

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES

NO. 239

19 March 2021

**NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008
(ACT NO. 59 OF 2008)****DRAFT AMENDMENTS TO THE REGULATIONS AND NOTICES REGARDING EXTENDED
PRODUCER RESPONSIBILITY, 2020**

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby in terms of sections 18(1), 18(3), 69(1)(b), (g), (i), (l), (o), (dd) and (ee), 72 and 73 of the National Environmental Management: Waste Act, 2008 (Act 59 of 2008), give notice of my intention to amend the Regulations regarding extended producer responsibility and Notices in respect of the extended producer responsibility scheme for the electrical and electronic equipment sector, the lighting sector, and the paper, packaging and some single use products, published in Government Notices R.1184, R.1185, R.1186 and R.1187 of Government Gazettes 43879, 43880, 43881 and 43882 of 5 November 2020 respectively, as set out in the Schedule hereto.

Members of the public are invited to submit, within thirty (30) days of publication of this notice in the Government Gazette, written representations or objections to the proposed amendments to the following addresses:

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

By hand at: Environment House, 473 Steve Biko Road, Arcadia, 0083

Please note that anyone entering the Department's building will be subjected to COVID 19 procedures. Due to the COVID 19 pandemic delivering comments by hand at the Department is being discouraged.

By email at: apillay@environment.gov.za.

Any enquiries in connection with the draft Notice can be directed to Mr Anben Pillay at Tel: 012 399 9827, alternatively through Cell: 066 489 6132.

The draft Notice can also be accessed at <http://sawic.environment.gov.za/> under "Draft documents for comment".

Comments received after the closing date may not be considered


BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

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 otherwise indicates -

"the Regulations" means the Regulations regarding Extended Producer Responsibility, 2020 published under Government Notice R.1184 in Government Gazette 43879 on 5 November 2020;

"the electrical and electronic equipment notice" means the Extended Producer Responsibility Scheme for the electrical and electronic equipment sector published under Government Notice R.1185 in Government Gazette 43880 on 5 November 2020;

"the lighting sector notice" means the Extended Producer Responsibility Scheme for the lighting sector published under Government Notice R.1186 in Government Gazette 43881 on 5 November 2020; and

"the paper and packaging notice" means the Extended Producer Responsibility Scheme for the paper, packaging and some single use products published under Government Notice R.1187 in Government Gazette 43882 on 5 November 2020.

Amendment of regulation 1 of the Regulations

2. Regulation 1 of the Regulations is hereby amended by -

(a) the substitution of some definitions for the following definitions:

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

"decent work" means work that is productive and delivers a fair income, security in the workplace and social protection for families, 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;

"extended producer responsibility" means that a producer's responsibility for an identified product is extended to the post-consumer stage of an identified product's life cycle;

"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;

"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;";

(b) the insertion, after the definition of "circular economy", of the following definition:

"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;";

(c) the insertion, after the definition of "free rider", of the following definitions:

"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;";

(d) the insertion, after the definition of "interim performance report", of the following definition:

"nett cost" means the full cost subtract the revenue from the sales of the collected material;";
and

(e) the deletion of the following definition:

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

Amendment of regulation 2 of the Regulations

3. Regulation 2 of the Regulations is hereby amended by the substitution for subregulation (2) of the following subregulation:

"(2) to ensure the effective and efficient management of the identified products at the end of their life."

Amendment of regulation 3 of the Regulations

4. Regulation 3 of the Regulations is hereby amended by -

(a) the substitution for subregulation (1) of the following subregulation:

"(1) 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"; and

(b) the substitution for subregulation (2) of the following subregulation:

"(2) 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."

Amendment of regulation 4 of the Regulations

5. Regulation 4 of the Regulations is hereby amended by -

(a) the substitution for subregulation (1) of the following subregulation:

"(1) All existing producers of identified 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."; and

(b) the substitution for subregulation (2) of the following subregulation:

"(2) All new producers of identified 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."

