Used Tire Recycling Fund” has been renumbered as Chapter 11.
- *New Chapter 12: Beneficial Use* – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.
- *New Chapter 13: Waste Tire Sites* – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.
- *New Chapter 14: Landfilling of Waste Tires* – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.
- *New Chapter 15: Tire Collection Centers* – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.
- *New Chapter 16: Tire Processing Facilities* – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.
- *New Chapter 17: Repealer, Severability, and Effective Dates* – Standard language included in most permanent regulations.

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF PROMULGATION OF)
REGULATION NO. 36,) DOCKET NO. 18-____-R
USED TIRE RECYCLING AND)
ACCOUNTABILITY PROGRAM)

PETITION TO INITIATE RULEMAKING
TO PERMANENTLY AMEND EMERGENCY RULEMAKING FOR
REGULATION NO. 36: USED TIRE RECYCLING AND ACCOUNTABILITY PROGRAM

Comes now the Arkansas Department of Environmental Quality (ADEQ), by and through Kevin White, Associate Director for the Office of Land Resources, and for its Petition to Initiate Rulemaking to Permanently Amend Emergency Rulemaking for Arkansas Pollution Control & Ecology Commission (APC&EC) Regulation No. 36: Used Tire Recycling and Accountability Program, states:

1. Act 317 of the 2017 Regular Session of the Arkansas General Assembly, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, created the Used Tire Recycling and Accountability Program; requires the Commission to promulgate regulations for the program; and requires ADEQ to implement and administer the program beginning January 1, 2018, and thereafter.

2. The proposed amendments simplify the name of the program to the Tire Accountability Program (TAP); provide comprehensive program administration information in compliance with Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, to include additional provisions for permitting, licensing, enforcement, and beneficial uses; remove preliminary implementation dates and deadlines that reference 2017; add references to new or renamed forms; and make minor revisions to include correcting typographical, grammatical, formatting, and stylistic errors throughout the emergency regulation.

3. Tammie Hynum, Senior Operations Manager, Office of Land Resources, will be available to answer questions concerning this proposed rulemaking.

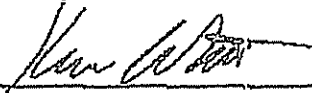
4. Exhibits attached to this petition and incorporated by reference include:

- a. Exhibit A -- A markup version of the regulation showing the proposed changes;
- b. Exhibit B -- Governor's Approval;
- c. Exhibit C -- Bureau of Legislative Research (BLR) Questionnaire;
- d. Exhibit D -- BLR Financial Impact Statement; and
- e. Exhibit E -- Proposed Minute Order.

5. Pursuant to APC&EC Reg. 8.812(A)(2), the provisions of Reg. 8.812 do not apply and an Economic Impact/Environmental Benefit Analysis is not required because this proposed regulation incorporates and adopts language of Arkansas state statutes without substantive change.

WHEREFORE, ADEQ respectfully requests the APC&EC initiate the rulemaking process, adopt the proposed Minute Order to initiate the rulemaking process, and promulgate the proposed permanent amendments to Regulation No. 36 after the completion of the rulemaking process.

Respectfully submitted,



Kevin White, Associate Director
Office of Land Resources
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
white@adeq.state.ar.us
(501) 682-0962

Exhibit A:

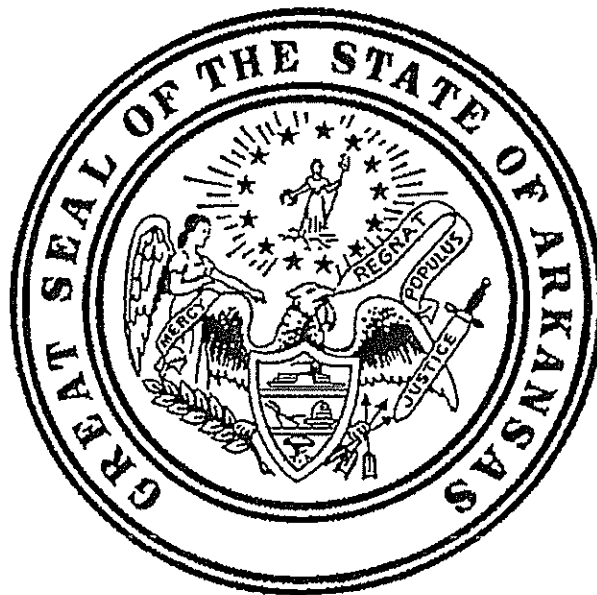
Regulation 36

Proposed Mark-up Draft

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

REGULATION NO. 36

**~~USED TIRE RECYCLING AND~~
ACCOUNTABILITY PROGRAM**



Submitted to the Arkansas Pollution Control & Ecology Commission

January 2018

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CHAPTER 1: GENERAL PROVISIONS

Reg. 36.101 Title, Implementation, and Administration

(A) This regulation shall be known and may be cited as the "Used Tire Recycling and Accountability Program."

(B) On the effective date of this regulation, the Arkansas Department of Environmental Quality (ADEQ) shall implement the Used Tire Recycling and Accountability Program.

(C) On or before January 1, 2018, and thereafter, the ADEQ shall administer the Tire Accountability Program in accordance with this regulation.

Reg. 36.102 Purpose

(A) The purpose of the Tire Accountability Program is to:

- (1) Reimburse used tire programs for used tire recycling and disposal costs;
- (2) Incentivize recycling used tires collected;
- (3) Provide accountability for the disbursement of moneys to used tire programs; and
- (4) Otherwise improve the sustainability of used tire programs.

(B) The purpose of this regulation is to:

- (1) Protect the public health, welfare and the state's environmental quality by promulgating regulations for the hauling, collection, storage, and recycling or disposal of recyclable tires, waste tires, and used tires culled for resale;
- (2) Provide accountability and sustainability for used tire programs by requiring use of the electronic uniform used tire manifest system developed by the Arkansas Department of Environmental Quality ADEQ and business plans for used tire programs;
- (3) Promote recycling and reuse of used tires;
- (4) Equalize the application of fees for all tires removed from rims; and
- (5) Ensure that reimbursements for used tire programs are related to the overall used tire program goals.

Reg. 36.103 Legislative Intent

The General Assembly made the following determinations related to used tires:

- (1) If not properly managed, used tires pose a potential threat to human health and safety and the environment because used tires:
 - (a) Are a known breeding habitat for mosquitoes and other disease-transmitting vectors; and
 - (b) Pose substantial fire hazards;

- (2) The state must have a used tire program for recyclable tires, waste tires, and used tires culled for resale that is accountable, effective, and efficient; and
- (3) The primary goal of the used tire program is to recycle or put to beneficial use as many used tires as possible.

Reg. 36.104 Authority

The Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, created in Act 317 of 2017 authorizes the Arkansas Pollution Control and Ecology Commission (Commission) to adopt regulations necessary for the ~~Arkansas Department of Environmental Quality (Department or ADEQ)~~ to implement and administer the Used Tire Recycling and Accountability Program.⁺

Reg. 36.105 Applicability

A person who receives funding under Commission Regulation 36, the ~~Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*~~, tire collection centers, tire retailers, tire processing facilities, tire transporters, tire generators, waste-tire sites, and commercial generators, ~~used tires regulated under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*~~, and waste-tire sites are subject to:

- (1) All provisions in Arkansas Code Title 8, Chapter 1 and Title 8, Chapter 4, Subchapters 1 and 2 concerning permits, licensing, inspections, and procedures;
- (2) Arkansas Code §§ 8-9-105, 8-6-204, 8-6-205, and 8-6-207(a)(6) concerning penalties and enforcement; and
- (3) All applicable regulations promulgated by the Arkansas Pollution Control and Ecology Commission.

~~Reg. 36.106 Open Burning Prohibited~~

~~A person shall not cause or permit the open burning of tires in the State of Arkansas.~~

~~Reg. 36.107 Continuation of Permitting, Licensing, and Enforcement Authority.~~

~~(A) A person holding any license or permit issued before the effective date of this regulation under Arkansas Pollution Control and Ecology Commission Regulation 14 shall continue to operate in compliance with the conditions of the license or permit. However, if the person obtains a new license, new permit, or modification within one hundred eighty (180) days after the effective date of this regulation, the Arkansas Department of Environmental Quality may issue a new license, new permit, or modification in compliance with this regulation.~~

⁺As a historical note, Ark. Code Ann. Title 8, Chapter 9, Subchapter 4 originated as a waste-tire program under Act 749 of 1991 and was amended by Acts 518, 519, and 529 of 1993; Act 1315 of 1995; Act 1292 of 1997; Acts 1164 and 775 of 1999; Act 1304 of 2003; Acts 961, 1822, and 1951 of 2005; Act 744 of 2011; and Act 840 of 2015 and Arkansas Pollution Control and Ecology Commission Regulation 14. Act 317 of 2017 transferred the previously known "waste tire program" to the "Used Tire Recycling and Accountability Program" beginning January 1, 2018.

~~(B) Any license or permit issued before the effective date of this regulation under Arkansas Pollution Control and Ecology Commission Regulation 14 that expires within one hundred eighty (180) days after the effective date of this regulation may be renewed upon application to the Arkansas Department of Environmental Quality, provided that the license or permit complies with this regulation.~~

~~(C) A license or permit issued before the effective date of this regulation under Arkansas Pollution Control and Ecology Commission Regulation 14 that is not in compliance with this regulation may be modified or revoked by the Director within one hundred eighty (180) days after the effective date of this regulation.~~

~~(D) If any part of this regulation is found to be invalid or unenforceable under applicable law, the invalid or unenforceable provision shall be deemed superseded by any applicable provision of Arkansas Pollution Control and Ecology Commission Regulation 14 that most clearly matches the intent of the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., and the remainder of the regulation will continue to be valid and enforceable.~~

Reg. 36.106 Inter-district Used Tire Programs.

(A) An inter-district used tire program shall:

- (1) Be formed using written agreements signed by the chair of each regional solid waste management board in the Inter-district;
- (2) Have a board of directors composed of the chair of each regional solid waste management board or his or her designee;
- (3) Elect a person to serve as the chair of the inter-district used tire program; and
- (4) Specify the exclusive entity that receives payment from the Used Tire Recycling Fund from ADEQ.

(B)(1) If a new inter-district is formed on or after January 1, 2018, or a regional solid waste management board is added to or removed from the inter-district that existed on or after January 1, 2018, the change requires the inter-district to:

- (a) Comply with all requirements in law and regulation concerning inter-districts;
- (b) Obtain approval from all regional solid waste management boards that are in the proposed inter-district;
- (c) Provide ADEQ with a Notice of Intent to submit a revised business plan under Chapter 7 of this regulation; and
- (d) Develop a revised business plan under Chapter 7 of this regulation and submit to ADEQ or its designee for review and approval.

(2) The ADEQ will provide the effective date of the new inter-district upon approval of the revised business plan.

(C) A used tire program may request operational assistance or guidance on compliance with this section from ADEQ, and ADEQ may provide operational assistance or guidance on compliance with this section to the used tire program.

Reg. 36.107 Market Development

(A) The Used Tire Program shall develop market opportunities for recycling and beneficial use of-used tires and used tire materials, including tire derived fuel.

(B) The market sectors for recycling and beneficial use of used tires could include ground rubber, use in civil engineering applications, tire-derived fuel, and rubberized asphalt.

CHAPTER 2: DEFINITIONS

Reg. 36.201 Definitions

As used in this regulation, the following definitions apply:

“Abatement” means the removal of used tires from a waste tire site, stock pile, or other site with accumulations of whole or shredded used tires.

“Access-controlled collection center” means a location where used tires are collected from tire generators, commercial generators, the public, or any combination thereof and:

- (1) Is secured; and
- (2) Only allows entry through specific points by authorized personnel.

“Baling” means a method of volume reduction whereby tires are compressed into bales.

“Beneficial use” means using a tire or part of a tire:

- (1) To make another product;
- (2) To make a component material of another product;
- (3) As a substitute for a commercial product or material; or
- (4) As a component to produce an alternative fuel for commercial purposes.

“Civil engineering application” means the use of waste tires in lieu of or in addition to natural occurring materials (such as rock, sand, dirt, gravel, etc.) in construction and erosion control. This definition does not include land reclamation.

“Commercial generator” means a person who sells new tires or provides delivery of new tires as part of fleet services to any one (1) or more of the following:

- (1) A municipality;
- (2) A county;
- (3) A state agency;
- (4) A federal agency;
- (5) A school district;
- (6) A political subdivision of the state; or
- (7) A person who in the ordinary course of business buys tires in bulk for use on commercial vehicles.

“Commercial generator” does not include a tire retailer.

“Commission” means the Arkansas Pollution Control and Ecology Commission or its successor, unless otherwise specified.

“Department” or ADEQ means the Arkansas Department of Environmental Quality or its successor, unless otherwise specified.

“Director” means the Director of the Arkansas Department of Environmental Quality or the Director’s designee, unless otherwise specified.

“Disclosure statement” means a written statement regarding business and legal activities as defined in Ark. Code Ann. § 8-1-106 *et seq.*

“E-Manifest” means the electronic format of used tire data that is:

- (1) Entered by an e-manifest user opener into the electronic uniform used tire manifest system;
- (2) Assigned a unique electronic document number by the ~~Arkansas Department of Environmental Quality’s~~ ADEQ’s e-manifest system portal; and
- (3) Transmitted electronically to the e-manifest system, e-manifest viewers, and e-manifest closers ~~by a user who has have been given permission to perform any one (1) or more of the following activities:~~
 - (a) ~~Initiate new submissions of used tire data~~ View the data;
 - (b) Communicate with the e-manifest opener;
 - ~~(b)(c)~~ Provide information related to the collection, transportation, distribution, and recycling or disposal of recyclable tires, waste tires, and used tires culled for resale; or
 - ~~(e)(d)~~ Submit used tire data Be the e-manifest closer.

“Electronic uniform used tire manifest system” or “e-manifest system” means an administrative method developed by the ~~Arkansas Department of Environmental Quality~~ ADEQ that:

- (1) Uses an electronic application for the submission and management of information related to the generation, collection, transportation, distribution, and recycling, beneficial use, disposal, or resale of each recyclable tire, waste tire, and used tire culled for resale regulated under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*; and
- (2) Records the origin, date of collection, date of transfer, quantity, type, transporter, and destination for each recyclable tire, waste tire, and used tire culled for resale regulated under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*

“Extra-large tire” means a tire that due to its size or construction is more difficult to process for recycling or disposal than a large tire and costs substantially more to process than a large tire.

“Extra-large tire” includes without limitation tires used, capable of being used, or designed to be used on any of the following vehicles or equipment:

- (1) A skid steer loader;
- (2) Excavation equipment;

- (3) A farm implement, including without limitation, a tractor;
- (4) A backhoe;
- (5) A road grader;
- (6) Industrial equipment;
- (7) A skidder; or
- (8) A heavy duty truck used off-road for mining.

"Extra-large tire" includes a tire with a load rating of "G" or higher.

"Fee-paid tire" means a used tire ~~that~~ for which a rim removal fee or commercial generator fee has been collected, reported, and paid on the replacement tire by a tire generator or commercial generator.

"Fee-waived tire" means a used tire ~~that~~ for which no rim removal fee, commercial generator fee, or import fee has been collected, reported, and paid.

"Funding decision" means the final administrative decision by the Director or designee on an application for Level One, Level Two, and Level Three reimbursements from the Used Tire Recycling Fund pursuant to ADEQ's administration of the ~~Used Tire Recycling and Accountability Program~~ under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.* and the final decision of the Director or designee on any disputes arising under any reimbursement.

"Grant decision" means the final administrative decision by the Director or designee on an ~~applications~~ application for grants pursuant to ADEQ's administration of the ~~Used Tire Recycling and Accountability Program~~ under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.* and the final decision of the Director or designee on any disputes arising under any grant.

"Inter-district used tire program" means a program formed by agreement of two (2) or more regional solid waste management boards to pool resources of all boards that are parties to the agreement for the administration of one (1) consolidated used tire program.

"Large tire" means a tire with a rim size greater than nineteen inches (19") and a load rating of "F" or higher including without limitation a wide-base or extra-wide single tire.

"Load rating" means the system of trade designations that identifies the weight carrying capacity range of a tire.

"Low profile tire" means a tire of any rim size that has a short sidewall and is designed to:

- (1) Be used on an automobile or light truck; and
- (2) Provide one (1) or more of the following:
 - (a) Performance enhancing precision and control; or
 - (b) An appearance enhancement.

“Manufacture reject tire” means a tire rendered defective in the manufacturing process.

“Open collection center” means an unsecure, open-access location where used tires are collected from tire generators, the public, or both before being recycled or disposed of by a used tire program.

“Operator” means any person who performs any operation at a permitted tire processing facility or tire disposal facility requiring individual judgment that may directly affect the proper operation of the facility. “Operator” does not include any official solely exercising general administrative supervision.

“Permit” means a written consent issued by the ~~Arkansas Department of Environmental Quality~~ ADEQ that authorizes a person or business to perform one (1) or more of the following functions at a tire processing facility, a tire disposal facility, or a tire collection center:

- (1) Construct;
- (2) Operate; or
- (3) Maintain.

“Permitted site” means a location used for collection, storage, processing, or disposal of used tires that has a current valid permit issued by ADEQ.

“Person” means an individual, government entity, or any other entity that is recognized by law with rights and duties.

“Processed tire” means tires, commingled tire parts, or pieces of tires that have been cut, shredded, or otherwise altered so that they are no longer whole, no longer identifiable, or both.

“Pro rata” means a proportional allocation using a procedure to assign an amount to a fraction according to its share of the whole.

“Qualified entity” means an entity that demonstrates to the ~~Arkansas Department of Environmental Quality~~ ADEQ that the entity has the capability, experience, and resources to operate and administer a used-tire program.

“Quantity” means the actual number of tires.

“Recyclable tire” means a worn, damaged, or defective tire that is recycled because it is no longer repairable, reusable, or suitable for its original intended purpose.

“Recycle” means the systematic process of collecting, sorting, decontaminating, and returning waste materials to commerce as commodities for use, other beneficial use, or exchange.

“Regional Solid Waste Management Board” or **“Board”** means a board created under Arkansas Code Title 8, Chapter 6, Subchapter 7, or its successor, unless otherwise specified.

“Regional Solid Waste Management District” or **“District”** means a district created under Arkansas Code Title 8, Chapter 6, Subchapter 7, or its successor, unless otherwise specified.

“Registered professional engineer” means professional engineer registered in the State of Arkansas.

“Residuals” means any liquids, sludges, metals, fabric, or byproducts resulting from the processing or storage of tires.

“Small tire” means a tire that has a load rating of “F” or lower and a rim size of nineteen inches (19”) or smaller and includes low profile tires.

