



COLORADO

Solid & Hazardous Waste Commission

Department of Public Health & Environment

NOTICE OF PROPOSED RULE-MAKING HEARING BEFORE THE COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the amendments to 6 CCR 1007-2, Part 1, Sections 1 and 10, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Amendment of 6 CCR 1007-2, Part 1, Sections 1 and 10 - Regulations Pertaining to Solid Waste Sites and Facilities - Amendments to Definitions, Waste Tire Fee, Annual Reports, General Waste Tire Monofill Standards, Waste Tire Fee Administration, Waste Tire End Users Fund, and Standards for End Users and Landowners of Waste Tire Bales

These modifications are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 30-20-1401(2), C.R.S.

The purpose of these amendments are to implement and enforce modifications to Part 14 of Title 30, Article 20, C.R.S. as established in Senate Bill 19-198. The Colorado General Assembly passed Senate Bill 19-198 in the 2019 legislative session.

Proposed amendments include:

- The modification of several definitions in Section 1.2.
- To set a Waste Tire Fee at an amount not to exceed two dollars on the sale of each new tire.
- New regulations for the Waste Tire Administration, Enforcement, Market Development and Cleanup Fund.
- To update the due date of annual reports submitted to the Hazardous Materials and Waste Management Division.
- To limit waiver requirements for waste tire monofill operators and owners.
- The modification of required documentation for persons selling new motor vehicle or new trailer tires, including the disclosure of collection of the Waste Tire Fee on sales receipts.
- To establish the rules and procedures for the End Users Fund and associated rebates.
- To establish the rules for the safe and responsible usage of waste tire bales by End Users and/or landowners.

Any information that is incorporated by reference in these proposed rules is available for review at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any state publications depository library.



Pursuant to C.R.S. §24-4-103(3), a notice of proposed rule-making was submitted to the Secretary of State on August 29, 2019. Copies of the proposed rulemaking will be mailed to all persons on the Solid and Hazardous Waste Commission's mailing list on or before the date of publication of the notice of proposed rule-making in the Colorado Register on September 10, 2019.

The proposed rulemaking materials may also be accessed at <https://www.colorado.gov/pacific/cdphe/shwc-rulemaking-hearings> or the Solid and Hazardous Waste Commission Office, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, 5th Floor, Building A, Denver, CO 80246-1530.

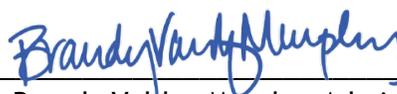
WRITTEN TESTIMONY

Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to cdphe.hwcrequests@state.co.us by Monday, September 30, 2019, at 11:59 p.m. Written materials submitted in advance will be distributed to the commission members prior to the day of the hearing.** Submittal of written testimony and materials on the day of the hearing will be accepted, but is strongly discouraged.

HEARING SCHEDULE:

DATE: Tuesday, October 15, 2019
TIME: 9:00 a.m.
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Building A, Sabin Conference Room
Denver, CO 80246

Oral testimony at the hearing regarding the proposed amendments may be limited.



Brandy Valdez Murphy, Administrator



1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

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3 **Solid and Hazardous Waste Commission**

4 **Hazardous Materials and Waste Management Division**

5 **6 CCR 1007-2**

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8 **STATEMENT OF BASIS AND PURPOSE**
9 **AND SPECIFIC STATUTORY AUTHORITY FOR**

10

11 Amendment to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR
12 1007-2, Part 1) – Section 1.2 (Definitions), Section 1.7.6 (Waste Tire Fee), Sections
13 10.3.5, 10.5.6, 10.6.7, 10.7.7, 10.8.7, 10.9.5 (Annual Report), 10.5.1 (General Waste
14 Tire Monofill Standards), Section 10.11 (Waste Tire Fee Administration),
15 Section 10.12 (Waste Tire End Users Fund), and 10.13 (Standards for End Users and
16 Landowners of Waste Tire Bales).

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19 **Basis and Purpose**

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21 I. **Statutory Authority**

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23 Section 30-20-1401(2), C.R.S. gives the Solid and Hazardous Waste Commission (the
24 Commission) the authority to promulgate waste tire regulations in order to implement
25 and enforce Section 30, Article 20, Part 14, C.R.S. These regulations implement Senate
26 Bill 19-198 (“SB 19-198” or “the Bill”) which modified Part 14. The Legislature passed SB
27 19-198 in 2019.

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29 II. **Senate Bill 19-198**

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31 Section 1 of SB 19-198 includes definitions of several terms.

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33 Section 2 of the Bill amends Section 30-20-1403, C.R.S. to give the Commission the
34 authority to set a Waste Tire Fee at an amount not to exceed two dollars on the sale of
35 each new tire. The Waste Tire Fee will become effective on January 1, 2020, and
36 continue through December 31, 2025. The Commission has the authority to adjust the
37 Waste Tire Fee on an annual basis. Per SB 19-198, the Waste Tire Fee will be reduced
38 automatically to \$0.55 on January 1, 2024.

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40 Section 3 of SB 19-198 includes new rules for the Waste Tire Administration,
41 Enforcement, Market Development and Cleanup Fund.

42 Section 4 of the Bill reestablishes the End Users Fund in Section 30-20-1405, C.R.S.
43 The End Users Fund will provide quarterly rebates to in-state End Users, retailers that
44 sell tire-derived products, and End Users who are also a Waste Tire Hauler and haul
45 waste tires from rural counties. This section gives the Commission the authority to set
46 the amount of the rebate annually on a per-ton basis. The rebates will be paid out based
47 on the tiering system.
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50 Section 5 of SB 19-198 limits the circumstances under which the Department can waive
51 requirements in 30-20-1415 (1)(j) and (1)(k), C.R.S. for waste tire monofill operators and
52 owners.
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54 Section 6 of the Bill includes an appropriation for the 2019-20 state fiscal year.
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56 Section 7 states that the Act is subject to a referendum petition.
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58 III. Purpose of revised regulations:

59
60 Section 1.2 (Definitions) is being amended to add, modify, and delete some of the
61 definitions to reflect new statutory definitions in Section 1 of SB 19-198 and to define
62 terms that are necessary for effective implementation of the Bill.
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64 Section 1.7.6 (Waste Tire Fee) is being amended to increase the Waste Tire Fee
65 amount from \$0.55 to \$1.25 on the sale of each new motor vehicle tire and new trailer
66 tire. The Waste Tire Fee is not a new fee as House Bill 14-1352 automatically set the
67 rate at \$0.55 when the previous End Users Fund and Market Development Fund was
68 repealed (effective January 1, 2018). Funds collected through the Waste Tire Fee will be
69 split between the Waste Tire Administration, Enforcement, Market Development and
70 Cleanup Fund and the End Users Fund.
71

72 Changes in sections 10.3.5 (Waste Tire Haulers), 10.5.6 (Waste Tire Monofills), 10.6.7
73 (Waste Tire Processors), 10.7.7 (Mobile Waste Tire Processors), 10.8.7 (Waste Tire
74 Collection Facilities), and 10.9.5 (End Users) require Annual Reports to be submitted to
75 the Department by March 1 of every year.
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77 Section 10.5.1(P) incorporates the limitation on waivers for owners and operators of
78 Waste Tire Monofills of Section 5 of SB 19-198 into the regulations.
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80 Section 10.11 (Waste Tire Fee Administration) modifies documentation requirements for
81 persons selling new motor vehicle or new tire trailers and requires, consistent with
82 Section 2 of SB 19-198, disclosure of collection of the Waste Tire Fee on receipts for
83 every new tire purchased.
84

85 Section 10.12 (Waste Tire End Users Fund) establishes the rules and procedures for the
86 End Users Fund and End User rebates.
87

88 Section 10.13 (Standards of End Users and Landowners of Waste Tire Bales)
89 establishes rules for the safe and responsible usage of waste tire bales by End Users
90 and/or landowners.
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92 **Discussion of Regulatory Proposal**

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94 The passage of SB 19-198 requires the addition, revision and deletion of several
95 definitions in Section 1.2 for the Solid Waste Regulations (6 CCR 1007-2, Part 1).
96

97 The following new definitions are being added to Section 1.2:

- 98 1. Alternative Daily Cover
- 99 2. ASTM Standard D6270
- 100 3. Beneficial User (as applied in Section 10)
- 101 4. Crumb Rubber
- 102 5. Rubber Mulch
- 103 6. Rural County
- 104 7. Ultimate Customer

105
106 The following existing definition is being modified in Section 1.2:

- 107 1. Waste Tire Bale

108
109 The following existing definition is being deleted from Section 1.2, as there are two
110 definitions for the same term.

