



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI CITY

COURT NAME: MILIMANI LAW COURTS

CASE NUMBER: HCCHRPET/E231/2025

CITATION: SOLLO NZUKI VS COUNCIL OF GOVERNORS AND SENATE AND 8 OTHERS

ORDERS(COURT DOCUMENT)

02/05/2025

L. N. MUGAMBI - JUDGE(SITTING ON BEHALF OF MWITA -J)

I have read the Notice of Motion Application dated 30/04/2025, the certificate of urgency of even date together with the affidavit in support sworn by Sollo Nzuki and direct as follows:

1. The Application be served physically upon the respondents within **7 days** and a return of service be filed to that effect.
2. Responses be filed and served within **14 days** from the date of service.
3. If need be leave is granted to the applicant to file and serve a rejoinder within **14 days** from the date of receipt of responses.
4. Further directions on 10/06/2025, before **Hon. E.C. Mwita-J**

L. N. MUGAMBI

JUDGE

02/05/2025

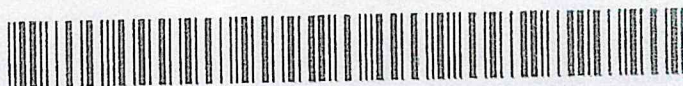
Penal Notice: Take notice that any disobedience or non-observance of the order of the court served herewith will result in penal consequences to you and any other person(s) disobeying and not observing the same

SIGNED BY: HON. MR. JUSTICE LAWRENCE N. MUGAMBI





THE JUDICIARY OF KENYA.
MILIMANI HIGH COURT
HIGH COURT CONSTITUTION AND HUMAN RIGHTS
DATE: 2025-05-02 13:06:02+03



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MILIMANI LAW COURTS
PETITION NO. _____ OF 2025

IN THE MATTER OF ARTICLES 2(4), 2(5), 2(6), 10, 19, 20, 21, 22, 23, 35, 36, 42,
46, 47, 69, 114, 165(3), 201, 209 AND 258 OF THE CONSTITUTION OF KENYA,
2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES

AND

IN THE MATTER OF SECTION 5, 5A, 6, 7, 8 AND 13 OF THE STATUTORY
INSTRUMENTS ACT, 2023 (CAP 2A)

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

IN THE MATTER OF THE SUSTAINABLE WASTE MANAGEMENT ACT, 2022

AND

IN THE MATTER OF THE SUSTAINABLE WASTE MANAGEMENT (EXTENDED
PRODUCER RESPONSIBILITY) REGULATIONS, 2024

AND

IN THE MATTER OF PUBLIC PARTICIPATION AND LEGITIMATE EXPECTATION.

AND

IN THE MATTER OF: THE DOCTRINES OF NATURAL JUSTICE,
CONSTITUTIONALISM, RULE OF LAW AND VOID FOR VAGUENESS.

BETWEEN

SOLLO NZUKI..... PETITIONER

AND

MINISTRY OF ENVIRONMENT AND FORESTRY 1ST RESPONDENT

THE NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY 2ND RESPONDENT

THE ATTORNEY GENERAL..... 3RD RESPONDENT

THE NATIONAL ASSEMBLY.....4TH RESPONDENT

AND

ALCOHOL BEVERAGES ASSOCIATION OF KENYA.....1ST INTERESTED PARTY

KENYA ASSOCIATION OF MANUFACTURERS.....2ND INTERESTED PARTY

THE SENATE3RD INTERESTED PARTY

KENYA NATIONAL CHAMBERS

OF COMMERCE AND INDUSTRY4TH INTERESTED PARTY

THE COUNCIL OF GOVERNORS5TH INTERESTED PARTY

KENYA PRIVATE SECTOR ALLIANCE6TH INTERESTED PARTY

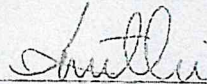
CERTIFICATE OF URGENCY

I, **CECIL G. MILLER** an Advocate of the High Court of Kenya practising as such in the firm of Miller & Company Advocates and being on record for the Applicant herein, do hereby certify this application to be urgent for the following reasons: -

1. **THAT** this matter is of extreme urgency and warrants the immediate and urgent attention of this Honourable Court.
2. **THAT** the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024, are set to be operationalized on the 4th of May 2025, and their operationalization poses an imminent threat to key sectors of the economy.
3. **THAT** these Regulations are fundamentally unconstitutional, having been enacted without any meaningful public participation, in blatant contravention of Article 10 and Article 118 of the Constitution of Kenya, as well as the mandatory requirements under the Statutory Instruments Act.
4. **THAT** these Regulations are fundamentally unconstitutional, having been enacted without any concurrence between the Senate and the National Assembly as per Article 110(3) of the Constitution of Kenya.
5. **THAT** no regulatory impact assessment was conducted prior to the promulgation of the Regulations, further rendering them procedurally defective and unlawful under the Statutory Instruments Act.
6. **THAT** the Regulations introduce multiple levies and charges which cumulatively amount to unlawful double taxation, creating an oppressive regulatory environment for producers.

7. THAT in the absence of urgent intervention by this Honourable Court, the manufacturing sector faces the imminent risk of collapse, as the Regulations are projected to increase production costs between 40% and 70%, placing an unsustainable financial burden on producers.
8. THAT the net effect of these Regulations will be to drastically inflate the cost of manufacturing goods, making local products unaffordable both to produce and to sell, thereby crippling competitiveness and threatening livelihoods.
9. THAT in view of the grave economic consequences and constitutional violations involved, it is in the overriding public interest and in the interest of justice that this matter be certified as urgent and be listed for immediate hearing on a priority basis.

DATED at NAIROBI this 30th day of April 2025.



MILLER & COMPANY

ADVOCATES FOR THE PETITIONER

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5. Alcohol Beverages Association of Kenya,
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6. The Kenya Association of Manufacturers,
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NOTICE OF MOTION

(Under articles 20, 22, 50(1), 23(3), 159(2)(d), 165, and 258 of the Constitution of Kenya 2010, Sections 19 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, and all other enabling provisions of the Law)

TAKE NOTICE THAT this Honourable Court will be moved on the _____ day of _____ 2025 at 9.00 o'clock in the forenoon or soon thereafter by the Applicant/Petitioner for Orders that:

1. THAT the Honourable Court be pleased to certify this application as extremely urgent and hear it ex-parte at the earliest opportunity
2. THAT pending the hearing and determination of the application and/or the Petition, the Honourable Court be pleased to issue a conservatory order staying or suspending any implementation, administration, application or enforcement of Regulation 3,4, 6, 7, 10, 11, 14, 18, 23, and the First Schedule of the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024.
3. THAT pending the hearing and determination of the application and/or the Petition, the Honourable Court be pleased to issue an interim order of prohibition prohibiting the respondents and interested parties or their agents, howsoever acting from giving effect to Regulation 3,4, 6, 7, 10, 11, 14, 18, 23, and the First Schedule the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024.

4. THAT consequent to the grant of the prayers above, the Honourable Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.

5. THAT costs of this application be provided for.

WHICH APPLICATION is supported by the annexed hereto affidavit of SOLLO NZUKI and is founded on the grounds and provisions of law listed hereunder, the nature of the case and other grounds and reasons to be adduced at the hearing hereof:-

1. THAT the matter herein is of extreme urgency as the 1st Respondent seeks to operationalize the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024, on 4th May 2025.
2. THAT the said Regulations were gazetted on 4th November 2024 without prior public participation, in clear violation of constitutional and statutory requirements.
3. THAT on 15th January 2025, the 2nd Respondent issued a public notice urging producers to familiarize themselves with the Regulations and take steps towards compliance, despite the absence of any meaningful stakeholder engagement.
4. THAT the Regulations were developed and published without adequate or proper public participation, in contravention of the Constitution of Kenya, the Statutory Instruments Act, the Sustainable Waste Management Act, and other enabling statutes.
5. THAT despite repeated and good-faith attempts by stakeholders to engage with the 2nd and 3rd Respondents regarding the impact of these Regulations, the Respondents have failed to incorporate public input or facilitate any effective participatory process.
6. THAT the 1st and 2nd Respondents have demonstrably failed to comply with the legal obligation to conduct proper public participation as required under Articles 10 and 118 of the Constitution, the Statutory Instruments Act, and the Sustainable Waste Management Act.
7. THAT Articles 10 and 118 of the Constitution of Kenya enshrine the principle of public participation and mandate the involvement of citizens in legislative and regulatory processes.

8. THAT Section 23 of the Sustainable Waste Management Act expressly requires public consultation and participation in accordance with the principles outlined in the Second Schedule.
9. THAT Section 33 of the Sustainable Waste Management Act provides that the Cabinet Secretary may, in consultation with the Authority, make regulations to give effect to the Act, and that any such regulations must conform to the standards and principles set out in the Interpretation and General Provisions Act (Cap. 2) and the Statutory Instruments Act (Cap. 2A).
10. THAT Section 5 of the Statutory Instruments Act requires a regulation-making authority to undertake appropriate consultations before making a statutory instrument likely to have a direct or substantial indirect effect on business or to restrict competition.
11. THAT Section 6 of the Statutory Instruments Act mandates that a regulatory impact statement must be prepared prior to the enactment of any statutory instrument likely to impose significant costs on the community or a segment thereof.
12. THAT the failure to consult the public before enacting the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 constitutes a grave breach of the right to public participation as guaranteed under Articles 10 and 118 of the Constitution.
13. THAT the failure to prepare and publish a regulatory impact statement for the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 further violates Article 35 of the Constitution on the right to access information, as well as Article 118 on public participation.
14. THAT the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 significantly deviate from the draft Environmental Management and Coordination (Extended Producer Responsibility) Regulations, 2021, which had been subjected to public participation.
15. THAT the 2021 Environmental Management and Coordination (Extended Producer Responsibility) Regulations were developed prior to the enactment of the Sustainable Waste Management Act, 2022.

16. THAT the Respondents unilaterally shifted the legal anchor for the EPR regulations from the Environmental Management and Coordination Act to the Sustainable Waste Management Act, without conducting a fresh participatory process.
17. THAT thereafter no public participation was conducted after the change of the anchor law as well as the amendments that had been made therein.
18. THAT a comparative review between the 2024 Regulations and the 2021 EMCA (EPR) Regulations reveals substantial amendments introduced post-public participation, including but not limited to:
- i. Introduction of Regulation 6, imposing new levies on importers of finished products;
 - ii. Introduction of Regulation 7, imposing levies on producer registration;
 - iii. Amendment of the First Schedule to include per-item fees for imported finished goods;
 - iv. Omission of the County Government's role, as included in the EMCA (EPR) Regulations;
 - v. Deletion of Regulation 16 under EMCA (EPR) that outlined transparent usage of Producer Responsibility Organization (PRO) fees, replaced with Regulation 18(3) requiring 5% remittance to the 2nd Respondent;
 - vi. Insertion of Regulation 18(4) introducing the Restoration Fund, which has no legal definition or anchor in the Sustainable Waste Management Act, 2022;
 - vii. Amendment of the Sixth Schedule, increasing registration and renewal fees for PRO licenses from Kshs. 10,000 and Kshs. 5,000 to an arbitrary Kshs. 100,000, without any public consultation.
18. THAT these amendments, introduced after the public had already participated in the 2021 EMCA (EPR) Regulations fundamentally alter the substance and legal impact of the Regulations, thus necessitating fresh public participation and consultation.
19. THAT the amendment to remove the role of the County Government was a ploy to remove the oversight of the 3rd Interested Party.
20. THAT in light of the above, this Honourable Court's urgent intervention is necessary to forestall the implementation of the unconstitutional and

procedurally defective regulations that would impose immense financial and operational burdens on producers and violate the rights of the public.

- 21 **THAT** the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 seek to impose disproportionately high and punitive fees on producers—many of which amount to double taxation—and will significantly increase the cost of doing business in Kenya. The Regulations introduce a rigid per-item fee structure regardless of product type, value, or volume, as illustrated below.

NO.	PRODUCT	AMOUNT (KShs.) Per item
1.	Packaging for non-hazardous products (plastics, aluminium, composite, paper and its corrugates, glass, cardboard and carton).	150
2.	Hazardous products' packaging (Industrial chemicals, oil and lubricants, pharmaceuticals, agrochemicals, veterinary, cosmetics, paints and solvents), treated wood and agricultural films.	150
3.	Electrical and Electronic Equipment, Mercury Auto Switches, thermostats, Battery and Accumulators.	150
4.	End of life motor vehicles, automobiles, aircrafts, locomotives.	150
5.	Non packaging items (Plastics, glass, paper, cardboard), Furniture (except wooden, metallic), Rubber and Tyres, textiles, leather, artificial hair, diapers and sanitary towels.	150

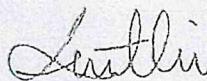
In addition to the per-item levies, the Regulations impose a series of other fees on producers, including but not limited to:

OTHER FEES IMPOSED ON PRODUCERS	
Registration as a member of a Producer Responsibility Scheme -Kshs. 50,000- Kshs.10,000	
Annual Licence as a member of a Producer Responsibility Scheme-Kshs. 50,000- 100,000	
Monthly Extended Producer fees to a Producer Responsibility Scheme – Based on the quantity of products introduced to the market,	
Import fees for finished goods & packaging materials -Kshs. 150 per item	

22. **THAT** the fee structure fails to consider sectoral differences in capacity and scale, disproportionately impacting small and medium-sized enterprises, and ultimately leading to higher consumer prices and reduced market competitiveness.
23. **THAT** the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 fail to take into account the existing tax burden on products, including Value Added Tax on finished goods and excise duties on imported materials, thereby compounding the cost of doing business.
22. **THAT** the said Regulations are inconsistent with Article 75(4) of the East African Community (EAC) Treaty, which expressly prohibits partner states from imposing new duties or levies, or increasing existing ones, on products traded within the community.
23. **THAT** the Regulations also contravene Sections 114 and 115 of the East African Community Customs Management Act (EACCOMA), which mandate that all import duties and taxes must be legislated and implemented by the competent revenue authority, not through subsidiary legislation by a Cabinet Secretary.
24. **THAT** the practical effect of implementing the Regulations will be the transfer of these additional tax burdens from producers to consumers, further inflating the already high cost of living and undermining consumer welfare.
25. **THAT** this per item levy is a reincarnation of the proposed eco-levy that was rejected in the 2024 Finance Bill which sought to levy a Kshs.150 on plastic packaging.

26. THAT this Honourable Court possesses the inherent and unfettered jurisdiction to intervene and issue the orders sought to uphold the Constitution and prevent irreparable harm.
27. THAT no prejudice will be occasioned to the Respondents should the orders be granted, as the relief sought is merely to preserve the status quo and ensure compliance with constitutional and statutory norms.
28. THAT the orders sought are grounded firmly in the public interest, as they aim to forestall the enforcement of unconstitutional, unlawful, and economically oppressive regulations.
29. THAT the Applicant has established a strong prima facie case, with a high likelihood of success, demonstrating serious questions of law and constitutional interpretation that warrant immediate judicial intervention.
30. THAT the orders now sought are interlocutory in nature and are intended to safeguard the public interest pending the determination of the substantive Petition or Motion. They do not in any way prejudice the final merits of the case.
31. THAT this Honourable Court, in exercise of its constitutional and equitable mandate, has both the authority and discretion to issue the orders prayed for in the interest of justice.
32. THAT the grant of the orders sought is necessary to uphold the rule of law, promote constitutional values, and preserve the integrity of the legislative and regulatory process.
33. THAT the balance of convenience overwhelmingly favours the Applicant, as allowing the impugned Regulations to take effect would result in irreparable harm to producers, consumers, and the national economy at large.
22. THAT the public interest will be best served by granting the orders sought.

DATED at NAIROBI this 30th day of April 2025.



MILLER & COMPANY
ADVOCATES FOR THE APPLICANT/PETITIONER

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VERIFYING AFFIDAVIT

I, SOLLO NZUKI, of P.O. Box 45707 – 00100 a male adult of sound mind residing within Nairobi County in the Republic of Kenya do hereby make solemn oath and state as follows:

1. THAT I am competent to swear this affidavit on my own behalf as the Applicant/Petitioner herein, aware of the matters in issue.
2. THAT I swear this affidavit in good faith and in support of the Notice of Motion application herein seeking interim orders.
3. THAT I have perused the application herein and confirm that the facts stated therein are true and correct.
4. THAT I hereby reaffirm and solemnly repeat the facts and averments stated and included in the Application, including each of the paragraphs (each individually as well as cumulatively), and solemnly state that the facts therein are true and to my own knowledge, information and belief.
5. THAT in support of my averments above, I annex hereto a bundle marked as Exhibit SN-1, containing copies of:
 - I. Preliminary Objection to Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 by the 1st Interested Party;
 - II. Public Notice by the 2nd Respondent calling for registration of producers dated 18th February 2025;
 - III. Public Notice dated 18th February 2025 issued by the 2nd Respondent on Implementation of the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024.

- IV. The Environmental Management and Coordination (Extended Producer Responsibility) Regulations, 2021;
- V. The Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024;
- VI. Copies of Newspaper Extracts showing stakeholder concern; and
- VII. Extract of the Finance Bill, 2024.

6. **THAT** the facts stated establish a sufficient case with a high possibility of success in respect of the Applicant's/Petitioner's claims, and that further there is an overarching requirement of justice that the orders sought be granted.
7. **THAT** unless the application is urgently heard and determined, the Applicant and the people of Kenya will suffer great loss and damage as the unconstitutional and unlawful Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 will be imposed on Kenyans.
8. **THAT** in view of the above, and pursuant to this Honourable Court's duty to promote and safeguard constitutionalism and the rule of law, I verily believe that it is now incumbent for this Honourable Court to determine the issues raised in this application to ensure that the best practices, rules, regulations, statutes and the Constitution are protected.
9. **THAT** what is deposed to herein is true to the best of knowledge save what has been deposed to on information and belief, the sources and grounds whereof have been respectively specified.

SWORN AT NAIROBI by the said
SOLLO NZUKI

th
This 30 day of April 2025

BEFORE ME


COMMISSIONER FOR OATHS

1
1
1



Deponent

DRAWN & FILED BY:-

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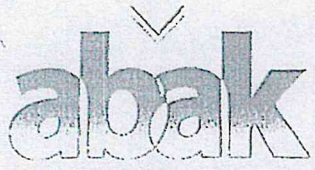
EXHIBIT SN-1

This is the exhibit marked "SN-1" referred to in the annexed affidavit / declaration of SOLLO NZUKI Sworn / declared before me this 30th day of April 2025 at Nairobi

EXHIBIT SN-1

No.	Particulars	Page No.
1.	Preliminary Objection to Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 by the 1 st Interested Party;	1-3
2.	Public Notice by the 2 nd Respondent calling for registration of producers dated 15 th February 2025;	4-5
3.	Public Notice dated 18 th February 2025 issued by the 2 nd Respondent on Implementation of the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024,	6
4.	The Environmental Management and Coordination (Extended Producer Responsibility) Regulations, 2021;	7-40
5.	The Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024,	41-69
6.	Copies of Newspaper Extracts showing stakeholder concern; and	70
7.	Extract of the Finance Bill, 2024.	71-84

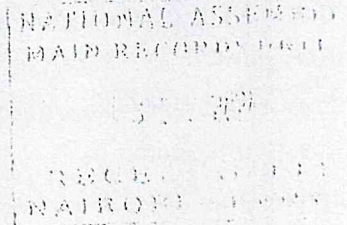
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Alcohol Beverages Association of Kenya
Responsibility & Self Regulation Initiative

2nd December 2024

Mr. Samuel Njoroge, CBS
The National Assembly
Office of the Clerk
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI



Advance By Email
Original by Recorded Delivery

cna@parliament.go.ke

Attention: Committee on Delegated Legislation
National Assembly

Dear Sir,

RE: PRELIMINARY OBJECTION TO LN 176 OF 2024 - SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCERS RESPONSIBILITY) REGULATIONS, 2024

The Alcohol Beverages Association of Kenya (ABAK) is an umbrella body that brings together Kenya's leading manufacturers and distributors of alcohol beverages for adults. ABAK exists to support the alcohol industry by providing training, information, and technical expertise to government agencies, consumers, value chain players and the society, at large.

We are writing to express our objection to the Sustainable Waste Management (Extended Producers Responsibility) Regulations 2024 (EPR Regulations), which were published on 4th November 2024. We also want to request for a meeting with the National Assembly Committee on Delegated Legislation, to discuss the impact of the regulations to our industry.

