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Testimony
in Opposition to
Senate Bill 939
in the
Rhode Island Senate Environment and Agriculture Committee

April 30, 2025

Dear Chair Sosnowski, Vice-Chair Britto, and Members of the Rhode Island Senate Environment and Agriculture Committee,

The Flexible Packaging Association (FPA) appreciates the opportunity to submit testimony in opposition to Senate Bill S939 (Bissaillon), which directs the Rhode Island Department of Environmental Management (DEM) to establish an extended producer responsibility (EPR) program for packaging in the State of Rhode Island.

I. Background on FPA and Flexible Packaging

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. Carry-out and take-out food containers and e-commerce delivery, which became increasingly important during the pandemic, are also heavily supported by the flexible packaging industry. Thus, FPA and its members are particularly interested in and deeply committed to solving the plastic waste issue and increasing the recycling of all packaging.

Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoints. But circularity options for flexible packaging are currently limited. There is no single solution that can be applied to all communities when it comes to the best way to collect, sort, and process flexible packaging. Viability is influenced by existing equipment and infrastructure; material collection methods and rates; volume and mix; and demand for the recovered material. Single-material flexible packaging, which is approximately half of the flexible packaging waste generated, can be mechanically recycled primarily through store drop-off programs; however, end markets are scarce. The other half can be used to generate new feedstock, through pyrolysis and gasification.

Developing end-of-life solutions for flexible packaging is a work in progress, and FPA is partnering with manufacturers, recyclers, retailers, waste management companies, brand owners, and other organizations to continue making strides toward total packaging recovery. Some examples include The Recycling Partnership (TRP); the Materials Recovery for the Future (MRFF) project; the Hefty® ReNew® Program; the Consortium for Waste Circularity; and the Flexible Film Recycling Alliance (FFRA). All these programs are seeking to increase the collection and recycling of flexible packaging. Also, increasing the recycled content of new products, including packaging, will not only create markets for the products, but will also serve as a policy driver for the creation of a new collection, sortation, and processing infrastructure for the valuable materials that make up flexible packaging.

It is FPA's position that a suite of options is needed to address the lack of infrastructure for non-readily recyclable packaging materials, and promotion and support of market development for recycled packaging is an important lever to build that infrastructure. FPA also supports well-crafted packaging extended producer responsibility (EPR) that can be used to promote this needed shift in recycling in the U.S. In fact, FPA was the first trade association in the U.S. to publicly support the Minnesota packaging EPR legislation, which was the only successful packaging EPR proposal to become law in 2024 and was an early supporter of the EPR bill passed in Maryland earlier this month and anticipated to become law shortly.

II. **FPA Requests an Exemption for Pathogen-Contaminated Packaging**

FPA's members produce specialty packaging the keeps meat, cheese, and other proteins fresh on grocery store shelves. Without this packaging and modern refrigeration, these products would not have the shelf life that our modern food system requires. FPA's members utilize technologies, such as portion control, reclose features, perforated plastics, film toughness, and modified atmosphere packaging (MAP) to ensure the preservation of food. Flexible packaging's unique characteristics provide food loss and waste reduction benefits to every segment of the food supply chain, including after purchase by consumers. These characteristics include barrier properties of the materials used in flexible packaging which extend transport as well as shelf life, reclosability features, enhanced product evacuation, and the optimization of product to package ratios. Flexible packaging has led the way in preventing food loss and waste through the use of modified atmosphere packaging. The principle of MAP is the replacement of air in the package with different fixed gas mixtures and the use of flexible films to control the dispersion of gas into and out of the package. An FPA report entitled "The Role of Flexible Packaging in Reducing Food Waste" summarized peer-reviewed scientific studies highlighted that meats generally stay safe to eat for an additional nine days, with the largest increase in freshness being ground beef at 17 days, when utilizing flexible packaging. FPA's report only had peer-reviewed data for one type of cheese—provolone, which was safe to eat for a staggering 90 additional days. Because of the unique role flexible packaging plays in the protection of protein, FPA requests that the legislative language in Maryland's EPR bill be included in S939 to temporarily exempt protein packaging from any established performance goals

and requirements, while leaving it subject to the program at large, until the proper recycling infrastructure is developed that can process flexible material contaminated by protein products.

III. FPA Opposes EPR Efforts that Pay for Disposal

FPA follows established best practices for designing and implementing extended producer responsibility programs. The Organization for Economic Co-operation and Development (OECD) states that at its core, EPR is "**Not a tax**, EPR compliance schemes may trigger a fee for producers, but the fee **pays for a service.**"[1] That service is the investment in recycling infrastructure for the end-of-life care for flexible packaging. Incentivizing disposal with producer funds is counter to the core principles of EPR and will confound the objective of increasing recycling in the state of Rhode Island. FPA respectfully requests that any language in S939 requiring producers to reimburse municipalities and service providers for disposal costs be struck from the bill.

IV. A Note on Advanced Recycling

Common advanced recycling technologies like pyrolysis, gasification, and depolymerization convert used plastics that would be considered waste into high-value materials using methods that are regularly deployed in other industries. Despite being a nascent industry compared to other materials that have had centuries to figure out how to design for a circular economy, our industry has voluntarily invested over $7 billion which has led to a massive 21 billion pounds of plastic waste being diverted from landfills across the nation each year. In time, we are confident that engineers and chemists will be able to definitively make the case for a circular plastics economy.

A common myth that FPA and others must constantly dispel is that advanced recycling is just burning plastic waste through incineration, when in reality, this type of recycling relies on cutting-edge technologies that purposefully operate with little to no oxygen (allowing for the recovery of material). Furthermore, advanced recycling produces emissions equal to or lower than similar facilities in other industries with the added benefit of no measurable lead or dioxin emissions. All advanced recycling facilities are subject to the same Clean Air Act standards as mechanical recycling and often outcompete those facilities on environmental indicators. FPA requests

clarifying language that advanced recycling with non-fuel end markets be counted towards any established performance goals within any packaging EPR program enacted in Rhode Island.

V. Reasonable Costs to Producers

As stated above, FPA and its members support well-crafted EPR that can be used to promote a needed shift in recycling in the United States. S939 requires producers pay "no less than 90% of the net cost" of the program by year three of its implementation. While FPA's members are wholly committed to addressing plastic pollution, asking producers to potentially pay for the future of Rhode Island's recycling system in full with no maximum payment threshold may undermine the long-term success of the EPR program. It is likely also to lead to unintended policy consequences along the waste supply chain. FPA requests this language be amended to say "up to 90% of the net cost" of the program by year three of its implementation to ensure that entities responsible for incurring costs are not incentivized to be financially irresponsible, similar to the cap included in the Maryland, Minnesota and Washington State EPR legislation.

VI. Conclusion & Next Steps

FPA is currently opposed to S939 but looks forward to potentially supporting a future version where the above changes have been made. Thank you for your consideration. We are happy to discuss any of these issues with you and your staff before your vote. If we can provide further information or answer any questions in advance of your decision, please do not hesitate to contact me at (410) 694-0824 or jrichard@flexpack.org.

Respectfully,

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