- 111 1. End User (removing first reference in Section 1.2)

112
113 The amended Section 1.7.6 requires retailers of new motor vehicle tires and new trailer
114 tires to collect a Waste Tire Fee in an amount of \$1.25 on the sale of each new motor
115 vehicle tire and new trailer tire and to remit the Waste Tire Fee to the Department by the
116 20th of each month. The Waste Tire Fee is set at \$1.25 to cover funds needed for the
117 administration for the Waste Tire Administration, Enforcement, Market Development and
118 Cleanup Fund and the End Users Fund and to pay End User rebates. The Waste Tire
119 Fee will be split and deposited into the funds effective January 1, 2020 as follows:

- 120 1. Waste Tire Administration, Enforcement, Market Development and Cleanup
121 Fund: \$0.50
- 122 2. End Users Fund: \$0.75

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124
125 Sections 10.3.5 (Waste Tire Haulers), 10.5.6 (Waste Tire Monofills), 10.6.7 (Waste Tire
126 Processors), 10.7.7 (Mobile Waste Tire Processors), 10.8.7 (Waste Tire Collection
127 Facilities), and 10.9.5 (End Users) were modified to move the required submittal date of
128 the Annual Report to the Department from April 1 to March 1 each year. The Annual
129 Report information is used to generate reporting to the legislature and predict end use
130 rates. The Commission believes the current due date of April 1 does not give
131 Department staff adequate time to prepare a legislative report or predict end use rebate
132 rates. Every year there are entities who either fail to submit a required Annual Report or
133 who fail to submit an accurate Annual Report by the due date. It takes the Department
134 time to pursue enforcement actions against these entities, which may or may not result

135 in the filing of an accurate annual report. Moving up the report date should provide
136 sufficient time for the Department to determine whether the Commission needs to
137 consider adjustments to the End User per ton rates.
138

139 Section 10.5.1(P) adds provisions regarding the issuance of waivers to Waste Tire
140 Monofills. The Department can waive requirements related to the storage and
141 management of waste tires in a monofill, but Section 5 of SB 19-198 added a
142 requirement that the Department seek public comment before doing so. Section 5 also
143 limited the Department's authority to issue a waiver. The Department cannot issue a
144 waiver unless the owner or operator of the Waste Tire Monofill "has demonstrated that it
145 has achieved a net reduction on an annual basis in the number of waste tires in the
146 monofill or unless an emergency event of limited duration such as a fire or flood, as
147 defined by the Commission, has occurred." The Commission is adding those
148 requirements to the regulations and defining "emergency event" to include tornadoes
149 and other instances of an uncontrollable natural force or human caused disaster. Waste
150 Tire Monofills can accept waste tires as a result of these types of events, even if they
151 would be otherwise be prevented from doing so under the requirements in 30-20-
152 1415(1)(j) and (1)(k), C.R.S.
153

154 Section 10.11.7 allows retailers to provide documentation other than receipts to
155 demonstrate compliance with Section 10.11 and 30-20-1043(1)(a), C.R.S. It can be an
156 unnecessary burden for each retailer of new motor vehicle/trailer tires to keep every new
157 tire receipt. Other documentation, such as transaction records or invoices, can serve to
158 provide information on new tire sales.
159

160 Section 10.11.8 adds the language in 30-20-1403(1)(a)(IV), C.R.S. requiring retailers to
161 include a specific statement on every invoice for new tires. The statement discloses the
162 Waste Tire Fee to consumers.
163

164 Section 10.12 outlines the rules regarding the End Users Fund and the rebates. The
165 previous subsection 10.12 was removed from Section 10 in 2018 when the End Users
166 Fund was repealed in January 2018. The main sections to the subsection include:
167

- 168 1. The general rules each applicant must follow to be eligible for a rebate.
- 169 2. The general rules based on type of applicant applying (End User, Retailers of
170 tire-derived products, and End Users applying for a Waste Tire Hauler rebate).
- 171 3. An eligibility table (Table 10-12.01) to clarify eligibility for End Users and
172 Retailers to participate in the End Users Fund.
- 173 4. Procedures for applicants to apply for rebates from the End Users Fund.
- 174 5. An explanation of the process the Department will use to review and approve or
175 deny the submitted applications.
- 176 6. A discussion of the appeals process when applicants feel the Department erred
177 in denying an applicant's application.
- 178 7. A per ton rebate amount for the three tiers and for hauling of waste tires from
179 rural counties (explanation below).
- 180 8. An explanation of how the Department will manage enforcement issues for
181 applicants.

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The Commission determined the per ton rate for the three tiers and the Waste Tire Hauler rebate based on the following steps:

1. Review of data submitted to the Department from the WT-4 (Colorado Commercial Waste Tire Hauler Annual Report) and WT-5 (Waste Tire Facility Annual Report) forms. These reports provide data on the end use of waste tires and tire-derived products on an annual basis. Each year the Department generates an annual report to the legislature regarding the reuse and recycling of waste tires in Colorado.
2. The “Colorado Office of the State Auditor Waste Tire Processor and End User Program Performance Audit, June 2014” report. This report recommends that the Department not set a per ton rate that exceeds the cost of any tire-derived product eligible for a rebate.
3. A report titled “Tire-Derived Products Representative Manufacturing Costs, November 2014” prepared by Tetra Tech, Inc. and TAG Resource Recovery. This report provides manufacturing costs for several tire-derived products in Colorado.
4. Discussions the Department had with the states of Utah, Oklahoma, and Louisiana pertaining to their rebate programs and the per ton rates they use for similar tire-derived products.

The Commission used this information to determine per ton rates that would: (1) provide rebates to applicants and tire-derived products to be competitive with non-waste tire products; and (2) keep the Waste Tire Fee as low as possible for consumers.

Section 10.12.1(B)(4) requires that waste tires in waste tire bales must be at least cut in half to be eligible for the end user rebate. The added requirement is a result of 30-20-1405(5)(e), C.R.S. (Section 4 of SB 19-198), which states that the Department may pay out rebates based on “the amount of the waste tire used and *destroyed*” (emphasis added). The Commission interprets “destroyed” to require the modification of waste tires such that they no longer have their original form or structure. Whole baled waste tires are not “destroyed.”

Section 10.13 establishes standards for End Users and landowners of waste tire bales. These standards address several problems that are unique to waste tire bales and are appropriate and necessary in order to carry out the Commission’s duty to promulgate rules related to the implementation and enforcement of C.R.S. Section 30, Article 20, Part 14 (Strategies for Waste Tires). Part 14 establishes the policy of the State “to pursue proposals for recycling and other beneficial use of waste tires in lieu of storage or landfill disposal, and . . . to encourage the development of techniques for resource recovery, recycling, and reuse of waste tires and to provide for the management of waste tires.” 30-20-1401(1), C.R.S. The Commission thus believes that it is necessary to set standards to ensure that waste tire bales are being put to beneficial use.

This subsection requires End Users or landowners to maintain the integrity of waste tire bales. Broken waste tire bales pose a hazard to the environment and public health.

229 Failure to address broken waste tire bales constitutes improper disposal of waste tires in
230 violation of 30-20-1414, C.R.S. Broken waste tire bales must be repaired or removed
231 from the property for disposal within 90 days of discovery. The Commission believes that
232 90 days is sufficient time for End Users and landowners to comply with Section 10
233 regulations when a waste tire bale fails.

234
235 This subsection also requires that beneficial use of waste tire bales be approved by the
236 Department prior to placement or, in the alternative, fall within the Department's pre-
237 approved beneficial uses for waste tire bales. The Department's Pre-Approved
238 Beneficial Uses Table 3 lists waste tire bales for use as containment, livestock sheds
239 and windbreaks. The Commission's assumption is that the pre-approved uses for the
240 waste tire bales are used for agricultural land and livestock. The Department will
241 consider adding additional pre-approved waste tire bale uses to Table 3 on a case by
242 case basis.

243
244 This subsection also states that End Users or landowners must remove any waste tire
245 bales which are no longer serving a beneficial use within 120 calendar days. End Users
246 must also cancel their End User registration within 90 days of the removal of all waste
247 tire bales.

