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ENVIRONMENTAL PROTECTION

AIR, ENERGY, AND MATERIALS SUSTAINABILITY

DIVISION OF SUSTAINABLE WASTE MANAGEMENT

Single-Use Paper and Plastic Carryout Bags and Polystyrene Foam Food Service Products

Adopted New Rules: N.J.A.C. 7:26L

Proposed: April 1, 2024, at 56 N.J.R. 449(a).

Adopted: March 10, 2025, by Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Filed: March 11, 2025, as R.2025 d.042, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1E-1 et seq., 13:1E-99.126 et seq., and 26:3A2-21 et seq.

DEP Docket Number: 01-24-02.

Effective Date: April 7, 2025.

Expiration Date: April 7, 2032.

This rulemaking will enable the State to reduce plastic pollution by limiting the sale and use of single-use plastic and paper carryout bags as well as polystyrene foam food service products, in accordance with N.J.S.A. 13:1E-99.126 et seq. (the Act). The rulemaking includes exemptions and waiver provisions for polystyrene foam food service products as well as enforcement provisions.

Summary of Hearing Officer's Recommendations and Agency's Response:

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The Department of Environmental Protection (Department) held a virtual public hearing on this rulemaking on May 1, 2024, at 9:00 A.M., through its video conferencing software, Microsoft Teams. Seth Hackman, Chief of the Bureau of Solid Waste Planning and Licensing, served as the hearing officer. Twelve people provided oral comments at the public hearing. After reviewing the written and oral comments received during the public comment period, the hearing officer recommended that the Department adopt the proposed rulemaking with the modifications described below in the response to comments and in the Summary of Agency-Initiated Changes. The Department accepts the hearing officer's recommendations.

A record of the public hearing is available for inspection, in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs

401 East State Street, 7th Floor

Mail Code: 401-04L

PO Box 402

Trenton, NJ 08625-0402

This notice of adoption document can also be viewed or downloaded from the Department's website at <https://dep.nj.gov/rules/notice-of-rule-adoptions>.

Summary of Public Comments and Agency Responses:

The Department accepted comments on the notice of proposal through May 31, 2024. The following individuals provided timely written and/or oral comments:

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1. Gene Benfatti, PlasTechFree, Inc.
2. Mike Bober, Pet Advocacy Network
3. Erika Bosack, Clean Ocean Action
4. Raymond Cantor, New Jersey Business and Industry Association (NJBIA)
5. Jennifer Coffey and Nandini Checko, Association of New Jersey Environmental Commissions (ANJEC)
6. Michael DeLoreto, NPXONE
7. Caren Fitzpatrick
8. Ronald Keller
9. Amanda Manares
10. Mark Nathan, PlasTechFree, Inc.
11. Mary Ellen Peppard, New Jersey Food Council (NJFC)
12. Jean Public
13. Thomas Santaguida
14. Brian Thompson, Beyond Plastics Advisory Board, Monmouth Beach Environmental Commission
15. Marta Young, Clean Water Action
16. Cindy Zipf, Erika Bosack, and Toni Groet for Clean Ocean Action, with endorsement by: Judith Enck, Beyond Plastics; Doug O'Malley, Environment New Jersey; Matt Gove, Surfrider Foundation; Brian Thompson, Beyond Plastics National Advisory Board and Monmouth Beach Environmental Commission; Taylor McFarland, New Jersey Sierra Club; Britta Forsberg, Save Barnegat Bay; and John Weber, Oceana.

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General Support

1. COMMENT: With the adoption of the Act, New Jersey has taken a major step in increasing education and awareness of the problems with single-use plastic and in decreasing plastic litter in our environment. Since the Act went into effect two years ago, both quantitative and qualitative data from stream, beach, and roadside cleanups demonstrate that there has been a drastic reduction in plastic bag litter, which used to be among the most common types of litter collected during these cleanups. This is a huge success. (5)

2. COMMENT: The Act has already resulted in a positive environmental impact with fewer shopping bags in trees and in natural areas. Consumers are changing their behavior by reusing plastic containers and bags from the grocery store. They are becoming accustomed to the use of reusable bags or foregoing bags entirely. The Act represents a huge step forward. Correcting a habit that is so ingrained in day-to-day life is not easy, but the benefits are enormous. (7)

