

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)

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NAME OF PRESENTER AT COMMITTEE MEETING Tammie Hynum

PRESENTER EMAIL Hynum@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: Used Tire Recycling and Accountability Program
2. What is the subject of the proposed rule? APC&EC adopted this emergency rulemaking to provide the framework necessary for ADEQ to transfer the current waste tire program to the new Used Tire Recycling and Accountability Program pursuant to Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*
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. _____

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

Yes ☐ No ☐

Not applicable because this is an emergency rulemaking under the law and regulations that authorize APC&EC to file emergency rulemakings –Ark. Code Ann. § 8-4-202(e) and APC&EC Reg. 8.807. (The APC&EC is exempt from the definition of “agency” under the Administrative Procedures Act, Ark. Code Ann. § 25-15-202(2)(C).)

If yes, what is the effective date of the emergency rule? September 15, 2017

When does the emergency rule expire? One hundred eighty (180) days after Legislative Council approval.

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.

The proposed new emergency regulation includes the following necessary for the transfer of the current waste tire program to the new Used Tire Recycling and Accountability Program by ADEQ on January 1, 2018:

- General overview, purpose, legislative intent, authority, and applicability related to the Used Tire Recycling and Accountability Program;
- Definitions related to the administration of the Used Tire Recycling and Accountability Program;
- Electronic uniform used tire manifest system (e-manifest system) purpose and administration;
- Used tire program accountability and business plans administration;
- Administrative procedures for tire generators;
- Collection of rim removal fees, commercial generator fees, and import fees and submission to the Department of Finance and Administration and the Arkansas Department of Environmental Quality for deposit into the Used Tire Recycling Fund; and
- Disbursements from the Used Tire Recycling Fund.

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?

Pursuant to Arkansas Pollution Control and Ecology Commission Regulation No. 8.807, the Arkansas Department of Environmental Quality (ADEQ) seeks an emergency rulemaking, effective for one hundred eighty (180) days, because transfer of the current waste tire program to the new Used Tire Recycling and Accountability Program must begin on January 1, 2018, and permanent rulemaking cannot be completed before this date. Failure to implement the new regulation will cause imminent peril to the public health and general welfare of Arkansans because the regulation provides essential information for the implementation and administration of the new program, to include the methods for disbursing essential funding to regional solid waste management boards for the management of used tires, the prevention of illegal tire dumping, and the abatement of waste tire sites.

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.adeq.state.ar.us/regs/drafts/reg36/17-004-R/

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

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

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

Because this is an emergency rulemaking, there is not a traditional public comment period. However, the draft regulation was filed with the APC&EC on August 16, 2017, and the APC&EC held its meeting on August 25, 2017. Public comments were allowed at this meeting, but there were none on this new regulation before the APC&EC adopted it that day.

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

September 15, 2017

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.

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.

Arkansas Pollution Control and Ecology Commission
Emergency Rulemaking for new Regulation 36
Rulemaking Packet Transmitted to Arkansas Legislative Council
Executive Subcommittee
August 31, 2017

List of Attachments:

Executive Summary

Petition for Rulemaking

Proposed Regulation 36

Governor's Approval

Public Notice

Commission Minute Order to Adopt Emergency Rulemaking

EMERGENCY RULEMAKING
APC&EC REGULATION NO. 36:
THE USED TIRE RECYCLING AND ACCOUNTABILITY PROGRAM
New Regulation – Executive Summary
August 16, 2017

The Arkansas Department of Environmental Quality (ADEQ) proposes this emergency rulemaking before the Arkansas Pollution Control and Ecology Commission (Commission) for the new Regulation No. 36 (The Used Tire Recycling and Accountability Program). This regulation provides the framework necessary for ADEQ's implementation and administration of Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.* Act 317 of 2017 also establishes the Commission's authority for the rulemaking.

In Act 317, the General Assembly found:

“(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.”