While we support the regulations' intended purpose to promoting sustainable waste management practices in Kenya, some of the provisions will constitute a heavy financial burden to the manufacturing sector, with the risk making businesses untenable.

Exorbitant fees

In the First Schedule, the regulations call for fees to be paid on certain products as listed below:

No.	Product	Amount (Ksh. per item)
1	Packaging for non-hazardous products (plastics, aluminum, composite, paper and its corrugates, glass, cardboard, and carton)	150
2	Hazardous products' packaging (Industrial chemicals, oil and lubricants, pharmaceuticals, agrochemicals, veterinary, cosmetics, paints and solvents), treated wood, and agricultural films	150
3	Electrical and Electronic Equipment, Mercury Auto Switches, thermostats, Battery and Accumulators	150
4	End-of-life motor vehicles, automobiles, aircraft, locomotives	150
5	Non-packaging items (Plastics, glass, paper, cardboard), Furniture (except wooden, and metallic), Rubber and Tyres, textiles, leather, artificial hair, diapers, and sanitary towels	150

Alcohol industry cost of production is going to increase by 70% if this regulation is passed in its current form. This excludes the impact of other levies that have also been proposed the EPR regulations, including:

- The requirement to registration all individual and collective Producer Responsibility Organisation (PROs) at KES 5,000
- Payment to National Environment Management Authority of Kenya (NEMA) amounting 5% of the amount paid by producers to PROs for collection of waste.
- An annual operating license fees per PRO of KES 100,000.

ABAK finds that these fees are disproportionately high, as they fail to consider the economic realities currently faced by the manufacturing sector. The industry is experiencing an unprecedented increased cost of doing business, increased demand to borrow loans to pay taxes, amid declining sales driven by reduced disposable income. Given the magnitude of the impact we expect from the implementation of EPR regulations, a regulatory impact assessment by Ministry of Environment and Forestry (MoE&F) should have been conducted to justify charging the proposed fees in the regulations. However, this has not been done.



The regulations will bring about additional administrative burden and costs, in the form of PRO registration fees and annual subscription levies, to industry members who have already established individual PROs through self-regulation to collect items such as glass.

Lack of Public Participation

The State Department for Environment and Forestry did not adequately engage in public participation during the formulation of these regulations. As mandated in Article 10 of the national values, industry players have a right to be involved in the decision-making process, in this case, the making of the EPR regulations. No adverts in the local newspapers or on the Ministry's website called for submissions and/or views regarding the formulation of these regulations, and thus, they were improperly constituted.

Given the concerns above, we request an audience with the Committee on Delegated Legislations to discuss the impact of the EPR regulations. We also requested that the implementation of these Regulations be paused until comprehensive public participation is conducted. We believe that an open dialogue between the State Department, NEMA and industry stakeholders would ensure that these concerns are addressed, and that the outcome will lead to the promotion of sustainable waste management without affecting industry growth and competitiveness.

We look forward to your response on the same.

Yours faithfully,

For: Alcohol Beverage Association of Kenya (ABAK)

Eric Githua
Chairman



NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

PUBLIC NOTICE

IMPLEMENTATION OF SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCER RESPONSIBILITY (EPR)) REGULATIONS, 2024

The National Environment Management Authority (NEMA) was established under Environmental Management and Coordination Act 1999 to exercise general supervision over all matters of environment and is the principal instrument of the Government in implementation of all environmental policies.

The Government of Kenya, through the Cabinet Secretary (Ministry of Environment, Climate Change and Forestry) gazetted the Sustainable Waste Management (**Extended Producer Responsibility (EPR)) Regulations 2024 on 4th November 2024**. These regulations aim to promote environmentally sound management of products throughout their life cycle, to obligate producers to take responsibility for the end-of-life (post-consumer) management of their products and to operationalize polluter pay principle.

Key highlights on the EPR Regulations

1. The regulations apply to all **producers** (manufacturers, importers and brand owners) of products **listed in the first schedule** of these regulations and the Extended Producer Responsibility (EPR) schemes for the **products category** in the first schedule.
2. These regulations highlights the Extended Producer Responsibility (EPR) obligations that each producer shall execute as per (regulation 5).
3. All importers of products listed in the first schedule shall within six months from the gazettment date (4th November 2024) register with NEMA and pay fees as per the first schedule.
4. All producers (brand owners) of products listed in the first schedule shall within six (6) months apply to NEMA for registration and issuance of extended Producer responsibility Certificate.
5. Requirements for registration of Producers, Importers and Extended Producer Responsibility (EPR) Schemes.
6. Requirements for licensing of the Extended Producer Responsibility schemes for the products category.
7. Requirements for Registration and licensing fees.

This **therefore is a call to all producers (brand owners)** to familiarize themselves with the provisions of these regulations and take the necessary **steps for compliance**.

The application can be effected through our Nema portal: www.nema.go.ke. You can download the regulations from the NEMA website www.nema.go.ke for further details on

the regulations. For any enquiries contact NEMA on the telephone numbers indicated on the website or via email on info@nema.go.ke

The Authority is committed to ensuring a clean, healthy and sustainably managed environment for a prosperous Nation.

Dated: 15th January, 2025

DIRECTOR GENERAL

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

Popo Road off Mombasa Road

P.O. Box 67839-00200

NAIROBI.

Email: info@nema.go.ke

Tel: 020-2101370/020-2183718

Mobile: 0724253398/0723363010/0735013046



REPUBLIC OF KENYA



National Environment Management Authority

IMPLEMENTATION OF SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCER RESPONSIBILITY (EPR) REGULATIONS, 2024

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2. These regulations highlight the Extended Producer Responsibility (EPR) obligations that each producer shall execute as per regulation 5.
3. All importers of products listed in the first schedule shall within six months from the gazettment date (4th November 2024) register with NEMA and pay the requisite fees as per the first schedule.
4. All producers (brand owners) of products listed in the first schedule shall within six (6) months of commencement of these regulations apply to NEMA for registration and issuance of extended Producer responsibility Certificate.
5. Requirements for registration of Producers, Importers and Extended Producer Responsibility (EPR) Schemes.
6. Requirements for licensing of the Extended Producer Responsibility schemes for the products category.
7. Requirements for Registration and licensing fees.

This **therefore is a call to all producers, including importers, manufacturers, brand owners**, to immediately apply for registration by logging into NEMA website, licensing portal, Extended Producer Responsibility

The application can be effected through our NEMA portal: www.nema.go.ke. You can download the regulations from the NEMA website www.nema.go.ke for further details on the regulations. For any enquiries contact NEMA on the telephone numbers indicated on the website or via email on info@nema.go.ke

The Authority is committed to ensuring a clean, healthy and sustainably managed environment for a prosperous Nation.

Dated: 18th February, 2025

DIRECTOR GENERAL

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

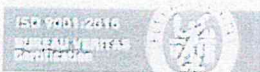
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: @NemaKenya



LEGAL NOTICE NO.....

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT
(No. 8 of 1999)

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (EXTENDED
PRODUCER RESPONSIBILITY) REGULATIONS, 2021**

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 EPR Compliance Schemes
- 9- Requirements for registration of a Producer Responsibility Organization
- 10- Revocation, suspension or cancellation of Registration Certificate
- 11- Approval of EPR Compliance Scheme by Authority
- 12- Role of the Ministry
- 13- EPR Plan
- 14- PRO Obligations
- 15- Charging and Modulation of EPR fees
- 16- PRO finance
- 17- Producer Responsibility Organization Agreements
- 18- PRO Governance
- 19- ~~Number-Nature~~ of PROs 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- EPR and Counties.

25- Role of County Governments

EPRs Schemes and Waste management.

Role of Waste Service Providers and Vulnerable Groups

A chapter should be inserted in the regulations to protect Vulnerable Groups such as waste pickers from exploitation by consumer brands and PROs for the activities they undertake in management of the products waste. These groups undertake activities such as collection, sorting, cleaning, among others to enable recycling, but they are not adequately compensated for their work. This means that the producer responsibility is donated to another party without fair remuneration. The Act should explicitly declare this to be illegal with the tribunal being able to hear such cases. Betterman Simdi Musasi - Clean Up Kenya

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.

32- Role of Public Entities

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, 1999
(No. 8 of 1999)

IN EXERCISE of the powers conferred by section 86 of the Environmental Management and Co-ordination Act, the Cabinet Secretary for Environment and Forestry, on the recommendation of the National Environment Management Authority, makes the following Regulations—

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (EXTENDED
PRODUCER RESPONSIBILITY) REGULATIONS, 2021**

PART I — PRELIMINARY

Citation. 1. These Regulations may be cited as the Environmental Management and Co-ordination (Extended Producer Responsibility) Regulations, 2021.

Interpretation. 2. In these Regulations unless the context otherwise requires—

No. 8 of 1999 “Act” means the Environmental Management and Co-ordination Act;

“actors” refers different players in the extended producer responsibility value chain;

“Authority” means the National Environment Management Authority established under section 7 of the Act;

“Brand” refers to a registered trade mark under which a product is sold.

“Brand owner” refers to the registered owner of the trademark.

“circular economy” refers to initiatives for designing and redesigning out waste from products, extraction of maximum value from natural resources, closing of material loops and creation of new value from materials that would otherwise have been wasted;

“collective EPR Compliance Schemes” refers to producers executing their extended producer responsibility obligations in a producer responsibility organisation;

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

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

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

“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” refers to an environmental management approach in which a producer’s responsibility for a product is extended to the post-consumer stage of a product life cycle;

“environmentally friendly or eco-design” means the practice of reducing environmental degradation and pollution by making products that comply with environmental sustainability that includes but not limited to minimal waste production, reusability, recyclability, compost ability, 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; it includes producers who fail to manage own products at the post-consumer stage; producers who under declare their volumes, or fails to demonstrate fulfilment of individual extended producer responsibility obligations, producer in a pooled scheme who fails to pay their subscriptions, submit accurate information or fulfil their membership requirements;

“individual EPR Compliance Schemes” refers to direct execution of extended producer responsibility obligations by an entity that is a sole producer of a product;

“mandatory initiatives” means initiatives implemented through government regulation;

“Tribunal” means the National Environment Tribunal established under section 125 the Act;

“packaging,” means the material in which a product is

wrapped or covered with in order to protect it or prevent it from being contaminated, sold or transported. in this regulation, packaging shall also be considered as a product;

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

“producer” means an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings;

In case where a converter is selling packaging or manufacturing packaging on behalf of a brand owner, then the brand owner is to be considered as the “producer”.

In case where the brand owner is rebranding for special purposes, the brand owner remains the “producer”.

“product” means a good or packaging introduced in the Kenyan market by any entity or persons through production, importation, franchising, marketing, and distribution outlets 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 EPR Compliance Schemes;

“product life cycle,” means the environmental sustainability of a product 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” means retrieval of materials from waste and includes repair, refurbishment, recycling, remanufacturing, composting, power generation, or any other initiative aimed at extracting value from material that would otherwise have been discarded as waste;

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

“waste” means—

- (a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered and includes all wastes as municipal waste, domestic waste, waste from agriculture, horticulture waste, aqua culture waste, forestry waste, medical waste, chemical, hazardous and toxic industrial waste, pesticide and toxic substances, but does not include radioactive waste; or
- (b) any other substance, material or object that is not mentioned above but may be defined as a waste by the Cabinet Secretary by notice in the *Gazette*;
- (c) any waste or portion of waste, referred to in paragraphs (a) and (b) ceases to be a waste—
 - (i) once an application for its re-use, recycling or recovery has been approved by the Authority or, after such approval, once it is, or has been re-used, recycled or recovered;
 - (ii) where approval is not required, once a waste is, or has been re-used, recycled or recovered; or
 - (iii) where the Cabinet Secretary has excluded any waste stream or a portion of a waste stream from the definition of waste; and

“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.

Object and purpose.

3. The object and purpose of these Regulations is to provide for extended producer responsibility for all products and packaging in all phases of their life cycle to enhance environmental sustainability through—
 4. —
 5. — reduction of pollution and environmental degradation;
 6. — sustainable use of natural resources;
 7. — promotion of circular economy;
 8. — reduction of waste at source;
 9. — promotion of environmentally friendly product designs; and
 10. — promotion of a culture of environmental consciousness and responsibility.

The object and purpose of this regulation is to operationalize the Polluter Pays Principle give effect to part 2 section 3(1) "every Kenyan is entitled to a clean and healthy environment and has a duty to safeguard it" and 3(5)(f) "Polluter Pays Principle" of EMCA 1999.

More specifically, this regulation intends to fulfil the following objectives

- (a) Provide an overarching framework for establishment of mandatory EPR schemes
- (b) Optimize life cycle approach to management of products and associated wastes.
- (c) Enhance resource mobilization for management of products and sustainable waste management.
- (d) Operationalization of Polluter Pays Principle
- (e) Promote collaborative approach in management of products associated wastes

Application of the regulations.

11.4. These regulations shall apply to producers, individual EPR Compliance Schemes and PROs for products listed in the first schedule.

PART II- EXTENDED PRODUCER RESPONSIBILITY OBLIGATION AND RESPONSIBILITIES

Extended producer responsibility obligations.

12.5. (1) Every producer shall bear extended producer responsibility obligation to reduce pollution and environmental impacts of the product that they introduce in 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 schemes system which may include a deposit refund system;

This clause is very vague. It could be improved by making mandatory deposit refunds the primary basis for producer responsibility. Use of the word 'may' suggests that producers can only adopt deposit refund systems only if they wish to.

The Authority or Cabinet Secretary needs to be given authority to from time to time publish a list of products which are subject to mandatory or non-mandatory refunds in a Gazette Notice with these publications being informed by among others, the inability to significantly reduce the waste stream from the environment by

other EPR mechanisms such as take backs and collections, or the design of the product which makes a deposit refund scheme impractical.

For example, hazardous products such as vehicle batteries, glass and certain aspects of plastics like PETs should be subject to mandatory deposit schemes.

Deposit return schemes are effective and well-evidenced pollution-prevention strategies. The introduction of DRS can also be a critical influencer for reuse and a key mechanism to help companies achieve recycled content targets and is also the key to circular economy.

For this reason, the First Schedule should be removed from the Act with the NEMA or the Cabinet Secretary given authority to publish this afterwards in a Gazette Notice and review and publish new notices as more evidence is presented. Betterman Simidi Masasi – Clean Up Kenya

- (b) setting up individual or collective EPR Compliance Schemes or join a collective EPR 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 material 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.

Execution of
extended
producer
responsibility
obligations.

- 13.6. (1) Every producer shall fulfil the obligations in regulation 5 by setting up individual or joining an established collective EPR Compliance Schemes(s).
- (2) A producer may transfer part of or the entire extended producer obligations subject to a membership agreement to a collective EPR Compliance Schemes through a producer responsibility organisation, in which they take membership.
- (3) A producer's obligation in a collective scheme shall include, but not be limited to, payment of membership fees to a registered and licensed producer responsibility organization.
- (4) Notwithstanding the provisions in sub regulation (2) and (3) above, lack of an established EPR Compliance Schemes shall not exempt any producer from extended producer responsibility obligations.

Products
covered under
extended
producer
responsibility

- ~~14.7.~~ (1) The products covered under these Regulations shall primarily 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

(2) The Authority shall, in addition to the products listed in the First Schedule, provide a list of products which from time to time may be subjected to extended producer responsibility compliance schemes.

(3) The development or amendments to the first schedule is informed by

(i) the ease of doing business

(ii) interrelatedness of functions and/or sectors (iii) economics of scale

(iv) PRO management viability

(v) prioritization of pollution by the product or packaging

PART III- REGISTRATION OF PRODUCER RESPONSIBILITY ORGANIZATIONS

Registration
of EPR
Compliance
Schemes.

- ~~15.8.~~ (1) A producer shall not introduce a product listed in the First Schedule of this Regulations into the country, unless they have obtained producer responsibility registration from the Authority.
- (2) A producer shall apply to the Authority for producer responsibility registration in Form A set out in the Second Schedule and pay the fee set out in the Sixth Schedule.
- (3) A producer responsibility organisation shall apply to the Authority for registration in Form B set out in the Second Schedule and pay the fee set out in the Sixth Schedule.

- (4) Every producer shall obtain a producer responsibility number, and a producer responsibility organisation shall obtain a producer extended responsibility number from the Authority.
- (5) Every producer responsibility organisation shall register its members using the producer responsibility number obtained under sub regulation (4).
- (6) The Authority shall issue an annual operating licence to individual producers' EPR Compliance Schemes and producer responsibility organisations' that fulfil their performance standards as set out in the work plan, fulfil reporting obligations and assessed to be of good standing by the Authority.
- (7) The Authority may revoke, suspend or cancel an extended producer responsibility Registration Certificate if the individual producer EPR Compliance Schemes or the producer responsibility organisation does not comply with statutory requirement or fails to meet the national target set out in the extended producer responsibility agreement entered into by the actors in the collective scheme.

Requirements
for
registration of
a Producer
Responsibility
Organization

- ~~16.9.~~ (1) The requirements for registration or renewal of a producer responsibility organization shall be as provided under Fourth Schedule.
- (2) The Authority shall issue an interim permit in set out in the Fifth Schedule for a period of ninety days for registration to enable the producer responsibility organization undertake stakeholder engagement.

Revocation,
suspension or
cancellation
of
Registration
Certificate

- ~~17.10.~~ (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 EPR scheme and each individual member of the PRO shall be responsible for the management of post consumer management of their product.
- (3) In case the PRO license is revoked the members shall nominate an interim committee to manage the PRO for a period not exceeding 6 months within which the PRO shall reorganize itself.**
- (4) Where the Authority cancels, revokes or suspends a licence in accordance with this section, the reasons for such action shall be

given to the licensee in writing.

Approval of EPR Compliance Scheme by Authority	<p>18.11. (1) The individual producer responsibility EPR Compliance Schemes systems shall be approved by the Authority for a maximum period of four years (renewable) on condition that the producer demonstrates proof of operational, technical, managerial and financial capacity to meet their EPR obligations and the national targets.</p> <p>(2) The Producer Responsibility Organisation shall be approved by the Authority for a maximum period of 4 years (renewable) on condition that the PRO 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.</p>
Role of the Ministry	<p>19.12. (1) The Ministry shall, upon recommendation from the Authority—</p> <p>(a) <i>Gazette</i> collective national objectives, frameworks and targets for extended producer responsibility compliance schemes;</p> <p>(b) issue appropriate guidelines to support implementation of this regulations; and</p> <p>(c) publicize the national targets and guidelines.</p>
EPR Plan	<p>20.13. Every individual and collective EPR Compliance Schemes shall submit a two-year work plan to the Authority as provided for in the Fourth Schedule.</p>
Producer Responsibility Organisations obligations.	<p>21.14. (1) The Producer Responsibility Organisation shall be responsible for executing extended producer responsibility obligations on behalf of its members.</p> <p>(2) The producer responsibility organization shall take the organisational and management responsibility for collection, sorting, material recovery, recycling, treatment and end of life management of its members' products.</p> <p>(3) The amount, ceiling and collection methods for the financial contribution under sub regulation (1) shall be as set out in the terms of reference of the contract.</p> <p>(4) The PRO shall be responsible establishing post-consumer collection and take back schemes system which may include a deposit refund system.</p>

- (5) 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 sub regulation (10).
- (6) The Producer Responsibility Organisation shall be responsible for modulation of EPR fees according to established environmental criteria 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.
- (7) Subject to conditions and limitations set out in the producer responsibility organization contract, a proportion of the waste recovered may be set aside for reuse or for recovery of usable parts.
- (8) The Producer Responsibility Organisation shall 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.
- (9) Producer responsibility organisational shall undertake market development for the secondary raw materials market of the products under their scope.
- (10) Producer Responsibility Organization shall fund research and development programs on emerging technologies to improve material recovery;
- (11) A Producer Responsibility Organisation recommend to the Authority to restrict or ban harmful or dangerous substances that undermine environmental sustainability in the products of its membership.
- (12) A Producer Responsibility Organisation shall set minimum targets based on the national targets in clause 12(1) for reuse, recycling and recovery for its members and offer incentives for waste service providers and informal waste holders to encourage sorting of waste at source.
- (13) A Producer Responsibility Organisation shall 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.
- (14) i) A Producer Responsibility Organisation may establish any other applicable mechanisms and systems for enforcing extended producer responsibility of its members.

ii) A Producer Responsibility Organisation may verify data provided by producers with relevant agencies

- (15) The producer responsibility organization may be required to 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.
- (16) The producer responsibility organization shall comply with the sustainable waste management objectives set by the Authority.
- (17) All Producer Responsibility Organisation shall ensure effective management and harmonious relations between the different actors involved in the scheme.
- (18) Every Producer Responsibility Organisation shall hold an annual member meeting to deliberate on the progress and performance of the PRO, governance, management and administrative systems.

