



PETCO'S HOW-TO GUIDE TO SECTION 18 FOR PRODUCERS

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DISCLAIMER: Please note, this document represents PETCO's best interpretation at present of the Section 18 regulations and has not been informed by legal opinion. It is a working document which will be updated regularly. Readers are encouraged to obtain independent legal advice as to the applicability of the Section 18 regulations to their operations.

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1. Introduction

In many countries, the management of municipal solid waste, including packaging waste, is the responsibility of the state, and is usually carried out at municipal level. The packaging waste is either directly collected by the relevant state authority or by private companies working on the state's behalf. The costs of such systems are borne by the local authorities and/or national government, with private citizens contributing financially through their municipal solid waste fees or taxes.

Producers of packaged goods and other stakeholders along the packaging value chain are only held responsible for ensuring their products meet certain health and safety standards.

In such systems, funding often only covers the collection of municipal solid waste, transport and disposal at landfills or open dumpsites. Local authorities frequently lack expertise and resources. Recycling often relies on the informal sector, within which multiple stakeholders collect, sort and recycle materials with a sufficiently high material value, often under inadequate welfare and environmental conditions. Transitioning towards sustainable waste management and a circular economy therefore requires a new approach, one that involves all stakeholders at every stage of the packaging value chain.

2. What does the South African legislation say?

The Extended Producer Responsibility Regulations were published on 5 November 2020. On 15 January 2021, a Government Notice was published which postponed the implementation of the Extended Producer Responsibility Regulations to 5 May 2021. On 5 May 2021, amendments to the Regulations and notices regarding Extended Producer Responsibility were published. The Regulations are therefore effective from 5 May 2021 and the revised date for final compliance is 5 November 2021. 2022 will be Year 1 of the EPR scheme implementation, reporting and targets.

For a full list of waste management legislation and policies applicable to the Extended Producer Responsibility Regulations in South Africa, including download links, see [Appendix 1](#).

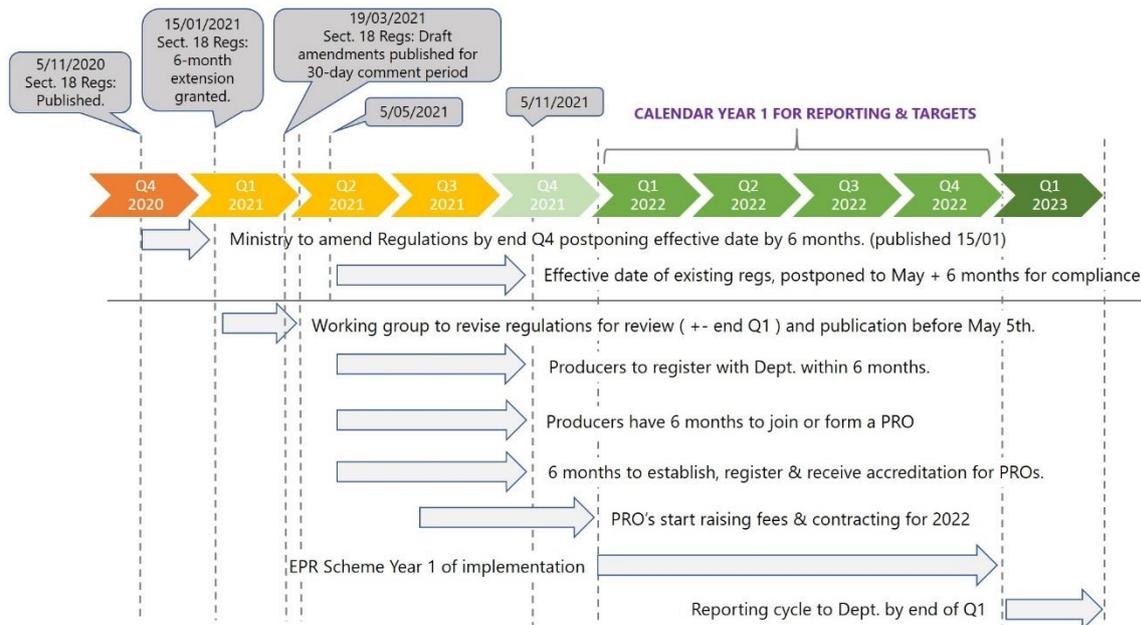


Figure 1: Timeline of important dates, as per Regulations.

- **What is Section 18?**

Section 18 refers to the Extended Producer Responsibility (EPR) aspect of the National Environmental Management Waste Act (NEMWA). Regulations were initially published in November 2020 after which a Government Notice was published on the 15th of January 2021 delaying their effective date to 5th May 2021. Final amendments were published on 5 May 2021, marking the coming-into-effect of EPR in South Africa.

The purpose of these Regulations is 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 NEMWA, to ensure the effective and efficient management of the identified product at the end of its life, and to encourage and enable the implementation of circular economy initiatives.

- **What is Extended Producer Responsibility (EPR)?**

The international principle of Extended Producer responsibility (EPR) is a waste management strategy for the sustainable organisation and financing of specific waste streams, such as discarded packaging. In terms of the Extended Producer Responsibility Regulations being promulgated, implementing EPR was voluntary. The NEMWA as read with Extended Producer Responsibility Regulations now obliges Producers to assume responsibility for their products up to and including the end-of-life stage of their product cycle. In EPR systems, Producers are responsible not only for health and safety issues associated with their products, but also for the management of packaging waste, including collection, sorting and recycling. Essentially, this means that the Producer must ensure that the products they place on the market do not negatively affect the environment after consumer use and therefore must

ensure that whatever post-use treatment is appropriate, occurs. Doing this may mean taking physical or financial accountability for the products.

In short, EPR systems tie Producers into financing and organising management systems for packaging waste, an approach that has implications for all other stakeholders in the value chain.

Implementing an EPR system enhances the interactions between different stakeholders, as well as assigning them new responsibilities. As EPR schemes for packaging only cover part of the total volume of municipal solid waste, they need to be integrated into broader waste management and circular economy policies.

- *Why should companies care about implementing an EPR system for packaging?*

Many companies that introduce packaging and packaged goods into markets are concerned about waste management issues, and some (particularly multinational corporations) have already agreed to voluntary targets. However, delivering reliable collection and recycling systems for household packaging waste and other packaging waste is expensive, and they can only be funded effectively if all the companies introducing packaging and packaged goods to the market contribute. Moreover, an EPR system allows companies to engage with the issue of waste on a level playing field, because the system is based on shared responsibility. Companies that decide to play an active role in an EPR system from the outset can influence how the system operates and contribute to the goal of EPR, which is to achieve a circular economy and address waste management issues.

