FPA Flexible Packaging Association
Connecting. Advancing. Leading.

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Delivered via email: eprcomments@state.co.us

RE: Public Comments on CAA Amended Program Plan

Dear Director Ryan,

The Flexible Packaging Association (FPA) is pleased to offer these comments to express our support for the Circular Action Alliance Colorado Amended Program Plan, which was approved by the Advisory Board in late August. We are concerned however about the statement of concern the Advisory Board placed on their recommendation—that the plan be adopted with a caution on using mass balance to help calculate recycled content.

FPA represents flexible packaging manufacturers and suppliers to the industry in the United States. Flexible packaging represents $42.9 billion in annual sales; is the second largest, and fastest-growing segment of the packaging industry; and employs approximately 85,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

These are products that you and I use every day—including hermetically sealed food and beverage products such as cereal, bread, frozen meals, infant formula, and juice, as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and disinfecting wipes. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Flexible packaging is also used for medical device packaging to ensure that the products packaged, like diagnostic tests, IV solutions and sets,

syringes, catheters, intubation tubes, isolation gowns, and other personal protective equipment maintain their sterility and efficacy at the time of use. Trash and medical waste receptacles use can liners to manage business, institutional, medical, and household waste.

We understand the Advisory Board's statement of concern is with the use of mass balance as a means of calculation, particularly as it applies to advance recycling. FPA notes that mass balance calculations are not unique to plastics or advanced recycling, and in fact are adopted by many other industries as a means to calculate recycled , renewable or the sustainable origin of products. Mass balance is adopted for use by organizations like the Rainforest Alliance to certify cocoa, orange juice and coconut oil. Mass balance is used as a primary means of estimating solar and wind energy. It is also a primary practice across the packaging industry adopted by both paper and aluminum products. By establishing an accounting framework that accounts for recycled inputs versus virgin outputs over a defined period, manufacturers can "allocate" the recycled material to specific products, where the physical separation of recycled versus virgin, or sustainable versus non etc. is impossible. This helps communicate when recycled content replaces an equivalent amount of new material. In all of these examples, third party certification is required with annual audits evaluating the accuracy of the mass balance calculations.[1]

FPA is concerned that should the CAA plan be passed with a restriction on using mass balance as a means of calculation for recycled content that this will then need to extend beyond just plastics but also into paper and aluminum, and possibly other materials which have long established systems in place to validate recycled content via third party certification. We note that the CAA plan for recycled content meets the state requirements while still recognizing the value of established certification process, including those that recognize mass balance as a valid means of evaluating recycled content percentages.

[1] A great primer on mass balance can be found at *American Chemistry Council (2021) Principles for the Advanced Recycling of Plastics Using a Mass Balance Approach*.

FPA understands that the concern from the Advisory Board is using mass balance in the context of free allocation[2], while there is an opportunity for the state to weigh in and compromise with fuel-exempt mass balance[3], We are concerned that additional restrictions on the Circular Action Alliance's Colorado EPR Program Plan approach, will restrict the organization's ability to incentive recycled content in materials that face more stringent restrictions that limit the use of recycled content due to health and safety concerns. Because the CAA plan is based on the International Organization for Standards (ISO) requirements and these standards require third-party certification, we believe the verification plan methodology on PCR content is laid out in Circular Action Alliance's Colorado Program Plan is equitable and just. Placing limitations on mass balance for advanced recycling but not on mechanical or other technologies which may advance in the future, hinders the states neutrality towards materials and limits CAA's ability to incentivize, certify and support recycled content within packaging.

Advanced recycling is necessary for increasing the use of recycled content in some highly regulated films and flexible packaging, as stringent quality standards enforced by the U.S. Food and Drug Administration (FDA) require additional washing and processing for mechanically recycled films to ensure no chemical migration, odor or color is transferred. This restricts the use of recycled content in some product packaging (i.e., cosmetics, food, medically sterilized devices and pet food). Obtaining FDA approvals for the use of mechanically recycled content for packaging for these types of products is often arduous and slow. Advanced recycling eliminates some of this lag because the technology returns plastics back into a monomer, eliminating concerns of chemical migration, odor or color. As we look at the volume of materials that would require FDA regulated PCR, we believe supporting its use through

[2] Free allocation allows for recycled content regardless of the end product. In advanced recycling where multiple end products may be produced (i.e. monomers and fuel by-products) ,free allocation recognizes the process of recycling regardless of the end product.
[3] Fuel exempt allocation would require recyclers to report and allocate the percentage of their end products made into monomers versus fuel or fuel derivatives. This adds an additional reporting burden onto producers already facing responsible end markets audits and recycled content audits.

advanced recycling certified through processes as outlined in the CAA program plan is necessary to support our mutual goals of increasing the recovery and reuse of flexible films and packaging and adopting mass balance as defined in the CAA plan is the most expeditious and responsible route towards success.

Because the CAA plan is based on the International Organization for Standards (ISO) requirements and these standards require third-party certification, we believe the verification plan methodology on PCR content and mass balance as outlined in Circular Action Alliance's Colorado Program Plan is equitable and just. Placing limitations on mass balance for advanced recycling, but not on mechanical or other technologies which may advance in the future, hinders the states neutrality towards materials, limits CAA's ability to incentivize and support recycled content within packaging and increase the reporting burden on recyclers and producers.

Thank you for the opportunity to comment on Circular Action Alliances Colorado Amended Program Plan. If we can provide further information or answer any questions, please do not hesitate to contact me at (602) 540-7544 kfisher@flexpack.org.

Respectfully,

Kyla Fisher
Director of Regulatory Affairs and Sustainability
Flexible Packaging Association

Cc: Mellik Gorton, Producer Responsibility Lead, Colorado Department of Public Health & Environment
Juri Freeman, Colorado Executive Director, Circular Action Alliance