Amendment of regulation 5 of the Regulations

6. Regulation 5 of the Regulations is hereby amended by -

(a) the substitution for paragraph (h) in subregulation (1) of the following paragraph:

"(h) submit this audit report to the Department within 60 days after finalisation of the audit;"

(b) the substitution for paragraph (k) in subregulation (1) of the following paragraph:

"(k) 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;"

(c) the substitution for paragraph (l) in subregulation (1) of the following paragraph:

"(l) the life cycle assessment must 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;"

(d) the substitution for Paragraph (w) in subregulation (1) of the following paragraph:

"(w) Collaborate as producers of an identified product and in consultation with the Department of Trade, Industry and Competition (the dtic), to develop a broad-based black economic empowerment (BBBEE) transformation charter for the value chain for the identified product, where the value chain comprises of the collection of the identified products, sorting and processing thereof, within two years of the publishing of the Notice, which transformation charter must comply with section 9(1) of the BBBEE Act, 2003 (Act 53 of 2003) and must include a special focus on women, youth and people living with disabilities;"

- (e) the substitution for paragraph (y) in subregulation (1) of the following paragraph:

"(y) where specified in the section 18(1) Notices, implement mandatory take back of their identified products at the end of their lives; and";

- (f) the substitution for paragraph (z) in subregulation (1) of the following paragraph:

"(z) implement environmental labels and declaration for the identified products in accordance with SANS 14021, SANS 14021 and SANS 14024 within a period of 3 years.";

- (g) the deletion of paragraphs (d), (e), (f), (g), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v) and (x) in subregulation (1);

- (h) the insertion, after regulation 5, of the following regulations:

"Obligations of a producer responsibility organisation that establishes and implements an extended producer responsibility scheme"

5A(1) The producer responsibility organisation must —

- (a) develop and maintain a system to collect the extended producer responsibility fees;
- (b) conduct internal biannual financial audits and make these audit reports available to the department upon request;
- (c) make the internal biannual audit reports available to the external auditor;
- (d) 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;
- (e) submit this audit report to the Department within 60 days after finalisation of the audit;
- (f) develop and maintain a register of its members, in the event that the scheme has two or more members;
- (g) collect, record, manage and submit data to the South African Waste Information System as required in regulation 8 of these Regulations;
- (h) by agreement with the board of directors, contract with the existing downstream value chain before outsourcing;
- (i) contract for the collection, recycling and recovery of the identified products, if outsourced, through a fair and transparent process;
- (j) keep records of the quantity of identified products:
 - (i) placed on the market;
 - (ii) collected;
 - (iii) sorted;
 - (iv) recycled; and
 - (v) recovered;
- (k) manage services that have been awarded to service providers in particular, these services include the fulfilment of collection and recycling by waste management companies;

- (l) co-operate with municipalities, within 3 years of implementation of their extended producer responsibility scheme, to increase the recovery of identified products from municipal waste;
- (m) integrate informal waste collectors, reclaimers and pickers into the post-consumer collection value chain;
- (n) develop and establish secondary markets for recycled content;
- (o) utilise new and existing infrastructure across extended producer responsibility schemes in a collaborative manner where feasible, or establish and operate new infrastructure within 3 years after completion of feasibility studies, where the initial feasibility study must be undertaken within 2 years of implementation of the extended producer responsibility scheme, that identifies the need for additional infrastructure;
- (p) Compensate informal waste collectors, reclaimers and pickers, who register with the National Registration Database, for collection services and environmental benefits, through the collection service fee by November 2022. The collection service fee shall be reviewed annually by the Department of Environment, Forestry and Fisheries;
- (q) implement transformation within those entities with whom they contract, with a special focus on women, youth and persons living with disabilities; and
- (r) prioritise the promotion of small businesses and entrepreneurs with a special focus on women, youth and persons living with disabilities.”;