3. COMMENT: Over the past two years, the Act has been a huge success, reducing the amount of unnecessary waste and the amount of plastic toxins entering the waste stream and New Jersey streets. While some people needed to adjust to having to bring their own bags to stores, the public caught on quickly. Continuing to uphold the purpose of the Act, which is to reduce unnecessary toxins and keep New Jersey safer, healthier, and cleaner, is essential. (15)

4. COMMENT: The Act's purpose to reduce single-use plastic waste is strongly supported. (16)

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5. COMMENT: Maintaining a strong bag ban is essential, but the clarifications in the proposed rules appear reasonable. (7)

6. COMMENT: The Department is commended for its efforts to develop the ideal solution to environmental sustainability in New Jersey. (8)

7. COMMENT: The Department's work to promulgate these proposed rules is appreciated, and the rules' purpose to reduce single-use plastic waste is strongly supported. (16)

8. COMMENT: The Department is commended for proposing clarifications and closing loopholes in the definitions section of the rules. (15)

RESPONSE TO COMMENTS 1 THROUGH 8: The Department acknowledges the commenters' support for the rulemaking.

Carryout Bag

9. COMMENT: The definition of "carryout bag" provides much needed clarity regarding the types of bags that are not included in the definition. Bags used solely to insulate food to maintain temperature, to contain food sliced to order, or to contain ready-to-serve hot food that has direct contact with the bag are appropriately excluded from the definition and, thus, allowed pursuant to the rules. (4 and 11)

10. COMMENT: Exempting temperature-regulated bags from the definition of "carryout bag" is appropriate. (15)

11. COMMENT: Clarifying the definition of "carryout bag" to require bags used to package loose items, such as fruit, nuts, coffee, grains, baked goods, candy, greeting cards, flowers, and

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small hardware items, to be without handles in order to be exempt from the definition is supported. Non-handled bags that are typically used for these items are smaller than conventional plastic grocery bags and, therefore, avoid wasteful packaging volume. As the Department points out in the notice of proposal Summary, without this clarification, the definition would give food service businesses an excuse to continue to use single-use plastic grocery bags for these items.

(16)

RESPONSE TO COMMENTS 9, 10, AND 11: The Department acknowledges the commenters' support.

12. COMMENT: The Department's thoughtful approach to this rulemaking is appreciated. Specifically, the inclusion of certain exemptions demonstrates awareness and thoughtfulness. However, the Department should consider extending the exemption for single-use plastic bags used to transport other live items.

Exemption number three to the definition of "carryout bag" currently includes bags used solely to contain live animals, such as fish or insects sold in a pet store. However, other live items require separation and protection as well. Specifically, aquatic plants for use in aquariums and other settings require similar packaging to live fish or insects. As currently written, the definition of "carryout bag" does not clearly exclude aquatic plants. The Department should consider extending this exemption to include "aquatic items requiring a waterproof bag" to address aquatic plants that are bagged prior to the point of sale for safe transport and to protect other items. This extension is practical and reasonable and is consistent with the exemption for a

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“non-handled bag used solely to package loose items such as fruits, vegetables, nuts, coffee, grains, baked goods, candy, greeting cards, flowers, or small hardware items.” Other states with similar regulations, including New York, have included similar language. (2)

RESPONSE: As the Department explained in the notice of proposal Summary, the definition of a carryout bag “excludes certain bags that are not considered carryout bags because they have specific, limited uses.” See 56 N.J.R. at 450. Consistent with the statute, the Department proposed to exclude a bag to contain or wrap uncooked meat, fish, or poultry and a bag used solely to contain live animals, such as fish or insects sold in a pet store. The Department agrees that a plastic bag used for aquatic plants is also excluded from the definition of “carryout bag.” Therefore, upon adoption, the Department is clarifying the definition of “carryout bag” to exclude a bag to contain aquatic plants.

13. COMMENT: The Department should clarify whether the prohibition of single-use plastic bags includes a bag used for raw marine organisms sold as bait, which could be live, fresh, or frozen. When the law went into effect, in response to an inquiry about the scope of the single-use plastic bag ban, the State advised that single-use plastic bags for raw marine organisms sold as bait are excluded from the prohibition. However, the proposed definition of “carryout bag” is unclear as to whether such bags are excluded or included. The State has an active outdoor retail industry, and many bait and tackle shops operate in the State.

