

LEGAL NOTICE NO.....

THE SUSTAINABLE WASTE MANAGEMENT ACT
(No. 31 of 2022)

**THE SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCER
RESPONSIBILITY) REGULATIONS, 2022**

ARRANGEMENT OF REGULATIONS

Regulation

PART I — PRELIMINARY

- 1- Citation.
- 2- Interpretation.
- 3- Object and purpose.
- 4- Application of the Regulations.

PART II- EPR OBLIGATION AND RESPONSIBILITIES

- 5- Extended producer responsibility obligations.
- 6- Execution of extended producer responsibility obligations.
- 7- Products covered under extended producer responsibility.

**PART III- REGISTRATION OF PRODUCER RESPONSIBILITY
ORGANIZATIONS**

- 8- Registration of extended producer responsibility compliance schemes.
- 9- Requirements for registration of a producer responsibility organization.
- 10- Revocation, suspension or cancellation of registration certificate.
- 11- Approval of extended producer responsibility compliance scheme by Authority.
- 12- Role of the Ministry.
- 13- Extended producer responsibility plan.
- 14- Producer responsibility organization obligations.
- 15- Charging and modulation of extended producer responsibility fees.
- 16- Producer responsibility organization finance.
- 17- Producer responsibility organization agreements.
- 18- Producer responsibility organization governance.
- 19- Number of producer responsibility organization s per product.
- 20- Registration certificate and operating license

- Annual operating licence.
21- Fees.
22- Renewal of Registration.
23- Records keeping and reporting.

PART IV - EPR SCHEMES AND WASTE MANAGEMENT

- 24- Extended producer responsibility and counties.
25- Extended producer responsibility schemes and waste management.

PART V-LICENSING, MONITORING AND COMPLIANCE

- 26- Role of the Authority.
27- Oversight.

PART VI- GENERAL PROVISIONS

- 28- Appeals.
29- Penalties and offences.
30- Transitional provision.
Table of content does not agree with real regulation

“converter” means an entity that transforms or combines secondary raw materials to produce a new product;

“consumer,” means the end user of a product;

“control audit” means a study commissioned by the Authority to evaluate performance of the extended producer responsibility schemes in order to confirm compliance or management systems implementation gaps;

“compliance schemes,” refers to both individual and collective extended producer responsibility schemes;

“Council” means the Waste Management Council established under section 6(2) of the Act;

“deposit refund scheme” means a collection system that requires a monetary deposit on a product at the point of sale where consumers redeem the deposit when they return the product;

“extended producer responsibility” has the meaning assigned under the Act;

“environmentally friendly” means the practice of reducing environmental degradation and pollution by making products that comply with environmental sustainability that includes minimal waste production, reusability, recyclability, composability, biodegradability and safe disposability;

“environment sustainability” means responsible interaction with the environment to avoid pollution, depletion or degradation of natural resources and allow for long-term environmental quality;

“free rider” means an individual or entity that does not contribute to a collective scheme but benefits from its existence and action and it includes a producer who fails to manage own products at the post-consumer stage; producers who under declare their volumes, or fail to demonstrate fulfilment of individual extended producer responsibility obligations, producers in a pooled scheme who fail to pay their subscriptions, submit accurate information or fulfil their membership requirements;

“individual extended producer responsibility compliance scheme” means a system where direct execution of the extended producer responsibility obligations fall on an entity that is a sole producer of a product;

“mandatory initiatives” means producer responsibility compliance schemes implemented through government regulation;

“Ministry” means the Ministry for the time being responsible for matters related to waste management;

“packaging” means the material in which a product is wrapped or covered in order to protect it or prevent it from being contaminated, facilitate handling, transportation and delivery and for purposes of these Regulations, shall also be considered as a product;

Part I, section 2 – interpretations with regards to the definition of packaging I believe it should be added that packaging could also be serving the purpose of transportation, not only protection against contamination.(Janne)

“post-consumer” means a period after usage when a product or packaging is discarded by a consumer or becomes waste;

“producer” means an entity that introduces goods, products and packaging into the country using authorised means by manufacturing, importing, distributing, converting, selling or re-selling or otherwise brings;

“product” means a good or packaging introduced in the Kenyan market by any entity or person through production, importation, franchising, marketing, a distribution outlet and channels, for consumption by the consumer;

“producer responsibility organisation” means a producers’ membership organization set up to assume legal obligation to implement extended producer responsibility on behalf of its members in a collective extended producer responsibility compliance scheme;

“product life cycle,” means the process a product goes through in all its stages from raw material extraction, design,

production, transportation, distribution, consumption or use, repair and maintenance, recycling and end of life disposal;

“recovery” has the meaning assigned under the Act; (is it possible to lift the definition from the Act to the regulations?)

“regulator” means government institutions with legal mandate to regulate products introduced in Kenya;

“take-back” means a mechanism through which producers collect their products from consumers;

“Tribunal” means the National Environment Tribunal established under section 125 the Environmental Management and Co-ordination Act, 1999;

“waste” has the meaning assigned under the Act; and (is it possible to lift the definition from the Act to the regulations?)

“waste management” means to control and monitoring of production to minimise waste, handling of post-consumer products including segregation at source, collection and take back schemes, transportation, processing of material recovered from waste, treatment and safe disposal of unrecoverable materials.

