

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

Memo to Accompany Model State Law for Extended Producer Responsibility

Drafting Background¹

Numerous states have developed EPR bills of various types.² Our drafting team analyzed them and drafted the model bill to be a combination of the best parts of each. Fortunately, there has been a tremendous amount of activity in the EPR space at the state level recently, which has made for rich discussions and considerations of what is possible and what is practicable, for administrators, producers, and affected communities.³

We strove to keep our bill as straightforward as possible, with obvious areas where a state can modify the draft to fit state contours and needs. Which agency will administer and enforce the act, the length and difficulty of the phasing-in period for producers, and the structure and nature of penalties for failure to comply with the act are just some of the critical questions legislators will have to grapple with in crafting their own legislation. In each scenario, we have settled on a structure that can be modified on a case-by-case basis.

Maybe the most fundamental question of any EPR regime is where the burden for compliance will be placed. The Organisation for Economic Co-operation and Development (OECD), a collection of mostly wealthy nations, for instance, sees EPR as a fundamentally consumer-dependent model.⁴ Our drafting team chose the other side of the spectrum, as many states recently have, by placing the ultimate burden for compliance on the producers themselves, rather than the consumer. Consumers will have to modify behavior, but it will be the producers'

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² https://www.productstewardship.us/page/State_EPR_Laws_Map

³ It is noteworthy that cities and regions have also made tremendous progress in developing circular economies through extending producer responsibility and liability: <https://ellenmacarthurfoundation.org/topics/cities/examples>; <https://www.oecd.org/regional/cities/circular-economy-cities.htm>; https://read.oecd-ilibrary.org/urban-rural-and-regional-development/the-circular-economy-in-cities-and-regions_1ba1a5e9-en#page1. Drafters believe that the main challenge with EPR legislation at the city level is that, ideally, an EPR regime organizes the largest possible unit of the economy in order to reduce inconsistencies that would result from varying regimes for businesses to navigate. As such, federal legislation would be the ultimate goal, but given the challenges with passing an EPR bill at that level, the state is the largest unit that seems feasible.

⁴ <https://www.oecd.org/env/tools-evaluation/extendedproducerresponsibility.htm>

task to incent that behavioral change and create systems to facilitate the transition. The extremes of the spectrum for this fundamental question have the consumer being saddled with costs, penalties, behavior changes, and unexpected disruptions to life as they know it, and on the other side of the spectrum is a producer closing the loop on the life cycle of a product, creating circular economies.⁵

A compromise can be struck where most of the heavy lifting is a producer or industry's responsibility while consumers and governments still have meaningful roles and responsibilities. This model bill is set up so that producers, either individually or through an industry producer responsibility organization (PRO), must take ownership of the packaging and paper products (PPP) used in every sale. Whether the PPP is reusable, contains all or some recyclable materials, or is not recyclable at all and contains more hazardous materials, this bill works to ensure that every producer has a role and responsibility from beginning to end. This bill is also readily extended into extending producer responsibility to the product itself, not just the PPP.

Ultimately, EPR bills work to transition each producer towards being more like a service provider and to build ties across industries, encouraging the sharing of best practices, efficiencies, and economies of scale, so that waste can be reduced to zero whenever possible, where all materials sold are reusable or recyclable, and that the return systems for such are so well established that that waste becomes, essentially, obsolete. The missing link has been that our society has allowed a product to leave the useful cycle of materials and waste away in landfills or worse (the graves); EPR bills work to close the loop at the end of every product life cycle, ensuring that products are returned, reused, or recycled, and not wasted (cradle-to-cradle).

Who is more equipped and appropriate to manage a product at the end of its life than the producer itself? Who better to understand the customers and how those customers would be incented to ensure 100% compliance with a return program than the producer that has customer data and history including targeted demographic data? Shifting the burden from consumers to companies by requiring every product and package remains a responsibility of the producers themselves seems the most equitable and wise arrangement possible. Coupling these requirements with producer-funded educational programs and infrastructure upgrades further ensures success.

This memo was originally the resource we created for ourselves in our drafting and has now been modified for readability purposes to accompany any drafter on their journey to pass an EPR bill in their state. We encourage you to reach out for questions or for support in crafting your own state's bill. No model bill is perfect, and this bill certainly is not, but we hope it provides the shape and structure needed to write a bill that fits any state.

EPR Primer

1. Introduction

Today's systems for disposing of discarded goods and packaging are negatively impacting the health of our families, our communities, and our environment. Environmental

⁵ For more on the definition of circular economies see: <https://ellenmacarthurfoundation.org/topics/circular-economy-introduction/overview>; <https://www.epa.gov/recyclingstrategy/what-circular-economy>; <https://www.europarl.europa.eu/news/en/headlines/economy/20151201STO05603/circular-economy-definition-importance-and-benefits>.

justice (EJ) issues abound from airborne emissions and particulate matter, to microplastics, toxic waste, incineration, undrinkable water, dumping in other countries, and now those countries rejecting waste they used to accept leading to that waste stream finding its way to other disadvantaged communities. The global system of production requires a better way of ensuring that people's needs for products are met without harm to the environment, other countries, or low-income communities, Tribal communities, and communities of color in the United States and beyond. The current cradle-to-grave system of production has yielded horrific numbers of landfills, formal and informal, and atrocities like the plastic gyres now taking up huge swaths of our oceans. That pollution kills people, flora, and fauna, and those waste streams disproportionately burden EJ communities.

