

SUMMARY OF EXPRESS TERMS

This rulemaking adds a new Part 353, Expanded Polystyrene Foam Container and Loose Fill Packaging Reduction, to set forth the requirements of Title 30 of Article 27 of the Environmental Conservation Law with respect to the prohibition on expanded polystyrene foam containers and loose fill packaging; financial hardship waiver application process; cost comparison analysis for alternative packaging; definition of the terms “comparable cost” and “undue financial hardship;” and hardship waiver approval, renewal, and revocation criteria.

Subpart 353-1 General Provisions

A new Subpart 353-1 sets forth the purpose and applicability and the definitions used in the regulations. Key statutory terms, such as “pre-packaged” and “single-use” are defined. This Subpart also addresses exemptions, violations and enforcement, severability, and preemption, including how a county can file a written declaration of its intent to enforce its local law as long as the law provides environmental protection equal to or greater than the state law and Part 353.

Subpart 353-2 Expanded Polystyrene Foam Container and Loose Fill Packaging Ban

A new Subpart 353-2 establishes the prohibitions related to the sale, offer for sale, and distribution of expanded polystyrene foam containers and polystyrene loose fill packaging. It addresses eligibility criteria for facilities and covered food service providers who may apply for a financial hardship waiver from certain requirements in the law and the application process. This Subpart also defines the terms “comparable cost” and “undue financial hardship,” as these terms relate to the approval criteria for a financial hardship waiver, and addresses hardship waiver approval, renewal, and revocation.

A new Part 353 is being added as follows:

PART 353

EXPANDED POLYSTYRENE FOAM CONTAINER AND POLYSTYRENE LOOSE FILL PACKAGING REDUCTION

Statutory authority: Environmental Conservation Law, title 1 of article 1, title 3 of article 3, title 30 of article 27

SUBPART 353-1 GENERAL PROVISIONS

353-1.1 Purpose and Applicability

353-1.2 Definitions

353-1.3 Exemptions

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Section 353-1.1 Purpose and applicability.

(a) Purpose.

The purpose of this Part is to implement Title 30 of Article 27 of the Environmental Conservation Law. This Part sets forth the requirements for a prohibition on expanded polystyrene foam containers and expanded polystyrene loose fill packaging.

(b) Applicability.

This Part applies to any covered food service provider or store, that sells, offers for sale, or distributes expanded polystyrene foam containers in New York State, and any manufacturer or store that sells, offers for sale, or distributes expanded polystyrene loose fill packaging in New York State.

Section 353-1.2 Definitions.

As used in this Part, the following terms have the following meanings. Unless otherwise noted, all words and terms in this Part are defined by their plain meaning.

(a) ‘Covered food service provider’ means a person engaged in the business of selling or distributing prepared food or beverages for on-premises or off-premises consumption, including but not limited to:

(1) food service establishments, caterers, temporary food service establishments, mobile food service establishments, and pushcarts as defined in the New York State Sanitary Code;

(2) retail food stores as defined in article 28 of the agriculture and markets law;

(3) delicatessens;

(4) grocery stores;

(5) restaurants;

(6) cafeterias;

(7) coffee shops;

(8) hospitals, adult care facilities, and nursing homes; and

(9) elementary and secondary schools, colleges, and universities.

(b) ‘Department’ means the New York State Department of Environmental Conservation.

(c) ‘Disposable food service container’ means a bowl, carton, clamshell, cup, lid, plate, tray, or any other product that is designed or used for the temporary storage or transport of a prepared food or beverage, including a container generally recognized by the public as being designed for single use.

(d) 'Environmental Conservation Law' or "ECL" means chapter 43-B of the Consolidated Laws of New York State.

(e) 'Expanded polystyrene foam' means expanded foam thermoplastics utilizing a styrene monomer and processed by any number of techniques. Such term does not include rigid polystyrene.

(f) 'Manufacturer' means every person, firm or corporation that produces or imports polystyrene loose fill packaging that is sold, offered for sale, or distributed in New York State.

(g) 'New York State Sanitary Code' means Title 10 of the New York Codes, Rules and Regulations.

(h) 'Polystyrene loose fill packaging' means a void-filling packaging product made of expanded polystyrene foam that is used as a packaging fill, commonly referred to as packing peanuts.

(i) 'Pre-packaged' means enclosing food fully or partially in such a way that the contents cannot be accessed without opening or changing the packaging.

(j) 'Prepared food' means food or beverages that are cooked, chopped, sliced, mixed, brewed, frozen, heated, squeezed, combined or otherwise prepared on the premises of a covered food service provider for immediate consumption and require no further preparation to be consumed. Prepared food includes, but is not limited to, ready to eat takeout foods and beverages.

(k) 'Rigid polystyrene' means plastic packaging made from rigid, polystyrene resin that has not been expanded, extruded, or foamed.

(l) 'Single-use' means designed and intended by the manufacturer to be used only one time in its same form and then discarded, and is not designed or intended for repeated use.

(m) 'Store' means a retail or wholesale establishment other than a covered food service provider.

Section 353-1.3 Exemptions.

This Part does not apply to the following:

- (a) Prepackaged food filled or sealed prior to receipt at a covered food service provider;
- (b) Raw meat, pork, seafood, poultry, or fish sold for the purpose of cooking or preparing off-premises by the customer; or
- (c) Food service containers made from rigid polystyrene resin (e.g., clear plastic containers marked with a #6 resin identifier).

353-1.4 Preemption.

(a) Except as provided in subdivisions b and c of this section, the provisions of this Part supersede and preempt all local laws, ordinances, or regulations governing the sale, offer for sale, or distribution of disposable food service containers containing polystyrene foam and polystyrene loose fill packaging.

(b) Any local law, ordinance, or regulation of any county will not be preempted if a county's local law, ordinance or regulation provides environmental protection equal to or greater than the provisions of Title 30 of Article 27 of the Environmental Conservation Law and this Part, and if the county files with the department a written declaration of its intent to administer and enforce the local law, ordinance or regulation.

(1) The following must be submitted to the department with the county's written declaration of its intent to administer and enforce the local law, ordinance or regulation:

- (i) a copy of the local law, ordinance, or regulation;
- (ii) a statement explaining how the local law, ordinance or regulation provides environmental protection equal to or greater than the provisions of Title 30 of Article 27 of the ECL and this Part; and
- (iii) any other information requested by the department.

(2) The county must notify the department if it intends to discontinue administering and enforcing the local law, ordinance, or regulation, or if the local law, ordinance, or regulation has been amended or repealed.

(c) The provisions of Title 30 of Article 27 of the Environmental Conservation Law and this Part do not apply in a city with a population of one million or more that has a local law, ordinance or regulation in place restricting the sale, offer for sale, or distribution of expanded polystyrene containers and polystyrene loose fill packaging polystyrene ban in place, including New York City.

353-1.5 Violations and enforcement.

(a) Any person who violates any provision of or who fails to perform any duty imposed by this Part, or any final determination or order of the commissioner issued pursuant to this Part, or Title 30 of Article 27 of the ECL, will be liable for all applicable penalties or sanctions set forth in Article 71, including section 71-2730 and Title 30 of Article 27 of the ECL and, as appropriate, any other New York State law. Such penalties will be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of Part 622 of this Title, ECL sections 71-1709 and 71-2727. In addition, such person may by similar process be enjoined from continuing such violation and any permit or registration issued to such person may be revoked or suspended or a pending renewal application denied. Each day a violation continues or exists is considered a separate violation.

(b) A county must notify the department if it intends to enforce the provisions of section 27-3003 of the ECL.

(c) Any county that has filed a written declaration pursuant to subdivision 2 of section 27-3007 of the ECL and subdivision 353-1.5(b) of this Part shall not enforce the provisions of Title 30 of Article 27 of the ECL.

353-1.6 Severability.

If any provision of this Part, or its application to any person or circumstance is held to be invalid, the remainder of this Part, and the application of that provision to other persons or circumstances, will not be affected.

SUBPART 353-2

EXPANDED POLYSTYRENE FOAM CONTAINER AND POLYSTYRENE LOOSE FILL PACKAGING
BAN

353-2.1 Expanded Polystyrene Foam Container Ban

353-2.2 Polystyrene Loose Fill Packaging Ban

353-2.3 Financial Hardship Waivers

353-2.4 Waiver Approval Criteria

353-2.5 Approval, Renewal, and Revocation

Section 353-2.1 Expanded Polystyrene Foam Container Ban.

Beginning January 1, 2022, no covered food service provider or store shall sell, offer for sale, or distribute disposable food service containers that contain expanded polystyrene foam in New York State.

Section 353-2.2 Polystyrene Loose Fill Packaging Ban.

Beginning January 1, 2022, no manufacturer or store shall sell, offer for sale, or distribute polystyrene loose fill packaging in New York State.

Section 353-2.3 Financial Hardship Waivers.

(a) Eligibility for waiver. The following facilities and covered food service providers described in paragraphs (1) and (2) of this subdivision are eligible to apply to the department for a financial hardship waiver from the requirements of subdivision 1 of section 27-3003 of the ECL and Section 353-2.1 of this Subpart for one or more disposable food service containers sold, offered for sale, or distributed by a facility or covered food service provider:

(1) Any facility, including but not limited to a community meal program, food pantry, or place of worship that meets the following criteria:

- (i) The facility provides food to food insecure individuals at no or nominal charge; and
- (ii) The facility is operated by either one of the following:
 - (a) a federal, state, or local government agency; or
 - (b) a not-for-profit corporation authorized to conduct activities in New York State.
- (2) Any covered food service provider that meets the following criteria:
 - (i) The covered food service provider has an annual gross income under \$500,000 dollars per location as stated on the income tax filing for the most recent tax year;
 - (ii) The covered food service provider does not operate 10 or more locations within New York State; and
 - (iii) The covered food service provider is not operated pursuant to a franchise agreement.
- (b) Waiver application.

A complete application for a hardship waiver must be submitted on a form prescribed by the department and include the following information for facilities and covered food service providers, as applicable:

- (1) a list and description of all disposable food service containers that contain expanded polystyrene foam containers the facility or covered food service provider wants to continue selling, offering for sale, or distributing, including information on container type, size, cost per unit, and quantity purchased per calendar year;
- (2) a list of comparable alternative products for each container with information concerning the container type and material, size, cost per unit, and annual cost for purchasing the alternative container;
- (3) calculations showing the annual cost difference of switching to an alternative container from a single-use disposable expanded polystyrene foam container;
- (4) an explanation and showing as to how the purchase or use of an alternative product that is not composed of expanded polystyrene foam would create an undue financial hardship for the facility or covered food service provider;

(5) any other relevant information the facility or covered food service provider chooses to submit to support the waiver application; and

(6) any other information or documentation requested by the department.

Section 353-2.4 Waiver approval criteria for covered food service providers.

In addition to the requirements in section 353-2.3, a covered food service provider seeking a waiver must demonstrate the following:

(a) After making all efforts to find the lowest cost alternative available, there is no alternative product of comparable cost that is not composed of expanded polystyrene foam. As used in this section, comparable cost means the purchase cost that is the same, less than, or does not exceed a cost of ten percent (10%) above the purchase cost of a comparable product that contains expanded polystyrene foam.

