

thousands of job vacancies that employers are unable to fill due to a shortage of qualified workers. Without action on the part of the state, employers in industries subject to such shortages of skilled workers may relocate outside of New York in order to retain adequate numbers of skilled employees. This problem is made more acute by the action of other states in the region to create programs to cultivate pools of skilled labor, creating an incentive for employers in New York to relocate jobs outside of the state. To address this problem, ETIP provides tax credit incentives to business entities that conduct or procure eligible training or provide eligible internship programs in advanced technology, life sciences, software development or clean energy.

Business applicants to the program must first establish that they are engaged in a strategic industry, as evidenced by factors such as shortages of skilled employees and technological disruption in the industry. Furthermore, such applicants must demonstrate, among other things, that they themselves will be providing or they will be procuring eligible training from an approved provider or providing an eligible internship program in advanced technology, life sciences, software development or clean energy.

The revised rule updates the administrative aspects of the program to allow for the business entities themselves to receive the tax credit when they provide for such training in house in addition to when they utilize a third party. In addition, it extends the eligible sectors for internship programs under this program to include software development and clean energy internships.

The revised rule also clarifies: 1) that necessary travel and child care service costs may be covered as part of the credit for the skills training and internship components of the program; 2) that a business utilizing the internship component of this program will no longer have to demonstrate that its interns make up less than 50% of its workforce; and 3) that business entities participating in the program will have to complete a post project survey for the Department.

COSTS:

I. Costs to private regulated parties (the business applicants): None. The revised rule will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None. The revised rule will not impose any costs on local governments.

LOCAL GOVERNMENT MANDATES:

None. There are no local government mandates associated with ETIP.

PAPERWORK:

The rule updates qualification rules and application procedures for ETIP. The rule entails certain paperwork burdens including materials to be submitted as part of applications for tax credits, additional documents the Commissioner may request from applicants as part of his evaluation of applications, and certain records that must be maintained by program participants for auditing purposes.

DUPLICATION:

The revised rule amends the existing regulations of the Commissioner of the Department of Economic Development, Part 250 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the revised rule.

ALTERNATIVES:

No alternatives were considered with regard to creating a new rule in response to the statutory requirement. The rule updates procedures for business entities to apply to ETIP. This action is necessary in order to clarify how qualifying businesses in strategic industries may receive program benefits and puts the regulations in conformity with the ETIP statute.

FEDERAL STANDARDS:

There are no federal standards applicable to ETIP; it is purely a state program that offers tax benefits to business entities in strategic industries incurring qualifying costs for eligible training or an eligible internship program in advanced technology. Therefore, the revised rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected agency (Department of Economic Development) and any applicants to ETIP will be able to achieve compliance with the regulation as soon as it is adopted.

Revised Regulatory Flexibility Analysis

Participation in the Employee Training Incentive Program ("ETIP") is entirely at the discretion of qualifying business entities. Neither statute nor the rule impose any obligation on any local government or business entity to participate in the program. The rule does not impose any adverse economic impact or compliance requirements on small businesses or local governments. In fact, the proposed rule may have a positive economic impact on small businesses. Only small businesses, those with one hundred

(100) employees or fewer, are eligible to apply to ETIP for benefits associated with providing an eligible internship program.

Because it is evident from the nature of the rule that it will have either no impact or a positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Revised Rural Area Flexibility Analysis

The Employee Training Incentive Program is a statewide business assistance program. Strategic businesses in rural areas of New York State are eligible to apply to participate in the program entirely at their discretion. Municipalities are not eligible to participate in the Program. The rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Revised Job Impact Statement

The rule updates administrative procedures for business entities to apply to the Employee Training Incentive Program ("ETIP") for tax credit benefits associated with providing eligible training to their employees, or an eligible internship program in advanced technology, life sciences, software development or clean energy. The program aims to induce employers to provide training in order to cultivate a pool of skilled workers who can meet the requirements for unfilled positions in strategic industries. The rule will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is intended to increase employment opportunities.

Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction

I.D. No. ENV-36-21-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Addition of Part 353 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, art. 27, title 30, section 27-3003(2)

Subject: Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction.

