

September 27, 2025

Jill Hunsaker Ryan, Executive Director
Colorado Department of Public Health & Environment (CDPHE)
4300 Cherry Creek South Drive
Glendale, Colorado 80246
Submitted electronically: eprcomments@state.co.us

**Re: Eco-modulation Rulemaking: Section 18.9 Producer Responsibility Regulations for
Producer Responsibility Program for Statewide Recycling Act, House Bill 22-1355**

Dear Ms. Hunsaker Ryan,

The Flexible Packaging Association (FPA) is pleased to offer these comments to the Colorado Department of Public Health and Environment (CDPHE) in response to the proposed eco-modulation fees for packaging developed by the Department. We are submitting these comments to share our thoughts regarding the practicalities, challenges and opportunities with the proposed fees.

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, roll stock, and other flexible products.

At a broad level, FPA is concerned that the proposed incentives are too prescriptive and will restrict the ability of producers to respond in meaningful ways. Additionally, we caution that overly prescriptive guidance and incentives may hinder the ability for CDPHE, and others, to respond and act as innovation occurs.

We encourage CDPHE to seek ways to simplify the proposed eco-modulation bonuses while still retaining the intent of them. Many of our comments below offer insight into where a simplified and less prescriptive approach could be achieved.

I. Packaging Sorting Instructions Benchmark (18.9.2A – page 6)

FPA supports CDPHE's desire to encourage producers to offer clean on-packaging labeling to help guide consumer action towards sortation and improved recyclability and composability. We have long been supporters of the industry-driven national labeling schemes of How2Recycle (H2R), How2Compost (H2C) and the Biodegradable Product Institute (BPI) compostable label certification program. Rather than prescribe what specific attributes should be included in on-packaging sorting instruction, we encourage CDPHE to evaluate existing labeling schemes against its own internal criteria and then revise the bonus for on-packaging sorting instructions to encourage use of these existing third party validated labeling schemes. This approach will encourage harmonized labeling schemes most consumers would recognize, rather than having producers adopt various messages. Furthermore, we believe this will place less administrative burden on those evaluating, and applying for, this bonus.

Should CDPHE wish to keep this bonus as currently drafted, we would encourage the development of additional guidance to clarify the data needs required from producers to document compliance with sections A1a to A1e. Of particular concern is section A1e – how would one assess if a label generates confusion or is too general?

II. Sourcing Local Content (18.9.2 B1 – page 6-7)

FPA appreciates the desire to leverage extended producer responsibility (EPR) to incent the use of post-consumer recycled (PCR) content and drive local economic impact. However, we are concerned that tying a bonus for PCR content to the use of material specifically from within the state will be burdensome and does not reflect the challenges inherent to manufacturing. For many producers, PCR content can come from multiple sources, and tracking the origin of it is not a common practice. While it might be possible with revisions to purchasing agreements for companies to track what facilities they obtain their PCR from, this will come with significant economic burden to those companies. This

approach however would only apply to PCR used in the context of ‘physical separation’ where a roll of film, paper, aluminum, or other material can only use inputs from Colorado and no other states. In many manufacturing scenarios, physical separation is next to impossible and most materials manufacturing with PCR utilizes ‘mass balance’ calculations. This approach grants manufacturers the ability to quantify the volume of PCR content purchased within the state against the total amount used to get an average percentage. This approach is necessary when we are dealing with national and sometimes global companies that may be shipping products to many different locations.

Lastly, FPA is concerned that tying the use of PCR content to purchases from in-state recycling facilities unfairly benefits some packaging materials and producers over others, as Colorado does not currently have a sufficient capacity of recyclers across all materials to meet material demands.

FPA believes the use of PCR content is worthy of a bonus, and we believe through the natural process of a market economy the state will see economic benefit as producers seek to source the most cost-efficient materials. We encourage CDPHE to simplify this bonus by offering a PCR content credit regardless of the origin of sourcing.

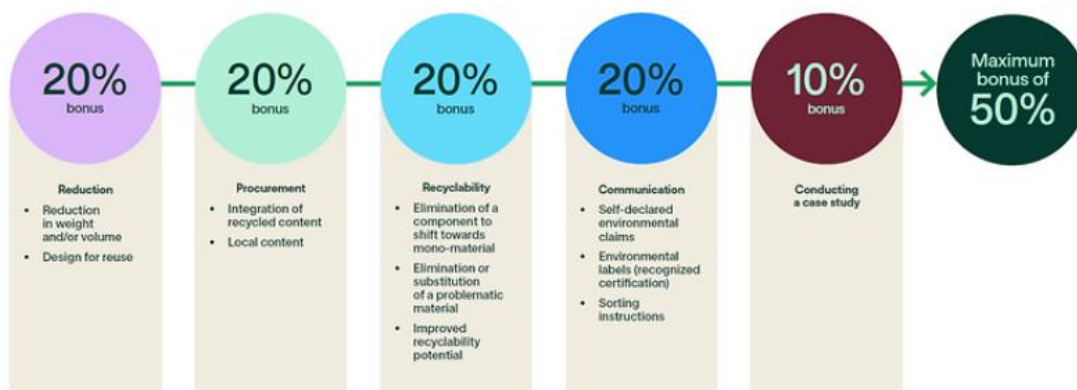
III. Case Study Benchmarks (18.9.22 E – page 7)

FPA believes that case studies can be a valuable tool to educate and encourage best practices. However, we have several questions regarding the practical implementation of this approach. Should we presume that these are applied for on an annual basis and once a case study has been approved the credit lasts for the calendar year only? While only a producer can apply for a case study, we note that in several circumstances you may have a packaging converter who developed one package format for multiple brands/producers. Baby food pouches an example where the same container, manufactured by one packaging converter, is used by several competing brands. Who in this case would apply for and receive the bonus? Could the converter apply on behalf of all their producer brand owners? Can each individual producer apply for the same container? If one producer files in year one, can their competitor apply again in year two, since it would be their first application?

We are additionally concerned about some of the examples of projects identified in second E2a-e. A few of these project examples that would qualify for a case study appear to be within the domain of the producer responsibility organization (PRO) or a collaborative of producers and their supply chain partners (i.e., E2b: MRF equipment design to improve material specific sorting; or E2d: fund facility studies or trials to identify high contamination items). If the PRO was to tackle these projects, are they able to apply on behalf of all producers? Can the producers claim these credits if they take it upon themselves to submit, even though a project may be led by the PRO? How might this apply in a situation where many companies may contribute to a pool of funds managed by a non-profit or funding consortium?

Eco-Enterprise in Quebec, Canada, does offer bonuses for case studies, but they limit these to packaging redesign, and the bonus is in addition to first meeting criteria for more recyclable design. Should CDPHE wish to incentive eco-design above and beyond the aspects laid out in earlier sections of the bonus schedule, we encourage the Department to adopt something closer to Quebec’s approach where incentives correspond to packaging design rather than broader aspects of recyclability investments and trials, and where case studies are seen as supplementary, after design changes have been approved.

Figure 1: Eco-Enterprises’ Ecodesign Incentive



Lastly, we encourage CDPHE to set parameters around who can apply for these bonuses and offer further guidance when case studies could be driven by the efforts of multiple organizations.

Conclusion and Next Steps

Thank you for the opportunity to comment on the proposed eco-modulation fees for packaging developed by CDPHE, and your consideration of our recommendations on the proposed Section 18.9 Producer Responsibility Regulations. 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 (FPA)

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