248
249 Section 10.13(D) states that the Department may notify local fire departments the
250 location of waste tire bales in their jurisdiction. The Department has responded to waste
251 tire bales that have caught fire and has witnessed the damage these fires cause to local
252 communities. Waste tire bale fires cannot be extinguished easily and will release
253 chemicals into the air, soil and ground water. Local fire departments may be able to
254 respond more quickly and effectively to a waste tire bale fire if they know of the bales
255 beforehand.

256
257 Finally, Section 10.13(G) states that End Users or landowners who have received
258 rebates are ineligible for waste tire cleanup funds. Once waste tire bales exceed their
259 beneficial use function, the tires become a waste tire again and are subject to Section 10
260 regulations. If the Department has paid End User rebates for the waste tire bales to be
261 end used, the Commission believes that the citizens of Colorado should not pay for the
262 clean-up and/or removal of discarded waste tire bales. In the instance of a change of
263 ownership or an emergency situation, the Department will evaluate the situation on a
264 case by case basis in order to determine whether using cleanup funds is appropriate.

265 266 Description of Local Government Involvement in the Stakeholder Process

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268 Executive Order D 2011-005 (EO-5), "Establishing a Policy to Enhance the Relationship
269 between State and Local Government" requires state rulemaking agencies to consult
270 with and engage local governments prior to the promulgation of any rules containing
271 mandates. The Department completed an EO-5 Internal Communication Form –
272 Conception Phase that was transmitted to local governments. These regulations would
273 impact any county or municipality that are a Waste Tire Hauler, Waste Tire Monofill,
274 Waste Tire Processor, Mobile Waste Tire Processor, Waste Tire Collection Facility,
275 and/or a Waste Tire End User.

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Issues Encountered During Stakeholder Process:

1. A stakeholder asked whether the “Good Standing” letter generated by the Secretary of State’s office for a business or person in Colorado must be submitted with each application. The Commission feels a “Good Standing” certificate is not required for every application, but the Department will check the Secretary of State’s website to confirm that those businesses or persons who are required to be registered are listed and in good standing.
2. A stakeholder asked a question about Section 8.6.2 (E) and why is it referenced in the Section 10.12 regulations. This section refers to the criteria solid waste must meet to be used for a beneficial use in lieu of disposal. The Commission believes that any tire-derived products that are end used should meet this criteria in order to receive a rebate from the End Users Fund. Adding this language will link the beneficial use of waste tires and tire-derived products to the rebate program.
3. A stakeholder asked a question about how the Commission will be able to track those waste tires removed from an illegal waste tire site are not paid for twice, once by the Waste Tire Administration, Enforcement, Market Development, and Cleanup Fund and again for a rebate from the End Users Fund. The Commission understands that the Department tracks any waste tire removed from these sites to the final destination, normally a Waste Tire Processor, Waste Tire Collection Facility or a Waste Tire Monofill. The Department will modify the purchase order or contract with the Waste Tire Hauler to stipulate that those tires are not eligible for a rebate from the End Users Fund.
4. A stakeholder asked whether Section 10.12.1(B)(2) requires an End User to comply with all local environmental requirements or just the local requirements for the end use of the tire-derived product. This language refers to local requirements on end use. The Commission feels it is up to the End User to determine whether the anticipated end use of the tire-derived product is allowed in any jurisdiction it is being end used. Sections 10.12.3(B) and 10.12.6(D) speak to the issue of compliance with state or federal environmental laws and regulations.
5. Stakeholders asked why waste tires used in a waste tire bale need to be at least cut in half in order to qualify for a rebate. The Commission interprets the word “destroyed” to require destruction of waste tires such that they no longer have their original form or structure. Whole waste tires are typically used in the processing of a waste tire bale. The Commission believes cutting a waste tire at least in half meets SB 19-198 requirement that a waste tire be “destroyed” in order to be eligible for a rebate. Several stakeholders agreed with this interpretation.
6. A stakeholder asked if using the average weight of a waste tire would be sufficient means for the waste hauler rebate. Waste Tire Haulers typically do not weigh their trucks as they collect waste tires. Instead waste tires are tracked individually with manifests and other reporting. The Commission feels the use of weight tickets is the most accurate way to determine the per ton rate for purposes of the rebate. The regulations allow other verifiable forms of documentation instead of weight tickets, as long as it is approved by the Department’s internal audit unit and/or the Colorado Attorney General’s Office.
7. A stakeholder asked when a subcontractor would be considered an ultimate customer. A subcontractor would be the ultimate customer if they are end using the tire-derived

- 322 product for its final intended use. The subcontractor would need to be registered as an
323 End User to qualify for a rebate from the End Users Fund.
- 324 8. A stakeholder asked if power plants who end used fuel created through the process of
325 pyrolysis would be eligible for a rebate from the End Users Fund. The Commission
326 believes this would be a tire-derived fuel and would be eligible for a Tier I rebate.
- 327 9. Questions were asked about who is eligible when crumb rubber is used to make rubber
328 mats to be sold in the retail market. The Commission believes the manufacturer of the
329 mats (or other molded products) would be eligible for the rebate as long as they
330 demonstrate those mats have been sold and moved offsite.
- 331 10. Several stakeholders asked why a minimum ton amount was being used in order for an
332 applicant to be eligible for a rebate. The Commission believes a minimum is necessary
333 due to concerns about the time and effort the Department expends in order to process
334 applications and distribute funds.
- 335 11. Stakeholders asked why the Department included language on applicants not being
336 eligible for hauling, retail sale or end use of tire-derived products when the Department is
337 conducting a waste tire cleanup using funds from the Waste Tire Administration,
338 Enforcement, Market Development, and Cleanup Fund. The Commission feels that any
339 activity, whether a waste tire cleanup or other grants or projects, should not cause the
340 Department to pay more than once on the hauling, retail sale, or end use of any waste
341 tire or tire-derived product.
- 342 12. Stakeholders asked whether an applicant would only be ineligible for a rebate when an
343 environmental compliance issue happens with the end use of a tire-derived product, or
344 whether any environmental compliance issue, even if not directly related to the end use
345 of the tire-derived product, would make an applicant ineligible. The Commission feels
346 failure to comply with any federal or state environmental law, rule or regulation could
347 subject the application to denial for that period or longer, depending on the infraction.
- 348 13. Many stakeholders had concerns about whether an application would be denied if a
349 subsidiary or parent company was out of compliance with state or federal environmental
350 laws, rules or regulations. The Commission understands that the Department previously
351 had guidance on this issue and that the Department will revisit that guidance.
- 352 14. Stakeholders asked why there is not a cap on the per ton rate for Tier I rebates. The Bill
353 does not institute a cap on any tier amount.
- 354 15. Stakeholders asked how rebates would be paid out if there is a shortage of funds to
355 meet what has been approved. The Bill directs the Department to pay out proportional
356 rebates when there are not enough funds to cover what was approved. This means all
357 applicants would be reduced by the same percentage so everyone approved who
358 receive an equal reduction in their approved rebate.
- 359 16. A stakeholder asked why an applicant cannot reapply for a rebate when there is a
360 shortage in the End Users Fund and the Department does not pay out full rebates to all
361 approved applicants. The Commission said due to fiscal rules, the Department cannot
362 go back to previous periods and readjust rebate payments. The Commission feels once
363 final rebates are paid, adjustments cannot be made unless a calculation or Department
364 error occurred.
- 365 17. Stakeholders asked why the Commission chose the word "may" and not "must" in
366 Section 10.13(D) when discussing contacting the local fire jurisdiction when waste tire
367 bales are placed on any property for end use. The Commission understands that most
368 waste tire bales are used in agricultural settings for purposes of containing livestock and

369 livestock feed. Therefore, fire codes that would apply to densely populated areas might
370 not be applicable or relevant to open fields. Local fire districts may be notified when the
371 number of waste tire bales being placed on a property warrants notification such that
372 those agencies need to be aware of the presence and number of waste tire bales. The
373 Commission feels that rather than requiring notification of local fire districts regarding the
374 placement of waste tire bales in each instance, the rule should allow the Department to
375 notify local fire departments of waste tire bale placement when circumstances or site
376 conditions warrant notification.

377 18. A stakeholder asked if the definition for "Alternative Daily Cover" could include language
378 that sets a maximum amount that could be used as cover at a landfill. The stakeholder
379 had concerns that landfills could take advantage of the program by applying more than
380 necessary to apply for a larger rebate amount. The Commission feels the definition
381 should remain as written in the regulations. The Department has regulatory authority
382 over landfills and can limit alternative daily cover use in the landfill's Engineered Design
383 and Operation Plan. The Department can also inspect these facilities to ensure
384 compliance with those limits.