Obligations of a Producer that establishes and implements its own scheme

5B(1) The Producer that establishes and implements their own scheme must —

- (a) allocate funding for implementation of the extended producer responsibility scheme;
- (b) conduct internal biannual financial audits and make these audit reports available to the department upon request;
- (c) make the internal biannual audit reports available to the external auditor;
- (d) 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;
- (e) submit this audit report to the Department within 60 days after finalisation of the audit;
- (f) collect, record, manage and submit data to the South African Waste Information System as required in regulation 8 of these Regulations;
- (g) where external services are required, contract with the existing downstream value chain before outsourcing, where the value chain comprises the collection of the identified products, sorting and processing thereof;
- (h) where external services are required, contract for the collection, recycling and recovery of the identified products, if outsourced, through a fair and transparent process;
- (i) keep record of quantity of identified products:
 - (i) placed on the market;
 - (ii) collected;
 - (iii) sorted;
 - (iv) recycled; and
 - (v) recovered;

- (j) manage services that have been awarded to service providers in particular, these services include the fulfilment of collection and recycling by waste management companies;
- (k) co-operate with municipalities, within 3 years of implementation of their extended producer responsibility scheme, to increase the recovery of identified products from municipal waste;
- (l) integrate informal waste collectors, reclaimers and pickers into the post - consumer collection value chain;
- (m) develop and establish secondary markets for recycled content;
- (n) utilise new and existing infrastructure across extended producer responsibility schemes in a collaborative manner where feasible, or establish and operate new infrastructure within 3 years after completion of feasibility studies, where the initial feasibility study must be undertaken within 2 years of implementation of the extended producer responsibility scheme, that identifies the need for additional infrastructure;
- (o) prioritise the promotion of small businesses and entrepreneurs with a special focus on women, youth and persons living with disabilities;
- (p) compensate informal waste collectors, reclaimers and pickers, who register with the National Registration Database, for collection services and environmental benefits, through the collection service fee by November 2022. The collection service fee shall be reviewed annually by the Department of Environment, Forestry and Fisheries; and
- (q) implement transformation within those entities with whom they contract, with a special focus on women, youth and persons living with disabilities."

Amendment of regulation 6 of the Regulations

7. Regulation 6 of the Regulations is hereby amended by -

(a) The substitution for subregulation (9) of the following subregulation:

- "(9) compliance with the requirements for programmes planned to contribute to government priorities including but not limited to—
- (a) job creation; and
 - (b) inclusive economic growth."

Amendment of regulation 7 of the Regulations

8. Regulation 7 of the Regulations is hereby amended by -

(a) the substitution for subregulation (1) of the following subregulation:

- "(1) The producer responsibility organisation that establishes and implements an extended producer responsibility scheme must determine the proposed extended producer responsibility fee and apply the extended producer fee equally across all members based on the identified products placed on the market.";

(b) the substitution for subregulation (2) of the following subregulation:

- "(2) The proposed extended producer responsibility fee must be submitted electronically to the Minister who may obtain concurrence on the proposed extended producer

responsibility fee from the Minister responsible for finance within 60 days of submission.”;

(c) the substitution for subregulation (3) of the following subregulation:

“(3) 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 product;
- (b) ease of recyclability;
- (c) current demand for the material for recycling purposes;
- (d) costs for establishing a collection system for the identified products;
- (e) collection, transport and treatment costs for separately collected waste;
- (f) administrative costs;
- (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
- (i) subtract revenues from recycled material sales.”;

(d) the substitution for subregulation (4) of the following subregulation:

“(4) The latest extended producer responsibility fee must be publicly available on the producer responsibility organisation website.”;

(e) the substitution for subregulation (5) of the following subregulation:

“(5) The producer responsibility organisation that establishes and implements an extended producer responsibility scheme must submit, to the department, an annual financial plan and an annual budget -

- (a) within 60 days of implementation for the first year of implementation or within 60 days of implementation, in the event that implementation occurs after 30 June in the first year, for the following year; and
- (b) by 30 November for the following year.”;

(f) the substitution for paragraph (c) subregulation (6) of the following subregulation:

“(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.”;

(g) the substitution for subregulation (7) of the following subregulation:

“(7)(a) 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.

(b) The administration cost of the extended producer responsibility scheme must not exceed—

- (i) 25% of the revenue collected in calendar year 1 of implementation;
- (ii) 20% of the revenue collected in calendar year 2 of implementation; and
- (iv) 15% of the revenue collected in calendar year 3 and beyond of implementation.".

