

A new Part 351 is being added as follows:

PLASTIC BAG REDUCTION, REUSE AND RECYCLING

Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, article 27, titles 27 and 28.

Subpart 351-1 General Provisions

351-1.1 Purpose and applicability.

(a) Purpose. This purpose of this Part is to implement Titles 27 and 28 of Article 27 of the Environmental Conservation Law. This Part sets forth the requirements for:

(1) a prohibition on plastic carryout bags;

(2) allowable reusable bags; and

(3) the recycling of plastic carryout bags and film plastic by stores.

(b) Applicability. This Part applies to any person required to collect tax, store operators, manufacturers, as well as operators of enclosed shopping malls in New York State.

351-1.2 Definitions.

As used in this Part and in Titles 27 and 28 of Article 27 of the Environmental Conservation Law, the following terms have the following meanings. Unless otherwise noted, all words and terms in this Part are defined by their plain meaning.

(a) ‘Compostable plastic bag’ means a plastic bag made of compostable plastic.

(b) ‘Compostable plastic’ means plastic that meets the American Society for Testing and Materials (ASTM) standard D6400-19, as incorporated by reference in section 351-1.3 of this Part, or other standard acceptable to the department.

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

(d) ‘Distribute’ means to give out, provide, supply, or otherwise make available for use in New York State.

(e) ‘Environmental Conservation Law’ or “ECL” means chapter 43-B of the Consolidated Laws of New York State.

(f) ‘Exempt bag’ means a bag that is:

(1) used solely to contain or wrap uncooked meat, fish, seafood, poultry, other unwrapped or non-prepackaged food, flower, plant, or other item for the purpose of separating it from other items to avoid contamination, prevent damage from moisture, or for sanitary, public health, or environmental protection purposes;

(2) used solely to package items from bulk containers, including fruits, vegetables, grains, candy, small hardware items (such as nuts, bolts, and screws), live insects, fish, crustaceans, mollusks, or other aquatic items requiring a waterproof bag;

(3) used solely to contain food sliced or prepared to order;

(4) used solely to contain a newspaper for delivery to a subscriber;

(5) sold in bulk quantities to a consumer at the point of sale that were specifically prepackaged in a manner to allow for bulk sale (for example, quantities of bags prepackaged in individual pre-sealed boxes) or prepackaged in individual boxes or containers for sale to a customer;

(6) sold as a trash bag;

(7) sold as a food storage bag, such as those in snack, sandwich, quart, and gallon sizes;

(8) used as a garment bag, such as over-the-hanger bags or those used by a dry cleaner or laundry service;

(9) made of plastic provided by a restaurant, tavern or similar food service establishment, as defined in the New York state sanitary code, to carry out or deliver prepared food;

(10) provided by a pharmacy to carry prescription drugs; or

(11) a reusable bag, as that term is defined in this Part.

(g) 'Film plastic' means a flexible sheet or sheets of petroleum or non-petroleum based plastic resin or other material (not including a paper carryout bag), less than 10 mils in thickness, commonly used in and as packaging products, which include, but are not limited to, plastic carryout bags, newspaper bags, garment bags, shrink-wrap, and other plastic overwrap.

(h) 'Film plastic bag' means any bag made of film plastic.

(i) 'Manufacturer' means:

(1) the producer of a film plastic sold to a store; or

(2) the manufacturer's agent or broker who sold the film plastic to a store.

(j) 'Operator' means a person in control of, or having daily responsibility for, the daily operation of a store, and which may include the owner of the store.

(k) 'Paper carryout bag' means a paper bag, other than an exempt bag, that is provided to a customer by a person required to collect tax, to be used by the customer to carry tangible personal property, regardless of whether such person required to collect tax sells any tangible personal property or service to the customer, and regardless of whether any tangible personal property or service sold is exempt from tax under Article 28 of the New York State Tax Law.

(l) 'Person required to collect tax' means any vendor of tangible personal property required to collect New York State sales tax pursuant to subdivision (a) of Section 1105 of the New York State Tax Law, "Imposition of sales tax."

(m) 'Plastic carryout bag' means any plastic bag, other than an exempt bag, that is provided to a customer by a person required to collect tax to be used by the customer to carry tangible personal property, regardless of whether such person required to collect tax sells any tangible personal property or service to the customer, and regardless of whether any tangible personal property or service sold is exempt from tax under Article 28 of the New York State Tax Law.

(n) 'Reusable bag' means a bag that:

(1) is either made of:

(i) cloth or other machine washable fabric; or

(ii) other non-film plastic washable material; and

(2) has at least one strap or handle that does not stretch and is fastened to the bag in such a manner that it allows the bag to meet the strength and durability standards in paragraphs 351-1.2

(n)(3) and (4);

(3) has a minimum lifespan of 125 uses, with a use equal to the ability to carry a minimum of 22 pounds over a distance of at least 175 feet; and

(4) has a minimum fabric weight of 80 grams per square meter (GSM) or equivalent for bags made of any non-film plastic of natural, synthetic, petroleum based, or non-petroleum-based origin, including woven or nonwoven polypropylene (PP), polyethylene-terephthalate (PET), cotton, jute, or canvas.

(o) 'Store' means a retail establishment that provided plastic carryout bags to its customers as a result of the sale of a product any time prior to March 1, 2020, and meets one or more of the following criteria:

(1) has over 10,000 square feet of retail space; or

(2) the retail establishment is part of a chain engaged in the same general field of business which operates five or more units of over 5,000 square feet of retail space in New York State under common ownership and management.