An essential part of the solution to this problem lies with extended producer responsibility policies. Extended producer responsibility (EPR) is an awkward name for a basic concept: requiring producers of products to take responsibility for the end products or waste that is generated by their use. EPR bills can be based on the principle of polluter pays, moving the burdens of managing waste from government, communities, and the environment to the initial manufacturers or generators of the waste. One of the key goals of EPR is to create incentives for producers to redesign products and packaging to minimize waste generation and facilitate easy management of end products.

Although most US states have at least one EPR law that applies to one or more categories of goods, the US has no national requirement along these lines, and state laws provide only piecemeal coverage of problematic waste streams within any given state.⁶ The model state EPR law provided as an accompanying document is intended to provide a flexible yet effective framework for ensuring a broader and more consistent approach to EPR in the United States.

2. Overview of Extended Producer Responsibility Approaches

EPR is a policy approach that extends the producer's responsibility for a product. Currently, under different state or national laws, producers are seen as having responsibility for a certain package of things: minimum wage laws, worker health and safety, consumer safety, and production costs. EPR adds to these responsibilities to also include the management of a product and its packaging after the product has been used. EPR policies shift the costs or physical collection partially or fully from local governments to producers, and can also provide explicit incentives for producers to reduce environmental impacts through decisions incorporated into the design of their products.⁷

At a minimum, EPR requires that the producer becomes responsible for post-consumer management of a product and/or its packaging. As the Product Stewardship Institute (PSI) explains: "There are two related features of EPR policy: (1) shifting financial and management responsibility, with government oversight, upstream to the producer and away from the public

⁶ Product Stewardship Institute, "U.S. State EPR Laws," https://www.productstewardship.us/page/State_EPR_Laws_Map.

⁷ <https://europen-packaging.eu/policy/9-extended-producer-responsibility.html/>.

sector; and (2) providing incentives to producers to incorporate environmental considerations into the design of their products and packaging.”⁸ EPR is a type of product stewardship and is seen as a key policy for effectuating the goals of a circular economy.⁹

The oldest formalized extended producer responsibility processes are the bottle refund systems developed over 100 years ago by the US beverage industry.¹⁰ Other familiar examples in the United States include producer responsibility for the disposal of mattresses, paint, printer cartridges, pharmaceuticals, electronics, and more. As a concept, EPR was introduced in the early 1990s to describe emerging policy measures aimed at shifting some waste management responsibilities to producers.¹¹

3. Types Of Producer Responsibility

- **Liability:** The producer is responsible for environmental damage caused by the product in question.
- **Economic responsibility:** The producer covers all or part of costs for collection, recycling or final disposal of products it manufacturers, and may charge a special fee.
- **Physical responsibility:** Manufacturer is involved in physical management of the products or of the effect of the products. This can range from merely developing the necessary technology, to managing the total "take back" system for collecting or disposing of products it has manufactured for which it may charge a fee.
- **Ownership** - producer assumes both physical and economic responsibility.
- **Informative/disclosure responsibility:** The producer is responsible for providing information on the product or its effects at various stages of its life cycle.

4. How Are These Responsibilities Implemented? Three categories of policy approaches to encourage product responsibility:

- **Mandates:** mandatory take-back; minimum recycled content standards; secondary materials utilization rate requirements; rates and dates; energy-efficiency standards; disposal bans and restrictions; materials bans and restrictions; and product bans and restrictions.
- **Economic levers:** advance disposal fees; virgin materials taxes; removing subsidies for virgin materials; deposit/refund systems; and environmentally preferable products procurement.
- **Disclosures:** seal-of-approval types of environmental labeling (Green Seal, Blue Angel); environmental information labeling (energy efficiency, CFC use, recycled content); product hazard warnings; product durability labeling.

⁸ Product Stewardship Institute, “[What is product stewardship?](#)” 2011.

⁹ The Ellen MacArthur Foundation, [Universal Circular Economy Policy Goals](#), 2021.

¹⁰ Pat Franklin, “Extended Producer Responsibility: A Primer,” Container Recycling Institute (CRI), <https://www.container-recycling.org/index.php/issues/extended-producer-responsibility>.

¹¹ Bass, Jessica, "The Potential and Limits of Extended Producer Responsibility: A Comparative Analysis Study," 2017, CMC Senior Theses, http://scholarship.claremont.edu/cmc_theses/1693.

5. **EPR Policy Approaches in Use Today:** A number of instruments are currently in use to shift responsibility for product and packaging waste from government and taxpayers to producers and consumers. For example:

- **Deposit refund systems:** Deposit refund systems can encourage reuse. At the very least they provide a monetary incentive to the consumer to return the product or package, and an infrastructure for its collection and recycling. Ten states and one US city, most Canadian provinces, and many European nations have enacted beverage container deposit laws. Deposit refund systems also exist for batteries and some hazardous wastes.
- **Product charges:** Product charges influence the choice of materials used. An eco-tax levied in Belgium reduced consumption of PVC.
- **Advanced disposal fees:** These fees are designed to influence the choice of materials used, and can generate substantial funds, which may or may not be used by government for environmental projects. They are sometimes refunded to consumers, but generally the consumer is unaware of the fee. Austria has implemented such a fee for refrigerators. Refundable disposal fees are required on automobiles in Sweden.
- **Voluntary agreements tied to mandatory regulations:** These agreements are used to phase out undesirable materials, encourage design for recyclability, or ensure high rates of reuse or recycling. The voluntary deposit system for aluminum cans in Sweden enables the aluminum industry to achieve the government mandated recycling rate. The stick that drives the deposit system is the promise of a ban if the rates fall below the recycling rate set by government.
- **Producer Responsibility Organization (PRO):** Waste producers share responsibility for waste collection and create collaborative systems to meet EPR goals. PROs operate under negotiated agreements between governments and groups of waste producers with a predefined scope of waste to be collected and collection targets. Funding is secured through licensing fees based on weight of packaging relative to units. Note: Take-back schemes generally combine both economic and physical responsibility.