(b) The purchase, distribution, or use of an alternative product that is not composed of expanded polystyrene foam would create an undue financial hardship. An undue financial hardship may be demonstrated by showing any one or more of the following:

(1) Increased costs are expected to result in at least a five percent (5%) increase of business operating costs;

(2) Increased costs are expected to result in reduction of at least five percent (5%) in operating profits; or

(3) The covered food service provider can demonstrate unique circumstances particular to it that create an undue financial hardship.

Section 353-2.5 Approval, renewal, and revocation.

(a) Financial hardship waivers are valid for a maximum of twelve months.

(b) The department will issue a written approval or denial of a financial hardship waiver to the facility or covered food service provider. An approval or denial may be issued electronically. If the department issues an approval, the approval must be retained and available for inspection at the facility or covered food service provider.

(c) A waiver application will be rejected if the facility or covered food service provider provides materially false, misleading, or inaccurate statements in the waiver application or supporting papers.

(d) A facility or covered food service provider may apply to the department for the renewal of a financial hardship waiver on an application form prescribed or approved by the department. Complete applications for renewal of a financial hardship waiver must be received by the department at least 60 days prior to expiration of the financial hardship waiver.

(e) Revocation, suspension, or modification.

A waiver may be revoked, suspended, or modified by the department at any time based on any of the following reasons:

(1) materially false, misleading, or inaccurate statements were provided in the waiver application or supporting papers;

(2) the waiver was issued erroneously or by mistake; or

(3) the waiver was obtained through fraud, deceit, or through submission of incorrect data.

REVISED SUMMARY OF REGULATORY 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,” went into effect on April 3, 2020, and established a ban on disposable food service containers that contain expanded polystyrene foam and polystyrene loose fill packaging. This rulemaking is intended to implement the provisions of the “Expanded polystyrene foam container and polystyrene loose fill packaging ban.”

Effective January 1, 2022, no covered food service provider or store (retail or wholesale) is allowed to sell, offer for sale, or distribute disposable food service containers that contain expanded polystyrene foam in New York State. In addition, no manufacturer or store is allowed to sell, offer for sale, or distribute polystyrene loose fill packaging (commonly referred to as packing peanuts) in the state. “Covered food service provider” means a person engaged in the business of selling or distributing prepared food or beverages for on-premises or off-premises consumption. Title 30 preempts all local laws, ordinances or regulations governing the sale, offer for sale, or distribution of disposable food service containers containing expanded polystyrene foam and polystyrene loose fill packaging. However, there are exemptions for raw meat, pork, seafood, poultry, and fish, prepackaged foods filled or sealed prior to receipt at a covered food service provider, and food service containers made of rigid polystyrene. Title 30 also includes a financial hardship waiver component for covered food service providers and facilities that meet certain criteria. Defining terms such as “comparable costs” and “undue financial hardship and the details of the financial hardship waiver application are necessary to accomplish the intent of the ban.

1. Statutory Authority

The Department's statutory authority to undertake the development of regulations concerning the provisions of the expanded polystyrene foam container and polystyrene loose fill packaging ban in Title 30 of Article 27 of the ECL is found in ECL Sections 1-0101, 3-0301, and 27-3003.

2. Legislative Objectives

The legislative objectives for Title 30 build on the accomplishments of other laws that reduce the negative environmental and community impacts of problematic, disposable, single-use plastic items. Plastic pollution from expanded polystyrene foam has been detected in the environment in New York State, other parts of the United States, and globally. It is a top contributor to plastic pollution that persists in the environment and negatively affects natural resources, fish and wildlife habitats, and litters communities and natural areas. In addition, foam containers and loose fill packaging, such as packing peanuts, do not contribute to sustainable materials management solutions as they are not accepted in the majority of recycling programs in New York State because the foam is a low value and difficult to recycle material. The need to ban these materials is being recognized through a growing number of foam bans across the country, around the world, and through the voluntary discontinued use of foam products by large corporations.

3. Needs and Benefits

Title 30 is intended to move consumers, businesses, government agencies, and non-profits away from the wasteful and environmentally damaging practice of using disposable single-use expanded polystyrene foam containers and loose fill packaging.

4. Costs

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 may impact costs for regulated entities, including the possibility of increased costs for covered food service

providers if the purchase and use of food service containers that do not contain expanded polystyrene foam cost more than products containing expanded polystyrene foam. However, there are alternatives that many retail or online stores carry, some of which are cost competitive. Although expanded polystyrene foam containers and loose fill are common, a variety of alternatives are available, many of which are recyclable or compostable, biodegradable, or reusable, further increasing the environmental benefits of the expanded polystyrene foam container and loose fill ban and appealing to customers who are increasingly looking for safer, environmentally preferable options. A cost comparison analysis from 2015 by the Takoma Park Public Works Department (TPPWD) in Takoma, Maryland describes the various cost differences of different foam alternatives (See <https://documents-takomapark.s3.amazonaws.com/public-works/polystyrene-ban/PW-20150624-cost-analysis-hand-out.pdf> (last visited February 3, 2022)). In 2021, the New York State Center for Sustainable Materials Management released a ‘Foam Container, Void Fill and Protective Packaging Alternative Guide’ that includes more up to date pricing information for alternative containers and packaging (https://static1.squarespace.com/static/5ed7acc21164f903067ef486/t/61c228f5d7639650babd6717/1640114424442/EPS+alt+guide_v1.0_d3_revision%5B90%5D.pdf (last visited February 3, 2022)). Some regulated entities may have an increased cost associated with alternative packaging, but these costs will vary depending on what alternative container or packaging material is chosen, what type of container or packaging needs to be replaced, (e.g., cups and plates), and the vendor chosen. The expanded polystyrene foam container and loose fill packaging ban also contains a financial hardship waiver provision if compliance would create an undue financial hardship for certain facilities and covered food service providers. The Part 353 regulations will not incur additional costs to the Department or local governments.

5. Local Government Mandates

The Part 353 regulations do not directly mandate the expenditure of funds by local governments and should not negatively affect local government operations. If a local government agency applies for a financial hardship

waiver, the local government agency is responsible for applying for, renewing, and keeping on file any approved hardship waiver approval. Any county that enacts a polystyrene ban by local law, ordinance, or regulation that provides environmental protection equal to or greater than the state law can file a written declaration with the Department to continue implementing the local law. If a county files such a written declaration, that county is responsible for submitting the written declaration, keeping the declaration on file, and notifying the Department of any changes that occur to the local law, ordinance, or regulation. Neither of these options are required or mandated.

6. Paperwork

Additional paperwork will only be required for covered entities who apply for a financial hardship waiver or a county with a local law providing environmental protection equal to or greater than the provisions of Title 30 or state regulations, which chooses to file a written declaration with the Department

7. Duplication

The Part 353 regulations do not duplicate any other federal or state requirements.

8. Alternative Approaches

Several alternative approaches were considered prior to initiating this rulemaking. One approach was to allow implementation to unfold based on the language in the law. A second approach was to implement through issuance of guidance, such as a series of fact sheets or frequently asked questions. A third approach was to issue a program policy to establish program requirements. All three alternatives were rejected because without regulations, the three alternatives would be inadequate, would not carry the full legal authority of regulations, and the intent of the expanded polystyrene foam container and loose fill packaging ban will not be accomplished as intended.

9. Federal Standards

There are no federal standards related to a ban on expanded polystyrene foam containers or loose fill packaging.

10. Compliance Schedule

Title 30 applies to regulated entities beginning January 1, 2022, pursuant to the law. The Part 353 regulations will become effective 30 days after filing with the Department of State.

REVISED REGULATORY IMPACT STATEMENT

6 NYCRR Part 353 Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction

INTRODUCTION

A new Title 30 of Article 27 of the Environmental Conservation Law (ECL), “Expanded polystyrene foam container and polystyrene loose fill packaging ban,” went into effect on April 3, 2020, and established a ban on disposable food service containers that contain expanded polystyrene foam and polystyrene loose fill packaging. This rulemaking is intended to implement the provisions of the “Expanded polystyrene foam container and polystyrene loose fill packaging ban.”

1. STATUTORY AUTHORITY

The Department’s statutory authority to undertake the development of regulations concerning the provisions of the expanded polystyrene foam container and polystyrene loose fill packaging ban in Title 30 of Article 27 of the ECL is found in ECL sections 1-0101, 3-0301, and 27-3003.

ECL section 1-0101 declares it the policy of the State to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution in order to enhance the health, safety and welfare of the people and their overall economic and social well-being.

ECL section 3-0301 empowers the Department to adopt regulations as may be necessary to carry out the environmental policy of the State set forth in section 1-0101.

ECL section 27-3003 authorizes the Department to promulgate any rules and regulations necessary to implement the provisions of Title 30, including criteria related to what constitutes comparable costs pursuant to subdivision two of section 27-3005 of the ECL.

2. LEGISLATIVE OBJECTIVES

The legislative objectives for Title 30 build on the accomplishments of Titles 27 (Plastic Bag Reduction, Reuse, and Recycling) and Title 28 (Bag Waste Reduction) to reduce the negative environmental and community impacts of the disposal of single-use plastic items. Polystyrene foam is a concern for people and the environment. It is lightweight, breaks apart easily, and does not readily biodegrade, contributing to litter that persists in the environment and that may also become microplastic pollution (plastic particles less than 5mm in diameter). In the study “Plastic Debris in 29 Great Lakes Tributaries,” foam was listed as the third most common plastic particle type detected (*Environ. Sci. Technol.* 2016, 50, 19, 10377–10385, Sept. 14, 2016, <https://pubs.acs.org/doi/10.1021/acs.est.6b02917> (last visited April 27, 2021)). An additional study conducted by Hudson River Park and Brooklyn College, “The Presence and Significance of Microplastics in the Lower Hudson River Estuary 2016-2019,” found that microplastic pollution has been detected in New York’s Hudson River, NY Harbor, the Mohawk River and other tributaries (Polanco, Helen, *et al.*, “The Presence and Significance of Microplastics in the Lower Hudson River Estuary 2016 – 2019: A Research Note,” <https://hudsonriverpark.org/app/uploads/2020/12/PrePrint-Draft-Microplastics-in-the-Lower-Hudson-River-2016-to-2019.pdf> (last visited April 27, 2021)). In data from the “Riverkeeper Sweep 2020 Report” and the Ocean Conservancy’s “International Coastal Cleanup 2020 Report,” foam packaging was found to be one of the top contributors of environmental litter, causing negative impacts to wildlife, waterways, and other natural resources, as well as littering our communities and natural areas (<https://www.riverkeeper.org/blogs/ecology/riverkeeper-sweep-2020-results/> (last visited April 27, 2021); https://oceanconservancy.org/wp-content/uploads/2020/10/FINAL_2020ICC_Report.pdf (last visited April 27, 2021)). In addition, expanded polystyrene (EPS) foam containers and loose fill packaging, such as packing peanuts, are not accepted in most recycling programs in New York State because the foam is a low value and difficult to recycle material. These items are not a solution to a more circular economy based on sustainable

materials management, which is being recognized through a growing number of foam bans across the country, around the world, and through the voluntary discontinued use of foam products by large corporations. To protect the people of New York State and the environment, the Legislature enacted Title 30 to address the negative impacts associated with manufacturing and use of disposable single-use plastics.

This Part 353 rulemaking is intended to establish the requirements and procedures necessary to implement the Legislative goals and objectives set forth in Title 30 so that the law can be effectively implemented and enforced.

