



Elements of Packaging and Paper Products (PPP) EPR Legislation Updated February 2020

This document provides a menu of legislative "elements" and options for state and local officials to use to develop extended producer responsibility (EPR) bills for packaging. The document provides guidance on elements that are necessary components of effective state EPR legislation in the United States. It is also intended to harmonize state legislation across the country. The document was developed by the Product Stewardship Institute (PSI) and a working group consisting of PSI state and local government members and will be updated periodically as appropriate. If you are developing an EPR bill for packaging, please contact PSI's Kristin Aldred Cheek (kristin@productstewardship.us) for additional resources.

ELEMENT	BASE MODEL	OPTIONS AND ADDITIONAL CONSIDERATIONS
<p>1. COVERED MATERIALS/ PRODUCTS/MARKET SECTOR</p>	<p><i>Packaging</i> is defined by its functions: containment and/or protection. Packaging includes consumer-facing (i.e., intended for the consumer market) primary, secondary, or tertiary packaging, as well as service packaging designed and intended to be filled at the point of sale (such as carry-out bags, bulk goods bags, take-out and home delivery food service packaging, and prescription bottles).</p> <p><i>Paper products</i> include paper sold as a product and all printed materials other than literary, text, and reference bound books.</p> <p>Covered Materials include all packaging and paper products regardless of recyclability.</p>	<p>Note: When determining what materials and what entities will be covered, keep in mind that Covered Materials and Covered Entities (Element #2) should align (i.e., the program should pick up material that producers are paying for under Covered Materials).</p> <p><u>Options to include in Covered Materials:</u></p> <ul style="list-style-type: none"> • Single-use plastic products (e.g., cutlery). • Packaging-like products (e.g., aluminum pie plates, sandwich bags, corrugated cardboard moving or file boxes, plastic wrap, aluminum foil). <p><i>Rationale: Consumers don't distinguish between PPP and these products, which are often put in recycling bins but are not Covered Materials under the base model. Therefore, producers that pay into the recycling system would subsidize the recycling of these other products. [Packaging-like materials are currently under consideration for inclusion in the British Columbia program (though they were not added during the most recent program revision).]</i></p> <ul style="list-style-type: none"> • PPP marketed to the industrial, commercial, and institutional (ICI) sectors. <p><i>Rationale: To maximize recovery rates and completely shift responsibility to producers, a comprehensive EPR program would cover all PPP materials, regardless of what market they flow through. However, if a state has well-established,</i></p>

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		<p><i>effective, privately managed ICI recycling programs, a state may choose not to include ICI in Covered Materials. (While Canadian EPR programs typically do not cover these materials, the European Union directive for packaging <u>does</u> cover packaging from all sectors. In the case of Belgium, for example, there are separate stewardship organizations to manage waste from residential packaging and to manage waste from commercial and industrial packaging.)</i></p>
<p>2. COVERED ENTITIES (groups that may use the producer funded recycling program free of charge)</p>	<p>The program should cover the existing municipal recycling program, such as curbside service to households (including single and multi-family dwellings), subscription services paid directly by residents, recycling services at transfer stations, and public recycling services for places such as sidewalks, plazas, and parks. The statute should define the existing program.</p> <p>Producers and the state may negotiate expansion of service (e.g., to multi-family dwellings where service does not currently exist) through the stewardship plan process, which may be needed to meet performance requirements.</p>	<ul style="list-style-type: none"> • If Covered Materials include those from ICI sectors, Covered Entities should include entities from the ICI sectors. • If ICI materials and entities are <i>not</i> covered by the bill, states could choose to include one or more of the following as a Covered Entity. Otherwise, the materials recovered from these entities would essentially be “free rider” materials under the base model. <ul style="list-style-type: none"> ○ Small businesses <p><i>Rationale: For example, in places where small businesses historically have been allowed to drop off recyclables at municipal waste facilities for free, a state may choose to allow them to continue to use the recycling system for free to avoid disruption of this service.</i></p> ○ Public events ○ Farms ○ Schools (K-12) ○ Colleges and universities
<p>3. RESPONSIBLE PARTY (“PRODUCER”) (who is responsible for funding the recycling program, and who is exempted?)</p>	<p>A “responsible party” is one that makes, licenses, or imports packaging or paper products for sale, use, or distribution in the state, or that distributes service packaging, and that has revenues of more than \$1,000,000 or produces more than one ton of packaging and paper products. Note that amounts apply to a whole company (i.e., not just one location or facility).</p> <p>The definition of responsible party should be tiered to provide clarity:</p> <p>“Responsible Party” means a party that has legal ownership of the brand of a product for sale, use, or distribution in the state,</p>	<ul style="list-style-type: none"> • A state may set the minimum revenue figure at \$0.25 per capita. • Although many 501(c)(3) organizations will fall under the de minimis guidelines, a state can also opt to exclude <i>all</i> 501(c)(3) organizations. However, Covered Materials from these organizations put onto the market (e.g., flyers and mailers, packaging for items they sell, etc.) will become “free riders” paid for by Covered Entities. • A state may opt to exclude municipalities (see above).