**Charging and
Modulation of
EPR fees**

22.15. (1) Members to a collective EPR 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 to a collective EPR compliance scheme shall contribute an annual subscription fee towards a collective extended producer responsibility compliance scheme.
- (3) Members to a collective EPR 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 as provided for in Ninth Schedule
- (4) The Extended Producer Responsibility fees shall be modulated based on sustainability measures as provided in the Ninth Schedule.
- (5) The PRO shall submit to the Authority EPR fees structure agreed among members calculated using guidance provided in Ninth Schedule

PRO finance

23.16. (1) The extended producer responsibility fees paid into the PRO 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) To develop secondary markets and uses for the products under their scope;
 - (g) Fund research and development programs and on emerging technologies to improve material recovery removal of pollutants and effective systems for handling post-consumer products;
 - (h) Machinery and equipment to support collection and recovery; and
 - (i) Guide members on eco-design standards of their products and recycler-friendly packaging.
- (2) The fees recovered under sub regulation (1) shall not be used for profit making purposes. All proceeds shall be ploughed back to the scheme to enhance sustainable waste management initiatives.

Producer
Responsibility
Organization
Agreements

24.17. 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.

PRO
Governance

25.18. (1) Members of a producer responsibility organisation are responsible for the management of the Producer Responsibility Organization.

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

For checks and balance, producers should not be shareholders of a PRO. This will create a scenario where the largest producers could have undue influence in the management of PROs. A suggestion could be for PROs to be service providers with some kind of autonomy. The regulation should also be clear on how a PRO is established. A suggestion could be for the Authority to competitively

requests for interests from entities interested in setting up PROs under set guidelines with at least two PROs per category selected.
Betterman Samudi Masasia – Clean Up Kenya

Nature Number of PROs per product	<p>(1) (1) There shall be only one producer responsibility organisation per product.</p> <p>(2) There shall be established Producer Responsibility Organizations as per categories provided in schedule I</p> <p>(2) The PRO shall establish appropriate mechanisms and structures for management of each product under their scope.</p> <p>(2) The Cabinet Secretary on advice of the Authority can review Schedule I.</p> <p>(3) A Producer Responsibility Organization can enter into formal agreements and cooperation frameworks for joint collection, take back schemes including deposit refund systems, treatment and appropriate disposal for the products under their scope.</p> <p>(3)(1) Notwithstanding sub-regulation (1) above, the Authority may allow more than one Producer Responsibility Organisation to accommodate material variation of the product.</p>
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Having one PRO per product category will create an EPR monopoly in the country and is subject to abuse by key industry players and defeat the purpose of the regulations. Betterman Simidi Musasia – Clean Up Kenya

Registration certificate and operating license	<p>(1)(3) (1) The Authority shall issue registration certificate to registered licensed EPR Compliance Schemes for—</p> <p>(a) individual producer responsibility; and</p> <p>(b) producer responsibility organisation.</p> <p>(2) Application for registration and renewal for the individual producer responsibility EPR Compliance Schemes and Collective Producer Responsibility Organisation shall be done in standard forms and submitted to the Authority as prescribed under Schedule Two.</p>
Annual Operating Licence	<p>(2)(4) The Authority shall issue Annual operating license to a registered and licensed EPR Compliance Schemes if the scheme meets the performance and reporting requirements provided under these Regulations and payment of the fee set out in the Sixth Schedule.</p>
Fees	<p>(3)(5) (1) The fee payable under this Regulation shall be as prescribed in the Sixth Schedule of these Regulations.</p> <p>(2) Requirements for registration and renewal shall be as prescribed in the Eighth Schedule.</p>

Renewal of
Registration

~~(4)(c)~~ (1) The renewal of the registration issued under regulation 18 shall be done at the end of the four-year period subject to annual review reports by the Authority.

(2) Any deregistered producer responsibility organization may re-apply subject to fulfilling the conditions and set out requirements.

- (3) The Authority shall establish a reporting mechanism for all the individual and collective extended producer responsibility schemes.

Records
keeping and
reporting

~~(5)(7)~~ (1) All producers shall maintain updated records of products managed, eco-design standards, contracts entered into by licensed waste service providers and Recyclers, and level of performance as per the work plan.

- (2) All EPR Compliance Schemes shall maintain updated records of products managed, eco-design standards, contracts entered into by licensed waste service providers and Recyclers, and level of performance as per the work plan.
- (3) All EPR Compliance Schemes shall publish their annual extended producer responsibility reports by 31st December 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.

PART IV - EPR SCHEMES AND WASTE MANAGEMENT SERVICES

EPR and
Counties

~~(6)(8)~~ The Producer Responsibility Organisations may enter into public private partnerships with county governments for purposes of—

- (a) establishment and operationalization of collection, take back and disposal; or
- (b) setting up material recovery and sustainable waste management facilities.

Role of
County
Governments

26. (a) Implementing devolved function of waste management

(b) Align their waste management laws with the national law

(c) Dispose waste within their county boundaries unless where there is an agreed framework for inter- county transport of waste.

(d) For reasons of benefits from economies of scale, Counties shall cluster into metropolises and pool resources for more effective waste management

(e) Counties shall facilitate or establish MRFs to promote sustainable waste management

(f) Facilitate movement of waste between counties at no costs

- (g) Facilitate establishment of intercountry waste management infrastructure considering economies of scale
- (h) Enhance public awareness on waste segregation and management

EPR Schemes
and Waste
management.

27. EPR Compliance Schemes shall operate under written agreement and contract, with designated waste actors with terms governing their engagement.

PART V-LICENSING, MONITORING AND COMPLIANCE

Role of the
Authority

28. The Authority shall monitor the operation of extended producer responsibility chains and producer responsibility organization, by setting operational rules and targets including—

- (a) registration of producers under the Eighth Schedule bearing extended producer responsibility obligations;
- (b) issue certificate of registration of extended producer responsibility for individual and collective schemes;
- (c) renewal of registration and issuance of annual operating licenses;
- (d) shall determine and review the terms of reference for registration and certifications from time to time;
- (e) undertake periodic review of extended producer responsibility targets;
- (f) shall maintain registration of all licensed producer responsibility both individual and collective which shall be made available to the public;
- (g) updating the list of covered products within the extended producer responsibility;
- (h) maintain an updated register of all registered and licensed individual EPR Compliance Schemes and producer responsibility organisations.
- (i) maintain and update periodic data transmitted by producer responsibility organization;
- (j) publishing annual status reports of EPR Compliance Schemes;

(k) evaluating the operations of extended producer responsibility chains;

(l) ensuring proper implementation of extended producer responsibility schemes, including assessment of product and waste chains (quantities marketed, waste collected and treated, etc.)

(m) verify that producer responsibility organizations comply with the terms of their authorisation, and take measures to sanction those that do not comply.;

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

(o) undertake capacity building and public awareness to support implementation of this regulation.

Oversight

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

(2) All EPR Compliance Schemes shall be monitored and audited annually by the Authority to ascertain whether it has attained its objectives, as well as to determine Kenya's position in relation to the objectives set for waste management.

(3) The data gathered will be used to improve the performance and regulatory process and to sanction actors who are not in compliance, if necessary.

(4) The Authority shall maintain an updated register of all schemes which shall be made available to the public.

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

PART VI – GENERAL PROVISIONS

Appeals.

30. (1) Any person aggrieved by the decision of the Authority can file an Appeal at the National Environment 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;
- (d) the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this regulations made thereunder,

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

Penalties and offences.

31. (1) It shall be an offence for an individual EPR Compliance Schemes or a producer responsibility organization to wilfully fail to undertake their obligation.

(2) Where a producer responsibility organization is found guilty of the offence under sub regulation (1) the cost of management of the said obligation be borne by the offender.

(3) It shall be an offence for a producer or Producer Responsibility Organization to under-declare or give false information on quantities held or managed under the EPR scheme or declare volumes of non-post-consumer products.

(4) 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

(5) Any person who violates the provisions of these Regulations commits an offence and is liable on conviction to imprisonment for such a term not exceeding two years or to fine not less than Kshs two million or not exceeding Kshs four million or to both.

Role of Public Entities

32. Regulators for products and packaging subject to EPR schemes shall on request provide producer related data to the Authority and PROs.

Transitional Provision

32.33. 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 ensure compliance with the provisions of these Regulations.

FIRST SCHEDULE

List of products and packaging subject to extended producer responsibility compliance scheme

- ~~1. Composites.~~
- ~~2. Agricultural film.~~
- ~~3. Batteries.~~
- ~~4. Oils and lubricants.~~
- ~~5. Plastics.~~
- ~~6. Aluminium products.~~
- ~~7. Glass.~~
- ~~8. Electrical and Electronic Equipment (EEE).~~
- ~~9. Furniture.~~
- ~~10. Paper and carton.~~
- ~~11. Mercury Auto Switches and thermostats.~~
- ~~12. Paints.~~
- ~~13. Pharmaceuticals products including packaging.~~
- ~~14. Textiles.~~
- ~~15. Tyres.~~
- ~~16. Automobiles.~~
- ~~17. Leather.~~
- ~~18. Rubber.~~
- ~~19. Agrochemicals and veterinary products including packaging.~~

1. Packaging for non-hazardous products (plastics, papers, aluminium, composite, glass and carton).
2. Hazardous products' packaging (Industrial chemicals, oil and lubricants, pharmaceuticals, agrochemicals, veterinary, cosmetics, paints and solvents) 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, artificial hair, diapers, sanitary towels.

SECOND SCHEDULE: FORMS

FORM A

APPLICATION TO OPERATE INDIVIDUAL /COLLECTIVE PRODUCERS

EXTENDED PRODUCER RESPONSIBILITY SCHEME

1. I hereby apply for a license to undertake Extended Producer Responsibility objectives for
.....(product 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.....

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

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

- i. Manufacturer
- ii. Importer,
- iii. Distributor,
- iv. Converter,
- v. Others..... (please specify)

2.2 List product(s) as per 2.1

.....

2.3 State the nature of product(s) and its packaging (e.g. water packaged in a PET bottle with
seals and labels).

.....

2.4 Describe circular economy initiative for your product(s) [reuse, recyclability, recoverability, energy efficiency]

.....

2.5 What is the 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

- i. A copy of the Certificate of Registration issued by the Registrar of Companies
- ii. Kenya Revenue Authority (KRA) Certificate
- iii. A copy of lease agreement of the facility of operation
- iv. Two-year work plan and budget/financial plan in relation to the proposed scheme Product/Packaging (Individual EPR)
- v. One (1) hard copy of & one (1) soft copy of the work plan according to signed minutes of the engagement with proposed actors of the scheme
- vi. The Extended Producer Responsibility Plan

SECOND SCHEDULE

FORM D

APPLICATION/RENEWAL FOR ANNUAL LICENSE

I hereby apply for a license to undertake extended producer responsibility obligations for..... (product(s) name) of which particulars are given below.

Name and address of the applicant

.....

Physical Address

Postal Address.....

Telephone Number.....

Email Address.....

PIN Number:

Registration number of the Extended Producer Responsibility Scheme

.....

Number of members:

.....

Type of Product(s):.....

.....

Category of Extended Producer Responsibility Scheme

.....

Annual estimated volume or quantity of product:.....

NB. Please attach requirements as outlined in Schedule Eight (8)

Date:.....Signature

Designation /Title

FOR OFFICIAL USE ONLY

Application received by on
.....20.....

Fees paid Kshs(in words)

Director General
National Environment Management Authority

THIRD SCHEDULE

Certificate No.....



EXTENDED PRODUCER RESPONSIBILITY

CERTIFICATE OF REGISTRATION

This certificate has been issued to (Extended Producer Responsibility Organization 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

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 (product(s))

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:

FOURTH SCHEDULE

EXTENDED PRODUCER RESPONSIBILITY (EPR) PLAN

Components of an EPR plan

- (a) Baseline for the products and packaging handled;
- (b) Minimum targets for reuse, recycling or recovery operations;
- (c) Collection, logistics, recycling and composting system and end of life disposal;
- (d) Modulation of EPR membership fees and parameters based on environmental sustainability criteria as stipulated under regulation
- (e) Public awareness and consumer education and information program on waste segregation and proper handling of postconsumer products;
- (f) Verifiable paid up membership;
- (g) List of service providers and actors in the scheme;
- (h) Eco-design guidelines for the products handled by the scheme;
- (i) A mechanism of controlling banned or dangerous substances' in products;
- (j) An annual reporting mechanism;
- (k) Training and capacity building of members and actors in the scheme;
- (l) Organized monitoring of members, product traceability system, inspections with a view of applying sanctions on producers who fail to meet expected requirements;
- (m) Model of financing the scheme and itemized budget based on actual cost;
- (n) Any other actions necessary for execution of responsibility or items prescribed by the Authority.

SCHEDULE V

INTERIM PERMIT FOR PRODUCER RESPONSIBILITY ORGANIZATION

(Extended Producer Responsibility Regulations, 2021)

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

SIXTH SCHEDULE: FEES



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

SEVENTH SCHEDULE

REQUIREMENTS FOR ISSUANCE OF ANNUAL OPERATIONAL LICENSE:

- a) Progress report for the past year
- b) Certified copy of annual returns filled with the registrar of companies including audited financial accounts:
- c) Certified copy of current register of PRO members
- d) Certified copy of agreements with service providers
- e) Work plan for the coming year
- f) Copy of the registration certificate
- g) Updated register of PRO members
- h) Progress report of the previous year (for renewal)
- i) Work plan and budget for the coming year
- j) Audited financial accounts (for renewal)
- k) Proof of payment of prescribed fees

EIGHTH SCHEDULE

a) INDIVIDUAL EPR COMPLIANCE SCHEMES REGISTRATION REQUIREMENTS

Requirements for registration:

- i. A declaration that the company is the sole producer of the product in the country
- ii. Proof of registration as a company.
- iii. Provide an EPR plan (see Schedule Four)
- iv. Provide actual copies of contracts entered into with relevant actors of the EPR scheme.
- v. Payment of the prescribed fees to the Authority
- vi. Provide a dispute resolution mechanism for the actors in the scheme
- vii. Ensure that the Articles and Memorandum of Association of the company declares that the sole business of the company is to undertake EPR obligations on the specific products.

b) PRODUCER RESPONSIBILITY ORGANISATION REGISTRATION REQUIREMENTS

Requirements for interim registration:

- i. The Authority shall advertise a call for applications for establishment of PROs in the newspapers.
- ii. Applicants shall provide the following documents for registration: Minutes of the meeting of PRO category sector members attended by at least 30 companies representing each product; the interim officials; the resolution and a reserved business name after the meeting and

List of membership

- iii. If the Authority receives more than one PRO applications, the interim officials will be given one month to meet and reach consensus for one PRO to be registered and submit minutes of meeting and the joint resolution.
- iv. If the multiple PRO applicants fail to agree, the authority shall choose one applicant to be registered as the PRO.

This is simply going to create an EPR monopoly in the country. Betterman Simidi Musasia – Clean Up Kenya

Requirements for registration / renewal

- i. Proof of registration as a company limited by guarantee as provided by the Companies Act Kenya
- ii. Updated list of membership and fee structure of the membership.
- iii. Provide an EPR plan (see Schedule Four)
- iv. Signed minutes of meetings with relevant actors
- v. Provide copy of lease agreement of the facility of operation
- vi. Payment of the prescribed fees to the Authority
- vii. Provide a dispute resolution mechanism for the actors in the scheme
- viii. Ensure that the Articles and Memorandum of Association of the company declares that sole business of the company is to undertake EPR obligations on the specific products.

ix. The directorship and membership of the company comprises of members of the PRO

- x. Memorandum of Association to declare change of Directorship every two years
- xi. EPR fees structure agreed among members calculated using guidance provided in Schedule Nine
- xii. (For renewal), submit a progress report on achievement of set targets.

NINTH SCHEDULE

Parameters for modulation of EPR fees within a PRO.

- a) Quantity of products introduced to the market.
- b) Existence of mechanism for segregation of products at source.
- c) Recyclability and Recoverability of products.
- d) Existence of markets for use of producer's secondary raw material.
- e) Absence/presence of hazardous or none hazardous but disruptive additives.
- f) Products with or without defined environmental foot prints.

Made on the.....2021.

KERIAKO TOBIKO,
Cabinet Secretary,
Ministry of Environment and Forestry.

SPECIAL ISSUE

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(Legislative Supplement No. 85)

LEGAL NOTICE No. 176

THE SUSTAINABLE WASTE MANAGEMENT ACT

(Cap. 387C)

THE SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCER RESPONSIBILITY) REGULATIONS, 2024

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

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

PART II—EXTENDED PRODUCER RESPONSIBILITY OBLIGATION

- 5—Extended producer responsibility obligations.
- 6—Extended producer responsibility fees.
- 7—Registration of producers.
- 8—Extended producer responsibility obligations.
- 9—Registration of extended producer responsibility schemes.
- 10—Registration of extended producer responsibility compliance schemes.
- 11—Requirements for registration of a producer responsibility organization.
- 12—Approval of extended producer responsibility compliance scheme by Authority.
- 13—Revocation, suspension or cancellation of Certificate of Registration
- 14—Annual operating licence.
- 15—Revocation, suspension or cancellation of licence.
- 16—Extended producer responsibility plan
- 17—Producer responsibility organisations obligations.
- 18—Charging and modulation of extended producer responsibility fees.

PART III— GENERAL PROVISIONS

19— Record keeping and reporting

20— Appeals

21— offences

22— General penalty

23— Transitional provision

FIRST SCHEDULE— List of products and packaging subject
to extended producer responsibility
compliance scheme

SECOND SCHEDULE— Forms

FIRST SCHEDULE— Fees

THE SUSTAINABLE WASTE MANAGEMENT ACT

(Cap. 387C)

IN EXERCISE of the powers conferred by section 13, as read with section 33 of the Sustainable Waste Management Act, the Cabinet Secretary for Environment, Climate Change and Forestry, makes the following Regulations—

THE SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCER RESPONSIBILITY) REGULATIONS, 2024

PART I—PRELIMINARY

1. These Regulations may be cited as the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“agent” means a registered entity contracted by a producer responsibility organization to deliver specific extended producer responsibility services on its behalf;

“brand” means a registered a trade mark under which a product is sold;

“brand owner” means the registered owner of the trademark;

“circular economy” means an environmental management approach that promotes initiatives for designing and redesigning waste from products, extraction of maximum value from natural resources, closing of material loops and creation of new value from materials that would otherwise have been considered as waste;

“collective extended producer responsibility compliance scheme” means a system where producers execute extended producer responsibility obligations in a producer responsibility organisation;

“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 a extended producer responsibility scheme in order to confirm compliance or management systems implementation gaps;

“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;

“environmentally friendly” means the practice of reducing environmental degradation and pollution by making products that comply with environmental sustainability principles including 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 long-term environmental quality;

“free rider” means —

- (a) 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;
- (b) a producer 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 falls on an entity that is a sole producer of a product;

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

“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;

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

“product” means a good or packaging introduced in the 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; and

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

3. The object and purpose of these Regulations shall be to—

Object and
purpose

- (a) extend the responsibility of a producer over a product and its packaging during the life cycle of the product or its packaging;
- (b) provide a framework for the establishment and operation of mandatory extended producer responsibility schemes; and
- (c) the operationalisation of the polluter pays principle.

4. (1) These Regulations shall apply to—

Application of the
Regulations

- (a) producers;
- (b) extended producer responsibility compliance schemes; and
- (c) the products set out in the First Schedule.

(2) These Regulations shall apply to products that produce waste that negatively impact the environment, human and animal health, due to the—

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

PART II—EXTENDED PRODUCER RESPONSIBILITY OBLIGATIONS

5. (1) Pursuant to section 13 of the Act, a producer shall—

Extended
producer
responsibility
obligations

- (a) establish a take back scheme which may include a deposit refund system;
- (b) set up and register an individual or a collective extended producer responsibility compliance scheme;
- (c) join a collective extended producer responsibility compliance scheme;
- (d) register with the Authority;
- (e) provide the Authority with reports of the status of the implementation of their extended producer responsibility obligations to the Authority;
- (f) 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;
- (g) 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;

- (h) provide consumers with information and 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; and
- (j) put in place circular economy initiatives and any other measures to reduce impact of their product on health and environment.