“Small tire” includes a tire from any of the following vehicles:

- (1) An automobile;
- (2) A motorcycle;
- (3) An all-terrain vehicle;
- (4) A lawn mower; or
- (5) A golf cart.

“Tire” means any one (1) or more of the following:

- (1) A continuous, ring-shaped, removable cover made of solid rubber, pneumatic rubber, or semipneumatic rubber that is installed around a wheel rim; or
- (2) Any other round piece of equipment that is attached or could be attached to a vehicle or aircraft and has a primary function of enabling surface mobility.

“Tire” does not include a solid wheel rim with an integral rubber covering or a tire used on a nonmotorized bicycle, golf cart, or lawn mower.

“Tire collection center” means either an access-controlled collection center or an open collection center where used tires are collected before being recycled or disposed of by a used-tire program.

“Tire derived fuel” or “TDF” means fuel derived from whole tires or processed tires.

“Tire disposal facility” means a separately permitted landfill, landfill unit, or waste tire monofill specifically designed and rated for the sole disposal of waste tires.

“Tire generator” means a person who:

- (1) Removes tires from rims for disposal or resale; or
- (2) Stores used tires on or in property owned, leased, or otherwise controlled by that person.

“Tire generator” includes without limitation:

- (1) A tire retailer;
- (2) A tire wholesaler;
- (3) A tire transporter;

- (4) A tire manufacturer;
- (5) A manufacturer of retreaded tires;
- (6) A new car dealer;
- (7) A used car dealer;
- (8) An auto repair shop; or
- (9) A salvage yard.

“Tire generator” does not include a commercial generator.

“**Tire manufacturer**” means a manufacturing operation engaged in the final assembly of the basic components of a tire.

“**Tire processing facility**” means a site where equipment is used to cut, chip, grind, shred, or otherwise alter used tires.

“**Tire retailer**” means any one (1) or more of the following:

- (1) A person who is in the business of selling new tires, used tires, or both new and used tires to the end consumer; or
- (2) A person who is in the business of or receives compensation for removing tires from rims.

“Tire retailer” does not include:

- (1) A person who sells tires to another person exclusively for the purpose of resale if the subsequent retail sale is subject to the fee imposed under Ark. Code Ann. § 8-9-404; or
- (2) A commercial generator.

“**Tire transporter**” means a person who is in the business of or receives compensation for transferring used tires from one (1) location to another location for collection, storage, processing, recycling, disposal, reuse, or resale.

“**Used tire**” means a tire that meets one (1) or more of the following criteria:

- (1) Is repairable or retreadable for its original intended purpose;
- (2) Is reusable;
- (3) Is recyclable; or
- (4) Has been collected by a tire retailer or at a tire collection center operated under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*

“Used tire” includes without limitation a recyclable tire, waste tire, and used tire culled for resale.

“Used tire” does not include a tire being held for ninety (90) days or less for the purpose of retreading or repairing the tire.

“Used tire culled for resale” means a tire that is removed from the rim but is diverted from a tire collection center, tire processing facility, or tire transporter with the intention of selling for reuse.

“Used-tire program” means a program that receives funding under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, and is operated by:

- (1) A regional solid waste management board; or
- (2) An inter-district used-tire program.

“Vehicle” means any piece of equipment that uses wheels for surface mobility.

“Waste tire” means a whole tire that is worn, damaged, or defective and land disposed because it is no longer repairable, reusable, or suitable for its original intended purpose.

“Waste tire originating from a tire manufacturer” means those new tires that originate from a tire assembly process and are determined by the tire manufacturer to be either defective or unfit for use on a vehicle.

“Waste tire site” means a location where unpermitted used tires are accumulated, whether loosely stored, baled, or a combination of both loosely stored and baled.

“Waste tire site” does not include:

- (1) A location where only new tires are stored; or
- (2) A location that is authorized to store tires by the ~~Arkansas Department of Environmental Quality~~ ADEQ or regulations promulgated by the Arkansas Pollution Control and Ecology Commission.

“Wide-base tire or extra-wide single tire” means a tire approximately four hundred fifty-five millimeters (455 mm) wide that is used on a vehicle ~~with a~~ in which the front axle load that exceeds the load capacity of a truck tire.

CHAPTER 3: USED-TIRE PROGRAMS

Reg. 36.301 Generally

(A) The regional solid waste management district or inter-district programs that collect and manage used tires are known as used-tire programs.

(B) Each used-tire program shall operate in compliance with all applicable regulation, law, and its approved business plan.

(C) A used-tire program's assigned identification number to be used for the electronic uniform used tire manifest system is the identification number assigned by the Department of Finance and Administration upon registration as a tire generator.

Reg. 36.302 Eligibility for Reimbursement

To be eligible for reimbursements under this regulation and the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, a used-tire program shall:

- (1) Be included in the solid waste management system under Ark. Code Ann. § 8-9-101 *et seq.* for each regional solid waste management district that the used-tire program serves;
- (2) Have a used tire management plan, as found in Commission Regulation 36.310, for each regional solid waste management district that the used-tire program serves, including a schedule for identification and cleanup of waste tire sites that is updated until abatement of each identified waste tire site is completed. The plan and implementation schedule are subject to review and approval by ADEQ;
- (3) Be included in each solid waste management district's recycling program under Ark. Code Ann. § 8-9-203 that the used-tire program serves;
- (4) If operated by a political subdivision of the state or other public entity:
 - (a) Use the financial management system under Ark. Code Ann. § 14-21-101 *et seq.*;
 - (b) Comply with the county purchasing procedures under Ark. Code Ann. § 14-22-101 *et seq.*;
 - (c) Comply with the Arkansas County Accounting Law of 1973, Ark. Code Ann. § 14-25-101; and
 - (d) Comply with the Local Fiscal Management Responsibility Act, Ark. Code Ann. § 14-77-101 *et seq.*;
- (5) Be operated in compliance with this regulation and all other laws, regulations, and rules related to the administration of solid waste management systems and recycling programs in Arkansas;
- (6) Encourage the voluntary establishment of tire collection centers at tire retailers, tire processing facilities, and solid waste disposal facilities for the deposit of tires generated in the state;

(7) Provide ADEQ with business plan information required under Chapter 4 of this regulation (Ark. Code Ann. § 8-9-408);

(8) Provide ADEQ with all quarterly financial information and progress reports under Chapter 11 of this regulation (Ark. Code Ann. § 8-9-409); and

(9)(a) Establish tire collection centers within each county served by the used-tire program that accepts tires from tire retailers at no charge if the tire retailer establishes that it:

(i) Collects the rim removal fee imposed under Chapter 8 of this regulation; and

(ii) Complies with the e-manifest system under Chapter 6 of this regulation.

(b) The tire collection centers may be at no one (1) or more of the following:

(i) A solid waste disposal facility;

(ii) A tire processing facility; or

(iii) A tire retailer.

Reg. 36.303 Optional Activities

A used-tire program that receives reimbursements from the Used Tire Recycling Fund, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., and this regulation may:

(1) Contract with a tire processing facility;

(2) Remove or contract for the removal of tires from waste tire sites within the regional solid waste management district;

(3) Provide incentives for establishing privately operated tire collection centers for the public; and

(4) Form an inter-district used-tire program using written inter-district agreements. The signed inter-district agreements shall be submitted to ADEQ and maintained at the facility as part of their record retention policy.

Reg. 36.304 Additional Fees for Extra Large Tires

(A) A used-tire program that accepts extra-large tires may establish its own fees for accepting extra-large tires. Agricultural tires are exempted from fees provided advanced arrangements are made with the used tire program and no more than four (4) extra large tires are delivered at any one (1) time per a month.

(B) The used-tire program shall provide ADEQ with a price of processing and disposing of extra-large tires prior to collecting fees. The price shall not exceed the costs of properly collecting and disposing of the extra-large tires.

(C) The used-tire program shall report the total fees collected from processing or disposing of extra-large tires on its quarterly reports to ADEQ.

Reg. 36.305 Maximum Quantity of Tires

(A) An individual who is a resident of a regional solid waste management district may discard no more than four (4) used tires of any size per month without an additional fee. Agricultural businesses are considered individuals for purposes of this regulation.

(B) A used-tire program may accept more than four (4) used tires of any size per month without an additional fee if:

(1) The used tires are collected as part of a clean-up effort by a governmental entity, nonprofit entity, or volunteer group; and

(2) The used-tire program documents in the e-manifest system the contact information for the entity or group the four (4) used tires of any size per month without an additional fee, and the quantity of fee-waived tires.

(C) If the used-tire program accepts fee-waived tires, in excess of four (4) used tires of any size per month, the waiver must be reasonably based on all information available to the used-tire program including:

(1) Frequency that the person drops off more than four (4) tires per month;

(2) Ability of the used-tire program to manage the additional tires;

(3) Risk of the tires being illegally dumped or stored if a fee is charged; or

(4) Other facts and circumstances including if the property owner discovered the used tires on the property and did not participate in the collection or storage of the used tires on the property.

(D) A used-tire program may require a person who is delivering fee-waived tires to give advanced notice so that a determination can be made as to whether the used-tire program has the capacity to handle and process the fee-waived tires.

(E) A used-tire program may charge a fee to individuals who discard more than four (4) used tires of any size per a month.

(F) A used-tire program may charge a fee for any tire, regardless of the quantity, discarded by an individual that remains on the rim.

Reg. 36.306 Tire Disposal Facility Restrictions

(A) No new tire disposal facilities shall be permitted unless the applicant demonstrates that there is no feasible recycling alternative.

(B) Tire disposal facilities shall be permitted, designed, constructed, and operated in accordance with the standards set forth in Commission Regulation 22.501.

Reg. 36.307 Enforcement

(A) A used-tire program is subject to penalties, enforcement, or both for noncompliance with this regulation including:

- (1) Failure to submit a business plan on or before December 31, 2018;
- (2) Failure to submit a revised business plan upon written notification from ADEQ;
- (3) Failure to maintain a complete and accurate record of used tires sold, collected, stored, recycled, disposed, transported, or managed;
- (4) Failure to use the e-manifest system;
- (5) Falsification or alteration of e-manifest system information, either electronically or paper copy;
- (6) Failure to provide accurate e-manifest information either electronically or by paper copy;
- (7) Transfer of used tires to a person or facility not permitted to accept the tires;
- (8) Failure to comply with any regulation issued by the Arkansas Pollution Control and Ecology Commission;
- (9) Failure to comply with an order issued by ADEQ;
- (10) Violation of any part of the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*;
- (11) Failure to report a material change;
- (12) Failure to provide documentation or reports required to be filed with ADEQ;
- (13) Failure to submit accurate information on a disclosure statement with a permit application;
- (14) Failure to maintain documents and accurate records;
- (15) Misrepresentation of any material fact in a license or registration application;
- (16) Presenting falsified or altered documents in a license or registration application;
- (17) Illegal dumping of tires or residuals; or
- (18) Collection or transfer of used tires without a valid tire transporter license if a tire transporter license is required.

Reg. 36.308 Penalties

(A) If a used-tire program fails to submit a business plan that is approved by ADEQ on or before July 1, 2018, the used-tire program and all regional solid waste management boards included in the used-tire program on July 1, 2018, are:

- (1) Ineligible to receive funding from the Used Tire Recycling Fund;
- (2) Prohibited from administering and operating a used-tire program; and
- (3) Prohibited from imposing any fees to support the administration and operation of a used-tire program.

- (B) The ADEQ may designate a qualified entity to perform the duties related to the operation and administration of a used-tire program deemed ineligible under subsection (A) of this section.
- (C) In addition to any other penalty provided by law, any general or site-specific permit issued according to the terms and conditions of Commission Regulation 36 may be suspended or revoked for noncompliance.

Reg. 36.309 Used Tire Management Plan

(A) Each used-tire program shall develop a used tire management plan that includes the following:

- (1) Listing of all waste tire sites within the used-tire program area (site name and address);
- (2) The quantity of waste tires located at each waste tire site;
- (3) The owner and operator of each waste tire site; and
- (4) The schedule of implementation to abate each waste tire site.

(B) The used tire management plan shall be submitted to ADEQ for review and approval on or before December 31, 2017.

(C) The used-tire program shall submit an updated used tire management plan for waste tire sites within their program area on or before December 31 annually.

CHAPTER 4: USED-TIRE PROGRAM ACCOUNTABILITY AND BUSINESS PLANS

Reg. 36.401 Initial Business Plans

On or before December 31, 2017, a used-tire program that receives funding from the Used Tire Recycling Fund shall provide ~~the Arkansas Department of Environmental Quality~~ ADEQ with a business plan using Form TAP-12 that establishes its current operating plan and a proposed operating plan for calendar year 2018 that has been approved by its board.²

Reg. 36.402 Overview Information

Used-tire program overview information shall include any of the following information as determined applicable by ~~the Arkansas Department of Environmental Quality~~ ADEQ:

- (1) Square mileage of the used-tire program;
- (2) Population served by the used-tire program;
- (3) Organizational structure of the used-tire program;
- (4) Inter-district agreements, if applicable; and
- (5) All applicable solid waste management plans.

Reg. 36.403 Minimum Required Information

(A) The minimum required information for the business plan is:

- (1) Operation information from the previous twelve (12) months to include:
 - (a) An explanation of debt and debt repayment obligations, including scheduled payments and to whom the payments are being made;
 - (b) A description of equipment used, including type, year manufactured, debt obligations related to the equipment, and whether it is leased or owned;
 - (c) An explanation of contract obligations including the amount, length, and scope of the contract;
 - (d) A description of how tires are managed, collected, transported, disposed, or recycled;
 - (e) A listing of costs for all tire collection centers, trailers, transfer stations, processing facility, mileage, fuel, and personnel;

² ~~The first performance and efficiency evaluation conducted in calendar year 2017 will serve as the used-tire program's business plan for calendar year 2018.~~

(f) The quantity of tires currently on any property owned, leased, or otherwise controlled by each regional solid waste management district included in the used-tire program; and

(g) Any documents that support the information, explanations, and descriptions to include contracts, receipts, utility bills, audit information, and any additional information deemed necessary; and

(2) Proposed operation costs for the next twelve (12) months to include:

(a) A description of how tires will be managed, collected, stored, transported, disposed, or recycled;

(b) Estimated cost of utilities, personnel, equipment, fees, leases, facilities, and any other costs related to the primary operation of the used-tire program;

(c) The capital improvement and maintenance plan with estimated expenditures and costs;

(d) The estimated transportation cost including mileage, fuel, equipment, personnel, utilities, insurance, bonds, and fees;

(e) The locations of all tire collection centers;

(f) The types of tires managed to include recyclable tires, waste tires, and used tires culled for resale; and

(g) Any documents that support the information, explanations, and descriptions, including contracts, receipts, utility bills, audit information, and any additional information deemed necessary.

~~(B)(1) A used tire program may use one (1) or more of the following options to transport used tires within the used tire program area:~~

~~(a) A tire transporter licensed by the Arkansas Department of Environmental Quality;~~

~~(b) Collection and transportation services provided by the used tire program; or~~

~~(c) Contract for used tire transportation services.~~

~~(2) The business plan shall designate which options will be used.~~

Reg. 36.404 Revised Business Plans

(A) A used-tire program shall provide an updated business plan to the ~~Arkansas Department of Environmental Quality~~ ADEQ related to operational changes and long-term planning within thirty (30) calendar days of the operational or planning changes.

(B) A revised business plan is required if any one (1) or more of the following occurs:

(1) A used-tire program has or is anticipated to have significant operational changes;

(2) Long-term plans are developed or changed;

(3) A new inter-district is formed;

(4) A regional solid waste management board is added to or removed from an inter-district; or

(5) The ~~Arkansas Department of Environmental Quality~~ ADEQ has determined that a proposed business plan does not meet the requirements of this chapter.

Reg. 36.405 Approval Process

(A)(1) The ~~Arkansas Department of Environmental Quality~~ ADEQ or its designee shall evaluate the efficiency, sustainability, and accountability of each used-tire program and its proposed cost of managing small tires and large tires for approval of the business plan reimbursement rate for small tires and large tires for each used-tire program.

(2) To calculate approved business plan rates, the ~~Arkansas Department of Environmental Quality~~ ADEQ may use the following:

- (a) Fiscal analysis of the proposed business plan;
- (b) Comparative analysis of the used-tire program to other used-tire programs in the state;
- (c) Comparative analysis of the used-tire program's proposed business plan to alternative business models for used tire management; or
- (d) Any other reasonable method of calculating business plan rates for the costs associated with the management of used tires.

Reg. 36.406 Effective Date

A business plan or revised business plan submitted is effective upon written approval by the ~~Arkansas Department of Environmental Quality~~ ADEQ or its designee.

Reg. 36.407 Failure to Submit an Approved Business Plan

(A) If a used-tire program fails to submit a business plan for approval by the ~~Arkansas Department of Environmental Quality~~ ADEQ on or before December 31, 2017, the used-tire program and all regional solid waste management boards included in the used-tire program are:

- (1) Ineligible to receive funding from the Used Tire Recycling Fund;
- (2) Prohibited from administering and operating a used-tire program; and
- (3) Prohibited from imposing any fees to support the administration and operation of a used-tire program.

(B)(1) If a used-tire program's proposed business plan is determined to be administratively incomplete, the used-tire program shall submit the additional information required by ADEQ within ten (10) calendar days of written notice.

(2) If a used-tire program fails to submit the additional information required by ADEQ within ten (10) calendar days, the used-tire program shall be deemed to have failed to submit a business plan.

Reg. 36.408 Designated Qualified Entity

(A) ~~the Arkansas Department of Environmental Quality~~ ADEQ may designate a qualified entity to perform the duties related to the operation and administration of a used-tire program deemed ineligible under this regulation.

(B) A qualified entity that is designated to perform the duties related to the operation and administration of a used-tire program shall operate the used-tire program in compliance with this regulation.

(C) If the qualified entity performs the duties related to the operation and administration of the used-tire program in compliance with this regulation, the qualified entity is eligible to receive funding under this regulation and from the Used Tire Recycling Fund.

CHAPTER 5: PERFORMANCE AND EFFICIENCY EVALUATIONS

Reg. 36.501 Generally

The Used-Tire Program will be evaluated for performance and efficiency by ADEQ under the Tire Accountability Program.

Reg. 36.502 Performance Indicators

ADEQ will evaluate the Business Plans using the following performance indicators for each used-tire program:

- (1) The quantity of:
 - (a) Recyclable tires; and
 - (b) Waste tires disposed in a landfill.
- (2) The number of reported waste tire sites located in the regional solid waste management districts that are included in the used-tire program:
- (3) Electronic uniform used tire manifest system compliance;
- (4) Administrative expenses;
- (5) Transportation expenses;
- (6) Building, warehouse, and other facilities expenses;
- (7) Revenue sources and the amount of revenue received from each source;
- (8) The number, location, and type of tire collection centers;
- (9) Any identified operational issues;
- (10) The number of enforcement actions against the used-tire program; and
- (11) Any other performance indicators that are determined to be useful to evaluate performance and efficiency.