(h) by the insertion of the following regulation after the regulation 7:

"Obligations of a Producer that establishes and implements their own scheme

- 7A** (1) 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
- (2) The proposed extended producer responsibility fee must be submitted electronically to the Minister who may obtain concurrence on the proposed extended producer responsibility fee from the Minister responsible for finance within 60 days of submission.
- (3) The extended producer responsibility fee must include:
- (a) costs for establishing a collection system for the identified products;
 - (b) collection, transport and treatment costs for separately collected waste;
 - (c) administrative costs;
 - (d) costs for public communication and awareness- raising (on waste prevention, litter reduction, separate collection, etc.);
 - (e) costs for the appropriate surveillance of the system (including auditing); and
 - (f) subtract revenues from recycled material sales;
- (4) The latest extended producer responsibility fee must be publicly available on the Producer's website.
- (5) The producer that establishes and implements their own scheme must submit, to the department, an annual financial plan and an annual budget-
- (a) within 60 days of implementation for the first year of implementation or within 60 days of implementation, in the event that implementation occurs after 30 June in the first year, for the following year; and
 - (c) by 30 November for the following year.
- (6) 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 conditions and procedures for revising the extended producer responsibility fee to reflect changes in the obligations incumbent on the registered producer under this Regulation; and
 - (d) The methodology for allocating and disbursing revenue for implementing the extended producer responsibility scheme amongst the collection, recycling, reuse and any other relevant component of the extended producer responsibility scheme.”;
- (l) the substitution for subregulation (8) of the following subregulation:
- “(8) The administration fee must be reviewed in calendar year 3 of implementation, and a Notice must be published in the Government Gazette by the Minister determining the administration fee for extended producer responsibility schemes.”.

Amendment of regulation 8 of the Regulations

9. Regulation 8 is hereby amended by -

- (a) the substitution for subregulation (1) of the following subregulation:

“8.(1) The following are the requirements for a producer responsibility organisation that implements an extended producer responsibility scheme:

- (a) The producer responsibility organisation that establishes and implements their own scheme must submit an 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.
- (b) 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 responsibility organisation, and the interim performance report must include the following but is not limited to:
 - (i) Unaudited interim performance against the published targets;
 - (ii) Unaudited breakdown of the allocation of the extended producer responsibility fee; and
 - (iii) Unaudited performance on all finance matters.
- (c) 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.
- (d) An annual external performance audit report must be submitted to the Department containing the following minimum requirements:

- (i) Performance against the published targets;
 - (ii) Breakdown of the allocation of the extended producer responsibility fee;
 - (iii) Performance on all finance matters;
 - (iv) Governance report;
 - (v) Impacts to the environment;
 - (vi) Recommendations in the event of non-compliance;
 - (vii) Status of free riders; and
 - (viii) Number of jobs created.
- (e) All producer responsibility organisations that 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:
- (i) placed on the market;
 - (ii) collected;
 - (iii) diverted away from landfill (recycled, reused, recovered, refurbished);
 - (iv) exported;
 - (v) landfilled; and
 - (vi) number of jobs created.
- (f) The Department may conduct verification audits on the obligations of the producer responsibility organisations.
- (g) In year 1 of implementation of these Regulations, the following will apply:
- (i) For subregulation (1) and (2), the period will be from the date of business commencement until end June of the calendar year;
 - (ii) Subregulation (1) and (2) will not be applicable in the event business commencement occurs after June of the calendar year; and
 - (iii) For subregulation (3), (4) and (5), the period will be from the date of business commencement until December of the calendar year.”;
- (b) the substitution for subregulation (2) of the following subregulation:
- “(2) The following are the requirements for a Producer that establishes and implements their own scheme:
- (a) The producer that establishes and implements their own scheme must submit an 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.

