

18TH NOVEMBER 2022



INTRODUCTION

THE PROBLEM

The Ministry of Environment and Forestry has finished the development of the Extended Producer Responsibility Regulations 2022. For the EPR regulations 2022, a producer is defined as “an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, distributing, converting, filling, re-filling, repacking or rebranding” as defined in the sustainable waste management Act, 2022.

The EPR Regulations 2022 was developed in compliance with clause 13 (3) of the Sustainable Waste Management Act, 2022 which requires the cabinet secretary responsible for matters relating to waste management to develop extended producer regulations within 2 years of coming into force of the Act.

The regulations propose that each producer will be required to join a Producer Responsibility Organization (PRO), which will undertake several activities on behalf of the producer to ensure their packaging does not affect the environment. These activities include recovery, collection, sorting, recycling, and treatment.

These Regulations shall apply to:



A producer



An individual extended producer responsibility compliance scheme



A producer responsibility organisation

PURPOSE OF THE EPR REGULATIONS 2022

THE PURPOSE OF THE EPR REGULATIONS 2022 IS TO:

Extend the responsibility

Extend the responsibility of a producer over a product and its packaging during the entire life cycle of the product or its packaging.

Provide a framework

Provide an overarching framework for the establishment of mandatory extended producer responsibility schemes.

Optimize the life cycle

Optimize the life cycle approach to the management of products and associated wastes.

Enhance resource

Enhance resource mobilization for the management of products and sustainable waste management.

Operationalization

Operationalization of polluter pays principle.

Promote a collaborative

Promote a collaborative approach in the management of products and associated wastes.



PRODUCERS' OBLIGATIONS UNDER EPR REGULATIONS 2022

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.

For purposes of fulfilling these obligations a producer shall:

- Establish a post-consumer collection and take back scheme which may include a deposit refund system.
- Set up an individual or a collective extended producer responsibility compliance scheme or join a collective extended producer responsibility compliance scheme.
- 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.
- Design products and packaging materials that minimize waste, facilitate reuse, recycling, recovery, and use of secondary raw materials where possible and are environmentally friendly at their end of life.
- 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.
- 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.
- Provide consumers with information on their role in reuse, return, take back points, the meaning of recycling and recovery labels and symbols on the products.
- Raise awareness on the management of post-consumer products that introduce in the market.
- Carry out product life cycle assessment about their products for enhancing environmental sustainability.
- Support the establishment of markets for secondary raw materials.
- Put in place circular economy initiatives and any other measures to reduce the impact of their product on health and the environment.
- Fund research and development programs on emerging technologies to improve material recovery.

● PROCESS FLOW (REGISTRATION, APPLICATION ● FOR A LICENSE, OPERATING LICENSE, RENEWAL)

REGISTRATION & APPLICATION FOR A LICENSE

There shall be only one producer responsibility organisation per product category listed in the First Schedule.

The Authority may allow for the registration and operation of more than one producer responsibility organisation per product to accommodate the material variation of a product. Producers may set up individual or collective compliance schemes. Individual compliance scheme is only for producers of sole products.

Producers in a collective compliance scheme shall pay membership fees to a registered and licensed producer responsibility organization to execute the obligations on behalf of its members.

All producers of products in the first schedule shall obtain the producer responsibility number and PRO shall obtain the producer extended responsibility number upon registering with the Authority.

All Compliance schemes shall obtain:

- Registration
- Annual operating license

On registration, the Authority will issue an interim permit for a period of ninety days to enable the PRO to undertake stakeholder engagement.

Upon the lapse of the ninety days of the interim permit issued, 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.



RENEWAL

The registration of an individual or collective 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.

REQUIREMENTS FOR REGISTERING A PRO

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

Proof of registration by the Registrar of Companies as a company limited by guarantee under the Companies Act.

An updated membership list.

Signed minutes of the annual general meeting.

A copy of the extended producer responsibility fees structure agreed among members calculated using guidance provided under these Regulations.

A progress report on achievement of set targets, in case of renewal of registration.

A copy of a control audit conducted by the Authority.

A copy of list of directors of the company issued by the Registrar of Companies.

A copy of the Pin Certificate issued by the Kenya Revenue Authority

A copy of a lease agreement or proof of ownership of the facility of operation.

An extended producer responsibility plan prepared in accordance with the requirements stipulated under these Regulations.

A budget or financial plan for the scheme





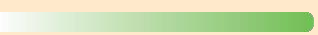
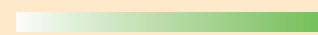
A copy of signed minutes of the meeting adopting the updated extended producer responsibility plan signed by representatives of products within the category.

An organogram for the producer responsibility organization. A dispute resolution mechanism for the actors in the scheme.

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 the specified products.

Proof of payment of the fees set out in the Third Schedule.

