

Model State Legislation: Plastic Foam Phase-Out



Farewell to Foam Act

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SECTION 1. Definitions

(a) In this Act:

- (1) **Biological product.** “Biological product” has the meaning given the term in Section 351(i) of the Public Health Service Act ([42 U.S.C. 262\(i\)](#)).
- (2) **Covered expanded polystyrene foam products.** “Covered expanded polystyrene foam products” means an expanded polystyrene cooler, an expanded polystyrene food service ware, and expanded polystyrene loose fill.
- (3) **Department.** “Department” means the [State Agency with oversight over the environment or waste management].
- (4) **Distributor.** “Distributor” means any person that distributes covered polystyrene foam products that are sold or offered for sale in the United States.
- (5) **Drug.** “Drug” has the meaning given the term in Section 201 of the Federal Food, Drug, and Cosmetic Act ([21 U.S.C. 321](#)).
- (6) **Expanded polystyrene.** “Expanded polystyrene” means blown polystyrene and expanded or extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any technique or combination of techniques, including fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).
- (7) **Expanded polystyrene cooler.** “Expanded polystyrene cooler” means a portable container made entirely or partially of expanded polystyrene that is designed or intended to be used for cold storage. “Expanded polystyrene cooler” does not include portable containers intended to be used for drugs, medical devices, or biological products.
- (8) **Expanded polystyrene food service ware.** “Expanded polystyrene food service ware” means food service ware made entirely or partially of expanded polystyrene.
- (9) **Expanded polystyrene loose fill.** “Expanded polystyrene loose fill” means a void-filling packaging product made entirely or partially of expanded polystyrene foam that is used as a packaging fill (commonly referred to as “packing peanuts”).
- (10) **Food service ware.** “Food service ware” means a product used for selling or providing food or beverages including bowls, plates, hot or cold beverage cups, lids, clamshells, trays, cartons for eggs or other food, or any other items used for serving or containing prepared food, including takeout food and leftovers from partially consumed meals prepared by food service providers.
- (11) **Food service provider.** “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:
 - (A) Food service establishment, caterer, temporary food service establishment, mobile food service establishment, and pushcart;
 - (B) Retail food store;
 - (C) Delicatessen;
 - (D) Grocery store;
 - (E) Restaurant;
 - (F) Cafeteria;
 - (G) Coffee shop;
 - (H) Hospital, adult care facility, and nursing home; and
 - (I) Elementary or secondary school, college, and university.

- (12) **Manufacturer.** “Manufacturer” means any person that manufactures or imports covered expanded polystyrene foam products that is sold, offered for sale, or distributed into the State.
- (13) **Medical device.** “Medical device” has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act ([21 U.S.C. 321](#)).
- (14) **Prepared food.** “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 food service provider for immediate consumption and require no further preparation to be consumed.
- (15) **Retailer.** “Retailer” means any person that sells, supplies, or offers to consumers covered expanded polystyrene foam products.

SECTION 2. Ban on covered expanded polystyrene foam products.

- (a) No later than two years after the effective date of this Act:
- (1) A food service provider, manufacturer, distributor, or retailer shall not sell, offer for sale, or distribute expanded polystyrene food service ware.
 - (2) A manufacturer, distributor, or retailer shall not sell, offer for sale, or distribute expanded polystyrene loose fill or expanded polystyrene coolers.

SECTION 3. Enforcement.

- (a) The department shall provide any food service provider, manufacturer, distributor, or retailer out of compliance with the requirements of this Act with written notification of the violation. The department must issue at least one notice of violation prior to assessing a penalty.
- (b) Any food service provider that violates this Act is subject to a civil penalty not to exceed \$100 for each day of the violation.
- (c) Any manufacturer, distributor, or retailer that violates this Act is subject to a civil penalty not to exceed \$500 per day for each day of the violation.

SECTION 4. Regulations.

- (a) The department may adopt rules necessary to implement this Act.

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