“Waste service provider” has the meaning assigned under the Act.

Purpose.

3. (1) The purpose of these Regulations shall be to—
 - (a) extend the responsibility of a producer over a product and its packaging during the entire life cycle of the product or its packaging;
 - (b) provide an overarching framework for establishment and operation of mandatory extended producer responsibility schemes;
 - (c) optimize the life cycle approach to management of products and associated wastes;
 - (d) enhance resource mobilization for management of products and sustainable waste management;
 - (e) operationalization of polluter pays principle; and

- (f) promote collaborative approach in management of products and associated wastes;

Application of the regulations.

4. (1) These Regulations shall apply to—

- (a) a producer;
- (b) an individual extended producer responsibility compliance schemes; and
- (c) a producer responsibility organisation.

Products covered under extended producer responsibility.

5. (1) These Regulations shall apply to the products set out in the First Schedule.

(2) The products covered under these Regulations shall be those that negatively impact the environment and health due to—

- (a) the challenge they pose on—
 - (i) reuse;
 - (ii) recyclability; and
 - (iii) recoverability;
- (b) the high management cost of the products at post-consumer stage because of the —
 - (i) quantities involved;
 - (ii) hazardous nature;
 - (iii) risks involved.

(3) The Authority may, in addition to the products listed in the First Schedule, advise the Cabinet Secretary to publish a list in the *Gazette*, of products which may from time to time, be subjected to extended producer responsibility compliance schemes under these Regulations.

PART II— EXTENDED PRODUCER RESPONSIBILITY OBLIGATIONS

Extended producer responsibility obligations.

6. (1) Every producer shall bear extended producer responsibility obligation to reduce pollution and environmental impacts of the

product that they introduce into the market and waste arising therefrom.

- (2) For purposes of fulfilling the obligation under sub regulation (1), a producer shall—
 - (a) establish post-consumer collection and take back scheme which may include a deposit refund system;
 - (b) set up an individual or a collective extended producer responsibility compliance scheme or join a collective extended producer responsibility compliance schemes;
 - (c) register and provide reports of the status of the implementation of their extended producer responsibility obligations to the Authority through the reporting system established by the Authority;
 - (d) design products and packaging materials that minimize waste, facilitate reuse, recycling, recovery, use of secondary raw materials where possible and are environmentally friendly at their end of life;
 - (e) take financial, organizational and physical responsibility for the management, treatment and disposal of their post-consumer products and end of life treatment for the waste generated by their products;
 - (f) provide updated information on quantities of products they introduce into the national market, recyclability and reusability, interpretation of packaging labels, market traceability mechanism and any other prescribed information through reporting system established by the Authority;
 - (g) provide consumer with information on their role on reuse, return, take back points, meaning of recycling and recovery labels and symbols on the products;
 - (h) raise awareness on management of post-consumer products that they introduce in the market;
 - (i) carry out product life cycle assessment in relation to their products for enhancing environmental sustainability;

- (j) support establishment of markets for secondary raw materials;
- (k) put in place circular economy initiatives and any other measures to reduce impact of their product on health and environment; and
- (l) fund research and development programs on emerging technologies to improve material recovery.

(2) A producer's obligation in a collective scheme shall include, but not be limited to, the payment of membership fees to a registered and licensed producer responsibility organization.

Execution of extended producer responsibility obligations.

7. (1) Every producer shall fulfil the obligations set out in regulation 6 individually or collectively by either setting up an individual producer responsibility compliance scheme or joining an established collective extended producer responsibility compliance scheme.

(2) A producer may transfer part of or the entire extended producer responsibility obligations subject to a membership agreement to a collective extended producer responsibility compliance scheme through a producer responsibility organisation, in which they take membership.

(3) Notwithstanding the provisions in sub regulation (2) above, lack of an established extended producer responsibility compliance scheme shall not exempt any producer from extended producer responsibility obligations.

PART III- REGISTRATION AND LICENSING OF PRODUCER RESPONSIBILITY ORGANIZATIONS

Number of producer responsibility organizations per product.

8. (1) There shall be established producer responsibility organisations per product category listed in the First Schedule.
Delete section shaded yellow below

(2) Notwithstanding sub regulation (1) above, the Authority may allow for registration and operation of more than one producer responsibility organisation to accommodate for material variation and development of eco-design standards of the respective product category as per EPR guidelines

- (3) The producer responsibility organisation shall establish appropriate mechanisms and structures for the management of each product under its respective category.
- (4) A producer compliance scheme shall apply to the Authority for registration and issuance of an annual operating licence before they can proceed to carry out extended producer responsibility obligations.
- (5) *Part III, section 8:4 – I think an annual operating license might not be appropriate as it might hinder incentive to invest in facilities and equipment if there is not a longer license. Instead an inspection and/or monitoring mechanism could be considered to make sure that the PRO is complying. Offenses and fees could be used to sanction, not immediate revocation of the license since that creates a lot of uncertainty and in the end puts a risk to the environment that waste will simply not be handled. I believe part III, section 17 (i) describes inspection that could be used for managing PROs and matters of operation license as well. (Janne)*
- (6) A producer responsibility organisation may enter into formal agreements and cooperation frameworks for joint research, collection, take back schemes, appropriate infrastructure, end of life treatment and disposal mechanisms for the products under its scope.