385 19. A stakeholder asked why a waste tire had to be cut in half if used in a waste tire bale to
386 be eligible for a rebate if the definition of a "Waste Tire Bale" does not indicate that. The
387 reason the waste tires need to be cut at least in half is to comply with the requirement
388 that tires for which a rebate is paid out are "destroyed," as required by 30-20-1405
389 (5)(II)(e). If an End User wanted to use waste tires for a waste tire bale without cutting
390 them at least in half they could, but that End User would not be eligible for a rebate from
391 the End Users Fund. Cutting the waste tire in half could also help keep waste tires from
392 broken or disassembled bales from being re-baled and getting another rebate from the
393 End Users Fund.

394 20. Several stakeholders asked to set the definition of "Crumb Rubber" to include up to less
395 than one-fourth inch in size of the material. The Commission decided to define "Crumb
396 Rubber" as sizes less than one-fourth inch to meet current industry and ASTM
397 standards.

398 21. Stakeholders asked why the Department was asking for the maximum amount allowed
399 by SB 19-198 (\$.50) of the Waste Tire Fee in order to administer the Waste Tire
400 Program. A rate of \$.50 will ensure that the program can maintain current staffing,
401 administer grant programs, manage the revived End Users Fund, and fund market
402 development activities and programs. The Commission notes that per SB 19-198, the
403 Department will see an automatic decrease in this portion of the fee from \$.55 to \$.50 on
404 January 1, 2020. The Bill does have a mechanism to move funds from the Waste Tire
405 Administration, Enforcement, Market Development and Cleanup Fund to the End Users
406 Fund if the Department's expenditures are below what is being collected into the Fund
407 (30-20-1404). The Department will review whether the \$.50 rate should be adjusted on
408 an annual basis, based on projected future expenditures.

409 22. Stakeholders asked how a waiver for a Waste Tire Monofill would be viewed if the
410 markets for the end use of waste tires were to fall significantly below what is being
411 generated each year and waste tires inventories accordingly increased throughout the
412 state. The stakeholder asked whether such an event could constitute an "emergency
413 event of limited duration" pursuant to 30-20-1415. The Commission does not feel a drop
414 in the end use of waste tires in the state would constitute an "emergency event of limited
415 duration."

- 416 23. A stakeholder asked whether a Waste Tire Monofill with an existing waiver that included
417 a stipulation that a Waste Tire Monofill could receive more waste tires into the facility
418 than was end used or processed, would be precluded from receiving another waiver in
419 the future. The statute prevents the Department from issuing a waiver to a facility that
420 has not at least achieved a “net reduction” in the number of waste tires in the monofill. A
421 Waste Tire Monofill must meet the “net reduction” requirement on an annual basis in
422 order to be eligible for a waiver in the following year, regardless if a waiver was in place
423 or not.
- 424 24. A stakeholder asked whether a Waste Tire Monofill had to meet a net reduction on
425 annual basis in order to receive a waiver, or whether the Department believe it would
426 just be one of the factors considered when deciding if a waiver could be granted. The
427 statute requires that a Waste Tire Monofill must show a net reduction (that is, at least
428 one more tire end used or processed than what was received into the Waste Tire
429 Monofill) in order to be considered for a new waiver.
- 430 25. A stakeholder asked about the term “annual basis” and questioned whether the
431 Department would look back at one year of activity at a Waste Tire Monofill to determine
432 whether there had been a “net reduction,” or will the Department will look at more than
433 one year to determine if the “net reduction” goal has been met at the facility. The
434 Commission interprets “annual basis” to mean that the Department should look one year
435 back from the date the waiver is requested to determine whether there has been a net
436 reduction.
- 437 26. A stakeholder asked whether an “Ultimate Customer” can also be an End User. The
438 Commission considers the “Ultimate Customer” the person who is buying a tire-derived
439 product from a retailer who intends to use the tire-derived product for its intended use. In
440 this scenario, an “Ultimate Customer” is not eligible to receive a rebate from the End
441 Users Fund, but the retailer would be.
- 442 27. A stakeholder asked whether the 10 ton minimum applied to the amount sold to an
443 “Ultimate Customer,” or whether the minimum applies per application. The minimum of
444 10 tons applies per application. An application must have at least 10 tons per quarter
445 period to be eligible for a rebate.
- 446 28. A stakeholder asked how the Commission determined the \$1.25 Waste Tire Fee. The
447 Commission considered the needs of the Department to administer the Waste Tire
448 Program, which includes staffing, grant programs, enforcement activities, and other
449 program needs. As previously discussed, the Commission believes that \$.50 per tire is
450 appropriate for these activities. Based on the projected end use of tire-derived products,
451 the projected number of replacement tires to be sold, the per ton rates set for each of the
452 three tiers and the Waste Tire Hauler rebate, and an estimate of additional funds needed
453 to help mitigate any funding issues and distribute full rebates, the Commission believes
454 that \$.75 is an appropriate amount to be allocated per tire to the End Users Fund.
- 455 29. A stakeholder asked what was considered when setting the per ton rates for the
456 separate tiers. The Commission considered the costs to manufacture tire derived
457 products, what other states with similar programs were providing in the form of rebates,
458 findings in the Colorado Office of the State Auditor Performance Audit completed in
459 2014, and discussion with stakeholders on how the end use of tire-derived products will
460 be impacted by reestablishment of the rebate program. The Commission feels the tier
461 rates will both support the current needs of the tire-derived product markets and help

- 462 incentivize more use of current tire-derived products, while assisting in the development
463 of new tire-derived products in the state.
- 464 30. A stakeholder submitted a comment asking who is eligible to apply for a Waste Tire
465 Hauler rebate. Per 30-20-1405(2)(b), only End Users who also are registered as a
466 Waste Tire Hauler would be eligible to apply for the rebate.
- 467 31. A stakeholder submitted a comment asking why silage covers were excluded from the
468 Tier III rebates. The statute (30-20-1405(5)(e)(III)) does not include silage covers in Tier
469 III.
- 470 32. A stakeholder submitted a comment asking whether End Users of alternative daily cover
471 and tire-derived aggregate be impacted should ASTM Standard D6270 be amended.
472 The Commission feels that any End User would need to comply with the amended
473 standard in order to be eligible for a rebate for the end use of those impacted tire-derived
474 products.
- 475 33. A stakeholder asked if the Commission had reached out to individual stakeholders to ask
476 them what their costs were to process or end use tire-derived products in order to
477 determine the per ton rates. Individual processors and end users were not asked to
478 provide this type of information since it is considered confidential. The Commission used
479 the annual reports, the Colorado Office of the State Auditor Waste Tire Processor and
480 End User Program Performance Audit, the Tire-Derived Products Representative
481 Manufacturing Costs report, and discussion with other states who have similar rebate
482 programs to determine the per ton rates.
- 483 34. One stakeholder felt that section 10.13 “singled out” or discriminated against End Users
484 of waste tire bales. The Commission notes that the processing of waste tires and the
485 end use of all tire derived products are regulated at various levels, in order to ensure the
486 successful processing and safe use of each product. For example, cement kilns are
487 required to meet stringent permitting and air quality standards in order to burn whole and
488 shredded waste tires as tire derived fuel. Landfills have to meet solid waste permitting
489 and Engineering, Design and Operations Plan requirements in order to utilize tire shreds
490 for alternative daily cover. All of these end uses (and others) are subject to inspection by
491 the waste tire program, as well as other Department regulatory programs. The
492 Commission notes that before this rule, there were no regulations specific to waste tire
493 bales.
- 494
- 495 The Commission feels minimum standards should be in place to protect human health
496 and the environment since waste tire bales are unique in the sense that they are a
497 temporary use of waste tires. Once waste tire bales break or are no longer beneficially
498 used, they are considered waste tires, not a tire-derived product. Because rebates
499 encourage the end use of waste tire bales, the Commission has a responsibility to
500 prevent the improper disposal of waste tires upon breakage and reduce the risk that
501 bales pose to human health and the environment.
- 502 35. A stakeholder expressed concern that waste tire bales were being “singled out” in
503 section 10.13 when it came to potential fires and asked why other End Users weren’t
504 called out in this section for burning waste tires for fuel. Other End Users who burn
505 waste tires or tire derived fuel are highly regulated by other divisions within Department.
506 Adding waste tire bale regulations to including the possibility of notifying local fire
507 districts when waste tire bales are being end used protects the public health and
508 environment by allowing local fire districts to prepare for a potential emergency.