Reg. 36.503 Biennial Evaluations

ADEQ will conduct evaluations of the Business Plans every two (2) years for each used-tire program. The first evaluation will be completed on or before December 31, 2018.

CHAPTER 46: E-MANIFEST SYSTEM

Reg. 36.301601 Purpose

(A) The purpose of this chapter is to establish procedures for implementing and administering the electronic uniform used tire manifest system (e-manifest system).

(B) The purpose of the e-manifest system is to provide accountability and sustainability by requiring the use of uniform manifests in paper copy or electronic form so that the ~~Arkansas Department of Environmental Quality~~ ADEQ has an accurate reporting of all information related to the collection, transportation, distribution, recycling, and disposal of recyclable tires, waste tires, and used tires culled for resale.

(C) The implementation of the e-manifest system is an ongoing process, and the ~~Arkansas Department of Environmental Quality~~ ADEQ may continue to develop the process and procedures including any one (1) or more of the following:

- (1) Use of paper forms;
- (2) Methods of registering accounts;
- (3) Requirements for electronic signature authorizations;
- (4) Requirements for information; or
- (5) Any other component of the e-manifest system necessary for its implementation and administration.

Reg. 36.302602 E-Manifest System Use Required

(A) Beginning on January 1, 2018, and except as provided under subsection ~~(B)~~ Commission Regulation 36.602(C) of this section, the following entities shall use the ~~e-manifest system Form TAP-11~~ to accurately report document all information related to the collection, transportation, distribution, recycling, and disposal of recyclable tires, waste tires, and used tires culled for resale being sent to a used-tire program:

- ~~(1) Used-tire programs;~~
- ~~(2)~~(1) Tire generators;
- ~~(3)~~(2) Tire collection centers;
- (3) Commercial generators; and
- (4) Any person who:
 - (a) Removes a tire from the used-tire program after it is collected; or
 - (b) Imports a tire according to Commission Regulation 36, Chapter 10 (Ark. Code Ann. § 8-9-404(c)); and
- ~~(5) Commercial generators as provided under Reg. 36.705(B)(2).~~

(B) The entities listed in Reg. 36.602(A) shall sign and date the manifest (Form TAP-11). The transporter shall verify, sign, and date the form. The originating entity shall maintain a

copy of the manifest and the transporter carries the original manifest with the shipment of tires. Once the tires arrive at the used-tire program destination, the used-tire program designated person signs and dates the manifest (after verifying the load matches the form), provides a copy to the transporter, and then enters all the information contained on Form TAP-11 into ADEQ's e-manifest system. The used-tire program shall also scan in the final completed paper manifest into ADEQ's e-portal system.

(C) The e-manifest system is intended to only apply to tires provided to a tire transporter for delivery to a used-tire program. The e-manifest system is not intended to and will not apply to tires not provided to or part of a used-tire program.

~~(B)~~(D)(1) Each person who is required to use the e-manifest system shall designate at least one (1) but not more than two (2) authorized individuals to enter data into the e-manifest system.

(2) The person shall provide one (1) valid and unique email address for each authorized individual.

(3) Any change of an individual's valid e-mail address for the e-manifest system shall be reported in writing to the ~~Arkansas Department of Environmental Quality~~ ADEQ within ten (10) calendar days.

(E) Form TAP-11 may be found on ADEQ's website. A used-tire program may develop and use triplicate copies of Form TAP-11.

Reg. 36.303603 Submission of E-Manifest Information on Paper

If any person required to use the e-manifest system under this chapter is unable to use the e-manifest system, the person may submit to the used-tire program an equivalent paper version (Form TAP-11) developed by ADEQ that shall be entered into the e-manifest system by the used-tire program.

Reg. 36.304604 Submitting E-Manifests

(A)(1) A person required to use the e-manifest system shall submit a new e-manifest or paper manifest for each transaction involving the collection, transportation, distribution, recycling, or disposal of recyclable tires, waste tires, or used tires culled for resale.

(2) A used-tire program is required to submit an e-manifest for all used tires collected or managed.

(B) A used-tire program and tire transporter shall report any discrepancies during transport on the paper copies of the e-manifests in his or her possession to include:

- (1) The quantity of used tires removed during transport;
- (2) The quantity of used tires added during transport; and
- (3) All contact information for any person who:
 - (a) Received used tires removed during transport; and
 - (b) Added used tires.

(C)(1) A tire generator, commercial generator, or person who imports used tires shall provide the tire transporter with two (2) paper copies of the e-manifest.

(2) The tire transporter shall provide one (1) paper copy to the used-tire program upon delivery and retain one (1) copy for its records.

Reg. 36.305605 Timely Submission of Accurate Data

(A) Every person required to use the e-manifest system shall submit data that accurately reflects each transaction, whether the data is entered electronically or submitted in paper form.

(B)(1) To be considered a timely submission of e-manifest data and for the used-tire program to receive funding, a the used-tire program tire processor or used-tire program shall finalize each manifest by entering the information contained on the manifest into the e-manifest system prior to processing or disposing of each load. ~~opened by a tire generator, commercial generator, or person who imports used tires within five (5) calendar days after receipt of the used tires.~~

~~(2) Every person who submits the information by paper must postmark and mail the information within five (5) calendar days after the transfer of possession of the used tires.~~

Reg. 36.306606 Falsification or Alteration of E-Manifest System Data

(A) A person shall not falsify or alter any e-manifest system data, whether on the paper Form TAP-11 or the e-manifest system form, provided by that person or any other person, ~~whether the data is entered electronically or submitted in paper form.~~

(B) Any errors made or discovered by a person in the course of using the paper Form TAP-11 or the e-manifest system shall be reported in writing to the Department within three (3) calendar days after discovery to the Arkansas Department of Environmental Quality ADEQ.

CHAPTER 57: TIRE GENERATORS

Reg. 36.501701 Registration

When a tire generator registers with the Department of Finance and Administration as a collector of the rim removal fee, the registration will include a procedure for registering with the Arkansas Department of Environmental Quality ADEQ to obtain an identifying number.

Reg. 36.502702 Types of Tire Generators

Tire generators include:

- (1) A tire retailer;
- (2) A tire transporter;
- (3) A tire wholesaler;
- (4) A tire manufacturer;
- (5) A manufacturer of retreaded tires;
- (6) A new car dealer;
- (7) A used car dealer;
- (8) An auto repair shop; or
- (9) A salvage yard.

Reg. 36.503703 Exclusions and Limitations

A tire generator shall not be deemed ~~does not include~~ a commercial generator unless the tire generator acts as a commercial generator for a transaction that is subject to the commercial generator fee.

Reg. 36.504704 Tire Retailers

Each tire retailer shall:

- (1) Be registered with the Department of Finance and Administration as a collector of rim removal fees;³
- (2) Collect the fees from the purchaser even if the purchaser elects to keep the used tire removed from the rim;
- (3) Pay on a monthly basis the rim removal fees that are collected each month to the Department of Finance and Administration;

³ ~~Each tire retailer that was not registered with the Department of Finance and Administration on August 1, 2017, shall be registered with the Department of Finance and Administration on or before December 1, 2017.~~

- (4) Comply with all requirements related to collecting and reporting rim removal fees;
- (5) Be registered with ~~the Arkansas Department of Environmental Quality ADEQ~~ as a tire retailer and have an identifying number issued by ~~the Arkansas Department of Environmental Quality ADEQ~~; and
- (6) Use the e-manifest system developed by ~~the Arkansas Department of Environmental Quality ADEQ~~ to account for each used tire removed from the rim; and
- (7) Obtain a general permit for tire collection centers as required by Commission Regulation 36.1502.

Reg. 36.505705 Tire Transporters

(A) For all tire transporters licensed on or after January 1, 2018, a tire transporter shall meet the following requirements to perform or be compensated for any duties under this regulation:

- (1) Obtain a tire transporter license for each vehicle to be used on each shipment of used tires ~~that is required to be included in the e-manifest system~~;
- (2) Provide proof that each vehicle has passed an annual safety inspection;
- (3) Provide proof of ~~financial responsibility insurance~~ insurance for each vehicle and authorized driver;
- (4) Provide a bond in the amount of ten thousand dollars (\$10,000);
- (5) Ensure that each authorized driver has completed training for the use of the e-manifest system;
- (6) For a renewal application, submit an annual report on or before March 1 to ~~the Arkansas Department of Environmental Quality ADEQ~~ that details the quantity and type of tires that were transferred by the tire transporter on a ~~form~~ Form TAP-2 prepared by the ~~Arkansas Department of Environmental Quality ADEQ~~; and
- (7) Pay an annual initial fee of fifty dollars (\$50.00), and annually thereafter, for each vehicle ~~that is to be~~ licensed.

(B)(1)(a) A new tire transporter shall submit an application for a tire transporter license at least thirty (30) calendar days before the tire transporter intends to begin transporting used tires.

(b) A corporate or governmental entity may submit one (1) application to license its entire fleet of vehicles.

(2) A tire transporter that applies for a license under this section shall file a disclosure statement at the time of application unless a disclosure statement has been filed with ~~the Arkansas Department of Environmental Quality ADEQ~~ within twelve (12) months preceding the date of the application submittal.

(C)(1) A licensed tire transporter shall possess a current decal issued by ~~the Arkansas Department of Environmental Quality ADEQ~~.

(2)(a) The tire transporter decal shall be displayed on the left driver side of the front window outside of the tire transporter's vehicle.

- (b) If a licensed tire transporter uses one (1) or more fleet vehicles, a copy of the tire transporter's license must be kept within the vehicle during transportation.
- (3) Upon expiration or revocation of a tire transporter license, the tire transporter shall immediately remove all tire transporter decals from all vehicles.
- (D) All vehicles and equipment used by tire transporters shall be constructed, operated, and maintained to prevent loss of used tires during transport, health nuisances, and safety hazards to operating personnel and the public.
- (E) A used-tire program is not required to be licensed by ADEQ as a tire transporter to transfer tires that it has collected, is managing, or both. Instead, the used-tire program shall be responsible for developing an internal tire transporter program for their employees and include all standards within their business plan.
- (F) All tire transporter licenses expire on February 28 of each year regardless of the issuance date.
- (G) The replacement fee for a lost or destroyed license decal is ten dollars (\$10.00).
- (H) A tire transporter license issued under this section is non-transferable.
- (I)(1) If a tire transporter is found to have not complied with this regulation, the tire transporter's license shall be suspended for three (3) months.
- (2) If the license of a tire transporter is suspended more than one (1) time in three (3) years, the tire transporter's license shall be revoked and the tire transporter is ineligible for a tire transporter license for an additional three (3) years from the date of revocation.

Reg. ~~36.506~~706 Tire Wholesalers

- (A) If a tire wholesaler removes used tires from the rim, the tire wholesaler shall:
- (1) Be registered with the Department of Finance and Administration as a collector of rim removal fees;⁴
 - (2) Collect the fees from the purchaser even if the purchaser elects to keep the used tire removed from the rim;
 - (3) Pay on a monthly basis the rim removal fees that are collected each month to the Department of Finance and Administration;
 - (4) Comply with all requirements related to collecting and reporting rim removal fees;
 - (5) Be registered with the ~~Arkansas Department of Environmental Quality~~ ADEQ as a tire wholesaler and have an identifying number issued by the ~~Arkansas Department of Environmental Quality~~ ADEQ; and

⁴ ~~Each tire wholesaler that was not registered with the Department of Finance and Administration on August 1, 2017, shall be registered with the Department of Finance and Administration on or before December 1, 2017.~~

(6) Use the e-manifest system to account for each used tire removed from the rim when the tire wholesaler delivers used tires to a used-tire program or tire processing facility for recycling or disposal.

~~(B) A tire wholesaler is exempt from using the e-manifest system until it delivers used tires to a used tire program or tire processing facility for recycling or disposal.~~

Reg. 36.507707 Tire Manufacturers

(A) A tire manufacturer shall be registered with ~~the Arkansas Department of Environmental Quality~~ ADEQ as a tire manufacturer and have an identifying number issued by ~~the Arkansas Department of Environmental Quality~~ ADEQ.

(B) Waste tires originating from a tire manufacturer shall be deposited at a permitted used-tire program, a permitted, access-controlled collection center, or a permitted tire processing facility for a fee to be established by the used-tire program, permitted, access-controlled collection center, or permitted tire processing facility.

(C) A tire manufacturer must use the ~~is exempt from using~~ the e-manifest system until at the point it delivers used tires to a used-tire program or tire processing facility for recycling or disposal.

(D) Records of the disposition of the waste tires originating from a tire manufacturer shall be maintained by that tire manufacturer for a period of at least three (3) years and shall be available for review by ~~the Department~~ by ADEQ.

Reg. 36.508708 New and Used Car Dealers

If a new or used car dealer removes unused or used tires from the rim, the new or used car dealer shall:

- (1) Be registered with the Department of Finance and Administration as a collector of rim removal fees;⁵
- (2) Collect the fees from the purchaser even if the purchaser elects to keep the unused or used tire removed from the rim;
- (3) Pay on a monthly basis the rim removal fees that are collected each month to the Department of Finance and Administration;
- (4) Comply with all requirements related to collecting and reporting rim removal fees;
- (5) Be registered with ~~the Arkansas Department of Environmental Quality~~ ADEQ as a new or used car dealer to obtain an identifying number; and
- (6) Use the e-manifest system to account for each unused or used tire removed from the rim.

⁵ ~~Each new or used car dealer that was not registered with the Department of Finance and Administration on August 1, 2017, shall be registered with the Department of Finance and Administration on or before December 1, 2017.~~

Reg. 36.509709 Auto Repair Shops

If an auto repair shop removes used tires from the rim and replaces it with a new or used tire, the auto repair shop shall:

- (1) Be registered with the Department of Finance and Administration as a collector of rim removal fees;⁶
- (2) Collect the fees from the purchaser even if the purchaser elects to keep the unused or used tire removed from the rim;
- (3) Pay on a monthly basis the rim removal fees that are collected each month to the Department of Finance and Administration;
- (4) Comply with all requirements related to collecting and reporting rim removal fees;
- (5) Be registered with the ~~Arkansas Department of Environmental Quality~~ ADEQ as an auto repair shop to obtain an identifying number for the e-manifest system; and
- (6) Use the e-manifest system to account for each used tire removed from the rim.

Reg. 36.510710 Salvage Yards

If a salvage yard removes used tires from the rim and replaces them with a new or used tire, the salvage yard shall:

- (1) Be registered with the Department of Finance and Administration as a collector of rim removal fees;⁷
- (2) Collect the fees from the purchaser even if the purchaser elects to keep the unused or used tire removed from the rim;
- (3) Pay on a monthly basis the rim removal fees that are collected each month to the Department of Finance and Administration;
- (4) Comply with all requirements related to collecting and reporting rim removal fees;
- (5) Be registered with the ~~Arkansas Department of Environmental Quality~~ ADEQ as a salvage yard to obtain an identifying number for the e-manifest system; and
- (6) Use the e-manifest system developed by the ~~Arkansas Department of Environmental Quality~~ to account for each used tire removed from the rim.

⁶ Each auto repair shop that was not registered with the Department of Finance and Administration on August 1, 2017, shall be registered with the Department of Finance and Administration on or before December 1, 2017.

⁷ Each salvage yard who was not registered with the Department of Finance and Administration on August 1, 2017, shall be registered with the Department of Finance and Administration on or before December 1, 2017.

Reg. 36.511711 Reporting of Material Changes

(A) A tire generator shall provide written notice to the ~~Arkansas Department of Environmental Quality~~ ADEQ within thirty (30) calendar days of any material change that affects its permit, license, or registration. A material change includes any one (1) or more of the following:

- (1) The relocation of the place of business;
- (2) New locations where the business is conducted;
- (3) The closure of a business or business location;
- (4) A change in the name, mailing address, telephone number, or email address; or
- (5) Purchasing new equipment intended to be used for activities that are subject to the permit, license, or registration.

(B) If a tire generator is registered with the Department of Finance and Administration to ~~remit and collect and remit~~ rim removal fees, the tire generator must also provide written notice to the Department of Finance and Administration within thirty (30) calendar days of any material change under this section.

Reg. 36.512712 Recordkeeping

(A) Except as otherwise provided in this chapter, a tire generator licensed or registered under this chapter shall maintain all documents related to its used tire duties for three (3) years.

(B) The documents maintained by the tire generator shall accurately reflect the used tire duties performed and collection and payment of all applicable rim removal fees.

(C) The documents shall be available for inspection by the ~~Arkansas Department of Environmental Quality~~ ADEQ personnel, the Arkansas Department of Finance and Administration personnel, or both during normal business hours.

Reg. 36.513713 Compliance

A tire generator is required to comply with this chapter and all other applicable portions of this regulation and the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*

~~Reg. 36.514 Enforcement~~

~~The Arkansas Department of Environmental Quality may suspend or revoke a registration, license, or permit or deny an initial or renewal registration, license, or permit for:~~

- ~~(1) Failure to maintain a complete and accurate record of used tires sold, collected, stored, transported, or managed;~~
- ~~(2) Falsification or alteration of e-manifest system information, either electronically or paper copy;~~
- ~~(3) Failure to provide accurate e-manifest information either electronically or by paper copy;~~

- ~~(4) Transfer of used tires to a person or facility not permitted to accept the tires;~~
- ~~(5) Failure to comply with any regulation or order issued by the Arkansas Pollution Control and Ecology Commission pursuant to the requirements of this regulation;~~
- ~~(6) Violation of any part of the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq.;~~
- ~~(7) Failure to submit reports required by this regulation;~~
- ~~(8) Failure to submit accurate information on a disclosure statement required under this chapter;~~
- ~~(9) Failure to report a material change as required under this chapter;~~
- ~~(10) Failure to maintain documents and accurate records as required under this chapter;~~
- ~~(11) Misrepresentation of any material fact in the license or registration application;~~
- ~~(12) Presenting falsified or altered documents in the license or registration application;~~
- ~~(13) Illegal dumping of used tires or tire residuals; or~~
- ~~(14) Collection or transfer of used tires without a valid tire transporter license if a tire transporter license is required.~~

CHAPTER 68: RIM REMOVAL FEES

Reg. ~~36.601801~~ Registration

When a tire generator registers with the Department of Finance and Administration as a collector of the rim removal fee as required under this chapter, the registration will include a procedure for registering with the ~~Arkansas Department of Environmental Quality~~ ADEQ to obtain an identifying number.

Reg. ~~36.602802~~ Rim Removal Fees Imposed

(A) Beginning on January 1, 2018, and pursuant to Ark. Code Ann. § 8-9-404, rim removal fees are imposed upon the transaction of removing a tire from a rim that is related to the sale of a replacement tire by a tire retailer.