Registration certificate and operating licence.

- 9. The Authority shall, upon approval of an application for registration, issue a Certificate of Registration and an Annual Operating Licence for extended producer responsibility compliance schemes for—
 - (a) individual producer responsibility; and
 - (b) producer responsibility organisation.

Registration of extended producer responsibility compliance schemes.

- 10. (1) A producer shall not introduce a product listed in the First Schedule to this Regulations into the country, unless the producer has applied to the Authority for producer responsibility registration and obtained a Registration Certificate (not provided in the schedules) and a producer responsibility number from the Authority.
- (2) A producer shall apply to the Authority for registration of an individual extended producer responsibility compliance scheme

in Form A set out in the Second Schedule and pay the fee set out in the Third Schedule.

- (3) Notwithstanding clause 2, the authority shall publish a call for PRO registration no later than 6 months after publication of this regulation.
- (4) The application under sub regulation (2) shall be accompanied by the following documentation—
 - (a) Application form
 - (b) a declaration that the company is the sole producer of the product in the country
 - (c) a copy of Registration Certificate from the Registrar of Companies;
 - (d) a copy of the extended producer responsibility plan;
 - (e) copies of contracts entered into with actors of the extended producer responsibility scheme.
 - (f) proof of payment of the fees set out in the Third Schedule;
 - (g) a copy of a dispute resolution mechanism for the actors in the scheme; and
 - (h) a copy of the Articles and Memorandum of Association of the company indicating that the sole business of the company is to undertake extended producer responsibility obligations on the specified products. (Is this a new company for individual compliance scheme – to be clarified – we propose you delete).
 - (i) Copy of annual EPR audit report conducted by an independent auditor licensed by the Authority (during annual renewal)

(4) Upon receiving the application in sub regulation (2), the Authority shall issue the producer with a Registration Certificate in Form B set out in the Second Schedule, indicating the extended producer responsibility number.

Requirements for registration of a producer responsibility organization.

11. (1) A producer responsibility organisation shall, before assuming any legal obligation to implement extended producer responsibility on behalf of its members, apply to the Authority for

registration in Form A set out in the Second Schedule and pay the fee set out in the Third Schedule.

(2) The application for producer responsibility organisation registration under sub regulation (1) shall be accompanied by the following documents—

- (a) Application form
- (b) proof of registration by the Registrar of Companies as a company limited by guarantee under the Companies Act;
- (c) A certified copy of current register of producer responsibility organisation members ;
- (d) Copies of contracts entered into with actors of the extended producer responsibility scheme
- (e) Certificate of Extended Producer Responsibility issued to all producers .
- (f) Certified copy of agreements with the approved waste service providers
- (g) signed minutes of the annual general meeting;
- (h) Workplan developed in consultation with the Department responsible for Waste Management in each county on EPR implementation.
- (i) a copy of the extended producer responsibility fees structure agreed among members calculated using guidance provided under these Regulations (section 19.3);
- (j) *Part III, section 11:2 (d) – add the reference to the section where the calculation guidelines can be found, it was not clear to me where they are stated. (Janne)*
- (k) a progress report on achievement of set targets, in case of renewal of registration;
- (l) a copy of annual EPR audit report conducted by an independent auditor licenced by the Authority;
- (m) a copy of list of directors of the company issued by the Registrar of Companies;
- (n) a copy of the Pin Certificate issued by the Kenya Revenue Authority;
- (o) a copy of a lease agreement or proof of ownership of the facility of operation; (please clarify)

- (p) an extended producer responsibility plan prepared in accordance with the requirements stipulated under these Regulations;
- (q) a budget or financial plan for the scheme;
- (r) a copy of signed minutes of the meeting adopting the updated extended producer responsibility plan signed by representatives of products within the category;
- (s) an organogram for the producer responsibility organisation;
- (t) Workplan and budget for the coming year;
- (u) Certified copy of annual audited financial accounts;
- (v) Copy of a dispute resolution mechanism for the actors in the scheme;
- (w) a copy of the Memorandum of Association of the company declaring that the sole business of the company is to undertake extended producer responsibility obligations on behalf of the members; and
- (x) proof of payment of the fees set out in the Third Schedule.
- (y)

For online applications, they will attach scanned original copies

Interchange application to come before the main application. Interim

(3) The Authority shall, before processing the application under sub regulation (1), issue an interim permit to the producer responsibility organisation in Form C set out in the Second Schedule, for a period of ninety days (I propose six months since the attachments are many) to enable the producer responsibility organization undertake stakeholder engagement and sensitisation of members.

(4) The producer responsibility organisation shall submit the following documents to the Authority for consideration before the interim permit is issued—

- (a) Application form
- (b) minutes of the meeting of the producer responsibility organisation, which should have a minimum of thirty companies in attendance;
- (c) a copy of business name reservation at the Registrar of Companies;

(d) a list of interim officials of the producer responsibility organisation elected at the meeting, drawn from different products in the category; and

(e) a list of the members of the producer responsibility organisation.