3. NEEDS AND BENEFITS

The purpose of this rule is to ensure that the provisions of Title 30 are efficiently and effectively implemented in a coordinated and consistent manner so that the legislative objectives described above are met. Title 30 provides that, effective January 1, 2022, no covered food service provider or store (retail or wholesale) is allowed to sell, offer for sale, or distribute disposable food service containers that contain EPS foam in New York State. In addition, no manufacturer or store is allowed to sell, offer for sale, or distribute polystyrene loose fill packaging (commonly referred to as packing peanuts) in the state. “Covered food service provider” means a person engaged in the business of selling or distributing prepared food or beverages for on-premises or off-premises consumption, including but not limited to: food service establishments, caterers, temporary food service establishments, mobile food service establishments, and pushcarts as defined in the New York State Sanitary Code; retail food stores as defined in Article 28 of the Agriculture and Markets Law; delicatessens; grocery stores; restaurants; cafeterias; coffee shops; hospitals, adult care facilities, and nursing homes; and elementary and secondary schools, colleges, and universities.

Disposable food service containers made of EPS foam that will be banned under the law include bowls, cartons, hinged “clamshell” containers, cups, lids, plates, trays, or any other product designed or used to temporarily store or transport prepared foods or beverages, and includes any container generally recognized as designed for single use. The law provides specific exemptions for raw meat, pork, seafood, poultry, and fish, prepackaged foods filled or sealed prior to receipt at a covered food service provider, and food service containers made of rigid polystyrene. Polystyrene loose fill packaging (commonly referred to as packing peanuts) will also be banned under the law. The enforcement provisions for Title 30 of Article 27 of the ECL, found in ECL Section 71-2730, specify penalty amounts for violations and those who are authorized to enforce provisions of the law.

Title 30 preempts all local laws, ordinances or regulations governing the sale, offer for sale, or distribution of disposable food service containers containing EPS foam and polystyrene loose fill packaging. There are, however, exceptions to this preemption. Title 30 does not apply in a city with a population of one million or more that has a local law, ordinance, or regulation in place restricting the sale, offer for sale, or distribution of EPS foam containers and polystyrene loose fill packaging (New York City). In addition, any local law, ordinance or regulation of any county will not be preempted if such local law, ordinance, or regulation provides environmental protection equal to or greater than Article 27 of Title 30 of the ECL or the Part 353 regulations, and the county files a written declaration of its intent to administer and enforce such county law with the Department.

Title 30 also includes a financial hardship waiver component. 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 a renewable 12-month hardship waiver of the requirements of Title 30 from the Department. 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 EPS foam and that the purchase or the use of an alternative product would create an undue financial hardship.

Title 30 is intended to move consumers, businesses, government agencies, and non-profits away from the wasteful and environmentally damaging practice of using disposable, single-use EPS foam containers and loose fill packaging. Expanded polystyrene foam (especially food and beverage soiled containers) is difficult to recycle and robust markets and widescale, readily available recycling options do not currently exist for expanded polystyrene foam. Therefore, EPS foam containers and loose fill packaging are often disposed of in landfills or incinerators. Although not recyclable at most materials processing facilities, EPS foam still ends up in the recycling stream due to confusion over recycling rules. In a materials processing facility setting, EPS foam containers and loose fill packaging have an adverse effect on the marketability of the other more voluminous recyclables as the foam breaks down into small pieces and is a contaminant to the recycling stream.

This rule is needed to facilitate the implementation and enforcement of the law in a consistent, efficient, and effective manner by defining key statutory terms, such as “comparable costs” and “undue financial hardship,” and setting forth the details of the financial hardship waiver application process, waiver approval criteria, the approval and renewal processes, and describing when a waiver may be revoked, suspended or modified. These definitions and processes are all essential to the implementation of the law and will help ensure that regulated entities clearly understand the law and their compliance obligations and the process for obtaining a financial hardship waiver. Alternative approaches, such as the issuance of guidance, would be inadequate to provide the legal authority necessary to implement and enforce the law on a uniform basis. The benefits to be derived from this rule include regulated entities having a clear understanding of their obligations and how to comply with the law and the achievement of the statutory goal of reducing the use of EPS foam containers and

packaging in New York State, thereby reducing the negative environmental and community impacts of the disposal of these items.

4. COSTS

Costs to Regulated Parties

While the regulations will not add any additional direct costs to the regulated parties, the requirements of the law itself and its ban on EPS foam disposable food service containers and loose fill packaging may impact costs for regulated entities, including the possibility of increased costs for covered food service providers if the purchase and use of food service containers that do not contain EPS foam cost more than products containing EPS foam. However, as discussed in depth below, there are cost competitive alternatives. Stores currently selling or distributing EPS foam disposable food service containers will be required under the law to find alternatives, and to the extent that these products may cost more for regulated entities that cannot sell the products to their customers for a higher price, there could be added costs. However, this rule provides a mechanism for certain facilities and covered food service providers to obtain a financial hardship waiver of the ban's requirements from the Department.

Manufacturers and distributors of expanded polystyrene foam disposable food service containers and loose fill packaging may see a decrease in profits from the sales of these items in New York State, and manufacturers and distributors of alternatives may see an increase in sales in the state. However, there are no direct costs to manufactures and distributors from the regulations or the law itself. Alternative items could cost more for distributors to purchase, but demand for alternative containers and packaging will also increase in the state, which could drive down costs.

Although EPS foam is often chosen for its low cost, insulating, and cushioning properties, there are many alternatives to EPS foam containers and packaging, some of which are cost competitive. Materials, such as rigid

plastic, paper, aluminum, plant fibers and starches, compostable bioplastics, and reusable items, are all options that many retail or online stores carry as alternatives. In some cases, these alternatives may also be recyclable or compostable, biodegradable, or reusable, thereby increasing the environmental benefits of the expanded polystyrene foam container and loose fill packaging ban and appealing to customers who are increasingly looking for safer, environmentally preferable options. A recent survey in the report “Chemical (Re)Action: Growth Opportunities in a Circular Economy” by Accenture (a global services and consulting company) of 6,000 consumers in 11 countries across North America, Europe and Asia shows a shift in consumer behavior towards environmentally preferable products, indicating that providing environmentally preferable products could be an asset to businesses due to consumer demand (https://www.accenture.com/_acnmedia/PDF-107/Accenture-Chemicals-Circular-Economy-Growth.pdf). In addition, switching to an alternative, such as reusable containers, can save money by reducing disposable food service ware costs, preventing litter, and lowering waste collection service costs.

In an alternative material cost analysis performed by Takoma Park Public Works Department (TPPWD) in Takoma, Maryland, TPPWD found a four cent (\$.04) increase in total unit cost when purchasing four alternative material items from one supplier, as opposed to polystyrene foam products. The TPPWD cost analysis summary also demonstrated that one of the most widely used containers, a 9-inch one-compartment clamshell, was available at a cheaper cost produced from a specific plant fiber (bagasse) than one composed of polystyrene foam. In the cost analysis performed by TPPWD in 2015, minimum cost changes ranged from 1 cent to 5 cents (\$.01-\$0.05) per unit for seven items that included common takeout containers, cups and plates with an average cost change of two cents (\$.02) per unit. However, in another cost analysis, the county in which Takoma Park is located separately estimated a ten-cent (\$.10) cost increase per unit from switching from polystyrene to an alternative product, which differs from TPPWD (<https://documents-takomapark.s3.amazonaws.com/public-works/polystyrene-ban/PW-20150624-cost-analysis-hand-out.pdf> (last

visited February 3, 2022)). In 2021, the New York State Center for Sustainable Materials Management released a *Foam Container, Void Fill and Protective Packaging Alternative Guide* that includes more up to date pricing information for alternative containers and packaging (https://static1.squarespace.com/static/5ed7acc21164f903067ef486/t/61c228f5d7639650babd6717/1640114424442/EPS+alt+guide_v1.0_d3_revision%5B90%5D.pdf (last visited February 3, 2022)). There is a wide array of alternative container and packaging options; some may cost more or less than other products depending on the item, size, and material used. Therefore, some regulated entities may have an increased cost associated with alternative packaging, but these costs will vary depending on which alternative container or packaging material is chosen, which type of container or packaging needs to be replaced, (e.g., cups and plates), and the vendor chosen. With the ban in effect, and as more entities purchase alternative packaging, the cost of alternative packaging may decrease. There are some alternative materials that can provide a cost savings or are the same cost, and some that will be more costly.

The expanded polystyrene foam container and loose fill packaging ban also contains a financial hardship waiver provision if compliance would create an undue financial hardship for certain facilities and covered food service providers. 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 apply for a renewable 12-month hardship waiver of the requirements of the law. In addition, food service providers that 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 may also apply for a hardship waiver. 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 EPS foam and that the purchase or use of an alternative product would create an undue financial hardship.

In determining a definition for “comparable cost” for this rule, the Department reviewed other New York State laws and policies that define similar terms; reviewed other state and city laws, regulations, and ordinances banning expanded polystyrene foam products; and had discussions with representatives from other states and cities with expanded polystyrene foam bans. The Department also reviewed cost comparison data from other cities and states regarding prices for foam containers and packaging and available alternatives and reviewed current pricing for foam containers and alternatives. Several New York State laws, such as General Municipal Law section 104-a, discuss the purchasing of recycled products for public, county, and other municipalities’ use and provide that recycled products may be purchased if the price is “reasonably competitive,” meaning that the cost of the recycled product does not exceed a cost premium of ten percent above the cost of a comparable product that is not a recycled product or, if at least fifty percent of the secondary materials utilized in the manufacture of the product are generated from the waste stream in the state, the cost of the recycled product does not exceed a cost premium of fifteen percent above the cost of a non-recycled comparable product. Some other states’ laws, and other local laws in New York State banning EPS foam products that include cost comparisons, define comparable cost to mean the products cost the same or less than expanded polystyrene foam products. After reviewing all these approaches, the Department determined it was reasonable to define comparable cost to mean the purchase cost that is the same, less than, or does not exceed a cost of ten percent (10%) above the purchase cost of a comparable product that contains expanded polystyrene foam.

Costs to the Department

The Department will not incur additional costs due to the issuance of the regulations. Increased staff time needed to provide technical assistance to the regulated community will be borne by existing staff.

Costs to Local Governments

There should be no additional costs to local government that are directly related to the regulations.

5. LOCAL GOVERNMENT MANDATES

This proposal does not directly mandate the expenditure of funds by local governments and should not negatively affect local government operations. If a local government agency that provides food and meals to food insecure individuals applies for a 12-month financial hardship waiver, the local government agency is responsible for applying for, renewing, and keeping on file any approved hardship waiver approval. Any county that enacts a polystyrene ban by local law, ordinance, or regulation that provides environmental protection equal to or greater than the state law or regulations can file a written declaration with the Department to continue implementing the local law. If a county files such a written declaration, that county is responsible for submitting the written declaration, keeping declarations on file, and notifying the Department of any changes that occur to the local law, ordinance, or regulation.

6. PAPERWORK

As noted in section 5, additional paperwork will only be required for covered entities who apply for a financial hardship waiver or a county with a local law providing environmental protection equal to or greater than the provisions of Title 30 or state regulations, which chooses to file a written declaration with the Department, as stated above.

7. DUPLICATION

The regulations do not duplicate any other federal or state requirements.

8. ALTERNATIVE APPROACHES

Several alternative approaches were considered prior to initiating this rulemaking.

