

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Saline County Regional Solid Waste Management District Board
DIVISION _____
DIVISION DIRECTOR Tiffany Dunn
CONTACT PERSON Sam Gibson, Attorney
ADDRESS Post Office Box 211, Benton, Arkansas 72018
PHONE NO. (501) 315-7471 **FAX NO.** (501) 315-7564 **E-MAIL** samgibson@gibsonandgibsonpa.com
NAME OF PRESENTER AT COMMITTEE MEETING Sam Gibson
PRESENTER E-MAIL samgibson@gibsonandgibsonpa.com

INSTRUCTIONS

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

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Saline County Regional Solid Waste Management District Rule 22.202 Regarding Requirements for Solid Waste Hauler Licenses and Vehicle Permits
2. What is the subject of the proposed rule? Licensing Solid Waste Haulers and Permitting Vehicles Used for Hauling Solid Waste within SCRSWM District
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒

If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes ☐ No ☒

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes ☐ No ☐

5. Is this a new rule? Yes ☐ No ☒ If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ☒ No ☐ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

This proposed Rule will be identical to the existing Rule of the same name, amending the existing rule only by changing and updating the documentation required of license applicants to confirm that they are properly qualified to collect Arkansas Sales and Use Taxes in connection with their business activities licensed under the Rule. See "Redline" Mark-up version attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

ACA § 8-6-701, et seq., and especially ACA § 8-6-721(a)

7. What is the purpose of this proposed rule? Why is it necessary?

The SCRSWMD Board is required by statute to license and regulate the business activity within the District of the persons and entities affected by the Rule. This amendment is necessary to conform the District's license application requirements regarding sales tax collection authority to documents that are readily available to applicants from DFA.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<http://www.recyclesaline.org/> and on the Arkansas Secretary of State website.

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐ If yes, please complete the following:

Date: Wednesday, April 20, 2022

Time: 1:00 p.m.

Place: City Council Meeting Room, Benton City Hall, 114 South East Street, Benton, Arkansas 72015

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

Wednesday, April 20, 2022

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

This Rule will govern all annual Solid Waste Hauler Licenses and Vehicle Permits issued for January 1, 2023 and thereafter

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See Attached

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See Attached

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

No formal public comment is expected; several affected local Solid Waste Haulers have privately expressed favorable comments about this amendment to the District staff.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Saline County Regional Solid Waste Management District Board

DIVISION _____

PERSON COMPLETING THIS STATEMENT Sam Gibson, Attorney

TELEPHONE NO. (501) 315-7471

FAX NO. (501) 315-7564

EMAIL: samgibson@gibsonandgibsonpa.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

Saline County Regional Solid Waste Management District Rule 22.202 Regarding Requirements for Solid Waste Hauler Licenses and Vehicle Permits

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

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

- a) How the additional benefits of the more costly rule justify its additional cost;

- b) The reason for adoption of the more costly rule;

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

- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

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

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

\$ Negligible

\$ Negligible

All applicants for SCRSWMD issuance of Solid Waste Hauler Licenses and Vehicle Permits (about 35 in total) This amendment imposes no direct cost on appliants, but should make obtaining certain documents required for the licensing process faster and less inconvenient for the applicants.

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

Current Fiscal Year

Next Fiscal Year

\$ 0.00

\$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?
Yes ☐ No ☒

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

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

PUBLIC NOTICE

The Board of the Saline County Regional Solid Waste Management District intends to adopt a rule amending Saline County Regional Solid Waste Management District Rule 22.202 Regarding Requirements for Solid Waste Hauler Licenses and Vehicle Permits. Copies of the Rule in its present form and as proposed to be amended are available at the offices of the District located at 114 West Sevier Street, Benton, Arkansas, at the District's website <http://www.recyclesaline.org/> and attached to this Notice as published on the Arkansas Secretary of State website.

Any interested person may present his or her position on the intended action of the Board or on the issues related to the intended action of the Board in writing delivered to the offices of the District prior to Wednesday, April 20, 2022, or in person at a Public Hearing which will be conducted at 1:00 p.m., Wednesday, April 20, 2022, at the City Council Meeting Room, Benton City Hall, 114 South East Street, Benton, Arkansas.

Saline County Regional Solid Waste Management District
Rule 22.202 Regarding Requirements for
Solid Waste Hauler Licenses and Vehicle Permits

(Resolution No. 2 of 2014
as Amended by Resolution No. 5 of 2015
and as Further Amended by Resolution No. 4 of 2019)
and as Further Amended by Resolution No. 1 of 2022)

Chapter 1 Preliminary Provisions

22.202.101: *Solid Waste Hauler License Required.* Any person, partnership, corporation, association or other entity listed in ACA § 8-6-721(b)(1) which is engaged in the business of collection of solid waste within the District or which is engaged in the business of transportation of solid waste for disposal or storage within the District shall first obtain a license from the District, and shall keep that license in good standing throughout the conduct of such business.