Bait products often leak and contain fish slime, bait juices, and unpleasant-smelling liquids. These bait products are typically placed in a plastic bag at the point of sale to prevent unwanted and foul liquids from contaminating vehicles, coolers, clothing, and hands. Although a

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paper bag is used, if necessary, for fishing tackle and equipment that is sold, plastic bags need to be used for raw bait and marine bait products for angling. Therefore, the Department should clarify that these plastic bags are excluded from the prohibition. (13)

RESPONSE: As the Department explained in the notice of proposal Summary, the definition of a carryout bag “excludes certain bags that are not considered carryout bags because they have specific, limited uses.” See 56 N.J.R. at 450. Consistent with the statute, the Department proposed to exclude a bag to contain or wrap uncooked meat, fish, or poultry and a bag used solely to contain live animals, such as fish or insects sold in a pet store. The Department agrees that a plastic bag used for raw bait is also excluded from the definition of “carryout bag.” Therefore, upon adoption, the Department is clarifying the definition of “carryout bag” to exclude a bag to contain raw marine bait.

14. COMMENT: Within the definition of “carryout bag,” the exemption for bags used to contain or wrap uncooked meat, fish, or poultry should apply only to non-handled bags, similar to the exemption for non-handled bags used to package loose items. Non-handled bags are smaller than conventional plastic grocery bags and their use avoids wasteful package volume. Otherwise, food service businesses may continue to use single-use plastic grocery bags for these items. (16)

RESPONSE: The adopted rules require bags for loose items to be non-handled due to confusion from the regulated community about the statutory exemption. Some misinterpreted the exemption and used carryout bags for loose items, such as pick-your-own fruits. The adopted rules do not specify that bags used to wrap uncooked meat, fish, or poultry must be unhandled because bags typically used for this purpose were already without handles before the Act came

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into effect. Further, in the two years the law has been in effect, the Department has not received any feedback or questions regarding these bags and, therefore, further clarity is unnecessary.

15. COMMENT: Laundry, dry cleaning, and garment bags; bags for prescription drugs provided by a pharmacy; and bags used to package loose items, such as fruits, vegetables, nuts, coffee, grains, bread, candy, greeting cards, flowers, or small hardware items, should not be exempt from the definition of “carryout bag.” Products other than single-use plastic bags can be used for these purposes, or customers can provide their own reusable bags, as they do for their larger items. For example, many pharmacies currently use paper bags for prescription drugs. Greeting cards can be placed directly in their envelope and do not need a separate bag. Every year, dry cleaners in the United States use more than 300 million pounds of plastic film, sometimes known as poly bags. This toxic and unnecessary use of polyethylene ends up in our waterways, land, and air, furthering unnecessary health hazards. The use of this material needs to be reduced. (15)

RESPONSE: Consistent with the Act, the rules provide exemptions to the definition of “carryout bag.” As discussed in the notice of proposal Summary, the Department proposed clarifications within this definition to reduce confusion regarding what type of bags are regulated pursuant to the Act and that are exempted. However, the rules must maintain the exemptions provided by the law. The law exempts plastic film bags, such as dry cleaner bags, prescription drug bags, and bags for loose items. Therefore, the rules also exempt these types of bags.

16. COMMENT: While clarifying the definition of “carryout bag” to prevent loopholes is supported, certain bags should be temporarily exempt, not permanently exempt, with an

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extension until a more readily available product exists. These bags include bags that are solely used to contain or wrap uncooked meat, fish, or poultry; bags used to contain a rotisserie chicken; and newspaper bags. (15)

RESPONSE: Consistent with the Act, the rules provide permanent exemptions to the definition of “carryout bag.” The implementing rules must maintain the exemptions provided by the law. The law does not authorize the Department to replace permanent exemptions with temporary exemptions that provide an extension until an alternative product is available; therefore, the Department cannot propose such an extension in the rules.