6. Types of Product Coverage

- Option 1: Everything
- Option 2: Specific Products
- Option 3: All PPP, excluding things covered under existing bottle laws

7. Fee Structures

- **Option 1: Variable Structure:** Fee structures can be complex. For example, policies can set up complicated fee structures that charge rates based on how easily materials can be recycled. For example, this year France will shift from a single charge for all

plastics to different rates for seven plastics categories. Some programs penalize companies for disruptive packaging or historic waste contributions and give bonuses for improvements or high recycled content, speed of compliance, and quality of programs, providing incentives for industry to make less wasteful products and packaging quickly. <https://www.pressherald.com/2020/01/22/bill-pending-in-maine-to-make-producers-pay-for-packaging-disposal/>.

- **Option 2: Flat Structure**

8. Innovative Cost Allocation/Funding:

- Costs allocated by market share in Connecticut E-Waste (EPR) Law, available at: <https://portal.ct.gov/DEEP/Reduce-Reuse-Recycle/Electronics/CT-Electronic-Recycling-Law>; https://www.cga.ct.gov/current/pub/chap_446n.htm

9. Who maintains the collection infrastructure? / Who exercises control over the collection system?

- **Producers**

- "Usually, EPR legislation allows the producers to select [for] themselves who they want to operate the system," said founder and CEO Scott Cassel, adding this broader governance question is a point of ongoing international discussion. <https://www.pressherald.com/2020/01/22/bill-pending-in-maine-to-make-producers-pay-for-packaging-disposal/>.
- Washington: Washington's bill puts the full burden on producers to manage their own waste by contracting a nonprofit organization to collect, organize, and recycle their single-use packaging. <http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Bills/1204.pdf>.
- California Pharmaceutical and Sharps Waste Stewardship Regulations, promulgated under [Senate Bill \(SB\) 212](#) (Jackson, Chapter 1004, Statutes of 2018), available at: <https://www.calrecycle.ca.gov/laws/rulemaking/pharmasharps>.

- **Government (local jurisdictions or state, reimbursed by producers)**

- Maine: Maine's bill uses this shared responsibility approach where municipalities maintain control over waste and recycling that would be funded by producers. https://www.mainelegislature.org/legis/bills/bills_129th/billtexts/HP150001.asp.

- **Enforcement Mechanisms**

- Agency or agencies aligned to enforce the Act and can sue when obligations are not met
- PRO members can sue a non-compliant member
- Citizen suits on non-compliant members, non-compliant PROs, agencies failing to enforce

- **Timeline**
 - Phase-in period
 - Compliance deadlines
 - Punitive period

Appendix: Various Existing Laws & Regulatory Schema

The United States

⇒Early EPR

- Bottle Bills (see also <http://www.bottlebill.org/> for summaries of elements and success rates of global bottle bills; see also <http://www.bottlebill.org/assets/pdfs/pubs/2009-BeverageSystemsCalifornia.pdf> for case global case studies and bottle bill feature recommendations):
- The lack of uniformity prevents a harmonized response from manufacturers and contributes significantly to the costs of compliance. Moreover, most bottle deposit programs rely on individual beverage distributors and require expensive sorting by brand and distributor.
- A notable exception to this is Oregon, the bottle bill pioneer, which in 2011 substantially expanded its bottle deposit law. It switched from a program based on individual beverage distributor/brand responsibility to a collective system run by a private, for-profit administrator: the Oregon Beverage Recycling Cooperative (OBRC). In addition, the expansion included a provision that directed OBRC to establish independent collection centers in order to relieve the burden on grocers and retailers. OBRC essentially acts like a statewide industry consortium of the entities responsible for the creation and the ultimate recycling of the product. Together these changes give more control to the manufacturers while simultaneously expanding manufacturer responsibility.

⇒California

- [S.B 54](#) signed into law by Gov. Newsom creating the “the nation's most sweeping extended producer responsibility law.”
 - Under S.B. 54, single-use packaging must be at least 30 percent recycled, reused or composted by 2028. That number increases to 40 percent by 2030 and to 65 percent after 2032.
 - According to [Politico](#): The law will also force industry sources to put \$5 billion over the next 10 years into helping address plastics pollution. A fee on single-use packaging and food ware will go to state agencies and local governments to assist in their related work. The law requires producers to join a producer responsibility organization, or PRO, that must provide recycling plans approved by the states.
- Quarterly post-sale accounting of number of products sold; producers are then responsible for exactly that number of products
- [Product Stewardship and Extended Producer Responsibility \(EPR\)](#) provides a list of programs currently in place under EPR law ([Extended Producer Responsibility Laws in California](#)). These laws are what mandate the stewardships.