Purpose: Implementation of the expanded polystyrene foam container and loose fill packaging ban in Environmental Conservation Law, art. 27, Title 30.

Public hearing(s) will be held at: 1:00 p.m., Nov. 15, 2021 at Virtual Electronic Webinar.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: <https://www.dec.ny.gov/regulations/propregulations.html>

#public): 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.

Text of proposed rule and any required statements and analyses may be obtained from: Amy Bloomfield, NYS Department of Environmental Conservation, 21 South Putt Corners Rd., New Paltz, NY 12561, (845) 256-3177, email: amy.bloomfield@dec.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: November 22, 2021.

Additional matter required by statute: Pursuant to Article 8 of the ECL, the State Environmental Quality Review Act, an Environmental Assessment Form, determination of significance (negative declaration), and Coastal Assessment Form have been prepared and are on file with the Department.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Summary of Regulatory Impact Statement (Full text is posted at the following State website: <https://www.dec.ny.gov/regulations/preprotections.html#public>):

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) will be 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 will be 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 that are described. 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 com-

munities 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 many cost competitive alternatives. Although expanded polystyrene foam containers and loose fill are common, a variety of alternatives exist that are readily 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 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 May 4, 2021)). 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 proposed regulations will not incur additional costs to the Department or local governments.

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 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 declarations 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 proposed 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 will apply to the 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.

Regulatory Flexibility Analysis

INTRODUCTION

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

1. EFFECT OF RULE

Part 353 implements Title 30 of ECL Article 27 of the ECL. The implementation of the proposed 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 foam products. There are also businesses that have voluntarily stopped using expanded polystyrene foam containers and packaging. Once the expanded polystyrene foam ban goes into effect on January 1, 2022, the law and regulations will 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 expanded polystyrene 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 proposed Part 353 regulations, and the county files a written declaration of its intent to administer and enforce such county law with the Department.

Although expanded polystyrene foam is often chosen for its low cost, insulating, and cushioning properties, there are many cost competitive alternatives to foam containers and packaging. Materials such as rigid plastic, paper, aluminum, plant fibers and starches, bioplastics, and reusable items are readily available from many retail or online stores. Some covered food service providers and stores may have increased costs associated with alternative packaging, but these 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, offer for sale, or distribute banned items. As the ban goes into effect and more entities purchase alternative packaging, this may drive down the cost of alternatives. There are some alternatives that are similar in cost, while others are more costly. Though some materials may show a cost increase, the costs for commonly available alternatives do not appear to be substantial. The law and proposed regulations do not require specific alternatives to be used; the alternatives just cannot contain expanded polystyrene foam. Contamination in the recycling stream caused by expanded polystyrene 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 manufacturers 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 proposed 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, many of which are cost-competitive and readily available. Some covered food service providers and stores may have increased costs associated with alternative packaging, but these costs will vary depending on what alternative is 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 products that will be banned. As the ban goes into effect and 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 cost analysis performed in Maryland, (See <https://takomaparkmd.gov/government/police/neighborhood-services/polystyrene-ban/> (last visited May 3, 2021); <https://documents-takomapark.s3.amazonaws.com/public-works/polystyrene-ban/PW-20150624-cost-for-business-fact-sheet.pdf>) it was estimated that alternatives to expanded polystyrene foam will cost anywhere from \$0.04 cents to \$0.10 more per unit than expanded polystyrene foam items, however costs vary. Any increase in cost would differ based on the quantity of expanded polystyrene foam containers or loose fill packaging a business is selling or distributing. 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 manufacturers 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 expanded polystyrene 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, as stated in the Compliance Costs section, 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 expanded polystyrene foam products that will be banned under the law. There are no economic or technological impacts anticipated for local governments related to the expanded polystyrene 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 container and polystyrene loose fill packaging ban. Part 353 will not result in any additional direct costs or additional adverse impacts to small busi-

nesses 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 expanded polystyrene 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 will hold meetings with interested stakeholders, including groups representing small businesses, as well as local government to explain the requirements of the law and collect feedback. The Department will be evaluating the feedback for input into the proposed rulemaking. The proposed regulations are intended to merely implement the requirements of the law.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

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 will not take effect until 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.