Reusable Carryout Bag

General

17. COMMENT: Even though the law allows the use of thick, polypropylene plastic reusable bags, these bags contribute to the plastic problem, which is what the law is trying to resolve, so they should not be allowed pursuant to the rules. Studies prove that the recycling rate for plastic in the United States is estimated to be only five to six percent, meaning 95 percent of all recycled items put into bins end up in landfills and waterways. When plastic reusable bags are discarded and end up in landfills and waterways, they break down slowly over thousands of years, which is why they are now referred to as “forever bags,” leaving microplastics behind in the soil and water. Microplastics are defined as tiny plastic particles with lengths less than five millimeters that result from the commercial development of plastics and the slow breakdown process of plastics. Microplastics have been found to be harmful to the environment and to human well-being. The surfaces of these tiny plastic fragments carry different types of contaminants, like bacteria and persistent organic pollutants. It has been found that a person absorbs a high quantity

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of microplastic particles every year through breathing air, drinking water, and the consumption of plant crops, animals, and fish. Science has proven that plastic is now in the human bloodstream, causing harmful health issues, because every person consumes, on average, the weight of a credit card in plastic per week. Therefore, it is very important to reduce the contamination of plastic waste in the oceans and landfills to avoid the threatening effects of microplastics on human health. (1)

18. COMMENT: Allowing the use of thick, polypropylene plastic reusable bags contradicts the objective of reducing plastic waste as the bags are not environmentally friendly. The Department should evaluate the environmental consequences when plastic reusable bags are discarded, particularly in terms of waste management and pollution. They pump synthetic pollution into the environment. Like single-use plastic bags, plastic-based reusable bags break down into microplastics and will not break down for hundreds to thousands of years, if not longer. Roughly eight billion kilograms of plastics enter the world's water every year, and a dump truck load of plastic is spilling into the ocean every minute. Given that the rate of recycling plastic in the United States is only about five to six percent, with the vast majority of plastic waste ending up in landfills and waterways, allowing products that contain any percentage of plastic does not address this issue. It is more beneficial to the environment to take every possible action to eliminate the use of plastic when plastic-free alternatives exist. (9)

19. COMMENT: Even though thick, polypropylene plastic reusable bags are allowed pursuant to the Act, the Department should not allow these bags pursuant to the rules as they are part of the problem the Department is trying to resolve. Studies show the recycling rate for plastic in the United States is only five to six percent, meaning 95 percent of all recycled items put into bins

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end up in landfills and waterways. Science has proven that plastic is now in the human bloodstream, causing harmful health issues, because every person consumes, on average, the weight of a credit card in plastic per week. (10)

20. COMMENT: Allowing polypropylene plastic reusable bags will not serve the purpose of the rules, which is to eliminate plastic. The added chemicals and toxins that are released into the environment when manufacturing plastic and paper products are exponentially more harmful than the production of plant-based products. (1 and 10)

21. COMMENT: Thick, polypropylene plastic reusable bags should not be allowed pursuant to the rules because they require a large amount of labor and resources to clean, as well as gasoline to transport them between destinations. Also, the manufacturing process for these bags results in waste byproducts. (9)

RESPONSE TO COMMENTS 17 THROUGH 21: The Act bans or limits the use of single-use plastic carryout bags based on the Legislature's determination that "it is no longer conscionable to permit the unfettered use and disposal of single-use plastics in the State." See N.J.S.A. 13:1E-99.126. The Act further defines "single-use plastic carryout bag" to mean "a carryout bag made of plastic that is not a reusable carryout bag." The statutory definition of "reusable carryout bag" expressly includes "a product made of polypropylene, PET nonwoven fabric, nylon, cloth, hemp product, or other machine washable fabric." As the Legislature determined to define "reusable carryout bag" to allow a product made of polypropylene and PET nonwoven fabric, the adopted rules — which must be consistent with the statute — also define "reusable carryout bag" to include products made of this material.

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Please see Responses to Comments 28 through 33 and 34 regarding the stitched handle requirement.