(5 Check on numbering) Upon the lapse of the ninety (one hundred and eighty) days of the interim permit issued under sub regulation (3), the Authority shall, on verification of the application for registration, issue a Certificate of Registration to the producer responsibility in Form B set out in the Second Schedule.

(6) The Certificate of Registration issued above shall indicate the extended producer responsibility number.

(5 repeated) Every producer (clarify) or producer responsibility organisation shall register its members using the producer responsibility number indicated in the Certificate of Registration issued under sub regulation (4). (sub regulation 4 not clear???)

6. 1. Contracts entered between the producer and the PRO shall be annual.

2. A producer shall not switch from one PRO to another unless at the beginning of a new contract year and after giving a 3 months' notice to the PRO and copying the same to NEMA.

Revocation, suspension or cancellation of Certificate of Registration.

12. (1) The Authority may revoke, suspend or cancel an extended producer responsibility Certificate of Registration if the individual extended producer responsibility compliance scheme or the producer responsibility organisation does not comply with statutory requirements or fails to meet the national target set out in the extended producer responsibility agreement entered into by the parties in the collective scheme.

(2) A producer responsibility organization whose Registration Certificate has been revoked may apply to the Authority for registration upon compliance with the conditions set out in the revocation.

Annual operating licence. Section 12 and 14 should follow each other and duplication removed

13. (1) A producer or producer responsibility organisation shall, upon registration, apply to the Authority for an annual operating licence in Form D set out in the Second Schedule and pay the fee set out

in the Third Schedule to undertake producer responsibility obligations for products listed in the First Schedule.

(2) An application for an annual operating licence under sub regulation (1) shall be accompanied by the following documents—

- (a) a copy of the progress report for the preceding year;
- (b) a copy of the list of Directors of the Company issued by the Registrar of Companies
- (c) a certified copy of current register of producer responsibility organisation members;
- (d) certified copy of agreements with the approved service providers;
- (e) a copy of the Certificate of Registration;
- (f) a work plan and budget for the coming year;
- (g) Workplan developed in consultation with the Department responsible for Waste Management in each county on EPR implementation.
- (h) Copy of annual EPR audit report conducted by an independent auditor licenced by the Authority.
- (i) Certified audited financial accounts,
- (j) proof of payment of the fees set out in the Third Schedule.
- (k) signed minutes of the annual general meeting.

(3) The Authority shall issue an annual operating licence in Form E set out in the Second Schedule to individual producers' extended producer responsibility compliance schemes and producer responsibility organisations that fulfil their performance standards as set out in the work plan and are assessed to be of good standing by the Authority.

Revocation, suspension
or cancellation of licence.
(12 and 14 are similar)

14. (1) The Authority may, after the issuance of an annual operating licence—

- (a) cancel or revoke such licence; or
- (b) suspend such licence, for such time, not more than twenty-four months,

where the licensee contravenes the provisions of the licence.

(2) Whenever a licence is revoked, suspended or cancelled, the holder thereof shall not proceed with the extended producer responsibility scheme and each individual member of the producer responsibility organisation shall be responsible for the management of their product.

(3) Part III, section 14:2 – in case of revocation of a license in Denmark or if a PRO files for bankruptcy etc. there is a pre-paid collateral security/deposit paid to ensure that the expenses for waste collection and treatment can be paid during the period of liquidation of the PRO. It is typically expenses for collection and treatment covering a period between 6 and 9 months that is pre-paid as deposit.(Janne) - to be included in the guidelines

(4) In case the producer responsibility organisation licence is revoked, the members shall nominate an interim committee to manage the producer responsibility organisation for a period not exceeding six months within which the producer responsibility organisation shall reorganize itself.

(5) Where the Authority cancels, revokes or suspends a licence in accordance with this regulation, the Authority shall indicate, in writing, the reasons for such cancellation, revocation or suspension.

(6) Where the Authority acts as per clause 5, the Authority may also prohibit the producer from placing the polluting product and packaging on the market (AG to confirm if this is a non-tariff barrier).

Approval of extended producer responsibility compliance scheme by Authority.

15. (1) The registration of an individual extended producer responsibility compliance scheme shall be approved by the Authority for a maximum period of four years, which shall be renewable, on condition that the producer demonstrates proof of operational, technical, managerial and financial capacity to meet their extended producer responsibility obligations and the national targets.

(2) The registration of a producer responsibility organisation shall be approved by the Authority for a maximum period of four years, which shall be renewable, on condition that the producer responsibility organisation demonstrates technical, managerial, financial and staffing and operational capacity to fulfil the requirements set out in the articles of association and agreements set by the members and stakeholders in the value chain.

Extended producer
responsibility plan.