(B) As used in this regulation, "proceeds from rim removal fees" means all moneys collected and received by the Arkansas Department of Finance and Administration for rim removal fees imposed under Ark. Code Ann. § 8-9-404(a) and interest and penalties on delinquent rim removal fees.

(C) A rim removal fee shall be charged by the tire retailer to the person who purchases:

- (1) A replacement tire for a rim that necessitates the removal of a different tire from the same rim; or
- (2) The service of removal of a tire from a rim and replacement with a tire that was not purchased from the tire retailer if the person requesting the rim removal cannot show proof of payment of the rim removal fee under this section for the replacement tire.

Reg. ~~36.603803~~ Amount of Rim Removal Fee

Beginning on January 1, 2018, the rim removal fee shall be imposed at the rate of:

- (1) Three dollars (\$3.00) for each new tire that replaces a tire removed from a rim; and
- (2) One dollar (\$1.00) for each used tire that replaces a tire removed from the rim.

Reg. ~~36.604804~~ Exclusions and Exemptions

(A) The rim removal fees imposed by this chapter do not apply to the sale of any of the following:

- (1) A solid wheel rim with an integral rubber covering;
- (2) A tire used on a nonmotorized bicycle, golf cart, or lawn mower;
- (3) Large retreaded tires;
- (4) Tires included as part of the equipment of a new motor vehicle; or
- (5) Tires included as part of the equipment of a used vehicle if included on the used vehicle at the time of sale and in the sales price of the used vehicle.

(B) Only one (1) of either the rim removal fee or the commercial generator fee shall be charged for the transaction of removing a tire from a rim that is related to the sale of a replacement tire. If a person establishes that he or she has paid either the rim removal fee or the commercial generator fee for a tire, the tire retailer or tire generator shall not charge an additional fee for that tire.

Reg. 36.605805 Duties

Each tire retailer shall:

- (1) Be registered with the Department of Finance and Administration as a collector of rim removal fees;⁸
- (2) Collect the fees from the purchaser even if the purchaser elects to keep the used tire removed from the rim;
- (3) Pay on a monthly basis the rim removal fees that are collected each month to the Department of Finance and Administration;
- (4) Comply with all requirements related to collecting and reporting rim removal fees;
- (5) Be registered with the ~~Arkansas Department of Environmental Quality~~ ADEQ as a tire retailer; and
- (6) Use the e-manifest system developed by the ~~Arkansas Department of Environmental Quality~~ ADEQ to account for each used tire removed from the rim.

Reg. 36.606806 Fee Remittance Procedure

(A)(1) The rim removal fees shall be collected from the purchaser by the tire retailer and remitted to the Director of the Arkansas Department of Finance and Administration.

(2) However, the tire retailer may retain five percent (5%) of the rim removal fee imposed under this chapter for administrative costs.

(B)(1) Each tire retailer shall file a return with the Director of the Arkansas Department of Finance and Administration on or before the twentieth of each month.

(2) The return shall show the total rim removal fees collected for each new tire and used tire removed from the rim during the preceding calendar month.

(3) The tire retailer shall remit the rim removal fees with the return.

(4) The Director of the Department of Finance and Administration shall prescribe the form and contents of the return.

(C)(1) Each tire retailer is subject to the Arkansas Tax Procedure Act, Ark. Code Ann. § 26-18-101 *et seq.*, and any rules promulgated by the Arkansas Department of Finance and Administration.

⁸ ~~Each tire retailer who was not registered with the Department of Finance and Administration on August 1, 2017, shall be registered with the Department of Finance and Administration on or before December 1, 2017.~~

(2) A tire retailer that is not registered with the Department of Finance and Administration as required under this chapter is subject to the Arkansas Tax Procedure Act, Ark. Code Ann. § 26-18-101 *et seq.*, and any rules promulgated by the Arkansas Department of Finance and Administration if the tire retailer is required by law to collect the rim removal fee imposed under this chapter.

Reg. 36.607807 Fee Imposed After Sales Taxes Computed

The rim removal fees imposed by this chapter shall be added to the total cost charged by the tire retailer to the purchaser after all applicable gross receipts and compensating use taxes on the tires have been computed and shall be separately stated on the invoice or bill of sale.

Reg. 36.608808 No Additional Charge to Purchaser

The tire retailer shall accept at no additional cost to the purchaser other than those fees collected under this regulation any or all used tires for which a purchaser paid the rim removal fee.

Reg. 36.609809 Revenues Deposited

(A) The Arkansas Department of Finance and Administration shall deposit the proceeds from rim removal fees collected under Ark. Code Ann. § 8-9-404 into the State Treasury as special revenues to the credit of the following funds in the following percentages:

- (1) Ninety-three percent (93%) to be deposited into the Used Tire Recycling Fund; and
- (2) Seven percent (7%) to be deposited into the Arkansas Department of Environmental Quality Fee Trust Fund.

(C) The Used Tire Recycling Fund shall also consist of:

- (1) Penalties assessed and collected under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*;
- (2) Interest, earnings, and any other revenues as may be authorized by law;
- (3) Any federal government moneys designated for deposit into the Used Tire Recycling Fund;
- (4) Any gift or donation to the Used Tire Recycling Fund; and
- (5) Those special revenues specified in Ark. Code Ann. §§ 8-9-404 and 19-6-301(165).

~~(D) The Used Tire Recycling Fund shall not include:~~

- ~~(1) Five percent (5%) of the fee retained for administrative costs by tire retailers under Ark. Code Ann. § 8-9-404(a)(5)(B) and commercial generators under Ark. Code Ann. § 8-9-404(d)(5)(B);~~
- ~~(2) The percentage of net special revenue deducted and deposited to the credit of the Special Revenue Fund Account of the State Apportionment Fund under Ark. Code Ann. § 19-5-203; or~~

~~(3) Seven percent (7%) deducted from the proceeds of fees imposed under § 8-9-404 and deposited into the Arkansas Department of Environmental Quality Fee Trust Fund under Ark. Code Ann. §§ 8-9-404(b)(1)(B), 8-9-404(c)(3)(A)(ii), and 8-9-404(d)(7)(B).~~

Reg. 36.610810 Administration of the Used Tire Recycling Fund

The Used Tire Recycling Fund shall be administered by ~~the Arkansas Department of Environmental Quality~~ ADEQ for reimbursements and grants to used-tire programs and administrative expenditures as authorized by law and regulation.

CHAPTER 79: COMMERCIAL GENERATORS AND COMMERCIAL GENERATOR FEES

Reg. 36.701901 Registration

When a commercial generator registers with the Department of Finance and Administration as a collector of the commercial generator fee as required under this chapter, the registration will include a procedure for registering with the ~~Arkansas Department of Environmental Quality ADEQ~~ to obtain an identifying number.

Reg. 36.702902 Commercial Generator Fees Imposed

(A) Beginning on January 1, 2018, and pursuant to Ark. Code Ann. § 8-9-404, commercial generator fees are imposed upon the transaction of a commercial generator selling or delivering a new tire as part of fleet services.

(B) As used in this regulation, "proceeds from commercial generator fees" means all moneys collected and received by the Arkansas Department of Finance and Administration under this chapter for commercial generator fees imposed under Ark. Code Ann. § 8-9-404(d) and interest and penalties on delinquent commercial generator fees.

~~(B)~~(C) The commercial generator fee shall be charged by the commercial generator to a person who in the ordinary course of business is an end user that removes used tires from the rim and replaces them with a new tire.

Reg. 36.703903 Amount of Commercial Generator Fee

The commercial generator fee shall be imposed at the rate of three dollars (\$3.00) for each new tire that is sold or delivered to an end user that removes used tires from the rim and replaces them with a new tire.

Reg. 36.704904 Exclusions and Exemptions

(A) The commercial generator fees imposed by this chapter do not apply to the sale of any of the following:

- (1) A solid wheel rim with an integral rubber covering;
- (2) A tire used on a nonmotorized bicycle, golf cart, or lawn mower;
- (3) Large retreaded tires;
- (4) Tires included as part of the equipment of a new motor vehicle; or
- (5) Tires included as part of the equipment of a used vehicle if included installed on the used vehicle at the time of sale and included in the sales price of the used vehicle.

(B) Only one (1) of either the commercial generator fee or the rim removal fee shall be charged for the transaction of removing a tire from a rim that is related to the sale of a replacement tire. If

a person establishes that he or she has paid either the commercial generator fee or rim removal fee for a tire, the commercial generator shall not charge an additional fee for that tire.

(C) A commercial generator ~~must use~~ is exempt from using the e-manifest system ~~when~~ until it delivers used tires to a used-tire program or tire processing facility for recycling or disposal.

Reg. 36.705905 Commercial Generator Duties

(A) Each commercial generator shall:

- (1) Be registered with the Department of Finance and Administration as a commercial generator;⁹
- (2) Collect the fees from the end user even if the end user elects to keep the used tire removed from the rim;
- (3) Pay on a monthly basis the commercial generator fees that are collected each month to the Department of Finance and Administration; and
- (4) Comply with all requirements related to collecting and reporting commercial generator fees.

(B) A commercial generator who collects used tires from end users shall:

- (1) ~~Be be~~ registered with the ~~Arkansas Department of Environmental Quality~~ ADEQ as a commercial generator with an identifying number issued by the ~~Arkansas Department of Environmental Quality~~ ADEQ; and
- (2) ~~Except as exempted under Reg. 36.704(C), use the e-manifest system developed by the Arkansas Department of Environmental Quality to account for used tires that it collects and transfers to a used tire program or tire processor for disposal.~~

Reg. 36.706906 Fee Remittance Procedure

(A)(1) The commercial generator fees shall be collected from the end user by the commercial generator who sells the tires to the end user and bills the end user for the tires, fees, and any other applicable taxes related to the sale and remitted to the Director of the Arkansas Department of Finance and Administration.

(2) However, the commercial generator who collects the commercial generator fee may retain five percent (5%) of the commercial generator fee imposed under this chapter for administrative costs.

(B)(1) Each commercial generator shall file a return with the Director of the Arkansas Department of Finance and Administration on or before the twentieth of each month.

⁹ ~~Each commercial generator who was not registered with the Department of Finance and Administration on August 1, 2017, shall be registered with the Department of Finance and Administration on or before December 1, 2017.~~

(2) The return shall show the total commercial generator fees collected for each tire sold to the end user during the preceding calendar month.

(3) The commercial generator shall remit the commercial generator fees with the return.

(4) The Director of the Department of Finance and Administration shall prescribe the form and contents of the return.

(C)(1) Each commercial generator is subject to the Arkansas Tax Procedure Act, Ark. Code Ann. § 26-18-101 *et seq.*, and any rules promulgated by the Arkansas Department of Finance and Administration.

(2) A commercial generator that is not registered with the Department of Finance and Administration is remains subject to the Arkansas Tax Procedure Act, Ark. Code Ann. § 26-18-101 *et seq.*, and any rules promulgated by the Arkansas Department of Finance and Administration if the commercial generator is required by law to collect the commercial generator fee imposed under Ark. Code Ann. § 8-9-404(d).

Reg. 36.707907 Fee Imposed After Sales Taxes Computed

The commercial generator fees imposed by this chapter shall be added to the total cost charged by the commercial generator to the end user after all applicable gross receipts and compensating use taxes on the tires have been computed and shall be separately stated on the invoice or bill of sale.

Reg. 36.708908 No Additional Charge to End User

The commercial generator shall accept at no additional cost to the end user other than those fees collected under this regulation any or all used tires for which an end user paid the commercial generator fee.

Reg. 36.709909 Revenues Deposited

~~(A) As used in this regulation, "proceeds from commercial generator fees" means all moneys collected and received by the Arkansas Department of Finance and Administration under this chapter for commercial generator fees imposed under Ark. Code Ann. § 8-9-404(d) and interest and penalties on delinquent commercial generator fees.~~

~~(B) The Arkansas Department of Finance and Administration shall deposit the proceeds from commercial generator fees under this chapter in the same manner as the rim removal fees are deposited into the Used Tire Recycling Fund.~~

(A) The Arkansas Department of Finance and Administration shall deposit the proceeds from commercial generator fees collected under Ark. Code Ann. § 8-9-404 into the State Treasury as special revenues to the credit of the following funds in the following percentages:

(1) Ninety-three percent (93%) to be deposited into the Used Tire Recycling Fund; and

(2) Seven percent (7%) to be deposited into the Arkansas Department of Environmental Quality Fee Trust Fund.

(B) The Used Tire Recycling Fund shall also consist of:

- (1) Penalties assessed and collected under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq.;
- (2) Interest, earnings, and any other revenues as may be authorized by law;
- (3) Any federal government moneys designated for deposit into the Used Tire Recycling Fund;
- (4) Any gift or donation to the Used Tire Recycling Fund; and
- (5) Those special revenues specified in Ark. Code Ann. §§ 8-9-404 and 19-6-301(165).

Reg. 36.710910 Administration of Used Tire Recycling Fund

The Used Tire Recycling Fund shall be administered by ~~the Department~~ ADEQ for reimbursements and grants to used-tire programs and administrative expenditures as authorized by law and regulation.

CHAPTER ~~810~~: PERSONS WHO IMPORT USED TIRES AND IMPORT FEES

Reg. ~~36.801~~1001 Registration

When a person who imports used tires registers with the Department of Finance and Administration as a collector of the import fee as required under this chapter, the registration will include a procedure for registering with the ~~Arkansas Department of Environmental Quality~~ ADEQ to obtain an identifying number.

Reg. ~~36.802~~1002 Import Fees Imposed

(A) Beginning on January 1, 2018, and pursuant to Ark. Code Ann. § 8-9-404, import fees are imposed on all used tires imported into Arkansas.

(B) As used in this regulation, “proceeds from import fees” means all moneys collected and received by the Arkansas Department of Finance and Administration for import fees imposed under Ark. Code Ann. § 8-9-404(c) and interest and penalties on delinquent rim removal fees.

Reg. ~~36.803~~1003 Amount of Import Fee

Beginning on January 1, 2018, the import fee shall be imposed at a rate of one dollar (\$1.00) for each used tire that is imported into Arkansas.

Reg. ~~36.804~~1004 Exclusions and Exemptions

The import fees imposed by this chapter do not apply to any of the following:

- (1) A solid wheel rim with an integral rubber covering;
- (2) A tire used on a nonmotorized bicycle, golf cart, or lawn mower;
- (3) Large retreaded tires;
- (4) Tires included as part of the equipment of a new motor vehicle; or
- (5) Tires included as part of the equipment of a used vehicle if included on the used vehicle at the time of sale and in the sales price of the used vehicle.

Reg. ~~36.805~~1005 Duties of Person Who Imports Used Tires

Each person who imports used tires shall:

- (1) Be registered with the Department of Finance and Administration as a person who imports used tires into Arkansas;⁴⁰

⁴⁰ ~~Each person who imports used tires into Arkansas who was not registered with the Department of Finance and Administration on August 1, 2017, shall be registered with the Department of Finance and Administration on or before December 1, 2017.~~

- (2) Pay on a monthly basis to the Arkansas Department of Finance and Administration the import fees for the used tires that are imported into Arkansas each month;
- (3) Comply with all requirements related to collecting and reporting import fees;
- (4) Be registered with the ~~Arkansas Department of Environmental Quality~~ ADEQ as a person who imports used tires into Arkansas and have an identifying number used by the ~~the Arkansas Department of Environmental Quality~~ ADEQ; and
- (5) Use the e-manifest system administered by the ~~Arkansas Department of Environmental Quality~~ ADEQ to account for each used tire imported into Arkansas.

Reg. 36.8061006 Fee Remittance Procedure

(A) The import fee imposed under this chapter shall be paid by the person who imports the used tire into Arkansas to the Arkansas Department of Finance and Administration in accordance with the Arkansas Tax Procedure Act, Ark. Code Ann. § 26-18-101 *et seq.*, and any rules promulgated by the Arkansas Department of Finance and Administration.

(B)(1) Each person who imports used tires shall file a return with the Director of the Arkansas Department of Finance and Administration on or before the twentieth of each month.

- (2) The return shall show the total import fees collected for each used tire imported into Arkansas during the preceding calendar month.
- (3) The person who imports used tires shall remit the import fees with the return.
- (4) The Director of the Department of Finance and Administration shall prescribe the form and contents of the return.

(C)(1) Each person who imports used tires into Arkansas is subject to the Arkansas Tax Procedure Act, Ark. Code Ann. § 26-18-101 *et seq.*, and any rules promulgated by the Arkansas Department of Finance and Administration.

(2) A person who imports used tires into Arkansas that is not registered with the Department of Finance and Administration is remains subject to the Arkansas Tax Procedure Act, Ark. Code Ann. § 26-18-101 *et seq.*, and any rules promulgated by the Arkansas Department of Finance and Administration if the person is required by law to collect the import fee.

Reg. 36.8071007 Revenues Deposited

~~(A) As used in this regulation, "proceeds from import fees" means all moneys collected and received by the Arkansas Department of Finance and Administration for import fees imposed under Ark. Code Ann. § 8-9-404(e) and interest and penalties on delinquent rim removal fees.~~

~~(B) The Director of the Arkansas Department of Finance and Administration shall deposit the proceeds from the import fee imposed under Ark. Code Ann. § 8-9-404(e) in the same manner as the rim removal fees are deposited into the Used Tire Recycling Fund.~~

(A) The Arkansas Department of Finance and Administration shall deposit the proceeds from import fees collected under Ark. Code Ann. § 8-9-404 into the State Treasury as special revenues to the credit of the following funds in the following percentages:

- (1) Ninety-three percent (93%) to be deposited into the Used Tire Recycling Fund; and
- (2) Seven percent (7%) to be deposited into the Arkansas Department of Environmental Quality Fee Trust Fund.

(B) The Used Tire Recycling Fund shall also consist of:

- (1) Penalties assessed and collected under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq.;
- (2) Interest, earnings, and any other revenues as may be authorized by law;
- (3) Any federal government moneys designated for deposit into the Used Tire Recycling Fund;
- (4) Any gift or donation to the Used Tire Recycling Fund; and
- (5) Those special revenues specified in Ark. Code Ann. §§ 8-9-404 and 19-6-301(165).

Reg. 36.8081008 Administration of the Used Tire Recycling Fund

The Used Tire Recycling Fund shall be administered by the ~~Arkansas Department of Environmental Quality~~ ADEQ for reimbursements and grants to used-tire programs and administrative expenditures as authorized by law and regulation.

CHAPTER ~~911~~: DISBURSEMENTS FROM THE USED TIRE RECYCLING FUND

Reg. ~~36.901~~1101 Applicability Generally

~~By January 1, 2018, the Arkansas Department of Environmental Quality shall establish The ADEQ establishes the Used Tire Recycling and Accountability Program to:~~

- (1) Reimburse used-tire programs for used tire recycling and disposal costs;
- (2) Incentivize recycling used tires collected under the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*;
- (3) Provide accountability for the disbursement of moneys to used-tire programs; and
- (4) Otherwise improve the sustainability of used-tire programs.