6. (1) Each importer of a finished product set out in the First Schedule shall pay to the Authority, at the point of importation, the corresponding fee set out in the First Schedule.

Extended
producer
responsibility
fees.

(2) Each importer shall, for purposes of importing any of the products set out in the First Schedule, apply to the Authority, at the point of import, for an extended producer responsibility certificate in Form A as set out in the Second Schedule and pay the corresponding product fee set out in the First Schedule.

(3) The application under sub-regulation (2) shall be accompanied by the following—

- (a) a description of the importer;
- (b) documentation showing the nature and quantities of the product; and
- (c) proof of payment of the requisite fee.

(4) The Authority may, within fourteen days of receipt of an application under this regulation—

- (a) approve the application;
- (b) request for further particulars; or
- (c) reject the application.

(5) The Authority shall, in writing, notify the applicant of its decision made under sub-regulation (4), within seven days of making the decision.

(6) Where the Authority approves the application under sub-regulation (4)(a), the Authority shall issue to the importer an Extended Producer Responsibility Certificate in Form B as set out in the Second Schedule.

(7) The Extended Producer Certificate issued under this regulation shall form part of the mandatory clearance and inspection documentation for an importer importing any of the items set out in the First Schedule.

7. (1) A producer shall apply to the Authority for registration as a producer in Form C as set out in the Second Schedule and pay the fee set out in the Third Schedule.

Registration of
producers.

(2) The application under sub-regulation (1) shall be accompanied by the following documents—

- (a) a copy of the Registration Certificate issued by the Registrar of Companies;
- (b) a document indicating the goods, product and packaging introduced into the country; and
- (c) proof of payment of the requisite fee.

(3) The Authority shall, within fourteen days of receipt of an application for registration under this regulation —

- (a) approve the application;
- (b) request for further particulars; or
- (c) reject the application.

(4) The Authority shall, in writing, notify the applicant of its decision made under sub-regulation (3), within seven days of making the decision.

(5) Where the Authority approves the application for registration under sub-regulation (3)(a), the Authority shall issue to the producer a Registration Certificate in Form D set out in the First Schedule.

(6) Where the Authority rejects the application for registration under sub-regulation (3)(c), the applicant shall have a right to appeal to in accordance with section.

8. (1) Every producer shall, upon registration, fulfil the obligations set out in regulation 5 either individually or collectively by—

Extended
producer
responsibility
obligations.

- (a) setting up an individual producer responsibility compliance scheme; or
- (b) joining a 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 the producer takes membership.

(3) Despite sub-regulation (1), the lack of an established extended producer responsibility compliance scheme shall not exempt a producer from the extended producer responsibility obligations under regulation 5.

9. (1) The Authority shall register extended producer responsibility schemes as—

Registration of
extended producer
responsibility
schemes.

- (a) individual producer responsibility compliance schemes where there is a single producer; or

- (b) collective producer responsibility compliance schemes where there is more than one producer.

(2) For the purposes of sub-regulation (1)(b), the collective schemes shall be established on the basis of similarity of products, their uses and the nature of waste arising therefrom.

(3) The registered extended producer responsibility schemes shall establish appropriate mechanisms and structures for the management of each product under its respective category.

10. (1) For the purposes of regulation 9, a producer shall apply to the Authority for registration of an individual extended producer responsibility compliance scheme in Form E as set out in the Second Schedule and pay the fee set out in the Third Schedule.

Registration of individual extended producer responsibility compliance schemes.

(2) The application under sub-regulation (1) shall be accompanied by the following—

- (a) a declaration that the applicant is the producer of the product in the country;
- (b) a certificate of conformity issued by the relevant authority in respect of the products produced by the producer;
- (c) a copy of registration certificate from the Registrar of Companies;
- (d) a copy of the producer's extended producer responsibility plan;
- (e) copies of agreements entered into with approved waste service providers; and
- (f) proof of payment of the requisite fees.

(3) The Authority may, within fourteen days of receipt of an application for registration under this regulation —

- (a) approve the application;
- (b) request for further particulars; or
- (c) reject the application.

(4) The Authority shall, in writing, notify the applicant of its decision made under sub-regulation (3), within seven days of making the decision.

(5) Where the Authority approves the application for registration under sub-regulation (3)(a), the Authority shall issue to the producer a Registration Certificate in Form F as set out in the Second Schedule.

11. (1) A collective extended producer responsibility organisation shall, before implementing an extended producer responsibility on behalf of its members, apply to the Authority for registration in Form E as set out in the Second Schedule and pay the fee set out in the Third Schedule.

Requirements for registration of a producer responsibility organization.

(2) The application under sub-regulation (1) shall be accompanied by the following—

- (a) proof of registration by the Registrar of Companies under the Companies Act; Cap. 486.
- (b) a certified copy of the most recent register of the members of the extended producer responsibility organisation;
- (c) copies of the Extended Producer Responsibility Registration Certificates issued to each member of the extended producer responsibility organisation;
- (d) certified copy of agreements with the approved waste service providers;
- (e) a copy of the extended producer responsibility fee structure agreed among the members of the extended producer responsibility organisation;
- (f) a progress report on achievement of set targets, in case of renewal of registration;
- (g) a copy of the annual Extended Producer Responsibility audit, in case of renewal of registration;
- (h) report conducted by an independent auditor approved by the Authority, in case of renewal of registration;
- (i) a list of the directors of the company issued by the Registrar of Companies;
- (j) a copy of the PIN Certificate issued by the Kenya Revenue Authority;
- (k) a copy of a lease agreement or proof of ownership of the facility of operation;
- (l) an extended producer responsibility plan prepared in accordance with these Regulations;
- (m) a budget or financial plan for the extended producer responsibility scheme;
- (n) a copy of signed minutes of the meeting adopting the updated extended producer responsibility plan signed by representatives of products within the category;
- (o) an organogram for the producer responsibility organisation;
- (p) work plan and budget for the coming year;
- (q) certified copy of annual audited financial accounts;
- (r) copy of a dispute resolution mechanism for the members participating in the extended producer responsibility scheme;
- (s) 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

(1) proof of payment of the relevant fees

(3) The Authority may, within fourteen days of receipt of an application for registration under this regulation —

- (a) approve the application;
- (b) request for further particulars; or
- (c) reject the application.

(4) The Authority shall, in writing, notify the applicant of its decision made under sub-regulation (3), within seven days of making the decision.

(5) Where the Authority approves the application for registration under sub-regulation (3)(a), the Authority shall issue to the producer a registration certificate in Form F as set out in the Second Schedule.

(6) The certificate of registration issued under sub-regulation (5) shall indicate the extended producer responsibility number.

(7) A producer shall not switch from one collective extended producer responsibility scheme to another unless at the beginning of a new contract year and after giving a three months' notice to the collective extended producer responsibility scheme and copying the same to the Authority.

12. (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.

Approval of
extended producer
responsibility
compliance
scheme by
Authority.

(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.

13. (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.

Revocation,
suspension or
cancellation of
Certificate of
Registration.

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

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

Annual operating
licence

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 Extended Producer Responsibility Registration Certificate;
- (f) a work plan and budget for the coming year;
- (g) proof of payment of the fees set out in the Third Schedule; and
- (h) a duly executed resolution of the company.

(3) The Authority shall, within fourteen days of receipt of an application for registration under this regulation —

- (a) approve the application;
- (b) request for further particulars; or
- (c) reject the application.

(4) The Authority shall, in writing, notify the applicant of its decision made under sub-regulation (3), within seven days of making the decision.

(5) Where the Authority approves the application for an annual operating licence under sub-regulation (3)(a), the Authority shall issue an annual operating licence in Form H as 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.

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

Revocation
suspension or
cancellation of
licence

- (a) cancel or revoke such licence; or
- (b) suspend such licence for such time as the Authority may deem fit,

where the licensee contravenes the conditions of the licence.

(2) 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.

(3) Where a licence is revoked, suspended or cancelled under this regulation, the holder of the licence 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.

(4) Where the Authority revokes the licence of the producer responsibility organisation—

- (a) an individual member of the organisation may proceed to join another producer responsibility organisation; and
- (b) the members of the organisation 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 reorganise itself.

(5) For purposes of this regulation, the Authority may prohibit the producer from placing the affected product and packaging in the market.

16. (1) Every individual and collective extended producer responsibility compliance scheme shall, prior to registration develop and submit a four-year extended producer responsibility plan to the Authority indicating the following—

Extended
producer
responsibility
plan

- (a) the baseline for the products and packaging handled;
- (b) plan for safe handling, processing and disposal of one hundred per centum 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.

17. A producer responsibility organisation shall—

Producer
responsibility
organisations
obligations

- (a) at an agreed upon fee, be responsible for executing extended producer responsibility obligations on behalf of its members;
- (b) undertake market development for the secondary raw materials market of the products under their scope;
- (c) establish research and development programs with registered research institutions on emerging technologies to improve material recovery, removal of pollutants and effective systems for handling post-consumer products; and
- (d) execute any other obligations set by the Authority for purposes of ensuring compliance with these Regulations.

18. (1) Each member 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, varying from one producer to another, taking into account the—

Charging and
modulation of
extended producer
responsibility
fees.

- (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;
- (f) products with or without defined environmental foot prints; and
- (g) fulfilment of extended producer responsibility obligations.

(2) The collective extended producer responsibility compliance scheme shall submit to the Authority extended producer responsibility

FOURTH SCHEDULE

(s. 7B(21))

GOODS SUBJECT TO ECO LEVY

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
1. Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) – other.	8472 90.00	98 per unit
2. Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions: accounting machines, postage franking machines, ticket-issuing machines and similar machines, incorporating a calculating device: cash registers – incorporating a printing device.	8470 21.00	225 per unit
3. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – Portable automatic data processing machines, weighing not more than 10kg, consisting of at least a central processing unit, a keyboard and a display.	8471 30.00	225 per unit
4. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined.	8471 41.00	225 per unit
5. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing	8471 49.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other, presented in the form of systems.		
6. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – processing units other than those of sub-heading 8471.41 or 8471.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units.	8471.50.00	225 per unit
7. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – input or output units, whether or not containing storage units in the same housing.	8471.60.00	225 per unit
8. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other units of automatic data processing machines.	8471.80.00	225 per unit
9. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other.	8471.90.00	225 per unit
10. Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, com-	8472.90.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (\$/s.)</i>
sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) - other.		
11. parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 84.70 to 84.72. Parts and accessories of automatic data processing machines and units thereof - parts and accessories of the machines of heading 84.71.	8473.30.00	98 per unit
12. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 - line telephone sets with cordless handsets.	8517.11.00	225 per unit
13. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 - smartphones.	8517.13.00	225 per unit
14. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice,	8517.14.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – Other telephones for cellular networks or for other wireless networks.		
15. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other.	8517.18.00	225 per unit
16. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network); base stations.	8517.61.00	225 per unit
17. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice,	8517.62.00	225 per unit

Description	Tariff number	Eco Levy rate (Shs.)
images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network); base stations; machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.		
18. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network); base stations; other.	8517.69.00	225 per unit
19. Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets – microphones and stands therefor	8518.10.00	98 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (\$hs.)</i>
20. Sound recording or reproducing apparatus – using magnetic, optical or semiconductor media.	8519.81.00	98 per unit
21. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – transmission apparatus for radio-broadcasting or television.	8525.50.00	98 per unit
22. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – transmission apparatus incorporating reception apparatus.	8525.60.00	98 per unit
23. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – high-speed goods as specified in Subheading Note 1 to this Chapter.	8525.81.00	98 per unit
24. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – Television cameras, digital cameras and video camera recorders; Other, radiation-hardened or radiation-tolerant goods as specified in Subheading Note 2 to this Chapter.	8525.82.00	98 per unit
25. Transmission apparatus for radio-broadcasting or television.	8525.83.00	98 per unit

Description	Tariff number	Eco Levy rate (Shs.)
whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – television cameras, digital cameras and video camera recorders; other, night vision goods as specified in Subheading Note 3 to this Chapter.		
26. Transmission apparatus for radio- broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – television cameras, digital cameras and video camera recorders; other.	8525.89.00	98 per unit
27. Radar apparatus, radio navigational aid apparatus and radio remote control apparatus – other; radio navigational aid apparatus.	8526.91.00	98 per unit
28. Reception apparatus for radio- broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radio- broadcast receivers capable of operating without an external source of power; pocket-size radio cassette- players.	8527.12.00	225 per unit
29. Reception apparatus for radio- broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radio- broadcast receivers capable of operating without an external source of power; other apparatus combined with sound recording or reproducing apparatus.	8527.13.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
30. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radio-broadcast receivers capable of operating without an external source of power; other.	8527.19.00	225 per unit
31. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles; combined with sound recording or reproducing apparatus.	8527.21.00	225 Per Unit
32. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles; other.	8527.29.00	225 per unit
33. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – other; combined with sound recording or reproducing apparatus.	8527.91.00	225 per unit
34. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – other; not combined with sound recording or reproducing apparatus but combined with a clock.	8527.92.00	225 per unit
35. Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – other; other.	8527.99.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
36. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; not designed to incorporate a video display or screen.	8528.71.00	1275 per unit
37. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; other, colour; unassembled.	8528.72.10	1275 per unit
38. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; other, monochrome; unassembled.	8528.73.10	1275 per unit
39. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording	8528.73.90	1275 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
or reproducing apparatus: other, monochrome: other.		
40. Thermionic, cold cathode or photo-cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode-ray tubes, television camera tubes) – cathode-ray television picture tubes, including video monitor cathode-ray tubes: colour.	8540.11.00	1800 per unit
41. Thermionic, cold cathode or photo-cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode-ray tubes, television camera tubes) – cathode-ray television picture tubes, including video monitor cathode-ray tubes: monochrome.	8540.12.00	1800 per unit
42. Thermionic, cold cathode or photo-cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode-ray tubes, television camera tubes) – television camera tubes, image converter and other photocathode tubes.	8540.20.00	1800 per unit
43. Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 90.28; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations – other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers).	9030.40.00	98 per unit
44. Rubber tyres of Chapter 40		1000 per unit
45. Diapers of Chapter 96		150 per kg

Description	Tariff number	Eco. Levy rate (Shs.)
46. Batteries or dry cells of Chapter 85		750 per kg
47. Plastic packing materials of Chapter 39		150 per kg

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MILIMANI LAW COURTS
PETITION NO. OF 2025

IN THE MATTER OF ARTICLES 2(4),2(5), 2(6), 10, 19, 20,21,22, 23, 35, 36, 42,
46, 47, 69, 114, 165(3), 201,209 AND 258 OF THE CONSTITUTION OF KENYA,
2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES

AND

IN THE MATTER OF SECTION 5, 5A, 6, 7, 8 AND 13 OF THE STATUTORY
INSTRUMENTS ACT, 2023 (CAP 2A)

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

IN THE MATTER OF THE SUSTAINABLE WASTE MANAGEMENT ACT,2022

AND

IN THE MATTER OF THE SUSTAINABLE WASTE MANAGEMENT (EXTENDED
PRODUCER RESPONSIBILITY) REGULATIONS, 2024

AND

IN THE MATTER OF PUBLIC PARTICIPATION AND LEGITIMATE EXPECTATION.

AND

IN THE MATTER OF: THE DOCTRINES OF NATURAL JUSTICE,
CONSTITUTIONALISM, RULE OF LAW AND VOID FOR VAGUENESS.

BETWEEN

SOLLO NZUKI..... PETITIONER

AND

MINISTRY OF ENVIRONMENT AND FORESTRY 1ST RESPONDENT

THE NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY 2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

THE NATIONAL ASSEMBLY.....4TH RESPONDENT

AND

ALCOHOL BEVERAGES ASSOCIATION OF KENYA.....1ST INTERESTED PARTY

KENYA ASSOCIATION OF MANUFACTURERS.....2ND INTERESTED PARTY

THE SENATE3RD INTERESTED PARTY

KENYA NATIONAL CHAMBERS

OF COMMERCE AND INDUSTRY4TH INTERESTED PARTY

THE COUNCIL OF GOVERNORS5TH INTERESTED PARTY

KENYA PRIVATE SECTOR ALLIANCE6TH INTERESTED PARTY

PETITION

TO: THE HIGH COURT OF KENYA

NAIROBI

The Humble Petition of **SOLLO NZUKI** of P.O. Box 45707 - 00100 Nairobi within the Republic of Kenya is as follows: -

A. DESCRIPTION OF THE PARTIES

1. The Petitioner is a male Adult of sound mind residing and working for gain in Nairobi within the Republic of Kenya. His address for service is care of **Miller & Company Advocates, 8th Floor, Flamingo Towers, Mara Road, Upperhill, P.O. Box 45707 - 00100, Nairobi, Kenya. Email: - info@mlradvocates.com**
2. The 1st Respondent is a government ministry charged with the responsibility of formulating and overseeing policies on environment and forestry in Kenya and has its registered offices at Nairobi within the Republic of Kenya.
3. The 2nd Respondent is a statutory agency mandated under the Environmental Management and Coordination Act (EMCA) to oversee and enforce environmental regulations and compliance in Kenya and has its registered office at Nairobi within the Republic of Kenya.
4. The 3rd Respondent is the Chief Legal Advisor to the Government and has its registered offices at Nairobi within the Republic of Kenya.
5. The 4th Respondent is a constitutional organ mandated to scrutinize legislation and exercise oversight in accordance with Article 94 of the Constitution and has its registered offices at Nairobi within the Republic of Kenya.

6. The 1st Interested Party is a private sector association representing stakeholders in the alcoholic beverages industry and has its registered office at Nairobi within the Republic of Kenya.
7. The 2nd Interested Party is a private sector body and a premier representative for manufacturing and value-add industries and has its registered office at Nairobi within the Republic of Kenya.
8. The 3rd Interested Party is one of the two Houses of Parliament established under Article 93 of the Constitution, mandated to represent and protect the interests of counties and has its registered offices at Nairobi within the Republic of Kenya.
9. The 4th Interested Party is a private sector organization established to represent and promote the interests of the business community in Kenya and has its registered office at Nairobi within the Republic of Kenya.
10. The 5th Interested Party is a body established under the Intergovernmental Relations Act to represent the interests of county governments and promote consultation and cooperation between national and county governments and has its registered office at Nairobi within the Republic of Kenya.
11. The 6th Interested Party is an umbrella body representing the interests of the private sector in Kenya and has its registered office at Nairobi within the Republic of Kenya.

B. LEGAL FOUNDATIONS OF THE PETITION

a. Constitutional Provisions

12. **Article 2(4)** provides that any law, including delegated legislation, or conduct that is inconsistent with the Constitution is invalid to the extent of the inconsistency.
13. **Article 2(5) and 2(6)** recognize general rules of international law and treaties ratified by Kenya as part of Kenyan law.
14. **Article 10** sets out national values and principles of governance, including public participation, transparency, accountability, good governance, and the rule of law. These values are binding on all state organs and public officers when making or implementing public policy decisions.
15. **Article 19** affirms that the Bill of Rights is an integral part of Kenya's democratic state and guarantees the protection of fundamental rights and freedoms.

16. Article 22 allows every person the right to institute court proceedings where a right or fundamental freedom in the Bill of Rights has been violated, is being violated or is likely to be violated.
17. Article 23 vests the High Court with jurisdiction to hear and determine applications for the enforcement of fundamental rights and to grant appropriate reliefs, including declarations of invalidity, judicial review orders and injunctive relief.
18. Article 35 guarantees the right to access information held by the state and public bodies.
19. Article 36 protects the freedom of association, including the right to form or join associations.
20. Article 42 and 69 underscore the right to a clean and healthy environment and impose duties on the State to establish a framework for sustainable environmental protection. However, environmental regulation must be lawful, rational, proportionate, and subject to procedural safeguards.
21. Article 46 protects consumers from unfair trade practices and arbitrary impositions. The levies imposed under the Regulations indirectly burden consumers by increasing the cost of goods without a legal basis or consumer protection mechanism.
22. Article 47 guarantees every person the right to administrative action that is lawful, reasonable, and procedurally fair.
23. Article 110(3) provides that before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.
24. Articles 201 and 209 govern public finance and taxation. Article 201 lays down the principles guiding all aspects of public finance in Kenya, emphasizing openness, accountability, and public participation. In turn, Article 209 restricts the power to impose taxes and charges to Parliament.
25. Article 258 provides for the right of any person to institute proceedings claiming that the Constitution has been contravened or is threatened with contravention.

b. Statutory Provisions

26. Section 5 of the Statutory Instruments Act provides that a regulation making authority must consult with persons likely to be affected by the proposed instrument.

