

REVISED REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

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. Many of these establishments could be small businesses.

Title 27 was amended and expanded, effective over four years ago on March 1, 2015, to also require the collection at these same stores and retail establishments 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, retail establishments 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 carryout bag distribution will not be accomplished in an efficient and effective manner.

1. EFFECT OF RULE

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 small businesses.

With respect to the costs 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 costs 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 plastic carryout bag. The regulations do not require the purchase of these 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 small businesses.

Manufacturers 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 small businesses.

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 small businesses.

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

Article 28 does provide 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 concerns only plastic carryout bags and film plastic.

2. COMPLIANCE REQUIREMENTS

With respect to the compliance requirements 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. Accordingly, these requirements and any associated costs 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. Additionally, there are no specific compliance requirements for local governments related to the plastic carryout bags and plastic film recycling.

With respect to the compliance requirements related to Title 28 for stores and other retail establishments, these entities will no longer be able to distribute plastic carryout bags to customers. This is a change in current common business practices for most retailers and there will be a compliance expectation.

There are other provisions of Article 28 related to 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 potential compliance issues and relates only to plastic carryout bags and film plastic.

3. PROFESSIONAL SERVICES

With respect to the compliance requirements 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. Accordingly, there are no new professional services anticipated to be required for small businesses or local governments due to the implementation of the plastic carryout bags and film plastic recycling requirements of the regulations.

4. COMPLIANCE COSTS

As noted above in the “Effect of the Rule” section, 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 small businesses.

With respect to compliance costs 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 compliance costs 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 compliance costs related to Title 28 for stores and other retail establishments, 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 plastic carryout bag. However, this is an option for retailers; it is not a requirement of the regulations. Additionally, the retailers could also choose to charge their customers for the sale of a bag as a taxable item to defray any additional costs.

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 small businesses.

Manufacturers of paper bags could realize an increase in sales if stores choose to provide paper bags to customers, to the extent that any manufacturers are small businesses.

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 small businesses.

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

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.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

With respect to the impacts of Title 27 on 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, so there are no economical or technological issues of concern anticipated.

The requirements related to Title 28 prohibiting the distribution of plastic carryout bags to customers is not anticipated to be a technological challenge as many alternative bags, including reusable bags, readily exist today. With respect to economic impacts, for stores and other retail establishments, 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 plastic carryout bag.

There are no impacts anticipated for local government related to plastic carryout bags and plastic film recycling.

There are other provisions of Article 28 related to potential fees on paper carryout bags in cities or counties in the State that choose to opt-in to the paper bag reduction fee provision in the law. This rulemaking does not include or address any of those issues and relates only to plastic bags and film plastic.

6. MINIMIZING ADVERSE IMPACTS

While the regulations themselves will not add any direct costs or adverse impacts to small businesses or local governments, the enactment of the laws themselves have an impact. Title 27 established collection, recycling and recordkeeping requirements for stores and manufacturers of these film plastic products and these requirements have

been in place for over ten years. Over the last few years, the Department of Environmental Conservation (Department) has undertaken efforts to minimize any potential impacts by engaging stakeholders directly through outreach. Additionally, to minimize adverse impacts, the Department has clarified provisions to promote the use of reusable bags and recycling of plastic carryout bags and film plastic. Small businesses that are manufacturers of reusable bags or paper carryout bags could see an increase in sales and employment. With respect to impacts related to Title 28, the regulations themselves do not pose any impacts on small businesses or local government.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Department has held numerous meetings with interested stakeholders, including groups representing small businesses as well as 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 the requirements of the law.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

The requirements of 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, so no cure period is necessary. With respect to the requirements of Article 28, the effective date is March 1, 2020, as required by the law.

Accordingly, the requirements of the law will be in place as of March 1, 2020, and the regulations will be in effect 30 days after filing with the Department of State.