- Paint, carpet, mattresses, pharmaceuticals and sharps, mercury thermometers, and pesticide containers
- EPR Legislation in CA: <https://calrecycle.ca.gov/epr/policylaw/>
 - Mercury Thermostats: [Health and Safety Code Section 25214.8.10 through 25214.8.20](#), the [Mercury Thermostat Collection Act of 2008](#), provides for producer responsibility, similar to what was intended in CalRecycle's EPR Framework. The Department of Toxic Substances Control is the lead state oversight department for this law.
 - Pesticide Containers: [Food and Agricultural Code Section 12841.4](#), covering [pesticide container recycling](#), and signed into law in 2008, requires first sellers using certain pesticide containers to demonstrate participation in a certified high-density polyethylene (HDPE) pesticide container recycling program and annually submit certifying documents to the director of the Department of Pesticide Regulation.
 - Paint: [Public Resources Code Sections 48700 through 48706](#) describe the requirements of the [Paint Stewardship Program](#) to ensure that leftover paint is properly managed in a manner that is sustainably funded. CalRecycle is the lead state oversight department for this law.
 - Carpet: [Public Resources Code Sections 42970 through 42983](#) describe the requirements of the [Carpet Stewardship Program](#) to ensure that discarded carpet becomes a resource for new products. CalRecycle is the lead state oversight department for this law.
 - Mattresses: [Public Resources Code Sections 42985 through 42994](#) describe the requirements of the [Mattress Stewardship Program](#), which aims to reduce illegal dumping, increase recycling, and substantially reduce local government costs for the end-of-use management of used mattresses. CalRecycle is the lead state oversight department for this law.
 - Pharmaceuticals and Sharps: [Public Resources Code Sections 42030 through 42036.4](#) established the [Pharmaceutical and Sharps Waste Stewardship Program](#), which requires safe and convenient disposal options for pharmaceutical drugs and home-generated sharps waste. CalRecycle is the lead state oversight department for this law. The [California State Board of Pharmacy](#) has oversight of specific provisions as well.
 - New bills are periodically introduced through the state's legislative process. CalRecycle maintains a [list of priority bills](#) covering a wide variety of topics, sometimes related to EPR.
- [Bill Text - AB-842 California Circular Economy and Plastic Pollution Reduction Act](#). This is a bill that failed in the Natural Resources Committee 1/31/22. Its aim was to expand EPR law to require that a producer, retailer or wholesaler that uses partial or all plastic packaging join or form a stewardship to achieve "75% recycling rate of single-use packaging and single-use products by 2032 and annually thereafter."

⇒Colorado

- [House Bill 22-1355: https://leg.colorado.gov/bills/hb22-1355](https://leg.colorado.gov/bills/hb22-1355)

- Gov. Polis [signed the bill](#) into law on June 2, 2022, making Colorado the third state to pass an EPR bill for packaging. “In Colorado’s version of EPR, producers would pay annual membership dues to the producer responsibility organization based on the amount and type of packaging or paper they use. Companies would thus have an incentive to reduce unnecessary packaging and use more recycled content in order to pay lower fees, according to the bill. Fees would go toward funding new or improved recycling services, and residents could keep using their usual recycling services if they wish, according to the bill. The bill also includes unique provisions for processing compostable packaging.”
- More about the passage of the bill here: <https://resource-recycling.com/recycling/2022/05/03/colorado-epr-bill-passes-house/>

⇒Connecticut

- **Bottle Bill:** <https://portal.ct.gov/DEEP/Reduce-Reuse-Recycle/Bottles/Bottle-Bill-Legislation>
 - Bottle Bill deposits to be held in a special trust fund for the state; quarterly reporting on account balances, credits, and withdrawals; and initiators to pay outstanding balances quarterly.
 - All containers for water and similar products sold in the state shall have a refund value (at least 5¢) and shall be embossed or stamped with the symbols to indicate the refund value for consumers.
 - Every deposit initiator must forward the unredeemed deposit balance in the special account to the Department of Energy and Environmental Protection (DEEP) for deposit in the State's General Fund.
- **Mandated Recycling:** <https://portal.ct.gov/DEEP/Reduce-Reuse-Recycle/Recycling-Its-the-Law#Cannot>
 - Glass & Metal Food & Beverage Containers
 - Plastic Containers (PET or PETE #1)
 - Plastic Containers (HDPE #2)
 - Corrugated Cardboard
 - Boxboard
 - Newspaper
 - Magazines
 - White & Colored Office Paper (residences and businesses)
 - Scrap Metal, including appliances
 - Ni-Cd Rechargeable Batteries (from consumer products)
 - Waste Oil (crankcase oil from internal combustion engines)
 - Leaves (must be composted)
 - Lead Acid Battery or Motor Vehicle Batteries
 - Grass Clippings (should be left on the lawn or, if necessary, composted)

- Commercially Generated Source Separated Organic Materials (Only applies to businesses compelled to do so per CGS Section 22a-226e.)
- **Items Covered Under a Product Stewardship Program**
 - Household Covered Electronic Devices (televisions, monitors, printers and computers)
 - https://www.cga.ct.gov/current/pub/chap_446n.htm
 - “Covered electronic device” or “CED” means desktop or personal computers, computer monitors, portable computers, CRT-based televisions and non-CRT-based televisions or any other similar or peripheral electronic device specified in regulations adopted pursuant to section
 - Paint
 - <https://www.cga.ct.gov/2011/ACT/Pa/pdf/2011PA-00024-R00SB-00828-PA.pdf>
 - Senate Bill No. 828- Paint stewardship program: no producer, distributor or retailer shall sell or offer for sale architectural paint (interior and exterior architectural coatings sold in containers of five gallons or less) to any person in this state if the producer of such architectural paint is not a member of the representative organization.
 - Mattresses
 - <https://www.cga.ct.gov/2013/ACT/pa/pdf/2013PA-00042-R00HB-06437-PA.pdf>
 - provides for free collection of discarded mattresses from municipal transfer stations.
 - Mercury Thermostats

⇒Maine

- **Stewardship Program for Packaging 38 M.R.S. § 2146 (PPP):**
 - <https://legislature.maine.gov/statutes/38/title38sec2146.html>
 - s1(O): Producer definition- tracks with trademark and brand owner or importer [Note: NY does the same]
 - (I) “Packaging material” excludes beverage containers and architectural paint containers (which are covered by other EPR laws)
 - §2: exemptions: producers of less than 2 million in gross revenue per year; less than one ton of packaging material sold into state per year; majority of revenue from salvage/bankruptcy sales; selling perishable food and use less than 15 tons of packaging material a year
 - §3: selection of organization: Maine will enter a 10-year contract with an organization to manage product stewardship fund