16. (1) Every individual and collective extended producer responsibility compliance scheme shall, prior to registration (we may need to give deadline for submission of this document), develop and submit a four-year EPR plan to the Authority indicating the following —

- (a) the baseline for the products and packaging handled;
- (b) Plan for safe handling, processing and disposal of 100% equivalent volume of products declared by the producer.
- (c) Plan to meet national targets for reuse, recycling or recovery operations and end of life management;
- (d) Plan for continuous additionality in material recovery and recycling including circularity.
- (e) a collection, logistics, recycling and composting system and end of life disposal mechanism;
- (f) modulation of extended producer responsibility membership fees and parameters based on environmental sustainability criteria;
- (g) a program on public awareness and consumer education and information on waste segregation and proper handling of post-consumer products;
- (h) a verifiable paid up membership list;
- (i) a list of service providers and actors in the scheme;
- (j) an eco-design standard operating procedure for the products handled by the scheme;
- (k) a mechanism of controlling banned or dangerous substances' in products handled by the scheme;
- (l) an annual reporting mechanism;
- (m) a plan or projection on training and capacity building of members and actors in the scheme;
- (n) a schedule on monitoring of members, product traceability system, inspections and compliance with these Regulations;

- (o) a model of financing the scheme integrating financial flows to the entire value chain actors; and
 - (p) any other actions necessary for execution of responsibility requested by the Authority.
- (2) Every producer responsibility organisation shall submit an annual work plan and progress report to the Authority.

Producer responsibility organisations obligations.

17. A producer responsibility organisation shall—

- (a) at an agreed upon fee, be responsible for executing extended producer responsibility obligations on behalf of its members;
- (b) take the organisational and management responsibility for collection, sorting, material recovery, recycling, treatment and end of life management of its members' products;
- (c) be responsible for establishing post-consumer collection and take back schemes which may include a deposit refund system;
- (d) be responsible for modulation of extended producer responsibility fees according to established environmental criteria listed in 19.3 on product design, useful life and end of life management as set out in the membership registration requirements and as reviewed during the annual members' general meeting;
- (e) be responsible for raising awareness on waste prevention, post-consumer product management and payment of a contribution to finance cross-sectorial communication campaigns in their territory of operation;
- (f) undertake market development for the secondary raw materials market of the products under their scope;
- (g) fund research and development programs on emerging technologies to improve material recovery;
- (h) set for its members' minimum targets for reuse, recycling and recovery based on the national targets set in accordance with regulation 12 and may offer incentives for waste service providers and informal waste holders to encourage sorting of waste at source;

- (i) undertake organised monitoring of its membership activities to ascertain that objectives are being achieved and to trigger inspections in view of applying sanctions to members who fail to fulfil their membership obligations;
 - (j) communicate to county governments the information they have on the quantities of waste collected and recovered through the extended producer responsibility mechanisms that have been declared in their territory of operation;
 - (k) comply with the sustainable waste management objectives set by the Authority;
 - (l) shall hold an annual general meeting to deliberate on the progress and performance of the organization, governance, management and administrative systems;
 - (m) ensure effective management and harmonious relations between the different actors involved in the scheme;
- (2) The amount, ceiling and collection methods for the fee under sub regulation (1) (a) shall be as set out in the terms of reference of the contract. (there is no 1a).
 - (3) PROs shall establish a registry and data centres for their respective members, products and submit report to the Authority quarterly.

Additional requirements on producer responsibility organisations.

- 18.** (1) The members of the producer responsibility organisation shall provide financial contributions which shall be used in their entirety to accomplish the extended producer responsibility obligations as set out in regulation 17.
- (2) Subject to conditions and limitations set out in the producer responsibility organization agreement, a proportion of the waste recovered by producer responsibility organisations may be set aside for reuse or for recovery of usable parts.
 - (3) A producer responsibility organisation may recommend to the Authority to restrict or ban harmful or dangerous substances that undermine environmental sustainability in the products of its membership.
 - (4) A producer responsibility organisation may establish any other lawful mechanisms and systems for enforcing extended producer responsibility of its members.

- (5) A producer responsibility organisation may verify data provided by producers with relevant agencies.
- (6) Every producer responsibility organisation shall engage waste service providers licensed by the Authority and the respective county government.
- (7) All producers shall not place their products in the market if they are not listed in the Authority's register.
- (8) All retailers within the product value chain shall only place products in the market from producers published in the updated register of the Authority.

Charging and modulation of extended producer responsibility fees.

19. (1) Members to a collective extended producer responsibility compliance scheme shall pay registration fees to the relevant producer responsibility organization, which shall then assume responsibility for the post-consumer and end of life management in lieu of the producers' products.

(2) Members of a collective extended producer responsibility compliance scheme shall contribute an annual subscription fee towards a collective extended producer responsibility compliance scheme.

(3) Members of a collective extended producer responsibility compliance scheme shall pay extended producer responsibility fees, calculated using the same parameters for all the producers in a given scheme, and shall vary from one producer to another taking into account the—

- (a) quantity of products introduced to the market;
- (b) existence of mechanism for segregation of products at source;
- (c) recyclability and recoverability of the products;
- (d) existence of markets for use of producer's secondary raw material;
- (e) absence or presence of hazardous or none hazardous but disruptive additives; and

(f) products with or without defined environmental foot prints.

(g) Fulfilment of obligations listed in section 6(2).

(4) The producer responsibility organisation shall submit to the Authority extended producer responsibility fees structure agreed among members calculated in accordance with sub regulation (4). (sub-regulation 4 not clear) for concurrence.

(5) The amount, ceiling and collection methods for the determination of financial contribution under this regulation shall be as set out in the terms of reference of the membership agreement.

Producer responsibility organisation finance.

