

## REVISED RURAL AREA FLEXIBILITY ANALYSIS

### 6 NYCRR Part 351 Plastic Bag Reduction, Reuse and Recycling

#### INTRODUCTION

Proposed Part 351 affects stores, other retail establishments, owners of enclosed shopping malls, manufacturers of film plastic carryout bags, and producers of reusable bags. These proposed Part 351 regulations will implement the requirements of Titles 27 and 28 of Article 27 of the Environmental Conservation Law.

The proposed rulemaking addresses the requirements of Title 27, which became effective over ten years ago on January 1, 2009. Title 27 established requirements for stores with 10,000 square feet or more of retail space and chains that operate five or more stores with greater than 5,000 square feet of retail space, and which provide plastic carryout bags to customers, to place bins for the collection of plastic carryout bags and have those collected bags recycled. Pursuant to this law, the owner of an enclosed shopping mall is required to place recycling bins at reasonable intervals throughout the mall. Large mall stores (50,000 square feet or more of retail space) are required to establish their own plastic carryout bag recycling programs. These stores and retail establishments are located statewide, including rural areas.

Title 27 was amended and expanded, effective over four years ago on March 1, 2015, to also require the collection at these same stores of uncontaminated non-rigid film plastic packaging products composed of plastic resins, which include, but are not limited to, newspaper bags, dry cleaning bags and shrink-wrap.

Title 27 established collection, recycling, and recordkeeping requirements for stores and manufacturers of these film plastic products and have been in place for over ten years.

In 2019, a new Title 28, “Bag Waste Reduction” was added to Article 27 of the ECL. This law bans the distribution of plastic carryout bags to customers, effective March 1, 2020, by any person required to collect tax. (“Person required to collect tax” means any vendor of tangible personal property subject to the tax imposed by New York State Tax Law section 1105(a), “Imposition of sales tax.”) This law provides specific exemptions from the definition of plastic carryout bag and requires these retail entities to allow the use of reusable bags. The law also specifically identifies that the new requirements do not exempt the provisions set forth in Title 27 relating to at store film plastic collection and recycling.

Titles 27 and 28 use similar terms, have some overlapping provisions, and taken together are intended to reduce the use of plastic carryout bags and increase the recovery and recycling of film plastic. Clarification of several terms and the coordination of Titles 27 and 28 through the proposed rulemaking is necessary because without further defining these terms in a consistent manner, the intent of the ban on plastic bag distribution will not be accomplished in an efficient and effective manner.

## 1. TYPES AND NUMBERS OF RURAL AREAS AFFECTED

The proposed regulations apply statewide, including rural areas of the state. All areas of the state, including stores and other applicable retailers located in rural areas will be affected directly or indirectly by the proposed rulemaking.

## 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND NEED FOR PROFESSIONAL SERVICES

While the regulations will not add any direct costs to the regulated parties, the enactment of the laws themselves influence costs. Many of the entities affected may be in rural areas.

With respect to the reporting, recordkeeping and the need for professional services related to Title 27 for stores, owners of enclosed shopping malls, and manufacturers, the collection, recycling and recordkeeping requirements have been in place for over ten years for plastic carryout bags and four years for film plastic recycling. Accordingly, their impact will not increase for this aspect of the requirements.

With respect to the reporting, recordkeeping and the need for professional services related to Title 28 for stores and other retail establishments, these entities will no longer be able to distribute plastic carryout bags to customers. There will be no new reporting or recordkeeping requirements, and there is no anticipated need for additional professional services.

It should be noted, however, that Article 28 provides for potential fees on paper carryout bags in cities or counties in the State that choose to opt-in to the paper carryout bag

reduction fee provision in the law. This rulemaking does not include or address any of those issues and relates only to plastic carryout bags and film plastic.

### 3. COSTS

As noted above in Section 2, while the regulations themselves will not add any direct costs to the regulated parties, the enactment of the laws themselves influence costs.

Entities affected may be in rural areas.

With respect to the costs related to Title 27 to stores, owners of enclosed shopping malls, and manufacturers, the collection, recycling and recordkeeping requirements have been in place for over ten years for plastic carryout bags and four years for film plastic recycling. Accordingly, their costs will not increase for this aspect of the requirements and will likely decrease over time due to the eventual decrease in the amount of film plastic being deposited in the collection bins because the distribution of many of the plastic carryout bags will be eliminated.

With respect to the costs to stores and other retail establishments related to Title 28, these entities will no longer be able to distribute plastic carryout bags to customers. If these entities choose to provide an alternate bag to customers, the cost per bag is estimated to be three to five times greater than a single-use plastic carryout bag. However, this alternative is not required by the regulations. Consumers could realize a cost increase as a result of choices made by stores or other retail establishments regarding the provision of bags.

Manufacturers of plastic carryout bags will experience a decline in sales of those bags in New York State, to the extent that any manufacturers are in rural areas.

Manufactures of paper bags could realize an increase in sales if a store chooses to provide paper bags to customers, to the extent that any manufacturers are in rural areas.

Manufacturers of reusable bags could realize an increase in sales as consumers move to the use of reusable bags over time, to the extent that any manufacturers are in rural areas.

There are no specific requirements for local governments related to plastic carryout bags and film plastic recycling.

It should be noted, however, that Article 28 provides for potential fees on paper carryout bags in cities or counties in the State that choose to opt-in to the paper carryout bag reduction fee provision in the law. This rulemaking does not include or address any of those issues and relates only to plastic carryout bags and film plastic.

#### 4. MINIMIZING ADVERSE IMPACTS

While the regulations will not add any direct costs or adverse impacts to rural areas, the enactment of the laws themselves have an impact.

As previously noted, the impacts related to the collection, recycling, and recordkeeping requirements in Title 27 for stores, owners of enclosed shopping malls, and manufacturers have been in place for over ten years for plastic carryout bags and four years for film plastic recycling.

With respect to impacts related to Title 28, the regulations themselves do not pose any unique impacts on rural areas.

## 5. RURAL AREA PARTICIPATION

The Department of Environmental Conservation (Department) has held numerous meetings with interested stakeholders, including groups representing local government to explain the requirements of the law. The Department has accepted and evaluated the feedback and comments for input into the proposed rulemaking. The proposed regulations are intended to merely implement and clarify the requirements of the law.