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	<p>including online retailers who sell into the state, that utilizes covered material. (1) Responsible parties shall be determined based on the following criteria:</p> <p>(A) A person who manufactures a product under the manufacturer’s own brand that uses covered material;</p> <p>(B) If subparagraph (A) does not apply, a person who is not the manufacturer of a product under the manufacturers own brand that uses covered material, but is the owner or licensee of a trademark under which a covered material is used in a commercial enterprise, sold, offered for sale or distributed in the state, whether or not the trademark is registered; or</p> <p>(C) If subparagraphs (A) and (B) do not apply, a person who imports the product that uses the covered material into the state for use in a commercial enterprise, sale, offer for sale or distribution in the state.</p> <p>Franchisors are obligated to report for resident franchisees.</p>	
<p>4. STEWARDSHIP ORGANIZATION(S) (or Producer Responsibility Organization, PRO) (groups of producers who work together to collect and recycle PPP)</p>	<p>Allow compliance by individual producers, as well as multiple producers that form a stewardship organization and discharge their responsibilities to that organization. Multiple stewardship organizations may be established.</p> <p>Stewardship organizations operating on behalf of multiple producers should be non-profit 501(c)(3) institutions.</p> <p>If there are multiple stewardship organizations, there should be a coordinating body. A state agency can take the role of, or create an entity to undertake, program management and coordination.</p>	<ul style="list-style-type: none"> Require an advisory board consisting of stakeholders with an interest in the existing recycling system, such as MRF’s, local governments, and PPP manufacturers to be established. The board should not include private entities that would bid on or enter contracts with a PRO, nor should it include Responsible Parties. The advisory board should provide expertise to the PRO, but not serve a regulatory function. To maintain a manageable number of PROs, require each PRO to represent a minimum market share or a minimum number of companies, or to pay a registration fee to establish the PRO.

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<p>5. FUNDING MECHANISM (method of defining producers' financial obligations)</p>	<p>Producer internalized funding covers all recycling program costs, including collection, transportation, processing, reuse, recycling, other recovery, disposal, education, program administration, and government oversight/administration.</p>	<ul style="list-style-type: none"> • Require producers to reimburse municipalities for disposal costs associated with the portion of PPP that is not recyclable or not recycled. Costs could be based on conducting waste audits demonstrating the amount of PPP in the waste stream, and then allocating a portion of municipal waste disposal costs to producers accordingly, unless demonstrated that the product was designed in the environmentally preferred manner. <p><i>Rationale: Packaging EPR programs typically cover the cost to manage materials that flow through the recycling system. The cost to manage materials that never enter the recycling stream (either because they are not recyclable or people dispose of them) are still borne by municipalities and taxpayers through the municipal solid waste stream.</i></p> <ul style="list-style-type: none"> • Require producers to contribute to the cost of litter programs, including contamination of compost from PPP materials such as plastic bags. • Require producers to apportion fees by weight and material type, and to account for one or more of the following: material management costs, a material's relative impact on the environment, lifecycle impacts, recycled content, and reuse. If credit is given for reusable items, specify a basis for determining that the items are in fact reused a minimum number of times in practice (e.g., an evaluation to show they are typically used 5 times). • In a shared financing model, producers cover a majority of net recycling program costs and municipalities are responsible for the remainder.
<p>6. PERFORMANCE STANDARDS</p>	<p>PPP should be managed in accordance with a state's waste management hierarchy or sustainable materials management policy.</p> <p>A plan must include ambitious, achievable targets for the collection and recycling of material by material type, subject to the state's approval in the stewardship plan, and producers should strive for continuous improvement. The state should have the authority to raise targets.</p>	<ul style="list-style-type: none"> • A state may choose to adopt environmental outcome-based measures (e.g., reduction in greenhouse gas emissions or energy consumption). • Avoid performance standards that are expressed simply in terms of total weight for all PPP (and not individual material targets), as this could discourage lightweighting or material reduction.