Pursuant to Arkansas Pollution Control and Ecology Commission Regulation No. 8.807, the Arkansas Department of Environmental Quality (ADEQ) seeks an emergency rulemaking, effective for one hundred eighty (180) days, because full implementation and operation of the new Used Tire Recycling and Accountability Program must begin on January 1, 2018, and permanent rulemaking cannot be completed before this date. Failure to implement the new regulation will cause imminent peril to the public health and general welfare of the state because the regulation provides essential information for the administration of the new program, to include the funding mechanism for used tire programs to manage used tires and the prevention of illegal tire dumping.

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF PROMULGATION OF)
REGULATION NO. 36, THE USED TIRE)
RECYCLING AND ACCOUNTABILITY) DOCKET NO. 17- ____-R
PROGRAM)

PETITION TO ADOPT EMERGENCY RULEMAKING AND
PROMULGATE REGULATION NO. 36

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 Adopt Emergency Rulemaking and Promulgate Regulation No. 36, states:

1. Act 317 of the 2017 Regular Session of the Arkansas General Assembly 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.

2. Pursuant to Arkansas Pollution Control and Ecology Commission Regulation No. 8.807, the Arkansas Department of Environmental Quality (ADEQ) seeks an emergency rulemaking because full implementation and operation of the new Used Tire Recycling and Accountability Program must begin on January 1, 2018, and permanent rulemaking cannot be completed before this date.

3. In Act 317, the Arkansas General Assembly found:

“(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.”


4. Failure to implement the new regulation will cause imminent peril to the public health and general welfare of the state because the regulation provides essential information for the administration of the new program, to include the funding mechanism for used tire programs to manage used tires and the prevention of illegal tire dumping.

5. Pursuant to APC&EC Reg.8.814, ADEQ submits the following documents supporting adoption of the regulation to the Commission for its consideration:

- a. Exhibit A – Final Proposed Regulation
- b. Exhibit B – Governor’s Approval
- c. Exhibit C – Proposed Minute Order

WHEREFORE, ADEQ respectfully requests that the Commission adopt the Proposed Minute Order to adopt emergency rulemaking and promulgate Regulation No. 36.

Respectfully submitted,



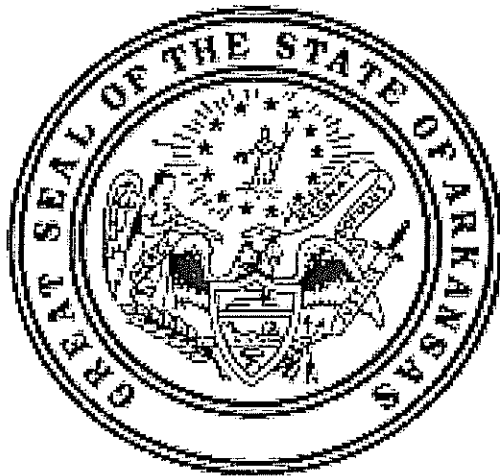
Kevin White, Associate Director
Office of Land Resources
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0962

Exhibit A:

Final Proposed Regulation 36

(New Regulation)

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



EMERGENCY RULEMAKING

REGULATION NO. 36

USED TIRE RECYCLING AND ACCOUNTABILITY PROGRAM

Submitted to the Arkansas Pollution Control & Ecology Commission

August 2017

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CHAPTER 1: GENERAL PROVISIONS

Reg. 36.101 Title

This regulation shall be known and may be cited as the “Used Tire Recycling and Accountability Program.”

Reg. 36.102 Purpose

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, 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 e-manifest system developed by the Arkansas Department of Environmental Quality 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.¹

Reg. 36.105 Applicability

A person who receives funding under 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, 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 Ark. Code Ann. Title 8, Chapter 1 and Title 8, Chapter 4, Subchapters 1 and 2 concerning permits, licensing, inspections, and procedures;
- (2) Ark. Code Ann. §§ 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.

(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.

¹ 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.

(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.

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

“Electronic uniform used tire manifest system” or **“e-manifest system”** means an administrative method developed by the Arkansas Department of Environmental Quality 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 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 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 the Department’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 for grants pursuant to the Department’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 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 the Department.