20. (1) Funds for the PRO shall include disbursements provided under section 19 from producers and donations from other sources.

(2) The extended producer responsibility fees paid into the producer responsibility organisation shall be used for—

(a) putting in place post-consumer products collection, logistics, recycling, recovery and safe disposal.

(b) engagement of downstream partners in the chain who take back, recycle and treat and end-of life product disposal.

(c) consumer education and public awareness on sustainable waste management practises;

(d) training and capacity building of actors in the scheme including but not limited to waste service providers, transporters and recyclers;

(e) management and administrative overheads of the extended producer responsibility system;

(f) establishment and development of secondary markets and uses for the products under their scope;

(g) establish research and development programs with registered research institutions on emerging technologies to improve material recovery, removal of pollutants, additionality and

circularity and effective systems for handling post-consumer products;

- (h) development of eco-design and eco-labelling standards in consultation with the body responsible for standards for products under their scope ;
- (i) Support purchase and maintenance of machinery and equipment to support waste collection, processing, recovery and safe end of life treatment; and
- (j) providing guidance to members on eco-design standards of their products and recycler-friendly packaging.

(2) The fees received under sub regulation (1) shall not be used for profit making purposes.

(3) All proceeds shall be ploughed back to the scheme to enhance sustainable waste management initiatives.

Producer Responsibility Organization Agreements.

(3) A producer responsibility organization shall enter into formal agreements with their members, waste service providers, recyclers and other key actors as required by the compliance scheme.

Producer responsibility organization governance.

(4) (1) Members of a producer responsibility organisation shall be responsible for the management of the producer responsibility organization.

(2) The producers shall be shareholders of the producer responsibility organization to which they belong.

Record keeping and reporting.

(5) (1) All producers shall maintain updated records of products managed, eco-design standards, contracts entered into with agents, licensed waste service providers and recyclers, and level of performance as per the work plan.

(2) All extended producer responsibility compliance schemes shall maintain updated records of products managed, eco-design standards, contracts entered into with agents, licensed waste service providers and recyclers, and level of performance as per the work plan.

- (3) All extended producer responsibility compliance schemes shall publish their annual extended producer responsibility reports by 31st January of every year.
- (4) All extended producer responsibility schemes both individual and collective shall submit up-to date annual report of the preceding year to the Authority by January 31st of every year.
- (5) All extended producer responsibility compliance schemes shall provide annual reports on volumes of products collected, transported and subjected to end-of life treatment to the respective counties.
- (6) The Authority shall establish a reporting mechanism for all the individual and collective extended producer responsibility schemes.

PART IV – ROLES AND RESPONSIBILITIES

Role of the Ministry.

(6) The Ministry shall, upon recommendation by the Authority—

- (a) issue, by notice in the *Gazette*, collective national objectives, frameworks and targets for extended producer responsibility compliance schemes;
- (b) issue appropriate manuals and procedures to support implementation of these Regulations;
- (c) publicize the national targets and procedures; and
- (d) facilitate stakeholder consultations on formulation and operation of producer responsibility organisations.

Role of the Authority.

(7) The Authority shall monitor the operation of extended producer responsibility schemes and producer responsibility organizations, by setting operational procedures and targets including—

- (a) registration of producers bearing extended producer responsibility obligations;
- (b) issuance of certificate of registration of extended producer responsibility for individual and collective schemes;

- (c) renewal of registration and issuance of annual operating licenses;
- (d) determining and reviewing the terms of reference for registration and certification from time to time;
- (e) undertaking periodic review of extended producer responsibility targets;
- (f) maintaining a publicly accessible register of all registered and licensed individual and collective extended producer responsibility schemes and producer responsibility organisations;
- (g) updating the list of covered products within the extended producer responsibility;
- (h) Updating register of producers compliant with this regulation based on data provided by PROs
- (i) maintain and update periodic data transmitted by producer responsibility organization;
- (j) publishing annual status reports of extended producer responsibility compliance schemes;
- (k) evaluating the operations of extended producer responsibility schemes;
- (l) ensuring proper implementation of extended producer responsibility schemes, including control audit, assessment of product and waste chains including, *inter alia*, quantities marketed, waste collected and treated;
- (m) verify that producer responsibility organizations comply with the terms of their authorisation, and take measures to sanction those that do not comply;
- (n) Determine minimum EPR fees in consultation with PROs
- o) Commit all finances generated from PROs to operationalize this regulation.

(o) designation of products to be included in the First Schedule; and

(p) undertaking capacity building and public awareness to support implementation of this regulation.

Part IV, section 25 – I believe there are many administrative tasks placed on NEMA and/or the MoEF. In Denmark at least some of the finances to cover these administrative tasks are paid by the PRO's eg. inspection and monitoring as part of the registration / yearly fee. (Janne)

Role of county governments.

(8) Pursuant to section 17 of the Act, each County government shall—

(a) set up appropriate facilities for disposal of waste disposal (make this last);

(b) work with producer responsibility organisations to ensure proper collection, transportation, sorting and disposal of waste products;

(c) facilitate the establishment of intercountry waste management infrastructure;

(d) Facilitate PROs to develop and implement county workplans for EPR implementation.

