

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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3 Solid and Hazardous Waste Commission/Hazardous Materials and
4 Waste Management Division

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6 6 CCR 1007-2

7 PART 1 REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

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10 Amendments to Section 10.12 (Waste Tire End Users Fund) and Section 1.2
11 Definitions

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14 1) Section 1.2 Definitions is being amended by deleting the definition of “Daily cover” as
15 follows:

16 1.2 Definitions

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20 ~~“Daily cover” means using tire-derived product as an alternate cover placed upon exposed solid waste~~
21 ~~in a permitted solid waste facility to control disease vectors, fires, odors, blowing litter and scavenging,~~
22 ~~without presenting a threat to human health or the environment.~~

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27 2) Section 10.12 (Waste Tire End Users Fund), consisting of § 10.12.1 (General Rules)
28 through § 10.12.6 (Enforcement) is deleted in its entirety and reserved to read as follows:

29 10.12 ~~WASTE TIRE END USERS FUND~~ Reserved.

30 ~~10.12.1 GENERAL RULES~~

31 ~~A. General Rules of Eligibility:~~

32 ~~1. The following are eligible to apply for the rebate from the End Users Fund (the “Fund”):~~

33 ~~(a) Colorado End Users of Colorado-generated tire-derived products or Colorado waste tires who~~
34 ~~end use in Colorado;~~

35 ~~(b) Colorado Retailers who sell certain Colorado-generated tire-derived products made in~~
36 ~~Colorado from Colorado waste tires; and~~

37 ~~(c) Colorado Waste Tire Processors of Colorado waste tires who generate tire-derived products~~
38 ~~in Colorado and sell their tire-derived products to out-of-state End Users.~~

39 ~~2. By February 1 of each year, all applicants who applied for a rebate in the previous calendar year~~
40 ~~must provide an estimated monthly forecast of the amount of waste tires they will process, tire-~~
41 ~~derived product they will sell and/or end use in the following calendar year. Such applicants who~~
42 ~~do not provide estimates will not be eligible to participate in the Fund in the following calendar~~
43 ~~year. All estimates shall be considered confidential business information.~~

44 ~~3. A business or person who is required to be registered with the Secretary of State's office to~~
45 ~~conduct business in the State of Colorado must be in "Good Standing" to be eligible for the~~
46 ~~rebate.~~

47 ~~4. Once the Department has paid a rebate or denied a rebate on a particular quantity of tire-derived~~
48 ~~product or whole waste tires used for energy or fuel, every part of that particular quantity of tire-~~
49 ~~derived product or whole waste tires is no longer eligible for payment of the rebate. This includes~~
50 ~~payments made before the adoption of these Rules.~~

51 ~~5. When waste tires are processed at the location of an illegal disposal with funds from the Waste~~
52 ~~Tire Administration, Enforcement, and Cleanup Fund, neither the processing of those waste tires,~~
53 ~~the retail sale of the tire-derived product generated, or the end use of the tire-derived product~~
54 ~~created is eligible for a rebate from the End Users Fund. When waste tires are removed from the~~
55 ~~location of an illegal disposal with funds from the Waste Tire Administration, Enforcement, and~~
56 ~~Cleanup Fund and processed at a separate location not using funds from the Waste Tire~~
57 ~~Administration, Enforcement, and Cleanup Fund, the processing of those waste tires, the retail~~
58 ~~sale of the generated tire-derived product, and the end use of the tire-derived product created is~~
59 ~~eligible to receive a rebate from the End Users Fund so long as all the other eligibility~~
60 ~~requirements are met.~~

61 **B. General Rules for End Users**

62 ~~1. To be eligible to receive a rebate for end using tire-derived product or whole waste tires to~~
63 ~~generate energy or fuel, a person must be currently registered with the Department as an End~~
64 ~~User.~~

65 ~~2. The Department will pay the rebate to an End User only if the end use complies with all local~~
66 ~~requirements in the jurisdiction end use occurs.~~