- (b) The interim performance report must be submitted to the Department within four weeks of the conclusion of the 6 month period, namely January to June of the calendar year, by the producer.
- (c) The interim performance report must include only:
 - (i) Unaudited interim performance against the published targets;
 - (ii) Unaudited breakdown of the allocation of the extended producer responsibility fee; and
 - (iii) Unaudited performance on all finance matters.
- (d) 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.
- (e) The annual performance report must include only:
 - (i) annual performance against the published targets;
 - (ii) breakdown of the allocation of the extended producer responsibility fee; and
 - (iii) annual performance on all finance matters.
- (f) An annual external performance audit report must be submitted, by the producer, to the department containing the following minimum requirements:
 - (i) Performance against the published targets;
 - (ii) Breakdown of the allocation of the extended producer responsibility fee;
 - (iii) Performance on all finance matters;
 - (iv) Impacts to the environment;
 - (v) Recommendations in the event of non-compliance; and
 - (vi) Number of jobs created.
- (g) The producer that 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:
 - (i) placed on the market;
 - (ii) collected;
 - (iii) diverted away from landfill (recycled, reused, recovered, refurbished);
 - (iv) exported;
 - (v) landfilled; and
 - (vi) number of jobs created.
- (h) The Department may conduct verification audits on the obligations of the producer;
- (i) In year 1 of implementation of these Regulations, the following will apply:
 - (i) For subregulation (1) and (2), the period will be from the date of business commencement until end June of the calendar year;
 - (ii) Subregulation (1) and (2) will not be applicable in the event business commencement occurs after June of the calendar year; and
 - (iii) For subregulation (3), (4) and (5), the period will be from the date of business commencement until December of the calendar year.”;

(c) the deletion of the subregulations (3), (4), (5), (6) and (7) in regulation 8.

Amendment of regulation 9 of the Regulations

10. Regulation 9 is hereby amended by the substitution for subregulation (3) of the following subregulation:

“(3) 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.”.

Amendment of regulation 11 of the Regulations

11. Regulation 11 is hereby amended by the substitution for subregulation (2) of the following subregulation:

- “(2) A producer responsibility organisation-
- (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.”.

Amendment of regulation 12 of the Regulations

12. Regulation 12 is hereby amended by -

(a) The substitution for subregulation (1) of the following subregulation:

“(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(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.”;

(b) the insertion, after subregulation (1), of the following subregulation:

“(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, 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.”.

Amendment of regulation 13 of the Regulations**13. Regulation 13 is hereby amended by -**

- (a) the substitution of subregulation (1) of the following subregulation:

"13.(1) A person, including a producer responsibility organisation, 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.";

- (b) the substitution of subregulation (2) of the following subregulation:

"(2) 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.";

- (c) The substitution of subregulation (3) of the following subregulation:

"(3) A registered producer responsibility organisation that does not comply with the requirements as contemplated in these Regulations may have their registration revoked.".

Amendment of the lighting sector Notice**14. The lighting sector Notice is hereby amended by -**

- (a) the Insertion, after the definition of "producer responsibility organisation", of the following definition:

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

- (b) the substitution of paragraph 5 of the following paragraph:

"5. Producers of the Items listed in paragraph 4 of this Notice are responsible for developing and implementing an extended producer responsibility scheme.";

- (c) the addition, after paragraph 7 of the following paragraph:

"Mandatory take back of their identified products

8.(1) Mandatory take back of identified products at the end of its life must be implemented for all the products identified in Annexure 1 within 1 year of the date of the implementation of the Extended Producer Responsibility Scheme.".

Amendment of the electrical and electronic equipment sector Notice

15. The electrical and electronic equipment sector Notice is hereby amended by –

- (a) the insertion, after the definition of “**producer responsibility organisation**”, of the following definition:

“**refurbishment**” means restoring old products to a working condition which must be available for reuse and which restores its original function;”;

- (b) the insertion, after paragraph 7 of the following paragraph:

“8.(1) Mandatory take back of identified products at the end of its life must be implemented within 1 year of the date of the implementation of the Extended Producer Responsibility Scheme for the following identified products:

- (a) Batteries;
- (b) Electrical goods;
- (c) Electronic consumer goods; and
- (d) Electronic industrial goods.”.