(e) collaborate with producer responsibility organisations to establish appropriate mechanisms for the operationalisation of the extended producer responsibility schemes established under these Regulations.

(f) undertake public sensitisation and awareness on waste segregation and management; and

(g) publish and maintain an updated inventory of waste service providers.

Oversight.

(9) (1) All registered and licensed schemes shall be subject to oversight by the Authority.

(2) All extended producer responsibility compliance schemes shall be monitored and audited annually by the Authority to ascertain the attainment of the scheme's objectives and to

determine Kenya's position in relation to the objectives set for waste management.

(3) The data gathered through the audit carried out under sub-regulation (2) shall be used to improve the performance and regulatory process of the schemes and to sanction schemes that are not in compliance.

(4) The Authority shall, in consultation with the Council, recommend to the Ministry collective national objectives, frameworks and targets for extended producer responsibility compliance schemes.

PART VI – GENERAL PROVISIONS

Appeals.

(10) (1) Any person aggrieved by any decision of the Authority under these Regulations may file an appeal at the Tribunal.

(2) Any person who is aggrieved by—

(a) the grant of a licence or certificate or a refusal to grant a licence or certificate under these regulations;

(b) the imposition of any condition, limitation or restriction on a licence or certificate issued under these regulations;

(c) the revocation, suspension or variation of a licence or certificate of registration issued under these regulations; or

(d) the imposition of an environmental restoration order or environmental improvement order by the Authority under these Regulations,

may within sixty days after the decision, make an appeal to the Tribunal.

Penalties and offences.

(11) (1) An individual extended producer responsibility compliance scheme or a producer responsibility organization commits an offence by wilfully failing to undertake any obligation under these Regulations and shall be liable upon conviction to the penalty set out in sub regulation (2).

- (2) Upon conviction by a court of law for the individual extended producer responsibility compliance scheme under sub regulation (1), the court shall order the offender to bear the cost of management of the said obligation.
- (3) Anybody who places in the market a product on behalf of a producer who is not listed in the register published by the Authority as per section 17(3) commits an offence and shall be liable upon conviction to a fine of not less than Kshs 500,000 per product or to one year imprisonment or to both.
- (4) A producer or producer responsibility organization commits an offence when the producer or producer responsibility organization gives misleading or false information on quantities held or managed under the extended producer responsibility scheme.
- (5) A producer who is not a member of a related producer responsibility organization, a free rider and does not fulfil their individual obligations commits an offence.

General penalty.

- (12) A person who contravenes a provision of these Regulations for which a penalty has not been provided shall, on conviction, be liable to the penalty provided under section 32 of the Act.

Transitional Provision

- (13) Any producer who, before the commencement of these Regulations was producing any of the products listed in the First Schedule shall apply to the Authority for a registration within six months after the commencement of these Regulations and shall ensure compliance with the provisions of these Regulations.

FIRST SCHEDULE *(r.5(1))*

LIST OF PRODUCTS AND PACKAGING SUBJECT TO EXTENDED PRODUCER RESPONSIBILITY COMPLIANCE SCHEME

1. Packaging for non-hazardous products (plastics,, aluminium, composite, paper and its corrugates, glass, cardboardand carton).
2. Hazardous products’ packaging (Industrial chemicals, oil and lubricants, pharmaceuticals, agrochemicals, veterinary, cosmetics, paints and solvents), treated wood and agricultural films

3. Electrical and Electronic Equipment, Mercury Auto Switches, thermostats, Battery and Accumulators
4. End of life motor vehicles, automobiles, aircrafts, locomotives
5. Non packaging items (Plastics, glass, paper, cardboard), Furniture (except wooden, metallic), Rubber and Tyres, textiles, leather, artificial hair, diapers, sanitary towels.

SECOND SCHEDULE: FORMS

FORM A (r. 10(2), 11(1))

APPLICATION FOR PRODUCER RESPONSIBILITY REGISTRATION

PART A: DETAILS OF APPLICANT

A1: Name of applicant (Individual or Firm).....

A2: Nationality.....

A3: PIN No.....

A4: Business Registration No. (*where applicable*)Date

A5: Postal Address.....

A6: Telephone No.....

A7. Physical Location.....

A8: Email:

A9. Contact Person..... Designation.....

Email..... Mobile No.....

A10: Indicate the category(s) of producer you belong (tick appropriately)

- | | | |
|-------|---------------|--------------------------|
| i. | Manufacturer, | <input type="checkbox"/> |
| ii. | Importer, | <input type="checkbox"/> |
| iii. | Refiller, | <input type="checkbox"/> |
| iv. | Repackager, | <input type="checkbox"/> |
| v. | Rebrander, | <input type="checkbox"/> |
| vi. | Brand owner, | <input type="checkbox"/> |
| vii. | Converter, | <input type="checkbox"/> |
| viii. | Others..... | (please specify) |

A11: List of Products and packaging (attach another page if necessary)

.....

PART B: DECLARATION BY APPLICANT

I hereby certify that the particulars given above are correct and true to the best of my knowledge and belief

Signature of applicant Full name in block letters Position

On behalf of..... Date.....