(p) 'Washable' means able to be cleaned or disinfected using typical homeowner means.

351-1.3 References.

The following document is incorporated by reference and is on file with the New York State Department of State. The document is available for inspection at the department's office located at 625 Broadway, Albany, New York 12233, or can be directly obtained from the source listed for the given reference.

American Society for Testing and Materials

ASTM D6400-19, Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities,

ASTM International, West Conshohocken, PA, 2019, www.astm.org.

351-1.4 Local laws.

The provisions of this Part supersede any local law or ordinance pertaining to plastic carryout bags or pertaining to plastic bag and film plastic recycling that are in effect on the effective date of this Part. No such local laws or ordinances may be enacted, implemented or enforced after the effective date of this Part.

351-1.5 Violations and enforcement.

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 Titles 27 or 28 of Article 27 of the ECL, shall be liable for all applicable penalties or sanctions set forth in Article 71, including section 71-2728, and Titles 27 and 28 of Article 27 of the ECL, including section 27-2807 and, as appropriate, any other New York State law. Such penalties shall be assessed by the commissioner after the 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 that a violation continues or exists is considered a separate violation.

351-1.6 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 351-2 Requirements for Persons Required to Collect Tax, Store Operators, Owners of Enclosed Shopping Malls, and Manufacturers

351-2.1 Prohibitions.

A person required to collect tax shall not:

- (a) distribute any plastic carryout bag to its customers unless the bag is an exempt bag;
- (b) prevent a person from using a bag of any kind that they have brought for purposes of carrying goods;
- (c) distribute an exempt bag for any purpose other than for the intended use of the exempt bag;
- (d) distribute an exempt bag for use as a replacement for a plastic carryout bag; or

(e) distribute additional exempt bags to customers beyond the quantity of exempt bags required for a purchase.

351-2.2 Sale of reusable bags by stores.

(a) The operator of a store must:

(1) make reusable bags available to customers within the store for purchase or at no charge; and

(2) permit a reusable bag to be used by a customer in lieu of a paper carryout bag.

(b) Reusable bags available for purchase shall be sold at a price determined by the operator of the store.

351-2.3 Film plastic collection and recycling responsibilities of stores.

(a) The operator of a store shall establish and maintain an at-store recycling program for plastic carryout bags and other film plastic that provides an opportunity for a customer of the store to return clean and dry plastic carryout bags and other film plastic to the store. The at-store

recycling program for plastic carryout bags and other film plastic must include the following components:

(1) A collection bin that is visible, easily accessible to the consumer, and clearly marked that the collection bin is available for the purpose of collecting and recycling plastic carryout bags and other film plastic. This requirement applies to all stores, except those within an enclosed shopping mall that are less than 50,000 square feet in size.

(2) In the case of an enclosed shopping mall, the owner of the enclosed shopping mall must place bins at reasonable intervals throughout the enclosed shopping mall area.

(3) A collection bin must have text printed directly on the bin, or a sign affixed to the side of the bin, to the top of the bin, or to a nearby wall not more than two feet away from the bin, that:

(i) is no less than eight and a half inches by eleven inches in size; and

(ii) states in easily visible and readable text that the bin is for plastic carryout bags and other film plastic collection only.

(b) Plastic carryout bags and other film plastic collected by the store or the owner of an enclosed shopping mall must be transported and recycled along with any other in-store film plastic, except for film plastic that is not sufficiently free of foreign materials that would adversely affect the recycling stream.

(c) Plastic carryout bags and other film plastic collected by a store or the owner of an enclosed shopping mall, which are free of foreign material, must not be disposed of in any solid waste disposal facility.

(d) A store or its agent, and the owner of an enclosed shopping mall or its agent, must maintain, for a minimum of three years, records describing the collection, transport and recycling of plastic carryout bag and other film plastic collected, by weight. A store or its agent, or the owner of an enclosed shopping mall or its agent, may weigh the film plastic bags received and any other in-store film plastic at a recyclables handling and recovery facility or other similar facility capable of accurately weighing or otherwise measuring the amount of film plastic collected. These records must be made available to the department upon request in a form prescribed by or acceptable to the department to demonstrate compliance with this section.

351-2.4 Manufacturer responsibilities.

(a) Records.

(1) When a manufacturer accepts plastic carryout bags or other film plastic for return, the manufacturer or its agent must maintain, for a minimum of three years, records describing the collection, transport and recycling of plastic carryout bags and other film plastic collected by weight. The manufacturer or its agents must weigh the plastic carryout bags or other film plastic

received at a recyclables handling and recovery facility, or other facility capable of accurately weighing or otherwise measuring the amount of film plastic collected.

(2) These records must be made available to the department upon request in a form prescribed by or acceptable to the department to demonstrate compliance with this section.

(b) Plastic carryout bags and other film plastic collected by the manufacturer, which are free of foreign material, must not be disposed of in any solid waste disposal facility.

(c) Warnings on bags. Manufacturers of compostable plastic bags or other non-petroleum-based bags, except paper carryout bags, sold to stores in New York State must have a warning printed on the bag, in a manner clearly visible to the customer in type no less than one-half of an inch in height, with the words "COMPOSTABLE BAG" - DO NOT PLACE IN A RECYCLING BIN".