



Colorado Department
of Public Health
and Environment

End Users Fund Guidance Bulletin

July 2014

Purpose

This guidance document provides information on the temporary management of the End Users Fund until updated regulations are adopted by the Solid and Hazardous Waste Commission (the "Commission").

Background

As of July 1, 2014, per House Bill (HB) 14-1352 (the "Law"), the Processor and End User Fund was replaced by the End Users Fund (the "Fund"). The Law requires the Fund to pay money to certain End Users, Retailers and Processors of waste tires and tire-derived products who provide an application to the Colorado Department of Public Health and Environment (the "Department"). The Law requires the Commission to promulgate new regulations no later than May 31, 2015.

How much will be rebated on a per ton basis?

Initially, the Department will rebate \$40 per ton for each approved ton, per 30-20-1405(4), C.R.S.

Will this amount change?

The Department may adjust this amount after considering certain statutory factors.

Additionally, if the weight of waste tires submitted for a rebate in any one month multiplied by the amount of the rebate exceeds the balance of the Fund, the Department will reduce the per-ton amount of the rebate for that month.

When is the application due date?

Applications must be postmarked by the 20th of each month for waste tires end used in the previous month. If the 20th of the month falls on a weekend or a holiday, then the due date will be the following business day. All due dates for fiscal year 2015 (July 1, 2014 to June 30, 2015) will be posted on the Department website (<https://www.colorado.gov/pacific/cdphe/wastetires>).

What types of waste tires that are processed, sold or end used are eligible for a rebate under the Fund?

All waste tires generated in Colorado are eligible. Waste tires generated out of state are not eligible to receive a rebate.

How often will a rebate be paid by the Fund?

The rebate will be paid monthly.

What is the minimum amount of tons of waste tires to be eligible to qualify for a rebate?

The minimum amount is 50 tons per state fiscal year. After submitting an initial application for a minimum of 50 tons, the applicant is eligible to apply for any ton amount in subsequent months of that fiscal year. In order to meet the initial 50 ton threshold, an applicant may combine weights end used in multiple months within one fiscal year. For example, an applicant who end uses 0 tons of tire-derived product [as defined in 30-20-1402 (9), C.R.S.] in July, 10 tons in August, 15 tons in September and 25 tons in November, may apply in December for

end using 50 tons. After this initial 50 ton application, if the applicant end uses 5 tons in January of that fiscal year, then the applicant may apply by February 20th for end using those 5 tons.

How many times is a tire-derived product eligible for a rebate?

Waste tires or tire-derived product are eligible for a rebate only one time. Once the Department has paid a rebate on a particular quantity of waste tires or tire-derived product, every part of that particular quantity of waste tires or tire-derived product is no longer eligible for a rebate.

Who is eligible for a rebate from the Fund?

Starting with July 2014 applications, per 30-20-1405(2), C.R.S., rebates will be paid to approved:

- In-state End Users;
- In-state Retailers who sell tire-derived products; and
- In-state Processors who sell their tire-derived product to out-of-state End Users.

Out of state Retailers, End Users and Processors are not eligible to participate in the End Users Fund.

Who is considered an approved End User to be eligible for a rebate under the Fund?

There are three types of eligible End Users. End Users who:

- Use a tire-derived product for a commercial or industrial purpose;
- Use a whole waste tire to generate energy or fuel; or
- Consume tire-derived product or use tire-derived product in its final application or in making new materials with a demonstrated sale to a third-party customer.

What are some examples of an End User who “uses a tire-derived product for a commercial or industrial purpose”?

- A landfill that is approved to use and apply tire shreds as alternative daily cover at a permitted facility.
- A landscaper who installs tire-derived aggregate (e.g., landscape mulch) on a commercial, public or residential property.
- Playground installers who install tire-derived aggregate (e.g., landscape mulch, playground surfacing, athletic fields, race tracks, or bicycle path) on a commercial, public or residential property.
- A company that installs tire-derived aggregate for a civil engineering project.
- A cement company that burns tire-derived fuel as part of energy recovery to produce cement.
- A business that installs tire bales as windbreakers or corrals on a commercial farm or ranch.
- An asphalt company that installs tire-derived aggregate on a public or private road or highway, parking lot or driveway.