509 36. Stakeholders submitted a comment asking whether greenhouse gas emissions could be
510 a factor in determining the per ton rate for the three tiers. SB 19-198 did not give the
511 Commission authority to consider greenhouse gas emissions in setting the per ton rates.
512

513

514 **Regulatory Alternatives**

515

516 No other regulatory alternatives were evaluated.

517

518 **Cost/Benefit Analysis**

519

520 A cost-benefit analysis will be performed if requested by the Colorado Department of
521 Regulatory Agencies.

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2

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

5

6 **6 CCR 1007-2**

7 **PART 1 REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES**

8

9

10 **Waste Tire Amendments**

11

12

13 **1) Section 1.2 Definitions is being amended by adding the following new definitions to**
14 **read as follows:**

15 **1.2 Definitions**

16 *****

17

18

19 **“Alternative Daily Cover”** means at least three inches of earthen material or other suitable material
20 placed over the exposed solid waste at the end of each operating day, or at such frequencies as needed
21 to prevent or minimize nuisance conditions.

22 *****

23

24

25 **“ASTM Standard D6270”** means the American Society for Testing and Materials Standard entitled
26 “Standard Practice for Use of Scrap Tires in Civil Engineering Applications”, effective on December 15,
27 2017. If this standard is amended, then the Department shall require compliance with the amended
28 standard.

29 *****

30

31

32 **“Beneficial user”** as used in Section 10, means a person who uses solid waste for energy recovery in a
33 manufacturing process or as an effective substitute for natural or commercial products, in a manner that
34 does not pose a threat to human health or the environment. Avoidance of processing or disposal cost
35 alone does not constitute beneficial use.

36 *****

37

38

39 **“Crumb rubber”** means rubber granules derived from a waste tire that are less than one-fourth inch in
40 size, and is wire and fiber free.

42 *****
43
44 **“Rubber mulch”** is a type of mulch-sized rubber material, which is one-fourth inch to three inches in size,
45 which is made from waste tires, and is wire and fiber free.
46

47 *****
48
49 **“Rural County”** means a county with a population of fewer than sixty thousand residents.
50

51 *****
52
53 **“Ultimate customer”** means an individual who actually purchases the tire-derived product and makes
54 final use of the tire-derived product.
55

56 *****

57
58
59 **2) Section 1.2 Definitions is being amended by revising the definition of “Waste Tire
60 Bale” to read as follows:**

61 **1.2 Definitions**

62 *****

63
64
65 **“Waste Tire Bale”** means a temporary use of waste tires that are mechanically compressed and bound
66 into block form and are secured using stainless steel or heavy gauge baling wire.
67

68 *****

69
70
71 **3) Section 1.2 Definitions is being amended by deleting the definition of “End User” as
72 follows:**

73 **1.2 Definitions**

74 *****

75
76
77 ~~**“End User”** means a person who uses a tire-derived product for a commercial or industrial purpose,~~

78 *****

79
80
81
82 **4) Section 1.7.6 (Waste Tire Fee) is amended to read as follows:**

83 **1.7.6 Waste Tire Fee**

84 Retailers must collect a fee of ~~\$0.55~~ \$1.25 on the sale of each new motor vehicle tire and new trailer
85 tire. Retailers must submit to the Department all fees collected from the sale of each new motor

86 vehicle tire and new trailer tire. The fees collected each month are due to the Department no later
87 than the 20th day of the following month.

88
89 The Waste Tire Fee must be distributed as follows:

- 90
91 a. \$.50 must be deposited into the Waste Tire Administration, Enforcement, Market Development,
92 and Cleanup Fund (Section 30-20-1404, C.R.S.).
93 b. \$.75 must be deposited into the End Users Fund (Section 30-20-1405, C.R.S.).
94

95
96 **5) The Table of Contents for Section 10 (Waste Tires) is being amended by revising the**
97 **listing for section 10.12 (Reserved) and adding a listing for section 10.13 (Standards for**
98 **End Users and Landowners of Waste Tire Bales) to read as follows:**
99

100 **SECTION 10**

101
102 **WASTE TIRES**

103
104 *****

105
106 **10.12 Reserved Waste Tire End Users Fund**

107 **10.13 Standards for End Users and Landowners of Waste Tire Bales**

108
109
110 **6) Section 10.3.5 (Annual Report) is being amended by revising paragraph (B) to read as**
111 **follows:**

112
113 **SECTION 10.3 - STANDARDS FOR WASTE TIRE HAULERS**

114
115 *****

116 **10.3.5 ANNUAL REPORT**

117
118 *****

119
120 (B) The annual report must be delivered to the Department, via certified mail, regular mail, facsimile,
121 hand delivery, or electronically by ~~April~~March 1st of each year and must include the following:

122
123 *****

124
125
126 **7) Section 10.5.1 (General Waste Tire Monofill Standards) is being amended by adding**
127 **new paragraph (P) to read as follows:**

128
129
130 **10.5 - STANDARDS FOR WASTE TIRE MONOFILLS**

131
132 **10.5.1 GENERAL WASTE TIRE MONOFILL STANDARDS**

133 *****

134
135 (P) After soliciting public comment, the Department may issue a waiver relating to any requirement of this
136 section, except that the Department shall not issue a waiver of Section 30-20-1415 (1) (j) and (1) (k),
137 C.R.S., and the parallel provision in Sections 10.5.1 (J) and (M) unless:

138
139 (1) The Waste Tire Monofill owner or operator has demonstrated that it has achieved a net reduction
140 on an annual basis in the number of waste tires in the monofill; OR

141
142 (2) Unless an emergency event of limited duration such as a fire, flood, tornado, an instance of an
143 uncontrollable natural force or human caused disaster has occurred which requires the Waste
144 Tire Monofill to be an outlet for the receipt of waste tires.
145

146
147 **8) Section 10.5.6 (Annual Report) is being amended by revising paragraph (A) to read as**
148 **follows:**
149

150
151 **10.5 - STANDARDS FOR WASTE TIRE MONOFILLS**
152

153 *****

154
155 **10.5.6 ANNUAL REPORT**
156

157 (A) Any person who owns or operates a Waste Tire Monofill must submit an annual report to the
158 Department and local governing body having jurisdiction by ~~April~~ March 1st of each year on the
159 Waste Tire Facility Annual Reporting Form (Form WT-5). The annual report must include the amount,
160 by actual count or by actual weight in tons, of waste tires received at the facility, how many waste
161 tires were processed or end used at the facility, how many waste tires were shipped off-site from the
162 facility for the preceding calendar year, and the total amount of waste tires accepted from
163 unregistered waste tire haulers.
164

165 *****

166
167
168 **9) Section 10.6.7 (Annual Report) is being amended by revising paragraph (A) to read as**
169 **follows:**
170

171 **10.6 - STANDARDS FOR WASTE TIRE PROCESSORS**
172

173 *****

174
175 **10.6.7 ANNUAL REPORT**
176

177 (A) All Waste Tire Processors must submit an annual report to the Department and local governing body
178 having jurisdiction by ~~April~~ March 1st of each year on the Waste Tire Facility Annual Reporting Form
179 (Form WT-5). The annual report must include the amount, by actual count or by actual weight in tons,
180 of waste tires received at the facility, how many waste tires were processed at the facility, how many
181 waste tires were shipped off-site from the facility for the preceding year, and the total amount of waste
182 tires accepted from unregistered waste tire haulers.

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10) Section 10.7.7 (Annual Report) is being amended by revising paragraph (A) to read as follows:

10.7 - STANDARDS FOR MOBILE WASTE TIRE PROCESSORS

10.7.7 ANNUAL REPORT

(A) All Mobile Waste Tire Processors must submit an annual report to the Department and local governing body having jurisdiction by ~~April-March~~ 1st of each year on the Mobile Waste Tire Processor Annual Reporting Form (Form WT-8). The annual report must include the amount, by actual count or by actual weight in tons, of waste tires processed at each mobile processing location during the previous year.

