

May 17, 2021

Colorado Department of Public Health and Environment
4300 Cherry Creek Drive S.
Denver, CO 80246-1530
Sent electronically to: cdphe.hmrecycling@state.co.us

To whom it may concern:

Thank you for the opportunity to comment on Colorado's draft recommendations and key principles of producer responsibility (hereinafter referred to as "CO draft PR recommendations" or the "recommendations." I am Alison Keane, President and CEO of the Flexible Packaging Association (FPA). FPA is the voice of U.S. manufacturers of flexible packaging and their suppliers. Flexible packaging represents over \$36 billion in annual sales and employs approximately 80,000 workers in the U.S.

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, candy, salty snacks, yogurt, and beverages, and sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and shaving cream. Flexible packaging is also used for medical device packaging to ensure that the products packaged, such as absorbable sutures, human tissue, and artificial joints, maintain their sterility and efficacy at the time of use. Even packaging for pet food and treats uses flexible packaging to deliver fresh and healthy meals to a variety of animals.

FPA appreciates the opportunity to submit input on the CO draft PR recommendations and is pleased to see that these recommendations referenced the FPA/Product Stewardship Institute's (PSI) extended producer responsibility (EPR) principles document. FPA prepared a factsheet on these principles as well and I have attached them to this letter for your reference. FPA supports the principles of EPR and much of the CO draft PR recommendations. FPA is particularly pleased the CO recommends following commonly accepted principles even though many principles exist and EPR is not new to the U.S., let alone North America and Europe. Many of the pieces of legislation we have seen on packaging do not follow these principles and would needlessly reinvent the wheel. This is particularly true of the legislation in Maine this year, LD1541, which does not mirror Maine's very own framework for such, which the recommendations reference. Another example of this is in Oregon, which is also referenced in the recommendations. Although Oregon has extensive research on EPR models and programs, the OR legislation this year, SB582 does not comport with these systems. FPA urges CO to utilize the vast resources already available to the state in implementing an EPR system for packaging and not create new schemes that do not comport with current models.

With this in mind, FPA provides these specific comments. FPA fully supports the recommendations on ensuring producer responsibility is implemented in an equitable manner; market development; clear scope of products affected and programs funded; centralized program management; and defined role for government. When it comes to fee setting and eco-modulation, FPA agrees that lifecycle analysis is critical to take into consideration all aspects of packaging, from manufacturer and transport to full circularity. Recyclability is only one aspect and reduction in greenhouse gas emissions, as well as other aspects, such as energy and water use, transportation efficiency, reuse, and recycled content should all be factors taken into consideration when setting eco-modulated fees. FPA believes

that the fees should be set by the PRO through the approved program plan, however, and not in the legislation itself, so that they can not only be appropriately set but appropriately be adjusted as the program grows and evolves.

FPA urges that an assessment be included in future recommendations or legislation in CO so that the PRO can determine the needed level of equitable collection coverage and access to recycling as well as expansion of recycling and reprocessing and markets and the costs for such. This assessment would inform both the PRO and the Colorado Department of Public Health and the Environment on the needs and costs of the program and help with eco-modulation of fees based on packaging and material types access to current versus future collection and reprocessing and the developing end markets for reprocessed material and recycled content. Using the assessment and plan vehicle ensures flexibility to adjust as the program progresses and more packaging can enter the system for full circularity.

FPA believes staffing of the PRO should be left up to the PRO and not assigned in the statute. If CO is concerned about staffing levels, that could be addressed in the program plan and subsequent annual reports or amendments. FPA is also concerned about the recommendation that fee revenue should not be used by the PRO for legal matters. The fee revenue should cover ALL administrative costs for the PRO and this should include day-to-day legal representation as well as legal costs for any matter that may arise. As a legal entity, the PRO cannot be limited in its ability to function as an organization and legal requirements, as well as protection, as part of any corporate governance structure.

In my prior employment, with the American Coatings Association, I started PaintCare and helped pass and implement it in Colorado before moving to the FPA. As the head of FPA, I stand ready, as do our members, to assist the state with EPR for packaging and look forward to continuing the discussion on how to develop and institute a program that creates a system that

allows for collection and recycling to a broader array of packaging materials, including flexible packaging and quality sorting and markets for currently difficult-to-recycle materials. Please do not hesitate to reach me at the above number or akeane@flexpack.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alison Keane", with a long horizontal flourish extending to the right.

Alison Keane, Esq., CAE, IOM
President & CEO