- *What is Design for Recycling?*

The recycling of packaging does not begin with its collection, but rather with its design. In ensuring the circular transition for plastics and plastic packaging, design for recycling is among the key aspects. Compatibility of materials, easy separation and the use of additives, among other features, play a role in determining the recyclability of a given product.

Design for Recycling (D4R) guidelines are generally developed by Producer Responsibility Organisations (PROs) to help guide their members make better product design choices. These guidelines recommend what to use or how to responsibly use a substrate or combination of substrates in a particular application, such that the resultant product is easier to recycle and compatible with the recycling infrastructure available in the country. These guidelines typically also highlight what not to do.

Download PETCO's D4R guidelines for designing PET bottles and thermoforms [here](#) to learn more about the recyclability of your PET packaging.

- *What is a Life Cycle Assessment?*

A Life Cycle Assessment (LCA)¹ is a cradle-to-grave or cradle-to-cradle analysis technique to assess environmental impacts associated with all the stages of a product's life, which is from raw material

¹ LCA is defined in NEMWA as "...a process where the potential environmental effects or impacts of a product or service throughout the life of that product or service is being evaluated".

extraction through to materials processing, manufacture, distribution, and use. LCAs normally quantify the full impact of various packaging choices in terms of carbon footprint.

The current Regulations include requirements to perform LCAs. However, while LCAs do have their place, PETCO does not believe that they are the right tool to enable collection and recycling as at times, choices with a low carbon footprint may not be easily recyclable. Instead, we believe Design for Recycling guidelines are a better tool.

- *When do I become obliged to comply with this legislation?*

While the Regulations are effective from the 5th of May 2021, existing Producers have six months to firstly, register as a producer and secondly, join a registered PRO, or establish and implement compliant extended Producer responsibility (EPR) schemes individually. Should a Producer decide to join a registered PRO, Producers will have to ensure that they join or form (if one is not already in existence) registered PROs that will implement an EPR scheme for each of the products that they sell between May and end-October 2021.

It is important to note that, because EPR schemes will need to be fully compliant and will be measured against targets for the 2022 calendar year, it is essential that they are fully operational before the November 2021 deadline. This will most likely mean that Producers would need to join and contribute to new PROs / EPR schemes ahead of the November deadline.

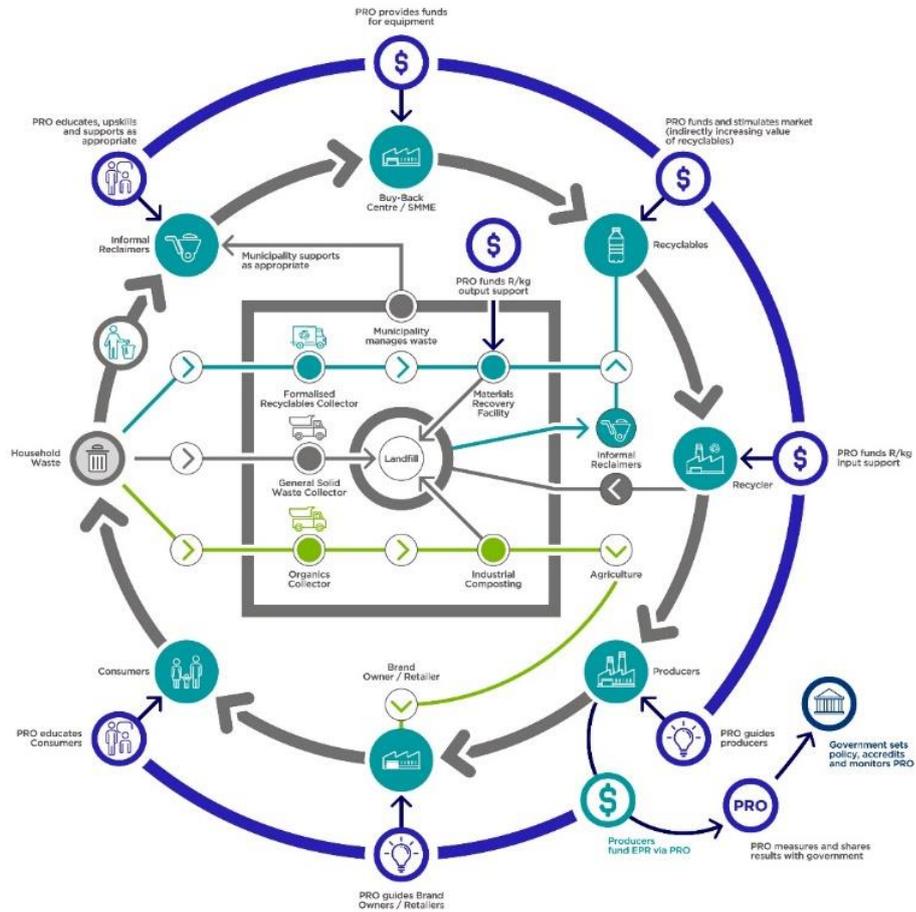


Figure 2: The role of Extended Producer Responsibility (EPR) in effective waste management.
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3. Roles and responsibilities

There are various roles and responsibilities within Extended Producer Responsibility (EPR) schemes that need to be understood for it to be successful. It is of the utmost importance that these roles are clear and unambiguous:

- *Raw material suppliers and converters of packaging material*

The raw material supplier is typically the first step in the local value chain and is the entity that provides packaging material for converters and manufacturers, either from virgin raw materials or secondary resources (recyclates). By using recyclates they can 'close the loop' as part of the circular economy.

Converters blend these materials (virgin or recyclate) with various additives into a formulated feedstock, to be used for packaging.

- *Producers of packaged goods*

Who is the Producer in the packaging sector?

