



# Trends in Packaging Extended Producer Responsibility (EPR)

A retailer's perspective

**Extended Producer Responsibility (EPR)** is one solution being increasingly proposed by governments to tackle the abundance of packaging and single use plastics in the marketplace, but along with this comes additional challenges and considerations for retailers.

To help retailers understand the changing Packaging and Printed Paper (PPP) landscape, UL and the Retail Council of Canada (RCC) have prepared this joint white paper to highlight proposed and implemented packaging EPR regulations in Canada, trends in the U.S. and EU, and lessons learned by retailers from Canada's implementation of packaging EPR over the last 20+ years.



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## About Retail Council of Canada

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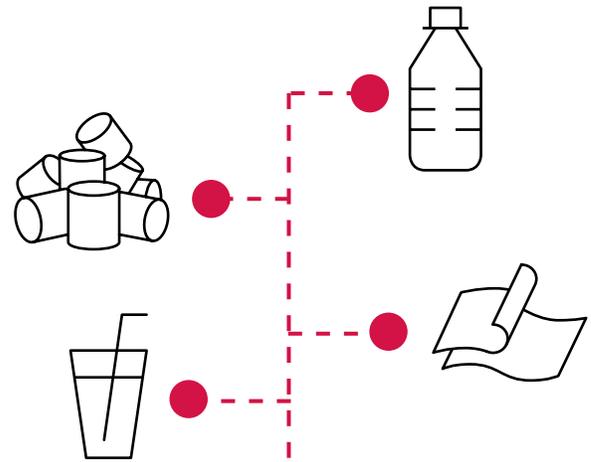
# Extended Producer Responsibility (EPR)

Around the world, consumers, governments and companies increasingly recognize that humankind is producing too much waste and facing challenges around the collection, transportation and disposal of waste. Because of this, countries are actively seeking solutions to reduce waste and limit harmful substances from entering the environment. Extended producer responsibility (EPR) is one solution being increasingly proposed by governments but along with this comes additional challenges and considerations for retailers.

EPR shifts responsibility from taxpayers to producers for the full lifespan of obligated materials and products. EPR includes a wide variety of products and product categories, including packaging, and may involve physical and/or financial obligations that have major implications for industry. Since its inception in Europe in the 1990s, EPR has undergone several iterations and is constantly being refined and adopted in countries around the world. What was forward thinking at the time is now becoming the baseline for waste reduction along with circular economy principles, where materials are kept in use for as long as possible through recycling, refurbishing and/or repurposing.<sup>1</sup>

EPR has been influenced by China's implementation of the National Sword policy in 2017, which banned the global import of most plastics and other recyclable

materials. This caused a huge, unmanageable excess of plastics and other nonbiodegradable materials across the world, including North America.<sup>2</sup> Due to this, regions like the U.S., Canada, Europe and Australia have started to re-examine recycling policies and programs at all levels of government.





## Single-use plastics

A common product subject to EPR is single-use plastics (SUPs) or disposable plastics, which, globally, have become well-known toxic pollutants. To address the adverse environmental impacts caused by the production and ultimate disposal of SUPs, governments around the world are moving toward legislation to ban SUPs.

Canada has taken bold steps towards an all-out ban of problematic SUPs by the end of 2021. Problematic SUPs include plastic bags, straws, stir sticks, cutlery, rings for six-packs of beverage containers and food ware/take-out containers made of plastics, such as expanded polystyrene.<sup>3</sup> The federal government recognizes that the impact to businesses and governments will be substantial and is working with them to achieve long-term, sustainable, financially viable solutions. Further to SUP bans, governments recognize that the regulations and laws around the handling and disposal of Packaging and Printed Paper (PPP) need to be updated and made more rigorous.

As of October 2020, both the states of Maine and New York have introduced bills that would establish EPR laws for PPP. Maine's proposal has been compared to the existing legislation in Quebec, Canada, that would see 100% producer/industry responsibility for costs associated with recycling and disposal. At the federal levels in both Canada and the U.S., packaging EPR legislation is being considered and proposed. These are just a few examples of the latest packaging EPR legislation and will be described in more detail below.

# Packaging and printed paper programs in Canada



As of October 2020, five Canadian provinces have packaging and printed paper programs in place, including the provinces of British Columbia, Saskatchewan, Manitoba, Ontario and Quebec, as seen in Figure 1. New Brunswick is expected to release an EPR regulation soon, which is expected to be similar to what exists in British Columbia.



Figure 1. Overview of EPR programs in Canada for packaging and printed paper (PPP), as of October 2020.

It is important to note that both Ontario and Quebec are working on transition policies to go from systems where producers fund programs, but have no control over systems, to EPR with full producer control. Therefore, it is important to distinguish between

funding and system control when discussing EPR, as they are not always synonymous. In some cases, producers pay but municipalities maintain control over operational aspects like collection systems, which may not yield all the benefits of EPR for businesses.