22.202.102: *Compliance With ADEQ Standards Required.* All solid waste haulers licensed by the District shall comply with the minimum standards to haul solid waste promulgated by the Arkansas Pollution Control and Ecology Commission (Regulation 22.202) and with the requirements of this Rule.

Chapter 2 License Application Procedure

22.202.201: *Annual Issuance of Solid Waste Hauler License and Vehicle Permits.* The Executive Director of the District shall issue solid waste hauler licenses and vehicle permits annually for each calendar year. Initial solid waste hauler licenses and vehicle permits must be obtained prior to the applicant beginning business, and renewal solid waste hauler licenses and vehicle permits must be obtained prior to December 31 of the year preceding the year for which they are issued. All solid waste hauler licenses and vehicle permits will expire on December 31 of the year for which they are issued. Solid waste hauler licenses are non-transferrable. A vehicle permit may be transferred from a vehicle taken out of service to a replacement vehicle in accordance with Section 22.202.205 of this rule.

22.202.202: *Application Procedure.* The Executive Director shall promulgate and make available to applicants such forms as the Executive Director may determine are convenient and necessary for the completion of the annual application process. It is the responsibility of the Applicant to timely request forms from the District Office either in person or by e-mail. The Executive Director may choose to provide application renewal forms to Applicants who are already licensed by the District for the previous year without such request, but it is sole

responsibility of the Applicant to ensure timely completion of the application forms. Applicants will submit a completed solid waste hauler license application form accompanied by the documentation listed below and accompanied by full payment of the licensing fees calculated in accordance with Section 22.202.205. The tender of an application that is not, in the sole opinion of the Executive Director, a complete application will not be treated as the submission of an application for purpose of determining whether the Late-Application Fee will be required of the applicant when the applicant later submits a complete application.

- a. Proof of Insurance.
- b. A completed Motor Vehicle Registration Form for each vehicle for which a vehicle permit is sought.
- c. ~~A current "Tax Clearance Letter-Form ET007"~~ An "Arkansas Sales & Use Tax Permit" or any other document issued by the Arkansas Department of Finance and Administration which, in the opinion of the Executive Director of the District, shows that the licensee is properly qualified ~~to collect Arkansas sales and use taxes and that the licensee is in good standing with~~ by the Arkansas Department of Finance and Administration ~~with regard to the collection of~~ to collect Arkansas sales and use taxes.

22.202.203: *Vehicle Inspections.* By submitting an application for solid waste hauler license and one or more vehicle permits, the applicant represents and verifies that all vehicles for which a vehicle permit is requested then meet and will continue to meet throughout the year for which the solid waste hauler license is issued the requirements set out in Section 22.202.204. The District Environmental Enforcement Officer will inspect vehicles hauling solid waste within the District on a random basis throughout the permit year. If violations are found in the inspection of a vehicle for which the District has issued a current vehicle permit, the Environmental Enforcement Officer will prepare in duplicate a Solid Waste Hauler Inspection Report listing the violations and the date by which the person in charge of the vehicle at the time of the inspection and the Environmental Enforcement Officer agree the listed violations will be corrected. The person in charge of the vehicle at the time of the inspection will sign the copy retained by the District's Environmental Enforcement Officer and will retain the other copy. Failure to correct the listed violations within the time stated on the Solid Waste Hauler Inspection Report is a violation of this Rule.

22.202.204: *Vehicle Inspection Requirements.* All vehicles shall comply with the following at all times:

- a. Open top trucks must have a tarp and straps.
- b. No "open air" side boards or tailgates (all front panels, side boards, and tailgates surrounding the solid waste being transported must be fully enclosed/solid).

- c. All lights must be operational.
- d. Each vehicle shall have an operational fire extinguisher.
- e. Each vehicle shall have Safety flares and/or Reflective triangles.
- f. Each vehicle shall have Motor Vehicle Lettering on doors or packer bed which lettering shall comply with C.F.R. § 390.21, and which shall include:
 - i. Name of business on each side of motor vehicle.
 - ii. Phone number on each side of motor vehicle.
 - iii. City, State and Postal Zip Code of home office on each side of motor vehicle.
 - iv. Lettering size must be a minimum of 2 inches in size.
 - v. Lettering must be a contrast color from the base color of the motor vehicle.
- g. Proof of current vehicle registration and current liability insurance coverage shall be kept in the vehicle at all times.

