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September 12, 2025

Jill Hunsaker Ryan
Executive Director
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive S
Denver, CO 80246
Delivered via email: eprcomments@state.co.us

RE: Public Comments on 2025 Eco-Modulation Update (Section 18.9 Producer Responsibility Regulations)

Dear Director Ryan:

On behalf of The Toy Association, thank you for the opportunity to provide comments on the 2025 eco-modulation proposed rules in Section 18.9 of 6 CCR 1007-2, Part 1.

The Toy Association is the North America-based trade association; our membership includes more than 800 businesses, from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs, and all members are involved in bringing safe & fun toys and games to children. We are invested in children and are invested in Colorado. The toy sector supports 10,000 jobs for Coloradans, including Colorado-based member companies such as Relevant Play, Big Discoveries, Elope, Inc., and Thin Air Brands, and produces \$2.2 billion in annual economic impact to the state of Colorado out of the \$90 billion worldwide annual economic impact.

Executive Summary:

Toy Association members support the goals of the eco-modulation program, namely, to provide a financial incentive for producers to promote increased recyclability of product packaging and to decrease the amount of virgin, non-recyclable materials sent to landfill. That said, The Toy Association is concerned about both the functional challenges of Colorado's proposed eco-modulation rules, as raised by other stakeholder groups, as well as specific, toy industry challenges, as follows:

- **Section A:** Section (A) details the issues with the proposed rule limiting the eco-modulation incentive in Section 18.9.2(B)(1) to goods produced in Colorado with



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20% postconsumer recycled (PCR) content. Such a requirement is impractical for the toy industry, given our national and global marketplace. While we understand that eco-modulation incentives are voluntary and there is a desire to create a robust circular economy within Colorado, we suggest that a greater environmental benefit is obtained by focusing on the overall percentage of PCR content used, rather than the origination of the PCR content. This would yield a practical and functional incentive and produce increased overall environmental benefits that are the foundation of the eco-modulation program.

- **Section B:** Section (B) describes the concerns with the proposed additional labeling requirements specific to the state of Colorado in Section 18.9.2(C)(1) and Section 18.9.3(B). State-specific packaging requirements are costly and difficult to implement given the national and global marketplace of the toy industry, which produces products that are sold across all 50 states and globally. Previous parallel examples in other national and global toy and consumer packaged goods markets, including in the European Union, proved that state or country-specific labeling create legal issues, confuse consumers and businesses, interfere with commerce, and do not result in the desired, positive environmental outcomes. A 1% incentive, as proposed in the current rulemaking draft, is unlikely to financially justify seeking the eco-modulation incentive. We propose waiting on any labeling rulemaking unless and until there could be harmonization across all EPR states for any labeling eco-modulation incentive.

A. The proposed rules applying the financial incentive only to goods produced in Colorado with 20% Colorado postconsumer recycled (PCR) content severely restricts and limits the environmental and functional benefit of the eco-modulation rule.

We appreciate the updates in the most recent proposed rulemaking to eliminate the requirements Sections 18.9.2(C)(2)(c) and (d) that would have required use of composting facilities in Colorado for testing purposes to qualify for the compostability benchmarks in Section 18.9.2(C). However, the requirement in Section 18.9.2(B)(1) to utilize Colorado postconsumer-recycled (PCR) content remains problematic.



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We are cognizant of the intent to have a circular economy within the state of Colorado and to incentivize use of Colorado PCR content, but incentivizing goods produced in-state using 20% Colorado PCR content effectively penalizes all others imported from outside Colorado and potentially increases EPR fees for those out-of-state-produced products, even if they are using PCR content. We appreciate that the eco-modulation incentives are voluntary, however, the program was put into statute to incentivize manufacturers to take certain desired steps, and if the incentive is not formulated in a way that creates an actual financial incentive, those intended steps will not materialize. Since this requirement is not necessitated by statute, we respectfully ask that the amount of PCR content, versus the source, be prioritized as the leading criteria. As described above, Toy Association members have a significant presence and investment in the state of Colorado, but not all their products can be produced in-state, due to lack of toy manufacturing infrastructure. For that reason, we believe incentivizing the use of greater PCR content in general will achieve Colorado's goals and have a greater material benefit, for both the environment and residents of Colorado, more than the proposed rules in their current form. We would also encourage consideration of an incentive that, at least initially, focuses more on recyclability of materials rather than use of a certain percentage of PCR content, to allow the recycling industry to increase scalability and efficiency needed with the expected increase in supply.

Additionally, an incentive specific to goods produced in Colorado with Colorado PCR content is inherently limited to Colorado with no ability to harmonize across other states. From the experience of our members navigating similar eco-modulation incentive programs in Europe, consistency and workability across jurisdictions is critical to achieving the EPR program goals of decreasing packaging and increasing recyclability. In those instances, where there was harmonization of the incentive structures across jurisdictions in Europe, businesses were able to make modifications necessary to achieve the financial incentives for the respective eco-modulation programs, and material improvements were seen in recyclability. Similarly, where harmonization did not exist, the administrative burden was such that the environmental benefits did not materialize in the way regulators hoped.