11) Section 10.8.7 (Annual Report) is being amended to read as follows:

10.8 - STANDARDS FOR WASTE TIRE COLLECTION FACILITIES

10.8.7 ANNUAL REPORT

Any person who owns or operates a Waste Tire Collection Facility must submit an annual report to the Department and local governing body having jurisdiction by ~~April-March~~ 1st of each year on the Waste Tire Facility Annual Reporting Form (Form WT-5). The annual report must include, by actual count or by actual weight in tons, the amount of waste tires received at the facility, how many waste tires were shipped off-site from the facility for the preceding calendar year, and the total amount of waste tires accepted from unregistered waste tire haulers.

12) Section 10.9.5 (Annual Report) is being amended by revising paragraph (A) to read as follows:

10.9 - STANDARDS FOR END USERS

10.9.5 ANNUAL REPORT

232 (A) End Users described in Section 10.9.1 must submit an annual report to the Department and local
233 governing body having jurisdiction by ~~April-March~~ 1st of each year on the Waste Tire Facility Annual
234 Reporting Form (Form WT-5). The annual report must include the amount, by actual count or by
235 actual weight in tons, of waste tires and tire derived product received at the End User's facility during
236 the previous year, and how many waste tires were used to generate energy or fuel during the
237 previous year.
238

239 *****

240
241
242 **13) Section 10.11 (Waste Tire Fee Administration) is being amended by revising**
243 **subsection 10.11.7 and adding new subsection 10.11.8 to read as follows:**
244

245
246 **10.11 WASTE TIRE FEE ADMINISTRATION**
247

248 *****

249
250 10.11.7 Any person who sells new motor vehicle or new trailer tires must retain and make available to
251 the Department for review any documentation or records (such as receipts or invoices) provided to
252 customers or transaction records) related to new tire sales to ensure compliance with Section 30-20-
253 1043 (1)(a), C.R.S., and the Regulations on the sales of these tires ~~for the Department to review~~.
254 Documentation and/or records must be retained for three (3) years from the date of sale.
255

256 10.11.8 Every receipt or invoice from the purchase of a new vehicle tire or new trailer tire must have the
257 following statement:
258

259 (1) In the largest bold-face type capable base on point-of-sale software, on existing invoice printers
260 possible, or from a permanent stamp, not to exceed fifteen points: "SECTION 30-20-1403,
261 COLORADO REVISED STATUTES, REQUIRES RETAILERS TO COLLECT A WASTE TIRE
262 FEE SET BY THE SOLID AND HAZARDOUS WASTE COMMISSION ON THE SALE OF EACH
263 NEW MOTOR VEHICLE TIRE AND EACH NEW TRAILER TIRE."
264

265 (2) The \$1.25 Waste Tire fee for each new tire purchased.
266
267

268 **14) Section 10.12 (Waste Tire End Users Fund), consisting of § 10.12.1 (General Rules)**
269 **through § 10.12.6 (Enforcement) is being added to Section 10 to read as follows:**
270

271 **10.12 WASTE TIRE END USERS FUND**
272

273 **10.12.1 GENERAL RULES**
274

275 **A. General Rules of Eligibility:**
276

277 1. The following are eligible to apply for the rebate from the End Users Fund (the "Fund"):
278

279 (a) Colorado registered End Users of Colorado-generated tire-derived products or Colorado
280 generated waste tires who end use in Colorado;
281

- 282 (b) Colorado Retailers who sell certain Colorado-generated tire-derived products made in
283 Colorado from Colorado-generated waste tires; and
284
- 285 (c) Colorado registered Waste Tire Haulers who are also a Colorado registered End User or
286 contracted with a Colorado registered End User that is also a Colorado registered Waste Tire
287 Hauler.
288
- 289 2. A business or person who is required to be registered with the Secretary of State's office to
290 conduct business in the State of Colorado must be in "Good Standing" to be eligible for the
291 rebate.
292
- 293 3. Once the Department has paid a rebate or denied a rebate on a particular quantity of tire-derived
294 product or whole waste tires used for energy or fuel, every part of that particular quantity of tire-
295 derived product or whole waste tires is no longer eligible for payment of the rebate. This includes
296 payments made before the adoption of these Rules.
297
- 298 4. Once the Department has paid a rebate or denied a rebate on a particular quantity of waste tires
299 hauled from a rural county to a Colorado registered End User, those same hauled waste tires
300 may be eligible for a rebate as described in 10.12.1 (A) (3), as long as the Waste Tire Hauler and
301 End User are knowingly operating in good faith.
302
- 303 5. When waste tires are processed at the location of an illegal disposal with funds from the Waste
304 Tire Administration, Enforcement, Market Development, and Cleanup Fund, neither the retail sale
305 of the tire-derived product generated or end use of the tire-derived product created is eligible for a
306 rebate from the Fund.
307
- 308 6. When waste tires are removed from the location of an illegal disposal with funds from the Waste
309 Tire Administration, Enforcement, Market Development, and Cleanup Fund and processed at a
310 separate location not using funds from the Waste Tire Administration, Enforcement, Market
311 Development and Cleanup Fund, the retail sale of the generated tire-derived product and the end
312 use of the tire-derived product created is eligible to receive a rebate from the Fund so long as all
313 the other eligibility requirements are met.
314
- 315 7. When waste tires are removed from the location of an illegal disposal with funds from the Waste
316 Tire Administration, Enforcement, Market Development, and Cleanup Fund from a rural county to
317 a registered Waste Tire Processor, Waste Tire Collection Facility, Waste Tire Monofill, or Waste
318 Tire End User, those waste tires are not eligible for a Waste Tire Hauler rebate from the Fund.
319
- 320 8. Any end use of waste tires or tire-derived products must meet the performance criteria of Section
321 8.6.2 (E) to be eligible to receive a rebate from the Fund.
322

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

- 324
- 325 1. To be eligible to receive a rebate for end using tire-derived products or whole waste tires to
326 generate energy or fuel, a person must be currently registered with the Department as an End
327 User. Any applicant who end uses tire-derived products or whole waste tires to generate energy
328 or fuel prior to registration with the Department is not eligible for a rebate.
329
- 330 2. The Department will pay the rebate to an End User only if the end use complies with all local
331 requirements in the jurisdiction where end use occurs. Any rebate issued to an End User where it
332 is later determined that the end use of the tire-derived products or waste tires by the End User

333 was not approved by the jurisdiction where the end use occurred, the Department may request
334 that the applicant return the rebate to the Fund.

- 335
- 336 3. Eligible and Ineligible End Uses. Table 10-12.01 states which end uses are eligible for which
337 category of rebate and some potential uses that are ineligible.
- 338
- 339 4. To receive the End User rebate for the end use of waste tire bales:
- 340
- 341 a. The applicant must submit the End Users Tire Bale Approval Form, available on the
342 Department's website.
- 343
- 344 b. Waste tires in the waste tire bale must be at least cut in half in order to be eligible for a rebate
345 from the Fund.
- 346

347 **C. General Rules for End Users applying for a Waste Tire Hauler rebate**

348

- 349 1. To be eligible to apply for a rebate, a person must be registered with the Department as a Waste
350 Tire Hauler and an End User. Any hauling of waste tires prior to registration with the Department
351 is not eligible for a rebate.
- 352
- 353 2. Only waste tires originated and hauled from rural counties (population of less than 60,000
354 residents) are eligible for a rebate for the Waste Tire Hauler and End User. Counties that meet
355 this standard will be listed at the Colorado Department of Local Affairs "Population Totals for
356 Colorado Counties" website: [https://demography.dola.colorado.gov/population/population-totals-](https://demography.dola.colorado.gov/population/population-totals-counties/)
357 [counties/](https://demography.dola.colorado.gov/population/population-totals-counties/). The most current population statistics will be used to determine if a county is
358 considered rural for the purpose of waste tires being eligible for a rebate.
- 359
- 360 3. The End User applying for a Waste Tire Hauler rebate must provide independent Waste Tire
361 Manifests (Form WT-2) and weight tickets for those waste tires hauled from a rural county to a
362 registered End User to be eligible for a rebate.
- 363
- 364 4. To receive the Waste Tire Hauler rebate for the hauling of waste tires, the applicant must submit
365 the Waste Tire Hauler application, available on the Department's website.
- 366