27. **Section 6** of the Statutory Instruments Act requires the preparation of a Regulatory Impact Statement (RIS) for any statutory instrument that is likely to impose significant costs on the community or a part of the community.
28. **Section 4(1), (2) and (3)** of the Fair Administrative Action Act guarantees every person has the right to administrative action, which is expeditious, efficient, lawful, reasonable and procedurally fair.
29. **Section 6** of the Fair Administrative Action Act provides that where an administrative action affects a person, they are entitled to a written explanation of the decision.
30. **Section 4(f)** of the Sustainable Waste Management Act requires stakeholder involvement in waste management decision-making.
31. **Section 13(3)** of the Sustainable Waste Management Act empowers the Cabinet Secretary to make regulations for the implementation of EPR, in consultation with stakeholders.
32. **Section 9(1)** of the Environmental Management and Coordination Act (EMCA) outlines the functions of the 2nd Respondent such as coordination, enforcement, and compliance monitoring among the 2nd Respondent's roles but does not include tax or levy collection.
33. **Section 86** of EMCA provides that the 2nd Respondent may propose environmental levies through the CS for approval but not to administer or collect them directly.
34. **Section 114 & 115** of the East African Community Customs Management Act (EACCMA) provides that all import duties and taxes must be legislated and implemented by the revenue authority.
35. **Article 75(4)** of the East African Community (EAC) Treaty states that partner states shall not impose new duties or levies or increase existing levies on products traded within the community.
36. **Article 80(1)** of the East African Community (EAC) Treaty mandates that the partner states are to take measures to ensure that they avoid double taxation.
37. **Article 161** of the COMESA Treaty requires states to ensure that they conclude agreements to ensure that they avoid double taxation.

C. FACTS RELIED UPON

38. The Petitioner is a Kenyan citizen and a public interest advocate actively engaged in matters of governance, environmental justice, and constitutional compliance in

- regulatory frameworks. He brings this Petition to challenge the legality and constitutionality of the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 (hereafter "the Regulations").
39. The Petitioner avers that on or about 4th November 2024, the Cabinet Secretary of the Ministry of Environment, Climate Change and Forestry, published Legal Notice No. 176 of 2024, enacting the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 (hereafter "the Regulations").
40. The Regulations were made pursuant to Section 13(3) of the Sustainable Waste Management Act, 2022, and purport to introduce an Extended Producer Responsibility (EPR) regime requiring all producers, importers, and brand owners of specified products to subscribe to Producer Responsibility Organizations (PROs) and to make monthly and per-item financial contributions.
41. Regulation 21 and Schedule 2 of the said Regulations impose:
- a. A monthly mandatory payment by producers to designated PROs;
 - b. An eco-levy of Kshs. 150 per item of packaging material on imported products;
 - c. A provision authorizing the 2nd Respondent to retain 5% of total collections from PROs for administration and enforcement.
42. Despite the significant fiscal and economic impact of these Regulations, the Cabinet Secretary and the 1st Respondent did not conduct a Regulatory Impact Assessment (RIA) as required by Section 6 of the Statutory Instruments Act, nor did they publish or circulate any such document for scrutiny or public comment.
43. Furthermore, the process leading to the enactment of the Regulations was devoid of meaningful public participation, contrary to the requirements of Articles 10 and 118 of the Constitution and Section 5 of the Statutory Instruments Act. There were no public forums, stakeholder meetings, or consultations with affected industry actors.
44. The term "per item", used to define the basis of the Kshs. 150 eco-levy is vague and undefined in both the Regulations and the parent Act. This opens the door to arbitrary interpretation and enforcement, contrary to the doctrine of legal certainty and the right to fair administrative action under Article 47.
45. The eco-levy is similar to the proposed eco-levy that was in the rejected Finance Bill 2024 that sought to levy a Kshs. 150 tax on imported plastic packaging as well as a levy on batteries that has been similarly placed in the First Schedule of the impugned Regulations.

46. Additionally, the 2nd Respondent's role in the collection of the eco-levy and the retention of a 5% administrative cut constitutes an ultra vires exercise of power, and is inconsistent with both EMCA and the Public Finance Management Act.
47. The 2nd Respondent is not mandated to levy import fees nor collect and retain collections from PROs under the Environmental and Management Act and the Sustainable Waste Management Act.
48. The levies imposed under the EPR Regulations duplicate existing fiscal obligations already paid by producers and importers under other statutes, including:
- a. The East African Community Customs Management Act (EACCMA);
 - b. The Excise Duty Act and other trade-related instruments.
49. Further, the eco-levy of Kshs. 150 per unit of packaging material on imported products is charged at the point of entry and the mandatory monthly payment to the PRO's is computed based on the sales made. This means that the manufacturer or producer is charged twice for the same items.
50. This results in double taxation, which is unlawful and unconstitutional, causes a distortion of the cost of goods and creates a barrier to trade, especially for imported products, contravening Article 210 of the Constitution and Kenya's obligations under Article 80(1) of the EAC and Article 161 of the COMESA treaties.
51. The sudden imposition of the EPR Regulations, without transitional provisions or stakeholder engagement, defeated the legitimate expectation of affected parties that new environmental regulations would be:
- a. Reasonable and proportionate;
 - b. Anchored in legislative frameworks;
 - c. Aligned with previously established compliance systems under EMCA; and
 - d. Preceded by structured, inclusive dialogue with stakeholders.
52. In view of the above, the Petitioner is aggrieved by the unconstitutional, procedurally defective, and economically punitive nature of the EPR Regulations, and seeks judicial intervention to safeguard the rule of law, public accountability, and the constitutional limits on executive and regulatory power.

D. VIOLATIONS OF THE LAW

53. The Respondents failed to conduct genuine, open, and inclusive public participation prior to enacting the EPR Regulations contrary to Article 10 of the Constitution. No public notices were issued, no industry consultations held, and no records of

stakeholder engagement availed. This breached the national values of transparency, accountability, and participation.

54. The Regulations were implemented without clarity, predictability, or procedural fairness in contravention to Article 47 and Section 4 of the Fair Administration Act. The use of vague terminology like "per item" is not defined and is void for vagueness. There was no opportunity for affected persons to comment, seek clarification, or be heard, thereby violating the right to fair administrative action.
55. The Regulations were considered by the National Assembly without the concurrence of the Speakers of the National Assembly and Senate as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill contrary to Article 110(3) of the Constitution of Kenya.
56. The Respondents violated Article 201 of the Constitution, which sets out the principles of public finance, including openness, accountability, and public participation in financial matters. The imposition of financial obligations under the EPR Regulations without public consultation, transparency, or legislative scrutiny offends these principles and amounts to unconstitutional fiscal conduct.
57. Article 210(1) of the Constitution provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation. The Respondents imposed tax-like charges through executive fiat, without enabling legislation or parliamentary approval, in clear breach of constitutional safeguards.
58. The Regulations were promulgated without due regard to Sections 5, 6, 11, and 13 of the Statutory Instruments Act, i.e., without a Regulatory Impact Assessment (RIA) as required under Section 6 and without public participation under Section 5. This renders the Regulations procedurally unlawful and invalid.
59. By promulgating delegated legislation that contradicts constitutional safeguards on taxation, public finance, and legislative process, the Respondents acted ultra vires and violated Article 2(4) of the constitution. The Constitution is supreme, and any law or conduct inconsistent with it is void to the extent of the inconsistency.
60. The mandatory registration with a limited number of Producer Responsibility Organizations (PROs), coupled with fixed monthly payments, amounts to coercive association and thereby infringing the freedom of association of affected producers, manufacturers, and importers as provisioned under Article 36 of the Constitution.

61. While environmental protection is a constitutional imperative, the approach adopted in the EPR Regulations lacks proportionality, technical justification, and proper stakeholder engagement. This undermines sound environmental governance envisioned under Article 69 of the constitution.
62. Stakeholders had a legitimate expectation that the new regulatory framework under the Sustainable Waste Management Act, 2022 would be harmonized with the previously drafted EMCA(EPR) Regulations, developed transparently, informed by existing EPR mechanisms and implemented in a phased and consultative manner. The impugned Regulations violated this expectation and introduced abrupt, punitive, and non-consultative obligations.

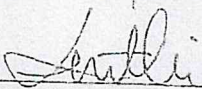
E. RELIEFS

- i. A declaration that Regulations 3,4, 6, 7, 10, 11, 14, 18, 23, and the First Schedule of the Sustainable Waste Management Regulations, 2024 (Legal Notice No. 176 of 2024) are unconstitutional, illegal, null and void for violating Articles 2(4), 10, 47, 201 and 210 of the Constitution of Kenya.
- ii. An order of prohibition restraining the 1st and 2nd Respondents from implementing, applying, or enforcing Regulation 3,4,6, 7, 10, 11, 14, 18, 23 and the First Schedule of Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 or any part thereof, or from collecting or demanding any payments, levies or compliance arising from them.
- iii. A declaration that the imposition of the Kshs. 150 per item eco-levy and the monthly payment to Producer Responsibility Organizations (PROs) under the First Schedule of the said Regulations constitutes an unlawful tax imposition that is in violation of Article 210 of the Constitution.
- iv. A declaration that the 1st Respondent lacks the constitutional and statutory mandate, as provisioned under Section 9(2) (i) of EMCA, to administer, retain or collect any fiscal levies or taxes, and that its enforcement of the Regulations is ultra vires.
- v. An order of certiorari quashing the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 (Legal Notice No. 176 of 2024) in their entirety.
- vi. A declaration that the Respondents violated the Petitioner's and stakeholders' constitutional rights to fair administrative action under Article 47 of the

Constitution, freedom of association under Article 36 of the Constitution, access to information under Article 35 of the Constitution, and public participation as provisioned under Article 10 of the Constitution and Section 5 and 6 of the Statutory Instruments Act, and breached the legitimate expectation of affected stakeholders.

- vii. A declaration that the quashing the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 (Legal Notice No. 176 of 2024) for lack of concurrence between the Speaker of the National Assembly and the Speaker of the Senate contrary to Article 110(3) of the Constitution.
- viii. Costs of this Petition
- ix. Any other relief or orders this Honourable Court may deem fit and just to grant.

DATED at NAIROBI this 30th day of April 2025.


MILLER & COMPANY
ADVOCATES FOR THE PETITIONER

DRAWN & FILED BY:-

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MILIMANI LAW COURTS
PETITION NO. _____ OF 2025

IN THE MATTER OF ARTICLES 2(4),2(5), 2(6), 10, 19, 20,21,22, 23, 35, 36, 42,
46, 47, 69, 114, 165(3), 201,209 AND 258 OF THE CONSTITUTION OF KENYA,
2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES

AND

IN THE MATTER OF SECTION 5, 5A, 6, 7, 8 AND 13 OF THE STATUTORY
INSTRUMENTS ACT, 2023 (CAP 2A)

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

IN THE MATTER OF THE SUSTAINABLE WASTE MANAGEMENT ACT, 2022

AND

IN THE MATTER OF THE SUSTAINABLE WASTE MANAGEMENT (EXTENDED
PRODUCER RESPONSIBILITY) REGULATIONS, 2024

AND

IN THE MATTER OF PUBLIC PARTICIPATION AND LEGITIMATE EXPECTATION.

AND

IN THE MATTER OF: THE DOCTRINES OF NATURAL JUSTICE,
CONSTITUTIONALISM, RULE OF LAW AND VOID FOR VAGUENESS.

BETWEEN

SOLLO NZUKI..... PETITIONER

AND

MINISTRY OF ENVIRONMENT AND FORESTRY 1ST RESPONDENT

THE NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY 2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

THE NATIONAL ASSEMBLY.....4TH RESPONDENT

AND

ALCOHOL BEVERAGES ASSOCIATION OF KENYA.....1ST INTERESTED PARTY

KENYA ASSOCIATION OF MANUFACTURERS.....2ND INTERESTED PARTY

THE SENATE3RD INTERESTED PARTY

KENYA NATIONAL CHAMBERS

OF COMMERCE AND INDUSTRY4TH INTERESTED PARTY

THE COUNCIL OF GOVERNORS5TH INTERESTED PARTY

KENYA PRIVATE SECTOR ALLIANCE6TH INTERESTED PARTY

SUPPORTING AFFIDAVIT

I, SOLLO NZUKI of P.O. Box 45707 - 00100, an adult male of sound mind, residing and working for gain in Nairobi, Kenya in the Republic of Kenya, make oath and state as follows:

1. THAT I am the Petitioner/Applicant herein hence competent to swear this affidavit.
3. THAT this affidavit is sworn in support of the Application and Petition herein.
4. THAT I have perused the Application herein and confirm that the facts stated therein are true and correct.
5. THAT I hereby reaffirm and solemnly repeat the facts and averments stated and included in the Application, including each of the paragraphs (individually as well as cumulatively), and solemnly state that the facts therein are true and to my own knowledge, information and belief and as advised by my advocates herein
6. THAT the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 were gazetted on 4th November 2024 without public participation. (Annexed and marked as NG-1 is a copy of the Regulations)
7. THAT the 2nd Respondent proceeded to issue a public notice on 15th of January 2025 calling producers to familiarize themselves with the provisions of these regulations and take the necessary steps for compliance (Annexed and marked as NG-2 is a Public Notice dated 15th January 2025 issued by the 2nd Respondent).
8. THAT the 2nd Respondent seeks to implement the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024, as evidenced by the public notice issued on 18th February 2025 calling producers, including importers, manufacturers and brand owners, to comply with the said Regulations. (Annexed

and marked as NG-3 is a Public Notice dated 18th February 2025 issued by the 2nd Respondent]

9. **THAT** the aforementioned regulations were gazetted without adequate and proper public participation in contravention of the Constitution of Kenya, Statutory Instruments Act and several other Acts and laws.
10. **THAT** despite numerous attempts by stakeholders to discuss the impact of the above-mentioned regulations with the 2nd and 3rd Respondents, the Respondents have failed to incorporate any public concerns from concerned stakeholders and the public at large or even conduct proper public participation.
11. **THAT** I am advised by my advocates herein that the 1st and 2nd Respondents have failed to conduct proper public participation in line with the Constitution of Kenya, Statutory Instruments Act and the Sustainable Waste Management Act.
12. **THAT** it is an uncontroverted fact that Articles 10 and 118 of the Constitution of Kenya provides for public participation and involvement of the public in the legislative affairs of the country.
13. **THAT** the Sustainable Waste Management Act under Section 23, provides for public consultation and participation in accordance with the principles set out in the Second Schedule.
14. **THAT** the Sustainable Waste Management Act under Section 33 states that the Cabinet Secretary may, in consultation with the Authority, make regulations for the better carrying into effect of the provisions of this Act and that under Section 33(3)(c), that the principles and standards applicable to the regulations made under this section shall be those set out in the Interpretation and General Provisions Act (Cap. 2) and the Statutory Instruments Act (Cap. 2A).
15. **THAT** it is an uncontroverted fact that Section 5 of the Statutory Instruments Act provides that before a regulation-making authority makes a statutory instrument, which is likely to have a direct, or a substantial indirect effect on business, or restrict competition; the regulation-making authority shall make appropriate consultations with persons who are likely to be affected by the proposed instrument.
16. **THAT** Section 6 of the Statutory Instruments Act provides mandates that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation making authority shall, prior

to making the statutory instrument, prepare a regulatory impact statement about the instrument.

17. **THAT** the failure to subject the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 to consult with the public is an affront to the right to public participation under Article 10 and 118 of the Constitution of Kenya.
18. **THAT** the failure of the 2nd Respondent to provide a regulatory impact statement on the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 is a violation of the right of access to information under Article 35 and public participation under Article 118 of the Constitution of Kenya.
19. **THAT** the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 differ vastly from the Environmental Management and Coordination (Extended Producer Responsibility) Regulations, 2021 which had been subject to public participation. **(Annexed and marked as NG-4 is a copy of the draft Environmental Management and Coordination (Extended Producer Responsibility) Regulations, 2021)**
20. **THAT** the 2021 Environmental Management and Coordination (Extended Producer Responsibility) Regulations were developed prior to the enactment of the Sustainable Waste Management Act, 2022.
21. **THAT** after the enactment of the Sustainable Waste Management Act, the Respondents changed the anchor of the Extended Producer Responsibility regulations to the Sustainable Waste Management Act from the Environmental Management and Coordination Act.
22. **THAT** a cursory glance of the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 and the Environmental Management and Coordination (Extended Producer Responsibility) Regulations, 2021(hereinafter referred to as the "EMCA (EPR) regulations") highlights that the 1st Respondent proceeded to amend the following clauses:
 - i.Regulation 6 on extended producer responsibility fees was added imposing levies on importers of finished products;
 - ii.Regulation 7 on registration of producers was added imposing levies on registration of producers;

- iii. The First schedule was amended to include fees for imported finished goods together with the "amount per item";
- iv. The Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 omitted the role of the County Government as proposed in EMCA (EPR) regulations;
- v Regulation 16 of the EMCA (EPR) regulations on use of fees paid to the Producer Responsibility Organizations (PROs) highlighted how the fees were to be used. There was no clause indicating that the PROs would have to remit 5% of the fees collected to the 2nd Respondent as per Regulation 18(3) of the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024.
- vi Regulation 18(4) of the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 introduces the term Restoration Fund as established under Section 25 of the Sustainable Waste Management Act, 2022. The term is not present in the Sustainable Waste Management Act, 2022 and is therefore not legally anchored.
- vii The Sixth Schedule of the EMCA (EPR) regulations proposed a fee of Kshs. 10,000 and Kshs.5,000 for registration and renewal of EPR annual operating licences for collective and individual PROs respectively. The Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 amended the fees registration and renewal of EPR annual operating licences to Kshs. 100,000 without any public participation.

23 **THAT** these amendments, introduced after the public had already participated in an earlier version of the Regulations, fundamentally alter the substance and legal impact of the Regulations, thus necessitating fresh public participation and consultation.

24 **THAT** the amendment to remove the role of the County Government was a ploy to remove the oversight of the 3rd Interested Party.

25 **THAT** the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 seeks to impose disproportionately high fees, some of which will amount to double taxation as follows:

NO.	PRODUCT	AMOUNT (KShs) Per item

1.	Packaging for non-hazardous products (plastics, aluminium, composite, paper and its corrugates, glass, cardboard and carton).	150
2.	Hazardous products' packaging (Industrial chemicals, oil and lubricants, pharmaceuticals, agrochemicals, veterinary, cosmetics, paints and solvents), treated wood and agricultural films.	150
3.	Electrical and Electronic Equipment, Mercury Auto Switches, thermostats, Battery and Accumulators	150
4.	End of life motor vehicles, automobiles, aircrafts, locomotives.	150
5.	Non packaging items (Plastics, glass, paper, cardboard), Furniture (except wooden, metallic), Rubber and Tyres, textiles, leather, artificial hair, diapers and sanitary towels.	150

OTHER FEES IMPOSED ON PRODUCERS	
Registration as a member of a Producer Responsibility Scheme -Kshs.50,000- Kshs 10,000	
Annual Licence as a member of a Producer Responsibility Scheme-Kshs. 50,000- 100,000	
Monthly Extended Producer fees to a Producer Responsibility Scheme – Based on the quantity of products introduced to the market;	
Import fees for finished goods & packaging materials-Kshs 150 per item	

26. THAT the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 fail to take into account other taxes levied on products including Value Added Taxes on finished products as well as excise duties on imported materials.