22.202.205: *Fees.* Each applicant shall pay an application fee for vehicles of 1 ton or less of \$25.00 per vehicle and for vehicles larger than 1 ton of \$50.00 per vehicle. The issuance of a solid waste hauler license includes the inspection and permitting of one vehicle used in the operation of the solid waste business. The applicant shall additionally pay a fee of \$25.00 per vehicle for each vehicle of 1 ton or less and of \$50.00 for each vehicle larger than 1 ton for the inspection and permitting of the second and each additional vehicle. Application fees are not pro-rated. An applicant for an initial solid waste hauler license and/or vehicle permits shall pay the full-year fee regardless of when during a calendar year the license and/or vehicle permit is issued. PROVIDED, HOWEVER, that a licensed solid waste hauler may pay a fee of \$15.00 at any time during the year to transfer a vehicle permit from a vehicle taken out of service to a replacement vehicle, The replacement vehicle shall be inspected and must comply with all requirements of this rule before the transfer of the vehicle permit can be completed.

22.202.206: *Late-Application Fee for License Renewal Imposed.* Any applicant who submits an application for issuance of a solid waste hauler license for the subsequent year later than the last business day prior to the expiration of the applicant's current solid waste hauler license or later than the last business day prior to December 31 of the current year, whichever is earlier, shall pay a Late-Application Fee of Two Hundred Fifty Dollars (\$250.00) in addition to the fees required by Section 22.202.205. The Late-Application Fee shall not be required of an applicant for an initial solid waste hauler license regardless of when the initial application is submitted.

Chapter 3 Operation and Enforcement

22.202.301: *Solid Waste Hauler Operational Requirements.* All collection and transportation systems shall meet the conditions outlined below:

- a. Solid waste shall be collected and transported so as to prevent public health hazards, environmental hazards, safety hazards and nuisances.
- b. Collection and transportation vehicles shall be kept in good working order and in a sanitary condition.
- c. Every hauler must display the one-year decal given at the time of permitting, said decal to be placed on the driver side of the hauling vehicle by the Executive Director or their representative at the time of inspection.
- d. All solid waste collected and transported in the District must be covered to prevent littering on highways and roadways. While a vehicle is moving short distances between pickups, the tarp may be left partially open so long as no solid waste is allowed to be blown, dropped, spilled or otherwise discharged from the vehicle. At all other times, the tarp shall be securely fastened, covering the entire contents of the vehicle.
- e. Yard waste must NOT be mixed with residential or commercial waste.
- f. Drivers shall have the appropriate operator license required by State law for the vehicle they operate.

22.202.302: *Violations.* The making of any material misrepresentation in connection with an application for solid waste hauler licenses or vehicle permits or the failure to comply with any of the provisions of this Rule shall be a violation of a regulation of a regional solid waste management board within the meaning of ACA § 8-6-722 and shall be punished accordingly.

22.202.303: *Revocation or Suspension of License or Permit.* Solid waste hauler licenses and/or vehicle registration permits issued thereunder may be revoked or suspended.

A. *Grounds for Revocation or Suspension.* The Executive Director may revoke or suspend any solid waste hauler license and/or one or more of the vehicle registration permits issued thereunder by the District after the same have been issued, when any one or more of the following grounds exist:

1. When the license was obtained by fraud or false representation of facts;
2. When the license was issued through mistake or inadvertence;
3. When the license application contained any false or misleading statement, evasions or suppression or omission of material facts.
4. When the license holder has committed substantial violations of the terms and conditions on which a license is issued.

5. When multiple customer complaints about the licensee have been submitted to the District.

6. When the licensee has violated local or county environmental ordinances or state environmental laws or those regulating the business activity for which the license is issued.

7. When the licensee has demonstrated wrongful behavior of a substantial character and of a public concern in relation to the licensed activity.

8. When reasonably necessary in the interests of protection of the public health, safety, or welfare.

B. *Notice; Opportunity to be Heard.* Before any solid waste hauler license and/or any vehicle permit issued thereunder shall be revoked or suspended, the holder of such license shall be given 10 business days' notice of an opportunity to be heard before Executive Director of the Saline County Regional Solid Waste District at which time the holder of such license must demonstrate cause why such license and/or vehicle registration permit should not be revoked or suspended.

Notice of the proposed revocation or suspension and of the opportunity to be heard shall be in writing and served on the license holder at the address on file with the District by first class or certified mail or delivered in person to the place of business.