22. COMMENT: As the rules allow plastic polypropylene reusable bags to be used in retail, the Department should provide its protocol for discarding these bags. (1)

23. COMMENT: While it is great that the law has eliminated 10 billion single-use plastic bags, it is worse for the environment when the plastic, reusable plastic bags allowed pursuant to the rules are discarded. The use of the plastic base for these bags, which are now being referred to as “forever bags,” is adding three times the amount of plastic to the environment. (10)

RESPONSE TO COMMENTS 22 AND 23: This rulemaking implements the Act, which, as explained in the Response to Comments 17 through 21, bans or limits the use of single-use plastic carryout bags based on the Legislature’s determination that “it is no longer conscionable to permit the unfettered use and disposal of single-use plastics in the State.” See N.J.S.A. 13:1E-99.126. The disposal of reusable carryout bags is beyond the scope of this rulemaking. However, the Department encourages the donation of excess reusable bags. The Community Food Bank of New Jersey’s website hosts a map of donation events and sites that will accept bags. This site is accessible through the Get Past Plastic webpage at <https://dep.nj.gov/get-past-plastic/>.

Multiple Reuse

24. COMMENT: The clarification in the definition of “reusable carryout bag” that “multiple reuse” means a bag is capable of being reused at least 125 times is supported. (16)

RESPONSE: The Department acknowledges the commenter’s support.

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25. COMMENT: The proposed rules for a reusable carryout bag include a 125-time usage requirement, which is the correct minimum usage to meet national standards. However, certain bags do not seem capable of meeting this requirement. The Department should create a bag certification process, preferably through a third party, to test the durability of reusable carryout bags to ensure they can be used at least 125 times. The intention of the law is to reduce waste, and low-quality bags can be deemed as single-use and easily disposable. (5)

RESPONSE: The Department thanks the commentor for the recommendation and will consider the development of a bag certification process intended to test the durability of a reusable carryout bag to ensure they can be used 125 times.

26. COMMENT: Clarifying language is needed to explain how the number of possible reuses will be evaluated. It is unclear whether the Department or another entity will test different types of bags for reusability and what methodology will be required, such as the level of degradation that will constitute failing the test. (16)

RESPONSE: A reusable carryout bag is a bag that is not a single-use plastic or paper carryout bag and, therefore, may be provided to a customer. The adopted rules require a reusable carryout bag to be designed and manufactured to be used at least 125 times. See adopted N.J.A.C. 7:26L-1.4. The store, food service business, grocery store, food bank, or food pantry that provides a reusable carryout bag to a customer is responsible for ensuring that the bag is designed and manufactured to comply with the minimum use requirement, as well as the other requirements in

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the adopted rules. The Department will evaluate whether a separate testing requirement is appropriate and necessary.

Stitching

27. COMMENT: Clarifying in the rules that reusable carryout bag handles may be either ultrasonically stitched or stitched with thread is supported. Ultrasonic stitching is the predominate method of manufacturing reusable bags in the United States and Europe as hand stitching is more labor intensive and expensive. Further, this process is scientifically proven to be just as strong as hand-stitched bags and results in a more affordable bag for consumers. (4 and 11)

RESPONSE: The Department acknowledges the commenters' support.

28. COMMENT: Ultrasonic stitching is not appropriate for reusable bags as it results in a bond that is far easier to break. Demonstrations show that the seams are very easy to separate. These bags cannot be used 125 times as required by the rules if they can easily be broken apart by hand or heavy groceries. (3)

29. COMMENT: The rules for a reusable carryout bag include a 125-time usage requirement, which is the correct minimum usage to meet national standards. However, certain bags do not seem capable of meeting this requirement, specifically heat-pressed ultrasonic stitched bags. They fall apart, and their seams split. Bags with actual threading last longer and are more durable. The Department is encouraged to disallow bags with heat-stitched ultrasonic seams until they can be proven to meet the minimum requirement. (5)

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30. COMMENT: The Department should not allow reusable bags with ultrasonic stitching or heat stitching on handles. Ultrasonic stitching is a welding technique that uses high frequency sound waves. These bags, specifically the handles, tend to rip apart easily and are, therefore, not able to withstand continual reuse as required by the law. Therefore, bags with ultrasonic stitching result in additional plastic leaching into the environment. Threading is more appropriate as it is stronger than ultrasonic stitching and eliminates plastic. (15)