67 ~~3. Eligible and Ineligible End Uses. Table 10-12.01 states which end uses are eligible for which~~
68 ~~category of rebate and some potential uses that are ineligible.~~

69 ~~4. To receive the End User rebate for the end use of tire bales, the applicant must submit the End~~
70 ~~Users Tire Bale Approval Form, available on the Department's website.~~

71 **C. General Rules for Retailers**

72 ~~1. To be eligible to apply for a rebate, a Retailer must have a current Colorado retail sales tax license~~
73 ~~pursuant to section 39-26-103, C.R.S.~~

74 ~~2. To be eligible for a retailer rebate, the retail sale must be to the ultimate consumer and the retailer~~
75 ~~must collect sales tax unless the customer is otherwise exempt from paying sales tax.~~

76 ~~3. Eligible and Ineligible Retailers. Table 10-12.01 states which sales are eligible to receive the~~
77 ~~retailer rebate and some potential sales that are ineligible.~~

78 ~~D. General Rules for Processors~~

79 ~~1. Processors are eligible for a rebate for processing waste tires into tire-derived product only when~~
80 ~~they sell to an out-of-state End User and move the tire-derived product out of state.~~

81 ~~2. To be eligible to receive a rebate for processing waste tires, a person must be currently registered~~
82 ~~with the Department as a Waste Tire Processor at the address at which that person claims~~
83 ~~processing of waste tires or as a Mobile Processor of waste tires pursuant to this Section 10.~~

84 ~~3. Processors who process waste tires into tire-derived product in one (1) month and sell the tire-~~
85 ~~derived product in a subsequent month to an out-of-state End User are eligible for the processor~~
86 ~~rebate only after the tire-derived product is sold out of state and moved out of state. Such~~
87 ~~applicants must provide documentation to the Department that demonstrates the tire-derived~~
88 ~~product was sold out of state and moved out of state.~~

89 ~~4. The Department will pay a Processor only if the end use complies with all local requirements in the~~
90 ~~jurisdiction in which it will be used.~~

91 ~~5. Eligible Processes. Table 10-12.01 states when a Processor is eligible for a rebate and some~~
92 ~~instances when a Processor is not eligible for a rebate.~~

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Table 10-12.01 Eligible End Uses, Processing and Retailing for the End Users Fund*

This table describes potential scenarios for waste tire processing, retailing and end use. This Table does not create new rights or eligibilities, but explains the rights and eligibilities established in statute.

Column breakdown explanation:

End User only (4A) An End User who "uses a tire derived product for a commercial or industrial purpose"

End User only (4B) An End User who "uses a whole waste tire to generate energy or fuel"

End User only (4C) An End User who "consumes tire derived product or uses tire derived product in its final application or in making new materials with a demonstrated sale to a third party customer."

Retailer Only Sells a tire derived product for its intended final use.

Processor Only Processes waste tires into a tire derived product.

Not eligible for a rebate Scenario does not qualify for a rebate under the current statute or regulations