PETCO's view is that, for packaging, the Producer should be either the Brand Owner of products using the packaging, the Retailer in the case of house brands, or the Importer of goods contained in packaging.²

In terms of the Extended Producer Responsibility Regulations as read with the Packaging Notice, a Producer is any person or category of persons, including a Brand Owner, who is engaged in the commercial manufacture, conversion, refurbishment (where applicable) or import of new or used identified products. In the packaging sector, the definition applies to a producer who places in excess of 10 tonnes of identified products onto the market on an annual basis, and extends to:

- (i) the paper, packaging and single use product manufacturer, converter and/or the brand owner where the brandowner operates an enterprise in South Africa;
- (ii) the licensed agent of the branded goods, or where no official agency agreement may be in place, the importer of the branded goods as depicted on the Bill of Lading, in the instance where the brand owner is not domiciled in South Africa; and
- (iii) in case of all other identified products not covered (i) and (ii) the producer shall be the Retailer.

Why should the Producer be the Brand Owner and Importers (and NOT the Converter)?

International best practice in EPR systems / PROs is clear that, for packaging, Brand Owners / Retailers / Importer are identified as the Producer. In addition, globally leading brands acknowledge their role as Producers in the context of Extended Producer Responsibility. In packaging specifically, "Brand

² For further reading, several other global best practice organisations including the [Organisation for Economic Co-operation and Development](#) (OECD) define the Producer as: The organization that has the greatest control in selecting materials and designing products.

owners” are seen as those responsible for making / influencing packaging choices and therefore should be held accountable for their positive / negative packaging choices. Brand Owners generally have no preference for one or other substrate and as such are more likely to support objective evaluation of and application of EPR fees within the PROs that they support. Conversely, packaging Converters will be incentivised to protect their chosen substrate.

Additionally, in the packaging space, Converters are often also Recyclers and as such, in EPR schemes, if Converters are considered the Producer, then some may be conflicted by being both a decision maker and beneficiary of the EPR scheme. This is currently the case in both Paper and Glass in South Africa (i.e. the Converter is also the Recycler) and, in other countries, is often the case in Plastics. As recycling and recycled content is growing in use and the circular economy is developing, vertical integration and potential for conflict of interest increases significantly.

Over the last 15 years, most voluntary EPR systems have been converter-led or have charged EPR fees at the level of the Converter or Raw Material purchases. Across all PROs, a common stumbling block has been the challenge of passing on EPR fees agreed by the Converter to the Brand Owner. If the Converter is seen as the Producer, it is likely that the “burden” will sit on the Converter and many Brand Owners will see EPR fees as simply another supply chain cost for evaluation and negotiation. In this environment, Converters will be incentivised to keep EPR fees as low as possible given their potential impact on their ability to win / lose business (i.e., belonging to an expensive PRO may negatively affect their competitiveness). This will again negatively impact the effectiveness of PROs and EPR regulation as a whole. By placing the burden on the Brand Owner, the decision regarding which PRO to join becomes the decision of the Brand Owner, and the cost vs. effectiveness of the PRO is more directly linked to the risk or benefit felt by the Brand Owner.

Lastly, best practice suggests that to properly measure the amount of any product placed on the market, PROs and the Department of Forestry, Fisheries and Environment (DFFE) should require Brand Owners / Retailers and Importers to account for ALL products placed into the market by converting sales into tonnes of packaging, regardless of where the packaging or finished goods are produced. Although in South Africa, the majority of packaging placed in the market is converted within South Africa, there is a significant portion of packaging that cannot be represented by a local converter. This reinforces the conclusion that Brand Owners / Retailers and Importers should be considered as Producers, rather than the converters of locally sourced packaging.

What will the Producer be held accountable for in terms of the Extended Producer Responsibility Regulations?

The primary responsibility for EPR is that of the Producer. By joining and contributing to a PRO, a Producer may attend to compliance of the Extended Producer Responsibility Regulations through a PRO. Ultimately however, if a PRO does not deliver against the requirements of the Regulations, either from a governance perspective or in terms of the results they achieve, the PRO can be discredited and the burden to execute their EPR returns to the Producer. As such, Producers need to ensure that the PROs that is asked to execute their EPR obligations are properly managed, governed, and funded.

However, there are obligations that are NOT transferred to a PRO and these include the requirement to declare consumption/production or sale of products accurately and timeously to their PROs, to pay their PROs timeously, and to register with the Department as a Producer. Producers may also be

required to take actions with respect to the products they manufacture to make them easier to collect and recycle.

What is important to note is that a Producer may choose not to join a PRO and must therefore implement an EPR scheme to manage their own products after consumer use. This is called an Individual Compliance Scheme (ICS) internationally. In this case (where the Producer is most notably accountable for collecting their own identified products only), Producers will effectively be accountable for the obligations of both a Producer and a PRO, although not explicit in the regulations, and must cover all costs associated with recovering their own identified products [e.g. costs for establishing a collection system for the identified products; collection, transport and treatment costs for separately collected waste; administrative and financial audit costs; costs for public communication and awareness-raising (on waste prevention, litter reduction, separate collection, etc.); etc.] Meeting these obligations alone may prove time-consuming and with particularly high costs. For this reason, ICS are viewed as the exception rather than the rule and are usually associated with returnable packaging systems where many of these challenges are already addressed.

What if I import packaging that is used to package products for the export market?

The EPR regulations cover all packaging placed on the South African market. The source of the packaging (i.e. locally produced or imported) is not relevant. As such, all packaging exported with finished goods is not subject to the regulations. However, any packaging that is used within the supply chain, during the production of such goods (e.g. packaging for ingredients and packaging for the packaging itself) is subject to the regulations. This is because this packaging enters the waste stream within South Africa. Producers may only exclude packaging used for finished goods that they can prove have been exported vs. products that may be exported by retailers or distributors.

- *Distributors and retailers of packaged goods*

This is the entity along the value chain that acts as a distribution point for the sale of goods to the public for use or consumption. Supermarkets and stores represent the interface between the private sector and end-consumer of packaged products. When distributors & retailers sell branded goods placed on the market by companies operating within South Africa, then the EPR burden falls on the brand owner and not the retailer or distributor. These goods may either be produced locally or imported. However, where the distributor or retailer sells goods under their own brand or imports products directly (without the brand owner being involved in the transaction) then the retailer or distributor is considered to be the producer and must take on the burden of EPR themselves. Retailers therefore also need to educate their customers about environmentally sound ways of handling packaging waste.

- *Producer Responsibility Organisations (PROs)*

The Producer Responsibility Organisation (PRO) functions as the 'system operator' within the EPR. It is the joint entity set up by the obliged companies or through legislation that assumes responsibility for the individual obliged companies concerning waste collection and disposal obligations. Joining forces establishes economies of scale, reduces transaction costs for each company and facilitates the management of packaging waste for consumers.