“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 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 Ark. Code Ann. Title 8, Chapter 6, Subchapter 7, or its successor, unless otherwise specified.

“Regional Solid Waste Management District” or “District” means a district created under Ark. Code Ann. 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 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 front axle load that exceeds the load capacity of a truck tire.

CHAPTER 3: E-MANIFEST SYSTEM

Reg. 36.301 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 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 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. 36.302 E-Manifest System Use Required

(A) Beginning on January 1, 2018, and except as provided under subsection (B) of this section, the following entities shall use the e-manifest system to accurately report all information related to the collection, transportation, distribution, recycling, and disposal of recyclable tires, waste tires, and used tires culled for resale:

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

(B)(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 within ten (10) calendar days.

Reg. 36.303 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 developed by the Department that shall be entered into the e-manifest system by the used tire program.

Reg. 36.304 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. 36.305 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, a tire processor or used tire program shall finalize each manifest 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. 36.306 Falsification or Alteration of E-Manifest System Data

(A) A person shall not falsify or alter any e-manifest system data 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 e-manifest system shall be reported to the Department within three (3) calendar days after discovery to the Arkansas Department of Environmental Quality.

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 with a business plan using Form UTRAP-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:

- (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, 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 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 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 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 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 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 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 the department within ten (10) calendar days of written notice.

(2) If a used tire program fails to submit the additional information required by the Department 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 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: TIRE GENERATORS

Reg. 36.501 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 to obtain an identifying number.

Reg. 36.502 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. 36.503 Exclusions and Limitations

A tire generator 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. 36.504 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;
- (4) Comply with all requirements related to collecting and reporting rim removal fees;

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.

- (5) Be registered with the Arkansas Department of Environmental Quality as a tire retailer and have an identifying number issued by the Arkansas Department of Environmental Quality; 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.

Reg. 36.505 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 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 e-manifest system;
- (6) For a renewal application, submit an annual report on or before March 1 to the Arkansas Department of Environmental Quality that details the quantity and type of tires that were transferred by the tire transporter on a form prepared by the Arkansas Department of Environmental Quality; and
- (7) Pay an annual fee of fifty dollars (\$50.00) for each vehicle that is 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 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.

(2)(a) The tire transporter decal shall be displayed on the left 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 as a tire transporter to transfer tires that it has collected, is managing, or both.

(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 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 as a tire wholesaler and have an identifying number issued by the Arkansas Department of Environmental Quality; and

(6) Use the e-manifest system to account for each used tire removed from the rim.

(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. 36.507 Tire Manufacturers

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

(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

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.

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 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.

(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.

Reg. 36.508 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 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.

Reg. 36.509 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 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.

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.

- (5) Be registered with the Arkansas Department of Environmental Quality 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. 36.510 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 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.

Reg. 36.511 Reporting of Material Changes

(A) A tire generator shall provide written notice to the Arkansas Department of Environmental Quality 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 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.

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. 36.512 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 personnel, the Arkansas Department of Finance and Administration personnel, or both during normal business hours.

Reg. 36.513 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 6: RIM REMOVAL FEES

Reg. 36.601 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 to obtain an identifying number.

Reg. 36.602 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) 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. 36.603 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. 36.604 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. 36.605 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 as a tire retailer; 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.

Reg. 36.606 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.

(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

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.

Department of Finance and Administration if the tire retailer is required by law to collect the rim removal fee imposed under this chapter.

Reg. 36.607 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. 36.608 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. 36.609 Revenues Deposited

(A) 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.

(B) 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. 36.610 Administration of the Used Tire Recycling Fund

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

CHAPTER 7: COMMERCIAL GENERATORS AND COMMERCIAL GENERATOR FEES

Reg. 36.701 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 to obtain an identifying number.