Reg. ~~36.902~~1102 Eligibility for Reimbursement

To be eligible for reimbursements under this regulation and the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, a used-tire program shall:

- (1) Be included in the solid waste management system under Ark. Code Ann. § 8-9-101 *et seq.* for each regional solid waste management district that the used-tire program serves;
- (2) Have a used tire management plan, as found in Commission Regulation 36.310, for each regional solid waste management district that the used-tire program serves, ~~to include without limitation~~ including a schedule for identification and cleanup of waste tire sites that is updated until abatement of each identified waste tire site is completed;
- (3) Be included in each solid waste management district's recycling program under Ark. Code Ann. § 8-9-203 that the used-tire program serves;
- (4) If operated by a political subdivision of the state or other public entity:
 - (a) Use the financial management system under Ark. Code Ann. § 14-21-101 *et seq.*;
 - (b) Comply with the county purchasing procedures under Ark. Code Ann. § 14-22-101 *et seq.*;
 - (c) Comply with the Arkansas County Accounting Law of 1973, Ark. Code Ann. § 14-25-101; and
 - (d) Comply with the Local Fiscal Management Responsibility Act, Ark. Code Ann. § 14-77-101 *et seq.*;
- (5) Operate in compliance with all laws, regulations, and rules related to the administration of solid waste management systems and recycling programs in Arkansas;
- (6) Encourage the voluntary establishment of tire collection centers at tire retailers, tire processing facilities, and solid waste disposal facilities for the deposit of tires generated in the state;

(7) Provide the ~~Arkansas Department of Environmental Quality ADEQ~~ with business plan information required under ~~Ark. Code Ann. § 8-9-408~~ and Chapter 4 (Ark. Code Ann. § 8-9-408) of this regulation;

(8) Provide the ~~Arkansas Department of Environmental Quality ADEQ~~ with all quarterly reports including ~~financial information and progress reports related to Ark. Code Ann. § 8-9-409~~;

- (a) The quantity of tires recycled;
- (b) The quantity of waste tires disposed in a landfill;
- (c) The number of reported waste tire sites in your regional solid waste management district;
- (d) Administrative expenses;
- (e) Transportation expenses;
- (f) Building, warehouse, and other facility expenses;
- (g) Revenue sources and the amount of revenue received from each source;
- (h) The number, location, and type of tire collection centers in your regional solid waste management district;
- (i) Any operational issues for the reporting quarter;
- (j) The number of enforcement cases brought against the used-tire program during the reporting quarter;
- (k) A statement of certification you are complying with the e-manifest system; and
- (l) Any other performance indicators that is associated with efficiency measures;

and

(9)(a) Establish at least one (1) tire collection center within each county served by the used-tire program that accepts tires from tire retailers at no charge if the tire retailer establishes that it:

- (i) Collects the rim removal fee ~~imposed under Ark. Code Ann. § 8-9-404(a)~~ and required under Chapter 6 § 8 of this regulation (Ark. Code Ann. § 8-9-404(a)); and
 - (ii) Complies with the e-manifest system under ~~Ark. Code Ann. § 8-9-407~~ and Chapter 3 6 of this regulation (Ark. Code Ann. § 8-9-407).
- (b) The tire collection centers may be at any one (1) or more of the following:
- (i) A solid waste disposal facility;
 - (ii) A tire processing facility; or
 - (iii) A tire retailer.

Reg. 36.9031103 Optional Used-Tire Program Activities

A used-tire program that receives reimbursements under this section may:

- (1) Contract with a tire processing facility that is permitted by the ~~Arkansas Department of Environmental Quality~~ ADEQ;
- (2) Remove or contract for the removal of waste tires from illegal waste tire sites within the regional solid waste management district;
- (3) Provide incentives for establishing privately operated tire collection centers for the public; and
- (4) Form an inter-district used-tire program.

Reg. 36.9041104 Compliance

Moneys disbursed from the Used Tire Recycling Fund by the ~~Arkansas Department of Environmental Quality~~ ADEQ for reimbursements under this regulation shall be distributed only to the used-tire programs that comply with all applicable requirements in this regulation related to the operation of used-tire programs.

Reg. 36.9051105 Disbursements Contingent Upon Available Funding

(A) All reimbursements and distributions claimed by used-tire programs or inter-district programs will be:

- (1) Based on moneys available in the ~~Used Tire Recycling Fund~~ funds;
- (2) According to funding levels in ~~this chapter~~ Commission Regulation 36.1106;
- (3) According to the rates established by the approved business plan; and
- (4) Funding priorities in ~~Commission Regulation 36.907~~ 1107.

(B) Nothing in this regulation shall be construed as requiring the State of Arkansas or the ~~Arkansas Department of Environmental Quality~~ ADEQ to accrue liabilities in excess of available funding.

Reg. 36.9061106 Funding Levels

Based on data received from the e-manifest system and quarterly reports, the following funding may be available for disbursement from the Used Tire Recycling Fund for used-tire programs or inter-district used-tire programs that are in compliance with all applicable requirements of this regulation:

- (1) Level One Funding - for used tires at the approved business plan rate;
- (2) Level Two Funding - for an eligible inter-district used-tire program under Ark. Code Ann. § 8-9-410(b) for assistance with funding an illegal dumps control officer position; and

(3) Level Three Funding - to an eligible used-tire program that is in compliance with Ark. Code Ann. § 8-9-408 for equipment purchases, repairs, or maintenance that are scheduled or planned at least six (6) months before and included in the business plan or revised business plan of the used-tire program.

Reg. 36.9071107 Priority Funding

The following funding levels for quarterly disbursements from the Used Tire Recycling Fund are established:

- (1) Level One Funding shall be paid first each quarter from all available moneys collected and available for disbursement in that quarter;
- (2) Level Two Funding shall be paid each quarter only if any moneys are available after all Level One Funding obligations are paid in full for that quarter; and
- (3) Level Three Funding shall be paid each quarter only if any moneys are available after all Level One Funding and Level Two Funding obligations are paid in full for that quarter and a grant application has been approved by ADEQ.

Reg. 36.9081108 Pro Rata Disbursements

If there are insufficient moneys available in a quarter to make reimbursements or grant awards for all submitted requests under any funding level, ~~the Arkansas Department of Environmental Quality~~ ADEQ shall calculate the total remaining ~~moneys~~ funds available and allocate the moneys to each used-tire program based on a pro rata share of each used-tire program's reimbursement or equipment grant request.

Reg. 36.9091109 Administrative Increases in the Reimbursement Rate

(A) The Arkansas Pollution Control and Ecology Commission may increase reimbursement rates if the Director of ~~the Arkansas Department of Environmental Quality~~ ADEQ recommends an increase because of one (1) or more of the following:

- (1) The relevant Consumer Price Index for the preceding calendar year exceeded the Consumer Price Index for calendar year 2018; or
- (2) The used-tire programs have established an increase in operation costs.

(B) An increase to any reimbursement rate shall not exceed ten percent (10%) each calendar year.

(C) If the Director determines an administrative increase in reimbursement rate is necessary and sufficient funds are appropriated and available, ADEQ shall uniformly apply the increase to each Used-Tire Program's approved business plan rate.

Reg. 36.9101110 Level One Funding Reimbursements

(A) Level One funding reimbursements shall be provided to used-tire programs based on the quantity of used tires managed from collection to final recycling or disposal by the used-tire program.

(B)(1) A used-tire program shall submit to ADEQ a reimbursement request no later than five (5) calendar days after the last day of each calendar quarter on a form developed by ADEQ to include:

(a) A statement that all information has been submitted to the e-manifest system or an explanation of any discrepancy reports related to e-manifest system data; and

(b) If applicable, documentation that supports its explanation of any discrepancy report during that calendar quarter.

(2) If the used-tire program is unable to submit its reimbursement request and all applicable documentation within the five (5) calendar days after the last day of each calendar quarter, the used-tire program shall request an extension from the Director or designee.

(C) ADEQ shall evaluate the reimbursement request and may use any of the following additional sources to determine Level One funding reimbursements to eligible used-tire programs:

(1) Data from the e-manifest system including ~~without limitation~~ the quantity of used tires managed and any data related to the verification of the claimed quantity of used tires managed;

(2) Quarterly progress reports;

(3) Approved business plan rates;

(4) Total reimbursement requests from all used-tire programs; and

(5) Total available funding for quarterly disbursements.

(D) Formula for Level One funding reimbursements:

(1) For each used-tire program each calendar quarter determine:

(a) The total approved quantity of small tires, large tires, and extra-large tires managed;

(b) The total approved business plan rate for small tires, large tires, and extra-large tires;

(2) Multiply the total approved quantity of each size of tires managed by the used-tire program's approved business plan rate for each size of tires; and

(3) Calculate the cumulative total of the used-tire program's approved reimbursement requests for Level One funding from all used-tire programs; and

(4)(a) Compare the total approved reimbursement requests from all used-tire programs with the total moneys available for the calendar quarter.

(b) If the total approved reimbursement requests for Level One funding are equal to or less than the moneys available for the calendar quarter, ~~the Department~~ by ADEQ will issue disbursements for the amounts.

(c) If the total claimed reimbursement requests for Level One funding exceed the moneys available for that calendar quarter, ~~the Department~~ ADEQ shall allocate the moneys available for reimbursement to each used-tire program based on a pro rata share of each used-tire program's reimbursement request compared to the total moneys available for Level One funding distribution for that calendar quarter.

Reg. 36.911111 Level Two Funding Reimbursements

(A) Level Two funding reimbursements shall be provided to an eligible inter-district used-tire program for assistance with funding one (1) illegal dumps control officer position.

(B) An eligible inter-district used-tire program shall submit to ADEQ a reimbursement request no later than five (5) calendar days after the last day of each applicable calendar quarter on a form developed by ADEQ within five (5) calendar days after the end of the calendar quarter that includes at least the following information:

(1)(a) A copy of a remuneration statement with the person who is employed as an illegal dumps control officer that establishes employment during that calendar quarter.

(b) All confidential information shall be redacted including the employee's address, social security number, and date of birth; and

(2) The Illegal Dump Control Officer (IDCO) license number;

(3) All current applicable inter-district used-tire program agreements; and

(4) A statement that the inter-district used-tire program serves a population of four hundred thousand (400,000) or more based on the most recent federal decennial census.

(C) If the inter-district used-tire program is unable to submit all necessary data within the five (5) calendar days after the end of the calendar quarter, the inter-district used-tire program shall request an extension from the Director or designee.

(D) ADEQ shall evaluate the reimbursement request and may request additional information or documents to determine whether an inter-district used-tire program is eligible to receive Level Two funding reimbursements for that calendar quarter.

(E) ADEQ will issue disbursements for the amounts if the total claimed reimbursement requests are equal to or less than the moneys available for the calendar quarter.

(F) Subject to availability and appropriation of funding, an eligible inter-district used-tire program shall not receive more than six thousand-two hundred fifty dollars (\$6,250) in a calendar quarter with a total not to exceed twenty-five thousand dollars (\$25,000) in a calendar year.

(G) Formula for Level Two Funding reimbursements:

(1) ADEQ makes the determination that moneys are available for disbursement after all claimed Level One reimbursement requests are fully funded;

- (2) Calculate the total of all claimed reimbursement requests for Level Two funding;
- (3)(a) If the total claimed reimbursement requests for Level Two funding equals or is less than the moneys available for that calendar quarter, ADEQ will issue disbursements for the amounts.
 - (b) If the total claimed reimbursement requests for Level Two funding exceed the moneys available for that calendar quarter, ADEQ shall allocate the moneys available for reimbursement to each inter-district used-tire program based on a pro rata share of each inter-district used-tire program's reimbursement request compared to the total moneys available for Level Two funding distribution for that calendar quarter.

Reg. 36.9121112 Level Three Funding Reimbursements

(A) Level Three funding reimbursements shall be provided to an eligible used-tire program ~~that is in compliance with Ark. Code Ann. § 8-9-408~~ for equipment purchases, repairs, or maintenance that are scheduled or planned at least six (6) months before and included in the business plan or revised business plan of the used-tire program.

(B) ADEQ shall use the following sources to determine whether a used-tire program is eligible to receive Level Three funding reimbursements for that calendar quarter:

- (1) Verification that equipment purchases, repairs, or maintenance ~~are~~ is outlined in the approved business plan;
- (2) Bid-quote specifications for equipment purchases, repairs, or maintenance when the cost exceeds twenty-five thousand dollars (\$25,000);
- (3) Verification that the used-tire program has complied with all applicable procurement laws on the purchase of equipment to be secured with state funds; and
- (4) Copies of specifications for any applicable contract and documentation of actual costs.

(C) Formula for Level Three Funding reimbursements:

- (1) ADEQ makes the determination that moneys are available for disbursement after all claimed Level One and Level Two reimbursement requests are fully funded;
- (2) Calculate the total of all claimed reimbursement requests for Level Three funding;
- (3)(a) If the total claimed reimbursement requests for Level Three funding equals or is less than the moneys available for that calendar quarter, ADEQ will issue disbursements for the amounts.
 - (b) If the total claimed reimbursement requests for Level Three funding exceed the moneys available for that calendar quarter, ADEQ shall allocate the moneys available for reimbursement to each used-tire program based on a pro rata share of each used-tire program's reimbursement request compared to the total moneys available for Level Three funding distribution for that calendar quarter.

(D) ADEQ reserves the right of title or to order the transfer or sale of equipment that is purchased with funding from the Used Tire Recycling Fund but is no longer used for the general purposes stated in the approved business plan.

Reg. 36.9131113 Reporting and Oversight Requirements

(A)(1) The used-tire program or inter-district used-tire program shall follow a budget and maintain an orderly accounting system to document used tire revenues and expenditures.

(2) The used-tire program or inter-district used-tire program shall observe all applicable accounting procedures and regulations in the management of funds received from the Used Tire Recycling Fund.

(3) Used-tire program funds shall be accounted for separate from other types of funds held by the used-tire program.

(B) Pursuant to Ark. Code Ann. § 8-6-704(d), expenditures, reimbursement funds, and grant funds received from the Used Tire Recycling Fund shall be listed in each District's annual financial audit separately from other District revenues. Interest accrued as a result of the Used Tire Recycling Fund shall be delineated from other District revenues.

(C) Within thirty (30) calendar days from the end of each calendar quarter, using a report format to be provided by ADEQ, each used-tire program shall, at the least, provide ADEQ with quarterly reports summarizing progress in the project and expenditures from moneys from the Used Tire Recycling Fund, as well as all revenue received or generated as a result of the used-tire program's implementation of the ~~Used Tire Recycling and Accountability Program~~. The report shall include the quantity and types of fee-paid tires processed and the quantity and types of fee-waived tires processed, as well as any other information, as determined by ADEQ, including documentation of revenues and expenditures for the calendar quarter and reserve funds.

Reg. 36.9141114 Administrative and Incentive Grants

(A) The Director of ~~the Arkansas Department of Environmental Quality~~ ADEQ may use not more than ten percent (10%) of the moneys available in the Used Tire Recycling Fund each fiscal year:

(1) For waste tire site abatement aid to be used only when the responsible person is either unable or unwilling to properly and timely abate the waste tire site;

(2) For the development, implementation, and maintenance of the e-manifest system; and

(3) To provide market and economic stimulus incentives.

(B) Eligible applicants for an abatement aid grant or market and economic stimulus incentive grant under this section include:

(1) An eligible used-tire program;

(2) A local government; or

(3) A state agency, board, or commission.

(C)(1) Abatement funds may be used only when the person(s) responsible for abatement of a site is either unable or unwilling to properly and timely abate the site.

(2) ~~This section does not relieve the~~ The responsible person is not relieved from any financial liability for abatement of a waste tire site.

(3) If an abatement aid grant under this section is provided, the funds recovered by ~~the~~ Department ADEQ or the used-tire program from the responsible person shall be returned to the Used Tire Recycling Fund.

(D) ~~Market and Economic Stimulus Incentive Grant:~~

(1) ~~The~~ Department ADEQ shall review and evaluate all grant applications, changes, and proposed projects in order to determine eligible project and contract costs, the merit and ranking of proposed grant projects, the amount of the award, and the conditions of approval for a grant award.

(2) Application forms, changes, contracts, or other documents must be fully completed when submitted to ~~the~~ Department ADEQ. Additional materials may be required to include:

(a) A project budget summarizing the approximate costs of grant-eligible items or contract services to be funded and costs of facilities and activities not grant funded but an integral part of the proposed project;

(b) Specifications and designs, approved by a professional engineer registered in the State of Arkansas, unless otherwise approved by ~~the~~ Department ADEQ, for grant-funded construction of facilities or bid-quote specifications for equipment when the cost of construction or equipment exceeds twenty-five thousand dollars (\$25,000);

(c) Copies of proposed specifications for a service contract and an estimate of the cost of the services to be contracted; and

(d) Verification that the applicant has conformed to all applicable procurement laws on contracting for services and on the purchase, use, or sale of equipment and facilities to be secured with state funds.

(E) If an application, contract, change, or proposed project is rejected for incompleteness or lack of documentation, ~~the~~ Department ADEQ shall return it to the applicant with a written explanation of its deficiencies.

(F) The eligibility of specific project or contract costs for funding shall be determined by ~~the~~ Department ADEQ. ~~The~~ Department ADEQ shall only make a final determination on an administratively complete application.

(G) ~~The~~ Department ADEQ shall notify an applicant in writing of the approval or disapproval of its applications, contracts, changes, or proposed projects for funding. If an application, contract, change, or proposed project is not approved for funding, an explanation of the rationale for not funding the applicant shall accompany the notice.

Reg. 36.9151115 Conditions of Grant Award

(A) The Department ADEQ may attach conditions to the award to ensure all grant projects:

- (1) Promote recycling or beneficial use;
- (2) Do not pose a potential threat to human health, safety, or the environment;
- (3) Will not encourage a breeding habitat for disease-transmitting vectors; and
- (4) Do not pose a fire hazard.

(B) These conditions shall include, at the minimum:

- (1) Before awarding any grant funds, the applicant or their contractors must possess and be in compliance with current necessary permits and licenses required by state law;
- (2) The applicant must conform to all applicable procurement laws on contracting for services and on the purchase, use or sale of equipment and facilities secured with state funds;
- (3) The Department ADEQ reserves the right of title or to order the transfer or sale of equipment that is purchased with grant funds but is no longer used for the general purposes stated in the grant application;
- (4) Department personnel shall have the right of entry to the premises of any grant-funded facility and the right of access to all records pertaining to any grant-funded project. Denial of access shall result in automatic suspension of the grant;
- (5) It shall be the responsibility of the grantee to immediately notify the Department ADEQ in writing in the event that the grantee cannot meet the implementation schedule outlined in the conditions of a grant award; and
- (6) After a grant award has been made, modifications may be made to the grant project only if the grantee submits adequate documentation with a change order to the Department ADEQ. The change order will be on a form provided by the Department ADEQ. The Department ADEQ will review any changes requested and will determine if any modifications are to be allowed.

