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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES

NO. 1184

05 NOVEMBER 2020

**NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008
(ACT NO. 59 OF 2008)****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), (l), (o), (dd) and (ee) of the National Environmental Management: Waste Act, 2008, make the Regulations regarding extended producer responsibility, as set out in the Schedule hereto.



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

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Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act bears that meaning, and unless the context indicates otherwise—

“brand owner” means a person, category of persons or company who makes and/or sells any product under a brand label;

“circular economy” means a regenerative system in which resource inputs and waste, emissions, and energy leakage are minimised by slowing, closing, and narrowing energy and material loops which can be achieved through long-lasting design, maintenance, repair, reuse, remanufacturing, refurbishing, and recycling and which is in contrast to a linear economy which is a 'take, make, dispose' model of production;

“decent work” means work that is productive and delivers a fair income, security in the workplace and social protection, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men;

“department” means the national Department responsible for the environment;

“extended producer responsibility” means that a producer's responsibility for their 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 take accountability in implementing extended producer responsibility;

“free rider” means a firm or individual who benefits from the actions or efforts from another, in relation to an extended producer responsibility scheme, without sharing or paying the costs;

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

“interim performance 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;

“producer responsibility organisation” means a not-for-profit organisation established by producers or any person operating in any of the industrial sectors covered in the Notices published in terms of the Act to support the implementation of their extended producer responsibility scheme and may represent either individual or collective producers;

“refurbishment” means restoring old products to a working condition which must be available for reuse and must meet the same technical standard as a new product;

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

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

“waste collection” means the gathering of waste identified through section 18 of the Act at the place of its generation or storage by a waste picker or service provider.

Purpose of the Regulations

2. The purpose of these Regulations is—
- (1) to provide the framework for the development, implementation, monitoring and evaluation of extended producer responsibility schemes by producers in terms of section 18 of the Act;
 - (2) to ensure the effective and efficient management of the identified end-of-life products; and
 - (3) to encourage and enable the implementation of the circular economy initiatives.

Application of the Regulations

3. These Regulations—
- (1) apply 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; and
 - (2) apply 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, that were placed on the market prior to these Regulations coming into effect.

Registration of producers

4. (1) All existing producers of products, at the time these Regulations come into effect, must register with the department within 6 months of the publication of the Government 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, who commence producing after these Regulations come into effect, 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 form, within 30 days of receipt of a form in which all sections are correctly completed.

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 that includes the entire value chain or join another extended producer responsibility scheme that includes the entire value chain or appoint a producer responsibility organisation to establish and implement an extended producer responsibility scheme that includes the entire value chain;
 - (b) be accountable for the operation and performance of their extended producer responsibility scheme;
 - (c) pay the extended producer responsibility fee to fund the extended producer responsibility scheme;

- (d) develop and maintain a system to collect the extended producer responsibility fees;
- (e) conduct internal biannual financial audits and make these audit reports available to the department upon request;
- (f) make the internal biannual financial audit reports available to the external auditor;
- (g) appoint an independent financial auditor to annually—
 - (i) conduct an external audit of the financial records; and
 - (ii) include the internal biannual audit findings in the annual audit report;
- (h) submit the external audit report to the department within 30 days after finalisation of the audit;
- (i) develop and maintain a register of its members, in the event that the scheme has two or more members;
- (j) collect, record, manage and submit 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 applicable standards within 3 years of implementation of their extended producer responsibility scheme;
- (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) by agreement with the board of directors, contract with the existing downstream value chain before outsourcing;
- (n) tender and contract for the sorting, collection, recovery and recycling of waste, if outsourced, through a fair and transparent process;
- (o) keep record of quantity of identified products put on the market, waste generation, collection, sorting, recycling and recovery of waste arising from the identified products;
- (p) control all services that have been awarded to service providers in particular, and these services include the fulfilment of collection and recycling by waste management companies;
- (q) co-operate with municipalities to increase the recovery of recyclables from municipal waste within 3 years of implementation of their extended producer responsibility scheme;
- (r) integrate informal waste collectors, reclaimers and pickers into the post-consumer collection value chain;
- (s) develop and establish secondary markets for recycled content;
- (t) utilise existing infrastructure across extended producer responsibility schemes for multiple waste streams in a collaborative manner, where feasible, or establish and operate new infrastructure within 3 years from the date of implementation of the scheme;
- (u) prioritise the promotion of small businesses and entrepreneurs with a special focus on women, youth and persons living with disabilities;
- (v) pay a living wage, but not below minimum wage, to all registered informal waste collectors, reclaimers and pickers;
- (w) develop a broad-based black economic empowerment transformation charter within the waste sector for 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 Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (x) implement transformation within all levels of the value chain with a special focus on women, youth and persons living with disabilities;

- (y) implement mandatory take-back of all their products at the end of life; and
- (z) implement environmental labels and declaration for the identified products in accordance with SANS/ISO 14021 and SANS/ISO 14024.

Minimum requirements and criteria for extended producer responsibility schemes to operate

6. The extended producer responsibility scheme contemplated in these Regulations must as a minimum include requirements for—

- (1) cleaner production measures that must include as a minimum but not limited to—
 - (a) design for recyclability; and
 - (b) waste minimisation or waste avoidance;
- (2) waste reduction including as a minimum but not limited to –
 - (a) composition of products; or
 - (b) volume of products; or
 - (c) weight of products to be restricted and reduced with associated timeframes;
- (3) reuse;
- (4) recycling;
- (5) recovery for beneficial use;
- (6) treatment;
- (7) disposal;
- (8) implementation and reporting on the following requirements to complement the scheme—
 - (a) minimum recycled content standards;
 - (b) secondary materials utilisation rate; and
 - (c) recovery rates; and
- (9) compliance with the requirements for programmes planned to contribute to government priorities including but not limited to—
 - (a) decent work creation;
 - (b) pay a living wage, but not below minimum wage to all registered informal waste collectors, reclaimers and pickers for the activities performed on behalf of the producers;
 - (c) social cohesion;
 - (d) inclusive economic growth; and
 - (e) improved quality of life.