The Toy Association asks that Colorado eliminate the requirement to produce goods in Colorado and utilize any percentage of Colorado-sourced PCR content and instead focus



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on the overall amount of PCR content used in the packaging. This would yield a practical incentive for our members and produce the increased overall environmental benefits that are the foundation of the eco-modulation program.

B. Avoid additional labeling requirements

Toy Association members support increasing compostability of packaging and understand the need for clear information for consumers to know what is, and is not, compostable. However, requiring specific labeling for packaging in Section 18.9.2(C)(1) may disincentivize producers from switching to compostable packaging. State-specific packaging requirements are difficult and costly to implement – especially on smaller toy packages that have very little printable space and are required by US law to use that printable space for safety warnings for young children – given the national and global marketplace our members operate in. A 1% incentive may not fiscally be sensible for producers.

Further, the labeling requirements in the newly proposed Section 18.9.3(B) are equally problematic. This requirement would necessitate Colorado-specific labeling as to the recyclability of the materials within Colorado if a producer was trying to obtain the eco-modulation incentive. Again, any type of state-specific labeling requirement is problematic for all producers that engage in commerce across the country, since they often have little-to-no control as to where their products end up throughout the supply chain.

As a parallel example, France requires use of a Triman symbol on packaging to indicate recyclability within France. Earlier this year, the European Union (EU) filed suit against France for their mandate to use this label on packaging, on grounds that it violates the “free movement of goods” principle within the EU. For one Toy Association member alone, compliance with the Triman symbol cost millions of euros, and the amount of ink required to print the symbol on their products could be measured in tanker truck loads. The Toy Association suggests studying the learnings and unintended consequences from France’s Triman symbol requirement in the EU, in order for Colorado to avoid repeating mistakes and unintended consequences.

The Toy Association respectfully requests that, at this time, Colorado pause any rulemaking related to specific labeling requirements until it has further studied the impact of the rules on interstate commerce and can consider ways to harmonize with other state EPR eco-



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modulation programs. This next step is reasonable under the circumstances and will ensure that the eco-modulation incentive will in fact result in the desired Colorado policy objectives.

Conclusion

The Toy Association respectfully asks that the 2025 eco-modulation proposed rules be amended as follows:

- Section 18.9.2(B)(1) be eliminated or, if retained, be modified to focus on the overall amount of postconsumer recycled content, rather than an incentive predicated on goods produced in Colorado with Colorado-originated PCR content.
- Eliminate the labeling requirements in Section 18.9.2(C)(1) and Section 18.9.3(B). State-specific labels are proven to be unworkable and problematic for producers, and a 1% incentive is not likely to promote industry's adoption of the label. At this stage, in order to ensure achievement of environmental goals and consumer clarity, rulemaking should be paused to consider opportunities to address foreseeable unintended consequences to consider opportunities for harmonization with other state EPR eco-modulation programs.

Colorado is at the forefront of eco-modulation programs and other states are looking to Colorado for how best to implement their respective eco-modulation programs.

Addressing the above-referenced issues now will help to ensure functional viability of the eco-modulation program in Colorado and advance Colorado's leadership nationally on eco-modulation program administration.

The Toy Association welcomes the opportunity for continued collaboration on the eco-modulation program and Colorado's EPR policy. Thank you again for the opportunity to submit comments. If you have any questions about this letter, please do not hesitate to reach out; we would be delighted to discuss further.

Sincerely,

Lindsey Hueer
Senior Manager, State Government Affairs, West
The Toy Association



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About The Toy Association and the toy industry:

The Toy Association is the North America-based trade association; our membership includes more than 800 businesses, from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs, and all members are involved in bringing safe & fun toys and games to children. The toy sector is a global industry of more than US \$90 billion worldwide annually, and our members account for more than half of this amount.

Toy safety is the top priority for The Toy Association and its members. Since the 1930s, we have served as leaders in global toy safety efforts; in the 1970s we helped to create the first comprehensive toy safety standard, which was later adopted under the auspices of ASTM International as ASTM F963. The ASTM F963 Toy Safety Standard has been recognized in the United States and internationally as an effective safety standard that has been adopted as a mandatory toy safety standard for all toys sold in the U.S. under the Consumer Product Safety Improvement Act (CPSIA) in 2008. It also serves as a model for other countries looking to protect the health and safety of their citizens with protective standards for children. The 2023 revision to ASTM F963 was accepted by the Commission and came into force in April 2024. The Toy Association continues to work with medical experts, government, consumers and industry to provide technical input to ensure that toy safety standards keep pace with innovation and potential emerging issues.

The Toy Association is committed to working with legislators and regulators around the world to reduce barriers to trade and to achieve the international alignment and harmonization of risk-based standards that will provide a high level of confidence that toys from any source can be trusted as safe for use by children. Standards alignment assures open markets between nations to maximize product availability and choice.