

DIVISION OF ENVIRONMENTAL QUALITY

SUBJECT: Repeal of Regulation No. 14: Regulations and Administrative Procedures for the Waste Tire Program

DESCRIPTION: The Division of Environmental Quality (“Division”), by and through the Arkansas Pollution Control and Ecology Commission (“Commission”), proposes to repeal Regulation No. 14: Regulations and Administrative Procedures for the Waste Tire Program because it is obsolete. Regulation No. 14 has been superseded by Regulation No. 36 (Tire Accountability Program), the new program created by Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq. The permanent Regulation No. 36 became effective on August 13, 2018.

PUBLIC COMMENT: A public hearing was held on January 9, 2019. The public comment period expired on January 25, 2019. The agency received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the repealed rule has no financial impact. It explains that the rule to be repealed has been replaced by the Commission’s Regulation No. 36: Tire Accountability Program (“TAP”) because of Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq, and that the new TAP is funded by tire fees that are required to be collected under Act 317 and are collected as special revenue.

LEGAL AUTHORIZATION: Act 317 of 2017, sponsored by Representative Lanny Fite, transferred the waste tire program of Regulation No. 14 to the Used Tire Recycling and Accountability Program. Regulation No. 36, which governs the superseding program, was promulgated pursuant to Arkansas Code Annotated § 8-9-414(a), as amended by Act 317; received legislative review and approval in July 2018; and, per the agency, became effective on August 13, 2018. Accordingly, the Division by and through the Commission, now seeks to repeal Regulation No. 14. The Commission has the power and duty to promulgate rules implementing the substantive statutes charged to the Division for administration. *See* Ark. Code Ann § 8-1-203(b)(1)(A).

**APC&EC REGULATION NO. 14:
REGULATIONS AND ADMINISTRATIVE PROCEDURES FOR
THE WASTE TIRE PROGRAM**
Proposed Amendments – Executive Summary
November 1, 2018

The Arkansas Department of Environmental Quality (ADEQ) proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission (APC&EC) to repeal Regulation No. 14: Regulation and Administrative Procedures for the Waste Tire Program because it is obsolete. Regulation No. 14 has been superseded by Regulation No. 36 (Tire Accountability Program), the new program created by Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.* The permanent Regulation No. 36 became effective on August 13, 2018. The APC&EC's authority for this rulemaking is Act 317 of 2017, the law that rendered Regulation No. 14 obsolete and necessitated this rulemaking to repeal Regulation No. 14.

**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 Kevin White

PRESENTER EMAIL white@adeq.state.ar.us

INSTRUCTIONS

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

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

1. What is the short title of this rule? Regulation No. 14: Regulation and Administrative Procedures for the Waste Tire Program
2. What is the subject of the proposed rule? Regulation and Administrative Procedures for the Waste Tire Program
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

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

January 25, 2019

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

August 30, 2019 (After legislative review and approval, APC&EC final repeal, and 10 days after filing with the Secretary of State)

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 can be found under the rulemaking docket at www.adeq.state.ar.us/regs/draft_regs.aspx.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). The Arkansas Pollution Control and Ecology Commission (APC&EC) is exempt from the definition of “agency” under the Administrative Procedure Act. (See Ark. Code Ann. § 25-15-202(2)(C)). Filing with the Secretary of State does not occur until after legislative review and approval and final repeal by the APC&EC.

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.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT

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

DIVISION

Office of Land Resources (OLR)

PERSON COMPLETING THIS STATEMENT

Kevin White, Associate Director, OLR

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

SHORT TITLE OF THIS RULE APC&EC Regulation No. 14: Regulation and Administrative Procedures for the Waste Tire Program

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

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

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

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

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

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

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

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

Current Fiscal Year

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

Next Fiscal Year

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

Total \$0.00 Total \$0.00

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

Current Fiscal Year

Next Fiscal Year

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

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

Current Fiscal Year

Next Fiscal Year

\$ 0.00 \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

\$ \$ 0.00 \$ \$ 0.00

This rule has been replaced by APC&EC Regulation No. 36: Tire Accountability Program (TAP) because of Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.* The new Tire Accountability Program is funded by tire fees that are required to be collected under Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, and are collected as special revenue.

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

Yes No

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

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

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