- Variable fee structure based on ease of recycling, etc. [Note: NY does the same]
- §4(a): Sales ban as penalty for non-compliance [Note: CA does the same; NY does not provide for sales ban]
- §6: fee: Maine DEP shall adopt rules setting payment calculation for material that is readily recyclable and material that is not readily recyclable
- §8: Producers may set up alternative collection programs; may offset their payment to org
- §5, 7: Maine does require producers to account for the quantity it produces to organization. Specifically, Maine requires producers to report annually the amount and description of the packaging material, and all brands associated with that material, sold or distributed in the State. But this responsibility is actually the organization's. So, they will develop ways to get that info from producers.
- §5(B), (F) requires the stewardship organization to provide a list of participating producers. For non-participating producers, the organization only needs to report the non-participating producers that are known by the organization.
- §9: municipal requirements: to be eligible for reimbursements from fund, municipalities must provide for collection and recycling, and reports to org.
- §10: municipal reimbursements: organization will reimburse median per-ton costs to municipalities (to incentivize municipalities to lower costs)
- §11: investments in education, infrastructure submitted by org to department for approval
- §12: Stewardship organization will establish and manage the packaging stewardship fund: to reimburse municipalities; cover operating costs of org; pay department applicable fees; support investment in education and infrastructure.
- §13 department rulemaking: payment schedule for low-volume and regular producers. Fees should incentivize increased recyclability of goods. Rulemaking for reporting of type and characteristics of packaging. Annual determination of packaging that is readily recyclable. Determination of municipal reimbursements. Assessing program performance including recycling rate goals. Audits. Determination for more exclusions based on federal law (FDA packaging, medical devices, etc.)
- Other products covered under Maine laws include batteries, electronics, thermostats, fluorescents, paint, bottles
(<https://www.maine.gov/dep/waste/productstewardship/index.html>)

⇒Massachusetts

- **301 CMR 4.00: Provisions for Recycling of Beverage Containers Bottle Bill**, available at: <https://www.mass.gov/doc/301-cmr-400-provisions-for-recycling-beverage-containers-bottle-bill/download>

- Recycles beverage containers including any sealable bottle, can, jar, or carton made from glass, metal, plastic or any combination of those materials and is produced for the purpose of containing a beverage. Does not include biodegradable containers.
 - Plastic bottles for recycling: screw type, snap cap or other closure and has a capacity of sixteen fluid ounces or more, but less than five gallons.
 - Rigid plastic container: any formed or molded container, other than a bottle, for single use, composed of mostly plastic resin and with an inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons.
 - Reusable beverage container: any beverage container structurally capable of being refilled and resold by a bottler at least ten times after its initial use.
- Deposits: Every beverage container with a capacity of less than two gallons will have a refund value of not less than 5¢. Consumers deposit the refund value of each beverage container during purchase with the beverage dealer. Restaurants are not required to collect a deposit from a customer for on-premise sales or redeem beverage containers for the public.
- Distributors' and Bottlers' Obligations (Except as provided in 301 CMR 4.05(5) and 4.03(2)(c)):
 - Distributors accept from any empty beverage container of the type, size, and brand sold by the distributor within the past 60 days, and shall pay the dealer the refund value of the beverage container as indicated thereon plus a handling fee of 02.25¢ per container.
 - Bottlers shall accept from a distributor or a dealer, any empty reusable beverage container of the type, size, and brand sold by the bottler within the past 60 days and shall pay the distributor or dealer the refund value of the reusable beverage container as indicated thereon plus a handling fee of at least 1¢ per container if the empty reusable container is presented at the time and at the location where the distributor or dealer obtains filled reusable beverage containers from the bottler.
- Permissive refusal: A bottler, dealer, distributor, or redemption center may refuse to accept a beverage container which is not in acceptable condition. Refillable glass beverage containers must be able to hold liquid, be able to be resealed, be in its original shape, and not be chipped or cracked to be acceptable. A nonrefillable glass beverage container may be chipped, but it may not have the bottom broken out or the neck broken off to be acceptable. Metal cans and plastic bottles must be easily identifiable and reasonably intact to be acceptable.

⇒New York

- **EPR Act**, available at: <https://legislation.nysenate.gov/pdf/bills/2019/S7718>
 - New York’s Act very clearly shifts responsibility from the public to producers. It is generally clear and accessible and touches on each of the PSI’s elements of model PPP EPR legislation. There are just a few areas of concern, as noted below.
 - Potential Criticisms:
 - Scope- Covered materials
 - Exclusions
 - s27-3001(2)(d): “does not include packaging used for the long-term protection or storage of a product or with a life of not less than five years.’
 - Covered Entities (groups that may use the producer funded recycling program free of charge in order to encourage adoption)
 - s27-3001: “A producer or producer responsibility organization *shall provide for widespread, convenient, and equitable access to collection opportunities for the covered products* identified under the producer or producer responsibility organization’s plan. A producer responsibility organization shall ensure services continue for all single and multi-family residential units that a municipality serves as of the effective date of this article...” (emphasis added)
 - s27-3010(1)(c): the plan should adequately provide for “convenient and free consumer access to collection facilities or collection services...”
 - Performance Standards
 - s27-3010(1)(d): “the plan takes into consideration a post-consumer content rate and recycling rate that will create or enhance markets for recycled materials and there is a plan to adjust the minimum rates on an annual basis.”
 - Convenience Requirement
 - s27-3005(2) (and s37-3010): “Costs to provide curbside collection or other level of consumer service that is, at minimum, as convenient as curbside collection or as convenient as the previous waste collection schema in the particular jurisdiction.”
 - Producer responsibilities
 - s27-3003(1)(2): No incentive for early submission of plan and compliance.
 - s27-3003(3): Exemptions
 - Producers who generate less than \$1,000,000 in annual revenue.
 - Producers who generate less and one ton of covered materials or products supplied to New York state residents

per year Producers who operate as a single point of retail sale and are not supplied or operated as part of a franchise.

