

## **6 NYCRR Part 353**

### **Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction**

#### **JOB IMPACT STATEMENT**

#### **INTRODUCTION**

A new Title 30 of Article 27 of the Environmental Conservation Law (ECL), “Expanded polystyrene foam container and polystyrene loose fill packaging ban” established a ban on disposable food service containers that contain expanded polystyrene foam and polystyrene loose fill packaging, which goes into effect on January 1, 2022. This rulemaking is intended to implement the provisions of the “Expanded polystyrene foam container and polystyrene loose fill packaging ban” by defining statutory terms such as “comparable costs” and “undue financial hardship,” and setting forth the details of the financial hardship waiver application process, which are necessary to ensure the bans on expanded polystyrene foam containers and expanded polystyrene loose fill packaging are implemented in a consistent, efficient and effective manner. The regulations will also help ensure that regulated entities clearly understand their compliance obligations and the process for obtaining a financial hardship waiver.

#### **1. NATURE OF IMPACT**

The implementation of the proposed rule is not expected to have an adverse effect on jobs or employment opportunities. Any job-related impacts associated with compliance with the implementation of Title 30 are the result of the Legislature’s enactment of the ban on expanded polystyrene foam container and polystyrene loose fill packaging ban. Part 353 will not result in

any additional direct costs or additional adverse impacts to jobs or employment opportunities that will not already occur as a result of the law.

Nothing being proposed in this rule is expected to result in diminished economic activity, which typically results in adverse impacts on employment opportunities. While the regulations will not add any additional direct costs to the regulated parties, the requirements of the law itself and its ban on expanded polystyrene foam disposable food service containers and loose fill packaging could impact costs for regulated entities, which, in turn, could possibly have an effect on jobs.

Title 30 prohibits covered food service providers and stores from selling, offering for sale, or distributing disposable food service containers that contain expanded polystyrene foam in New York state. When this ban on expanded polystyrene foam products takes effect on January 1, 2022, demand for polystyrene containers is likely to decrease. Depending on the type of container and material type, acceptable alternative containers have the potential to cost more. Covered food service providers could experience an increase in costs if the purchase and use of food service containers that do not contain expanded polystyrene foam cost more than products containing expanded polystyrene foam. If increased food service container costs cannot be passed on to customers, there potentially could be an effect on jobs if additional costs are so high that food service providers are unable to retain current staffing levels or are unable to hire additional employees. However, this is not anticipated to be the case, as there are many cost competitive alternatives. Additionally, this rule implements the financial hardship waiver provisions in Title 30 wherein certain covered food service providers and facilities may be granted a financial hardship waiver from the requirements of Title 30 for disposable food service containers.

While the proposed regulations themselves will not directly affect jobs, the enactment of the law itself may affect jobs for manufacturers and distributors who sell, offer for sale, or distribute banned items in New York state, as there are manufacturers and distributors located in this state who manufacture and/or distribute banned polystyrene products. When the law becomes effective, or even before that time as stores prepare for the ban, these businesses will see reduced sales of banned polystyrene products in New York state. Any time a business reduces sales of some items, this could reduce profits, and this could have an impact on jobs. However, the Department has reviewed some of the containers and packaging offered by these manufacturers and distributors, and both manufacturers and distributors offer a diverse array of products for sale, including items that are not banned under the law and can still be sold or distributed in New York state. They may also offer alternative containers and packaging that are allowed under the law and for which manufacturers and distributors may see an increase in sales of those products after the law becomes effective. This could have a positive impact on employment opportunities for businesses that manufacture, sell, or distribute alternative containers and packaging. In addition, disposable food service containers containing expanded polystyrene foam can be sold out of state, in states without a ban.

Manufacturers and distributors of disposable food service containers that do not contain expanded polystyrene foam could experience an increase in sales as a result of the likely shift to other containers by covered food service providers and stores. Due to the many options currently available on the market, it is not anticipated that there will be a lack of supply of alternative disposable food service containers that do not contain expanded polystyrene foam. The law and proposed regulations may also result in an increased focus on reusable containers as an alternative and a shift to a more circular system. This would again boost prospects for those

companies that do not sell disposable food service containers containing expanded polystyrene foam. Switching to reusable containers as an alternative can save money by reducing disposable food service ware costs, preventing litter, and lowering fees for waste collection services.