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 considering the:

	Quantity of products introduced to the market.		Existence of markets for use of producer's secondary raw material.
	Existence of mechanism for segregation of products at source.		Absence or presence of hazardous or none hazardous but disruptive additives.
	Recyclability & recoverability of the products.		Products with or without defined environmental foot prints.




Producers shall pay registration fees to the producer responsibility organization, Producers contribute an annual subscription fee towards a collective EPR compliance scheme.

PRO APPLICATION FEES

Registration fees		Renewal of Registration fees		Annual Licence fees	
<ul style="list-style-type: none"> • Collective Extended Producer Responsibility Schemes 	Ksh. 10,000	<ul style="list-style-type: none"> • Collective Extended Producer Responsibility Schemes 	Ksh. 10,000	<ul style="list-style-type: none"> • Collective Extended Producer Responsibility Schemes 	Ksh. 10,000
<ul style="list-style-type: none"> • Individual Extended Producer Responsibility Schemes 	Ksh. 5,000	<ul style="list-style-type: none"> • Individual Extended Producer Responsibility Schemes 	Ksh. 10,000	<ul style="list-style-type: none"> • Individual Extended Producer Responsibility Schemes 	Ksh. 10,000
				<ul style="list-style-type: none"> • Individual producer registration (one-off) 	Ksh. 5,000

PENALTIES AND OFFENCES

An individual extended producer responsibility compliance scheme or a producer responsibility organization commits an offence by:

-  Willfully failing to undertake any obligation under these Regulations.
-  Giving misleading or false information on quantities held or managed under the extended producer responsibility scheme.
-  Not being a member of a related producer responsibility organization or being a free rider.

Upon conviction by a court of law for the individual extended producer responsibility compliance scheme, the court shall order the offender to bear the cost of management of the said obligation.



REVOKATION OF LICENSE

The Authority may, after the issuance of an annual operating licence cancel or revoke such licence; or suspend such licence, for such time, not more than twenty-four months, where the licensee contravenes the provisions of the licence.

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.

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.

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.

DISPUTE RESOLUTION

Any person aggrieved by any decision of the Authority under these Regulations may file an appeal at the Tribunal by the following matters within sixty days after the decision:

The grant of a licence or certificate or a refusal to grant a licence or certificate under these regulations.


The revocation, suspension or variation of a licence or certificate of registration issued under these regulations.


The imposition of any condition, limitation or restriction on a licence or certificate issued under these regulations.


The imposition of an environmental restoration order or environmental improvement order by the Authority under these Regulations.


EPR FEES


Pursuant to section 17 of the Act, each County government shall:


 Set up appropriate facilities for disposal of waste disposal

 Work with producer responsibility organisations to ensure proper collection, transportation, sorting and disposal of waste products.

 Facilitate the establishment of intercountry waste management infrastructure.

 Collaborate with producer responsibility organisations to establish appropriate mechanisms for the operationalisation of the extended producer responsibility schemes established under these Regulations.

 Undertake public sensitisation and awareness on waste segregation and management.

 Publish and maintain an updated inventory of waste service providers.



ANTICIPATED OPPORTUNITIES & IMPACTS ON BUSINESSES



PRODUCT STEWARDSHIP

- Under EPR Product Stewardship extends to the ultimate disposal of the product.
- Responsibility for the reduction of the environmental impact of a product and its packaging is extended to producers beyond the factory gate to the post-consumer stage in line with the polluter pay principle.
- EPR transfers/shifts the financial burden of product and packaging to producers and product consumers.



SUPPLY CHAIN COLLABORATION

- EPR requires the creation of a new alliance, partnership and collaboration between value chain players: producers and importers join up to form an organization (PRO) to take back and manage their products from a central position.



STIMULATING BUSINESS GROWTH



CREATING JOB OPPORTUNITIES



EPR DRIVING CIRCULAR ECONOMY BUSINESS MODELS

- Product Life cycle assessment
- Eco-design Products. Redesigning of production models to reduce environmental footprint (recycling content standards).
- Eco-label - a specific type of product labeling that certifies the environmental performance of a product or service. Currently, most Eco-labels are voluntary whereas EPR regulations require producers to design environmental labels for their products.
- Take back systems.
- Resource use efficiency - Producers will work with product designers to create products that are designed for durability, reuse, and safe recycling.
- Producer will have to set up a system for closed-loop production, with an advanced recycling infrastructure so that all products collected can be turned into high-quality inputs for new goods.
- Value recovery models - With urban mining, the extraction of resources from complex value chains and current waste streams can be turned into value.



EPR ENHANCES CUSTOMER LOYALTY

- EPR provides an opportunity to build stronger relations with customers.
- Traceability systems, take back systems, loyalty points and motivates customers to make sustainable purchases.