Reg. 36.9161116 Suspension or Termination of Funding Decisions or Grant Decisions

(A) Upon written notice by the Director or designee to the affected used-tire program, inter-district used-tire program, or grantee, a reimbursement or grant may be suspended or terminated if the Director or designee determines that because of the used-tire program, inter-district used-tire program, or grantee's inability or unwillingness to complete or meet the conditions of the reimbursement or grant there is just cause for suspending or terminating the reimbursement or grant. The notice shall be sent by certified mail no later than thirty (30) calendar days before the effective date of suspension or termination. The notice shall include:

- (1) The Director's decision to suspend or terminate the reimbursement or grant, the date of the Director's decision, and the effective date of the suspension or termination;
- (2) A statement that provides giving the explanation for the suspension or termination;

(3) Notice of any applicable conditions;

(4) If the action taken is suspension, a statement that the used_tire program, inter-district used_tire program, or grantee's failure to address the reasons for suspension in a timely manner may result in termination of the reimbursement or grant; and

(5) A statement that the used_tire program, inter-district used_tire program, or grantee may request an adjudicatory hearing and Commission review on whether the decision of the Director should be reversed or modified.

(B) Suspension shall be for a period of time to be approved by ~~the Department~~ ADEQ after negotiations with the used_tire program, inter-district used_tire program, or grantee, but not to exceed twelve (12) months. During the period of suspension no funds shall be disbursed to the used_tire program, inter-district used_tire program, or grantee and the used_tire program, or inter-district used_tire program, or grantee must demonstrate to ~~the Department's~~ ADEQ's satisfaction that the reasons for suspension have been addressed and corrected in order for the reimbursement or grant funding to be reinstated. If, at the end of the specified suspension period, the Director or designee determines that the used_tire program, ~~or inter-district used_tire program, or grantee's~~ grant project and conditions cannot be continued or completed, the reimbursement or grant shall be automatically terminated and the Director ~~or designee~~ shall notify the used_tire program, or inter-district used_tire program, or grantee of termination in writing.

(C) Termination of a reimbursement or grant need not be preceded by suspension proceedings as described in this chapter.

(D) If a suspension or termination has been executed, ~~the Department~~ ADEQ may designate another qualified entity to assume the administration of the used tire management system within the used_tire program receiving the suspension or termination.

Reg. 36.9171117 Reimbursement of Funds to ADEQ

(A) The Director may order the used_tire program, inter-district used_tire program, or grantee to reimburse ~~the Department~~ ADEQ a part of or all of the funds awarded if the Director determines that the used_tire program, inter-district used_tire program, or grantee has not met the conditions of the reimbursement or grant.

(B) Written notice of the Director's decision to order reimbursement shall be sent to the affected used_tire program, inter-district used_tire program, or grantee by certified mail with a statement notifying the used_tire program, inter-district used_tire program, or grantee that the used_tire program, inter-district used_tire program, or grantee may request an adjudicatory hearing and Commission review on whether the decision of the Director should be reversed or modified.

CHAPTER 12: BENEFICIAL USE

Reg. 36.1201 Project Approval

(A) Proposed beneficial use projects shall require written approval by both the used-tire program and ADEQ.

(B) The used-tire program, where used tires or residuals will be used, shall set any policies, form any standards, and develop any review process that it feels appropriate that do not conflict with any law or regulation. The used-tire program shall be responsible for the initial review and written approval of specific sites and corresponding construction specification and details of beneficial use projects.

(C) Upon approval by the used-tire program, a complete copy of the proposed beneficial use project and the used-tire program's written approval shall be submitted to ADEQ for the second level of review. The ADEQ's review will include, at a minimum, environmental protection, technical adequacy, and regulatory compliance.

Reg. 36.1202 Project Proposal Requirements

The ADEQ, at its discretion, may require the beneficial use proposal to be prepared by a professional engineer registered in the State of Arkansas. The beneficial use proposal shall include the following information unless otherwise specified by ADEQ in writing:

- (1) Legal description, address, and directions to the proposed beneficial use site;
- (2) A map or aerial photograph indicating land use within a one-fourth (1/4) mile radius of the proposed beneficial use site which shall be of adequate scale to show all residences, structures, surface waters, public and private water supply sources, access roads, historic sites, and other existing man-made features relating to the beneficial use site;
- (3) Maps indicating the existence of any regulated wetlands or flood plains on or adjacent to the beneficial use site;
- (4) A site plan map that delineates survey boundary locations, the location of existing or proposed access roads, existing buildings and improvements including any staging and storage areas for incoming used tires, general site topography, and existing and proposed drainage characteristics including any run-on/run-off control systems;
- (5) A list of the tire generators including both name, location, and mailing address;
- (6) Concurrence of the landowner indicating acceptance and responsibility of the used tires or residuals and an agreement to indemnify ADEQ from any future liability resulting from the beneficial use project;
- (7) Statement(s) that the beneficial use project complies with all applicable regulations from any local regulatory body having jurisdiction over the beneficial use project to include any one (1) or more of the following: planning, building, code enforcement, or drainage departments;

(8) Any applicable environmental permits;

(9) Project specifications and details including a description of the proposed application, the quantity of used tires anticipated to be used in the project, construction methods and materials, construction drawings and details, and a project schedule. An explanation shall be provided demonstrating how the engineering properties of these materials will be beneficial to the project; and

(10) An explanation of how the beneficial use project will comply with all applicable provisions of this regulation.

Reg. 36.1203 Review Considerations

The following conditions shall be considered in determining the appropriateness of proposed beneficial use project applications:

(1) The level of engineering, technical detail, or both provided as compared to the complexity of the beneficial use project. Relatively simple uses of the used tires for erosion control may require only a minimum amount of pre-project planning and construction drawing detail. Projects that will use used tires in a manner that their failure could endanger life or damage property shall require more engineering effort and detail. The ADEQ may require detailed construction drawings and specifications that are signed and stamped by a registered professional engineer licensed in the State of Arkansas;

(2) Availability or lack of availability of more cost effective, efficient, or dependable materials that could be used instead of the used tires. This factor recognizes that in most cases, cost, efficiency, and dependability are important factors in the selection of materials to incorporate into a beneficial use project. When used tires are superior to other materials in these respects, incorporating them into the project is a reasonable alternative. When they are not, the legitimacy of their use cannot be substantiated;

(3) The probability of injury or damage should be balanced against the risk of environmental failure, structural failure, or both; and

(4) Where used tires are proposed as a substitute for another material, the applicant shall demonstrate that the used tires will perform in a manner similar to the material for which it is substituted. In addition, if tire bales are used as structural members, a demonstration must be submitted showing that the tire bales exhibit adequate properties to perform as structural members. The demonstration may include previous projects where the tire bales performed satisfactorily under similar conditions, literature describing similar installations, or test data showing that the material meets required performance standards.

Reg. 36.1204 Additional Safeguards

The ADEQ reserves the right to grant written conditional approval for beneficial use projects and impose additional operating requirements, design requirements, or both, as needed to ensure structural integrity, technical adequacy, and protection of the environment.

Reg. 36.1205 Financial Assurance

The ADEQ may require separate financial assurance for any approved beneficial use project. If ADEQ determines a beneficial use project requires financial assurance, the financial assurance mechanism must be submitted and approved by ADEQ prior to approval of the beneficial use project and commencement of construction.

Reg. 36.1206 Exemptions

The following uses of used tires may be exempted from the review and approval requirements of this Chapter as determined by ADEQ on a case-by-case basis:

- (1) A person who owns or leases real property may use five hundred (500) or less used tires for soil erosion control, drainage improvements, or to secure covers over silage, hay, straw, or agricultural products;
- (2) The use of used tire chips as leachate collection media under solid waste landfills in place of traditional aggregate, if the proposed beneficial use is approved during the permitting process or subsequent modifications;
- (3) The use of used tire chips in on-site wastewater soil absorption systems in place of traditional aggregate if the material meets the Arkansas Department of Health specifications and guidelines;
- (4) The use of shredded used tires, baled tires, or crumb rubber in road or highway construction projects if beneficial use projects are conducted by, in association with, or under the guidance of the Arkansas Highway and Transportation Department or other roadway authority, as applicable; and
- (5) Suitable processed used tire materials may be used in the construction of daily cover systems for all landfills if the use is authorized by ADEQ: shown to not present a threat to human health and the environment; and shown to control disease vectors, fires, odors, blowing litter, or scavenging.

CHAPTER 13: WASTE TIRE SITES

Reg. 36.1301 Prohibited Activities

(A) A person shall not maintain a waste tire site.

(B) It is illegal for any person to dispose of tires, used tires, or portions of tires in the state unless the tires, used tires, or portions of tires are disposed of for processing or collected for processing at a permitted tire processing facility, a tire collection center, or a permitted solid waste disposal facility.

Reg. 36.1302 Waste Tire Sites

(A) This section applies to any one (1) or more of the following:

(1) An owner or operator of a waste tire site;

(2) Any facility permitted under this regulation that no longer accepts, collects, or processes tires; or

(3) Any individual responsible for creating unpermitted waste tire piles.

(B)(1) Within thirty (30) calendar days of receiving written notice by ADEQ or a local government that the waste tire site must be closed, the owner or operator shall provide ADEQ and the applicable regional solid waste management district with:

(a) Information concerning the waste tire site's location and size and the approximate quantity of tires that are accumulated at the waste tire site; and

(b) A written plan specifying a method and time schedule for the removal, disposal, or recycling of tires, subject to approval by ADEQ.

(2) The owner or operator shall implement the written plan approved by ADEQ according to the schedule.

(C) To close a waste tire site, the owner or operator shall:

(1) Stop public access to the site, including without limitation physically restricting entry to the site;

(2) Post a notice that indicates the site is closed and provides the nearest location where unwanted used tires can be deposited;

(3) Notify ADEQ and local governments that have jurisdiction of the onset of closure;

(4) Remove all waste tires, recyclable tires, used tires culled for resale, processed tires, and residuals and deliver to one (1) or more of the following as applicable:

(a) A used-tire program;

(b) A permitted tire processing facility;

(c) A permitted solid waste management facility;

(d) A location approved by ADEQ for beneficial use of tires;

(5) Repair the waste tire site to effectively promote surface water flow and remove any soil contamination; and

(6) Notify ADEQ in writing within five (5) calendar days of completing closure.

CHAPTER 14: LANDFILLING OF WASTE TIRES

Reg. 36.1401 Requirements

- (A) The disposal facility shall be constructed, operated, and maintained according to final plans, specifications, and operation narrative as approved by ADEQ and in compliance with applicable provisions of the Solid Waste Management Act, Ark. Code Ann. § 8-6-201 et seq., Commission Regulation 22, and all other applicable rules and regulations.
- (B) The disposal facility shall be maintained in good condition at all times.
- (C) The disposal facility operations shall be conducted by licensed, qualified on-site operators holding the appropriate license as required under Commission Regulation 27.
- (D) For purposes of disposal, "sufficiently small part" means that the tire has been cut into four (4) substantially equal pieces or into two (2) pieces around the circumference of the tread.
- (E)(1) Whole tires shall not be deposited into a landfill or a waste tire monofill as a method of final disposal unless shredded or split into sufficiently small parts to assure their proper disposal or otherwise allowed in the facility permit.
- (2) Only small tires that have been processed by cutting, shredding, or splitting into sufficiently small parts to assure proper disposal or small tires processed by baling may be disposed of at a tire disposal facility that has a permit issued for a landfill designed and operated as a waste tire monofill.
- (F) Landfills that receive waste tires must also meet and comply with the conditions and standards contained in Arkansas Pollution Control and Ecology Commission Regulation 22.
- (G) A landfill may store processed tire materials outdoors if:
- (1) The ADEQ has authorized the use of the processed tire materials as suitable for use in the construction of daily and intermediate cover systems;
 - (2) The use of the processed tire materials does not present a threat to human health and the environment; and
 - (3) The use of the processed tire materials has been shown to control disease, vectors, fires, odors, blowing litter, or scavenging.
- (H) Financial assurance must be obtained as required in Commission Regulation 22, and annual adjustments must be made based on the estimated cost for a third party to perform post closure care.
- (I) An initial permit fee must be submitted with the initial permit application. Annual permit fees shall be assessed according to Commission Regulation 9.
- (J) The quality assurance and quality control procedures for construction shall be according to Commission Regulation 22 and ADEQ-approved design requirements of the permit application.
- (K) Measures to control and prevent storm water from running through or into the active fill area shall be constructed and maintained at the site. No tires shall be deposited in standing water

or within the seasonal groundwater. The permittee shall obtain any required storm water permits from ADEQ's Office of Water Quality.

(L) Best management practices shall be implemented to control erosion and to prevent off-site deposition of sediment, leachate, and waste.

Reg. 36.1402 Cover Requirement

Tires shall be covered at least weekly, or as required by the permit, with earthen cover material or other alternate cover as approved by ADEQ.

Reg. 36.1403 Recordkeeping

(A) The owner or operator of a permitted solid waste disposal site shall record and maintain for three (3) years information regarding their activities.

(B) The records shall be made available for inspection by Department personnel during normal business hours and include, at a minimum, all test results, inspection results, maps, certifications, quality assurance/quality control criteria, and operation and development plans.

Reg. 36.1404 Annual Reporting

Owners and operators of waste tire disposal facilities shall submit to ADEQ an annual report by June 30 that summarizes the information collected regarding their activities. In addition, tire disposal facilities shall meet annual reporting requirements under Commission Regulation 22.

CHAPTER 15: TIRE COLLECTION CENTERS

Reg. 36.1501 Tire Collection Centers

(A) Each Regional Solid Waste Management Regional Board shall establish at least one (1) tire collection center in each county that is served by the used-tire program. The tire collection centers shall be access controlled.

(B) A board may petition ADEQ for a one-time exception and establish a temporary open-collection center for non-profit or household collection events. The approved length of time to operate a temporary open-collection center will be determined on a case-by-case basis.

Reg. 36.1502 Permit Required

(A) A tire collection center general permit is required for any one (1) or more of the following:

(1) A tire retreading business where tires from tire generators, tire transporters, or the public are kept on any real property owned, leased, or otherwise controlled by the tire retreading business prior to being recycled or disposed of by the used-tire program;

(2) A person who in the ordinary course of business removes tires from rims and the tires removed from rims are stored for more than ninety (90) calendar days on any real property owned, leased, or otherwise controlled by the person;

(3) A tire retailer that keeps tires from other tire generators, tire transporters, or the public prior to being recycled or disposed of by the used tire generator on any real property owned, leased, or otherwise controlled by the tire retailer; or

(4) A used-tire program.

(B) The permit shall specify that the tire collection center is an access-controlled collection center and provide details on how the tires are managed.

Reg. 36.1503 Application

(A) Before beginning operation, a tire collection center shall submit a general permit application to ADEQ using Form TAP-6 (General Permit Notification Application) requesting coverage under the General Permit prior to operating.

(B) General permits are valid for a period of five (5) years. A new general permit application must be submitted using Form TAP-6 within forty-five (45) days of the initial general permit's expiration date.

Reg. 36.1504 Disposal Fees

(A) A resident of the District shall not be charged a fee for discarding four (4) or fewer used tires of any size at a tire collection center each month or more often at the discretion of the District.

(B) A tire generator shall not be charged a fee for discarding at a tire collection center the quantity of small tires and large tires equal to the quantity of tires that the tire generator has collected and paid the rim removal fee.

(C) A commercial generator shall not be charged a fee for discarding at a tire collection center the quantity of small tires and large tires equal to the quantity of tires that the commercial generator has collected and paid the commercial generator fee.

(D) Any state or other governmental entity within this state that is required to purchase tires on state contract shall not be charged a fee for discarding at a tire collection center the quantity of small tires and large tires equal to the quantity of tires that the entity can establish that it has paid to a tire generator or commercial generator that is registered with the Arkansas Department of Finance and Administration to collect and pay the rim removal fee or commercial generator fee. The entity may discard the small tires and large tires in a Regional Solid Waste Management District other than the District where the tires were purchased without being charged an additional fee.

Reg. 36.1505 Recordkeeping and Annual Reporting

(A) The owner or operator of a tire collection center shall record and maintain for three (3) years information regarding their activities, which shall be used to annually complete Form TAP-5 (Tire Collection Center and Processing Facility Annual Report) due by June 30 to ADEQ.

(B) Records shall be maintained onsite and available for inspection by ADEQ personnel during normal business hours. Activities to be recorded and maintained include at a minimum:

(1) Any demonstration, certification, finding, monitoring, testing, or analytical data required;

(2) Closure cost estimates and any monitoring, testing, financial assurance records, or analytical data;

(3) Any other records required by Commission Regulation 36; and

(4) All records and schedules shall also be available for review.

Reg. 36.1506 Inspections

(A)(1) The owner or operator must inspect its facility for malfunctions and deterioration, operator errors, and discharges that may be causing or lead to:

(a) Release of hazardous constituents to the environment; or

(b) A potential threat to human health or the environment.

(2) The owner or operator must conduct these inspections to identify problems in time to correct them before harm to human health or the environment occurs.

(B)(1) The owner or operator must develop and follow a written schedule for inspecting all equipment, safety and emergency equipment, security devices, operating equipment, and site conditions, including tire storage areas, vegetative growth, berms, and buildings that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) The inspection frequency should be no less than weekly. These inspection records must include the date and time of the inspection, the name of the employee conducting the inspection, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

(3) The inspection records must be maintained on-site for a period of three (3) calendar years.

(4) The owner or operator must remedy any deterioration or malfunction of equipment, security devices, emergency equipment, or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately in accordance with ADEQ-approved emergency preparedness plan.

Reg. 36.1507 Permit Fee

(A) An initial permit fee of two hundred dollars (\$200) is due at the time of submitting the general permit notification Form TAP-6.

(B) An annual tire collection center permit fee of fifty dollars (\$50) is due on June 30 along with the submittal of the annual report (Form TAP-5).

Reg. 36.1508 Storage

(A) A permitted tire collection center may collect a maximum of five thousand (5,000) loose tires or a maximum of ten thousand (10,000) compacted and baled tires at the site.

(B) A tire collection center must comply with the following technical and operational standards:

(1)(a) Not be constructed, maintained, or operated in or within two hundred feet (200') of any wetland, transitional wetland, or isolated wetlands.

(b) A person may maintain a tire storage area within the two hundred-foot setback upon demonstration to ADEQ that permanent control methods for residuals will result in compliance with water quality standards of ADEQ.