Scenario: If you...	...then you may apply as a/an:					
	End User only (4A)	End User only (4B)	End User only (4C)	Retailer only	Processor Only	Not eligible for a rebate
Use tire derived product (alternative daily cover) at a landfill permitted by the state and approved for use of tire shreds for alternative cover for municipal solid waste.	X					
Install tire derived product for use as a cover material, as approved by the department prior to use.	X					
Construct walls, fences and/or barriers made from tire derived product as aggregate on residential, commercial or public property. This does not apply to walls, fences or barriers made from tire bales.	X					
Install tire derived products (tire chips or crumb rubber) for sport fields, such as football, baseball or soccer fields on residential, commercial or public property.	X					
Install tire derived product (tire chips, rubber mulch, crumb rubber) for playground surfacing or base material for a playground surface on residential, commercial or public property.	X					
Use tire derived product for energy recovery or a fuel substitute in cement kilns, biofuel plants, electric arc furnaces, or power plants.	X					
Install tire derived product as landscape mulch or other type of landscape material on a residential, commercial or public property.	X					
Install tire derived products (tire chips) on the installation of septic systems on residential, commercial or public property.	X					
Install tire derived products (ground rubber) incorporated/blended into asphalt or concrete for highway or paving applications.	X					
Install tire derived product in civil engineering projects (highway embankments, leachate cells at landfills, base material for roads, etc.).	X					
Install tire bales for a permanent engineered structure, stamped and sealed by a Colorado Certified Professional Engineer, that is allowed by state laws and regulations and local ordinances. This does not include fencing, windbreaks, or corrals.	X					
Install tire bales for end use on agricultural land using galvanized steel baling wire and installed to facilitate tire bale stability and longevity, as allowed by state laws and regulations and local ordinances (including fencing, windbreaks, and corrals).	X					
Install tire derived product for highway safety products (crash barrels, guard rails, crash walls).	X					
Install tire derived product as silage covers for a commercial or industrial purpose.	X					
End use steel derived from a processed waste tire. This does not include steel produced through pyrolysis.	X					
Use whole waste tires for energy recovery or a fuel substitute in cement kilns, biofuel plants, electric arc furnaces, or power plants.		X				
Use whole waste tires through the process of pyrolysis to create fuel to be used by a third party customer.		X				

Column breakdown explanation:

End User only (4A) An End User who "uses a tire derived product for a commercial or industrial purpose"

End User only (4B) An End User who "uses a whole waste tire to generate energy or fuel"

End User only (4C) An End User who "consumes tire derived product or uses tire derived product in its final application or in making new materials with a demonstrated sale to a third party customer."

Retailer Only Sells a tire derived product for its intended final use.

Processor Only Processes waste tires into a tire derived product.

Not eligible for a rebate Scenario does not qualify for a rebate under the current statute or regulations

Scenario; If you...	...then you may apply as a/an:					
	End User only (4A)	End User only (4B)	End User only (4C)	Retailer only	Processor Only	Not eligible for a rebate
Use whole waste tires through the process of pyrolysis to create syngas to be used in the industrial process of the pyrolysis facility. The percent of the weight of the waste tire used to produce syngas, not the total weight of the whole waste tires consumed, determines the rebate amount.		X				
Use whole waste tires through the process of pyrolysis to create syngas which is condensed into the liquid petroleum products derived from that same pyrolysis process. This final end liquid petroleum product is to be used by a third party customer.		X				
Use tire derived product through the process of pyrolysis to create syngas to be used in the industrial process of the pyrolysis facility. The percent of the weight of the tire derived product used to produce syngas, not the total weight of the tire derived product consumed, determines the rebate amount.			X			
Use tire derived product through the process of pyrolysis to create syngas which is condensed into the liquid petroleum products derived from that same pyrolysis process with a demonstrated sale to a third party customer.			X			
Perform pyrolysis on whole waste tires to make tire derived products (recovered carbon steel) with a demonstrated sale to a third party customer.			X			
Perform pyrolysis on tires shreds to make tire derived products (recovered carbon steel) with a demonstrated sale to a third party customer.			X			
Use tire derived product (tire chips) that makes molded products (lawn furniture, deck boards, erosion control products, etc.) with a demonstrated sale to an in-state or out-of-state customer.			X			
Sell tire derived products to a final in-state customer who will use the tire derived product for its final intended use. Applicant charges sales tax for this transaction, or does not charge sales tax for this transaction because the consumer is an exempt organization (charity, government agency, or another tax exempt entity).				X		
Sell tire derived products to an out-of-state customer. Sales tax is charged for this transaction or sales tax is not charged for this transaction because the customer is an exempt organization (charity, government agency, or another tax exempt entity).				X		
Sell tire derived products to a commercial business, where sales tax is charged, or sales tax is not charged for this transaction because the customer is an exempt organization (charity, government agency, or another tax exempt entity), and the commercial business will use the tire derived product for its intended final use (e.g. landscape mulch installed on commercial property) and the tire derived material will not be resold.				X		
Process whole waste tires into tire derived products that are sold to an out-of-state End User.					X	
Process a whole waste tire, removing the steel, and then sell the steel to an out-of-state End User.					X	

Column breakdown explanation:

End User only (4A) An End User who "uses a tire derived product for a commercial or industrial purpose"

End User only (4B) An End User who "uses a whole waste tire to generate energy or fuel"

End User only (4C) An End User who "consumes tire derived product or uses tire derived product in its final application or in making new materials with a demonstrated sale to a third party customer."

