



EXTENDED PRODUCER RESPONSIBILITY REGULATIONS

IWMF

10 June 2021



forestry, fisheries
& the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA



BACKGROUND

- December 2019: Department embarked on a process to implement Extended Producer Responsibility for the country.
- Extensive consultation ensued which resulted in EPR Regulations and notices for Electrical and Electronic Equipment (EEE), Lighting and paper and packaging sectors being published on **05 May 2021** for implementation.



CONTENT OF REGULATIONS

1. Definitions
2. Purpose of the Regulations
3. Application of the Regulations
4. Registration of producers
5. Extended producer responsibility measures to be implemented. Obligations of producers and producer responsibility organisations
6. Minimum requirements and criteria for extended producer responsibility schemes to operate
7. Financial arrangements for an extended producer responsibility scheme
8. Monitoring, reporting and evaluation
9. Performance review of the extended producer responsibility scheme
10. Registration of producer responsibility organisations
11. Requirements for producer responsibility organisations
12. Offences
13. Penalties



DEFINITIONS

- "brand owner" means a person, category of persons or company who makes and/or sells any **identified product** under a brand label;
- "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 fully complying with the requirements of the extended producer responsibility scheme**



Definitions contd.

- “importer” means a person or category of persons that brings **identified products or items that contain identified products** into the country from abroad **and including but not limited to the one that first places them into the market for sale;**
- “producer” means any person or category of persons or a brand owner who is engaged in the commercial manufacture, conversion, refurbishment (**where applicable**) or import of new and / or used identified products as identified by the Minister by Notice in the Government Gazette in terms of section 18(1) of the Act, **and a producer includes, where relevant, the same as defined in the specific section 18 Notices for each of the identified products as gazetted by the Minister in terms of section 18(1) and (2) of the Act;**
- **“collection” means the gathering of identified products at the end of their lives, at the place of its generation or storage by a waste picker, collector or reclaimer or service provider;**



Definitions contd.

- "full cost" means all the direct fixed and variable costs associated with the extended producer responsibility scheme;
- "identified products" means products that are identified in terms of section 18(1)(a) of the **Act** and published in the Government Gazette by the Minister;
- "nett cost" means the full cost subtract the revenue from the sales of the collected material;



DEFINITIONS CONTD.

- "refurbishment" means restoring old products to a working condition which must be available for reuse and which restores its original function



2. PURPOSE

- (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 product at the **end of its life**; and
- (3) to encourage and enable the implementation of the **circular economy** initiatives



3. APPLICATION

- apply to the **identified products** in terms of section 18(1)(a) of the Act and to the producers of those identified products published in the Government Gazette by the Minister;
- apply to the **identified products** in terms of section 18(1)(a) of the Act and to the producers of those identified products published in the Government Gazette by the Minister, that were placed on the market **prior to these Regulations** coming into effect; and
- do not apply to the **identified products** in terms of section 18(1)(a) of the Act and to the producers of those identified products published in the Government Gazette by the Minister, to that portion which is **exported only** or that produce the identified products for export purposes only.



4. & 10. REGISTRATION

- Existing Producers/PRO's – must register by **05 November 2021**.
- New Producers/PRO's – must register within 3 months of establishment.
- Registration via South African Waste Information Centre (SAWIC). **Takes 10 minutes to complete**



5. EPR MEASURES - PRODUCERS

- The producer of a product or class of products, must-
 - **establish** and implement an extended producer responsibility scheme
 - **or join** another extended producer responsibility scheme
 - **or appoint a producer responsibility organisation** to establish and implement an extended producer responsibility scheme that includes the entire **value chain**;
- be accountable for the **operation** and **performance** of their extended producer responsibility scheme;



5. EPR MEASURES - PRODUCERS

- conduct a life cycle assessment, in relation to the identified product, in accordance with the applicable standards **within 5 years** of implementation of their extended producer responsibility scheme;
- through the life cycle assessment as a minimum focus on the following:
 - (i) **Minimisation of material** used in the identified product;
 - (ii) **Design** of the product to facilitate **reuse**; **recycling** or **recovery**, without compromising the functionality of the product; and
 - (iii) **Reduction** of environmental **toxicity** of the resulting post - consumer waste stream;



5. EPR MEASURES - PRODUCERS

- collaborate as producers of an identified product and in consultation with the Department responsible for Trade, Industry and Competition , to **develop a broad - based black economic empowerment transformation charter** with targets, timelines and implementation measures, within **two years** 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 53 of 2003) and must include a **special focus** on **women, youth** and **people** living with **disabilities**;
- **where specified** in the section 18(1) Notices, implement **mandatory take back** of their identified products at the end of their lives; and
- implement **environmental labels** and declaration for the identified products in accordance with SANS 14021 and SANS 14024 **within** a period of **3 years**.