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	<p>Specific targets should be set and performance measured in relation to the amount of material on the market (i.e., percent of material on market).</p> <p>By the end of 2025, a minimum of 65% by weight of all PPP will be reused or recycled, with the following minimum targets for materials:</p> <ul style="list-style-type: none"> • 55 % of plastic; • 60% of wood; • 75% of ferrous metal; • 75% of aluminum; • 75% of glass; and • 75% of paper and cardboard. <p>By the end of 2030, a minimum of 75% by weight of all PPP waste will be reused or recycled, with the following minimum targets for materials:</p> <ul style="list-style-type: none"> • 65 % of plastic; • 75% of wood; • 85% of ferrous metal; • 85% of aluminum; • 85% of glass; • 85% of paper and cardboard <p>Include audit requirements for data collection and material disposition.</p>	
<p>7. CONVENIENCE STANDARDS</p>	<p>Producers must provide convenient, free, and on-going consumer access to collection facilities and/or collection services that are as convenient as trash disposal.</p> <p>Where curbside pickup is not available, producers are required to provide convenient, equitable access to permanent collection facilities that are within a reasonable drive time to 95 percent of the population.</p> <p>If there are existing state or local laws that set standards for service (e.g., curbside pick-up, plastic bag drop off, etc.), producers must meet or exceed those standards (also see Related Laws #13).</p> <p>If the state oversight authority agrees that a material (such as plastic bags) is not suitable for the most convenient means of</p>	<p>Note: free access applies to Covered Entities (#2) and should be specified in the Stewardship Plan (#9).</p> <p>Note: Outreach & Education (#11) addresses consumer awareness of collection facilities and services.</p>

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	collection available, another means of collection can be used.	
8. DESIGN-FOR-ENVIRONMENT	Covered Materials should be designed to minimize their overall environmental and health impacts. To minimize the impacts of extraction, manufacture, use, and end-of-life management, producers should consider such adjustments as: eliminating or reducing the amount of material used, eliminating toxic substances, designing for reuse and lifespan extension, incorporating recycled materials, designing to reduce environmental impacts across a product's lifecycle, and improving recyclability. (Recyclability refers to the technical feasibility of recycling the materials, the practical ease of recycling the materials, and consumers' ease in identifying materials as recyclable.)	<ul style="list-style-type: none"> Any lifecycle analysis used to guide management of materials should be conducted by an independent third party using accepted standards, should involve the state during the analysis process, and should be subject to approval by the state. Management options considered for a particular program should be aligned with the infrastructure in the program area. (For example, biodegradability of materials may be a consideration if industrial composting and closed loop recycling systems exist and are accessible to Covered Entities.) <p>Note: Producer fees can be structured to incentivize design-for-environment (see #5, Funding Mechanism).</p>
9. STEWARDSHIP PLAN CONTENTS	<p>Producers submit a 5-year plan for initial review and subsequent review at 5-year intervals. The state should have the authority to require that a plan be revised before its time period ends if targets are not being met or if there is a change in circumstances that warrants a revision.</p> <p>The plan should describe Covered Materials, Covered Entities, and responsible parties covered under the plan; stewardship organization structure; funding, including how fees will be structured and collected; performance targets; material collection methods, consumer convenience and geographic coverage, consumer education, and a customer service process (e.g., a process for answering citizen or customer questions and resolving issues); sound management practices for worker health and safety; design-for-environment provisions; how producers will work with existing recycling programs and infrastructure; how producers will consult with state and local governments and any other important stakeholders; and plans for market development.</p>	

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<p>10. REPORTING REQUIREMENTS</p>	<p>On an annual basis, producers must report at minimum: production and collection amounts; management of materials relative to the state’s waste hierarchy or sustainable materials management policy (amounts by method, recycling rates based on a percentage of PPP produced, and amounts sent to end markets); data on the final destination of materials, including the form of any materials exported (e.g., whether they were mill-ready); contamination in the recycling stream; stewardship organization board and/or advisory committee composition; collection service vendors, collection locations, population coverage, and accessibility (geographic distribution of collection, distance to population, hours or frequency); expenses; efforts to reduce environmental impacts at each stage of a product's lifecycle; educational efforts and results; customer service efforts and results; performance relative to targets in the approved plan; and any other information the agency deems appropriate or directs the producers to include. The report must be published online.</p> <p>Reporting should fit with a state’s existing waste tracking plans (e.g., data tracking for overall trash generation and reduction) to provide consistency and enable comparisons across programs.</p>	<ul style="list-style-type: none"> For states using outcome-based performance standards, include greenhouse gas, energy impacts, and other environmental impacts in the reporting requirements. If including, specify standards for estimating impacts. <p>Note: Requiring consistent reporting across states and over time will facilitate comparisons of program performance.</p>
<p>11. OUTREACH & EDUCATION REQUIREMENTS</p>	<p>Producers must educate consumers across the state on proper end-of-life management for Covered Materials, as well as provide the location and availability of curbside and drop-off collection opportunities. Recycling instructions should be consistent statewide, easy to understand, and easily accessible.</p> <p>Producers should also be required to include labels on Covered Materials that are easy to read and align with the recycling program (i.e., the labels should indicate that a material is recyclable and instruct people specifically on how to</p>	<p>Note: If a state chooses to provide its own outreach and education program, such programs should aim for messaging and design that is consistent as possible across the entire state.</p>