27. **THAT** the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 fail to take into account that Article 75(4) of the East African Community (EAC) Treaty states that partner states shall not impose new duties or levies or increase existing levies on products traded within the community.
28. **THAT** the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 fail to take into account that **Section 114 & 115** of the East African Community Customs Management Act (EACCMA) provides that all import duties and taxes must be legislated and implemented by the revenue authority.
29. **THAT** the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 will eventually shift the burden of these taxes from the producer to the consumer who is burdened by the high cost of living and will lead to job losses. (Annexed and marked as NG-5 is a copy of a newspaper extract published in the Daily Nation on 4th April 2024 highlighting the effect of the said Regulations on the consumer.)
30. **THAT** further, this per item levy is a reincarnation of the proposed eco-levy that was rejected in the 2024 Finance Bill which sought to levy a Kshs. 150 on plastic packaging. (Annexed and marked as NG-6 is an extract of the rejected Finance Bill 2024)
31. **THAT** I depose this Affidavit to support the position that Regulations 3, 4, 6, 7, 10, 11, 14, 18, 23, and the First Schedule of the Sustainable Waste Management Regulations, 2024 (Legal Notice No. 176 of 2024) are unconstitutional, illegal, null and void for violating Articles 2(4), 10, 47, 110(3), 201 and 210 of the Constitution of Kenya.
32. **THAT** I depose this Affidavit to support the position that the imposition of the Kshs. 150 per item eco-levy and the monthly payment to Producer Responsibility Organizations (PROs) under the First Schedule of the said Regulations constitutes an unlawful tax imposition that is in violation of Articles 110(3) and 210 of the Constitution.
33. **THAT** I depose this Affidavit to support the position that the 2nd Respondent lacks the constitutional and statutory mandate, as provisioned under Section 9(2) (I) of EMCA, to administer or collect any fiscal levies or taxes, and that its enforcement of the Regulations is ultra vires.

34. THAT I depose this Affidavit to support the position that the Respondents violated the Petitioner's and stakeholders' constitutional rights to fair administrative action under Article 47 of the Constitution, freedom of association under Article 36 of the Constitution, access to information under Article 35 of the Constitution, and public participation as provisioned under Article 10 of the Constitution and Section 5 and 6 of the Statutory Instruments Act, and breached the legitimate expectation of affected stakeholders.

35. THAT I depose this Affidavit to support the Application and the Petition herein.

36. THAT I solemnly affirm that the facts deposed herein are true to the best of my knowledge, information, and belief, save for matters expressly stated to be based on information, which sources have been disclosed.

SWORN at NAIROBI by the said

SOLLO NZUKI

This 30th day of April 2025

BEFORE ME



(DEPONENT)



COMMISSIONER FOR OATHS

DRAWN & FILED BY:-

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Phone: +254-202848000/+254-202221291/+254-202848001
Email: clerk@parliament.go.ke
5. Alcohol Beverages Association of Kenya,
P.O. Box 59826-00100,
Nairobi.
6. The Kenya Association of Manufacturers,
15 Mwanzi Road, Westlands,
Nairobi.
7. Kenya National Chamber of Commerce and Industry
Telkom Plaza-Orange House 2nd Floor, Ralph Bunche Road,
Nairobi.
Phone: +254 203 927 000
Email: info@kenyachamber.or.ke
8. Council of Governors
Delta Corner, 2nd Floor, Opp PWC Chiromo Road,
Off Waiyaki Way, Westlands
Nairobi
Phone: +254 (020) 2403313/4
Email: info@co.gov.ke, correspondence@councilofgovernors.net
9. The Senate
Clerk's Chambers, The Senate, Parliament Buildings
P.O. Box 41842-00100
Nairobi
Phone: +254-202848000/+254-203261304
Email: clerk@senate.parliament.go.ke
10. Kenya Private Sector Alliance
7th Floor, South Tower, Two Rivers, Limuru Rd, Nairobi.
P.O. Box 3556-00100
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Phone: +254202730371|2|+254720340949|0735999979|+254208720620|1|
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SPECIAL ISSUE

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LEGAL NOTICE NO. 176

THE SUSTAINABLE WASTE MANAGEMENT ACT

(Cap. 387C)

THE SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCER RESPONSIBILITY) REGULATIONS, 2024

ARRANGEMENT OF REGULATIONS

Regulation

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- 10—Registration of extended producer responsibility compliance schemes.
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This is the exhibit marked "NG-1"	
referred to in the annexed affidavit / declaration	
of: GOLLO NZUKI	
Sworn / declared before me this 30 th	
day of April 2025	at Nairobi

PART III— GENERAL PROVISIONS

19— Record keeping and reporting

20— Appeals

21— offences

22— General penalty

23— Transitional provision

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THE SUSTAINABLE WASTE MANAGEMENT ACT

(Cap. 387C)

IN EXERCISE of the powers conferred by section 13, as read with section 33 of the Sustainable Waste Management Act, the Cabinet Secretary for Environment, Climate Change and Forestry, makes the following Regulations—

THE SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCER RESPONSIBILITY) REGULATIONS, 2024

PART I—PRELIMINARY

1. These Regulations may be cited as the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“agent” means a registered entity contracted by a producer responsibility organization to deliver specific extended producer responsibility services on its behalf;

“brand” means a registered trade mark under which a product is sold;

“brand owner” means the registered owner of the trademark;

“circular economy” means an environmental management approach that promotes initiatives for designing and redesigning waste from products, extraction of maximum value from natural resources, closing of material loops and creation of new value from materials that would otherwise have been considered as waste;

“collective extended producer responsibility compliance scheme” means a system where producers execute extended producer responsibility obligations in a producer responsibility organisation;

“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 a extended producer responsibility scheme in order to confirm compliance or management systems implementation gaps;

“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;

“environmentally friendly” means the practice of reducing environmental degradation and pollution by making products that comply with environmental sustainability principles including 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 long-term environmental quality;

"free rider" means —

- (a) 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;
- (b) a producer 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 falls on an entity that is a sole producer of a product;

"mandatory initiatives" means producer responsibility compliance schemes implemented through Government regulation;

"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;

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

"product" means a good or packaging introduced in the 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; and

"take-back" means a mechanism through which producers collect their products from consumers.

3. The object and purpose of these Regulations shall be to —

Object and
purpose.

- (a) extend the responsibility of a producer over a product and its packaging during the life cycle of the product or its packaging;
- (b) provide a framework for the establishment and operation of mandatory extended producer responsibility schemes; and
- (c) the operationalisation of the polluter pays principle.

4. (1) These Regulations shall apply to—

Application of the
Regulations

- (a) producers;
- (b) extended producer responsibility compliance schemes;
and
- (c) the products set out in the First Schedule.

(2) These Regulations shall apply to products that produce waste that negatively impact the environment, human and animal health, due to the—

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

PART II—EXTENDED PRODUCER RESPONSIBILITY OBLIGATIONS

5. (1) Pursuant to section 13 of the Act, a producer shall—

Extended
producer
responsibility
obligations

- (a) establish a take back scheme which may include a deposit refund system;
- (b) set up and register an individual or a collective extended producer responsibility compliance scheme;
- (c) join a collective extended producer responsibility compliance scheme;
- (d) register with the Authority;
- (e) provide the Authority with reports of the status of the implementation of their extended producer responsibility obligations to the Authority;
- (f) 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;
- (g) 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;

- (h) provide consumers with information and 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; and
- (j) put in place circular economy initiatives and any other measures to reduce impact of their product on health and environment.

6. (1) Each importer of a finished product set out in the First Schedule shall pay to the Authority, at the point of importation, the corresponding fee set out in the First Schedule.

Extended
producer
responsibility
fees.

(2) Each importer shall, for purposes of importing any of the products set out in the First Schedule, apply to the Authority, at the point of import, for an extended producer responsibility certificate in Form A as set out in the Second Schedule and pay the corresponding product fee set out in the First Schedule.

(3) The application under sub-regulation (2) shall be accompanied by the following—

- (a) a description of the importer;
- (b) documentation showing the nature and quantities of the product; and
- (c) proof of payment of the requisite fee.

(4) The Authority may, within fourteen days of receipt of an application under this regulation—

- (a) approve the application;
- (b) request for further particulars; or
- (c) reject the application.

(5) The Authority shall, in writing, notify the applicant of its decision made under sub-regulation (4), within seven days of making the decision.

(6) Where the Authority approves the application under sub-regulation (4)(a), the Authority shall issue to the importer an Extended Producer Responsibility Certificate in Form B as set out in the Second Schedule.

(7) The Extended Producer Certificate issued under this regulation shall form part of the mandatory clearance and inspection documentation for an importer importing any of the items set out in the First Schedule.

7. (1) A producer shall apply to the Authority for registration as a producer in Form C as set out in the Second Schedule and pay the fee set out in the Third Schedule.

Registration of
producers.

(2) The application under sub-regulation (1) shall be accompanied by the following documents —

- (a) a copy of the Registration Certificate issued by the Registrar of Companies;
- (b) a document indicating the goods, product and packaging introduced into the country; and
- (c) proof of payment of the requisite fee.

(3) The Authority shall, within fourteen days of receipt of an application for registration under this regulation —

- (a) approve the application;
- (b) request for further particulars; or
- (c) reject the application.

(4) The Authority shall, in writing, notify the applicant of its decision made under sub-regulation (3), within seven days of making the decision.

(5) Where the Authority approves the application for registration under sub-regulation (3)(a), the Authority shall issue to the producer a Registration Certificate in Form D set out in the First Schedule.

(6) Where the Authority rejects the application for registration under sub-regulation (3)(c), the applicant shall have a right to appeal to in accordance with section.

8. (1) Every producer shall, upon registration, fulfil the obligations set out in regulation 5 either individually or collectively by —

Extended producer responsibility obligations.

- (a) setting up an individual producer responsibility compliance scheme; or
- (b) joining a 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 the producer takes membership.

(3) Despite sub-regulation (1), the lack of an established extended producer responsibility compliance scheme shall not exempt a producer from the extended producer responsibility obligations under regulation 5.

9. (1) The Authority shall register extended producer responsibility schemes as —

Registration of extended producer responsibility schemes.

- (a) individual producer responsibility compliance schemes where there is a single producer; or

- (b) collective producer responsibility compliance schemes where there is more than one producer.

(2) For the purposes of sub-regulation (1)(b), the collective schemes shall be established on the basis of similarity of products, their uses and the nature of waste arising therefrom.

(3) The registered extended producer responsibility schemes shall establish appropriate mechanisms and structures for the management of each product under its respective category.

10. (1) For the purposes of regulation 9, a producer shall apply to the Authority for registration of an individual extended producer responsibility compliance scheme in Form E as set out in the Second Schedule and pay the fee set out in the Third Schedule.

Registration of individual extended producer responsibility compliance schemes.

(2) The application under sub-regulation (1) shall be accompanied by the following—

- (a) a declaration that the applicant is the producer of the product in the country;
- (b) a certificate of conformity issued by the relevant authority in respect of the products produced by the producer;
- (c) a copy of registration certificate from the Registrar of Companies;
- (d) a copy of the producer's extended producer responsibility plan;
- (e) copies of agreements entered into with approved waste service providers; and
- (f) proof of payment of the requisite fees.

(3) The Authority may, within fourteen days of receipt of an application for registration under this regulation —

- (a) approve the application;
- (b) request for further particulars; or
- (c) reject the application.

(4) The Authority shall, in writing, notify the applicant of its decision made under sub-regulation (3), within seven days of making the decision.

(5) Where the Authority approves the application for registration under sub-regulation (3)(a), the Authority shall issue to the producer a Registration Certificate in Form F as set out in the Second Schedule.

11. (1) A collective extended producer responsibility organisation shall, before implementing an extended producer responsibility on behalf of its members, apply to the Authority for registration in Form E as set out in the Second Schedule and pay the fee set out in the Third Schedule.

Requirements for registration of a producer responsibility organization.

(2) The application under sub-regulation (1) shall be accompanied by the following—

- (a) proof of registration by the Registrar of Companies under the Companies Act; Cap 486
- (b) a certified copy of the most recent register of the members of the extended producer responsibility organisation;
- (c) copies of the Extended Producer Responsibility Registration Certificates issued to each member of the extended producer responsibility organisation;
- (d) certified copy of agreements with the approved waste service providers;
- (e) a copy of the extended producer responsibility fee structure agreed among the members of the extended producer responsibility organisation;
- (f) a progress report on achievement of set targets, in case of renewal of registration;
- (g) a copy of the annual Extended Producer Responsibility audit, in case of renewal of registration;
- (h) report conducted by an independent auditor approved by the Authority, in case of renewal of registration;
- (i) a list of the directors of the company issued by the Registrar of Companies;
- (j) a copy of the PIN Certificate issued by the Kenya Revenue Authority;
- (k) a copy of a lease agreement or proof of ownership of the facility of operation;
- (l) an extended producer responsibility plan prepared in accordance with these Regulations;
- (m) a budget or financial plan for the extended producer responsibility scheme;
- (n) a copy of signed minutes of the meeting adopting the updated extended producer responsibility plan signed by representatives of products within the category;
- (o) an organogram for the producer responsibility organisation;
- (p) work plan and budget for the coming year;
- (q) certified copy of annual audited financial accounts;
- (r) copy of a dispute resolution mechanism for the members participating in the extended producer responsibility scheme;
- (s) 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

(1) proof of payment of the relevant fees.

(3) The Authority may, within fourteen days of receipt of an application for registration under this regulation —

- (a) approve the application;
- (b) request for further particulars; or
- (c) reject the application.

(4) The Authority shall, in writing, notify the applicant of its decision made under sub-regulation (3), within seven days of making the decision.

(5) Where the Authority approves the application for registration under sub-regulation (3)(a), the Authority shall issue to the producer a registration certificate in Form F as set out in the Second Schedule.

(6) The certificate of registration issued under sub-regulation (5) shall indicate the extended producer responsibility number.

(7) A producer shall not switch from one collective extended producer responsibility scheme to another unless at the beginning of a new contract year and after giving a three months' notice to the collective extended producer responsibility scheme and copying the same to the Authority.

12. (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.

Approval of
extended producer
responsibility
compliance
scheme by
Authority.

(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.

13. (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.

Revocation,
suspension or
cancellation of
Certificate of
Registration.

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

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

Annual operating
licence.

the Third Schedule to undertake producer responsibility obligations for producers 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 Extended Producer Responsibility Registration Certificate;
- (f) a work plan and budget for the coming year;
- (g) proof of payment of the fees set out in the Third Schedule; and
- (h) a duly executed resolution of the company.

(3) The Authority shall, within fourteen days of receipt of an application for registration under this regulation —

- (a) approve the application;
- (b) request for further particulars; or
- (c) reject the application.

(4) The Authority shall, in writing, notify the applicant of its decision made under sub-regulation (3), within seven days of making the decision.

(5) Where the Authority approves the application for an annual operating licence under sub-regulation (3)(a), the Authority shall issue an annual operating licence in Form H as 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.

15. (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 as the Authority may deem fit,

where the licensee contravenes the conditions of the licence.

(2) 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.

Revocation,
suspension or
cancellation of
licence

fee structure agreed among members in accordance with these regulations.

(3) The collective extended producer responsibility compliance scheme shall remit to the Authority five per centum of the membership fee collected under these Regulations for monitoring inspection and control audits, by the 10th February of each year.

(4) The money remitted under sub regulation (3) shall form part of the Restoration Fund established under section 25 of the Act.

(5) A collective extended producer responsibility compliance scheme that contravenes the provisions of this regulation commits an offence and shall on conviction be liable to the penalty provided under section 32 of the Act.

PART III – GENERAL PROVISIONS

19. (1) Every extended producer responsibility compliance scheme shall keep and maintain 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. Records

(2) Every extended producer responsibility compliance scheme shall 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.

(3) Every extended producer responsibility schemes both individual and collective shall submit up-to date annual report of the preceding year to the Authority by the 31st January of each year.

(4) Every extended producer responsibility compliance schemes shall provide annual reports on volumes of products collected, transported, recycled, reused, recovered and subjected to end-of life treatment to the respective counties.

(5) The Authority shall establish a reporting mechanism for all the individual and collective extended producer responsibility schemes.

20. Any person or an entity aggrieved by any decision of the Authority under these Regulations may pursuant to section 31 of the Act, appeal to the Tribunal. Appeals

21. (1) An individual extended producer responsibility compliance scheme or a producer responsibility organization that wilfully fails to undertake any obligation under these Regulations commits an offence. Offences

(2) Upon conviction under sub-regulation (1), the court shall order the individual extended producer responsibility compliance scheme or the producer responsibility organization to bear the cost of management of the said obligation.

(3) A person who introduces in the market a product on behalf of a producer who is not listed in the register published by the Authority as per the Act, commits an offence.

(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.

22. A person who commits an offence under these Regulations for which no penalty has been provided shall, on conviction, be liable to the penalty provided under section 32 of the Act. General penalty

23. Each producer in operation before the commencement of these Regulations shall apply to the Authority for registration within six months after the commencement of these Regulations and shall ensure compliance with the provisions of these Regulations. Transitional Provision

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

[rr. 4(1)(c), 6(1), (2), (7), 7(5), 14(1)]

NO.	PRODUCT	AMOUNT (KShs) <i>Per item</i>
1.	Packaging for non-hazardous products (plastics, aluminium, composite, paper and its corrugates, glass, cardboard and carton).	150
2.	Hazardous products' packaging (Industrial chemicals, oil and lubricants, pharmaceuticals, agrochemicals, veterinary, cosmetics, paints and solvents), treated wood and agricultural films.	150
3.	Electrical and Electronic Equipment, Mercury Auto Switches, thermostats, Battery and Accumulators.	150
4.	End of life motor vehicles, automobiles, aircrafts, locomotives.	150
5.	Non packaging items (Plastics, glass, paper, cardboard), Furniture (except wooden, metallic), Rubber and Tyres, textiles, leather, artificial hair, diapers and sanitary towels.	150

SECOND SCHEDULE

FORM A

(r.6(2))

APPLICATION FOR EXTENDED PRODUCER RESPONSIBILITY IMPORT
CERTIFICATE

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.....

A10: Consignment No.....

Email.....

Mobile No.....

A10: Indicate the category(s) of the import product

.....

A11: List and Quantity 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
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@nema.go.ke

FORM B

(r.6(6))



EXTENDED PRODUCER RESPONSIBILITY – IMPORT CERTIFICATE

Certificate No.

This certificate has been issued to
(Extended Producer Responsibility – Importer name) in fulfilment of the extended
producer responsibility import registration requirements in compliance with these
Regulations.

Date of issue:

Expiry Date:.....

Signature
Director General
National Environment Management Authority

FORM C

(r. 7(1))

APPLICATION FOR PRODUCER 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 ☐
 - ii. Importer ☐
 - iii. Refiller ☐
 - iv. Repackager ☐
 - v. Rebrander ☐
 - vi. Brand owner ☐
 - vii. Converter ☐
 - 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:

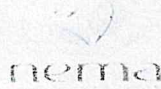
Account Name: NEMA Revenue Account
Account No. 1102298158
Bank: KCB, KICC Branch

Director-General,
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: dgncema@swiftkenya.com

FORM D

(r. 7(5))



CERTIFICATE OF REGISTRATION

Certificate No.

This certificate has been issued to
(Producer name) in fulfilment of the extended producer responsibility registration
requirements in compliance with these Regulations.

Date of issue:

Expiry Date:

Signature

Director General

National Environment Management Authority

FORM E

(rr. 10(1))(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)

ix. Manufacturer ☐x. Importer ☐xi. Refiller ☐xii. Repackager ☐xiii. Rebrander ☐xiv. Brand owner ☐xv. Converter ☐

xvi. 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
National Environment Management Authority
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

FORM F

(r. 10(5), (11)(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 these Regulations.

Date of issue:

Expiry Date:.....

Signature

Director General
National Environment Management Authority

FORM G

(r.14(1))

APPLICATION FOR ANNUAL 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 AddressKRA PIN Number

Company Registration Number (If
applicable)

- 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.

FORM H

(r.14(5))

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

(r. 6(1))

FEES



Individual producer registration (one off) – Ksh. 5, 000

Registration

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

Annual Licence

1. Collective Extended Producer Responsibility Scheme – Ksh. 100,000
2. Individual Extended Producer Responsibility Scheme – Ksh. 50,000

Made on the 14th October, 2024.

ADEN DUALE,
*Cabinet Secretary for Environment
Climate Change and Forestry.*

Commodity prices to go up by 16% on new producer rule

Diapers, detergents and sanitary towels among those to be affected



Garbage with Nairobi Central Business District (NILE)

MARTIN MWITA
/NILE/

CONSUMERS will pay more for key commodities as importers and suppliers indicate they will pass on costs associated with the new environmental rule.