- Outreach and education requirements
 - s27-3013(2): Requires a plan to work with participating producers to label covered products with information to help consumers manage the products. s27-3013(3): The department shall determine the “effectiveness” of the outreach and education.
 - Reporting requirements
 - s27-3015: Lists the reporting requirements as an exhaustive list.
 - Administrative costs
 - s27-3008(2): Language does not make clear that producers should cover *all* costs.
 - Audits
 - s27-3015: Lacks health, safety, and environmental audits at facilities involved in the final disposition of materials, and periodic materials flow audits.
 - S27-3015(b)&(c): Producers are required to report the weight and type of covered materials collected, but not the amount distributed in the State. See s6(C) of Maine bill.
 - Penalties (Enforcement)
 - s27-3019
- **NY’s New EPR Act for Packaging, A10185 (Introduced May 5, 2022; currently pending):** <https://resource-recycling.com/plastics/2022/05/11/epr-and-packaging-reduction-bill-introduced-in-new-york/>

⇒Oregon

- **HB 1036 - Bottle Bill (Introduced July 2, 1971)**
 - [Original Bottle Bill Text](#)
- **SB 707 (Passed June 7, 2007)**
 - <https://olis.oregonlegislature.gov/liz/2007R1/Downloads/MeasureDocument/SB707/Enrolled>
 - Incentivizes distributors to create a unified system of redeeming containers throughout the state
 - Reduces the load size, accounting, and sorting problems for individual distributors
 - 2009 – CR Inc, BROCO and most other distributors joined together to form the Oregon Beverage Recycling Cooperative (OBRC)
 - Major Provisions

- Stores $\geq 5,000$ square ft or must accept empty containers of any brand or size, if they sell the same type of beverage
- Stores $\leq 5,000$ square ft can limit the number of containers they redeem to 50 per person per day
- Establishing the Bottle Bill Task Force
 - Issued the following recommendations:
 - Support an industry proposal for the beverage industry to set up and run a statewide system of redemption centers
 - Expand the list of beverages to include sports drinks, coffees, teas, juices, wines, liquors and other beverages, excluding milk or milk substitutes
 - Increase the refund value of beverage containers to 10 cents
 - Set a goal of an 80 percent return rate under the proposed system
 - Beverages Included
 - Beverages $\leq 3L$:
 - Water, flavored water, soda water, and mineral water
 - Beer/malt beverages
 - Carbonated soft drinks
 - Hard seltzers
 - Kombucha
 - Beverages between 4 oz and 1.5L:
 - Tea
 - Coffee
 - Hard cider (if 8.5% ABV or less)
 - Fruit, vegetable, and aloe vera juice
 - Non-alcoholic wine
 - Beverages containing marijuana or hemp
 - Energy and sports drinks
 - Coconut water Oral electrolyte replacements
 - Ready to drink cocktail mixers
 - Muscle Milk Beverages containing dairy or plant-based milk where milk is not the first ingredient
- Food waste reduction
 - OR's DEQ works with local partners to rescue food to redistribute to food insecure populations. For food that is unable to be rescued, the DEQ provides other end-of-life solutions, such as composting, anaerobic digestion and agricultural use.
 - <https://www.oregon.gov/deq/mm/food/Pages/default.aspx>
- Repair and reuse grant program (paused during Covid-19)
 - Grants for repairing and reusing items such as sports equipment, bikes, clothing, tools, furniture, denim, cell phones, shoes, vacuums.

- <https://www.oregon.gov/deq/mm/Pages/Product-Lifespan-Extension.aspx>
- E-Waste Recycling
 - It is illegal in Oregon to dispose of computers, monitors and TVs in the garbage or at disposal sites such as landfills, incinerators and transfer stations. Anyone knowingly disposing of these items can be fined. Oregon's e-recycling program offers free recycling for any one person to bring 7 or fewer computers, monitors and TVs to a participating e-waste collection site.
 - <https://www.oregon.gov/deq/ecycles/Pages/ban.aspx>

⇒ Washington

- **HB 1204 - 2019-20**, original bill available at: <https://app.leg.wa.gov/billsummary?BillNumber=1204&Chamber=House&Year=2019>
→ <http://lawfilesexst.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Bills/1204.pdf?q=20200727005847>; PDF also available in Google Drive: https://drive.google.com/drive/u/1/folders/1NSBWrtJ_z_IYTWS05Swfiz8NgkkfOEi (Washington HB 1204 - 2019-20).
 - Comments: Washington's bill covers fewer kinds of packaging than New York's but is more progressive with respect to the packaging that it does cover. Washington's bill also more closely follows the PSI recommendations.
 - Covered Producers
 - s2(1): prioritizes various alternative definitions of "producer."
 - Addressing past harms
 - s7: product stewardship programs must prevent plastic packaging from becoming litter and collect littered plastic packaging from public places.
 - Product ban
 - s14: plastic packaging with less than 25% post-consumer content banned starting 2023, with exceptions.
 - Stewardship Organization
 - s15: specifies requirements for makeup of organization's advisory committee; org must reimburse tribal members, community members, and members of nonprofit organizations for their participation expenses.
 - Potential Criticisms:
 - Scope- Covered materials
 - s3(1)(a): plastic packaging only
 - s3(3): same exemptions as NY
 - Stewardship Organization
 - s3(1)(a): requires participation in a stewardship organization