Table 1 outlines the percentage of funding that producers are responsible for, the level of producer control and examples of obligated products. Without a say in how systems are run, EPR has limited benefit for retailers, as there is a reduced capacity for economies of scale and innovation.

**Table 1. Overview of producer funding, level of system control and obligated products in the Canadian provinces.**

Province	Percentage funded	Level of control	Products***
<b>British Columbia</b>	Industry funds – 100% Municipalities funds – 0%	Producer controlled	Paper products, printed paper, newspaper, newsprint, paper and cardboard packaging. Flexible and rigid plastic packaging and containers, aluminum packaging and containers, steel containers, glass bottles and jars, multilayer packaging, plastic bags and overwrap.
<b>Saskatchewan</b>	Industry funds – 75% Municipalities funds – 25%	Producer funded; No control	Paper products, printed paper, newspaper, newsprint, paper and cardboard packaging. Flexible and rigid plastic packaging and containers, aluminum packaging and containers, steel containers, glass bottles and jars, multilayer packaging, plastic bags and overwrap, packaging-like products.
<b>Manitoba</b>	Industry funds – 80% Municipalities funds – 20%	Producer funded; No control	Paper products, printed paper, newspaper, newsprint, paper and cardboard packaging. Flexible and rigid plastic packaging and containers, aluminum packaging and containers, steel containers, glass bottles and jars, multilayer packaging, plastic bags and overwrap.
<b>Ontario</b>	Industry funds – 50% Municipalities funds – 50%*	Producer funded; No control	Newspapers, glossy magazines, directories, lottery tickets, envelopes, paper and plastic carry-out bags, disposable plates and cups, food wraps, gift wrapping, takeout and home delivery food service items, e.g., pizza boxes, cups.
<b>Quebec</b>	Industry funds – 100% Municipalities funds – 0%**	Producer funded; No control	Paper products, printed paper, newspaper, newsprint, paper and cardboard packaging. Flexible and rigid plastic packaging and containers, aluminum packaging and containers, steel containers, glass bottles and jars, multilayer packaging, plastic bags and overwrap, packaging-like products.

\* Ontario will transition to a 100% industry-funded/controlled PPP program between 2023 and 2025.

\*\*Quebec is also working on a policy to transition to a producer-controlled system.

\*\*\* Examples of products included in the PPP programs; not an exhaustive list.

# EPR packaging legislation in the United States



In the last few years, there have been initiatives to enact legislation around packaging at the federal, state and municipal levels, which include EPR initiatives as part of the solution to reduce excess waste. At the federal level, Senator Tom Udall (D-New Mexico) and U.S. Representative Alan Lowenthal (D-California) have introduced a draft bill to tackle what they call the “plastic waste crisis.” Their press release explains that “shifting the large and growing financial burden of cleaning up plastic pollution from state and local governments to the companies that manufacture and sell the products ... will increase the effectiveness of pollution control.”<sup>4</sup>

## Maine

When it comes to state-level legislation around sustainable packaging, Maine was the first state to consider introducing EPR. A draft of state-wide EPR legislation has been created by the Maine Department of Environmental Protection and presented to the Maine Committee on Environment and Natural Resources.<sup>5</sup>

## New York

As of October 2020, New York state has an EPR act under consideration. This act would amend the existing environmental conservation law. As stated in the New York senate bill, the legislative intent behind the act is that it is:

*...in the public interest of the state of New York for covered material and product producers to undertake the responsibility for the development and implementation of strategies to promote recycling, reuse and recovery of covered material and products through investments in the end-of-product-life management of products.*<sup>6</sup>

## Oregon

Across the country, in Oregon, the Department of Environmental Quality (DEQ) commissioned RRS to generate a report outlining five potential scenarios towards recycling progress. The fifth scenario is the most heavily EPR focused and explained that:

*Producers would be required to finance and manage the recycling system, including public education, collection, transportation, processing and marketing of recyclables, as well as necessary recycling infrastructure investments. Producers would also be responsible for funding litter abatement and waste reduction/prevention and upstream activities.*<sup>7</sup>

While there has currently been no adoption of the scenarios, the fact that the report was commissioned and is so heavily weighted toward EPR in the state suggests that the path forward will include EPR legislation.

The overall theme at both the federal and state levels is to shift the responsibility and financial burden from taxpayers to producers. This means producers will pay more for packaging materials that are not recyclable or sustainable. Simultaneously, a retail charge at the consumer level, such as with plastic bag fees, is predicted to incentivize producers to use sustainable products. This shift to extended producer responsibility (EPR) programs in the U.S. follows global precedent set by Canada and the E.U.