Title 30 also contains a ban on polystyrene loose fill packaging. Beginning January 1, 2022, no manufacturer or store can sell, offer for sale, or distribute polystyrene loose fill packaging in New York State. Similar to the above, alternative packaging may cost more, but, as explained below, this is not anticipated to have significant job-related impacts. Manufacturers, distributors, and stores that sell polystyrene loose fill packaging do exist in some locations in this state and they will likely experience a decline in sales of these products in New York State, which could negatively impact jobs. However, similar to the manufacturers of disposable food service containers that contain expanded polystyrene foam, these companies appear to have product lines beyond polystyrene loose fill packaging that can still be sold in this state after the ban goes into effect. Manufacturers, distributors, and stores that sell acceptable alternative fill packaging could see an increase in sales due to a likely shift in purchasing for those that use fill packaging, which may also result in the need to expand production, and the need to hire more people. Some distributors currently advertise starch packing peanuts as the packing peanuts with the fastest sales growth for their business. In addition, the Department has reviewed available alternatives, and many cost competitive alternatives exist, such as packing peanuts made from starch, with some alternatives even providing a cost savings compared to polystyrene loose fill packaging. Further, many available alternatives are biodegradable, recyclable, or made of recycled content, increasing the environmental benefits associated with the ban. The prohibitions within the legislation do not favor one industry over another, but rather promote a shift to more environmentally preferable solutions to ensure a healthy future for all in New York State.

## **2. CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED**

While the implementation of the proposed regulations is not expected to have a substantial effect on jobs or employment opportunities, the categories of jobs that could be affected by the requirement of the law include: (1) covered food service providers (persons engaged on the business of selling or distributing prepared food or beverages for on-premises or off-premises consumption); (2) stores (retail or wholesale establishments other than covered food service providers); (3) manufacturers or distributors of disposable food containers; and (4) manufacturers or distributors of polystyrene loose fill packaging. Covered food service providers include retail food stores, delicatessens; grocery stores; restaurants; cafeterias; coffee shops; hospitals, adult care facilities, and nursing homes; and elementary and secondary schools, colleges and universities. Title 30 and the proposed regulations allow covered food service providers and certain facilities to apply for a financial hardship waiver, which would reduce any potential financial impacts to eligible covered food service providers and facilities.

Any job impacts would likely be experienced by manufacturers or distributors of disposable food service containers that contain expanded polystyrene foam and manufactures of polystyrene loose fill packaging because these products will be banned from being sold or distributed under the law. The number of jobs or employment opportunities at these businesses that will be affected by the law and regulations is unknown, but it is estimated to be minimal. To the extent that any manufacturers and distributors of these products are located in New York, jobs could be negatively impacted if these entities rely heavily on the sale and distribution of food service containers and loose fill packaging made from expanded polystyrene foam and do not have the

ability to shift to, or increase, the production and distribution of other products. However, manufacturers of these products typically manufacture other packaging and products and could shift product development to those market opportunity areas over time. Manufacturers of reusable or disposable food service containers that do not contain polystyrene foam and other non-polystyrene packaging fill could experience an increase in sales due to purchasing shifts by regulated entities. Although it is difficult to predict the impact of the law and regulations on employment, there is potential for a small number of jobs to be created due to the need for increased alternatives to expanded polystyrene foam disposable food service containers and polystyrene loose fill packaging.

### **3. REGIONS OF ADVERSE IMPACT**

Except for New York City, to which the proposed regulations do not apply because it has its own similar law banning expanded polystyrene containers and polystyrene loose fill packaging, all covered entities must adhere to the same requirements regardless of where they are located in this State. Therefore, there is no region of the State expected to be adversely impacted from the proposed regulations more than other areas of the State.

### **4. MINIMIZING ADVERSE IMPACT**

Section 27-3005 of the law outlines provisions related to a financial hardship waiver and applying for a waiver. The proposed regulations implement Title 30's financial hardship waiver provisions by addressing financial hardship waiver eligibility, applying for a waiver, approval criteria, and renewal of a waiver in order to assist in minimizing adverse impacts for those entities that meet the requirements outlined in Section 27-3005. Covered food service providers

that meet certain criteria (have an annual gross income under \$500,000 per location, do not operate 10 or more locations in New York State, and are not operated according to a franchise agreement), as well as facilities operated by a not-for-profit corporation or by a federal, state, or local government agency that provide food and meals to food insecure individuals, may request from the Department a renewable 12-month hardship waiver of the requirements of Title 30. Hardship waivers may be granted for one or more disposable food service containers to a covered food service provider that demonstrates there is no alternative product of comparable cost that is not composed of expanded polystyrene foam and that the purchase or use of an alternative product would create an undue financial hardship. In addition, the Department intends to undertake efforts to minimize any potential impacts by engaging stakeholders directly through outreach, education, and guidance documents.

## **5. SELF-EMPLOYMENT OPPORTUNITIES**

The proposed regulations are not expected to negatively impact self-employment opportunities and may drive entrepreneurial endeavors for those seeking to develop reusable food service containers, other allowable alternative food service containers, or non-polystyrene loose fill packaging.

## **6. INITIAL REVIEW OF RULE**

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.