Retailer Only Sells a tire derived product for its intended final use.

Processor Only Processes waste tires into a tire derived product.

Not eligible for a rebate Scenario does not qualify for a rebate under the current statute or regulations

Scenario; If you...	...then you may apply as a/an:					
	End User only (4A)	End User only (4B)	End User only (4C)	Retailer only	Processor Only	Not eligible for a rebate
Process a whole waste tire, removing the steel, and then sell the steel to an in-state End User.						X
Sell tire derived products to either an in state or out-of state wholesaler or retailer who will then sell the tire derived products directly to a final customer.						X
Use pyrolysis created tire derived products (recovered carbon, biofuel, steel) in state for a commercial or industrial purpose.						X
Process whole waste tires into a tire derived product that is sold to a national distributor.						X
Sell whole waste tires.						X
Sell tire bales.						X
Bale waste tires.						X
Reuse any used or whole waste tire as a vehicle tire or trailer tire.						X
Burn a whole waste tire or tire derived product without recovering the energy.						X
Use buffings generated from the recapping or retreading process.						X
Dispose of waste tires or tire derived product.						X
Recap or retread a tire for use on a vehicle or trailer.						X
Create buffings from the recapping or retreading of a tire.						X
Use whole waste tires, upon CDPHE beneficial use approval, for erosion control, stormwater management, sound damping, grade fill, corals, fencing, home construction, and other approved uses.						X
Use any whole waste tire or tire derived product out of state.						X

*An activity not covered by this Table may still be eligible for a rebate at the Department's discretion pursuant to these regulations and section 30-20-1401, C.R.S., et seq :

1 **10.12.2 APPLICATION PROCEDURES**

2 ~~A. A person applying for a rebate must comply with all the provisions of this Section 10.12.2.~~

3 ~~B. An applicant for a rebate must file a complete application on Department Form WT-07, providing at a~~
4 ~~minimum:~~

5 ~~1. Applicant's name and address.~~

6 ~~2. Name and location where end use, retail sale or processing occurred.~~

7 ~~3. A description of the end use, retail sale or processing.~~

8 ~~4. Certification the waste tires were Colorado-generated.~~

9 ~~5. For End Users:~~

10 ~~(a) the source of waste tires or tire-derived product; and~~

11 ~~(b) the End User's Waste Tire Certificate of Registration number.~~

12 ~~6. For Retailers:~~

13 ~~(a) a list of consumers the Retailer sold the tire-derived product to; and~~

14 ~~(b) proof the Retailer collected sales tax on the retail sale or that the retail sale was exempt from~~
15 ~~sales tax.~~

16 ~~7. For Processors and Mobile Processors selling tire-derived product to out of state End Users:~~

17 ~~(a) a list of out of state End Users that purchased the tire-derived product; and~~

18 ~~(b) the Processor or Mobile Processor's Waste Tire Certificate of Registration number.~~

19 ~~8. The amount of waste tires or tire-derived product processed, sold by a retailer, or end used, by~~
20 ~~weight in tons.~~

21 ~~9. The time period in which the waste tires or tire-derived product were processed, sold by a retailer~~
22 ~~or end used.~~

23 ~~10. Other supporting documentation required by the Department.~~

24 ~~11. An authorized signature.~~

25 ~~C. Timing of Rebate Applications:~~

26 ~~1. Applications for rebates will be accepted no later than the stated due date on the application~~
27 ~~and/or Department's website.~~