5A. OBLIGATIONS OF PRO'S THAT ESTABLISH SCHEMES

- The producer responsibility organisation must-
- **develop** and **maintain** a system to collect the EPR **fees**;
- Maintain register of its members;
- Conduct internal and external financial audits and submit to the Department;
- External Audit Report will be uploaded onto the South African Waste Information Centre (SAWIC) for public access;
- collect, record, manage and submit **data** to the South African Waste Information System;
- Contract with the downstream value chain for services needed and ensure that the contracting process is fair and transparent.



5B. OBLIGATIONS OF PRODUCERS THAT ESTABLISH THEIR OWN SCHEMES

- The producer that establishes and implements their own scheme must -
 - **allocate funding** for implementation of the extended producer responsibility scheme;
 - conduct internal and external **financial audits** and make these audit reports available to the department.
 - Maintain data and report it on SAWIS.



5A-B. OBLIGATIONS OF PRO'S AND PRODUCERS THAT ESTABLISH EPR SCHEMES

- co- operate with all **municipalities** (where applicable), **within 3 years** of implementation of their extended producer responsibility scheme, to increase the recovery of identified products from municipal waste **integrate** informal waste collectors, **reclaimers** and pickers into the **post consumer** collection **value chain**;
- **develop** and establish **secondary markets** for recycled content;
- **utilise new** and **existing** infrastructure across extended producer responsibility schemes in a collaborative manner where feasible;
- Compensate informal sector for the environmental service they are doing. This must be implemented by **November 2022**.
- Transform the sector. Focus on women, youth and persons with disabilities. Focus on small business and entrepreneur development.



7. EPR Fee

- weight of product;
- ease of recyclability;
- current demand for the material for recycling purposes;
- costs for establishing a collection system for the identified products;
- collection, transport and treatment costs for separately collected waste;
- administrative costs;
- costs for public communication and awareness - raising on waste prevention,
- litter reduction, separate collection, etc.
- costs for the appropriate surveillance of the system (including auditing); and
- subtract revenues from recycled material sales.



7. EPR FEE

PRO ESTABLISHED SCHEME

- PRO together with members determine the fee and apply fee proportionally to all members based on the identified products placed on the market.
- The latest extended producer responsibility fee must be publicly available on the PRO website.
- The administration cost of the EPR scheme will be limited the following:
 - (i) Salaries of the producer responsibility organisation staff;
 - (ii) Overhead costs (utilities and rent); and
 - (iii) Information Technology and Systems.



7. ADMINISTRATION COSTS PRO ESTABLISHED SCHEME

- **20%** of the revenue collected in calendar year 1 of implementation;
- **15%** of the revenue collected in calendar year 2 of implementation; and
- **12%** of the revenue collected in calendar year 3 and beyond of implementation.



7A. PRODUCER-ESTABLISHED SCHEME EPR FEE

- The **producer** that establishes and implements their own scheme must determine and **allocate appropriate** extended producer responsibility **funding**, which will hereafter be referred to as an extended producer responsibility fee, and **resources** to ensure an effective extended producer responsibility scheme.



7A. PRODUCER-ESTABLISHED SCHEME

EPR FEE

- The extended producer responsibility **fee** must be **equal** to:
 - **costs** for establishing a **collection system** for the identified products; plus
 - **collection, transport** and **treatment** costs for separately collected waste; plus
 - **administrative** costs; plus
 - **costs** for public **communication** and **awareness - raising** (on waste prevention, litter reduction, separate collection, etc.); plus
 - costs for the appropriate **surveillance** of the system (including **auditing**); and
 - less revenues from recycled material sales;



7A. PRODUCER-ESTABLISHED SCHEME EPR FEE

- The latest extended producer responsibility **fee** must, at all times, be **publicly available** on the Producer's **website**.
- The producer that establishes and implements their own scheme must submit, to the department, an **annual financial plan** and an annual budget.