Rural Area Flexibility Analysis

INTRODUCTION

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

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

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 (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 proposed 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 proposed 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 dis-

tribute expanded polystyrene foam containers and stores and manufacturers located in rural areas that sell, offer for sale or distribute expanded polystyrene loose fill packaging (commonly known as packing peanuts) could be affected directly or indirectly by the law and the proposed rulemaking.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND 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 expanded polystyrene 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 expanded polystyrene 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 expanded polystyrene 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 expanded polystyrene 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 expanded polystyrene foam cost more than products containing expanded polystyrene foam. In a cost analysis performed in Maryland, (See <https://takomaparkmd.gov/government/police/neighborhood-services/polystyrene-ban/> (last visited May 3, 2021); <https://documents-takomapark.s3.amazonaws.com/public-works/polystyrene-ban/PW-20150624-cost-for-business-fact-sheet.pdf>) it was estimated that alternatives to expanded polystyrene foam will cost anywhere from \$0.04 cents to \$0.10 more per unit than expanded polystyrene foam items, however costs vary. Any increase in cost would differ based on the quantity of expanded polystyrene foam containers a business is selling or distributing. If retail and wholesale stores choose to provide alternatives in place of expanded polystyrene foam containers, these could cost more for stores to purchase than expanded polystyrene 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 expanded polystyrene 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 manufacturers 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 expanded polystyrene foam could experience an increase in sales due to a likely shift to other containers by covered food service providers and stores. Due to the many options currently available on the market, it is not anticipated that there will be a lack of supply of alternative disposable food service containers that do not contain expanded polystyrene foam. The law and proposed regulations may also result in an increased focus on reusable containers as an alternative and a shift to a

more circular system, 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 expanded polystyrene 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 expanded polystyrene 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 manufacturers 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 IMPACT

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 expanded polystyrene 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 with interested stakeholders will be held to explain the requirements of the law and stakeholders in rural areas will again be invited to attend. The Department will be accepting public comments and evaluating the feedback and comments for input into the proposed rulemaking. The proposed regulations are intended to merely implement and clarify the requirements of the law.

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.

Job Impact Statement

INTRODUCTION

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

1. NATURE OF IMPACT

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

Nothing being proposed in this rule is expected to result in diminished

economic activity, which typically results in adverse impacts on employment opportunities. While the regulations will not add any additional direct costs to the regulated parties, the requirements of the law itself and its ban on expanded polystyrene foam disposable food service containers and loose fill packaging could impact costs for regulated entities, which, in turn, could possibly have an effect on jobs.

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

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

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

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

able 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 AFFECTED

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

Any job impacts would likely be experienced by manufacturers or distributors of disposable food service containers that contain expanded polystyrene foam and manufactures of polystyrene loose fill packaging because these products will be banned from being sold or distributed under the law. The number of jobs or employment opportunities at these businesses that will be affected by the law and regulations is unknown, but it is estimated to be minimal. To the extent that any manufacturers and distributors of these products are located in New York, jobs could be negatively impacted if these entities rely heavily on the sale and distribution of food service containers and loose fill packaging made from expanded polystyrene foam and do not have the ability to shift to, or increase, the production and distribution of other products. However, manufacturers of these products typically manufacture other packaging and products and could shift product development to those market opportunity areas over time. Manufacturers of reusable or disposable food service containers that do not contain polystyrene foam and other non-polystyrene packaging fill could experience an increase in sales due to purchasing shifts by regulated entities. Although it is difficult to predict the impact of the law and regulations on employment, there is potential for a small number of jobs to be created due to the need for increased alternatives to expanded polystyrene foam disposable food service containers and polystyrene loose fill packaging.