- 28 ~~2. Unless applying pursuant to 10.12.2 (D), applications will only be accepted for activities that~~
29 ~~occurred in the previous calendar month.~~
- 30 ~~3. Applications received after the due date will be denied.~~
- 31 ~~4. The Department will not accept adjustments for processed applications from prior calendar~~
32 ~~months.~~
- 33 ~~5. An applicant can only receive a rebate for activities occurring in the current fiscal year.~~
- 34 ~~6. The Department will make best efforts to process rebates within thirty (30) days from the due date.~~
- 35 ~~D. An applicant's initial application in any state fiscal year (July 1 through June 30) must be for a~~
36 ~~minimum of ten (10) tons. Notwithstanding section 10.12.2(C)(2) of these Rules, to achieve this ten~~
37 ~~(10) ton minimum, an applicant can consolidate several calendar months of tonnage to meet this~~
38 ~~minimum amount. After submitting an initial application for a minimum of ten (10) tons, an applicant~~
39 ~~is eligible to apply for any ton amount in subsequent months in that fiscal year.~~
- 40 ~~E. The Department may deny a rebate to an applicant who has received funding from the Market~~
41 ~~Development Fund if paying from both funds will result in double paying for the same activity.~~
- 42 ~~F. Applicants must provide weight tickets from a scale that meets the requirements of the Colorado~~
43 ~~Measurement Standards Act, sections 35-14-101 through 35-14-134, C.R.S. to document weights of~~
44 ~~waste tires or tire-derived product end used, tire-derived product processed and sold out of state, or~~
45 ~~tire-derived product sold in a retail sale. Other verifiable forms of documentation may be acceptable~~
46 ~~on a case by case basis.~~

47 **10.12.3 PROCESSING OF APPLICATIONS**

- 48 ~~The Department will review applications according to a four-step process: (1) review for completeness, (2)~~
49 ~~review for compliance with applicable laws and regulations, (3) review for eligible processes, retail sales~~
50 ~~and end uses, and (4) determination of a rebate amount.~~
- 51 ~~A. **Completeness:** If an application is not complete or if supporting documentation is insufficient, then~~
52 ~~the Department will notify the applicant and grant the applicant a five (5) business day grace period to~~
53 ~~submit the missing information. The Department may defer paying rebates to all applicants until~~
54 ~~adequate information is received. If the applicant does not submit adequate information in the~~
55 ~~prescribed time period, then the Department may deny a rebate for that month.~~
- 56 ~~B. **Compliance:** After the Department has determined all applications submitted in a given month are~~
57 ~~complete, it will conduct a compliance verification to ensure each applicant is in compliance with all~~
58 ~~applicable laws and regulations and was in compliance with all applicable laws and regulations during~~
59 ~~the time period for which they are seeking a rebate.~~
- 60 ~~C. **Eligibility:** After compliance verification, the Department determines which applicants are eligible for~~
61 ~~rebates.~~
- 62 ~~D. **Rebate amount:** The Department will calculate the amount of rebate per section 10.12.5 of these~~
63 ~~Regulations and notify each applicant of its determination.~~

64 **10.12.4 APPEALS PROCESS**

65 ~~A. For approved applications, if an applicant believes the Department has made a calculation error in the~~
66 ~~response to an approved application, the applicant must notify the Department in writing within five~~
67 ~~(5) business days of receiving the Department's response. The notice must contain a copy of the~~
68 ~~application and the Department's response, a brief statement describing the believed error, and~~
69 ~~copies of any documents supporting the statement. The Department will review the notice and~~
70 ~~attached documents and may further investigate the matter.~~

71 ~~1. If the Department concludes an error has been made and the Department has not yet paid the~~
72 ~~rebate that month, then the Department will reinstate the application and recalculate the payment~~
73 ~~before paying any rebates that month.~~

