

## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

### DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES

NO. 718

26 JUNE 2020

#### NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008 (ACT NO. 59 OF 2008)

#### CONSULTATION ON THE PROPOSED REGULATIONS REGARDING EXTENDED PRODUCER RESPONSIBILITY

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment hereby in terms of section 69(1)(b), (g), (i), (o), (l) and (dd), read with sections 72 and 73 of the National Environmental Management: Waste Act, 2008 consult on my intention to make regulations regarding the extended producer responsibility, as set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 30 days of publication of this Notice in the Gazette, written representations on or objections to the following addresses:

By post to: The Director General: Department of Environment, Forestry and Fisheries  
Attention: Mr Anben Pillay  
Private Bag X447  
Pretoria  
0001

By hand at: Environment House, 473 Steve Biko Street, Pretoria, Arcadia, 0082

By email: [apillay@environment.gov.za](mailto:apillay@environment.gov.za)

Tel. Enquiries: (012) 399-9827.

The draft Regulations can also be accessed at <http://sawic.environment.gov.za> under “**Documents for Comment**” or obtained at the Department’s offices.

**Comments received after the closing date may not be considered.**



**BARBARA DALLAS CREECY**  
**MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

**SCHEDULE**  
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## Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the National Environmental Management Waste Act, 2008 (Act No. 59 of 2008) bears that meaning and, unless the context otherwise indicates-

**“brand owner”** means a person, category of persons or company who sells any commodity under a registered brand label;

**“decent work”** means it is work based on the understanding that work is not only a source of income but more importantly a source of personal dignity, family stability, peace in community, and economic growth that expands opportunities for productive jobs and employment;

**“extended producer responsibility”** means that a producer’s responsibility for a product is extended to the post-consumer stage of a product’s life cycle;

**“extended producer responsibility scheme”** means a system that puts into effect obligations under which producers are given full responsibility to implement extended producer responsibility;

**“importer”** means a person or category of persons that brings finished goods or its individual components into the country from abroad;

**“mid-year report”** means a report to be submitted for the period 1 January until 30 June;

**“producer”** means any person or category of persons or a brand owner who is engaged in the commercial manufacture, conversion, refurbishment or import of new and/or used products as identified by the Minister by notice in the *Government Gazette* in terms of section 18(1) of the Act;

**“product responsibility organisations”** means a non-profit company established by producers or any person operating in any of the industrial sectors covered in these Regulations to support the implementation of their extended producer responsibility scheme;

**“small business”** carries the meaning as defined in National Small Business Act, 1996 (Act No. 102 of 1996); and

**“the Act”** means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

## Purpose of the Regulations

2. The purpose of these Regulations is-
  - (a) to provide the framework for the development, implementation, monitoring and evaluation of extended producer responsibility schemes by producers, importers and brand owners in terms of section 18 of the Act;
  - (b) to ensure the effective and efficient management of the identified waste streams; and
  - (c) to encourage and enable the implementation of chemicals and waste economy and circular economy initiatives.

## Application of the Regulations

3. These Regulations are applicable to the identified products in terms of section 18(1)(a) of the Act and its related waste streams published in the *Government Gazette* by the Minister.

## Registration of Producers

4. (1) All existing producers of products, identified by the Minister in terms of section 18(1)(a) of the Act by notice in the *Government Gazette*, must register with the Department within 6 months of the publication of a notice in the *Government Gazette* in terms of section 18(1) of the Act by completing the prescribed form obtainable from the Department.

- (2) All new producers of products identified by the Minister in terms of section 18(1)(a) of the Act by Notice in the *Government Gazette*, must register with the Department within 3 months of being established, by completing the prescribed form obtainable from the Department.
- (3) The Department must consider all producer registration application forms and issue a registration number for each producer that has submitted such completed form within 30 days of receipt.