The notice to be given to the holder of such license must state the grounds and reasons for the recommended revocation or suspension and must also state the time and date on which the opportunity to be heard as well as the location. The purpose of the opportunity to be heard includes but is not limited to:

1. Clarify any misunderstandings of facts;
2. Establish agreement on as many of the undisputed facts as possible;
3. Identify the factual disagreements to be decided by the Executive Director;

C. *Director's Determination; Appeal.* The Executive Director, within five (5) business days following the date of the opportunity to be heard, shall notify the license holder by certified mail of the Executive Director's decision. Such decision shall be either:

1. To withdraw the Notice of Revocation or Suspension; or
2. To revoke or suspend the solid waste hauler license and/or the vehicle registration permit(s) issued thereunder.

The notice shall contain the findings of fact which formed the basis for the Executive Director's decision. The license holder shall have 15 days to file a written appeal and request for a hearing before the Board to contest

the findings of fact upon which the Executive Director relied. Upon receipt of the written request, the Board shall set the date, time and location of a Hearing before Board;

The Notice of Hearing shall be served upon business license holder by mailing the same to the business license holder at the address on file at the District's office. Service shall be by any means allowable by the Arkansas Rules of Civil Procedure as well as by First Class mail. The failure of a license holder to receive the Notice of Hearing, if sent to the last address on file at the Board, shall not constitute a failure to serve the license holder. The Notice of Hearing shall be mailed to the respondent at least 20 days prior to the hearing.

D. *Hearing Before the Board.*

1. Appearance at the Hearing. The license holder must appear on the date specified in the notice of hearing unless another date is agreed upon in writing by both the District and the license holder. If the license holder does not appear on the scheduled date the Board will interpret the absence as an indication that the license holder no longer wishes to pursue the matter. The license holder will be in "default" and the Board will interpret the absence to be an admission by license holder that all of the findings of fact made by the Executive Director are true. In that event, the Board will affirm the Executive Director's decision by resolution.

2. Conduct of the Hearing. The hearing will be conducted as an administrative hearing. The Board will oversee the hearing, rule on procedure, and determine the evidence which may be presented. At the hearing, the license holder shall have the right to introduce pertinent witnesses and documents and be represented by an attorney should the license holder choose.

The Executive Director or their designee and the license holder may make an opening statement. Each will briefly summarize the facts as believed. Each party may then present evidence. The Executive Director will present the evidence first, the witnesses, if any, and then the license holder may do the same. The evidence may be in documents or oral testimony from witnesses. Witnesses will be sworn to tell the truth. Both the license holder and the Executive Director may be a witness.

Generally, witnesses can testify only about matters of which they have personal knowledge. Documents may be viewed by the Board. The Board has the authority to determine which evidence will be considered.

3. Board Determinations. Following the hearing, and after deliberation, the Board may, by resolution, take one of the following actions:

a. Revoke or suspend the then current license and/or vehicle registration permit(s) issued thereunder; or,

b. Choose not to revoke or suspend the then current license and/or vehicle registration permit(s) issued thereunder.

4. *Notice of Decision.* The Board shall notify the license holder of its decision by one or more of the following methods:

a. Personal delivery to the license holder; or

b. Certified mail, return receipt requested, to the last address on file with the District; or

c. Fax notice to the last known fax number on file with the District; or,

d. Posting a notice of the license revocation in a conspicuous place upon the premises of the fixed place of business as specified in the application for the license.

E. *Emergency Suspension of License.* Upon a finding and declaration by the Executive Director that an emergency situation exists which may endanger the public environmental health the Executive Director may immediately suspend a solid waste hauler license and/or a vehicle permit(s) issued thereunder.

1. Notice of Emergency Suspension. As soon as practical after taking such action, the Executive Director shall notify the license holder of the emergency suspension by one or more of the following methods:

a. Personal delivery to the license holder; or,

b. Certified mail, return receipt requested, to the last address on file with the District; or,

c. Fax notice to the last known fax number on file with the District; or,

d. Posting a notice of the emergency suspension in a conspicuous place upon the premises of the fixed place of business as specified in the application for the license.

2. Appeal. The solid waste hauler license holder may appeal the Executive Director's decision using the same procedure for appeal as that set out in Subsection D *Hearing Before the Board* set out above.

Chapter 4 Miscellaneous

22.202.401: *Severability.* If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application, and to this end provisions of this rule are declared to be severable.

22.202.402: *Effective Date.* This rule shall govern the issuance of all Solid Waste Hauler Licenses and Vehicle Permits issued for the years 2020~~0~~³ and thereafter and shall be in full force and effect ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research following adoption by the Saline County Regional Solid Waste Management Board.