One approach was to forgo rulemaking. This alternative was considered and rejected. The Department believes that the implementation of the law will be facilitated by defining key statutory terms, such as “comparable costs,” and setting forth what constitutes an undue financial hardship and the process for submitting a hardship waiver application, which are essential to the implementation of the law. This approach will ensure that the law is understood by the regulated community and that the statutory goal of reducing the use of expanded polystyrene foam containers and packaging is achieved.

A second approach was to implement the law through issuance of guidance, such as a series of fact sheets or frequently asked questions. This alternative was considered for initial guidance for stakeholders, but the Department deemed it inadequate to provide the legal authority necessary to implement and enforce the law on a uniform basis. Moreover, this alternative would not have addressed the issues of statutory interpretation that would have likely arisen as regulated entities tried to comply with the law. Accordingly, this alternative was rejected as a stand-alone alternative.

A third approach was to issue a program policy to establish program requirements. This alternative was considered in lieu of drafting regulations. While this alternative would provide for public comment, it would not carry the full legal authority of a formal rulemaking. Therefore, this alternative was also rejected as a stand-alone alternative.

9. FEDERAL STANDARDS

There are no federal standards related to a ban on expanded polystyrene foam containers or loose fill packaging.

10. COMPLIANCE SCHEDULE

Title 30 applies to regulated entities beginning January 1, 2022, pursuant to the law. The Part 353 regulations will become effective 30 days after filing of the Notice of Adoption with the Department of State for publication in the “Official Compilation of Codes, Rules, and Regulations of the State of New York.”

REVISED RURAL AREA FLEXIBILITY ANALYSIS

6 NYCRR Part 353 Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction

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 went 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. TYPES AND NUMBERS OF RURAL AREAS AFFECTED

For purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means those portions of the state so defined by Executive Law section 481(7). SAPA section 102(10). Under Executive Law section 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.” There are 44 counties in New

York State that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile.

The regulations apply statewide (excluding New York City), including rural areas of the state. The law and regulations do not apply in cities with a population of one million or more that have a local polystyrene ban in place (this includes New York City). In addition, any local law, ordinance or regulation of any county will not be preempted if such local law provides environmental protection equal to or greater than Title 30 or the Part 353 regulations, and the county files a written declaration of its intent to administer and enforce such county law with the Department. All applicable areas of the state, including stores and covered food service providers, located in rural areas that sell, offer for sale or distribute expanded polystyrene (EPS) foam containers and stores and manufacturers located in rural areas that sell, offer for sale or distribute EPS loose fill packaging (commonly known as packing peanuts) could be affected directly or indirectly by the law and the rulemaking.

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

While the regulations will not add any mandatory reporting, recordkeeping, other compliance requirements, or the need for additional professional services to regulated entities, the enactment of the law itself requires regulated entities to comply with the ban on EPS foam disposable food service containers and loose fill packaging. Regulated entities are state-wide, including in rural areas.

The additional administrative requirements only relate to those entities that elect to complete an application for a financial hardship waiver or counties that enact a polystyrene ban through a local law that provides environmental protection equal to or greater than the state law and choose to file a written declaration with the Department to continue to administer and enforce the county law. Title 30 provides that local polystyrene bans will be preempted by the state law, except for laws in counties that choose to file such written declaration. A

financial hardship waiver is available for entities that meet certain requirements related to the prohibition on selling, offering for sale or distributing disposable food service containers that contain EPS foam. The hardship waiver is the only component of the regulations that would result in any additional administrative obligations, but the waiver is optional and not required under the Part 353 regulations. Additionally, a county that enacts a polystyrene ban by local law that provides environmental protection equal to or greater than the state law could choose to file a written declaration with the Department if it intends to continue administering and enforcing its local law. However, the written declaration is also optional, and, if pursued, would involve minimal paperwork.

3. COSTS

While the regulations will not add any additional direct costs to regulated parties, the requirements of the law itself and its ban on EPS foam disposable food service containers and loose fill packaging may impact costs for regulated entities, including those in rural areas. Beginning January 1, 2022, the law prohibits covered food service providers and stores from selling, offering for sale, or distributing disposable food service containers that contain EPS foam in New York State. Depending on the type of container and alternative material chosen, alternative acceptable containers have the potential to cost more. Therefore, there is a possibility of increased costs for covered food service providers if the purchase and use of food service containers that do not contain EPS foam cost more than products containing EPS foam. In a 2015 cost analysis performed in Maryland, (See <https://takomaparkmd.gov/government/police/neighborhood-services/polystyrene-ban/> (last visited February 3, 2022); <https://documents-takomapark.s3.amazonaws.com/public-works/polystyrene-ban/PW-20150624-cost-for-business-fact-sheet.pdf> (last visited February 3, 2022)) it was estimated that alternatives to EPS foam will cost anywhere from \$0.04 cents to \$0.10 more per unit than EPS foam items; however, costs vary. In 2021, the New York State Center for Sustainable Materials Management released a ‘Foam Container, Void Fill and Protective Packaging Alternative Guide’ that includes more up to date pricing information for alternative

containers and packaging

(https://static1.squarespace.com/static/5ed7acc21164f903067ef486/t/61c228f5d7639650babd6717/164011442442/EPS+alt+guide_v1.0_d3_revision%5B90%5D.pdf (last visited February 3, 2022)). Some regulated entities may have an increased cost associated with alternative packaging, but these costs will vary depending on what alternative container or packaging material is chosen, what type of container or packaging needs to be replaced, (e.g., cups and plates), and the vendor chosen. If retail and wholesale stores choose to provide alternatives in place of EPS foam containers, these could cost more for stores to purchase than EPS foam items. However, the likely increase in demand for alternative products could increase sales of alternative products, potentially offsetting any higher costs to purchase these items, and possibly generating increased profits from alternatives.

This prohibition applies across the state — in urban, suburban and rural areas — and variation in costs for different types of public and private entities in rural areas is not anticipated. Manufacturers of disposable food service containers that contain EPS foam do exist in some locations across New York State. However, the Department has not identified any manufacturers of banned products that are located in rural areas of the state who could realize decreased sales of banned products or decreased profits. There are no direct costs to manufactures and distributors from the regulations or the law itself. The law and regulations will be applied across the state equally, except for cities to which the law does not apply, or counties who file a written declaration to administer and enforce their own local law, according to the requirements in the state law.

Manufacturers and distributors of disposable food service containers that do not contain EPS foam could experience an increase in sales due to a likely shift to other containers by covered food service providers and stores to any of the various options currently available on the market. The law and regulations may also result in an increased focus on reusable containers as an alternative and a shift to a more circular system, which can also provide cost savings. This would again boost prospects for those businesses that provide alternatives.

Switching to reusable containers as an alternative can save money by reducing disposable food service ware costs, prevent litter, and lower waste collection services.

Title 30 also contains a ban on polystyrene loose fill packaging. Beginning January 1, 2022, no manufacturer or store shall sell, offer for sale, or distribute polystyrene loose fill packaging in New York State. Similar to the above, alternative packaging may cost more. If stores replace EPS foam loose fill packaging with alternatives, it may cost more to purchase some of these items. However, demand for these items will likely increase, and increased sales of alternatives could offset any increased costs to purchase and provide alternative packaging options. In reviewing some existing available alternative packaging options, the Department found cost competitive options, with some even providing a cost savings. In addition, manufacturers, distributors, and stores offer product lines beyond EPS foam loose fill packaging, including alternatives or items that will not be banned under the law, which can continue to be sold in New York State after the ban goes into effect. No direct costs to manufactures and distributors from the regulations or the law itself are anticipated. 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.

4. MINIMIZING ADVERSE IMPACTS

Part 353 will implement Title 30's financial hardship waiver provisions, which will help to minimize adverse impacts on facilities and covered food service providers in rural areas. 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 EPS foam and that the purchase or use of an alternative product would create an undue financial hardship.

5. RURAL AREA PARTICIPATION

The Department held one widely-attended virtual public meeting, which was advertised all over the state and to which stakeholders from all over the state, including rural areas, were invited and also attended. This provided public and private interests in rural areas with the opportunity to participate in the rule making process without having to travel to an in-person meeting. Additional meetings, outreach, and education to stakeholders, including those in rural areas, were also performed to explain the requirements of the law and regulations. The Department accepted public comments and evaluated the feedback and comments for input into the rulemaking. The regulations are intended to merely implement and clarify the requirements of the law.

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.

REVISED REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

6 NYCRR Part 353 Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction

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 went 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. EFFECT OF RULE

Part 353 implements Title 30 of ECL Article 27 of the ECL. The implementation of the regulations is not expected to have an adverse effect on small businesses or local governments, however the enactment of the law itself may affect some small businesses. Although the regulations will not add direct costs to the regulated parties, many of the entities affected by Title 30 may be small businesses.

Based on the categories of small businesses in the New York Small Business Economic Profile for 2018 by the U.S. Small Business Administration, Office of Advocacy,

(<https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-NY.pdf> (last visited May 3, 2021), which provides data regarding small businesses in New York State, the categories which could potentially be impacted by the law include retail trade, accommodation and food services, healthcare and social assistance, wholesale trade, manufacturing, and educational services. These categories make up 620,380 New York State small businesses.

The number of these small businesses that could be affected by the law and regulations, because they currently manufacture, sell or distribute expanded polystyrene foam products that will be banned under the law, is unknown. However, the number of small business affected is very likely less than the total number of businesses documented in this report due to a few factors. For instance, many municipalities in New York already have local laws banning expanded polystyrene foam products, including the counties of Albany, Dutchess, Nassau, Putnam, Suffolk, Ulster, and Westchester, as well as New York City and the City of Oswego. Consequently, about sixty-six percent (66%) of the population in this state is already subject to a local law banning expanded polystyrene (EPS) foam products. There are also businesses that have voluntarily stopped using EPS foam containers and packaging. With the EPS foam ban in effect on January 1, 2022, the law and regulations apply equally to local governments, except for those which currently have a ban in place, as indicated in the law. The law does not apply in New York City because Title 30 does not apply in a city with a population of one million or more that has a local law in place restricting the sale, offer for sale, or distribution of EPS foam containers and polystyrene loose fill packaging. In addition, any local law, ordinance or regulation of any county will not be preempted if such local law provides environmental protection equal to or greater than Title 30 or the Part 353 regulations, and the county files a written declaration of its intent to administer and enforce such county law with the Department.

Although EPS foam is often chosen for its low cost, insulating, and cushioning properties, there are many alternatives to foam containers and packaging, some of which are cost competitive. Materials such as rigid

plastic, paper, aluminum, plant fibers and starches, bioplastics, and reusable items, are all options that many retail or online stores carry as alternatives. Some covered food service providers and stores may have increased costs associated with alternative packaging, but these costs will vary depending on which alternative is chosen and the type of container or packaging being replaced. The regulations should have little to no effect on regulated parties who do not currently sell, offer for sale, or distribute banned items. With the ban in effect and with more entities purchasing alternative packaging, this may drive down the cost of alternatives. There are some alternatives that are similar in cost, while others are more costly. The law and regulations do not require specific alternatives to be used; the alternatives just cannot contain EPS foam. Contamination in the recycling stream caused by EPS foam containers and loose fill packaging could decrease, potentially reducing costs associated with contaminated recyclables and increasing the value and marketability of recyclables.

To the extent that stores and manufacturers required to comply with Title 30 are small businesses, those stores and manufacturers will see a decline in sales of banned products within the state. Stores and manufactures that are small businesses that sell alternative containers and packaging could realize an increase in sales.