By joining a PRO, declaring production and sales to the PRO, and paying EPR fees, a Producer essentially passes on SOME of their obligations to the PRO. International best practice has demonstrated that fewer larger PROs are generally more effective than many small PROs, due to their economies of scale and the critical mass they represent when engaging with municipalities, waste companies and recyclers.

What is the role of a PRO?

The primary role of a PRO is to implement an EPR scheme on behalf of its members.

The PRO is accountable for fulfilling all its tasks and for spending the funds paid by the obliged companies accordingly. A PRO operates as the coordinating body between Producers and take-back/recycling operators; it assumes the responsibilities of all its Producer members and organises take-back and recycling activities on their behalf. The PRO is also responsible for providing information about the system and maintaining communications between the stakeholders in the supply chain.

PROs also play the important role of educating consumers to encourage more recycling, and helping their members improve product design to make products easier to collect and recycle.

This wide range of responsibilities makes the PRO the most important stakeholder organisation within the system; it is responsible for setting up, developing and maintaining the system, as well as assuming the take-back obligations of the obliged companies that are its members.

What will PROs be held accountable for?

By joining a PRO and remaining in good standing (i.e. declaring volume & paying EPR fees in full) with the PRO in question, a Producer transfers some of their Extended Producer Responsibility to the PRO. Amongst other things, the PRO will be held accountable for:

- i) Developing and implementing an effective EPR scheme for its Members' chosen identified products placed on the market.
- ii) Measuring and reporting on the scheme as required.
- iii) Ensuring compliance with finance and governance requirements.

Effectiveness of an EPR scheme will be measured in terms of performance against agreed targets for several Key Performance Indicators, like percentage collection, recycling and, where appropriate, re-use and recycled content.

Who should join a PRO?

Most PROs are industry-led, meaning that they are set up by companies, associations or other organisations in the private sector. Fundamentally the PRO represents the Producers as identified in the regulations. As such, the key members of the PRO should be: brand owners, retailers and importers. Other supply chain members may also join or be represented in PRO structures to enable broader industry participation. Critically, joining a PRO does not mean you are compliant. To remain compliant a Producer must remain in good standing with their chosen PRO.

Who monitors PROs?

PROs are effectively monitored in two ways. Firstly, PROs are subject to performance review and accreditation by state authorities to ensure they perform their roles and carry out their responsibilities. PROs that do not comply fully with the regulations, demonstrate a lack of governance or fail to achieve the mandated targets may be censured by the Department and potentially even lose their accreditation. However, it is not the states responsibility to ensure that a PRO is effective. The primary responsibility to ensure that a PRO is compliant and effective lies with the Producer members on whose behalf the PRO acts. As such, producer members should be actively involved in the oversight of their chosen PROs.

Will I have to join a PRO for every packaging material I use?

The Regulations require Producers that place more than 10 tonnes of “identified products”, in this case packaging, to belong to a PRO or implement an individual compliance scheme for each of the packaging materials produced by the Producer that DFFE has identified as being subject to the Regulations i.e., all identified products.

Can I join just one PRO?

If one PRO offers a scheme or multiple schemes that covers ALL the identified products in your business, then you can join only one PRO. Currently however, most South African PROs operate a single scheme and tend to represent only one product or a family of products. As such, at present you would need to join more than one scheme if you are producing products made from multiple materials. Alternatively, you may join one or more PROs for some of your products and establish your own EPR scheme for others. You may even establish your own scheme/s for ALL of your products, but this is relatively unlikely.

When must I join a PRO?

Start the process of engaging with your chosen PRO as soon as possible. Establishing EPR schemes takes time, and for a number of products/packaging types there may not currently be a scheme operated by a PRO that will ensure compliance. As such, time will be required to develop and implement such schemes. Registration of existing Producers with the Department must take place by 5 November 2021³ as per the applicable provisions of the Regulations specifically. 2022 will be Year 1 of the EPR scheme implementation, reporting and targets.

If I am a micro-business, must I join a PRO?

Yes. The Regulations do not exclude anyone or have a minimum threshold based on the size of your business. The only threshold in the case of packaging is the de minimus of 10 tonnes of packaging per year. As such, ALL Producers exceeding 10 tonnes annually must comply.

PROs may at their discretion provide for micro-businesses in the form of simplified contributions, e.g. a flat fee vs. monthly declarations, and *pro-rata* fees.

³ New producers that come into being after the publishing of the final regulations on 5 May have 3 months (until 5 August 2021) to register with the Department.

Where do competition laws come into play?

With respect to changing markets, increasing consumer awareness and preference for sustainable products, the circular economy is increasingly seen as an economic opportunity for businesses. This will in fact enable a competitive advantage over those businesses that still rely on linear models of production and consumption.

Voluntary initiatives by companies may negatively impact or even disrupt competition within their industries, as some companies may decide not to take part. In contrast, mandatory EPR systems create an additional financial flow by obliging all the companies concerned to pay into the system. This maintains a level playing field between them (i.e. ensuring fair competition/avoiding free-riding).

Although PROs may require the cooperation of competitors, there is clear evidence both locally and internationally that any concerns about contravening competition law can be managed. The first and most important principal is that the operations of the PRO must be independent of any member and that any sensitive information (e.g. sales volumes) is not visible to other members or to board members. Board members representing members should only serve in a non-executive capacity and should not be exposed to any data shared by a competitor. Data shared with the board should always be aggregated, to enable business designs but prevent unfair access to competitor information.

However, if the regulatory framework for the EPR system does not provide for appropriate monitoring mechanisms and prevent free-riding, competition may be disrupted even in a mandatory EPR system.

Current PROs in South Africa⁴

With the understanding that new PROs may be formed and can emerge under these Regulations, these are the current packaging PROs in South Africa:

PLASTICS (per polymer identification code):

1: PETCO, the PET recycling company NPC (www.petco.co.za), represents the South African PET plastic industry's joint effort to self-regulate post-consumer polyethylene terephthalate (PET) recycling.

2, 4 and 5: Polyco, the Polyolefin Responsibility Organisation NPC (www.polyco.co.za). Polyolefins is the collective term for the kinds of plastics that include polyethylene, namely low-density polyethylene (LDPE), linear low-density polyethylene (LLDPE), high-density polyethylene (HDPE) and polypropylene (PP). Mixed plastics (7) also currently fall under Polyco's mandate.