367 **D. General Rules for Retailers**

368

- 369 1. To be eligible to apply for a rebate, a Retailer must have a current Colorado retail sales tax
370 license pursuant to Section 39-26-103, C.R.S. Any tire-derived product sold prior to the Retailer
371 having a Colorado retail sales tax license is ineligible for a rebate from the Fund.
- 372
- 373 2. To be eligible for a Retailer rebate, the retail sale must be to the ultimate consumer and the
374 Retailer must collect sales tax unless the ultimate customer is otherwise exempt from paying
375 sales tax.
- 376
- 377 3. Only tire-derived product that is sold to ultimate customers is eligible for a rebate for the Retailer
378 from the Fund.
- 379
- 380 4. Eligible and Ineligible Retailers. Table 10-12.01 states which sales are eligible to receive the
381 retailer rebate and some potential sales that are ineligible.
- 382
- 383

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

This table describes potential scenarios for waste tire and tire-derived product end use and retailing. This Table does not create new rights or eligibilities or discuss every potential scenario; it attempts to explain the rights and eligibilities established in statute. Any 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.*

Column Breakdown Explanation:

Tier I: Crumb rubber and tire-derived fuel for energy recovery

Tier II: Molded products and rubber mulch

Tier III: Waste tire bales, alternative daily cover, tire-derived aggregate

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

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

Scenario, if you are	Then you are eligible for			
	Tier I	Tier II	Tier III	Not Eligible for a rebate
An End User who end uses tire-derived fuel or whole waste tires for energy recovery or a fuel substitute at a permitted facility (cement kilns, biofuel plants, electric arc furnaces, or power plants).	X			
An End User who end uses crumbed rubber to manufacture a final product (e.g. molded products, cement, deck boards, furniture, etc.) with a demonstrated sale to an ultimate customer.	X			
An End User who installs a tire-derived product that includes crumbed rubber (e.g. asphalt, concrete, etc.) into a construction, highway, or paving application for a commercial or industrial purpose.	X			
An End User who installs crumbed rubber on a playground, athletic field, or for a landscaping project on a residential, commercial or public property.	X			
A retailer who sells crumbed rubber to the ultimate customer who will use the crumb rubber for its final intended use (e.g. infill on an athletic field, etc.). 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			
An End User who installs rubber mulch on a playground or landscaping project on a residential, commercial or public property.		X		
A retailer who sells rubber mulch to the ultimate customer who will use the rubber mulch for its final intended use (e.g. landscaping, playground, etc.). 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		
A retailer who sells molded products to the ultimate customer who will use the molded products for its final intended use (e.g. furniture, deck boards, erosion control products, etc.). 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		
An End User who is end using waste tire bales, with waste tires that are cut (at least halved), bound with stainless or galvanized steel baling wire, that are installed to facilitate waste tire bale stability and longevity, are in accordance with general engineering and agricultural practices, as allowed by state laws and regulations and local ordinances and meet requirements of Section 10.13. Only waste tire bales end uses listed on Table 3 - Pre-Approved Beneficial Uses table on the department's website are eligible for a rebate.			X	
An End User who received and uses a tire-derived product as alternative daily cover at a landfill			X	

permitted by the state and is approved for use of tire shreds for alternative cover for municipal solid waste. The tire shreds must meet specification standards as Type-B tire-derived aggregate as established by the ASTM Standard D6270.				
An End User who installs tire-derived aggregate for civil engineering projects (highway embankments, permanent cover for a landfill cell, leachate cells at landfills, base material for roads, etc.). The tire-derived aggregate must meet specification standards as Type-A tire-derived aggregate as established by the ASTM Standard D6270.			X	
A waste tire processor who is processing whole waste tires into any tire-derived product.				X
Selling whole waste tires.				X
Selling waste tire bales.				X
Selling or end using sidewalls used for silage covers or any other approved end use.				X
Sale or end use of any steel generated and separated from a processing of a waste tire.				X
Reusing any used or whole waste tire as a vehicle tire, trailer tire, or any usage of husbandry.				X
Burning a whole waste tire or tire-derived product at a non-permitted facility and without recovering the energy.				X
Creating buffings from the recapping or retreading of a tire.				X
Recapping or retreading a tire for any vehicle or non-vehicle use.				X
Using buffings generated from the recapping or retreading process.				X
Disposing of waste tires or tire-derived products.				X
Using whole waste tires, upon CDPHE beneficial use approval, for erosion control, stormwater management, sound damping, grade fill, corrals, fencing, home construction, and other approved uses.				X
Using whole waste tires or tire-derived products for a non-beneficial use.				X
Using whole waste tires or tire-derived products out-of-state.				X

386 **10.12.2 APPLICATION PROCEDURES**

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- A. A person applying for a rebate must comply with all the provisions of this Section 10.12.2.
- B. An applicant for a rebate must file a complete application on Department Form WT-11, providing at a minimum:
 - 1. Applicant's name and address.
 - 2. Name and location where end use, retail sale, or waste tire hauling occurred.
 - 4. Certification the waste tires were Colorado-generated.
 - 5. For End Users:
 - (a) The source of waste tires or tire-derived product;
 - (b) A description of the end use; and
 - (c) The End User's Waste Tire Certificate of Registration number.
 - 6. For End Users applying for a Waste Tire Hauler rebate:
 - (a) A list of rural locations that waste tires were hauled from;
 - (b) A list of End Users that received the hauled waste tires;
 - (c) A description of the end use of the hauled waste tires;
 - (d) The Waste Tire Hauler's Waste Tire Certificate of Registration number; and
 - (e) The End User's Waste Tire Certificate of Registration number.
 - 7. For Retailers:
 - (a) A list of consumers the Retailer sold the tire-derived product to;
 - (b) A description of the tire-derived products sold; and
 - (c) Proof the Retailer collected sales tax on the retail sale or that the retail sale was exempt from sales tax.
 - 8. The amount of waste tires or tire-derived product sold by a retailer, end used, or hauled by weight in tons.
 - 9. The time period in which the waste tires or tire-derived product were sold by a retailer, end used, or hauled.
 - 10. Other supporting documentation required by the Department.
 - 11. Authorized signatures and initials where required.

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C. Timing of Rebate Applications:

1. Applications for rebates will be accepted no later than the stated due date on the application and/or Department's website.
2. Applications will only be accepted for activities that occurred in the previous calendar quarter period.
3. The Department will only accept applications send by mail, courier, or delivered to the Department's mailroom (must be stamped and signed and/or initialed by mailroom personnel as received).
4. Applications received or postmarked after the due date will be automatically denied.
5. The Department will not accept emailed or faxed applications.
6. The Department will not accept adjustments for processed applications from prior calendar quarter periods.
7. An applicant can only receive a rebate for activities occurring in the current fiscal year.

D. Any applicant's application must include a minimum of 10 tons end used, retail sale, and/or waste tires hauled to be eligible for a rebate.

E. The Department may deny a rebate to an applicant who has received funding from the Waste Tire Administration, Enforcement, Market Development, and Cleanup Fund if paying from both funds will result in double paying for the same activity.

F. Applicants must provide weight tickets from a scale that meets the requirements of the Colorado Measurement Standards Act, Sections 35-14-101 through 35-14-134, C.R.S. to document weights of waste tires or tire-derived product end used, tire-derived product sold in a retail sale, or waste tires hauled from a rural county. Other verifiable forms of documentation may be acceptable on a case by case basis based on approval of the Department's internal audit unit and/or the Colorado Attorney General's Office.

10.12.3 PROCESSING OF APPLICATIONS

The Department will review applications according to a four-step process: (1) review for completeness, (2) review for compliance with applicable laws and regulations, (3) review for eligible end uses, retail sales and waste tire hauling, and (4) determination of a rebate amount.

A. **Completeness:** If an application is not complete or if supporting documentation is insufficient, then the Department will notify the applicant and grant the applicant a five (5) business day grace period to submit the missing information. The Department may defer paying rebates to all applicants until adequate information is received. If the applicant does not submit adequate information in the prescribed time period, then the Department may deny a rebate for that quarter.