There are no specific requirements for local governments, unless a county chooses to file a written declaration with the Department, or a local government agency applies for a financial hardship waiver; however, neither of these actions are required.

2. COMPLIANCE REQUIREMENTS

With respect to the requirements related to Title 30, there will be a change in current business practices for covered food service providers, stores and manufacturers still selling, offering for sale or distributing banned products, as they must comply with the ban by January 1, 2022. The law and regulations do not require specific reporting or recordkeeping, except to the extent that covered food service providers and facilities who choose to

apply for a financial hardship waiver will be required to complete an application for a waiver and if the waiver is approved, the approval must be retained and available for inspection at the facility or covered food service provider.

There are no specific compliance requirements for local governments related to Title 30 or Part 353 unless a county does not want its local law to be preempted and files a written declaration with the Department or a local agency applies for a financial hardship waiver. These actions may be pursued but are not required.

3. PROFESSIONAL SERVICES

There are no new professional services anticipated to be required for small businesses or local governments.

4. COMPLIANCE COSTS

As noted above, while the regulations will not add additional direct costs to small businesses or local governments, the enactment of the law itself may impact costs for regulated entities. Many of the entities affected may be small businesses.

With respect to the costs related to Title 30 for covered food service providers and stores that sell, offer for sale or distribute expanded polystyrene foam containers or loose fill packaging, there are a variety of alternative containers and packaging available, some of which are cost-competitive. Some covered food service providers and stores may have increased costs associated with alternative packaging, but these costs will vary depending on the alternative chosen. For example, switching to reusable containers can save money by reducing disposable food service ware costs, preventing litter, and lowering waste collection and disposal costs. The regulations should have little to no effect on regulated parties who do not currently sell, offer for sale, or distribute banned products. As more entities purchase alternatives, this may drive down the cost of alternatives. Some alternatives are similar in cost and some will cost more. In a 2015 cost analysis performed in Maryland, it was estimated

that alternatives to expanded polystyrene foam will cost anywhere from \$0.04 cents to \$0.10 more per unit than polystyrene foam items; however, costs vary. (See <https://takomaparkmd.gov/government/police/neighborhood-services/polystyrene-ban/> (last visited February 3, 2022); <https://documents-takomapark.s3.amazonaws.com/public-works/polystyrene-ban/PW-20150624-cost-for-business-fact-sheet.pdf> (last visited February 3, 2022)). In 2021, the New York State Center for Sustainable Materials Management released a *Foam Container, Void Fill and Protective Packaging Alternative Guide* that includes more up to date pricing information for alternative containers and packaging (https://static1.squarespace.com/static/5ed7acc21164f903067ef486/t/61c228f5d7639650babd6717/1640114424442/EPS+alt+guide_v1.0_d3_revision%5B90%5D.pdf (last visited February 3, 2022)). There is a wide array of alternative container and packaging options; some may cost more or less than other products, depending on the item, size, and material used. To the extent that stores and manufacturers required to comply with Title 30 are small businesses, those stores and manufacturers will see a decline in sales of banned items within New York State. Stores and manufactures that are small businesses that sell alternative containers and packaging could realize an increase in sales.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The requirements related to Title 30 prohibiting the sale, offer for sale or distribution of certain EPS foam containers and loose fill packaging are not anticipated to be a technological challenge since many alternative containers and packaging already exist today. With respect to economic impacts, some covered food service providers and stores may have increased costs associated with alternative packaging, but costs will vary depending on what alternative is chosen and the type of container or packaging being replaced. The regulations should have little to no effect on regulated parties who do not currently sell or distribute polystyrene foam

products that will be banned. There are no economic or technological impacts anticipated for local governments related to the EPS foam container and loose fill packaging ban.

6. MINIMIZING ADVERSE IMPACTS

Any adverse economic impacts or additional costs associated with compliance with the implementation of Title 30 are the result of the Legislature's enactment of the ban on expanded polystyrene foam containers and polystyrene loose fill packaging. Part 353 will not result in any additional direct costs or additional adverse impacts to small businesses or local governments that will not already occur as a result of the law.

Part 353 will implement Title 30's financial hardship waiver provisions, which will help to minimize adverse impacts. 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 EPS foam and that the purchase or use of an alternative product would create an undue financial hardship.

The Department intends to undertake efforts to minimize potential impacts by engaging stakeholders through outreach, education, and guidance documents. Small businesses that are manufacturers of alternative containers and packaging could see an increase in sales and employment.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Department held meetings with interested stakeholders, including groups representing small businesses, as well as local governments, to explain the requirements of the law and collect feedback. The Department performed additional outreach and education, accepted public comments, and evaluated the feedback for input into the rulemaking. The regulations are intended to merely implement the requirements of the law.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

This rule does not establish or modify a violation or penalties associated with a violation; the law establishes the penalties for violations in Section 71-2730 of Article 71 of the ECL. While the law went into effect immediately, the ban on expanded polystyrene foam containers and polystyrene loose fill packaging in Article 27, Title 30 took effect on January 1, 2022, as required by the law. The regulations will be in effect 30 days after filing with the Department of State.

9. 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.

REVISED JOB IMPACT STATEMENT

6 NYCRR Part 353 Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction

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 went into effect on January 1, 2022. This Part 353 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 Part 353 regulations 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 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 (EPS) 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 EPS foam in New York State. With the ban on EPS foam products in effect as of 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 EPS foam cost more than products containing EPS 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 alternatives to choose from, including those that are cost competitive. 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 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. With the law in effect, 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 manufactures 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 now that the law is in effect. 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 EPS foam can be sold out of state, in states without a ban.

Manufacturers and distributors of disposable food service containers that do not contain EPS 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 EPS foam. The law and 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 EPS 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 EPS 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 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 Part 353 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 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 EPS 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 EPS 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 EPS foam disposable food service containers and polystyrene loose fill packaging.

3. REGIONS OF ADVERSE IMPACT

Except for New York City, to which the Part 353 regulations do not apply because it has its own similar law banning expanded polystyrene foam 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 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 Part 353 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 EPS 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 Part 353 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.

Summary of the Assessment of Public Comment

On the

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

6 NYCRR PART 353

Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction

Comments Received from September 8, 2021 through November 22, 2021

In September 2021, the New York State Department of Environmental Conservation (Department) proposed 6 NYCRR Part 353 Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction regulations to implement the ban on expanded polystyrene (EPS) foam containers and polystyrene loose fill packaging. Notice of the proposed rulemaking appeared in the State Register and in the Department's Environmental Notice Bulletin on September 8, 2021. Public comments were received from September 8, 2021 through November 22, 2021, and a virtual public hearing was held on November 15, 2021. This Summary Assessment of Public Comment provides an overview of the comments received during the public comment period and the Department's responses. The full Assessment of Public Comment provides a response to the substantive comments raised during the public comment period.

6 NYCRR Part 353 implements Environmental Conservation Law (ECL) Article 27, Title 30. The law and the regulations prohibit any person engaged in the business of selling or distributing prepared food or beverages for on- or off-premises consumption from selling, offering for sale, or distributing disposable food service containers that contain EPS foam in New York, beginning January 1, 2022. In addition, no manufacturer or store is allowed to sell, offer for sale, or distribute polystyrene loose fill packaging in the state.

The majority of commentors (199 out of 232) supported this rulemaking. Expanded polystyrene foam is a major contributor to environmental litter, which causes negative impacts to wildlife, waterways, and natural resources. EPS foam is lightweight, breaks apart easily, and does not readily biodegrade, rendering it persistent in the environment and susceptible to becoming microplastic pollution. Concerns were expressed by commentors that styrene is a chemical of concern for human health. In addition, EPS foam containers and loose fill packaging are not accepted by most recycling programs in New York State because the foam is difficult to recycle, easily contaminates the recycling stream, is often soiled, and has low value. The ban on EPS foam food service containers and loose fill packaging will serve to reduce the EPS foam products in New York State and the negative effects of EPS foam mentioned by commentors.

A few commentors oppose the ban for various reasons, including adverse financial impacts to local businesses. Several people commented that the Department should delay the effective date of the EPS foam ban due to the Covid-19 pandemic, worker shortages, and supply chain issues. Commentors asked that implementation be delayed in order for industry to build up inventory on acceptable alternatives to EPS foam. The comments on opposition to the requirements of the law are noted. However, the Department must implement the provisions of the “Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Ban” in Title 30 of Article 27 of the ECL. Implementation of the law cannot be delayed without legislative action, which is beyond the scope of this rulemaking. While the Department acknowledges the timing of the passage of this law coincided with the pandemic, some supply chain issues may exist, and some adjustments may be necessary, before the state ban went into effect, New York City, Long Island, and several other counties in New York State already had local EPS foam bans in place. Therefore, roughly 66% of the state’s population has been under some type of EPS foam ban for the last several years.

Several commentors were concerned about the disposition or use of existing stock of EPS foam containers and being able to procure acceptable alternatives to EPS foam with current supply chain challenges. One commenter asked if there would be a grace period for businesses to use up existing inventory of banned EPS foam products. The law would need to be amended to allow for a grace period. However, covered food service providers and facilities that meet the eligibility criteria may apply for a financial hardship waiver to use up existing stock or if alternatives to EPS foam are cost prohibitive or unattainable.

Numerous commenters stated that alternatives to EPS foam containers and loose fill packaging are available. Another commenter requested the Department identify sources where covered food service providers and retailers can find environmentally preferable alternatives to EPS foam products. Alternative container and packaging guidance materials, including an “Alternatives to Single-Use Expanded Polystyrene Foam Food and Beverage Containers and Expanded Polystyrene Loose Fill Packaging (“Packing Peanuts”)” reference guide, are posted on the Department’s website: <https://www.dec.ny.gov/chemical/120762.html>.

One commenter indicated support for the definition of “comparable cost” in the proposed regulations, but believed the definition of “undue financial hardship” is unnecessarily broad. Food service providers seeking a waiver may demonstrate an undue financial hardship by showing any one or more of the three criteria listed in 6 NYCRR Section 353-2.4(b). After evaluating this comment, the Department has determined that the criteria to establish an undue financial hardship are not too broad, and the three criteria listed collectively provide a reasonable and balanced approach for covered food providers to demonstrate an undue financial hardship. Another commenter noted that the Department’s Regulatory Impact Statement (RIS) cites data from before the pandemic and is out of date, and they believe the current costs of alternatives is substantial compared to foam products and the price differential proposed in the waiver process. Since the Department’s RIS for the proposed

Part 353 regulations was published, new resources have become available, such as the New York State Center for Sustainable Materials Management's (CSMM) "Foam Container, Void Fill and Protective Packaging Alternative Guide" which was developed in 2021. The RIS has been revised to account for updated information.

Some commenters believe the ban does not go far enough and wanted all EPS foam to be banned, as well as other single use items. Several commenters also request that the financial hardship waiver provisions in the regulations be removed or used sparingly, while one commenter believes the waiver process is too burdensome, complicated and time consuming for struggling small businesses. These comments are noted; however, banning additional materials or products is outside the scope of this rulemaking. Since the financial hardship waiver provisions are specified in statute, and the Part 353 regulations implement the criteria established in the law, they will remain in the Part 353 regulatory provisions.