- Covered Entities (groups that may use the producer funded recycling program free of charge)
 - s5(1): “A producer or producer responsibility organization shall provide for widespread, convenient, and equitable access to collection opportunities for the producer’s plastic packaging...”
- Performance Standards
 - Progressive reduction

⇒Vermont

- **Vermont Universal Recycling Act**, available at: <https://dec.vermont.gov/waste-management/solid/universal-recycling> (Universal Recycling, As Enacted Into Law in 2012 (Act No. 148, formerly H.485); was changed in 2018 and 2019).
 - Ordering Priorities (e.g., s6604: used to require that waste management plans promote ordered priorities; e.g., s6605k: food waste management hierarchy)
- **EPR Program for PPP H.142 (2021)** available at <https://legislature.vermont.gov/Documents/2022/Docs/BILLS/H-0142/H-0142%20As%20Introduced.pdf>
 - §7181(4) “Packaging” only excludes long-term packaging and beverage containers subject to VT bottle deposit program.
 - §7181(5) Bill would include paper products.
 - §7181(13) responsible party is manufacturer, or owner of trademark, or importer.
 - §7182(a) prohibition of sale unless compliant
 - (b): exceptions for those that sell less than one ton of covered material (packaging or paper), or have less than 1 million in gross revenue
 - §7183: organization
 - Unlike Maine (and like Oregon), Vermont's scheme would allow any organization to register if compliant. Would potentially have many organizations. But the multiple organizations would be required to coordinate and submit one program plan.
 - §7184: program plans, reports, audits
 - (c) program plans should provide for free collection of recyclables (so organization should pay collectors if they do not operate themselves), but public and private facilities allowed to opt in to be a collection location.
 - (c)(4) organization shall fund: administration of plan; collection; processing; R&D for improved markets and infrastructure; and education.
 - §7185 advisory council to advise program plans.
 - §7187 agency responsibilities: review and approve program plans.
 - §7188 rulemaking
 - §7189 gives a private right of action to organizations against responsible parties who do not pay. Agency will not play a role unless subpoenaed.

- Other EPR style legislation for Bottles, thermostats, paint, electronics, bulbs, batteries (mostly consumers have to take them to specified drop-off locations)
<https://dec.vermont.gov/waste-management/solid/product-stewardship>

Federal EPR Legislation

- There is no federal EPR bill and while several have been introduced, no national policy exists for EPR.
- **National Beverage Container Reuse & Recycling Act** (introduced 1999), available at: <https://www.govinfo.gov/app/details/BILLS-106s859is>.
- **Save Our Seas Act (signed into law 12/21/20):**
[The Save Our Seas 2.0 Act](#) is composed of three main pieces:
 - 1) Strengthening the United States' domestic marine debris response capability with a Marine Debris Foundation, a genius prize for innovation, and new research to tackle the issue.
 - 2) Enhancing global engagement to combat marine debris, including formalizing U.S. policy on international cooperation, enhancing federal agency outreach to other countries, and exploring the potential for a new international agreement on the challenge.
 - 3) Improving domestic infrastructure to prevent marine debris through new grants for and studies of waste management and mitigation.
- **Break Free From Plastic Pollution Act (BFFPPA)** (EPR Bill for packaging and beverage containers) (introduced 2020, reintroduced On March 25, 2021, ([S. 984/H. R.2238](#)) and provided these [Section By Section](#) and [Bulleted](#) bill summaries.

Federal Solid Waste Legislation

⇒EPA Waste Regulation

- EPA regulates household, industrial, and manufacturing solid and hazardous wastes under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et seq. (1976)) EPA's RCRA Orientation Manual is available at: <https://www.epa.gov/hwgenerators/resource-conservation-and-recovery-act-rcra-orientation-manual>.
- RCRA gives EPA the authority to control hazardous waste from the "cradle-to-grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also set forth a framework for the management of non-hazardous solid wastes. <https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act>.
- EPA encourages states to assume primary responsibility for implementing a hazardous waste program through state adoption, authorization and implementation of the

regulations. <https://www.epa.gov/rcra/resource-conservation-and-recovery-act-rcra-regulations#nonhaz>.

- RCRA and the regulations promulgated under it will impose specific process requirements on producers once EPR legislation allocates responsibility to them for their products and packaging, whereas right now RCRA and the related regulations generally impose those requirements on traditional waste generators and handlers.
- The RCRA regulations are contained in title 40 of the Code of Federal Regulations (CFR) parts 239 through 282.