# EPR packaging legislation in the European Union



With EPR having its origins in Europe, the European Union (E.U.) has well-established EPR regulations and programs in place. To date, most member states have packaging EPR programs, although a variety of programs exist (including stringency, management and allocation of fees). Due to this variability, there is no consistent definition for EPR across Europe, but the E.U. Packaging and Packaging Waste Directive, which was adopted in 1994, provides a harmonized legislative framework for implementing packaging EPR throughout the E.U.



Within Europe, packaging EPR ensures that producers are responsible for funding programs and meeting national recycling and recovery targets, which contrasts with North America where EPR is at the state or provincial level. Material-specific fees are paid by producers into EPR programs based on the weight of packaging materials produced. The fees incurred by producers are then used to pay waste management companies or local authorities who collect packaging waste. Where the fees are allocated depends upon the country's waste management system.<sup>8</sup>

Given that EPR has evolved over decades in European countries like Germany and Austria, some countries have taken programs to the next level by implementing competitive schemes for PPP. This has influenced other jurisdictions, like the Canadian province of Ontario, to regulate competitive schemes.

While the E.U. has achieved great waste reduction results with packaging EPR, the European Organization for Packaging and the Environment is currently exploring methods to establish minimum requirements for all member states that would be applied to all existing and future EPR programs. As of March 11, 2020, the European Commission released a New Circular Economy Action Plan, including strategies for plastics and packaging.<sup>9</sup> Strategies include the review of various directives to promote the eco-design of packaging, clarity around labeling and cooperation among member states to work towards a circular economy.

## Retailer commitments

In response to EPR schemes and consumer concern, retailers have been making an increasing number of environmental commitments. For example, some retailers have adopted packaging management policies and have been in direct contact with vendors to implement changes throughout supply chains. Many companies have also committed to using more post-consumer recycled content in packaging and more transparent labelling. For example, some companies have started using How2Recycle's labeling system, which provides standardized clear disposal instructions for consumers.<sup>10</sup>

Beyond individual corporate commitments, retailers can participate in plastics pacts, including the U.S. Plastics Pact<sup>11</sup> and Canada Plastics Pact. In addition to acting as a source of information for retailers, these pacts provide a forum for stakeholder collaboration, including other brand owners, packaging manufacturers, researchers, government organizations and nongovernment organizations, among others. High level collaboration also creates opportunities for alignment, large scale innovation and rapid system change. The Circular Plastics Taskforce (GAPC in French) is another Canadian example looking at optimizing plastics management throughout the recycling value chain through better alignment between materials recovery facilities, processors and the needs of post-consumer resin end markets.

## Benefits of EPR from a retailer's perspective

Stewardship programs with 100% EPR can be beneficial for retailers since industry has increased control over the system, making it easier to find operational efficiencies and economies of scale. In comparison, producers have less control in systems where funding is industry's responsibility, but government/municipalities still run the actual programs, such as the compensation schemes described earlier.

EPR can also incentivize innovation when it comes to infrastructure and product/packaging design, since producers are required to consider the full life cycle of a product or material. Increased control over the system also helps producers get access to post-consumer recycled content, allowing new products with economic value to be created. Meanwhile, reuse and recycling help promote a circular economy, reduce environmental impacts and create jobs. An added benefit of increased diversion rates is positive consumer and shareholder perception.



# Key policy aspects for retailers and lessons learned from Canada's implementation of packaging EPR

## Jurisdiction

One important distinction to note between North America and Europe is that EPR is led by provinces and states in North America, whereas EPR is developed at the national level in Europe. Ultimately, this adds complexity in the North American market since there may be a lack of harmonization between provincial/state-level regulations. This is an important consideration for retailers that operate across borders, both within and between countries.

## Producer definition

From a retail perspective, it is important to understand who is obligated under an EPR scheme and how a producer is defined within a regulation. In North America, the definition of “producer” varies depending on the state or province and program specific legislation. One factor to consider is that some definitions can exclude companies that supply into a province but do not have establishments in that jurisdiction. For example, online retailers can be difficult to capture within definitions, but they contribute a significant amount of paper and printed packaging into a system. Similarly, a major brand can have regional offices/distribution facilities that can each cover multiple provinces or states, which means that they may not have any direct legal obligations to a jurisdiction where they are not located.

Therefore, it is important to have a comprehensive definition. One way to achieve this is by including a producer hierarchy within a regulation. The Government of Ontario has taken this approach for recent producer responsibility regulations, including batteries and electronics, and plans to continue with

this definition for the upcoming PPP and municipal hazardous and special waste (MHSW) regulations. One key aspect to note is that the first obligated producer should be a resident brand holder in the relevant country, e.g., Canada, even if it is a provincial regulation. This can help address the problem where companies may have regional offices in other provinces or states.