A few commenters believe there is confusion over whether a foodservice distributor, which usually falls under the definition of a "store," can continue to stock EPS foam products in their New York State warehouses for sales and delivery to locations outside the state and the issue should be addressed in the regulation. Another commenter is concerned that while the financial hardship waiver process allows for an end user with an approved financial hardship waiver to use EPS foam containers, the businesses with a waiver must procure that product from an out of state supplier, and this will impact New York state operated businesses who sell foam containers now and the potential alternatives. The law and the Part 353 regulations prohibit any covered food service provider or store from selling, offering for sale, or distributing EPS foam disposable food service containers in New York State; this ban applies to both in-state and out-of-state stores that sell or distribute EPS foam containers in the state. The state law and the Part 353 regulations also do not allow for a "store" (retail or

wholesale establishment) to sell or distribute EPS foam containers to a covered food service provider or facility with a financial hardship waiver unless such store also has a financial hardship waiver. Sales and distribution occurring outside of the state, the storage of EPS foam disposable food service containers or loose fill packaging for out-of-state sale or distribution, and amendments to the law to allow for stores that are distributors to obtain financial hardship waivers are outside the scope of this rulemaking.

Several commenters indicate that more education and outreach is necessary, especially prior to enforcement action. The Department has conducted specific outreach to covered food service providers, retail and wholesale stores, manufacturers, municipalities and applicable trade associations, councils, and organizations. Education and outreach materials, including alternative container and packaging guidance mentioned above and other outreach materials are available on the Department's website. The Department also plans to continue with more public-facing outreach and education before taking enforcement action.

The Department has determined that the need to protect environmental resources is essential and a prohibition on the sale and distribution of EPS foam disposable food service containers and loose fill packaging products will help accomplish this objective. After careful consideration and evaluation of the public comments received on the proposed Part 353 regulations, the Department determined that changes to the proposed regulations were not necessary. The Department will implement the provisions of the "Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Ban" in Title 30 of Article 27 of the ECL and adopt the Part 353 regulations to ensure that the provisions of Title 30 are efficiently and effectively implemented in a coordinated and consistent manner and the legislative objectives are met. The Department understands there are challenges to implementing the law and regulations due to the pandemic and supply chain issues and will work with regulated entities to overcome these challenges through outreach and by providing educational resources.

Assessment of Public Comment
On the
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
6 NYCRR PART 353
Expanded Polystyrene Foam Container and
Polystyrene Loose Fill Packaging Reduction
Comments Received from September 8, 2021 through November 22, 2021

The New York State Department of Environmental Conservation (Department) prepared this Assessment of Public Comment to address the comments received on the proposed 6 NYCRR Part 353 Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction regulations. This rulemaking implements the ban on expanded polystyrene (EPS) foam containers and polystyrene loose fill packaging. Notice of the proposed rulemaking appeared in the September 8, 2021 State Register, as well as in the Department’s Environmental Notice Bulletin. Public comments were received from September 8, 2021 through November 22, 2021, and a virtual public hearing was held on November 15, 2021. This Assessment of Public Comments responds to all substantive comments received during the public comment period, including written comments and oral statements made during the public hearings. Comments received were compiled, reviewed, and responses categorized based on their content. All commenters were assigned an individual commenter number. A table listing all commenters is included at the end of this document. After careful consideration and evaluation of the public comments received on the proposed Part 353 regulations, the Department determined that changes to the proposed regulations were not necessary.

Comment #1: Commenters expressed strong support for banning expanded polystyrene foam containers and loose fill packaging. Various reasons were cited including: the material is not accepted in curbside recycling programs; it creates microplastics when it breaks apart and creates litter and harmful impacts to fish and

animals that mistake it for food and ingest it; styrene is considered a probable carcinogen which leaches from containers into food and drinks; plastic contributes to the acceleration of the climate crisis; serious steps must be taken to curb the production and use of single use plastics; and multiple commenters cited finding expanded polystyrene during beach, stream, and roadway cleanup efforts.

199 Commenters support the ban:

Commenters 1-7, 9-14, 17-18, 20-29, 31-34, 36-45, 47, 50-53, 55-58, 61-70, 72-89, 91-102, 104-106, 109-113, 115-116, 118-125, 128-141, 143-145, 147-151, 153-158, 160-168, 170-177, 179-180, 182-184, 186-190, 192, 194-200, 202-205, 207-232.

Response to Comment #1: The comments support the proposed regulation and are noted.

Comment #2: The timing of the effective date is problematic due to the pandemic, worker shortages, inflation, and supply chain issues. The cost and availability of cups and containers is interfering with the transition to non-foam. One commenter (#22) specifically stated, “The supply chain for both domestic and imported products cannot sustain the increase in demand due to manufacturers not being able to operate at 100% for over a year due to social distancing, labor shortages and supply shortages. Imported product is experiencing record delays and product ordered today are not likely to be in the states until March.” Another commenter (#201) requested that within the proposed Part 353 rulemaking, the Department “acknowledge the ongoing detrimental effects the COVID-19 pandemic has caused and is causing to the food service industry,” and stated that the ban, as currently enacted, will further damage New York's food service industry. The commenter also pointed out that the ban was signed into law less than a month after the onset of the pandemic on April 3, 2020. Several commenters believe the Department should consider delaying implementation to build up inventory on acceptable alternatives to EPS foam. The commenters’ suggestions for delay ranged from 3 months to one year.

Commenters 8, 15, 16, 19, 22, 35, 43, 47, 48, 49, 54, 59, 60, 71, 76, 90, 100, 103, 104, 107, 114, 117, 126, 127, 142, 146, 152, 159, 169, 176, 178, 181, 185, 191, 193, 201, 206

Response to Comment #2: The Department acknowledges the timing of the passage of this law coincided with the pandemic and there may be some supply chain issues. However, implementation of the law and the regulations cannot be delayed without legislative action, which is beyond the scope of this rulemaking. While the Department recognizes there will likely be some adjustments necessary, approximately 65% of the state population has been under similar local expanded polystyrene foam bans for several years now. The Department is committed to working with covered food service providers and stores who need assistance with compliance. Alternative container and packaging guidance and other outreach materials are available on the Department's website: <https://www.dec.ny.gov/chemical/120762.html>.

Comment #3: The Department should limit the amount of financial hardship waivers granted.

Commenters 18, 33, 67, 75, 78, 119, 120, 123, 135, 140

Response to Comment #3: The Department must provide financial hardship waivers to covered food service providers and facilities that meet the criteria set forth in the law; Environmental Conservation Law (ECL) Section 27-3005.

Comment #4: Nassau and Suffolk counties have bans on “Styrofoam” containers so it will have to be evaluated whether there is preemption.

Commenter 18

Response to Comment #4: Pre-emption criteria is provided in the law at ECL Section 27-3007 and also under 6 NYCRR Section 353-1.4. Title 30 of Article 27 of the ECL preempts all local laws, ordinances or regulations governing the sale, offer for sale, or distribution of disposable food service containers containing EPS foam and loose fill

packaging, unless the local law, ordinance or regulation provides environmental protection equal to or greater than the provisions ECL Article 27, Title 30 and the Part 353 regulations, and such county files with the Department a written declaration of its intent to administer and enforce such local law, ordinance, or regulation. As of February 1, 2022, the Department has not received a declaration from any county with a local law in place that plans to continue administering its local law after January 1, 2022. Additionally, as stated in the law, ECL Article 27, Title 30 does not apply in city with a population of one million or more which has a local polystyrene ban in place, including New York City.

Comment #5: Alternatives to EPS foam containers and loose fill packaging are available. Additionally, one commenter (#18) expressed “hope that Empire State Development sees this as an opportunity to help boost NY companies seeking to provide these alternatives.”

Commenters 18, 20, 38, 44, 62, 67, 74, 84, 91, 106, 111, 112, 118, 123,134, 143, 155, 172, 175, 194, 203, 205, 210

Response to Comment #5: The comments on alternatives to EPS foam containers and loose fill packaging being available and the request to boost New York companies seeking to provide alternatives in the state are noted. Alternative container and packaging guidance and other outreach materials are available on the Department’s website: <https://www.dec.ny.gov/chemical/120762.html>.

Comment #6: Commenters asked that a variety of other materials also be considered for bans, including the following: semi-recyclables; diapers; rigid foam; EPS foam beads in potting soil; foam construction materials; EPS foam marine products; lottery tickets; and other plastics that cushion shipped items. Commenters asked that the state require compostable utensils and packaging for restaurant takeout, as well as require the reuse of packing peanuts. One commenter requested an expansion of the Bottle Bill.

Commenters 28, 30, 45, 53, 84, 86, 94, 129, 227, 230

Response to Comment #6: The other materials commenters mentioned are noted; however, banning additional materials or products is outside of the scope of the Part 353 rulemaking.

Comment #7: Commenters oppose the ban for various reasons including adverse financial impacts to local businesses.

Commenters 35, 46, 108, 152

Response to Comment #7: The comments on opposition to the requirements of the law are noted. However, the Department must implement the New York State “Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Ban” in Title 30 of Article 27 of the ECL. The Part 353 rulemaking is intended to establish the requirements and procedures necessary to effectively implement the ban.

Comment #8: While the law and regulations allow for covered food service providers and facilities, such as places of worship and community meal programs, to obtain financial hardship waivers, distributors in New York State are not allowed to sell EPS foam containers in the state to entities with a hardship waiver. The regulations should allow organizations with financial hardship waivers to buy from distributors in the state. It is recommended that the waiver be applied to the covered food service provider and their distributor to allow for products to be purchased locally.

Commenters 35, 152

Response to Comment #8: ECL Section 27-3003(1)(a) of the law prohibits covered food service providers and stores from the selling, offering for sale, or distributing EPS foam disposable food service containers in the state. The law and the Part 353 regulations do not use the term “distributor;” however the term “store” means “a retail or wholesale establishment other than a covered food service provider.” Many “distributors” are likely considered to be retail or wholesale establishments or “stores”

that are no longer able to sell, offer for sale, or distribute EPS disposable food service containers in New York State. If a distributor does meet the definition of a “covered food service provider” or “facility” that is eligible for a financial hardship waiver, then such distributor could apply for a waiver. However, it seems unlikely that most distributors would meet the eligibility requirements in the law.

A retail or wholesale establishment without a financial hardship waiver is prohibited from selling or distributing EPS foam containers to a covered food service provider/facility, including a covered food service provider/facility with a waiver, if that sale/distribution is occurring in New York State. The financial hardship waiver only allows the covered food service provider/facility to sell or distribute the specific EPS foam containers for which it is granted a waiver; it does not cover other locations or other entities, such as the supplier/distributor. Amending the law to expand the eligibility requirements to allow for “stores” or “distributors” to obtain a financial hardship waiver would require legislative action, which is beyond the scope of this rulemaking.

Comment #9: There should be more education and outreach, especially prior to enforcement action.

Commenters 35, 82, 119, 120, 123,128, 135, 139

Response to Comment #9: The Department conducted specific outreach to covered food service providers, retail and wholesale stores, manufacturers, municipalities and applicable trade associations, councils, and organizations. The Department also partnered with the New York State Departments of Health and Agriculture and Markets to reach covered food service providers and stores affected by the ban directly. Alternative container and packaging guidance and other outreach materials are available on the Department’s website: <https://www.dec.ny.gov/chemical/120762.html>. The Department plans to continue with more public-facing outreach and education before taking enforcement action.