3: The Polystyrene Association of South Africa (www.polystyrenerecyclingnetwork.com).

6: The SA Vinyl Association (www.savinyls.co.za) were established by their represented plastic manufacturers to fulfil functions such as product stewardship and reducing environmental impacts of their sectors.

⁴ Note: This is not an exhaustive list. Please see the National Recycling Forum's website for other PROs: www.recycling.co.za/members.html

PAPER

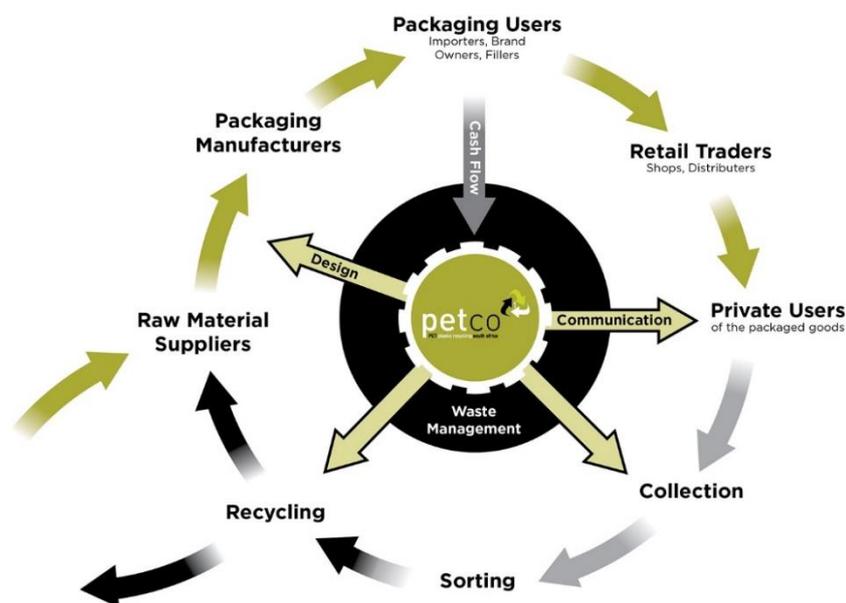
Fibre Circle (www.thepaperstory.co.za/fibrecircle) is the producer responsibility organisation (PRO) for the paper and paper packaging sector that facilitates an extended producer responsibility (EPR) programme among paper manufacturer and importers as well as brand owners and retailers.

METALS

MetPac-SA (www.metpacsa.org.za) is an industry body that represents the various role-players in the metal packaging sector in South Africa.

GLASS

The Glass Recycling Company (www.theglassrecyclingcompany.co.za) is South Africa's official organisation for promoting glass recycling.



Source: www.cyclos.de

Figure 3: The role of PETCO, as a Producer Responsibility Organisation, within the recycling value chain. (Image adapted courtesy of Cyclos for use by PETCO.)

- **Waste Management Operators**

Waste Management Operators are responsible for the collection, management and recycling of packaging (in accordance with the highest possible standards to ensure high-quality recycling), through contracts and/or tenders with either local municipalities, PROs, or individual Producers. This

responsibility also extends to companies operating in the informal sector. These entities are eligible to receive funds from EPR schemes for handling packaging waste.

- *National Government*

It is up to governments to implement clear, mandatory Regulations for the EPR system. The government should also monitor the system or at least ensure that appropriate monitoring mechanisms are in place, both to make sure all the relevant requirements and targets are met, and to guarantee a level playing field for all companies involved. This responsibility also encompasses the imposition of sanctions if individual obligations are not fulfilled. It is also important that the government keeps the system under constant review and ensures it is modified as required.

- *Local Authorities and Municipalities*

Typically, local municipalities are responsible for waste collection from households and businesses, including providing readily accessible infrastructure. One of the key challenges for municipalities and local authorities is to ensure that all citizens are informed about the waste collection system and the fact that packaging and other recyclables will be collected separately. Local authorities are also the key point of contact for groups and institutions that can act as awareness multipliers for the rest of the population, such as nurseries, schools, universities, clubs and other organisations.

Although these Regulations do not outline specific obligations of municipalities, under the NEMWA, the primary responsibility for post-consumer and post-industrial waste remains with municipalities. As such, they are a key player in enabling increased collection and recycling. The Regulations propose close cooperation between PROs, waste management companies and municipalities.

- *Informal waste collectors*

Given the valuable role that informal waste collectors currently play in the waste economy, it is essential that they are considered going forward. DFFE is particularly concerned about potential exploitation of the informal sector and as such has proposed measures to try and address this, including ensuring fair remuneration for the services they offer. All informal waste collectors, reclaimers and pickers will need to register with the National Registration Database for collection services.

- *Consumers*

Sustainable waste management partly depends on changing consumers' attitudes towards waste, and particularly on creating a sense of civic collective responsibility for it. Making sure people are informed about both the benefits of proper waste management and the adverse effects of failure to manage it effectively is key to promoting this change.

Consumers are not obliged to pay fees to the EPR system, but they usually cover its costs as additional costs are passed on to consumers through product prices. In this manner, packaging that is hard to collect and recycle should have a higher burden to pass on to consumers and as a consequence consumer pressure can encourage brand owners to choose better packaging. Consumers must dispose of packaging correctly, ideally by separating the waste at source to ensure high-quality recycling. Additionally, they need to be aware of strategies for waste reduction and observe strict hygiene standards.

4. Obligations and penalties

- *Who is obliged to register under Section 18?*

The Producer is, either individually (through an Individual Compliance Scheme) or collectively (through a Producer Responsibility Organisation) responsible for the products and packaging that they place on the market after consumption. As a Producer, you will be required to declare the nature and volume of your products and will be held accountable to achieve the targets set out by national government in respect of reduction, reuse, recycling and recycled content.

- *What are the specific obligations for Producers under Section 18?*

Producers will need to identify themselves and take the necessary actions to ensure that they are compliant with the new laws. If not, you or your business could face [serious penalties](#).

These are some of the key requirements for Producers:

1. Register with the department:
 - (a) All existing producers of identified products, at the time the Regulations come into effect, must register with the department within 6 months of publication of the Regulations by completing the online registration process accessible via the South African Waste Information Centre website:
(sawic.environment.gov.za/epr/regindex.php).
 - (b) All new producers of identified products, who commence producing after the Regulations come into effect, must register with the department within 3 months of being established, by completing the online registration process accessible via the South African Waste Information Centre website:
(sawic.environment.gov.za/epr/regindex.php).