Firm Name and seal

PART C: REQUIREMENTS

Please submit the following attachments:

- (a) Application Form;
- (b) Certificate of Registration for the Company.
- (c) Documents indicating the type of products and packaging introduced to the Kenyan Market
- (b) The prescribed fee: Payable to:

Account Name: NEMA Revenue Account

Account No. 1102298158

Bank: KCB, KICC Branch

**Director-General,
The National Environment Management Authority (NEMA),
Kapiti Road, South C,
P.O. Box 67839 – 00100,
NAIROBI, KENYA.**

Tel. 254-020-609013/27/79 or 608999 Fax 254-02-608997 E-mail: dgnema@swiftkenya.com

NB: Certificate of registration for the individual producer missing.

SECOND SCHEDULE

FORM B

(r. 10(4),10(5))



EXTENDED PRODUCER RESPONSIBILITY

CERTIFICATE OF REGISTRATION

Certificate No.....

This certificate has been issued to (Extended Producer Responsibility name) in fulfilment of the extended producer responsibility registration requirements in compliance with the Environmental Management and Coordination (Extended Producer Responsibility) Regulations 2021.

Date of issue:

Expiry Date;.....

Signature

Director General

National Environment Management Authority

FORM C (r.11(1))

INTERIM PERMIT FOR PRODUCER RESPONSIBILITY ORGANIZATION

**DIRECTOR GENERAL
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY**

Permit Number:

This is to authorize..... (Name of Producer Responsibility Organization) to undertake extended producer responsibility obligations for (name of product(s)).

This permit is valid for a period of three (3) months from (Date of issue) to..... (Date of expiry).

NOTE: This permit is not a guarantee for registration certificate.

Signature.....

**DIRECTOR GENERAL
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY**

SECOND SCHEDULE

FORM D

(r.13(1))

APPLICATION FOR LICENCE TO OPERATE INDIVIDUAL /COLLECTIVE PRODUCERS EXTENDED PRODUCER RESPONSIBILITY SCHEME

1. I hereby apply for a licence to undertake extended producer responsibility objectives for(Category name) of which particulars are as given below;

Full Name of Applicant or contact person.....

Name of company on behalf of which the application is being made (if applicable)

Producer responsibility registration number/Producer Responsibility Organization registration number (in case of renewal).....

Registered address of Applicant/Company

(Address and postcode)

Physical Locality :(location, building)

County

Phone/Mobile number

E-mail Address

PIN Number

Company Registration Number

(If applicable)

2. Production and product lifecycle management

Delete since this is a PRO application

2.2 List product(s) for collective scheme

.....

-

.....

2.4 Describe circular economy initiative for your product(s) [reuse, recyclability, recoverability, energy efficiency (attach additional pages as necessary)]

.....

2.5 What is the estimated annual volume/quantity of product(s) introduced into the market?

.....

2.6 State the estimated annual amount of your product/product components at post-consumer stage.

.....

2.7 State mechanisms put in place for identification and tracking of your product(s)?

.....

3 Attach the following documents together with the application form

- (a) Proof of registration as a company limited by guarantee as provided by the Companies Act Kenya;
- (b) Copy of list of directors (CR12) issued by the Registrar of Companies;
- (c) Kenya Revenue Authority (KRA) Pin Certificate;
- (d) A copy of lease agreement/ proof of ownership of the facility of operation;
- (e) The Extended Producer Responsibility Plan;
- (f) Budget/financial plan of the proposed scheme;
- (g) Signed minutes of the meeting adopting the extended producer responsibility plan signed by representatives of products within the category (for collective schemes)
- (h) List of members of the producer responsibility organisation per product
- (i) Proposed organogram for the producer responsibility organisation
- (j) Provide a dispute resolution mechanism for the actors in the scheme
- (k) Copy of the Memorandum of Association of the company declaring that the sole business of the company is to undertake extended producer responsibility obligations on the specific products.
- (l) proof of payment of the relevant fees to the Authority.

SECOND SCHEDULE
FORM E (r.13(3))
ANNUAL LICENCE TO OPERATE AN EXTENDED PRODUCER RESPONSIBILITY
SCHEME

License number:

Application Reference:

Name.....

Postal Address:

You are hereby licensed to undertake Extended Producer Responsibility Obligations for
..... (Category)

This License is valid from..... (date of issue) to (date of expiry)

This license is subject to the following conditions (see over leaf).

Date issued:

THIRD SCHEDULE: FEES (r.10(2), 11(1), 13(1))



Director General

National Environment Management Authority

Application fees

Registration

1. Collective Extended Producer Responsibility Schemes – Ksh. 10,000
2. Individual Extended Producer Responsibility Schemes - Ksh. 5,000

Renewal of Registration

1. Collective Extended Producer Responsibility Schemes – Ksh. 10,000
2. Individual Extended Producer Responsibility Schemes - Ksh. 10,000

Annual Licence

1. Collective Extended Producer Responsibility Scheme – Ksh. 10,000
2. Individual Extended Producer Responsibility Scheme – Ksh. 10,000

Individual producer registration (one off) – Ksh. 5000

Monitoring and Control Audit

0.5 % of the total annual EPR fee that PRO is managing as provided in section 19 (3)

Made on the.....2022.

SOIPAN TUYA,
Cabinet Secretary for Environment and Forestry.