Amendment of the paper, packaging and some single use products Notice

16. The Paper, packaging and some single use products sector Notice is hereby amended by -

- (a) the substitution of the “**biodegradable plastic**” definition for the following definition:

“**biodegradable products**” mean 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;”

- (b) the substitution of some definitions for the following definitions:

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

“**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;

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

“**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 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;”;
- (c) the substitution of the **“single-use plastics”** definition for the following definition:
- ““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;”;
- (d) the insertion after the definition of **“paper”** of the following definitions:
- “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;
- “post-consumer material”** 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;”;
- (e) the insertion after the definition of **“producer”** of the following definition:
- “recycled content”** means the proportion, by mass, of post-consumer recycled material in a product or packaging excluding any pre-consumer waste;”;
- (f) the substitution for paragraph 3 of the following paragraph:
- “3. This Notice applies to the following identified products at the end of their life –**
- (1) paper & paper packaging material;
 - (2) plastic packaging;
 - (3) biodegradable and compostable packaging;

- (4) single-use products;
- (5) single-use compostable products;
- (6) single-use biodegradable products;
- (7) glass packaging; and
- (8) metal packaging containers.”;

(g) the substitution for item (d) of subparagraph (1) in paragraph 4 of the following item:

“(d) Single use products:

- (i) Films/Flexibles: agricultural mulch films, garbage bags, pallet wrap;
- (ii) Injection moulded products: cups, tubs, cutlery (knives, forks, and spoons), stirrers;
- (iii) Blow moulded products: bottles, containers, jars;
- (iv) Extruded products: straws, sheets; and
- (v) Thermoformed products: trays, punnets, cups, various packaging.”;

(h) the substitution for item (e) of subparagraph (1) in paragraph 4 of the following item:

“(e) Single use compostable products:

- (i) Compostable Films/Flexibles: agricultural mulch films, garbage bags, pallet wrap;
- (ii) Compostable Injection moulded products: cups, tubs, cutlery (knives, forks, spoons), stirrers;
- (iii) Compostable Blow Moulded products: bottles, containers, jars;
- (iv) Compostable Extruded products: straws, sheets; and
- (v) Compostable products: trays, punnets, cups, various packaging.”;

(i) the substitution for item (f) of subparagraph (1) in paragraph 4 of the following item:

“(f) Single use biodegradable plastic products:

- (i) Biodegradable Films/Flexibles: agricultural mulch films, garbage bags, pallet wrap;
- (ii) Biodegradable Injection Moulded products: cups, tubs, cutlery (knives, forks, spoons), stirrers;
- (iii) Biodegradable Blow Moulded products: bottles, containers and jars;
- (iv) Biodegradable Extruded products: straws, sheets; and
- (vi) Biodegradable products: trays, punnets, cups, various packaging.”;

(j) the substitution for item (h) of subparagraph (1) in paragraph 4 of the following item:

“(h) Metal packaging including:

- (i) Tinsplate (Ferrous); and
- (ii) Aluminium (non-ferrous).”;

(k) the substitution for paragraph 7 of the following paragraph:

“7. The targets for each identified waste stream for the products as contained in Annexure 1 to this Notice apply for a period of 5 years from the date of the implementation of the extended producer responsibility scheme.”.

Product or class of Products	Year	Product Design (recycled content) [%]	Reuse Target [%]	Collection Target [%]	Recycling Target [%]	Energy recovery/ exports/ other [%]
Glass Packaging						
Alcoholic beverage (ready to drink)	1	20	6	46.4	38.40	-
	2	25	7	52.5	43.44	-
	3	30	8	58.4	48.32	-
	4	35	9	64.6	53.45	-
	5	40	10	65.4	54.12	-
Beer	1	20	17	46.4	38.40	-
	2	25	18	52.5	43.44	-
	3	30	19	58.4	48.32	-
	4	35	20	64.6	53.45	-
	5	40	21	65.4	54.12	-
Wine	1	20	9	46.4	38.40	-
	2	25	10	52.5	43.44	-
	3	30	11	58.4	48.32	-
	4	35	12	64.6	53.45	-
	5	40	13	65.4	54.12	-
Spirits	1	20	15	46.4	38.40	-
	2	25	16	52.5	43.44	-
	3	30	17	58.4	48.32	-
	4	35	18	64.6	53.45	-
	5	40	19	65.4	54.12	-
Food	1	20	1	46.4	38.40	-
	2	25	2	52.5	43.44	-
	3	30	3	58.4	48.32	-
	4	35	4	64.6	53.45	-
	5	40	5	65.4	54.12	-
Non-alcoholic beverage (soft drinks)	1	20	11	46.4	38.40	-
	2	25	12	52.5	43.44	-
	3	30	13	58.4	48.32	-
	4	35	14	64.6	53.45	-
	5	40	15	65.4	54.12	-
Pharmaceutical	1	20	1	46.4	38.40	-
	2	25	2	52.5	43.44	-
	3	30	3	58.4	48.32	-
	4	35	4	64.6	53.45	-
	5	40	5	65.4	54.12	-
Metal Packaging:						
Aluminium (non Ferrous) Beverage Cans (Used)	1	24	-	62	30	32
	2	28	-	64	32	32
	3	32	-	66	33	33
	4	36	-	68	34	34
	5	40	-	70	35	35
	1	0	-	22	10	12