⇒ **Non-Hazardous Waste**

- The [Solid Waste Program](#), under RCRA Subtitle D, encourages states to develop comprehensive plans to manage nonhazardous industrial solid waste and municipal solid waste, sets criteria for municipal solid waste landfills and other solid waste disposal facilities, and prohibits the open dumping of solid waste.
 -
- Title 40 of the CFR parts 239 through 259 contain the regulations for solid waste. The requirements for underground storage tanks, which are also regulated under RCRA, are located in title 40 CFR part 280. A list of all solid waste regulations with links to the regulatory text is provided below:
 - [Part 239 – Requirements For State Permit Program Determination Of Adequacy](#)
 - [Part 240 – Guidelines For The Thermal Processing Of Solid Wastes](#)
 - [Part 241 - Solid Wastes Used as Fuels or Ingredients In Combustion Units](#)
 - [Part 243 – Guidelines For The Storage And Collection Of Residential, Commercial, And Institutional Solid Waste](#)
 - [Part 246 – Source Separation For Materials Recovery Guidelines](#)
 - [Part 247 – Comprehensive Procurement Guideline For Products Containing Recovered Materials](#)
 - [Part 254 – Prior Notice Of Citizen Suits](#)
 - [Part 255 – Identification Of Regions And Agencies For Solid Waste Management](#)
 - [Part 256 – Guidelines For Development And Implementation Of State Solid Waste Management Plans](#)
 - [Part 257 – Criteria For Classification Of Solid Waste Disposal Facilities And Practices](#)
 - [Part 258 – Criteria For Municipal Solid Waste Landfills](#)
 - [Part 259 \[Reserved\]](#)

⇒Hazardous Waste

- The regulations governing hazardous waste identification, classification, generation, management and disposal are found in title 40 CFR parts 260 through 273.
 - [Part 260 – Hazardous Waste Management System: General](#)
 - [Part 261 – Identification And Listing Of Hazardous Waste](#)
 - [Part 262 – Standards Applicable To Generators Of Hazardous Waste](#)
 - [Part 263 – Standards Applicable To Transporters Of Hazardous Waste](#)
 - [Part 264 – Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities](#)
 - [Part 265 – Interim Status Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities](#)
 - [Part 266 – Standards For The Management Of Specific Hazardous Wastes And Specific Types Of Hazardous Waste Management Facilities](#)
 - [Part 267 – Standards For Owners And Operators Of Hazardous Waste Facilities Operating Under A Standardized Permit](#)
 - [Part 268 – Land Disposal Restrictions](#)
 - [Part 270 – EPA Administered Permit Programs: The Hazardous Waste Permit Program](#)
 - [Part 271 – Requirements For Authorization Of State Hazardous Waste Programs](#)
 - [Part 272 – Approved State Hazardous Waste Management Programs](#)
 - [Part 273 – Standards For Universal Waste Management](#)
 - [Universal Waste Program](#): EPA’s universal waste regulations streamline the hazardous waste management standards for certain categories of hazardous waste that are commonly generated by a wide variety of establishments. The federal universal waste regulations are available at: <https://www.ecfr.gov/cgi-bin/text-idx?SID=0501d91ec562faafa833c60c2404d806&mc=true&node=pt40.27.273&rgn=div5> (Title 40 of the Code of Federal Regulations (CFR) in part 273).
 - The regulations apply to batteries, pesticides, mercury-containing equipment, lamps, and aerosol cans.
 - The universal waste regulations can vary from state to state. The majority of states have adopted the full federal universal waste program; however, others have only adopted some of the federal universal wastes. A state does not have to include all of the federal universal wastes when they adopt the universal waste regulations. If a state doesn’t adopt a certain universal waste and the waste meets the definition of a hazardous waste, then it must be managed as a hazardous waste in that state. Additionally, states may add

additional universal wastes to the state's universal waste program. Information about state-specific universal wastes programs is available at: <https://www.epa.gov/hw/state-universal-waste-programs-united-states>.

⇒ Medical Waste Management

- States regulate medical waste, but EPA provides [model guidelines](#) developed from the Medical Waste Tracking Act (MWTa) of 1988, which expired in 1991. The medical waste problem has proliferated during COVID especially for EJ communities that often host them and in environments where dumping occurs.

Model EPR Legislation for Various Product Types

- **PPP**
 - [Summary of Elements of Model Packaging and Paper Products \(PPP\) EPR Legislation](#), Product Stewardship Institute (2020)
 - Detailed [Elements of Model Packaging and Paper Products \(PPP\) EPR Legislation](#), Product Stewardship Institute (2020)
 - U.S. Senator Tom Udall and U.S. Representative Alan Lowenthal released a [memo to state legislators](#), providing a blueprint for introducing clauses from the BFFPPA at the state and local level. [8.10.20 - Memo to NCEL - Break Free from Plastic Pollution Act - Legislative Blueprints](#)
- **E-Waste**
 - Model State Bill for Manufacturer Takeback for E-Waste, available at: <http://www.electronicstakeback.com/wp-content/uploads/ETBC-Model-E-Waste-Bill-January-2012.pdf>
- **Batteries**
 - Model Consumer Battery Stewardship Act (Product Stewardship Institute), available at: https://cdn.ymaws.com/www.productstewardship.us/resource/resmgr/Meeting_Materials/Model_All_Battery_Bill_6-11-.pdf (see also various introduced state battery stewardship legislation, available at: https://www.productstewardship.us/page/2014_BatteryDialogue).

Surveys and Reports

- Brief Comparison of State Laws on Electronics Recycling: http://www.electronicstakeback.com/wp-content/uploads/Compare_state_laws_chart.pdf
- Ten Lessons Learned from State E-Waste Laws: <http://www.electronicstakeback.com/wp-content/uploads/Lessons-Learned-from-State-E-waste-laws.pdf>

- Disposal Bans & Mandatory Recycling in the United States, Northeast Recycling Council (NERC),
https://nerc.org/documents/disposal_bans_mandatory_recycling_united_states.pdf
(Revised July 2020). [Note: Generally, it doesn't look like many of these extend producer responsibilities. Instead, they put responsibilities on waste management bodies, etc.]
- Product Stewardship Institute Report (w/ recommendations for improving Connecticut's programs and measures of their success): https://portal.ct.gov/-/media/DEEP/reduce_reuse_recycle/product_stewardship/20161024DEEPEPREvaluationResultsRecommendationsFNLpdf.pdf