**Extended producer responsibility measures to be implemented by producers**

5. (1) The producer of a product or class of products, as identified by the Minister in terms of section 18(1) of the Act must—
  - (a) establish and implement an extended producer responsibility scheme or join another scheme;
  - (b) be fully accountable for the performance of the extended producer responsibility scheme;
  - (c) finance the extended producer responsibility scheme;
  - (d) develop and maintain a system to collect the extended producer responsibility fees;
  - (e) conduct internal audits and make these audit reports available to the Department upon request;
  - (f) make the internal biannual audit reports available to the external auditor;
  - (g) appoint an independent financial auditor to annually:
    - (i) audit the financial records;
    - (ii) include the internal biannual audit findings in the annual audit report; and
    - (iii) submit this audit report to the Department within 30 days after finalisation of the audit report;
  - (h) develop and maintain a register of its members;
  - (i) develop and manage the data collection system;
  - (j) collate and submit the aggregated data to the South African Waste Information System as required in Regulation 8 of these Regulations;
  - (k) conduct a life cycle assessment in relation to the product, in accordance with the relevant South African Bureau of Standards or International Organisation for Standardisation standards (**14040 & 14044**);
  - (l) through the life cycle assessment factor changes in the design, composition or production process of a product that will result in:
    - (i) reduction in the consumption of natural resources;
    - (ii) design of more environmentally friendly products;
    - (iii) waste prevention;
    - (iv) reduction of the volume of the resulting post-consumer waste stream; and
    - (v) reduction of toxicity of the resulting post-consumer waste stream;
  - (m) tender and contract for the collection, recycling and recovery of waste;
  - (n) document collection, sorting, recycling and recovery of waste;
  - (o) control all services that have been awarded to service providers in particular, these services include the fulfilment of collection and recycling by waste management companies;
  - (p) establish new infrastructure to promote the effective implementation of the extended producer responsibility scheme;
  - (q) utilise existing infrastructure for waste management where feasible;
  - (r) utilise new and existing infrastructure across schemes and for multiple waste streams in a collaborative manner where feasible;
  - (s) promote small businesses;
  - (t) develop a broad-based black economic empowerment (BBBEE) transformation charter within the waste sector of the products identified in the Notice published in terms of section

- 18(1) of the Act within one year of the publishing of the Notice, which transformation charter must comply with section 9(1) of the BBBEE Act;
- (u) implement transformation within all levels of the value chain including transformation targets with BBBEE charter timeframes;
- (v) develop and establish secondary markets for recyclable materials;
- (w) implement mandatory take back of all their products at the end of its life; and
- (x) implement environmental labels and declaration for the identified products in accordance with SANS 14021, SANS 14024 and SANS 14024.

**Minimum requirements and criteria for extended producer responsibility schemes to operate**

6. The extended producer responsibility scheme must as a minimum include requirements for--
- (a) cleaner production measures that must include as a minimum but not limited to—
    - (i) design for recyclability; and
    - (ii) waste minimization;
  - (b) waste reduction including as a minimum but not limited to –
    - (i) composition of products;
    - (ii) volume of products; or
    - (iii) weight of products to be restricted and reduced with associated timeframes;
  - (c) reuse;
  - (d) waste recycling;
  - (e) recovery;
  - (f) waste treatment;
  - (g) waste disposal;
  - (h) implement and report on the following instruments to complement the scheme—
    - (i) minimum recycled content standards;
    - (ii) secondary materials utilization rate requirements;
    - (iii) recovery rates/time;
    - (iv) energy-efficiency standards;
    - (v) disposal bans and restricted;
    - (vi) material bans and restrictions;
    - (vii) product bans and restrictions; and
    - (viii) environmentally preferable products procurement procedures; and
  - (i) comply with the requirements for programmes planned to contribute to government priorities including but not limited to—
    - (i) decent work creation including the payment of fair prices for waste products returned to the producer of the scheme;
    - (ii) pay a living wage, but not below minimum wage;
    - (iii) social cohesion;
    - (iv) inclusive economic growth; and
    - (v) improved quality of life.

**Financial arrangements for an extended producer responsibility scheme**

7. (1) The producers must determine the extended producer responsibility fee in consultation with the Minister of Finance and Minister of Trade, Industry and Competition.
- (2) The fee must be based on a differentiated rate per item category, dependent on weight and recyclability of each item, which must be paid by producers (the obligated industry) to fund extended producer responsibility schemes.
- (3) The producer must submit a financial plan and a budget for the duration of the registration in which, inter alia, the following information is mentioned:
- (a) Estimated revenue from the various product streams;
  - (b) The way in which the contributions shall be calculated and assessed, the total amount of the contributions that cover the full cost of the obligations incumbent on the producer applying for registration, and the collection methods for each material;
  - (c) The conditions and procedures for revising the contributions to reflect changes in the obligations incumbent on the registered producer under this Regulations; and
  - (d) Methods for allocating revenue for operating the extended producer responsibility scheme amongst collection, waste minimisation, recycling, waste reuse.
- (4) The administration fee of the product responsibility organisation must not exceed 6% of the revenue collected.

