

SECOND EMERGENCY RULEMAKING
APC&EC REGULATION NO. 36:
THE USED TIRE RECYCLING AND ACCOUNTABILITY PROGRAM
Proposed Amendments – Executive Summary
February 16, 2018

The Arkansas Department of Environmental Quality (ADEQ) proposes this second emergency rulemaking before the Arkansas Pollution Control and Ecology Commission (Commission) for proposed changes to the first emergency Regulation No. 36 (Used Tire Recycling and Accountability Program.) The Commission’s authority for the rulemaking is Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*

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 and Ark. Code Ann. §§ 8-4-202(e) and 8-9-414, the Arkansas Department of Environmental Quality (ADEQ) seeks a second emergency rulemaking because the current emergency rulemaking will expire on March 7, 2018, and the permanent rulemaking process cannot be completed by this date. Failure to implement this second emergency rulemaking will cause imminent peril to the public health and general welfare of the state because the regulation provides statutorily-required, essential information for the administration of the new program, to include funding for the used tire programs, management of used tires, and the prevention and remediation of illegal tire dumping.

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This second emergency rulemaking makes the same changes as the permanent rulemaking initiated by the Commission on January 26, 2018, by: (a) simplifying the name of the program to the Tire Accountability Program (TAP); (b) providing comprehensive program administration information in compliance with Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, to include provisions for permitting, licensing, enforcement, and beneficial uses; (c) removing preliminary implementation dates and deadlines that reference 2017; (d) adding references to new or renamed forms; and (e) making minor revisions to include correcting typographical, grammatical, formatting, and stylistic errors throughout the emergency regulation.

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

- ***Chapter 1: General Provisions*** – Changes made to this chapter include:
 - Reg. 36.101 was changed by adding subsection (C);
 - Reg. 36.102 was changed by adding subsection (A);
 - Reg. 36.106 entitled “Open Burning Prohibited” was stricken because that issue is under Regulation No. 18: Arkansas Air Pollution Control, Chapter 6;
 - Reg. 36.107 entitled “Continuation of Permitting, Licensing, and Enforcement Authority” under Regulation No. 14 was stricken because it will no longer be necessary after this permanent rulemaking is effective
 - New Reg. 36.106 was added concerning inter-district used tire programs; and
 - New Reg. 36.107 was added concerning market development.
- ***Chapter 2: Definitions*** – Changes to the definition of e-manifest were made.
- ***New Chapter 3: Used-Tire Programs*** – Added to provide information related to the administration of used-tire programs.
- ***Chapter 4: Used-Tire Program Accountability and Business Plans*** – Reg. 36.403 was changed by striking subsection (B).
- ***New Chapter 5: Performance and Efficiency Evaluations*** – Added for administrative guidance.

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