Financial arrangements for an extended producer responsibility scheme

- 7. (1) A producer must determine the proposed extended producer responsibility fee.
- (2) The proposed extended producer responsibility fee must be submitted to the Minister who must obtain concurrence on the proposed extended producer responsibility fee from the Minister responsible for finance.
- (3) The extended producer responsibility fee must be based on full cost recovery including a differentiated rate per item category, of each product or class of product, which must be paid

- by a producer to fund extended producer responsibility schemes and be dependent on the following:
- (a) weight of product;
 - (b) ease of recyclability;
 - (c) current demand for the material for recycling purposes;
 - (d) costs for establishing a separate waste collection system;
 - (e) collection, transport and treatment costs for separately collected waste;
 - (f) administrative costs i.e. costs linked to the running of a producer responsibility organisation;
 - (g) costs for public communication and awareness-raising (on waste prevention, litter reduction, separate collection, etc.);
 - (h) costs for the appropriate surveillance of the system (including auditing and measures against free riders); and
 - (i) subtract revenues from recycled material sales.
- (4) The extended producer responsibility fee must be indicated as a separated line item on every invoice and cash sale receipt for each purchase.
 - (5) The producer must submit, to the department, an annual financial plan and an annual budget-
 - (a) within one month of implementation for the first year of implementation or within one month of implementation, in the event that implementation occurs after 30 June in the first year, for the following year; and
 - (b) by 30 June for the following year.
 - (6) The annual financial plan and annual budget must include, as a minimum, the following information:
 - (a) Estimated revenue (extended producer responsibility fees) from the various product streams;
 - (b) The manner in which the contributions (extended producer responsibility fees) are calculated and assessed;
 - (c) The total amount of the contributions (extended producer responsibility fees) that cover the full cost of the obligations incumbent on the producer applying for registration;
 - (d) The revenue collection method for each product stream;
 - (e) The conditions and procedures for revising the contributions to reflect changes in the obligations incumbent on the registered producer under this Regulations; and
 - (f) The methodology for allocating and disbursing revenue for implementing the extended producer responsibility scheme amongst the collection, waste minimisation, recycling, waste reuse and any other relevant component of the extended producer responsibility scheme.
 - (7) The administration fee of the extended producer responsibility scheme must not exceed-
 - (a) 12% of the revenue collected in calendar year 1 of implementation; and
 - (b) 9% of the revenue collected in calendar year 2 of implementation.
 - (8) The administration fee must be reviewed in calendar year 2 of implementation, and a Notice must be published in the *Government Gazette* by the Minister prescribing the administration fee for extended producer responsibility schemes.

Monitoring, reporting and evaluation

8. (1) A producer must submit an interim performance report of the scheme measured against the individual targets in the relevant published Government Notice in terms of Section 18(1) of the Act.
- (2) The interim performance report must be submitted to the department within four weeks of the conclusion of the 6 months period namely, January to June of the calendar year, by the producer.
- (3) Annual external performance audit reports must be submitted to the department within 3 months of the conclusion of the year-end, which is on 31 December.
- (4) An annual external performance audit report must be submitted, by the producer, to the department containing the following minimum requirements:
 - (a) Performance against the published targets;
 - (b) Breakdown of the allocation of the extended producer responsibility 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.
- (5) All producers must record and report, as a minimum on an annual basis, to the South African Waste Information System the quantities of waste, in tons, resulting from the identified products that are-
 - (a) generated;
 - (b) collected;
 - (c) diverted away from landfill (recycled, reused, recovered, refurbished);
 - (d) exported; and
 - (e) disposed.
- (6) The department may conduct verification audits on the obligations of producers.
- (7) In year 1 of implementation of these Regulations, the following will apply:
 - (a) For subregulation (1) and (2), the period will be from the date of business commencement until end June of the calendar year;
 - (b) Subregulation (1) and (2) will not be applicable in the event business commencement occurs after June of the calendar year; and
 - (c) For subregulation (3), (4) and (6), the period will be from the date of business commencement until December of the calendar year.

Performance review of the extended producer responsibility scheme

9. (1) Performance of the extended producer responsibility scheme 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) Producers may approach the department for an earlier review due to non-achievement or over-achievement of targets.

Registration of producer responsibility organisations

10. (1) All existing producer 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.
- (2) All newly established producer responsibility organisations, after the coming into effect of these Regulations, must register with the department within 3 months of being established by completing the prescribed form from the department.

Requirements and criteria for producer responsibility organisations to operate

11. (1) The department may only register a producer responsibility organisation if such organisation meets the minimum requirements contemplated in subregulation (2).
- (2) A producer responsibility organisation—
- (a) must be an autonomous body established by producers through a due process;
 - (b) must be a registered not-for-profit organisation;
 - (c) must be managed by a board of directors comprised of representatives from the entire value chain of their products; and
 - (d) must not have members or immediate family members that have any vested interest in the particular waste stream.

Offences

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

Penalties

13. (1) A person convicted of an offence under these Regulations 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 registered producer who does not comply with these Regulations may have their registration as contemplated in regulation 4(1) or 4(2) of these Regulations revoked and/or be compelled to join another extended producer responsibility scheme.
- (3) A registered producer responsibility organisation that does not comply with the requirements as contemplated in regulation 10(1) or 10(2) of these Regulations may have their registration revoked.

Short title and commencement

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

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