Reg. 36.702 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) 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. 36.703 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. 36.704 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 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 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 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. 36.705 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 registered with the Arkansas Department of Environmental Quality as a commercial generator with an identifying number issued by the Arkansas Department of Environmental Quality; 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. 36.706 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.

- (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.

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.

(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 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. 36.707 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. 36.708 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. 36.709 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.

Reg. 36.710 Administration of Used Tire Recycling Fund

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

CHAPTER 8: PERSONS WHO IMPORT USED TIRES AND IMPORT FEES

Reg. 36.801 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 to obtain an identifying number.

Reg. 36.802 Import Fees Imposed

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.

Reg. 36.803 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 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 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;¹⁰
- (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;

¹⁰ 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.

(4) Be registered with the Arkansas Department of Environmental Quality as a person who imports used tires into Arkansas and have an identifying number used by the Arkansas Department of Environmental Quality; and

(5) Use the e-manifest system administered by the Arkansas Department of Environmental Quality to account for each used tire imported into Arkansas.

Reg. 36.806 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 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. 36.807 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(c) 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(c) in the same manner as the rim removal fees are deposited into the Used Tire Recycling Fund.

Reg. 36.808 Administration of the Used Tire Recycling Fund

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

CHAPTER 9: DISBURSEMENTS FROM THE USED TIRE RECYCLING FUND

Reg. 36.901 Applicability

By January 1, 2018, the Arkansas Department of Environmental Quality shall establish 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 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 for each regional solid waste management district that the used tire program serves to include without limitation 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 with business plan information required under Ark. Code Ann. § 8-9-408 and Chapter 4 of this regulation;
- (8) Provide the Arkansas Department of Environmental Quality with all quarterly financial information and progress reports related to Ark. Code Ann. § 8-9-409; 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 Chapter 6 of this regulation; and
 - (ii) Complies with the e-manifest system under Ark. Code Ann. § 8-9-407 and Chapter 3 of this regulation.
- (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. 36.903 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;
- (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. 36.904 Compliance

Moneys disbursed from the Used Tire Recycling Fund by the Arkansas Department of Environmental Quality 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. 36.905 Disbursements Contingent Upon Available Funding

- (A) All reimbursements and distributions claimed by used tire programs will be:
 - (1) Based on moneys available in the Used Tire Recycling Fund;

- (2) According to funding levels in this chapter;
- (3) According to the rates established by the approved business plan; and
- (4) Funding priorities in Reg. 36.907.

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

Reg. 36.906 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. 36.907 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 the Department.

Reg. 36.908 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 shall calculate the total remaining moneys 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. 36.909 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 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, the Department shall uniformly apply the increase to each Used Tire Program's approved business plan rate.

Reg. 36.910 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 the Department a reimbursement request no later than five (5) calendar days after the last day of each calendar quarter on a form developed by the Department 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) The Department 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 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 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. 36.911 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 the Department a reimbursement request no later than five (5) calendar days after the last day of each applicable calendar quarter on a form developed by the Department 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) The Department 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) The Department 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) The Department 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, the Department 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, the Department 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. 36.912 Level Three Funding

(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) The Department 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 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) The Department 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, the Department 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, the Department 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) The Department 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. 36.913 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 the Department, each used tire program shall, at the least, provide the Department 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 the Department, including documentation of revenues and expenditures for the calendar quarter and reserve funds.

Reg. 36.914 Administrative and Incentive Grants

(A) The Director of the Arkansas Department of Environmental Quality 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) 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 responsible person 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 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 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. 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, 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 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. The Department shall only make a final determination on an administratively complete application.

(G) The Department 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. 36.915 Conditions of Grant Award

(A) The Department 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 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 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. The change order will be on a form provided by the Department. The Department will review any changes requested and will determine if any modifications are to be allowed.

Reg. 36.916 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 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 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 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 grant project and conditions cannot be continued or completed, the reimbursement or grant shall be automatically terminated and the Director 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 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. 36.917 Reimbursement of Funds to the Department

(A) The Director may order the used tire program, inter-district used tire program, or grantee to reimburse the Department 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.