Comment #10: The regulations should be strengthened to exclude fruits and vegetables from exemption in accordance with Section 353-1.3(a).

Commenters 41, 173

Response to Comment #10: The Part 353 regulations do not apply to prepackaged food filled or sealed prior to receipt at a covered food service provider because the law provides an exception for these prepackaged foods. However, under the ban in the law and regulations, a covered food service provider or store would be prohibited from selling, offering for sale, or distributing fruits and vegetables prepared on-premises and packaged in an expanded polystyrene foam disposable food service container.

Comment #11: The regulations do not go far enough and should ban all polystyrene, including egg cartons, raw meat, and packaged foods. The EPS foam bans in the State of Vermont and the City of San Francisco were cited as good examples to follow by one commenter.

Commenters 64, 80, 128, 136, 197

Response to Comment #11: The comments are noted. However, the regulations are based on the provisions of Environmental Conservation Law, Article 27, Title 30, which provide specific exemptions for prepared food filled or sealed prior to receipt at a covered food service provider and for raw meat, pork, seafood, poultry, or fish sold for the purpose of cooking or preparing off-premises by customer. Removing exemptions as requested by the commenters requires legislative action, which is outside the scope of the Department's authority in this rulemaking.

Comment #12: Commenter supports the Department's definition of "comparable cost" in the Part 353 regulations and believes the current definition of "undue financial hardship" is unnecessarily broad." The final rule should define "undue financial hardship" very narrowly by applying only the third of the three criteria listed in section 353-2.4(b) that may be demonstrated by a covered food service provider seeking a

financial hardship waiver: “(3) The covered food provider can demonstrate unique circumstances particular to it that create an undue financial hardship.”

Commenter 82

Response to Comment #12: Food service providers seeking a waiver may demonstrate an undue financial hardship by showing any one or more of the three criteria listed. The other two criteria in section 353-2.4(b) are: (1) increased costs are expected to result in at least five percent (5%) increase of business operating costs; and (2) increased costs are expected to result in reduction of at least five percent (5%) in operating profits. The Department believes the criteria specified for obtaining an undue financial hardship waiver under 6 NYCRR Section 353-2.4(b) are not too broad, especially considering the length of the pandemic was unforeseen at the time of the passage of the law. Associated and ongoing issues with supply chains, the work force, and economics have been put forth by other commenters as areas of concern on the proposed regulations. The inclusion of criteria directly related to a business’s operating costs and profits, in addition to a criterion that requires a showing of unique circumstances particular to a covered food service provider that create an undue financial hardship, together provide a reasonable and balanced approach for covered food providers to demonstrate an undue financial hardship.

Comment #13: Identify sources where food providers and retailers can find environmentally preferable alternatives to EPS foam.

Commenter 82

Response to Comment #13: The Department has created an Alternatives to Single-Use Expanded Polystyrene Foam Food and Beverage Containers and Expanded Polystyrene Loose Fill Packaging (“Packing Peanuts”) reference guide, which is posted on the Department’s website. Additionally, the NYS Center for Sustainable Materials Management has created a Foam Container, Void Fill and Protective Packaging Alternative Guide. A link to this document can be found on the Department’s website,

along with other resources about alternatives to EPS foam:

<https://www.dec.ny.gov/chemical/120762.html>.

Comment #14: Establish a procurement process to assist school districts around the state in purchasing environmentally preferable alternatives to EPS foam. Their combined purchasing power will reduce any cost differential and maximize economic and environmental benefits from the implementation of this statute. Also, the Department should not approve schools for financial hardship waivers absent “unique” or “exceptional” circumstances.

Commenter 82

Response to Comment #14:

Establishing the suggested procurement process is outside the scope of this rulemaking. However, this comment is noted and the Department will explore this concept further outside of the rulemaking process. There are already several EPS foam alternatives available in New York State’s Preferred Source Program (NYSPSP) from which public schools and state universities can purchase products. Examples can be found on the NYSPSP website at:

https://www.nyspspabilityone.com/OA_HTML/xxnib_ibeCCtpSctDspRte.jsp?section=16913&sitex=10102:22372:US&NIBPROD=cVlqUpFzKZNJ2EjwGvRDWvcd2Z&NIBPROD_pses=ZGE0ADD3E7B47E0DB88B47B8B7F0C0E69040548180D60B93EFC215A82350CA5BA5188F5D4FE122DE478972691F2DF8082AFDC3393D8930AA55.

The Department is currently working to make connections within the school systems to determine what additional support may be needed regarding EPS foam alternatives. Schools requesting financial hardship waivers will be considered equally with other covered food service providers and facilities who are eligible to request a financial hardship waiver. The Department must provide financial hardship waivers to covered food service providers and facilities that meet the criteria set forth in the law, ECL Section 27-3005.

Comment #15: There has been some confusion over whether a foodservice distributor, which usually falls under the definition of a “store,” can continue to stock EPS foam products in their New York State warehouses for sales and delivery to locations outside the state of New York. While Department staff addressed this issue in email correspondence in which they indicate that they do not see anything in the law or regulations that would prevent a wholesale establishment from temporarily storing EPS foam disposable food service containers in their New York warehouse before they are sold outside of New York state, the Department should clearly address this in the regulation.

Commenter 107, 152

Response to Comment #15: The language in ECL Section 27-3003 and in Sections 353-2.1 and 353-2.2 of the regulations states that the prohibition is on selling, offering for sale, or distributing expanded polystyrene foam disposable food service containers and loose fill packaging in New York State. Sales and distribution occurring outside of New York State are not addressed in the law and the storage of EPS foam disposable food service container or loose fill packaging for out-of-state sale or distribution is outside the scope of this rulemaking.

Comment #16: The waiver process is too burdensome, complicated and time consuming for struggling small businesses. Small businesses do not want to share profit and loss information with state government.

Commenter 107

Response to Comment #16: The comment is noted. ECL Section 27-3005 requires covered food service providers to demonstrate that there is no alternative product of comparable cost that is not composed of EPS foam and that the purchase or use of an alternative product that is not composed of EPS foam would create an undue financial hardship. The Part 353 regulations implement the financial hardship waiver criteria

established in the law. The Department will evaluate the financial hardship waiver process during initial implementation and make any appropriate adjustments to facilitate the process as Department staff continue to work with covered entities to end their use of EPS foam.

Comment #17: Community meal programs should have a blanket exemption.

Commenter 110

Response to Comment #17: The law, ECL Article 27, Title 30, does not provide a blanket exemption for community meal programs, so such an exemption was not included in the Part 353 rulemaking. While the Department does not wish to see community meal programs adversely impacted by this law or the Part 353 regulations, not all community meal programs utilize EPS foam. Those that do use EPS foam disposable food service containers and qualify as covered food service providers or facilities that are eligible for a financial hardship waiver may apply for a financial hardship waiver. The current 2022 financial hardship waiver request form does not require as much information from facilities that are operated by a not-for-profit corporation or by a federal, state, or local government agency that provides food to food insecure people at no or nominal charge, so the process of obtaining a financial hardship waiver should not be difficult for most community meal programs that need one.

Comment #18: What about out-of-state vendors shipping into New York State?

Commenter 116

Response to Comment #18: The law and the Part 353 regulations prohibit any covered food service provider and store from selling, offering for sale, and distributing EPS foam disposable food service containers and prohibit any manufacturer and store from selling, offering for sale, and distributing polystyrene loose fill packaging in New York State. This ban applies to both in-state and out-of-state stores that sell or

distribute EPS foam containers or loose fill packaging in New York State. In addition to the Department's outreach efforts to New York State entities, the Department has also made outreach efforts to some of the larger national retail and wholesale stores and covered food service providers. The Department will continue outreach and education to affected entities, including out of state stores and covered food service providers shipping into New York state. A consumer complaint form is available on the Department's website to report complaints:

<https://www.dec.ny.gov/chemical/120762.html>.

Comment #19: Hospitals and other institutions need to be included in the ban.

Commenter 129, 227

Response to Comment #19: Hospitals and other health care facilities are covered food service providers that are included in the ban under ECL Section 27-3001(1) in the law and 6 NYCRR Section 353-1.2(a)(8) of the rule.

Comment #20: Will there be a grace period for businesses with leftover inventory?

Commenter 176

Response to Comment #20: Covered food service providers and facilities that meet certain criteria may request a renewable 12-month financial hardship waiver if they are eligible. If the Department grants a waiver, the covered food service provider or facility will be able to continue to sell, offer for sale, or distribute existing inventory of EPS foam containers. However, neither the law nor the Part 353 regulations include a grace period that applies to all regulated entities with leftover inventory of EPS foam disposable food service containers or loose fill packaging. The law cannot be amended to include a grace period allowing for the sale or distribution of inventory already in stock without legislative action, which is beyond the scope of this rulemaking.

Comment #21: Why did you carve out an exception for New York City?

Commenter 230

Response to Comment #21: The state law provides that ECL Article 27, Title 30 does not apply in a city with a population of one million or more that has a local law, ordinance or regulation in place which restricts the sale, offer for sale, or distribution of expanded polystyrene containers and polystyrene loose fill packaging. New York City has a population of one million or more and has had a local law banning EPS foam in place since January 2019. The state law is very similar for consistency purposes, except for hardship waiver procedures.

Comment #22: What about foam blocks used for shipping things like televisions, furniture, etc.? New York City has an exception listed. Are you expecting all major electronics suppliers to comply?

Commenter 230

Response to Comment #22: Only expanded polystyrene loose fill packaging is banned by the law; foam blocks are outside the scope of the law and this rulemaking.

Comment #23 The financial hardship waiver process allows for an end user with an approved financial hardship waiver to use foam containers, however they must procure that product from an out of state supplier. This will impact New York state operated businesses who sell foam containers now and the potential alternatives.

Commenter 22

Response to Comment #23: The law and the Part 353 regulations prohibit any covered food service provider or store from selling, offering for sale, or distributing EPS foam disposable food service containers in New York State; this ban applies to both in-state and out-of-state stores that sell or distribute EPS foam containers in New York State. The state law and the Part 353 regulations do not allow for a “store” (retail or

wholesale establishment) to sell or distribute EPS foam containers to a covered food service provider or facility with a financial hardship waiver, unless such store also has a financial hardship waiver. Under the current law and regulations, it is unlikely that most “stores” would meet the eligibility requirements. Amendments to the law to allow for these stores to obtain financial hardship waivers require legislative action, which is outside the scope of the Department’s authority in this rulemaking.

Comment #24: The Department’s Regulatory Impact Statement (RIS) cites data that was before the pandemic and the Department indicates cost increases per unit for alternatives do not appear substantial. These data are out of date and the current cost of alternatives is substantial compared to foam products and the price differential the Department proposed in the waiver process.

Commenter 107

Response to Comment 24: The comment is noted, particularly with respect to pre-pandemic considerations. The Part 353 regulations implement the financial hardship waiver criteria established in the law for eligible covered food service providers and facilities to assist with these challenges on a temporary basis while the supply chain adjusts accordingly. Since the Department’s Regulatory Impact Statement for the proposed Part 353 regulations was published, new resources have become available, such as the New York State Center for Sustainable Materials Management’s (CSMM) “Foam Container, Void Fill and Protective Packaging Alternative Guide” developed in 2021:

https://static1.squarespace.com/static/5ed7acc21164f903067ef486/t/61c228f5d7639650babd6717/1640114424442/EPS+alt+guide+v1.0_d3_revision%5B90%5D.pdf. There are a wide array of alternative containers and packaging; some may cost more or less than other products, depending on the item, size, and material used. The Regulatory Impact Statement has been revised to account for updated information.