**Monitoring, Reporting and Evaluation**

8. (1) The producer must submit a mid-year report on the performance of the scheme measured against the individual targets agreed upon.
- (2) The mid-year report must be submitted to the Department within two weeks of the conclusion of the 6 month period namely January to June.
- (3) The annual performance reports must be submitted to the Department within 3 months of the conclusion of the year end, which year end is on 31 December.
- (4) All producers must report to the South African Waste Information System on an annual basis on the quantities of waste resulting from the identified products that are:
- (a) quantity of waste generated;
  - (b) collected;
  - (c) diverted away from landfill (recycled, reused, recovered, refurbished);
  - (d) exported; and
  - (e) disposed.
- (5) The Department may conduct verification audits on the obligations of the producers.
- (6) The annual external audit report must be submitted to the Department containing the following minimum requirements:
- (a) Performance against the agreed targets;
  - (b) Breakdown of the allocation of the fee;
  - (c) Performance on all finance matters;
  - (d) Governance related matters;
  - (e) Impacts to the environment;
  - (f) Recommendations in the event of non-compliance;
  - (g) Status of free riders; and
  - (h) Number of decent jobs created.

**Performance review of the extended producer responsibility scheme**

9. (1) The extended producer responsibility scheme performance must be reviewed at 5 year intervals by the Department.
- (2) The Department may at any time review the extended producer responsibility scheme based on its performance.

- (3) The producers may approach the Department for an earlier review due to non-achievement or over-achievement of targets.

### **Registration of product responsibility organisations**

10. (1) All existing product responsibility organisations must register with the Department within 6 months of the publication of these Regulations in the *Government Gazette* by completing the prescribed form from the Department and receiving a registration number.
- (2) All newly formed product responsibility organisations must register with the Department within 3 months of being established by completing the prescribed form from the Department and receiving a registration number.
- (3) Product responsibility organisations registration will be dependent on complying with the requirements as set out in Regulation 11 of these Regulations.

### **Requirements and criteria for product responsibility organisations to operate**

11. The minimum requirements for product responsibility organisations are, it must:
- (a) be an autonomous body established by producers as incorporators, shareholders; or directors by a due process;
  - (b) be a registered non-profit company;
  - (c) have representatives from the entire value chain of their products; and
  - (d) be managed by a Board of Directors.

### **Obligations of product responsibility organisations**

12. The product responsibility organisations must:
- (a) be responsible for the management and implementation of the extended producer responsibility scheme on behalf of its producers which must as a minimum include:
    - (i) tendering and contracting for the collection, recycling and recovery of waste;
    - (ii) documentation of collection, sorting, recycling and recovery of waste;
    - (iii) controlling all services that have been awarded to service providers – in particular, these services include the fulfilment of collection, recycling and recovery by waste management companies;
    - (iv) pay a living wage, but not below minimum wage, to all registered informal waste collectors, reclaimers and pickers;
    - (v) establish new infrastructure to promote the effective implementation of the extended producer responsibility scheme;
    - (vi) utilise existing infrastructure for waste management where feasible; and
    - (vii) utilise new and existing infrastructure across schemes and for multiple waste streams in a collaborative manner where feasible.
  - (b) develop and maintain a system to collect the extended producer responsibility fees;
  - (c) appoint an independent financial auditor to annually audit the financial records and submit this audit report to the Department within 30 days after finalisation of the audit report;
  - (d) develop and maintain a register of its members; and
  - (e) manage the data collection, collation and submission to the South African Waste Information System as required in terms of Regulation 8 of these Regulations.

### **Offences**

13. A person commits an offence if that person contravenes or fails to comply with regulations 4(1), 4(2), 5, 6, 7(3), 7(4), 8, 10, 11 or 12 of these Regulations.

### **Penalties**

14. (1) A person convicted of an offence under these Regulation is liable to—
- (a) imprisonment for a period not exceeding 15 years;

- (b) an appropriate fine; or
- (c) both a fine and imprisonment.
- (2) A producer who does not comply with these Regulations may also have their registration revoked and/or be compelled to join another scheme.
- (3) A producer responsibility organisation that does not comply with these Regulations may have their registration revoked.

**Short title and commencement**

16. These Regulations are called the Extended Producer Responsibility Regulations, 2020 and come into effect on the date of publication in the *Government Gazette*.