Product or class of Products	Year	Product Design (recycled content) [%]	Reuse Target [%]	Collection Target [%]	Recycling Target [%]	Energy recovery/ exports/ other [%]
Aluminium (non-Ferrous) Other	2	1	-	24	11	13
	3	2	-	26	12	14
	4	3	-	28	13	15
	5	4	-	30	14	16
Tinplate (Ferrous) Metal Packaging	1	-	-	56	53	-
	2	-	-	57	54	-
	3	-	-	58	55	-
	4	-	-	59	56	-
	5	-	-	60	57	-
Plastic PET Beverage bottles	1	10	-	60	54	-
	2	12.5	-	64	58	-
	3	13	-	66	59	-
	4	15	-	68	61	-
	5	20	-	70	65	-
Plastic PET Oil Bottles	1	-	-	7	6	-
	2	-	-	13	12	-
	3	-	-	25	23	-
	4	-	-	32	29	-
	5	-	-	39	35	-
Plastic Thermoformed PET	1	-	-	9	8	-
	2	-	-	13	12	-
	3	-	-	19	17	-
	4	-	-	27	2	-
	5	-	-	35	30	-
Plastic (Flexible) PET	1	50	-	10	9	-
	2	55	-	20	18	-
	3	60	-	30	27	-
	4	70	-	40	36	-
	5	80	-	50	45	-
Polyolefins Rigid polyolefin packaging	1	-	-	55	39	-
	2	-	-	57	42	-
	3	-	-	60	45	-
	4	-	-	61	48	-
	5	-	-	64	52	-
Polyolefin (flexible)	1	-	-	58	44	-
	2	-	-	60	46	-
	3	-	-	62	48	-
	4	-	-	64	50	-
	5	-	-	66	52	-
Polyolefins (Multi-layer films packaging)	1	-	-	15	11	-
	2	-	-	20	15	-
	3	-	-	25	20	-
	4	-	-	30	25	-

Product or class of Products	Year	Product Design (recycled content) [%]	Reuse Target [%]	Collection Target [%]	Recycling Target [%]	Energy recovery/ exports/ other [%]
	5	-	-	35	30	-
Polyvinyl Chloride (Rigid and flexible)	1	-	-	6	5	-
	2	-	-	6.5	5.5	-
	3	-	-	7	6	-
	4	-	-	7.5	6.5	-
	5	-	-	8	7	-
Polystyrene (expanded and High Impact)	1	-	-	22	20	-
	2	-	-	27	25	-
	3	-	-	33	30	-
	4	-	-	40	36	-
	5	-	-	48	43	-
Biodegradable Packaging	1	-	-	15	5	-
	2	-	-	25	15	-
	3	-	-	50	40	-
	4	-	-	65	55	-
	5	-	-	80	70	-
Compostable Packaging	1	-	-	15	15	-
	2	-	-	25	25	-
	3	-	-	50	50	-
	4	-	-	65	65	-
	5	-	-	80	80	-
Single use products	1	8	-	60	30	-
	2	12	-	65	35	-
	3	14	-	70	40	-
	4	17	-	75	45	-
	5	20	-	80	50	-
Single use compostable products	1	-	-	15	15	-
	2	-	-	25	25	-
	3	-	-	50	50	-
	4	-	-	65	65	-
	5	-	-	80	80	-
Single use biodegradable products	1	-	-	15	5	-
	2	-	-	25	15	-
	3	-	-	50	40	-
	4	-	-	65	55	-
	5	-	-	80	70	-
Paper & paper Packaging material:						
Newspapers	1	-	-	45	35	-
	2	-	-	50	40	-
	3	-	-	55	45	-
	4	-	-	60	50	-
	5	-	-	65	55	-