What are some examples of an End User who “uses a whole waste tire to generate energy or fuel”?

- A cement company that burns whole waste tires for energy recovery to produce cement.
- A pyrolysis company that conducts a thermal decomposition of a whole waste tire to produce syngas used for energy recovery.
- A pyrolysis company that conducts a thermal decomposition of a whole waste tire to produce oil.

What are some examples of 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”?

- A pyrolysis company that conducts a thermal decomposition of tire-derived product to make a new material with proof of a demonstrated sale to a third party customer.
- A company that uses tire-derived products to produce molded products with proof of a demonstrated sale to a third party customer.

What is considered a Retailer eligible for a rebate from the Fund?

- A business that sells a small quantity of tire-derived product to the ultimate consumer.

What is an example of a Retailer that sells a small quantity of tire-derived product?

- A company that sells landscape mulch to a customer who will install on their own property. The customer is not eligible to participate in the Fund.

What is considered a Processor eligible for a rebate from the Fund?

- A company that sells their tire-derived product to an out-of-state End User.

What are some examples of a Processor who sells tire-derived products to an out-of-state End User?

- A company that processes alternative daily cover who sells to an out-of-state landfill.
- A company that processes and sells a tire-derived fuel to be burned at an out-of-state cement company.
- A company that processes landscape mulch that is sold to an out-of-state landscape company.

If a Processor sells a tire-derived product (e.g., landscape mulch) to a Retailer, who is eligible for a rebate?

The in-state Retailer would be eligible for a rebate when the tire-derived product is sold to a customer. The Processor is not eligible because Processors are eligible only when they sell to out of state End Users.

If a Processor produces a tire-derived product (e.g., landscape mulch) which is sold to an in-state landscape company, who is eligible for a rebate?

The landscape company would be considered the End User once the landscape material is installed in-state.

How does the Department determine whether a person is a Retailer?

When a person collects sales tax on a sale of tire-derived product, the Department considers that person a Retailer for purposes of rebates from the Fund.

When does a Retailer not collect sales tax to a customer and how does that impact their ability to receive a rebate from the Fund?

Typically, if a person does not collect sales tax on the sale of tire-derived product, that person may not apply to receive a Retailer rebate. However, because sales tax is not collected when the customer is a charity, government entity or other sales-tax exempt entity, Retailers engaged in sales to such entities who clearly indicate on the supporting documentation why they did not collect sales tax may be eligible for the Retailer rebate. If the Department is unable to determine why sales tax was not collected for a customer, the submitted tons will not be eligible for a rebate.

Would a Retailer who sells tire-derived product to a wholesaler be eligible for a rebate under this Fund?

It depends. If the Retailer collects sales tax then he would be eligible for the Retailer rebate. However if the Retailer does not collect sales tax then he would not be eligible for a rebate.

What documentation is acceptable to demonstrate to the Department that tire-derived products have been sold to a third-party customer?

Invoices, receipts, bill of lading, binding contracts and other documentation approved by the Department on a case by case basis. Those who submit a contract as proof of a third party sale will be eligible for a rebate upon proof that the tire-derived product has moved offsite to the End User.

What is the appeal process for denied applications?

Until the Commission promulgates new regulations, the existing appeals process in 6 CCR 1007-2 Part 4 (1.7) applies.

What changes will be made to the application as of July 1, 2014?

Adjustments reflecting those eligible to participate will be added to the application. Any sections that do not comply with HB 14-1352 will be adjusted.

Who would be considered out of compliance and ineligible to participate in the Fund?

The Department may deny the rebate to any person who is out of compliance with any state or federal environmental laws, rules or regulations.

What if two parties claim rebates for the same quantity of tire-derived product, both appear to be eligible under the law and regulations and neither are willing to withdraw their application?

If both apply within the same month, then the End User will receive the rebate. If they apply in separate months, the application received first will receive the rebate.

For more information:

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