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	<p>recycle the material in the producers' program, or should indicate that a material is <i>not</i> recyclable under the program to reduce contamination).</p> <p>If performance targets are not being met, the producer is required to conduct an evaluation of outreach and education efforts to ensure that such efforts are sufficient and effective, as well as to provide information that can be used to target and improve outreach and education efforts.</p>	
12. ANTI-TRUST AND COMPETITION	<p>A producer or stewardship organization is immune from liability for any claim of a violation of antitrust, restraint of trade or unfair trade practice, if such conduct is a violation of antitrust laws, to the extent the producer or stewardship organization is exercising authority to carry out the provisions of the law.</p>	
13. PREEMPTION/RELATED LAWS	<p>This law should not preempt existing state or local laws that are more stringent, nor preempt future enactment of more stringent laws. State legislation that preempts or erodes the ability of local governments to address solid waste problems should only be considered when it is agreed to by local government and would create a more effective and beneficial statewide program (for further information, see PSI's Preemption Policy Statement).</p> <p>Make sure that this law is consistent with bottle bill, pay-as-you-throw, toxics in packaging, or other related laws in the state.</p>	
14. PENALTIES FOR VIOLATION	<p>Provisions to ensure compliance must be included to ensure a level playing field.</p> <p>A producer may not sell, use, or distribute Covered Materials (including products packaged in Covered Materials) in the state unless the producer has an approved stewardship plan or is participating in a stewardship organization with an approved plan. Provisions to ensure compliance may include assessing penalties against</p>	

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	producers and stewardship organizations, and may also include seeking the issuance of orders requiring compliance with the law. Producers participating in an approved plan or stewardship organizations on their behalf should be allowed to take legal action against non-compliant producers.	
15. ADMINISTRATIVE FEES	Administrative fees should be paid by producers, and should be sufficient to cover state agency oversight costs, including rule writing, planning, plan review, annual oversight, compliance, enforcement, and other directly related tasks. Such fees should only be allocated to the PPP EPR program. The law may specify that the fees support one or more staff positions within the oversight agency to administer the program.	
16. AUDIT REQUIREMENT	Annual reports should include an independent financial audit.	<ul style="list-style-type: none"> • A state may include a requirement for a periodic materials flow audit (to determine amounts and characteristics of Covered Materials in the solid waste stream). If included, add the audit to the plan and reporting requirements. • A state may include a requirement for audits ensuring all facilities involved in the collection and processing of materials through final disposition are managed in a manner protective of human health and the environment, including worker safety, with an understanding that government oversight may include monitoring to ensure compliance. If included, add audits to the plan and reporting requirements.
17. GOVERNMENT ROLES	<p>The government provides program oversight and enforcement, including reviewing, approving, amending, and rejecting stewardship plans as appropriate.</p> <p>Program plans should include provisions to consult with state and local governments.</p>	<ul style="list-style-type: none"> • A state may require government representation on producer responsibility board and/or advisory committee (see #4, Stewardship Organization).
18. TRANSITION/ IMPLEMENTATION SCHEDULE	Producers must submit a stewardship plan within six months of enactment of this legislation. The state has 90 days to review the plan, plus a 30-day public comment period. If a plan is rejected, the producers must submit a revision within 60 days. The	

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	<p>stewardship plan must be implemented within one year of plan approval. The state has 60 days, plus a 30-day public comment period, to review subsequent 5-year plans.</p> <p>Require that stewardship organization(s) operate on an annual basis that is consistent with state recordkeeping (i.e., fiscal or calendar) to simplify reporting and comparisons across packaging and other stewardship or waste management programs.</p>	
<p>19. INFRASTRUCTURE AND MARKETS</p>	<p>Producers shall use existing infrastructure to the extent it is technologically feasible and economically practical.</p>	<ul style="list-style-type: none"> • A state may require that a minimum percentage of stewardship program expenditures go toward market, sorting, and reprocessing research and development activities, including investments in equipment or facilities.