B. **Compliance:** After the Department has determined all applications submitted in a given quarter have been received, it will conduct a compliance verification to ensure each applicant is in compliance with

488 all applicable environmental laws and regulations and was in compliance with all applicable
489 environmental laws and regulations during the time period for which they are seeking a rebate.
490 Applicants must notify the Department of any pending or active compliance issues to assist in the
491 compliance verification. Any applicant who does not notify the Department of any known compliance
492 issues may lead to automatic denial of any submitted or pending applications.
493

494 C. **Eligibility:** After compliance verification, the Department determines which applicants are eligible for
495 rebates.
496

497 D. **Rebate amount:** The Department will calculate the amount of rebate per Section 10.12.5 of these
498 Regulations and notify each applicant of its determination.
499

500 **10.12.4 APPEALS PROCESS**

501 A. **For approved applications,** if an applicant believes the Department has made a calculation error in
502 the response to an approved application, the applicant must notify the Department in writing within
503 five (5) business days of receiving the Department's response. The notice must contain:
504

- 505 1. A copy of the original submitted application and supporting documents;
- 506 2. A copy of the Department's response;
- 507 3. A detailed description describing the believed error;
- 508 4. Copies of any documents supporting the detailed description.

509 The Department will review the notice and attached documents and may further investigate the
510 matter and ask for additional information from the applicant. Any additional information requested
511 information would be due within five (5) business days of the Department's request. Any incomplete
512 appeal submittals or inability to submit additional requested information must lead to an automatic
513 denial of the appeal by the Department.
514

515 The Department will only accept appeals sent by mail, courier, or delivered to the Department's
516 mailroom (must be stamped and signed or initialed by mailroom personnel as received). Appeals
517 received or postmarked after the due date will be automatically denied without review. The
518 Department will not accept emailed or faxed appeals.
519

- 520 1. If the Department concludes an error has been made and the Department has not yet paid the
521 rebate that quarter, then the Department will reinstate the application and recalculate the
522 payment before paying any rebates that quarter.
523
- 524 2. If the Department concludes an error has been made and the Department has already paid the
525 rebates that quarter, then the Department will notify the applicant and reimburse the applicant
526 from the next quarter's rebate money, as available, according to the following method:
527
 - 528 (a) The Department will determine what the applicant should have been paid had the Department
529 not erred;
 - 530 (b) The Department will pay the applicant that amount from the next quarter's money; and
531

539 (c) The next quarter's money will be reduced accordingly.
540
541 3. If the Department concludes no calculation error was made, then it will notify the applicant that its
542 previous determination was not in error and is final. This determination is subject to appeal
543 pursuant to Section 24-4-106, C.R.S.
544

545 **B. For denied applications:** If an applicant believes his or her application was wrongly denied, then the
546 applicant must, within five (5) business days of denial, submit the following to the Department:
547

- 548 1. A copy of the denied application and supporting documents;
- 549 2. The denial letter;
- 550 3. A statement explaining why the applicant believes the Department erred; and
- 551 4. All other information the applicant believes relevant.
552
553

554 The Department will review the notice and attached documents and may further investigate the
555 matter and ask for additional information from the applicant. Any additional information requested
556 information would be due within five (5) business days of the Department's request. Any incomplete
557 appeal submittals or inability to submit additional requested information must lead to an automatic
558 denial of the appeal by the Department.
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561 The Department will only accept original appeals send by mail, courier, or delivered to the
562 Department's mailroom (must be stamped and signed or initialed by mailroom personnel as
563 received). Appeals received or postmarked after the due date will be automatically denied without
564 review. The Department will not accept emailed or faxed original appeals.
565
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- 567 1. If the Department concludes it erred in denying the application, and the Department has not yet
568 paid the rebate that quarter, then the Department will reinstate the application and recalculate the
569 payment before paying the rebate that quarter.
570
- 571 2. If the Department concludes it erred in denying the application and the Department has already
572 paid the rebate that quarter, then the Department will notify the applicant and reimburse the
573 applicant from the next quarter's money, as available, according to the following method:
574
 - 575 (a) The Department will determine what the applicant should have been paid had the Department
576 not erred;
 - 577 (b) The Department will pay the applicant that amount from the next quarter's money; and
 - 578 (c) The next quarter's money will be reduced accordingly.
579
- 580 3. If the Department concludes no error was made, then it will notify the applicant that its previous
581 determination was not in error and is final. This determination is subject to appeal pursuant to
582 Section 24-4-106, C.R.S.
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587 **10.12.5 REBATE AMOUNT**

588 A. The Department will pay the rebate amount on a per-ton basis.
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B. Beginning April 1, 2020, the amount of the rebate is as follows:

- (1) Tier 1: \$50 per ton;
- (2) Tier 2: \$25 per ton;
- (3) Tier 3: \$12.50 per ton; and
- (4) Waste Tire Hauler: \$12.50 per ton.

C. If the tons approved for the rebate in any one quarter multiplied by the amount of the rebate rates in Section 10.12.5(B) exceeds the balance of the Fund, then the Department must reduce the per ton amount of the rebate that quarter to a rate that will not cause a deficit in the Fund. The Department must reduce the per ton rates proportionally until all rebate funds are exhausted.

Any applicant who does not receive a full rebate due to not enough moneys in the Fund cannot later claim the missing funds in a later application submittal or request.

10.12.6 ENFORCEMENT

- A. A person who applies for a rebate is subject to a review by the Department at any time. Applicants must allow access to all records related to waste tire management activities during normal business hours for the purpose of determining compliance with these rules for five (5) years from the date of receiving a rebate. Any applicant who refuses a review by the Department must have any submitted or pending application denied and will be ineligible for any future rebates from the Fund.
- B. If an applicant provides information that constitutes a trade secret, confidential personnel information, or proprietary commercial or financial information, in accord with Section 24-72-204, C.R.S., then the applicant may request the Department withhold such documents from disclosure in the event the Department receives a request for records in accord with the Colorado Open Records Act, section 24-72-101 et seq. All such documents must be clearly marked with the term "Proprietary Information" on each appropriate page. Records marked as containing trade secret, confidential, personnel, or proprietary information that do not actually contain such information may be released pursuant to an Open Records Act request.
- C. In addition to any other penalty imposed by law, any applicant who knowingly or intentionally provides false information to the Department when applying for a rebate must be ineligible to receive any future rebates from the Fund and moneys from the Waste Tire Administration, Enforcement, Market Development and Cleanup Fund. The Department may refer any evidence obtained during the investigation to the Colorado Attorney General Office or other law enforcement agencies for further review and potential prosecution.
- D. The Department may deny the rebate to any person who is out of compliance with any State or Federal environmental laws, rules or regulations.
- E. The Department may hold any application due to compliance issues for the duration of the fiscal year in which that it is submitted, pending the resolution of the compliance issue. If at the end of the fiscal year the compliance issue has not been resolved, then the Department may deny any applications

640 being held. Any applicant who knowingly withholds information on current compliance advisories,
641 orders, or other formal notifications may have any submitted or pending applications denied.
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643
644 **15) Section 10.13 (Standards for End Users and Landowners of Waste Tire Bales) is**
645 **being added to Section 10 to read as follows:**
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647
648 **10.13 STANDARDS FOR END USERS AND LANDOWNERS OF WASTE TIRE BALES**
649

- 650 A. End Users or landowners of waste tire bales must maintain the integrity of individual waste tire bales
651 at all times. Loose whole or cut waste tires from broken waste tire bales are viewed as waste tires
652 and are subject to the applicable requirements of Section 10 of these rules.
653
- 654 B. Broken waste tire bales must be repaired within 90 days of discovery, or alternatively removed from
655 the property for proper disposal within 90 days of discovery.
656
- 657 C. Beneficial use of waste tire bales must be approved by the Department prior to placement, unless the
658 end use is listed as pre-approved beneficial use per the Pre-Approved Beneficial Uses Table 3 listed
659 on the Department's website.
660
- 661 D. The Department may notify the local fire jurisdiction when waste tire bales are placed on any property
662 for end use.
663
- 664 E. End Users or landowners end using waste tire bales are subject to Department inspection.
665
- 666 F. Once waste tire bales are no longer serving their beneficial use, the End User or landowner must
667 remove the waste tire bales within 120 calendar days. The waste tire bales must be delivered to a
668 registered waste tire facility and manifested in accordance with Section 10 requirements. An End
669 User must cancel their End User registration within 90 days of the removal of all waste tire bales.
670
- 671 G. End Users or landowners of waste tire bales whom have received rebate monies from the Fund (past
672 or present) may be ineligible for waste tire cleanup funds for the cleanup of waste tires or tire-derived
673 products for which rebates were received. The Department may consider exceptions in the instance
674 of an emergency or change of ownership.
675
- 676 H. Waste tire bales used in any manner not on the Department's *Pre-Approved Beneficial Use List Table*
677 *3*, or approved by the Department on a case-by-case basis is considered waste tire disposal and is
678 subject to applicable parts of this Section 10.