3. REGIONS OF ADVERSE IMPACT

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

4. MINIMIZING ADVERSE IMPACT

Section 27-3005 of the law outlines provisions related to a financial hardship waiver and applying for a waiver. The proposed regulations implement Title 30's financial hardship waiver provisions by addressing financial hardship waiver eligibility, applying for a waiver, approval criteria, and renewal of a waiver in order to assist in minimizing adverse impacts for those entities that meet the requirements outlined in Section 27-3005. Covered food service providers that meet certain criteria (have an annual gross income under \$500,000 per location, do not operate 10 or more locations in New York State, and are not operated according to a franchise agreement), as well as facilities operated by a not-for-profit corporation or by a federal, state, or local government agency that provide food and meals to food insecure individuals, may request from the Department a renewable 12-month hardship waiver of the requirements of Title 30. Hardship waivers may be granted for one or more disposable food service containers to a covered food service provider that demonstrates there is no alternative product of comparable cost that is not composed of expanded polystyrene foam and that the purchase or use of an alternative product would create an undue financial hardship. In addition, the Department intends to undertake efforts to minimize any potential impacts by engaging stakeholders directly through outreach, education, and guidance documents.

5. SELF-EMPLOYMENT OPPORTUNITIES

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

6. INITIAL REVIEW OF RULE

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Medium- and Heavy-Duty (MHD) Zero Emission Truck Annual Sales Requirements and Large Entity Reporting

I.D. No. ENV-36-21-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Parts 200 and 218 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 1-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105; Federal Clean Air Act, section 177 (42 USC 7507)

Subject: Medium- and heavy-duty (MHD) zero emission truck annual sales requirements and large entity reporting.

Purpose: Annual zero emission MHD truck sales requirements for model years 2025-2035. Report MHD volumes, operations, and locations.

Public hearing(s) will be held at: 2:00 p.m., Nov. 9, 2021 via electronic webinar.

Instructions on how to "join" the hearing webinar and provide an oral statement will be published on the Department's proposed regulations webpage for 6 NYCRR Part 218 by September 8, 2021. The proposed regulations webpage for 6 NYCRR Part 218 may be accessed at: <https://www.dec.ny.gov/regulations/propregulations.html>

Persons who wish to receive the instructions by mail or telephone may call the Department at (518) 402-9003. Please provide your first and last name, address, and telephone number and reference the Part 218 public comment hearing.

The Department will provide interpreter services for hearing impaired persons, and language interpreter services for individuals with difficulty understanding or reading English, at no charge upon written request submitted no later than October 19, 2021. The written request must be addressed to ALJ Michele M. Stefanucci, NYS DEC Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, NY 12233-1550 or emailed to ALJ Stefanucci at ohms@dec.ny.gov.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: <https://www.dec.ny.gov/regulations/propregulations.html>

#public): The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 218 and Section 200.9. Section 200.9 is a list that cites Federal and California codes and regulations that have been referenced by the Department while amending Part 218. The purpose of the amendment is to revise the existing low emission vehicle (LEV) program to incorporate California's Advanced Clean Truck (ACT) medium- and heavy-duty zero emission vehicle (ZEV) standards. The Department is amending Sections 218-1.1, Applicability; 218-2.1, Prohibitions; 218-4.1, ZEV percentages; and adding a new 218-4.2, Large Entity Reporting Requirement. The remaining Sections in Part 218 are unchanged.

Section 218-1.1(a) is amended to include ZEV standards for 2025 and subsequent model year medium- and heavy-duty trucks and to correct miscellaneous typographical errors.

Section 218-2.1(a) is amended to update the sections being incorporated by reference from the California Code of Regulations.

Section 218-4.1 is amended to incorporate California's latest (ZEV) standards for medium- and heavy-duty trucks. The proposed ACT amendments would introduce ZEV sales requirements for all manufacturers that sell vehicles in weight classes 2b through 8 (gross vehicle weight rating (GVWR) > 8,500 lbs.) in New York. The sales requirement would be a percentage, varying by model year, vehicle class, and vehicle type of the manufacturer's annual New York sales volume for that model year. Starting with MY 2025 in New York, manufacturers would incur deficits for each vehicle sold that must be met with credits generated from selling medium- and heavy-duty ZEVs or near zero emission vehicles (NZEVs).

Medium- and heavy-duty ZEV and NZEV credits may be generated,