The Extended Producer Responsibility (EPR) compliance becomes mandatory on May 4, for all manufacturers, importers and brand owners who place products on the market.

Under the EPR which is anchored within the Sustainable Waste Management Act 2022, players in the value chain will be held accountable for the entire lifecycle of their products, including post-consumer waste management and environmental impacts, which comes with an extra cost.

Large consumer goods manufacturers such as Coca-Cola, East African Breweries, Budeco Africa, Dabur, manufacturers of medical equipment among others, will have to create additional budgets for the tracing, collection and recycling or disposal of packages for

their products. This is mainly plastic packages and products, beverage cans, electronics among others.

Importers will also be required to pay Sh1 (Sh1.2%) per item imported into the country payable to the National Environment Management Authority (NEMA) for end-of-life management, including research, recycling and disposal, with raw materials and industrial input imports also on the list. A Sh150 charge is imposed per item for all imports with nylon packaging, on top of an already existing waste management annual fee currently being paid.

EPR fee on a 40-foot of diapers for instance will average Sh334,950 while those of detergents and sanitary towel will be at an average Sh1,450 and Sh361,000, respectively. According to the Kenya Association of Manufacturers (KAM), companies are also required to pay Sh1,000 to NEMA for administrative services.

Producers and traders have now indicated most consumer goods prices could increase as they will be forced to pass on the extra costs of doing business, and calls to de-

fer the implementation for further consultations.

Commodities that will be most affected include cooking oil, diapers, detergents, sanitary towels, bottled water, canned food products, alcoholic drinks, among others, a move that will add pressure to an already struggling consumer who has been battling reduced spending power and high taxation in the country.

The Association of Kenya Suppliers which also represents the interest of importers in the country yesterday warned of a sharp increase in commodity prices, which could lead to low sales by businesses and drop in consumption taxes for the government.

The cost has to be absorbed somewhere and the biggest casualty is the consumer who is already struggling with a high cost of living and low disposable income. There will be a huge implication across the value chain including raw material imports and finished goods," the association's CEO Shinaid Bert told the Star on phone.

The Shippers Council of Eastern Africa (SCEA) which also represents importers and exporters said SMEs and micro enterprises will be adversely affected by the proposed levy of Sh150 per item and "which does not consider equity".

"The levy shall aggravate the already difficult business environment. The intention to protect the environment is noble, but further consultation and understanding of the regulations and what levies are to be imposed are important," SCEA chief executive Agayo Ogamini said.

This, amid concerns over low awareness in the industry over the new regulations.

The Kenya Extended Producer Responsibility Organisation (KE-

PRO) puts compliance rate at an estimated five per cent.

"This can be attributed to existing gaps in the regulations or a lack of clarity around compliance requirements," KEPRO chief executive James Odongo said.

Registered members are also required to declare the volume of packaging or products they introduce into the market monthly.

At present, the compliance rate for this requirement under KEPRO stands at about 60 per cent, he said, signaling the need for ongoing awareness and support to achieve full adherence to EPR obligations.

On consumers, KEPRO has been intentional in promoting awareness and driving behavior change.

Through our Consumer-Led Transformation Initiative, we have conducted regional awareness drives that have reached over 1,000 direct participants to date. In addition, we are working closely with churches and schools to reinforce our messaging. We believe that children are the champions of tomorrow, and fostering environmental responsibility from an early age is key to achieving long-term, transformative change," said Odongo.

(+) INSTANT ANALYSIS

Kenya faces significant challenges in waste management, including inadequate infrastructure, weak enforcement of regulations, and a large informal sector involved in waste collection and disposal. The country is working towards improving waste management through policies like the National Sustainable Waste Management Policy and the Sustainable Waste Management Act.

SPECIAL ISSUE

Kenya Gazette Supplement No. 102 (National Assembly Bills No. 30)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2024

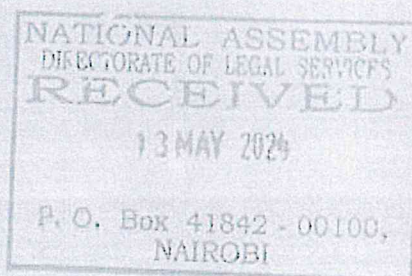
NAIROBI, 9th May, 2024

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Finance Bill, 2024 551



PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

PART V—MISCELLANEOUS FEES AND LEVIES

44. The Miscellaneous Fees and Levies Act is amended in section 7—

Amendment of
section 7 of
Cap. 469C.

(a) by deleting the words "two point five" appearing in subsection (2) and substituting therefor the word "three";

(b) by deleting subsection (7) and substituting therefor the following new sub-section—

(7) Ten percent of monies in the Fund under subsection (6) shall be used for the payment of Kenya's contributions to the African Union and any other international organisation to which Kenya has a financial obligation, while twenty percent will be used for revenue enforcement initiatives or programmes.

45. The Miscellaneous Fees and Levies Act is amended by inserting the following new section immediately after section 7A—

Insertion of new
section 7B in
Cap. 469C.

Eco levy.

7B. (1) There shall be paid a levy to be known as the eco levy on the goods specified in the Fourth Schedule manufactured in Kenya or imported into Kenya.

(2) The eco levy shall be paid to the Commissioner at the rate specified in the Fourth Schedule—

(a) in the case of locally manufactured goods, by the manufacturer at the time the goods are removed from the excise stock room; and

(b) in the case of imported goods, by the importer at the time of entering the goods into the country.

(3) The purpose of the levy shall be to ensure that the manufacturers and importers of the goods specified in the Fourth Schedule pay for the negative environmental impacts of the goods.

(4) The Cabinet Secretary may make Regulations for the better implementation of the provisions of this section.

(3) Where a licence is revoked, suspended or cancelled under this regulation, the holder of the licence 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.

(4) Where the Authority revokes the licence of the producer responsibility organisation—

- (a) an individual member of the organisation may proceed to join another producer responsibility organisation; and
- (b) the members of the organisation 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 reorganise itself.

(5) For purposes of this regulation, the Authority may prohibit the producer from placing the affected product and packaging in the market.

16. (1) Every individual and collective extended producer responsibility compliance scheme shall, prior to registration develop and submit a four-year extended producer responsibility plan to the Authority indicating the following—

Extended
producer
responsibility
plan

- (a) the baseline for the products and packaging handled;
- (b) plan for safe handling, processing and disposal of one hundred per centum 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.

17. A producer responsibility organisation shall—

*Producer
responsibility
organisations
obligations*

- (a) at an agreed upon fee, be responsible for executing extended producer responsibility obligations on behalf of its members;
- (b) undertake market development for the secondary raw materials market of the products under their scope;
- (c) establish research and development programs with registered research institutions on emerging technologies to improve material recovery, removal of pollutants and effective systems for handling post-consumer products; and
- (d) execute any other obligations set by the Authority for purposes of ensuring compliance with these Regulations.

18. (1) Each member 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, varying from one producer to another, taking into account the—

*Charging and
modulation of
extended producer
responsibility
fees.*

- (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;
- (f) products with or without defined environmental foot prints; and
- (g) fulfilment of extended producer responsibility obligations.

(2) The collective extended producer responsibility compliance scheme shall submit to the Authority extended producer responsibility

fee structure agreed among members in accordance with these regulations.

(3) The collective extended producer responsibility compliance scheme shall remit to the Authority five per centum of the membership fee collected under these Regulations for monitoring inspection and control audits, by the 10th February of each year.

(4) The money remitted under sub regulation (3) shall form part of the Restoration Fund established under section 25 of the Act.

(5) A collective extended producer responsibility compliance scheme that contravenes the provisions of this regulation commits an offence and shall on conviction be liable to the penalty provided under section 32 of the Act.

PART III – GENERAL PROVISIONS

19. (1) Every extended producer responsibility compliance scheme shall keep and maintain 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. Records.

(2) Every extended producer responsibility compliance scheme shall 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.

(3) Every extended producer responsibility schemes both individual and collective shall submit up-to date annual report of the preceding year to the Authority by the 31st January of each year.

(4) Every extended producer responsibility compliance schemes shall provide annual reports on volumes of products collected, transported, recycled, reused, recovered and subjected to end-of life treatment to the respective counties.

(5) The Authority shall establish a reporting mechanism for all the individual and collective extended producer responsibility schemes.

20. Any person or an entity aggrieved by any decision of the Authority under these Regulations may pursuant to section 31 of the Act, appeal to the Tribunal. Appeals.

21. (1) An individual extended producer responsibility compliance scheme or a producer responsibility organization that wilfully fails to undertake any obligation under these Regulations commits an offence. Offences.

(2) Upon conviction under sub-regulation (1), the court shall order the individual extended producer responsibility compliance scheme or the producer responsibility organization to bear the cost of management of the said obligation.

(3) A person who introduces in the market a product on behalf of a producer who is not listed in the register published by the Authority as per the Act, commits an offence.

(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.

22. A person who commits an offence under these Regulations for which no penalty has been provided shall, on conviction, be liable to the penalty provided under section 32 of the Act. General penalty.

23. Each producer in operation before the commencement of these Regulations shall apply to the Authority for registration within six months after the commencement of these Regulations and shall ensure compliance with the provisions of these Regulations. Transitional Provision

ii) A Producer Responsibility Organisation may verify data provided by producers with relevant agencies

- (15) The producer responsibility organization may be required to 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.
- (16) The producer responsibility organization shall comply with the sustainable waste management objectives set by the Authority.
- (17) All Producer Responsibility Organisation shall ensure effective management and harmonious relations between the different actors involved in the scheme.
- (18) Every Producer Responsibility Organisation shall hold an annual member meeting to deliberate on the progress and performance of the PRO, governance, management and administrative systems.

**Charging and
Modulation of
EPR fees**

- 22.15. (1) Members to a collective EPR 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 to a collective EPR compliance scheme shall contribute an annual subscription fee towards a collective extended producer responsibility compliance scheme.
 - (3) Members to a collective EPR 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 as provided for in Ninth Schedule
 - (4) The Extended Producer Responsibility fees shall be modulated based on sustainability measures as provided in the Ninth Schedule.
 - (5) The PRO shall submit to the Authority EPR fees structure agreed among members calculated using guidance provided in Ninth Schedule

PRO finance

- 23.16. (1) The extended producer responsibility fees paid into the PRO 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) To develop secondary markets and uses for the products under their scope;
- (g) Fund research and development programs and on emerging technologies to improve material recovery removal of pollutants and effective systems for handling post-consumer products;
- (h) Machinery and equipment to support collection and recovery; and
- (i) Guide members on eco-design standards of their products and recycler-friendly packaging.

(2) The fees recovered under sub regulation (1) shall not be used for profit making purposes. All proceeds shall be ploughed back to the scheme to enhance sustainable waste management initiatives.

Producer Responsibility Organization Agreements

24.17. 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.

PRO Governance

25.18. (1) Members of a producer responsibility organisation are responsible for the management of the Producer Responsibility Organization.

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

For checks and balance, producers should not be shareholders of a PRO. This will create a scenario where the largest producers could have undue influence in the management of PROs. A suggestion could be for PROs to be service providers with some kind of autonomy. The regulation should also be clear on how a PRO is established. A suggestion could be for the Authority to competitively

requests for interests from entities interested in setting up PROs under set guidelines with at least two PROs per category selected.
Benjamin Samdi Musasia – Clean Up Kenya

<p>Nature Number of PROs per product</p>	<p>(1) (4) There shall be only one producer responsibility organisation per product.</p> <p>(2) There shall be established Producer Responsibility Organizations as per categories provided in schedule 1</p> <p>(2) The PRO shall establish appropriate mechanisms and structures for management of each product under their scope.</p> <p>(2) The Cabinet Secretary on advice of the Authority can review Schedule 1.</p> <p>(3) A Producer Responsibility Organization can enter into formal agreements and cooperation frameworks for joint collection, take back schemes including deposit refund systems, treatment and appropriate disposal for the products under their scope.</p> <p>(3)(1) Notwithstanding sub-regulation (1) above, the Authority may allow more than one Producer Responsibility Organisation to accommodate material variation of the product.</p>
<p>Having one PRO per product category will create an EPR monopoly in the country and is subject to abuse by key industry players and defeat the purpose of the regulations. Betterman Simidi Musasia – Clean Up Kenya</p>	
<p>Registration certificate and operating license</p>	<p>(1)(3) (1) The Authority shall issue registration certificate to registered licensed EPR Compliance Schemes for—</p> <p>(a) individual producer responsibility; and</p> <p>(b) producer responsibility organisation.</p> <p>(2) Application for registration and renewal for the individual producer responsibility EPR Compliance Schemes and Collective Producer Responsibility Organisation shall be done in standard forms and submitted to the Authority as prescribed under Schedule Two.</p>
<p>Annual Operating Licence</p>	<p>(2)(4) The Authority shall issue Annual operating license to a registered and licensed EPR Compliance Schemes if the scheme meets the performance and reporting requirements provided under these Regulations and payment of the fee set out in the Sixth Schedule.</p>
<p>Fees</p>	<p>(3)(5) (1) The fee payable under this Regulation shall be as prescribed in the Sixth Schedule of these Regulations.</p> <p>(2) Requirements for registration and renewal shall be as prescribed in the Eighth Schedule.</p>

Renewal of
Registration

(1) The renewal of the registration issued under regulation 18 shall be done at the end of the four-year period subject to annual review reports by the Authority.

(2) Any deregistered producer responsibility organization may re-apply subject to fulfilling the conditions and set out requirements.

- (3) The Authority shall establish a reporting mechanism for all the individual and collective extended producer responsibility schemes.

Records
keeping and
reporting

- (5)(7) (1) All producers shall maintain updated records of products managed, eco-design standards, contracts entered into by licensed waste service providers and Recyclers, and level of performance as per the work plan.
- (2) All EPR Compliance Schemes shall maintain updated records of products managed, eco-design standards, contracts entered into by licensed waste service providers and Recyclers, and level of performance as per the work plan.
- (3) All EPR Compliance Schemes shall publish their annual extended producer responsibility reports by 31st December 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.

PART IV - EPR SCHEMES AND WASTE MANAGEMENT SERVICES

EPR and
Counties

(6)(8) The Producer Responsibility Organisations may enter into public private partnerships with county governments for purposes of—

- (a) establishment and operationalization of collection, take back and disposal; or
- (b) setting up material recovery and sustainable waste management facilities.

Role of
County
Governments

26. (a) Implementing devolved function of waste management
- (b) Align their waste management laws with the national law
- (c) Dispose waste within their county boundaries unless where there is an agreed framework for inter- county transport of waste.
- (d) For reasons of benefits from economies of scale, Counties shall cluster into metropolises and pool resources for more effective waste management
- (e) Counties shall facilitate or establish MRFs to promote sustainable waste management
- (f) Facilitate movement of waste between counties at no costs

- (k) evaluating the operations of extended producer responsibility chains;
- (l) ensuring proper implementation of extended producer responsibility schemes, including assessment of product and waste chains (quantities marketed, waste collected and treated, etc.)
- (m) verify that producer responsibility organizations comply with the terms of their authorisation, and take measures to sanction those that do not comply.;
- (n) designation of products to be included in the First Schedule; and
- (o) undertake capacity building and public awareness to support implementation of this regulation.

Oversight

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

(2) All EPR Compliance Schemes shall be monitored and audited annually by the Authority to ascertain whether it has attained its objectives, as well as to determine Kenya's position in relation to the objectives set for waste management.

(3) The data gathered will be used to improve the performance and regulatory process and to sanction actors who are not in compliance, if necessary.

(4) The Authority shall maintain an updated register of all schemes which shall be made available to the public.

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

PART VI – GENERAL PROVISIONS

Appeals.

30. (1) Any person aggrieved by the decision of the Authority can file an Appeal at the National Environment 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;

- (g) Facilitate establishment of intercountry waste management infrastructure considering economies of scale
- (h) Enhance public awareness on waste segregation and management

EPR Schemes
and Waste
management.

27. EPR Compliance Schemes shall operate under written agreement and contract, with designated waste actors with terms governing their engagement.

PART V-LICENSING, MONITORING AND COMPLIANCE

Role of the
Authority

28. The Authority shall monitor the operation of extended producer responsibility chains and producer responsibility organization, by setting operational rules and targets including—

- (a) registration of producers under the Eighth Schedule bearing extended producer responsibility obligations;
- (b) issue certificate of registration of extended producer responsibility for individual and collective schemes;
- (c) renewal of registration and issuance of annual operating licenses;
- (d) shall determine and review the terms of reference for registration and certifications from time to time;
- (e) undertake periodic review of extended producer responsibility targets;
- (f) shall maintain registration of all licensed producer responsibility both individual and collective which shall be made available to the public;
- (g) updating the list of covered products within the extended producer responsibility;
- (h) maintain an updated register of all registered and licensed individual EPR Compliance Schemes and producer responsibility organisations.
- (i) maintain and update periodic data transmitted by producer responsibility organization;
- (j) publishing annual status reports of EPR Compliance Schemes;

FIRST SCHEDULE

List of products and packaging subject to extended producer responsibility compliance scheme

- ~~1. Composites.~~
- ~~2. Agricultural film.~~
- ~~3. Batteries.~~
- ~~4. Oils and lubricants.~~
- ~~5. Plastics.~~
- ~~6. Aluminium products.~~
- ~~7. Glass.~~
- ~~8. Electrical and Electronic Equipment (EEE).~~
- ~~9. Furniture.~~
- ~~10. Paper and carton.~~
- ~~11. Mercury Auto Switches and thermostats.~~
- ~~12. Paints.~~
- ~~13. Pharmaceuticals products including packaging.~~
- ~~14. Textiles.~~
- ~~15. Tyres.~~
- ~~16. Automobiles.~~
- ~~17. Leather.~~
- ~~18. Rubber.~~
- ~~19. Agrochemicals and veterinary products including packaging.~~

1. Packaging for non-hazardous products (plastics, papers, aluminium, composite, glass and carton).
2. Hazardous products' packaging (Industrial chemicals, oil and lubricants, pharmaceuticals, agrochemicals, veterinary, cosmetics, paints and solvents) 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, artificial hair, diapers, sanitary towels.

- (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;
- (d) the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this regulations made thereunder,

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

Penalties and offences.

31. (1) It shall be an offence for an individual EPR Compliance Schemes or a producer responsibility organization to wilfully fail to undertake their obligation.
- (2) Where a producer responsibility organization is found guilty of the offence under sub regulation (1) the cost of management of the said obligation be borne by the offender.
- (3) It shall be an offence for a producer or Producer Responsibility Organization to under-declare or give false information on quantities held or managed under the EPR scheme or declare volumes of non-post-consumer products.
- (4) 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.
- (5) Any person who violates the provisions of these Regulations commits an offence and is liable on conviction to imprisonment for such a term not exceeding two years or to fine not less than Kshs two million or not exceeding Kshs four million or to both.

Role of Public Entities

32. Regulators for products and packaging subject to EPR schemes shall on request provide producer related data to the Authority and PROs.

Transitional Provision

- 32.33. 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 ensure compliance with the provisions of these Regulations.

SECOND SCHEDULE: FORMS

FORM A

APPLICATION TO OPERATE INDIVIDUAL /COLLECTIVE PRODUCERS

EXTENDED PRODUCER RESPONSIBILITY SCHEME

1. I hereby apply for a license to undertake Extended Producer Responsibility objectives for
.....(product 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.....

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

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

- i. Manufacturer
- ii. Importer,
- iii. Distributor,
- iv. Converter,
- v. Others (please specify)

2.2 List product(s) as per 2.1

.....

2.3 State the nature of product(s) and its packaging (e.g. water packaged in a PET bottle with
seals and labels).

.....

2.4 Describe circular economy initiative for your product(s) [reuse, recyclability, recoverability, energy efficiency]

2.5 What is the 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

- i. A copy of the Certificate of Registration issued by the Registrar of Companies
- ii. Kenya Revenue Authority (KRA) Certificate
- iii. A copy of lease agreement of the facility of operation
- iv. Two-year work plan and budget/financial plan in relation to the proposed scheme
Product/Packaging (Individual EPR)
- v. One (1) hard copy of & one (1) soft copy of the work plan according to signed minutes of the engagement with proposed actors of the scheme
- vi. The Extended Producer Responsibility Plan

THIRD SCHEDULE

Certificate No.....