(c) Storm water control methods shall meet storm water requirements of ADEQ.

(d)(i) The tire storage area shall be designed and managed to divert storm water or flood waters around and away from the tire storage areas.

(ii) Specifically, if an open-top container or trailer is used as a tire storage area at a tire collection center, a storm water permit will not be required if the container or trailer is covered with a tarp or placed under some type of constructed cover during inclement weather or when the business is closed.

(iii) If the tire storage area is open, uncovered, or not enclosed on all sides of the container or trailer, a storm water permit from the Office of Water Quality of ADEQ will be required unless approval is received, in writing, from the Office of Water Quality that a permit is not required.

(C) Tire storage areas must have clear signage that indicates the type of used tire in the tire storage areas. The types of tires are waste tires, used tires culled for resale, and recyclable tires. If the tires are not segregated with clear signage, used tires culled for resale and recyclable tires shall be determined to be waste tires for enforcement purposes under this regulation.

(D) Tire storage areas must have dimensions that are no greater than the following maximum dimensions:

- (1) Width: Fifty feet (50'); and
- (2) Length: One hundred feet (100'); and
- (3) Height: Fifteen feet (15').

(E) Tire storage areas must have a fire lane that is fifty feet (50') wide around the perimeter of each tire storage area and unobstructed access to the fire lane for emergency vehicles at all times.

(F)(1) The owner or operator shall develop and implement a program to control mosquitoes and rodents or request control measures from the local mosquito and vector control office to protect the public health and welfare.

(2) Mosquito control measures may include any one (1) or more of the following to be used during inclement weather or when the business is closed:

- (a) Covering the storage site, tire pile, container, or trailer used for the collection and storage of any combination of waste tires, used tires culled for resale, and recyclable tires with a tarp; or
- (b) Placing any used tires under some type of constructed cover.

(G) If the storage site receives tires from persons other than the operator of the storage site, a sign shall be posted at the entrance that is legible from a distance of twenty feet (20') and that states operating hours, cost of disposal, and storage site rules.

(H) Operations involving the use of open flames shall not be conducted within twenty-five feet (25') of a tire storage area.

(I) An approach and all weather access road to the tire storage areas shall be kept passable for any motor vehicle at all times.

(J) Access to the site shall be controlled through the use of fences, gates, natural barriers, or other means approved by ADEQ. However, at tire collection centers where used tires are collected and stored in containers and trailers, the installation of a fence will not be necessary if the tire collection center uses another method that is approved by ADEQ.

(K)(1) Tire storage areas must have surface water run-on/run-off controls, such as berms and ditches, to prevent surface water from entering the area and to prevent liquid runoff from a potential tire fire from leaving the site or entering surrounding water bodies.

(2)(a) A tire collection center that allows tires to be deposited on the ground or a concrete slab must have surface water run-on/run-off controls.

(b) A tire collection center that uses any type of container or trailer for collection and storage is not required to berm the tire storage areas.

(L) Fire protection services for the site shall be assured and documented in the operating records through notification to local fire protection authorities. A fire safety survey shall be conducted by the local fire protection authorities annually.

(M) Communication equipment shall be maintained to assure that the operator can contact local fire protection and emergency authorities in case of a fire.

(N) Tire storage areas must be kept free of grass, underbrush, and other potentially flammable vegetation at all times.

(O) The operator shall prepare and keep at the site an emergency preparedness manual. The manual shall be updated at least once a year and more frequently if there are changes in operations at the site.

(P) The operator of the site shall immediately notify ADEQ of a fire or other emergency if that emergency has potential off-site effects and submit a written report within two (2) weeks of the fire or other emergency.

(Q) Adequate equipment to aid in the control of fires shall be provided and maintained at the facility at all times.

(R) The operator of the site shall maintain records of the quantity of used tires and used tire materials received at the site, stored at the site, and shipped from the site.

(S) The minimum separation distances between exposed buildings and tire piles or between isolated tire piles shall comply with National Fire Protection Association Standards.

Reg. 36.1509 Entry

Access to the site shall be controlled through the use of fences, gates, natural barriers, or other means approved by ADEQ. However, at tire collection centers where used tires are collected and stored in containers and trailers, the installation of a fence will not be necessary if the tire collection center uses another method of control that is approved by ADEQ.

Reg. 36.1510 Vector Control

An approved vector control program must be operational at all times for tires stored outdoors.

Reg. 36.1511 Permit Transfers

General permits are not transferrable.

Reg. 36.1512 Financial Assurance

(A) Financial assurance is not required for tire collection centers at the time of applying for and receiving a general permit. However, during the period of general permit coverage, ADEQ may determine financial assurance is warranted and require the permittee to file and maintain financial assurance.

(B) If the permittee is notified in writing by ADEQ to provide financial assurance, the amount to be acquired will be based on the estimated cost of third party closure.

(C) If the permittee has been notified financial assurance is required, the permit coverage is only effective after the financial assurance documents have been filed with ADEQ and approved.

(D) Financial assurance mechanisms should be selected from those listed in Commission Regulation 22.

CHAPTER 16: TIRE PROCESSING FACILITIES

Reg. 36.1601 Permit Required

(A) A tire processing facility shall obtain a site-specific permit prior to construction or operation commencement using Form TAP-4.

(B) A tire processing facility used for processing not more than five hundred (500) used tires during any thirty (30) calendar days using mobile equipment shall operate pursuant to a general permit.

(C) To obtain coverage under a general permit, the owners and operators of qualifying facilities or mobile equipment shall notify ADEQ on Form TAP-6 thirty (30) calendar days before the operation begins.

(D) Owners or operators of mobile baling, chopping, cutting, shredding, or any other processing equipment must annually report to ADEQ by June 30 describing their activities from the period of July 1 through June 30 of the previous state fiscal year. This annual report shall be submitted using Form TAP-5. The annual permit fee is one hundred dollars (\$100) and shall be submitted to ADEQ at the time of the annual report submission.

(E) The general permits issued under this chapter are valid for five (5) years. A new notice of intent, using Form TAP-6, shall be submitted to ADEQ within forty-five (45) calendar days of the existing general permit expiring.

(F) Within thirty (30) calendar days after the completion of the chopping, cutting, or shredding operation, all processed used tires and residuals are:

- (1) Removed from the waste tire site or tire collection center for recycling or further processing; or
- (2) Disposed of in a permitted solid waste management facility.

Reg. 36.1602 Storage

(A) All whole tires, used tires, waste tires, recyclable tires, used tires culled for resale, tire bales, processed tires, and residuals shall be stored in accordance with the tire storage requirements in this regulation. Tires received for processing, but remaining on trailers for a period of time, are also subject to the tire storage requirements of this regulation.

(B) A tire processing facility may not accept any used tires for processing if it has reached its storage limit, whether stored outdoor, indoor, or on a trailer. The storage limit for a tire processing facility is thirty (30) times the daily capacity of the processing equipment used. Owners or operators of tire processing facilities shall provide processing equipment specifications in their permit application or permit modifications from which daily capacity may be determined. In extraordinary cases, such as where a specific project requires a large accumulation of baled or shredded tires to complete an alternative end use initiative, ADEQ shall have the authority to increase the storage limit if all other requirements of this regulation are met.

(C) A tire processing facility must comply with the following technical and operational standards:

(1)(a) Not be constructed, maintained, or operated in or within two hundred feet (200') of any wetland, transitional wetland, or isolated wetlands.

(b) A person may maintain a tire storage area within the two hundred-foot setback upon demonstration to ADEQ that permanent control methods for residuals will result in compliance with water quality standards of ADEQ.

(c) Storm water control methods shall meet storm water requirements of ADEQ.

(d)(i) The tire storage area shall be designed and managed to divert storm water or flood waters around and away from the tire storage areas.

(ii) If the tire storage area is open, uncovered, or not enclosed on all sides of the container or trailer, a storm water permit from the Office of Water Quality of ADEQ will be required unless approval is received, in writing, from the Office of Water Quality that a permit is not required.

(D) Tire storage areas must have clear signage that indicates the type of used tire in the tire storage areas. The types of tires are waste tires, used tires culled for resale, and recyclable tires. If the tires are not segregated with clear signage, used tires culled for resale and recyclable tires shall be determined to be waste tires for enforcement purposes under this regulation.

(E) Tire storage areas must have dimensions that are no greater than the following maximum dimensions:

(1) Width: fifty feet (50');

(2) Length: one hundred feet (100'); and

(3) Height: fifteen feet (15').

(F) Tire storage areas must have a fire lane that is fifty feet (50') wide around the perimeter of each tire storage area and unobstructed access to the fire lane for emergency vehicles at all times.

(G)(1) The owner or operator shall develop and implement a program to control mosquitoes and rodents or request control measures from the local mosquito and vector control office to protect the public health and welfare.

(2) Mosquito control measures may include any one (1) or more of the following to be used during inclement weather or when the business is closed:

(a) Covering the storage site, tire pile, container, or trailer used for the collection and storage of any combination of waste tires, used tires culled for resale, and recyclable tires with a tarp; or

(b) Placing any used tires under some type of constructed cover.

(H) If the storage site receives tires from persons other than the operator of the storage site, a sign shall be posted at the entrance that is legible from a distance of twenty feet (20') and that states operating hours, cost of disposal, and storage site rules.

(I) Operations involving the use of open flames shall not be conducted within twenty-five feet (25') of a tire storage area.

(J) An approach and all weather access road to the tire storage areas shall be kept passable for any motor vehicle at all times.

(K) Access to the site shall be controlled through the use of fences, gates, natural barriers, or other means approved by ADEQ. However, at tire processing facilities where used tires are collected and stored in containers and trailers, the installation of a fence will not be necessary if the tire collection center uses another method that is approved by ADEQ.

(L)(1) Tire storage areas must have surface water run-on/run-off controls, such as berms and ditches, to prevent surface water from entering the area and to prevent liquid runoff from a potential tire fire from leaving the site or entering surrounding water bodies.

(2)(a) A tire processing area that allows tires to be deposited on the ground or a concrete slab must have surface water run-on/run-off controls.

(b) A tire processing area that uses any type of container or trailer for collection and storage is not required to berm the tire storage areas.

(M) Fire protection services for the site shall be assured and documented in the operating records through notification to local fire protection authorities. A fire safety survey shall be conducted by the local fire protection authorities annually.

(N) Communication equipment shall be maintained to assure that the operator can contact local fire protection and emergency authorities in case of a fire.

(O) Tire storage areas must be kept free of grass, underbrush, and other potentially flammable vegetation at all times.

(P) The operator shall prepare and keep at the site an emergency preparedness manual. The manual shall be updated at least once a year and more frequently if there are changes in operations at the site.

(Q) The operator of the site shall immediately notify ADEQ of a fire or other emergency if that emergency has potential off-site effects and submit a written report within two (2) weeks of the fire or other emergency.

(R) Adequate equipment to aid in the control of fires shall be provided and maintained at the facility at all times.

(S) The operator of the site shall maintain records of the quantity of used tires and used tire materials received at the site, stored at the site, and shipped from the site.

(T) The minimum separation distances between exposed buildings and tire piles or between isolated tire piles shall comply with National Fire Protection Association Standards.

Reg. 36.1603 Duration

At least seventy-five percent (75%) of both the used tires and processed tires that are contained on the property of the tire processing facility must either be processed and removed from the

facility during the year received for recycling or disposal or disposed of at an off-site permitted solid waste management facility.

Reg. 36.1604 Recordkeeping

(A) The owner or operator of a tire processing facility shall record and maintain information regarding their activities for three (3) years. The records shall be available for inspection by Department personnel during normal business hours.

(B) Activities to be recorded and maintained include, at a minimum:

- (1) Any demonstration, certification, finding, monitoring, testing, or analytical data required;
- (2) Closure and post-closure care plans, cost estimates, and any monitoring, testing, financial assurance records, or analytical data;
- (3) Any other records required by Commission Regulation 36; and
- (4) All records and schedules shall also be available for review.

Reg. 36.1605 Inspections

(A)(1) The owner or operator must inspect its facility for malfunctions and deterioration, operator errors, and discharges which may be causing or lead to:

- (a) Release of hazardous constituents to the environment; or
- (b) A potential threat to human health or the environment.

(2) The owner or operator must conduct these inspections to identify problems in time to correct them before harm to human health or the environment occurs.

(B)(1) The owner or operator must develop and follow a written schedule for inspecting all equipment, safety and emergency equipment, security devices, operating equipment, and site conditions, including tire storage areas, vegetative growth, berms, and buildings that are important to preventing, detecting, or responding to environmental health or human health hazards.

(2) The inspection frequency should be no less than weekly. These inspection records must include the date and time of the inspection, the name of the employee conducting the inspection, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

(3) The inspection records must be maintained on-site for a period of three (3) calendar years.

(4) The owner or operator must remedy any deterioration or malfunction of equipment, security devices, emergency equipment, or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately in accordance with ADEQ-approved emergency preparedness plan.

Reg. 36.1606 Vector Control

An approved vector control program must be operational at all times for tires stored outdoors.

Reg. 36.1607 Emergency Preparedness

(A) The owner or operator of a tire processing facility shall submit for review and approval an emergency preparedness plan that adequately mitigates all fire hazards and provides for the safety and health of all persons who may be potentially affected by a fire event at the tire processing facility. Once approved by ADEQ, the plan shall be implemented in the event of an emergency.

(B) Communication equipment shall be maintained at all tire processing facilities to ensure that the site operator can contact local fire protection authorities in the event of fire.

(C) Equipment to aid in the control of fires must be provided and maintained at the tire processing facility at all times. An adequate water supply shall be available for use by the local fire authority.

Reg. 36.1608 Operator License Requirement

An operator at a tire processing facility shall be licensed as solid waste management facility operator in accordance with Arkansas Pollution Control and Ecology Commission Regulation No. 27.

Reg. 36.1609 Application and Annual Permit Fees

(A) Applications for a site-specific tire processing facility permit shall be submitted to ADEQ using Form TAP-4 (Used Tire Collection and Processing Facility Permit Application). Engineering components of the tire processing facility shall be designed and approved by a professional engineer licensed in the State of Arkansas.

(B) Notification for a general permit for mobile tire processing equipment shall be submitted to ADEQ using Form TAP-6 (General Permit Notification).

(C) The site specific tire processing facility initial permit fee is two hundred fifty dollars (\$250). The permit fee is to be submitted with the permit application.

(D) The site specific tire processing facility annual permit fee is two hundred fifty dollars (\$250) and is due each year on June 30 with the annual report (Form TAP-5).

(E) The mobile tire processing equipment initial general permit fee is two hundred dollars (\$200). The general permit fee is to be submitted with the permit notification (Form TAP-6).

(F) The mobile tire processing equipment annual general permit fee is fifty dollars (\$50) and is due each year on June 30 with the annual report (Form TAP-5).

Reg. 36.1610 Disclosure Statement

The applicant shall file a disclosure statement at the time the application is submitted.

Reg. 36.1611 Permit Transfers

A site-specific permit for a tire processing facility may be transferred if the current permittee submits an administratively and technically complete application including the following:

- (1) A written request for the permit transfer;
- (2) A certification by the current permittee that all facility engineering designs, operational plans, and other permit application documents have or will be furnished to the proposed permittee prior to permit transfer, as well as certification that the facility was constructed according to design;
- (3) Adequate documentation from the current permittee showing that the proposed permittee shall have ownership or control of the site for which transfer of permits is being requested;
- (4) A completed disclosure statement of the proposed permittee;
- (5) A permit transfer fee in accordance with ADEQ's current fee schedule as found in the Arkansas Pollution Control and Ecology Commission Regulation No. 9; and
- (6) Proof financial assurance is submitted within thirty (30) calendar days of the documented date prior to asset transfer.

Reg. 36.1612 Annual Reporting

An owner or operator of a tire processing facility shall submit to ADEQ an annual report by June 30 that summarizes information on the activities of the tire processing facility. The report shall be submitted to ADEQ using Form TAP-5 (Used Tire Collection and Processing Facility Annual Report).

Reg. 36.1613 Closure Plan

(A) All site-specific permits shall include a closure plan.

(B) The closure plan shall include:

- (1) A written description of how the closure requirements will be met;
- (2) A closure schedule, including time period for completion;
- (3) A plan for site rehabilitation;
- (4) Proof of financial assurance; and
- (5) Measures for submitting annual cost estimate adjustments using the current inflation factor.

Reg. 36.1614 Closure Approval

After receiving written notification that site closure is complete, ADEQ shall inspect the site. If the closure is found to meet the terms of the approved closure plan and regulations, ADEQ shall approve the closure in writing. The Director or designee shall release the financial instruments within thirty (30) calendar days of ADEQ approving closure.

Reg. 36.1615 Financial Assurance

(A) Owners or operators of used tire processing facilities must file and maintain financial assurance of closure with ADEQ as set forth in Commission Regulation 22. Owners or operators of mobile tire processing equipment, that are required by the Director to post financial assurance, shall select a financial assurance mechanism from those allowable mechanisms identified in Reg. 22.

(B) The amount of financial assurance required of the owner or operator shall be established by the Director or designee based upon the estimated closure costs. This required amount may be adjusted to take into account any changes in the requirements of the permit.

(C) Within ten (10) calendar days after the final decision to issue a permit for a new used tire processing facility, the Director shall notify the permittee in writing of the amount of financial assurance required. Before the permit can be effective, the permittee must file with ADEQ, the amount of financial assurance required.

(D) For used tire processing facilities that seek to utilize an incremental plan, the permittee may initially request financial assurance covering only closure cost. The permittee must, at least thirty (30) calendar days prior to beginning operation of a subsequent increment not covered by financial assurance, file adequate assurance for that increment with ADEQ.

(E) Financial assurance is not required for mobile tire processing equipment at the time of applying for and receiving a general permit. However, during the period of general permit coverage, ADEQ may determine financial assurance is warranted and require the permittee to file and maintain financial assurance. If the general permittee is notified in writing by ADEQ to provide financial assurance, the amount to be acquired will be based on the estimated cost of third party closure. If the general permittee has been notified financial assurance is required, the general permit coverage is only effective after the financial assurance documents have been filed with ADEQ and approved.

CHAPTER 17: REPEALER, SEVERABILITY, AND EFFECTIVE DATES

Reg. 36.1701 Repealer

All regulations and parts of regulations currently promulgated by the Arkansas Pollution Control and Ecology Commission that are in conflict with this regulation are repealed to the extent of the conflict.

Reg. 36.1702 Severability

The provisions of this regulation are severable. If any part of this regulation is declared invalid or unenforceable by a court, the remainder of the regulation will continue to be valid and enforceable.

Reg. 36.1703 Effective Date

This regulation shall be effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.