***NOTE:** Registrations under the previous and now-defunct Section 28 regulations are no longer valid. Re-registration is required as outlined above in accordance with the current Section 18 Regulations.*
2. Establish an Extended Producer Responsibility (EPR) scheme that includes the entire value chain **OR** appoint a Producer Responsibility Organisation (PRO) to establish and implement an EPR scheme on their behalf that includes the entire value chain.
3. Be accountable for the operation and performance of EPR scheme.
4. Pay the appropriate levy to the EPR scheme – payments and contracting by end-2021.
5. Fulfil monitoring and reporting obligations – to begin Q1 2022.
6. Implement environmental labelling of packaging to indicate disposal information.
7. Use design for recycling guidelines and science-based assessment tools to reduce the environmental footprint of production and usage; keep products in circulation through reuse models where appropriate; increase recyclability and reduce or eliminate toxicity in the post-consumer waste stream.

- *What packaging materials trigger a registration obligation?*

These Regulations apply to:

- (1) The identified products in terms of section 18(1)(a) of the Act and to the producers of these identified products.
- (2) The identified products in terms of section 18(1)(a) of the Act that were placed on the market prior to the Regulations coming into effect, and to the producers of these identified products.

However, these regulations do not apply to the identified products that is exported or to the producers of these identified products.

What is packaging?

It is usually clear whether an element around a product is packaging or not. Obvious examples of packaging are bottles, butter tubs, and cans. These elements clearly have the sole function of packaging the product. It becomes more difficult if the packaging has one or more additional functions or can be used afterwards for another purpose e.g. a mustard jar, a lipstick container or a coat hanger.

Types of packaging:

1. **Primary Packaging (or sales packaging):** Primary packaging is the packaging in direct contact with the product itself and is sometimes referred to as consumer or retail packaging. The main purpose of primary packaging is to protect and/or preserve, contain and inform the consumer. There are various examples of primary packaging and there can sometimes be several components for one product. For example, for beer, the bottle containing the liquid and the label are both classed as primary packaging. Corrugated primary packaging is often used for gift and luxury products such as in the tech and cosmetic industry.
2. **Secondary Packaging:** Secondary packaging's main purpose is for branding display and logistical purposes. As well as protecting and collating individual units during storage and are often used by the beverage, food and cosmetic sectors for displaying primary packs on shelves and are sometimes also referred to as grouped or display packaging. Secondary packaging also includes packaging purposely made to display multiple product units for sale which speeds restocking from storeroom to shelf, this packaging includes retail-ready packaging (RRP), shelf-ready packaging (SRP) or counter-top display units (CDUs). Secondary packaging is predominantly corrugated cardboard packaging print finished to a high standard, such as being litho printed with well thought out branding and design, due to the integral part it has to play in the marketing funnel. E.g. Secondary packaging for drinks manufacturers could include gift packaging. Another example would be the plastic rings that hold a six-pack of cans together, or the cardboard box that holds a case of cans together. Further examples would be a box containing smaller boxes of batteries, or a large box of items intended for individual sale.

3. **Tertiary Packaging (or transport packaging):** Tertiary packaging facilitates the protection, handling and transportation of a series of sales units or secondary packaging in order to group everything into unit loads during transit. This type of packaging is rarely seen by the consumer. E.g. Tertiary packaging for bottled drinks would include transit packaging such as brown cardboard boxes, wood pallets and shrink wrap.
4. **Service packaging (or collective packaging):** This packaging is not filled with goods until the point at which it is passed to the end consumer. This is usually put on at the time of sale to the consumer. E.g. Service packaging would include bags for bread rolls, butcher's paper, trays for chips, takeaway coffee cups, pizza box or bags for fruit and vegetables.
5. **Multipacks:** These are collective packaging designed to be taken away by the consumer. Examples include packaging around six 1.5 l lemonade bottles or packaging around 2 spray cans.
6. **Dispatch packaging:** Each added packaging to send products in the framework of sales by mail order or over the internet to individuals. An example would be a cardboard box or plastic bag to send clothes via a courier.
7. **Reusable packaging:** Reusable packaging is packaging that is intended to make a minimum number of cycles within its lifespan and to be filled or used again for the same purpose as for which it was designed. To do this, the packaging must meet certain technical requirements and be included in a system that makes reuse possible. Examples include A drinks bottle on which a deposit is paid or a reusable shopping bag.
8. **Supply Chain packaging:** Although it does not typically reach the consumer, packaging used within a supply chain, such as packaging used to hold ingredients or even packaging for packaging is considered packaging in the context of the regulations. For clarity, consider the example of HDPE closures supplied to a beverage producer in LDPE bags within a corrugate box. Where the closures are produced locally, the responsibility lies with the entity selling the closures, but where the closures are imported, the responsibility for EPR lies with the entity importing the goods (i.e. the company using the HDPE closures).

How do I deal with areas of uncertainty?

If the packaging material typically accumulates as waste for private end-consumers, it must be registered with an EPR system.

What will it cost?

The extended producer responsibility fee must be based on nett 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 the 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, 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.

What are the penalties for non-compliance?

Producers and PROs commit an offence if they contravene or fail to comply to the regulations. Producers convicted of an offence under the Regulations are liable to:

- a. imprisonment for a period not exceeding 15 years;
- b. an appropriate fine; or
- c. both a fine and imprisonment.

Although it is not clearly outlined in the regulations, practically any fine issued to a Producer or PRO, that for example may not have paid their fair share to a PRO or not joined a PRO, would typically be significantly larger than the cost avoided through non-compliance. Fines are therefore likely to be proportional to the size of the business at fault. A registered producer who does not comply with these Regulations may also have their registration revoked and/or be compelled to join another extended producer responsibility scheme.

5. Registration

The primary function of the registration process is to provide DFFE with a record of all the Producers identified in terms of the regulations and the products that each place in the market. The DFFE should also then check to ensure that all Producers are compliant and have joined a PRO or established their own EPR scheme for each of the identified products they place in the market. In so doing, the DFFE is able to monitor and prevent so called “free-riding”. Obligated producers must also report the quantities of identified products that they place in the market annually to enable the state to consolidate national collection and recycling metrics. Producers do not technically have to “register” with PROs, but rather “join” PROs.