Exhibit B:

Governor's Approval

Evyan, Janelle

From: Justin Tate <Justin.Tate@governor.arkansas.gov>
Sent: Monday, August 21, 2017 2:01 PM
To: Evyan, Janelle
Cc: Caleb Stanton; Brooke Woodward
Subject: Regulation 36: Used Tire Recycling and Accountability Program.

Janelle,

The Governor approved for emergency promulgation ADEQ's rules on the used Tire Recycling and Accountability program. Please proceed with the emergency rule promulgation process. If you have any questions or concerns, feel free to contact me.

Best,

Justin Tate
Chief Legal Counsel
Office of Governor Asa Hutchinson
(501) 682-8040

NOTICE OF EMERGENCY RULEMAKING

Pursuant to Arkansas Code Annotated, Section 8-4-202(e) and Arkansas Pollution Control and Ecology Commission Regulation No. 8.807(C), the Arkansas Pollution Control and Ecology Commission (APC&EC) made a formal finding on August 25, 2017, that an emergency rulemaking was necessary to prevent imminent peril to public health and general welfare concerning implementation and administration of the new Used Tire Recycling and Accountability Program mandated by Act 317 of the 2017 Regular Session of the Arkansas General Assembly. As a result, the APC&EC has adopted for 180 days on an emergency basis the new Regulation 36 (Used Tire Recycling and Accountability Program) that allows the Arkansas Department of Environmental Quality (ADEQ) to implement and administer the new program that begins on January 1, 2018.

The emergency Regulation 36 includes a general overview, purpose, legislative intent, authority, and applicability related to the Used Tire Recycling and Accountability Program; definitions related to the administration of the Used Tire Recycling and Accountability Program; electronic uniform used tire manifest system (e-manifest system) purpose and administration; used tire program accountability and business plans administration; administrative procedures for tire generators; collection of rim removal fees, commercial generator fees, and import fees and submission to the Department of Finance and Administration and the Arkansas Department of Environmental Quality; and disbursements from the Used Tire Recycling Fund. The emergency 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 emergency 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.

Published August 31 and September 1, 2017
Becky W. Keogh, Director,
Arkansas Department of Environmental Quality

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to Adopt
Emergency Rulemaking and
Promulgate Regulation No. 36

Docket No. 17-004-R

MINUTE ORDER NO. 17- 23

PAGE 1 OF 1

Pursuant to Reg.8.807(C), the Arkansas Pollution Control and Ecology Commission's emergency rulemaking procedure, the Commission finds that imminent peril to public health and general welfare exists if Regulation No. 36 is not immediately enacted as required by Act 317 of the 2017 Regular Session of the Arkansas General Assembly. Therefore, the Commission immediately adopts and promulgates Regulation No. 36, Used Tire Recycling and Accountability Program.

PROMULGATED THIS 25th DAY OF AUGUST 2017, BY ORDER OF THE
ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: Miles Goggans
Miles Goggans., Chairman

ATTEST: Becky Keogh
Becky Keogh, Director

COMMISSIONERS:

<u>LB</u>	L. Bengal
<u>JTC</u>	J. Chamberlin
<u>J. Crow</u>	J. Crow
<u>JSF</u>	J. Fox
<u>TE</u>	C. Gardner
<u>BRH</u>	B. Holland

<u>DM</u>	D. Melton
<u>SM</u>	S. Moss, Jr.
<u>RR</u>	R. Reynolds
<u>WS</u>	W. Stites
<u>GW</u>	G. Wheeler
<u>BW</u>	B. White

M. Goggans SUBMITTED BY: Kevin White PASSED: 08/25/2017
M. Goggans - Chair



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: **September 5, 2017**

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

The instant proposed rules implement 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 shall promulgate regulations to carry out the intent and purposes of the Used Tire Recycling and Accountability Act (“Act”), 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 provided by law, authorize the final disposition of waste tires at a permitted solid waste

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.

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: (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 the effective date of Act 317. *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.