74 ~~2. If the Department concludes an error has been made and the Department has already paid the~~
75 ~~rebate that month, then the Department will notify the applicant and reimburse the applicant from~~
76 ~~the next month's rebate money, as available, according to the following method: (1) The~~
77 ~~Department will determine what the applicant should have been paid had the Department not~~
78 ~~erred; (2) The Department will pay the applicant that amount from the next month's money; and~~
79 ~~(3) The next month's money will be reduced accordingly.~~

80 ~~3. If the Department concludes no calculation error was made, then it will notify the applicant that its~~
81 ~~previous determination was not in error and is final. This determination is subject to appeal~~
82 ~~pursuant to section 24-4-106, C.R.S.~~

83 ~~B. For denied applications: If an applicant believes his or her application was wrongly denied, then the~~
84 ~~applicant must, within five (5) business days of denial, submit the following to the Department: (1) a~~
85 ~~copy of the denied application and supporting documents, (2) the denial letter, (3) a statement~~
86 ~~explaining why the applicant believes the Department erred, and (4) all other information the applicant~~
87 ~~believes relevant.~~

88 ~~1. If the Department concludes it erred in denying the application, and the Department has not yet~~
89 ~~paid the rebate that month, then the Department will reinstate the application and recalculate the~~
90 ~~payment before paying the rebate that month.~~

91 ~~2. If the Department concludes it erred in denying the application and the Department has already~~
92 ~~paid the rebate that month, then the Department will notify the applicant and reimburse the~~
93 ~~applicant from the next month's money, as available, according to the following method: (1) The~~
94 ~~Department will determine what the applicant should have been paid had the Department not~~
95 ~~erred; (2) The Department will pay the applicant that amount from the next month's money; and~~
96 ~~(3) The next month's money will be reduced accordingly.~~

97 ~~3. If the Department concludes no error was made, then it will notify the applicant that its previous~~
98 ~~determination was not in error and is final. This determination is subject to appeal pursuant to~~
99 ~~section 24-4-106, C.R.S.~~

100 **10.12.5 REBATE AMOUNT**

101 ~~A. The Department will pay the rebate amount on a per-ton basis.~~

102 ~~B. Beginning January 1, 2017, the amount of the rebate is seventy-five dollars (\$75) per ton.~~

103 ~~C. If the tons approved for the rebate in any one month multiplied by the amount of the rebate in section~~
104 ~~10.12.5(B) exceeds the balance of the Fund, then the Department shall reduce the per ton amount of~~
105 ~~the rebate that month to a rate that will not cause a deficit in the Fund.~~

106 **10.12.6 ENFORCEMENT**

107 ~~A. A person who applies for a rebate is subject to a review by the Department at any time. Applicants~~
108 ~~must allow access to all records related to waste tire management activities during normal business~~
109 ~~hours for the purpose of determining compliance with these rules for five (5) years from the date of~~
110 ~~receiving a rebate.~~

111 ~~B. If an applicant provides information that constitutes a trade secret, confidential personnel information,~~
112 ~~or proprietary commercial or financial information, in accord with section 24-72-204(3), C.R.S., then~~
113 ~~the applicant may request the Department withhold such documents from disclosure in the event the~~
114 ~~Department receives a request for records in accord with the Colorado Open Records Act, section~~
115 ~~24-72-101 et seq. All such documents must be clearly marked with the term "Proprietary Information"~~
116 ~~on each appropriate page. Records marked as containing trade secret, confidential, personnel, or~~
117 ~~proprietary information that do not actually contain such information may be released pursuant to an~~
118 ~~Open Records Act request.~~

119 ~~C. In addition to any other penalty imposed by law, any applicant who knowingly or intentionally provides~~
120 ~~false information to the Department when applying for a rebate shall be ineligible to receive any future~~
121 ~~rebates under these rules.~~

122 ~~D. The Department may deny the rebate to any person who is out of compliance with any State or~~
123 ~~Federal environmental laws, rules or regulations. The Department will work with stakeholders to~~
124 ~~develop guidance for determining what compliance violations merit denial of the rebate.~~