- *Who do I have to register with?*

All existing producers of identified products, at the time the Regulations come into effect, must register with DFFE within 6 months of publication of the Regulations by completing the online registration process accessible via the South African Waste Information Centre website: (sawic.environment.gov.za/epr/regindex.php). All new producers of identified products, who commence producing after the Regulations come into effect, must register with the department

within 3 months of being established, by completing the online registration process accessible via the South African Waste Information Centre website: (sawic.environment.gov.za/epr/regindex.php).

Registrations under the previous and now-defunct Section 28 regulations are no longer valid. Re-registration is required as outlined above in accordance with the current Section 18 Regulations.

The list of registered companies should be published on a register website. This allows anyone to check whether a given company introducing packaged goods or service packaging to the market in the country concerned is registered and paying EPR fees.

6. PETCO

- *Why should I join PETCO?*

If your company puts PET packaging onto the market, PETCO can help you to meet your legal obligations for household packaging.

Joining PETCO gives your company the following advantages:

- ✓ You achieve your recycling targets at a low cost.
- ✓ Your administration is simplified.

Your agreement with PETCO is only valid after you have paid the annual financial contribution. PETCO uses this contribution to fulfil its members' legal recycling and information obligations.

The income of PETCO, both from its members and from the other sources of revenue, is used for the operation of the organisation with the main aim being the achievement of the targets set by legislation with the lesser possible cost. PETCO, as an NPC, uses any possible surplus as the following year's revenue.

PETCO's membership packages are designed to offer the greatest access to services and information required to maximise environmental performance within PET plastic recycling in South Africa. Membership provides a greater level of support and brings increased involvement with the PETCO team to your specific projects. Email petconews@petco.co.za for more information about the PETCO membership programme.

- *If I am a member of PETCO, will all my packaging be collected and recycled?*

As a Collective System, PETCO is responsible for the recovery and recycling of a target percentage of PET packaging (as determined by the Regulations) that its members place in the market. This target is specified in the regulations and increases in each of the first 5 years of implementation. In order to ensure that PETCO's members remain compliant, PETCO must reach or exceed this targeted collection and recycling rate. As such, PETCO will look to achieve this obligation in the most efficient means possible to minimise the cost to its members. For this reason, it chooses which packaging it will collect and in what way. As much as ultimately it would be wonderful if we were able to collect everything,

we know that this would dramatically increase the overall cost of the system. As such, initially the EPR scheme may target higher collection in urban areas and grow collection outside of urban areas over time as the target increases.

Visit www.petco.co.za for more information.

APPENDIX 1. Legislation and policies applicable to waste management in South Africa

1. [National Environmental Management Act \[No. 107 of 1998\]](#) (NEMA)
2. The National Waste Management Strategy (NWMS)
3. [White Paper on Integrated Pollution and Waste Management \(2000\)](#)
4. Polokwane Declaration on Waste Management (2001)
5. [National Environmental Act: Waste Act \(2008\)](#)
6. [National Policy for the Provision of Basic Refuse Removal Services to the Indigent Households \(2010\)](#)
7. [National Development Plan 2030: Our future - make it work](#), 15 August 2012
8. [National Environmental Management: Waste Amendment Act \(2014\)](#)
9. [National Pricing Strategy for Waste Management \(2016\)](#)
10. National Environmental Management Act: Waste Act, 2008 (Act No 59 of 2008): Section 28 Notice (2017)
11. [National Waste Management Strategy \(2020\)](#)
12. Gazette 43879: [National Environmental Management Act: Waste Act, 2008 \(Act No 59 of 2008\): Regulations regarding Extended Producer Responsibility \(November 2020\)](#)
13. Gazette 43882: [National Environmental Management Act: Waste Act, 2008 \(Act No 59 of 2008\): Regulations regarding Extended Producer Responsibility Scheme for Paper, Packaging and some Single Use Products \(November 2020\)](#)
14. Gazette 44078: [National Environmental Management Act: Waste Act, 2008 \(Act No 59 of 2008\): Amendment of Regulations and Notices regarding Extended Producer Responsibility, 2020 \(15 January 2021\)](#) – Extension of effectiveness date of EPR regulations by 6 months to 5 May 2021.
15. Gazette 44295: [National Environmental Management Act: Waste Act, 2008 \(Act No 59 of 2008\): Draft Amendments to the Regulations and Notices regarding Extended Producer Responsibility, 2020 \(19 March 2021\)](#) – Draft amendments published for 30-day comment period.
16. Gazette 44539: [National Environmental Management: Waste Act \(59/2008\): Amendments to the Regulations and Notices Regarding Extended Producer Responsibility, 2020 \(5 May 2021\)](#) – Final amendments published, marking the effectiveness date of EPR in South Africa.

APPENDIX 2. Definitions

“**Biodegradable plastic**” means products that degrade by biological activity, resulting in a specific change in the chemical structure of the material. Degradation can occur under aerobic or anaerobic conditions. The end products are gas (carbon dioxide or methane), water, biomass and mineral components.

“**Brand Owner**” means a person, category of persons or company who makes and/or sells any identified product under a brand label.

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

“**Collection**” means the gathering of an identified product at the end of its life, at the place of its generation or storage by a waste picker, collector or reclaimer or service provider.

“**Collection service fee**” means the agreed fee payable to the waste collectors, reclaimers or pickers through the extended producer responsibility scheme.

“**Collection target**” means the amount of **post-consumer-identified products** collected from the waste stream measured after primary sorting as a percentage of the amount of **identified products** placed on the market.

“**Compostable products**” mean a group of biodegradable products that break down in an aerobic composting process through the action of naturally occurring microorganisms and do so to a high extent within a specified timeframe. The biological processes yield carbon dioxide, water, inorganic compounds and biomass, leaving no visible contaminants or toxic residues.

“**Consumer**” means end users of a product, including individuals, households, commercial, industrial and institutional users.

“**Cost recovery**” means the recovery of operational and maintenance costs of the producer responsibility organisations, i.e. costs related to the collection, storage and treatment of waste products, as well as the administrative and awareness raising costs of the producer responsibility organisations.

“**Department**” means the national Department responsible for the environment.

“**Disposal**” refers to any waste management operation not defined as recovery. Any activity that later results in secondary treatment to reclaim valuable substances or energy is also classified as disposal.