### Producer hierarchy in Ontario:

1. Brand holder – resident in Canada
2. First importer – resident in Ontario
3. Marketer – resident in Ontario
4. Marketer – not a resident in Ontario

## Agreements to allow flexibility on who takes on responsibility

Ultimately, a tiered hierarchy better reflects supply chains, particularly when a regulation recognizes the use of commercial/remitter agreements. The use of agreements is a common practice for other product categories, such as batteries and electronics, and allows responsibilities to be shifted up or down the hierarchy. For example, a brand holder may be captured as a producer by the definition but not have the expertise and/or capacity to meet obligations in that jurisdiction. In this case, a retailer may be willing to enter into an agreement and take on responsibilities, e.g., reporting, on behalf of the brand holder or vice versa. Ultimately, the legal obligation still lies with the original producer if responsibilities are not met, but having the agreements allows efficiencies to be found within the system.

## Exemptions

Another aspect to consider when deciding on who should be captured under a definition is whether there should be exemptions for small businesses to minimize costs and administrative burden. In many jurisdictions and programs, it is common to have a “de minimis” threshold based on revenue and/or the amount of material supplied into the market. A less common practice is to include a threshold based on the number of employees, which is not always effective, as some brands have small teams in a jurisdiction but have thousands of employees overall.

## Reporting

Another important aspect of EPR is reporting to ensure producers are meeting obligations. Reporting can also help identify what aspects of the system are performing well versus underperforming, e.g., low recovery rates for certain material types. From a retailer’s perspective, harmonized lists of reportable materials and reporting frequencies between provinces benefit retailers through reduced administrative burden.

## Flat or modulated fees

Depending on how EPR systems are set up, producers may work with and pay fees to stewardship organizations or producer responsibility organizations (PROs). Within Canada, EPR programs typically establish fees based on cost of collection and recycling minus the revenue attached to the value of materials on commodity markets. Beyond this standard approach, fees among items of the same category, e.g., aluminum packaging, usually have a flat fee, regardless of their design. Flat fees are easier to understand and can include some modulation aspects, such as the methodology explained above. They are typically used for product stewardship, e.g., electronics, tires, etc. On the other hand, eco-modulated fees heavily incentivize design optimization of products and packaging, as fees can be set based on additional factors, such



as recyclability or the percentage of post-consumer recycled content. In other words, materials that are more difficult to recycle will have higher fees associated with them to help transition toward a more circular economy. Eco-modulated fees are common in European programs, including the PPP program in France.

## Eco-fee visibility

In some jurisdictions, producers can pass along program costs to customers using eco-fees, which are also known as Environmental Handling Fees (EHF) or Container Recycling Fees (CRF). These fees are non-refundable and usually taxable; rather, they are used for the responsible collection, transportation and disposal of the product/material.

Within Canada, regulations vary on whether fees must be embedded within product prices or remain silent around fees. If a regulation is silent, the choice is left up to the producer to decide whether to embed fees in product prices, absorb the cost as a company or make the fee visible on consumer receipts. In general, retailers prefer to have flexibility on whether they can display fees according to their business models and internal systems. Visible fees can be an effective way to educate consumers on environmental stewardship and promote transparency. Alternatively, a company may choose to absorb the fees to simplify receipts for consumers. It is important to note that some retailers are challenged in that their point-of-sale systems may not support different eco-fees.

## The challenge with weight-based targets

Producers are all working to achieve cost efficiencies. As such, packaging optimization or downsizing is observed throughout the supply chain. Lightweighting is becoming a major factor, which explains the plateauing performance of certain recycling programs. While tonnage/kilograms/pounds per capita has been a universally used metric in the past few decades to assess performance, lightweighting creates potential shortcomings in jurisdictions where performance requirements are mostly weight-based. Producers should look to metrics that are tailored to material types to make sure they appropriately reflect the efforts made to collect and recycle items.





## How UL empowers packaging EPR data collection, reporting and evaluation

UL WERCSmart® has been at the forefront of helping retailers collect key packaging and printed paper data and metrics from their supply chains to assess and meet EPR packaging data acquisition and reporting obligations, evaluate the effectiveness of packaging policies, and track the progress of public-facing commitments. To learn more, visit [MSC.UL.com/WERCSmart](https://www.ul.com/MSA/UL/Products/Services/UL-WERCSmart).

## Conclusion

As a result of excessive waste being produced around the world, solutions to waste reduction are being sought out by consumers, governments and industry. The E.U. provides a national model for Extended Producer Responsibility (EPR) programs with implications at the country level, whereas the trend in Canada and the U.S. is to regulate at the provincial or state level. This white paper highlighted several key lessons learned from Canada's approach to packaging EPR, which serve as helpful considerations for other regions, such as the U.S., who are exploring packaging EPR frameworks.

The Retail Council of Canada (RCC) and UL are providing solutions and support to assist retailers in understanding the changing regulatory landscape and acquiring and managing the packaging and printed paper data they need from their supply chains.

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