Exhibit B:

Governor's Approval

Evyan, Janelle

From: Justin Tate <Justin.Tate@governor.arkansas.gov>
Sent: Thursday, January 25, 2018 10:06 AM
To: Evyan, Janelle
Subject: RE: A - Markup Permanent Reg 36 - 1-10-2018 TOC

Janelle,

The Governor has approved this regulation for permanent rulemaking initiation with the Arkansas Pollution Control and Ecology Commission (APC&EC). The Governor has also approved this for emergency rulemaking review and approval before the Executive Subcommittee of Arkansas Legislative Council and emergency rulemaking adoption by the APC&EC. The Governor will continue to review this regulation as both rulemaking processes proceed and may have further input before final adoption by the APC&EC. Please check back with this office before final adoption of the both the emergency rule and permanent rule.

Best,

Justin
Director of Rules and Regulatory Affairs
Office of Governor Asa Hutchinson
(501) 682-8040

Exhibit D:

Financial Impact Statement

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Environmental Quality (ADEQ) by and through the
Arkansas Pollution Control and Ecology Commission (APC&EC)

DIVISION Office of Land Resources (OLR)

PERSON COMPLETING THIS STATEMENT Kevin White, Associate Director, OLR

TELEPHONE (501) 682-0962 FAX (501) 682-0565 EMAIL: white@adeq.state.ar.us

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE APC&EC Regulation No. 36: Used Tire Recycling and
Accountability Program

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;
N/A

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>\$ 0.00</u>
Federal Funds	<u>\$ 0.00</u>
Cash Funds	<u>\$ 0.00</u>
Special Revenue	<u>\$ 0.00</u>
Other (Identify)	<u>\$ 0.00</u>

Next Fiscal Year

General Revenue	<u>\$ 0.00</u>
Federal Funds	<u>\$ 0.00</u>
Cash Funds	<u>\$ 0.00</u>
Special Revenue	<u>\$ 0.00</u>
Other (Identify)	<u>\$ 0.00</u>

Total \$0.00

Total \$0.00

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	\$ 0.00
Federal Funds	\$ 0.00
Cash Funds	\$ 0.00
Special Revenue	\$ 0.00
Other (Identify)	\$ 0.00
Total	\$ 0.00

Next Fiscal Year

General Revenue	\$ 0.00
Federal Funds	\$ 0.00
Cash Funds	\$ 0.00
Special Revenue	\$ 0.00
Other (Identify)	\$ 0.00
Total	\$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. _____

Current Fiscal Year

\$ 000000

Next Fiscal Year

\$ 000000

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ \$ 0.00

Next Fiscal Year

\$ \$ 0.00

Any implementation cost for the rule is funded by tire fees that are required to be collected under Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., and are collected as special revenue. Available funding for the program is limited to the special revenues collected.

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more _____ of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Exhibit E:

Proposed Minute Order

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Petition to Initiate
Rulemaking - Regulation No. 36**

Docket No. 18-002-R

MINUTE ORDER NO. 18-

PAGE 1 OF 3

On January 12, 2018, the Arkansas Department of Environmental Quality (ADEQ) filed a Petition to Initiate Rulemaking to Permanently Amend Emergency Rulemaking for Regulation No. 36: Used Tire Recycling and Accountability Program. The Petition has been designated as Docket No. 18-002-R.

The Commission met on January 26, 2018, to review the Petition and institute a rulemaking proceeding to consider adopting the proposed permanent amendments to Regulation No. 36. The Commission also recommends adoption for the following procedures and schedule:

1. ADEQ will file an original and three (3) copies and an electronic version of all materials required under this Minute Order.
2. ADEQ will publish notice of this rulemaking in a newspaper of general circulation for two (2) consecutive days.
3. A public hearing will be conducted on February 27, 2018, at 2:00 p.m. in the Commission Room, 5301 Northshore Drive, North Little Rock, Arkansas.
4. The period for receiving all written comments concludes ten (10) business days after the date of the public hearing, at 4:30 p.m. (Central Time) on March 15, 2018, unless an extension of time is granted. Persons submitting written public comments shall submit them to ADEQ. ADEQ will deliver public comments to the Commission Secretary within ten (10) business days after the close of public comments. ADEQ shall file a Responsive Summary before the proposed rule is submitted to the Legislative Council for review.
5. ADEQ shall seek review of the proposed rulemaking by the Joint Interim Committee on Public Health and Welfare and the Administrative Rules and Regulations Subcommittee of Legislative Council. If the General Assembly is in session and chooses to review the proposed regulatory amendments, ADEQ may seek review by the designated committees and subcommittees. Since this permanent rulemaking process cannot be finalized before the current emergency rulemaking expires, ADEQ is authorized to seek review and approval by the Executive Subcommittee of Arkansas Legislative Council for possible necessary successive emergency rulemaking that is substantially similar to the draft markup filed for this rulemaking.
6. After legislative review, ADEQ shall file with the Commission a Statement of Basis and Purpose as required by Reg.8.815. In addition, ADEQ shall file a proposed Minute Order deciding this matter.
7. The Commission may consider this matter at the June 2018 meeting. If the appropriate legislative committees do not complete review and approval of the proposed rule by this date, the Commission will consider the proposed amendments to the regulation after review by the

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to Initiate
Rulemaking - Regulation No. 36

Docket No. 18-002-R

MINUTE ORDER NO. 18-

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legislative committees. The Commission may ask questions of any persons who made oral or written comments.

8. At the Commission meeting, the presentation of oral statements and legal arguments will be regulated as follows:

a. The Chair of the Commission will permit members of the public to make an oral statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the one (1) hour oral statement period may be extended.

b. At the discretion of the Chair, an attorney representing one (1) or more individuals, a corporation, or other legal entity may be permitted five (5) minutes to address the Commission.

c. ADEQ shall be permitted ten (10) minutes to address the Commission.

d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present for any questions they have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

e. After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

9. The Commission finds that the provision of Reg.8.812 do not apply and an Economic Impact/Environmental Benefit Analysis is not required because this proposed regulation incorporates and adopts language of an Arkansas state statute without substantive change.

The Commission hereby initiates the rulemaking proceeding into this docket. The Commission adopts, without modification, the procedural schedule set forth above.

BY: _____
Miles Goggans, Chair

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to Initiate
Rulemaking - Regulation No. 36

Docket No. 18-002-R

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COMMISSIONERS

L. Bengal
J. Chamberlin
C. Colclasure
J. Fox
C. Gardner
B. Holland

D. Melton
S. Moss, Jr.
R. Reynolds
W. Stites
G. Wheeler
B. White

M. Goggans - Chair

SUBMITTED BY: Kevin White PASSED: _____

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to Initiate
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The Commission met on January 26, 2018, to review the Petition and institute a rulemaking proceeding to consider adopting the proposed permanent amendments to Regulation No. 36. The Commission also recommends adoption for the following procedures and schedule:

1. ADEQ will file an original and three (3) copies and an electronic version of all materials required under this Minute Order.
2. ADEQ will publish notice of this rulemaking in a newspaper of general circulation for two (2) consecutive days.
3. A public hearing will be conducted on February 27, 2018, at 2:00 p.m. in the Commission Room, 5301 Northshore Drive, North Little Rock, Arkansas.
4. The period for receiving all written comments concludes ten (10) business days after the date of the public hearing, at 4:30 p.m. (Central Time) on March 15, 2018, unless an extension of time is granted. Persons submitting written public comments shall submit them to ADEQ. ADEQ will deliver public comments to the Commission Secretary within ten (10) business days after the close of public comments. ADEQ shall file a Responsive Summary before the proposed rule is submitted to the Legislative Council for review.
5. ADEQ shall seek review of the proposed rulemaking by the Joint Interim Committee on Public Health and Welfare and the Administrative Rules and Regulations Subcommittee of Legislative Council. If the General Assembly is in session and chooses to review the proposed regulatory amendments, ADEQ may seek review by the designated committees and subcommittees.
6. After legislative review, ADEQ shall file with the Commission a Statement of Basis and Purpose as required by Reg.8.815. In addition, ADEQ shall file a proposed Minute Order deciding this matter.
7. The Commission may consider this matter at the May 2018 meeting. If the appropriate legislative committees do not complete review and approval of the proposed rule by this date, the Commission will consider the proposed amendments to the regulation after review by the legislative committees. The Commission may ask questions of any persons who made oral or written comments.

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to Initiate
Rulemaking - Regulation No. 36

Docket No. 18-____-R

MINUTE ORDER NO. 18-

PAGE 2 OF 3

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a. The Chair of the Commission will permit members of the public to make an oral statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the one (1) hour oral statement period may be extended.

b. At the discretion of the Chair, an attorney representing one (1) or more individuals, a corporation, or other legal entity may be permitted five (5) minutes to address the Commission.

c. ADEQ shall be permitted ten (10) minutes to address the Commission.

d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present for any questions they have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

e. After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

9. The Commission finds that the provision of Reg.8.812 do not apply and an Economic Impact/Environmental Benefit Analysis is not required because this proposed regulation incorporates and adopts language of an Arkansas state statute without substantive change.

The Commission hereby initiates the rulemaking proceeding into this docket. The Commission adopts, without modification, the procedural schedule set forth above.

BY: _____
Miles Goggans, Chair

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to Initiate
Rulemaking - Regulation No. 36

Docket No. 18-____-R

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COMMISSIONERS

____ L. Bengal
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____ J. Fox
____ C. Gardner
____ B. Holland

____ D. Melton
____ S. Moss, Jr.
____ R. Reynolds
____ W. Stites
____ G. Wheeler
____ B. White

____ SUBMITTED BY: Kevin White PASSED: _____
M. Goggans - Chair

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to Initiate
Rulemaking - Regulation No. 36

Docket No. 18-002-R

MINUTE ORDER NO. 18-06

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On January 12, 2018, the Arkansas Department of Environmental Quality (ADEQ) filed a Petition to Initiate Rulemaking to Permanently Amend Emergency Rulemaking for Regulation No. 36: Used Tire Recycling and Accountability Program. The Petition has been designated as Docket No. 18-002-R.

The Commission met on January 26, 2018, to review the Petition and institute a rulemaking proceeding to consider adopting the proposed permanent amendments to Regulation No. 36. The Commission also recommends adoption for the following procedures and schedule:

1. ADEQ will file an original and three (3) copies and an electronic version of all materials required under this Minute Order.

2. ADEQ will publish notice of this rulemaking in a newspaper of general circulation for two (2) consecutive days.

3. A public hearing will be conducted on February 27, 2018, at 2:00 p.m. in the Commission Room, 5301 Northshore Drive, North Little Rock, Arkansas.

4. The period for receiving all written comments concludes ten (10) business days after the date of the public hearing, at 4:30 p.m. (Central Time) on March 15, 2018, unless an extension of time is granted. Persons submitting written public comments shall submit them to ADEQ. ADEQ will deliver public comments to the Commission Secretary within ten (10) business days after the close of public comments. ADEQ shall file a Responsive Summary before the proposed rule is submitted to the Legislative Council for review.

5. ADEQ shall seek review of the proposed rulemaking by the Joint Interim Committee on Public Health and Welfare and the Administrative Rules and Regulations Subcommittee of Legislative Council. If the General Assembly is in session and chooses to review the proposed regulatory amendments, ADEQ may seek review by the designated committees and subcommittees. Since this permanent rulemaking process cannot be finalized before the current emergency rulemaking expires, ADEQ is authorized to seek review and approval by the Executive Subcommittee of Arkansas Legislative Council for possible necessary successive emergency rulemaking that is substantially similar to the draft markup filed for this rulemaking.

6. After legislative review, ADEQ shall file with the Commission a Statement of Basis and Purpose as required by Reg. 8.815. In addition, ADEQ shall file a proposed Minute Order deciding this matter.

7. The Commission may consider this matter at the June 2018 meeting. If the appropriate legislative committees do not complete review and approval of the proposed rule by this date, the Commission will consider the proposed amendments to the regulation after review by the

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to Initiate
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legislative committees. The Commission may ask questions of any persons who made oral or written comments.

8. At the Commission meeting, the presentation of oral statements and legal arguments will be regulated as follows:

a. The Chair of the Commission will permit members of the public to make an oral statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the one (1) hour oral statement period may be extended.

b. At the discretion of the Chair, an attorney representing one (1) or more individuals, a corporation, or other legal entity may be permitted five (5) minutes to address the Commission.

c. ADEQ shall be permitted ten (10) minutes to address the Commission.

d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present for any questions they have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

e. After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

9. The Commission finds that the provision of Reg.8.812 do not apply and an Economic Impact/Environmental Benefit Analysis is not required because this proposed regulation incorporates and adopts language of an Arkansas state statute without substantive change.

The Commission hereby initiates the rulemaking proceeding into this docket. The Commission adopts, without modification, the procedural schedule set forth above.

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION


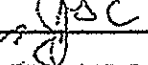
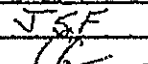
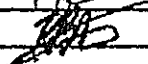


SUBJECT: Petition to Initiate
Rulemaking - Regulation No. 36


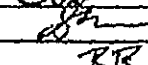
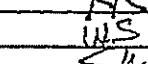
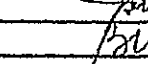


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COMMISSIONERS

	L. Bengal
	J. Chamberlin
	C. Colclasure
	J. Fox
	C. Gardner
	B. Holland

	D. Melton
	S. Moss, Jr.
	R. Reynolds
	W. Stites
	G. Wheeler
	B. White

 SUBMITTED BY: Kevin White PASSED: 01/26/2018
M. Goggans - Chair

**NOTICE OF PROPOSED REGULATION CHANGES,
PUBLIC HEARING, AND PUBLIC COMMENT PERIOD**

The Arkansas Pollution Control and Ecology Commission (APC&EC) will hold a public hearing in North Little Rock on February 27, 2018, to receive comments on proposed amendments to emergency APC&EC Regulation 36 (Used Tire Recycling and Accountability Program). The hearing will begin at 2:00 p.m. in the Commission Room at the Arkansas Department of Environmental Quality (ADEQ) headquarters building, 5301 Northshore Drive, North Little Rock, AR 72118. The deadline for submitting written comments on the proposed regulation is 4:30 p.m. (Central Time) March 15, 2018.

In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearing. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period. APC&EC authority for the new Regulation 36 is Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*

The proposed amendments simplify the name of the program to the Tire Accountability Program (TAP); provide comprehensive program administration information in compliance with Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, to include provisions for permitting, licensing, enforcement, and beneficial uses; remove preliminary implementation dates and deadlines that reference 2017; add references to new or renamed forms; and make minor revisions to include correcting typographical, grammatical, formatting, and stylistic errors throughout the emergency regulation. The complete filing with the APC&EC related to the proposed changes to Regulation 36 can be found on the Draft Regulations page on ADEQ's website at www.adeq.state.ar.us/regs/draft_regs.aspx.

Copies of the proposed changes to Regulation 36 are available for public inspection during regular business hours at the ADEQ headquarters building, 5301 Northshore Drive, North Little Rock, AR 72118, or at ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway.

Oral and written comments will be accepted at the hearing, but written comments are preferred in the interest of accuracy. In addition, written and electronic mail comments will be considered if received no later than 4:30 p.m. (Central Time) March 15, 2018. Written comments should be delivered or mailed to: Kelly Robinson, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic mail comments should be sent to: reg-comment@adeq.state.ar.us.

Published January 30 and 31, 2018

Becky W. Keogh, Director,

Arkansas Department of Environmental Quality



State of Arkansas
Bureau of
Legislative Research

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Richard Wilson, Assistant Director
for Research Services

Memorandum

TO: Members, ALC – Executive Subcommittee

FROM: Rebecca Miller-Rice, Legislative Attorney, Administrative Rules Review Section, Legal Services Division

CC: Marty Garrity, Director, Bureau of Legislative Research;
Jessica Sutton, Administrator, Administrative Rules Review Section,
Legal Services Division

DATE: February 12, 2018

SUBJECT: Legal Authorization for Emergency Promulgation of Regulation No. 36:
Tire Accountability Program by the Arkansas Department of
Environmental Quality, Arkansas Pollution Control and Ecology
Commission

This second and subsequent emergency rulemaking continues the implementation of Act 317 of 2017, which created the Used Tire Recycling and Accountability Program. Pursuant to Arkansas Code Annotated § 8-9-414(a), as amended by Act 317, § 1, the Arkansas Pollution Control and Ecology Commission (“Commission”) shall promulgate regulations to carry out the intent and purposes of the Used Tire Recycling and Accountability Act (“Act”), codified at Ark. Code Ann. §§ 8-9-401 through 8-9-415, as amended by Act 317, § 1. The regulations shall: (1) provide for the administration of permits for tire processing facilities, tire collection centers, commercial generators, and any other person or entity that collects, receives, processes, recycles, or disposes of used tires regulated under the Act with the maximum permit fee not to exceed two hundred fifty dollars (\$250) annually;¹ (2) establish standards for tire processing facilities, tire collection centers, tire transporters, and beneficial use projects; (3) establish procedures for administering reimbursements to used tire programs under Ark. Code Ann. § 8-9-405; (4) unless otherwise

¹ The maximum permit fee shall not apply to tire transporters. See Ark. Code Ann. § 8-9-414(b)(1)(B), as amended by Act 317, § 1.

provided by law, authorize the final disposition of waste tires at a permitted solid waste disposal facility if the waste tires have been cut into sufficiently small parts for proper disposal and in compliance with the Act and all other applicable provisions in Title 8 of the Arkansas Code; (5) establish procedures for administering the electronic uniform used tire manifest system; (6) establish accountability procedures for the sustainability of used tire programs operated under the Act; and (7) establish the number of tires that each individual who is a resident of a regional solid waste management district may discard monthly without a fee.² *See* Ark. Code Ann. § 8-9-414(b), as amended by Act 317, § 1.

The Commission may further: (1) develop an alternative tire transporter licensing program to be administered by used tire programs, regional solid waste management boards, or both; (2) promulgate regulations that are necessary to administer the fees and reimbursement rates for services provided under the Act by the used tire programs; and (3) clarify and add definitions for sizes of tires using technical information and specifications. *See* Ark. Code Ann. § 8-9-414(c), as amended by Act 317, § 1. The Commission shall additionally encourage the establishment of voluntary tire collection centers where used tires generated in Arkansas can be deposited, which shall include without limitation tire retailers, tire processing facilities, and solid waste disposal facilities, but shall not include the collection of tires generated by a tire manufacturer. *See* Ark. Code Ann. § 8-9-414(d), as amended by Act 317, § 1. Finally, the Commission shall not prohibit the disposal of waste tires in landfills or monofills for three (3) years from August 1, 2017. *See* Ark. Code Ann. § 8-9-414(e), as amended by Act 317, § 1.

² The maximum number of tires under this provision shall not be more than four (4) tires per month. *See* Ark. Code Ann. § 8-9-414(b)(7)(B), as amended by Act 317, § 1.