“**EPR Fee**” is the price paid by a Producer to the Producer Responsibility Organisation/system operator in return for carrying out the Producers’ responsibilities.

“EPR Framework” means the supporting document and guideline for the implementation of the EPR Regulations.

“EPR Scheme” means a system of actions employed by a PRO to meet the EPR obligations of the Producers as set out in these Regulations. It can be an individual system (or individual compliance system) where a Producer organises its own system, or a collective system (collective compliance system) where several Producers decide to collaborate and thus fulfil their responsibility in a collective way through a specific organisation.

“Extended Producer Responsibility (EPR)” is an environmental policy approach in which a means that a producer’s responsibility for an identified product is extended to the post-consumer stage of an identified product’s life cycle. In practice, EPR involves Producers taking responsibility for the management of products after becoming waste, including: Collection; pre-treatment, e.g. sorting, dismantling or de-pollution; (preparation for) reuse; recovery (including recycling and energy recovery) or final disposal. EPR systems can allow Producers to exercise their responsibility either by providing the financial resources required and/or by taking over the operational aspects of the process from municipalities. They assume the responsibility voluntarily or mandatorily; EPR systems can be implemented individually or collectively.

“Free Rider” means a producer who benefits from the actions or efforts of another producer, in relation to an extended producer responsibility scheme without fully complying with the requirements of the extended producer responsibility scheme.

“Full cost” means all the direct fixed and variable costs associated with the extended producer responsibility scheme on waste collection, storage, treatment and some administration and awareness raising costs.

“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.

“Importer” means a person or category of persons who 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.

“Input Recycling” means the tonnage of post-consumer material purchased for recycling by recyclers, after primary sorting of material types and separation of other waste.

“Interim performance report” means a report to be submitted for the period 1 January until 30 June.

“Nett cost” means the full cost less the revenue from the sales of the collected material.

“Licensed Agent” – a person or category of persons, domiciled in South Africa operating an enterprise trading in branded goods originating from outside of South Africa under a formal agreement with the Brand Owner.

“Obligated Industry” means the companies that are obliged to pay a fee within an operational EPR system. In most cases, these companies are domestic Producers and importers introducing packaged products into the market.

“Output Recycling” means the difference between material collected for recycling and the actual material that has been processed into new material, i.e. after the recycling process for the purpose of understanding material flow.

“Packaging” means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the Producer to the user or the consumer. Packaging consists of:

- a) grouped packaging or secondary packaging, i.e. is intended to protect not only the product, but also the primary packaging, which often is the packaging most visible to the consumer in retail displays. The most common examples of secondary packaging include cardboard cartons, cardboard boxes, and cardboard/plastic crates.
- b) sales packaging or primary packaging, is the first packaging layer in which the product is contained.
- c) transport packaging or tertiary packaging, i.e. Tertiary packaging facilitates the protection, handling and transportation of a series of sales units or secondary packaging in order to group everything into unit loads during transit. This type of packaging is rarely seen by the consumer.

“Post-consumer materials” means material generated by households or by commercial, industrial and institutional facilities in their role as end-users of the product which can no longer be used for its intended purpose. This includes returns of material from the distribution chain.

“Pre-consumer materials” means materials diverted from the waste stream during a manufacturing process, excluding materials, such as rework, regrind or scrap generated in a process, capable of being reclaimed within the same process that generated them and which are reutilized.

“Producer Responsibility Organisation (PRO)” means a non-profit collective entity set up by the obliged companies or through legislation, which becomes responsible for meeting the waste collection and disposal obligations of the individual obliged companies. The PRO is the most important stakeholder (organisation) in an EPR system and is responsible for setting up, developing and maintaining the system, as well as for the take-back obligations of the obliged companies.

“Producer” means the entity, person or category of persons identified by the Regulations as being responsible for extended producer responsibility in terms of Section 18. Producers who place in excess of 10 tonnes of identified products onto the market on an annual basis, responsible for extended producer responsibility under the regulations shall be identified subject to the following criteria:

- (a) In the case where branded goods, either are identified products or are sold accompanied by or within identified products and the registered owner of the brand operates an enterprise,

domiciled in South Africa, that makes and/or sells such goods, the producer shall be the paper, packaging and single use product manufacturer, converter and/or the brand owner.

(b) In the case where branded goods, either are identified products or are sold accompanied by or within identified products and the registered owner of the brand does not operate or have a controlling interest in an enterprise domiciled in South Africa, that makes and or/sells such goods, the Producer shall be either –

(i) the licensed agent of the branded goods, or

(ii) where no official agency agreement may be in place, the importer of the branded goods as depicted on the Bill of Lading;

(c) In the case of all other identified products not covered by subparagraphs (i) and (ii) the producer shall be the Retailer

“Recyclable” means an item is **recyclable** in terms of these **Regulations** if its successful post-consumer collection, sorting, and recycling is proven to currently work in practice and at scale in South Africa.

“Recovery” means the controlled extraction or retrieval of any substance, material or object from waste.

“Recycled content” means the proportion, by mass, of post-consumer recycled material in a product or packaging excluding any pre-consumer waste.

“Recycling” means the processing of collected material with the intention of using all or part of the collected material as raw material for the manufacture of new products. Recycled tonnage or percentage (%) shall be measured on an **input recycling** basis.

“Regulations” means these Regulations, published in their entirety.

“Repurpose” means to use something for a purpose other than its original intended use rather than disposal.

“Retailer” means an entity primarily dedicated to the sale of goods, either branded or unbranded directly to consumers.

“Reuse” means Packaging is refilled or used for the same purpose for which it was conceived.

“Single-use products” means items/materials designed to be commonly used for products or packaging and include items intended to be used only once before they are thrown away or recycled and could be made from any material.

“Targets” means the targets for **Identified Products** as set out and agreed in the EPR Framework.

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

“Waste hierarchy” is a tool for ranking waste management options according to their environmental impact. It gives top priority to preventing waste wherever possible. Where waste is generated, the

options considered for handling it are, in order by priority: preparing for re-use; recycling; recovery and, as a last resort, permanent disposal.

“Waste management” describes typical activities including (a) the collection, transport, treatment and disposal of waste, (b) the control, monitoring and regulation of the production, collection, transport, treatment and disposal of waste and (c) the prevention of waste via in-process modifications, reuse and recycling.

“Waste picker” means a person who collects identified products from residential and commercial waste bins, landfill sites and open spaces to revalue them and generate an income.