EXTENDED PRODUCER RESPONSIBILITY

CERTIFICATE OF REGISTRATION

This certificate has been issued to (Extended Producer Responsibility Organization 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

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 (product(s))

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:

SECOND SCHEDULE

FORM D

APPLICATION/RENEWAL FOR ANNUAL LICENSE

I hereby apply for a license to undertake extended producer responsibility obligations for..... (product(s) name) of which particulars are given below.

Name and address of the applicant

.....

Physical Address

Postal Address.....

Telephone Number.....

Email Address.....

PIN Number:

Registration number of the Extended Producer Responsibility Scheme

.....

Number of members:

.....

Type of Product(s):.....

.....

Category of Extended Producer Responsibility Scheme

.....

Annual estimated volume or quantity of product:.....

NB. Please attach requirements as outlined in Schedule Eight (8)

Date:Signature

Designation /Title

FOR OFFICIAL USE ONLY

Application received by on
.....20.....

Fees paid Kshs(in words)

Director General
National Environment Management Authority

SCHEDULE V

INTERIM PERMIT FOR PRODUCER RESPONSIBILITY ORGANIZATION

(Extended Producer Responsibility Regulations, 2021)

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

FOURTH SCHEDULE

EXTENDED PRODUCER RESPONSIBILITY (EPR) PLAN

Components of an EPR plan

- (a) Baseline for the products and packaging handled;
- (b) Minimum targets for reuse, recycling or recovery operations;
- (c) Collection, logistics, recycling and composting system and end of life disposal;
- (d) Modulation of EPR membership fees and parameters based on environmental sustainability criteria as stipulated under regulation
- (e) Public awareness and consumer education and information program on waste segregation and proper handling of postconsumer products;
- (f) Verifiable paid up membership;
- (g) List of service providers and actors in the scheme;
- (h) Eco-design guidelines for the products handled by the scheme;
- (i) A mechanism of controlling banned or dangerous substances' in products;
- (j) An annual reporting mechanism;
- (k) Training and capacity building of members and actors in the scheme;
- (l) Organized monitoring of members, product traceability system, inspections with a view of applying sanctions on producers who fail to meet expected requirements;
- (m) Model of financing the scheme and itemized budget based on actual cost;
- (n) Any other actions necessary for execution of responsibility or items prescribed by the Authority.

SIXTH SCHEDULE: FEES



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

SEVENTH SCHEDULE

REQUIREMENTS FOR ISSUANCE OF ANNUAL OPERATIONAL LICENSE:

- a) Progress report for the past year
- b) Certified copy of annual returns filed with the registrar of companies including audited financial accounts;
- c) Certified copy of current register of PRO members
- d) Certified copy of agreements with service providers
- e) Work plan for the coming year
- f) Copy of the registration certificate
- g) Updated register of PRO members
- h) Progress report of the previous year (for renewal)
- i) Work plan and budget for the coming year
- j) Audited financial accounts (for renewal)
- k) Proof of payment of prescribed fees

EIGHTH SCHEDULE

a) INDIVIDUAL EPR COMPLIANCE SCHEMES REGISTRATION REQUIREMENTS

Requirements for registration:

- i. A declaration that the company is the sole producer of the product in the country
- ii. Proof of registration as a company.
- iii. Provide an EPR plan (see Schedule Four)
- iv. Provide actual copies of contracts entered into with relevant actors of the EPR scheme.
- v. Payment of the prescribed fees to the Authority
- vi. Provide a dispute resolution mechanism for the actors in the scheme
- vii. Ensure that the Articles and Memorandum of Association of the company declares that the sole business of the company is to undertake EPR obligations on the specific products.

b) PRODUCER RESPONSIBILITY ORGANISATION REGISTRATION REQUIREMENTS

Requirements for interim registration:

- i. The Authority shall advertise a call for applications for establishment of PROs in the newspapers.
- ii. Applicants shall provide the following documents for registration: Minutes of the meeting of PRO category sector members attended by at least 30 companies representing each product; the interim officials; the resolution and a reserved business name after the meeting, and

List of membership

- iii. If the Authority receives more than one PRO applications, the interim officials will be given one month to meet and reach consensus for one PRO to be registered and submit minutes of meeting and the joint resolution.
- iv. If the multiple PRO applicants fail to agree, the authority shall choose one applicant to be registered as the PRO.

This is simply going to create an EPR monopoly in the country. Betterman Simidi Musashi - Clean Up Kenya

Requirements for registration / renewal

- i. Proof of registration as a company limited by guarantee as provided by the Companies Act Kenya
- ii. Updated list of membership and fee structure of the membership.
- iii. Provide an EPR plan (see Schedule Four)
- iv. Signed minutes of meetings with relevant actors
- v. Provide copy of lease agreement of the facility of operation
- vi. Payment of the prescribed fees to the Authority
- vii. Provide a dispute resolution mechanism for the actors in the scheme
- viii. Ensure that the Articles and Memorandum of Association of the company declares that sole business of the company is to undertake EPR obligations on the specific products.

- ix. The directorship and membership of the company comprises of members of the PRO

nema

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

PUBLIC NOTICE

IMPLEMENTATION OF SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCER RESPONSIBILITY (EPR)) REGULATIONS, 2024

The National Environment Management Authority (NEMA) was established under Environmental Management and Coordination Act 1999 to exercise general supervision over all matters of environment and is the principal instrument of the Government in implementation of all environmental policies.

The Government of Kenya, through the Cabinet Secretary (Ministry of Environment, Climate Change and Forestry) gazetted the Sustainable Waste Management (Extended Producer Responsibility (EPR)) Regulations 2024 on 4th November 2024. These regulations aim to promote environmentally sound management of products throughout their life cycle, to obligate producers to take responsibility for the end-of-life (post-consumer) management of their products and to operationalize polluter pay principle.

Key highlights on the EPR Regulations

1. The regulations apply to all **producers** (manufacturers, importers and brand owners) of products listed in the **first schedule** of these regulations and the Extended Producer Responsibility (EPR) schemes for the **products category** in the first schedule.
2. These regulations highlights the Extended Producer Responsibility (EPR) obligations that each producer shall execute as per (regulation 5).
3. All importers of products listed in the first schedule shall within six months from the gazette date (4th November 2024) register with NEMA and pay fees as per the first schedule.
4. All producers (brand owners) of products listed in the first schedule shall within six (6) months apply to NEMA for registration and issuance of extended Producer responsibility Certificate.
5. Requirements for registration of Producers, Importers and Extended Producer Responsibility (EPR) Schemes.
6. Requirements for licensing of the Extended Producer Responsibility schemes for the products category.
7. Requirements for Registration and licensing fees.

This **therefore** is a call to all **producers (brand owners)** to familiarize themselves with the provisions of these regulations and take the necessary **steps for compliance**.

The application can be effected through our Nema portal: www.nema.go.ke. You can download the regulations from the NEMA website www.nema.go.ke for further details on

is the exhibit marked".....	N.G.2
referred to in the annexed affidavit / declaration	
of.....	SOLO N2041
Sworn / declared before me this.....	30 th
day of.....	April 2025
at.....	Nairobi

the regulations. For any enquiries contact NEMA on the telephone numbers indicated on the website or via email on info@nema.go.ke

The Authority is committed to ensuring a clean, healthy and sustainably managed environment for a prosperous Nation.

Dated: 15th January, 2025

DIRECTOR GENERAL

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

Popo Road off Mombasa Road

P.O. Box 67839-00200

NAIROBI.

Email: info@nema.go.ke

Tel: 020-2101370/020-2183718

Mobile: 0724253398/0723363010/0735013046

FORM II

(r.14(5))

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

(r. 6(1))

FEEES



nema

Individual producer registration (one off) – Ksh. 5, 000

Registration

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

Annual Licence

1. Collective Extended Producer Responsibility Scheme – Ksh. 100,000
2. Individual Extended Producer Responsibility Scheme – Ksh. 50,000

Made on the 14th October, 2024.

ADEN DUALE,
*Cabinet Secretary for Environment
Climate Change and Forestry.*

FORM G

(c.14(1))

APPLICATION FOR ANNUAL 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.....KRA PIN Number

Company Registration Number (If applicable)

- 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.

(c) Documents indicating the type of products and packaging introduced to the Kenyan Market

(b) The prescribed fee: Payable to:

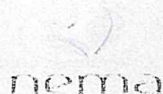
Account Name: NEMA Revenue Account
Account No. 1102298158
Bank: KCB, KICC Branch

Director-General
National Environment Management Authority
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

FORM F

(r. 10(5), 11(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 these Regulations.

Date of issue:

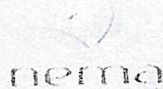
Expiry Date:

Signature

Director General
National Environment Management Authority

FORM D

(r. 7(5))



CERTIFICATE OF REGISTRATION

Certificate No.....

This certificate has been issued to
(Producer name) in fulfilment of the extended producer responsibility registration
requirements in compliance with these Regulations.

Date of issue:

Expiry Date:

Signature

Director General

National Environment Management Authority

FORM E

(rr. 10(1)) (1/1/1)

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)
- ix. Manufacturer
 - x. Importer
 - xi. Refiller
 - xii. Repackager
 - xiii. Rebrander
 - xiv. Brand owner
 - xv. Converter
 - xvi. 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.

FORM C

(r. 7(1))

APPLICATION FOR PRODUCER 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
 - ii. Importer
 - iii. Refiller
 - iv. Repackager
 - v. Rebrander
 - vi. Brand owner
 - vii. Converter
 - 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,
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: dgenema@swiftkenya.com

Director-General
The National Environment Management Authority
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@nema.go.ke

FORM B

(r.6(6))



EXTENDED PRODUCER RESPONSIBILITY – IMPORT CERTIFICATE

Certificate No.....

This certificate has been issued to
(Extended Producer Responsibility – Importer name) in fulfilment of the extended
producer responsibility import registration requirements in compliance with these
Regulations.

Date of issue:

Expiry Date:.....

Signature
Director General
National Environment Management Authority

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

[rr. 4(1)(c), 6(1), (2), (7), 7(5), 14(1)]

NO.	PRODUCT	AMOUNT (KShs) <i>Per item</i>
1.	Packaging for non-hazardous products (plastics, aluminium, composite, paper and its corrugates, glass, cardboard and carton).	150
2.	Hazardous products' packaging (Industrial chemicals, oil and lubricants, pharmaceuticals, agrochemicals, veterinary, cosmetics, paints and solvents), treated wood and agricultural films.	150
3.	Electrical and Electronic Equipment, Mercury Auto Switches, thermostats, Battery and Accumulators.	150
4.	End of life motor vehicles, automobiles, aircrafts, locomotives.	150
5.	Non packaging items (Plastics, glass, paper, cardboard), Furniture (except wooden, metallic), Rubber and Tyres, textiles, leather, artificial hair, diapers and sanitary towels.	150

SECOND SCHEDULE

FORM A

(r.6(2))

APPLICATION FOR EXTENDED PRODUCER RESPONSIBILITY IMPORT
CERTIFICATE

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.....

A10: Consignment No.....

Email.....

Mobile No.....

A10: Indicate the category(s) of the import product

.....

A11: List and Quantity 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

- x. Memorandum of Association to declare change of Directorship every two years
- xi. EPR fees structure agreed among members calculated using guidance provided in Schedule Nine
- xii. (For renewal), submit a progress report on achievement of set targets.

NINTH SCHEDULE

Parameters for modulation of EPR fees within a PRO.

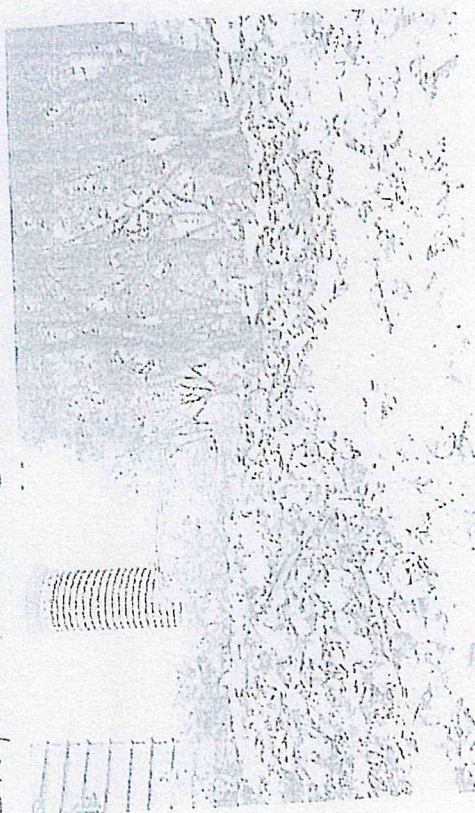
- a) Quantity of products introduced to the market.
- b) Existence of mechanism for segregation of products at source.
- c) Recyclability and Recoverability of products.
- d) Existence of markets for use of producer's secondary raw material.
- e) Absence/presence of hazardous or none hazardous but disruptive additives.
- f) Products with or without defined environmental foot prints.

Made on the2021.

KERIAKO TOBIKO,
*Cabinet Secretary,
Ministry of Environment and Forestry.*

16% on new producer rule

Diapers, detergents and sanitary towels among those to be affected



Garbage withing Nairobi Central Business District /FILE

MARTIN MWITA
for the press

CONSUMERs will pay more for key commodities as importers and suppliers indicate they will pass on costs associated with the new environmental rule.

The Extended Producer Responsibility (EPR) compliance becomes mandatory on May 4, for all manufacturers, importers and brand owners who place products on the market.

Under the EPR which is anchored within the Sustainable Waste Management Act 2022, players in the value chain will be held accountable for the entire lifecycle of their products, including post-consumer waste management and environmental impacts, which comes with

their products. This is mainly plastic packages and products, beverage cans, electronics among others.

Importers will also be required to pay \$1,500 per item imported into the country payable to the National Environment Management Authority (NEMA) for end-of-life management, including research, recycling and disposal, with raw materials and industrial input imports also on the list. A \$150 charge is imposed per item for all imports with nylon packaging, on top of an already existing waste management annual fee currently being paid.

EPR fee on a 40-hour of diapers for instance will average \$334,980 while those of detergents and sanitary towels will be at an average \$381,400 and \$856,000, respectively. According to the Kenya As-

ter the implementation for further consultations.

Commodities that will be most affected include cooking oil, diapers, detergents, sanitary towels, bottled water, canned food products, alcoholic drinks, among others, a move that will add pressure to an already struggling consumer who has been battling reduced spending power amid high taxation in the country.

The Association of Kenya Suppliers, which also represents the interest of importers in the country yesterday warned of a sharp increase in commodity prices, which could lead to low sales by businesses and drop in consumption taxes for the government.

"The cost has to be absorbed somewhere and the biggest casualty is the consumer who is already struggling with a high cost of living and low disposable income. There will be a huge implication across the value chain including raw material imports and finished goods," the association's CEO Ishmael Bett told the Star on phone.

The Shippers Council of Eastern Africa (SCEA) which also represents importers and exporters said SMEs and micro enterprises will be adversely affected by the proposed levy of \$150 per item and "which does not consider equity."

"The levy shall aggravate the already difficult business environment. The intention to protect the environment is noble, but further

EPR) put compliance rate at an estimated five per cent.

"This can be attributed to existing gaps in the regulations or a lack of clarity around compliance requirements," KEPRO chairperson James Odongo said.

Registered members are also required to declare the volume of packaging or products they introduce into the market monthly.

At present, the compliance rate for this requirement under KEPRO stands at about one per cent, by signaling the need for ongoing awareness and support to achieve full adherence to EPR obligations.

On consumers, KEPRO has been intentional in promoting awareness and driving behavior change.

"Through our Consumer-Led Transformation Initiative, we have conducted regional awareness drives that have reached over 1,000 direct participants to date. In addition, we are working closely with churches and schools to reinforce our messaging. We believe that children are the champions of tomorrow, and instilling environmental responsibility from an early age is key to achieving long-term transformation change," said Odongo.

(+) INSTANT ANALYSIS

Kenya faces significant challenges in waste management, including inadequate infrastructure, weak

This is the exhibit marked... NG-5
referred to in the annexed affidavit / declaration of: COHKO N20K1
Sworn / declared before me this... 2014
day of... April... 2025 at... Nairobi

(3) The purpose of the levy shall be to ensure that the manufacturers and importers of the goods specified in the Fourth Schedule pay for the negative environmental impacts of the goods.

(4) The Cabinet Secretary may make Regulations for the better implementation of the provisions of this section.

FOURTH SCHEDULE

(s. 7B(2))

GOODS SUBJECT TO ECO LEVY

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
1. Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) – other.	8472.90.00	98 per unit
2. Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers – incorporating a printing device.	8470.21.00	225 per unit
3. Automatic data processing machines and units thereof; magnetic or optical readers; machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – Portable automatic data processing machines, weighing not more than 10kg, consisting of at least a central processing unit, a keyboard and a display.	8471.30.00	225 per unit
4. Automatic data processing machines and units thereof; magnetic or optical readers; machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined.	8471.41.00	225 per unit
5. Automatic data processing machines and units thereof; magnetic or optical readers; machines for transcribing	8471.49.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Sns.)</i>
data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other, presented in the form of systems.		
6. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – processing units other than those of sub-heading 8471.41 or 8471.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units.	8471.50.00	225 per unit
7. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – input or output units, whether or not containing storage units in the same housing.	8471.60.00	225 per unit
8. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other units of automatic data processing machines.	8471.80.00	225 per unit
9. Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other.	8471.90.00	225 per unit
10. Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, com-	8472.90.00	225 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) – other.		
11. arts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 84.70 to 84.72. Parts and accessories of automatic data processing machines and units thereof – parts and accessories of the machines of heading 84.71.	8473.30.00	98 per unit
12. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – line telephone sets with cordless handsets.	8517.11.00	225 Per Unit
13. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – smartphones.	8517.13.00	225 per unit
14. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice,	8517.14.00	225 per unit

Description	Tariff number	Eco Levy rate (Shs.)
images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – Other telephones for cellular networks or for other wireless networks.		
15. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other.	8517.18.00	225 per unit
16. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), base stations.	8517.61.00	225 per unit
17. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice,	8517.62.00	225 per unit

Description	Tariff number	Eco Levy rate (Shs.)
images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network); base stations; machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.		
18. Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network); base stations; other.	8517.69.00	225 per unit
19. Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets – microphones and stands therefor	8518.10.00	98 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
20. Sound recording or reproducing apparatus – using magnetic, optical or semiconductor media.	8519.81.00	98 per unit
21. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – transmission apparatus for radio-broadcasting or television.	8525.50.00	98 per unit
22. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – transmission apparatus incorporating reception apparatus.	8525.60.00	98 per unit
23. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – high-speed goods as specified in Subheading Note 1 to this Chapter.	8525.81.00	98 per unit
24. Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – Television cameras, digital cameras and video camera recorders; Other, radiation-hardened or radiation-tolerant goods as specified in Subheading Note 2 to this Chapter.	8525.82.00	98 per unit
25. Transmission apparatus for radio-broadcasting or television.	8525.83.00	98 per unit

<i>Description</i>	<i>Tariff number</i>	<i>Eco Levy rate (Shs.)</i>
36. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; not designed to incorporate a video display or screen.	8528.71.00	1275 per unit
37. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; other, colour; unassembled.	8528.72.10	1275 per unit
38. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; other, monochrome; unassembled.	8528.73.10	1275 per unit
39. Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording	8528.73.90	1275 per unit

Description	Tariff number	Eco Levy rate (Shs.)
or reproducing apparatus; other, monochrome; other.		
40. Thermionic, cold cathode or photo- cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode- ray tubes, television camera tubes) – cathode-ray television picture tubes, including video monitor cathode-ray tubes; colour.	8540 11 00	1800 per unit
41. Thermionic, cold cathode or photo- cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode- ray tubes, television camera tubes) – cathode-ray television picture tubes, including video monitor cathode-ray tubes; monochrome.	8540 12 00	1800 per unit
42. Thermionic, cold cathode or photo- cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode- ray tubes, television camera tubes) – television camera tubes, image converter and other photocathode tubes.	8540 20 00	1800 per unit
43. Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 90.28, instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations – other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers).	9030 40 00	98 per unit
44. Rubber tyres of Chapter 40		1000 per unit
45. Diapers of Chapter 96		150 per kg

<i>Description</i>	<i>Tariff number</i>	<i>Excise rate (Shs.)</i>	<i>Levy</i>
46. Batteries or dry cells of Chapter 85		750 per kg	
47. Plastic packing materials of Chapter 39		150 per kg	