Comment #25: The commenter requests that the Department post a list of hardship waivers granted.

Commenter 123

Response to Comment #25: The comment is noted, and the Department will consider posting a list of the hardship waivers granted on the Department’s website.

Commenter ID number	Commenter Business or Organization*	Commenter Name
1	N/A	Adam Barnard
2	N/A	Alexis
3	N/A	Alissa Ferlito
4	N/A	Amy Jesaitis
5	N/A	Amy Vastola
6	N/A	Anne Aboff
7	N/A	Anne Austin
8	Indian River Central School District (Philadelphia, NY)- School Lunch Director	Anne Easter
9	N/A	Astrid Pettersen
10	N/A	Barbara Dangman
11	N/A	Barbara DiTommaso
12	N/A	Barbara Frank
13	N/A	Barbara Leonard
14	N/A	Barbara Spink
15	Whitsons Culinary Group	Beth Bunster
16	Whitsons Culinary Group	Beth Drayer
17	HUMuS: Huntington Mobilization for Sustainability- Project Director	Beth Finger
18	Green Inside and Out, Suffolk County Single Use Plastics Task Force	Beth Fiteni
19	Ithaca City School District- Ithaca Child Nutrition Director	Beth Krause
20	SUNY Broome Community College Psychology and Human Services Department	Bill Altman
21	N/A	Bill Leuszler
22	Hills & Markes	Bill Miller
23	N/A	BL Lobb
24	N/A	Bob Green
25	Unitarian Universalist Congregation of the Catskills	Bob Janis Dillon

26	N/A	Bonita Hagan
27	N/A	Brenda Rusch
28	N/A	Brent Lyons
29	N/A	Brett Baginski
30	N/A	Brian Guyer
31	N/A	Brigitte
32	N/A	Burton Thelander
33	Sierra Club	Caitlin Ferrante
34	N/A	Candace D. Hammonds
35	Foodservice Packaging Institute	Carol Patterson
36	N/A	Carole Nemore
37	N/A	Caroline O'Hara
38	N/A	Carolyn Jonientz
39	N/A	Catherine L. Winter
40	N/A	Catherine Osgood
41	County Legislator 7th District, Westchester County Board of Legislators	Catherine Parker
42	N/A	Cathy Farris
43	Brewster Central School District- Director of Child Nutrition Services	Cathy Hancock
44	N/A	Charles Hendler
45	N/A	Charles Milligan
46	N/A	Charlie Darcangelo
47	Williamsville Central School District- Child Nutrition Director	Cheryl Kirschner
48	Whitsons Culinary Group	Chris Fautas
49	Whitsons Culinary Group	Chris Hisgen
50	N/A	Chris Olney
51	N/A	Christie Billeci
52	N/A	Christine E Gallagher
53	N/A	Christine Guarino
54	Whitsons Culinary Group	Christine Kunmann
55	N/A	Christine Lambert
56	N/A	Christy McElligott
57	N/A	Chuck and Barbara Manning
58	N/A	Dale Pondysh
59	Whitsons Culinary Group	Dalma Rivera
60	NYS Senator	Daphne Jordan
61	N/A	Dave Colavito
62	N/A	David Esmond
63	N/A	David LaMontagne
64	N/A	Denise DiGiovanni
65	N/A	Diane Collins

66	N/A	Don Doornbos
67	N/A	Donna Esposito
68	N/A	Drea Leanza
69	N/A	E. Kevin Conley
70	N/A	Ed Hecklau
71	Whitsons Culinary Group	Eileen Spina
72	N/A	Elaine Bair
73	N/A	Elaine Doremus
74	N/A	Elena Valentino
75	Buffalo Niagara Waterkeeper	Elizabeth Cute
76	Holland Central School District- Food Service Director	Elizabeth Flitton
77	N/A	Elizabeth Poreba
78	N/A	Ellen McCoy
79	N/A	Ellen Waggener
80	Grassroots Environmental Education	Ellen Weininger
81	N/A	Emily Wall
82	New York City Environment Director, Natural Resources Defense Council	Eric Goldstein
83	N/A	Eric Maxwell
84	Executive Director, Hudsonia Ltd	Erik Kiviat
85	N/A	Erin Zipman
86	N/A	Frank Almquist
87	N/A	Fred Feibusch
88	N/A	Fredrika V. Miller
89	N/A	Gary Klee
90	Whitsons Culinary Group- Whitsons School Nutrition	Gina Jones Mineola
91	N/A	Guy Allaud
92	N/A	Hali Holmes
93	Mamakating Environmental Education Center- Director	Jackie Broder
94	Town of Ithaca Conservation Board	James Hamilton
95	N/A	James Macris
96	350 Brooklyn Plastic Free Team	Jan Thompson, Alrun Steinrueck, Plastic free co-chairs
97	N/A	Jane Golub
98	N/A	Janet Campbell
99	N/A	Janet Mattox
100	Gates Chili Central School District (Rochester) - Director of School Nutrition	Janice Phillips
101	N/A	Jean M Schmidlein
102	N/A	Jean&Jose Schultz&Rodriguez

103	Whitsons Culinary Group	Jeanine Walshon
104	New York School Nutrition Association	Jennifer Martin
105	N/A	Jerri Meys
106	N/A	Jill Shultz
107	NY Association of Convenience Stores	Jim Calvin
108	small packing material company owner	Jim Ellison
109	N/A	Jim Taft
110	N/A	Jim Tooker
111	N/A	Joanne Klepetar
112	N/A	Joe and Kathleen Galloway
113	N/A	Joe Zoske
114	Whitsons Culinary Group- School Nutrition- Senior Vice President	John Gersbeck
115	N/A	John Hallowell
116	N/A	John Hart
117	Whitsons Culinary Group	John Koutras
118	N/A	John Rath
119	Sierra Club Niagara/ Facebook Page: Bring the NYC Styrofoam Ban to My Hometown	John S. Szalasny
120	Citizens Campaign for the Environment	Jordan Christensen
121	N/A	Josh Lipsman
122	N/A	Joy Keithline
123	Beyond Plastics	Judith Enck
124	N/A	Judy Greco
125	N/A	Karen Miller
126	Whitsons Culinary Group- School Nutrition- General Manager	Karen Piciullo
127	Whitsons Culinary Group	Karen Scott
128	N/A	Kate Maynard
129	Orange County Dept. of Planning & Sustainability Coordinator, Orange County Climate Smart Community Task Force	Kate Schmidt
130	N/A	Katharine B. Harris
131	N/A	Kathleen Hogan
132	N/A	Kathleen Shea
133	N/A	Kathryn Kassner
134	N/A	Kathy McElligott
135	N/A	Katie Chao
136	Town of Huntington Conservation Board	Kerrie Shannon
137	N/A	Kim & Jason Persse
138	State University of New York (SUNY) Oneonta- Associate Professor of Biology and Biological Field Station	Kiyoko Yokota
139	Zero Waste Capital District	Kurt Krumperman

140	N/A	Lance Milne
141	N/A	Laura Barber
142	Pawling Central School District - Food Service Director	Lauren Collica
143	N/A	Lauren Holt
144	N/A	Linda Emanuel
145	N/A	Lisa Barron
146	Whitsons culinary Group- Huntington Central School District	Lisa Spivak
147	N/A	Lois Bailey
148	N/A	Lorenz Worden
149	N/A	Lorraine Doyno Evans
150	N/A	Louis Falzerano
151	N/A	Louise Grieco
152	Pactiv Evergreen	Lynn Dyer
153	N/A	Lynne Kanter
154	N/A	Madeline Frank
155	N/A	Madeline Frank
156	Operation S.P.L.A.S.H, Long Island	Manas11 (Unknown name)
157	N/A	Margaret Wiltberger
158	N/A	Margot Gold
159	Gates Chili Central School District (Rochester) - School Nutrition Coordinator	Maria Bellanca
160	N/A	Mark Chaffin
161	N/A	Mary & Alan Hornung
162	N/A	Mary Beth Mylott
163	N/A	Mary Mancuso
164	N/A	Mary McDonough
165	N/A	Mary McLaughlin
166	N/A	Maryellen Rudolph
167	N/A	Maura Sullivan
168	N/A	Michael Aman
169	Adirondack Regional Chamber of Commerce	Michael Bittel
170	N/A	Michael C. Sinclair
171	N/A	Michael Toledo
172	N/A	Morgana Fall
173	Westchester County Legislator	Nancy Barr
174	N/A	Nancy Dwyer
175	Member of Clean Air Action of NY and Zero Waste of Warren-Washington Counties	Nancy Ellett-Crosby
176	Seasonal Icecream Shop Owner	Nancy L. Meyers
177	N/A	Nancy Padak
178	Whitsons Culinary Group	Nanette DeVito

179	N/A	Neil Rice
180	N/A	NF (Unknown name)
181	Salmon River Central School (Fort Covington)- School Food Service Manager	Nicole Foster
182	The Wild Center (Tupper Lake, NY)- Biologist	Nicole Morin
183	N/A	Nivo Rovedo
184	N/A	Patricia Sears Doherty
185	Whitsons Culinary Group	Paul Whitcomb
186	N/A	Portia Zwicker
187	N/A	Raji Narayana
188	N/A	Renee Bush
189	N/A	rfyogibear@aol.com
190	N/A	Richard Feldman
191	Whitsons Culinary Group	Rick Emery
192	N/A	Robert Miller
193	Whitsons Culinary Group	Robert Whitcomb
194	N/A	Robyn Gray
195	N/A	Roger
196	N/A	Ron Blackmore
196	N/A	Ron Blackmore
197	N/A	Ron Sagen
198	N/A	Ronald Finkelstein
199	N/A	Roseanne Winn
200	N/A	Ryan Subocz
201	Underberg & Kessler LLP on behalf of the Palmer Family of Companies Inc.	Ryan T. Biesenbach
202	N/A	Sal Deangelo
203	Bashakill Vineyards and Blind Dog Kitchen	Samara Ferris
204	N/A	Sandy Bissell
205	N/A	Sarah Walsh
206	Whitsons Culinary Group	Scott Berry
207	N/A	Sharon Nieminski
208	N/A	Stanley Scharf
209	N/A	Stephanie Gubelin
210	N/A	Stephen D. Maikowski
211	N/A	Steve Banbury
212	N/A	Steven Goldstein
213	N/A	Sue Abbott-Jones
214	N/A	Sue Longtin
215	N/A	Susan Mayer
216	N/A	Susan O'Neill
217	N/A	Susan Senecah
218	N/A	Susan Stoll

219	Deep Living Guide- Author, Blogger	Susanne Meyer-Fitzsimmons
220	N/A	Suzanne Gold
221	N/A	Tanya Vargason
222	N/A	Terri Grove
223	N/A	Thomas Gokey
224	Divine Catering	Tina Lieberman
225	N/A	Toni Sturm
226	Zero Waste Warren County	Tracy Frisch
227	(unnamed commenter)	vegekate@aol.com (Unknown name)
228	N/A	Vicki Michela
229	N/A	Wendy Dwyer
230	N/A	Will Dalton
231	N/A	William Mancini
232	(unnamed commenter)	woodsidedell1@gmail.com (Unknown name)

*N/A denotes commenters making personal statements.