Product or class of Products	Year	Product Design (recycled content) [%]	Reuse Target [%]	Collection Target [%]	Recycling Target [%]	Energy recovery/ exports/ other [%]
Magazines	1	-	-	35	33	-
	2	-	-	36	34	-
	3	-	-	38	36	-
	4	-	-	40	38	-
	5	-	-	42	40	-
Office & graphic Paper - Mixed & other paper	1	-	-	35	33	-
	2	-	-	36	34	-
	3	-	-	38	36	-
	4	-	-	40	38	-
	5	-	-	42	40	-
Corrugated cases / Kraft papers	1	-	-	60	58	-
	2	-	-	65	63	-
	3	-	-	70	68	-
	4	-	-	75	73	-
	5	-	-	80	78	-
Liquid packaging board	1	-	-	10	5	-
	2	-	-	15	10	-
	3	-	-	20	15	-
	4	-	-	25	20	-
	5	-	-	30	25	-
Paper and paper packaging - Labels	1	-	-	10	5	-
	2	-	-	15	10	-
	3	-	-	20	15	-
	4	-	-	25	20	-
	5	-	-	30	25	-
Paper and paper packaging - Paper sack	1	-	-	10	5	-
	2	-	-	15	10	-
	3	-	-	20	15	-
	4	-	-	25	20	-
	5	-	-	30	25	-

EXPLANATORY MEMORANDUM

DRAFT AMENDMENTS TO THE REGULATIONS AND NOTICES REGARDING EXTENDED PRODUCER RESPONSIBILITY, 2020

The proposed amendments to the Regulations regarding extended producer responsibility and Notices in respect of the extended producer responsibility scheme for the electrical and electronic equipment sector, the lighting sector, and the paper, packaging and some single use products, published in Government Notices R.1184, R.1185, R.1186 and R.1187 of *Government Gazettes* 43879, 43880, 43881 and 43882 of 5 November 2020 respectively, can be summarised as follows:

- The definition of "Producer" now provides for customised definitions for the specific Notices to provide clarity;
- The requirements for the Life Cycle Assessment (LCA) have been prescribed in the Regulations to provide clarity;
- The transformation requirements have been clarified and clearly indicate the roles of the relevant stakeholders;
- The obligations of a product responsibility organisation and the producer have been separated to avoid the conflation of roles and responsibilities;
- The costs associated with the calculation of the extended producer responsibility fee have been prescribed to prevent any uncertainty or ambiguity;
- The requirement to include the extended producer responsibility fee as a separate line item on each invoice or cash sale receipt was removed and the provision was amended to provide for the extended responsibility fee to be displayed on the website of the producer responsibility organisation or producer;
- The items that must be included in the determination of the administration cost for the producer responsibility organisation have been prescribed, as well as the percentage administration cost;
- The Lighting Notice and Electrical and Electronic Equipment Notice have been amended by listing the identified products that must have a mandatory take back scheme;
- The Paper, Packaging and Some Single Use Products Notice has been amended as follows:
 - The definition of Producer has been amended for the Paper, packaging and some single use products Notice to provide for the -
 - inclusion of a threshold of 10 tonnes per annum to focus on larger manufacturers;
 - provision for licensed agents for branded products; and
 - provision for the retailer to be the "producer" in circumstances for the identified products where the importer or licensed agent is unknown;
 - The definitions of some categories have been amended such as biodegradable plastics, compostable plastics and single use plastics to biodegradable products, compostable products and some single use products respectively; and
 - The targets for some identified products have been amended in agreement with the affected industry.