

NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW*

**ARTICLE 27 — COLLECTION, TREATMENT AND DISPOSAL
OF REFUSE AND OTHER SOLID WASTE**

TITLE 30 — Expanded Polystyrene Foam Containers and Polystyrene Loose Fill Packaging Ban

Section 27-3001. Definitions.

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§ 27-3001. Definitions

For the purposes of this title, the following terms shall have the following meanings:

1. “Covered food service provider” means a person engaged in the business of selling or distributing prepared food or beverages for on-premise or off-premise consumption including but not limited to:

- (a) food service establishments, caterers, temporary food service establishments, mobile food service establishments, and pushcarts as defined in the New York State Sanitary Code;
- (b) retail food stores as defined in article 28 of the agriculture and markets law;
- (c) delicatessens;
- (d) grocery stores;
- (e) restaurants;
- (f) cafeterias;
- (g) coffee shops;
- (h) hospitals, adult care facilities, and nursing homes; and
- (i) elementary and secondary schools, colleges, and universities.

2. “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.

3. “Expanded polystyrene foam” means expanded foam thermoplastics utilizing a styrene monomer and processed by any number of techniques. Such term shall not include rigid polystyrene.

* **Disclaimer:** The text of this law is presented as a quick reference tool. While it is believed to be accurate, it is not a certified copy of the law and therefore should not be relied upon for legal interpretation. The text here includes amendments up to chapter 83 of the laws of 2025, effective Dec. 13, 2024.

4. “Manufacturer” means every person, firm or corporation that produces or imports polystyrene loose fill packaging or expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are designed or intended to be used for cold storage that is sold, offered for sale, or distributed in the state.

5. “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.

6. “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.

7. “Rigid polystyrene” means plastic packaging made from rigid, polystyrene resin that has not been expanded, extruded, or foamed.

8. “Store” means a retail or wholesale establishment other than a covered food service provider.

§ 27-3003. Expanded polystyrene foam containers and polystyrene loose fill packaging ban

1. (a) Beginning January first, two thousand twenty-two, no covered food service provider or store shall sell, offer for sale, or distribute disposable food service containers that contain expanded polystyrene foam in the state.

(b) Beginning January first, two thousand twenty-two, no manufacturer or store shall sell, offer for sale, or distribute polystyrene loose fill packaging in the state.

(c) Beginning January first, two thousand twenty-six, no covered food service provider, manufacturer or store shall sell, offer for sale, or distribute expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are designed or intended to be used for cold storage, including but not limited to coolers and ice chests.

2. The department is authorized to promulgate any other such rules and regulations as it shall deem necessary to implement the provisions of this title including criteria related to what constitutes comparable costs pursuant to subdivision two of section 27-3005 of this title.

§ 27-3005. Exemptions and waivers

1. Notwithstanding any inconsistent provision of law, this title shall not apply to:

(a) Prepackaged food filled or sealed prior to receipt at a covered food service provider; or

(b) Raw meat, pork, seafood, poultry or fish sold for the purpose of cooking or preparing off-premises by the customer; or

(c) Expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are used for cold storage for:

(i) drugs and medical devices as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.);

(ii) animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and other packaging materials regulated by the United States department of agriculture under the virus, serum, toxin act (21 U.S.C. 151-159), including vaccines;

(iii) tissues as defined in section forty-three hundred sixty of the public health law or biological products as defined in the federal Public Health Service Act (42 U.S.C. Sec 262);

** (iv) temperature-sensitive samples, cultures or specialized laboratory reagents requiring cold storage during shipment, either delivered to or received from:

(A) the department of agriculture and market's food laboratory pursuant to its duties under the agriculture and markets law; or

(B) laboratories for testing to help ensure human health, animal health, and/or food safety pursuant to statutory or regulatory requirements of, or standards established under, programs administered by the department, the department of health, the department of agriculture and markets, the United States department of agriculture and/or the United States food and drug administration; or

*** (v) microbial cultures used for dairy, meat, or fermented beverage manufacturing and requiring cold storage during shipment or delivery to dairy or meat processing plants or breweries and wineries as defined in section three of the alcoholic beverage control law.

** The exemption in ECL § 27-3003(c)(iv) expires on January 1, 2035.

*** The exemption in ECL § 27-3005(c)(v) expires on January 1, 2030.

2. Any facility, regardless of its income, including soup kitchens, food pantries and places of worship, operated by a not-for-profit corporation or by a federal, state, or local government agency that provides food to needy individuals at no or nominal charge, and any covered food service provider having an annual gross income under five hundred thousand dollars per location as stated on the income tax filing for the most recent tax year and that:

(a) does not operate ten or more locations within the state; and

(b) is not operated pursuant to a franchise agreement may request from the department, in a manner and form established by the department, a financial hardship waiver of the requirements of section 27-3003 of this title.

Such waiver request may apply to one or more disposable food service containers sold, offered for sale, or distributed by any such covered food service provider. The department shall grant a waiver if such covered food service provider demonstrates that there is no alternative product of comparable cost that is not composed of expanded polystyrene foam and that the purchase or use of an alternative product that is not composed of expanded polystyrene foam would create an undue financial hardship. Such financial hardship waiver shall be valid for twelve months and shall be renewable upon application to the department.

§ 27-3007. Preemption

1. Except as provided in subdivisions two and three of this section, this title shall supersede and preempt all local laws, ordinances or regulations governing the sale, offer for sale, or distribution of disposable food service containers or containers designed or intended to be used for cold storage containing expanded polystyrene foam and polystyrene loose fill packaging.

2. Any local law, ordinance or regulation of any county shall not be preempted if such local law, ordinance or regulation provides environmental protection equal to or greater than the provisions of this title or any rules or regulations promulgated hereunder, and such county files with the department a written declaration of its intent to administer and enforce such local law, ordinance or regulation.

3. This title shall not apply in a city with a population of one million or more which 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.

§ 27-3009. Severability

If any clause, sentence, paragraph, section or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

ARTICLE 71 — ENFORCEMENT

TITLE 27 — Enforcement of Article 27 and Article 71

§ 71-2730. Enforcement of title 30 of article 27 of this chapter.

1. Any person who shall violate section 27-3003 of this chapter shall be liable to the state of New York for a civil penalty of not more than two hundred fifty dollars for the first violation, not more than five hundred dollars for the second violation in the same calendar year, and not more than one thousand dollars for the third and each subsequent violation in the same calendar year. A hearing or opportunity to be heard shall be provided prior to the assessment of any civil penalty.

2. (a) The department, the department of agriculture and markets, the department of health, and the attorney general are hereby authorized to enforce the provisions of section 27-3003 of this chapter.

(b) The provisions of section 27-3003 of this chapter may also be enforced by a county and the local legislative body thereof may adopt local laws, ordinances or regulations consistent with this title providing for the enforcement of such provisions. Provided that a violation of this title may not be enforced by both the state and a county, and provided further that any county that has filed a written declaration pursuant to subdivision two of section 27-3007 of this title shall not enforce the provisions of this title.

3. Any fines that are collected by the state during proceedings by the state to enforce the provisions of section 27-3003 of this chapter shall be paid into the environmental protection fund established pursuant to section ninety-two-s of the finance law.

****4. Any fines that are collected by a county during proceedings by the county to enforce the provisions of section 27-3003 of this title within the county shall be retained by the county.

**** ECL § 71-2730(4) expires and deemed repealed Jan. 1, 2030, pursuant to L.2020, c. 58, pt. PP, § 4.