7A. PRODUCER-ESTABLISHED SCHEME

EPR FEE

- The annual financial plan and annual budget must include, as a minimum, the following information:
 - (a) Extended producer responsibility **fee allocation**;
 - (b) The manner in which the extended producer responsibility **fee** is **calculated**;
 - (c) The **total** amount of the contributions (extended producer responsibility **fees**) that cover the nett cost of the obligations incumbent on the producer applying for registration;



8. MONITORING AND EVALUATION PRO & PRODUCER

- **interim performance report** on the scheme measured **against** the individual **targets** in the relevant published Government Notice in terms of Section 18(1) of the Act submitted by July every year.
- Focus areas of report:
 - **Unaudited** interim **performance** against the published **targets**;
 - Unaudited breakdown of the **allocation** of the extended producer responsibility **fee**; and
 - Unaudited **performance** on all **finance matters**.



8. MONITORING AND EVALUATION PRO & PRODUCER

- **Annual performance audit reports** must be submitted to the Department within 3 months of the conclusion of the year end, which is on 31 December.
- An annual external performance audit report must contain the following minimum requirements:
 - Performance against the published **targets**;
 - Breakdown of the **allocation** of the extended producer responsibility fee;
 - Performance on all finance matters;
 - Governance report; and
 - Number of jobs created.



8. MONITORING AND EVALUATION PRO AND PRODUCER

- All producer responsibility organisations and producers who establishes and implements their own scheme must **record** and **report**, as a minimum on an annual basis, to the **South African Waste Information System** the **quantities** of the identified **product** that are:
 - **placed on the market** by members of the producer responsibility organisation or by the producers who implement their own scheme;
 - collected;
 - **diverted** away from landfill (recycled, reused, recovered, refurbished);
 - **exported**;
 - **landfilled**; and
 - number of jobs created.



9. PERFORMANCE REVIEW OF THE EXTENDED PRODUCER RESPONSIBILITY SCHEME

- **Performance** of the extended producer responsibility scheme must be reviewed at **5 year intervals** by the department.
- The **department** may at any time **review** the **extended producer responsibility scheme** based on its performance.
- Producer responsibility organisations or the producer that establishes and implements their own scheme may approach the Department for an **earlier review** due to **non-achievement** or **over-achievement** of targets.



11. CRITERIA FOR A PRO

- (a) must be an **autonomous body** established by producers by a due process;
- (b) must be a registered **not-for-profit** company;
- (c) must be **managed** by a **board of directors** comprised of representatives from **producers**; and
- (d) adhere to the **Companies Act** in terms of good corporate governance and management of conflicts of interest.



12. OFFENCES

- (1) A **person** commits an offence if that person contravenes or fails to comply with regulations 4(1) and (2), 5, 5A, 5B, 6, 7(1), 7(2), 7(3), 7(4), 7(5), 7(6), 7(7), 7A, 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(d), 8(1)(e), 8(2)(a), 8(2)(b), 8(2)(c), 8(2)(d), 8(2)(e), 9(3), 10 or 11 of these Regulations;
- (2) A **producer responsibility organisation** commits an offence if that producer responsibility organisation contravenes or fails to comply with regulations 4(1) and (2), 5, 5A, 5B, 6, 7(1), 7(2), 7(3), 7(4), 7(5), 7(6), 7(7), 7A, 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(d), 8(1)(e), 8(2)(a), 8(2)(b), 8(2)(c), 8(2)(d), 8(2)(e), 9(3), 10 or 11 of these Regulations.



13. PENALTIES

- A person convicted of an offence under these Regulations is liable to -
 - imprisonment for a period not exceeding **15 years**;
 - an appropriate **fine**; or
 - **both** a fine and imprisonment..
- A **registered producer** who does not comply with these Regulations may have their **registration** as contemplated in these Regulations **revoked** and/or be **compelled to join another** extended producer responsibility **scheme**.
- A **registered producer responsibility organisation** that does not comply with the requirements as contemplated in these Regulations may have their **registration revoked**.



NOTICES

- New definitions included
- Some definitions amended to provide more clarity
- Mandatory take back
- Refined targets



Mishelle Govender

Chief Director: Hazardous Waste Management and Licensing
Department of Forestry, Fisheries and the Environment.

Email: migovender@environment.gov.za

Tel: 012 399 8993

Thank You



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