31. COMMENT: The Department should not consider a carryout bag with handles made using ultrasonic stitching to be a reusable bag. Ultrasonic stitching melts fabric together, which results in a bond that is far easier to break than a handle stitched with a sewing machine. Ultrasonic seams can be ripped apart by hand with minimal difficulty. Therefore, heavier grocery items are likely to break the seams before the carryout bag is used 125 times, which is the minimal standard proposed for a reusable carryout bag in the rules. (16)

32. COMMENT: Reusable carryout bags with ultrasonic stitching are a wolf in sheep's clothing and should not be allowed. The Department may be creating a loophole for merchants to offer free plastic bags to customers and prevent progress in reducing plastic pollution. Research shows that all plastics shed microplastics and nanoplastics, and the rule should take this into account. (14)

33. COMMENT: The concern about stitched handles on reusable bags is misplaced. Reusable, plastic-based bags should not be allowed just because they have stitched handles as they are still toxic to the environment. (9)

RESPONSE TO COMMENTS 28 THROUGH 33: The intent of the Act and implementing rules is to replace single-use bags with reusable bags and encourage a system of reuse. Stitched

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handles are required so that traditional single-use plastic carryout bags are not replaced with thicker, single-use plastic carryout bags. The Department has determined that neither traditional stitching nor ultrasonic stitching can be used on a thick, single-use plastic carryout bag; therefore, both techniques for connecting handles to reusable carryout bags are allowed pursuant to the rules.

In addition to having stitched handles, a bag must also be designed and manufactured for a minimum of 125 uses to meet the definition of a “reusable carryout bag.” See adopted N.J.A.C. 7:26L-1.5. This minimum use requirement will ensure that a carryout bag is sufficiently sturdy to comply with the definition of a reusable carryout bag.

34. COMMENT: The Department should not require reusable bags to have stitched handles. This requirement negates the use of plastic-free bags that are just as strong and durable as their plastic counterparts, but are much more environmentally friendly. (1 and 10)

RESPONSE: As stated in the notice of proposal Summary, the Act requires a reusable carryout bag to have “stitched handles” and be “designed and manufactured for multiple reuses(s).” As the Act’s definition of a reusable carryout bag includes “stitched handles,” the implementing rules include this requirement.

Washability

35. COMMENT: The Department previously stated that reusable carryout bags may be either machine washable or hand washable, but as proposed, the rules allow only machine washable bags. Although many types of reusable bags can be machine washed, it is considered a best

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practice by both bag manufacturers and the environmental community to hand wash reusable bags in order to prolong the life of the bag and reduce the release of microfibers into the water supply. The Department should clarify the language of the rules so that it is clear that both machine washable and hand washable reusable bags are permitted in New Jersey. (4 and 11)

RESPONSE: As explained in the notice of proposal Summary, the Act specifies the type of material of which a reusable carryout bag may be made. See 56 N.J.R. at 450. These material types include polypropylene, PET nonwoven fabric, nylon, cloth, or hemp. The Act also allows a reusable carryout bag to be made of other machine washable fabric. See N.J.S.A. 13:1E-99.130. If the reusable carryout bag is made of an “other” fabric, the fabric must be machine washable, though the bag may be handwashed in practice. If the reusable carryout bag is made of one of the specified material types, the material or fabric need not be machine washable since the machine washability requirement pertains only to “other” fabrics.

While the Department provided guidance that all reusable carryout bags must be capable of withstanding multiple washes, either by hand or machine, the adopted rules clarify and affirm the statutory requirement that any “other” fabric be machine washable.

36. COMMENT: Clarifying language is needed to explain how machine washability will be evaluated. It is unclear whether the Department or another entity will test different types of bags for washability and what methodology will be required, such as the type of machines that will be used to test machine washability and the level of degradation that will constitute failing the test.

(16)

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RESPONSE: As explained in the Response to Comment 35, the machine washability requirement applies to a reusable carryout bag made of a material other than one specified in the definition of reusable carryout bag. As with the minimum reuse requirement (see the Response to Comment 26), the store, food service business, grocery store, food bank, or food pantry that provides a reusable carryout bag to a customer is responsible for ensuring that the bag meets the definition of a reusable carryout bag. The Department will evaluate whether a separate testing requirement is appropriate and necessary.

Food Service Business

37. COMMENT: Clarifying that the definition of “food service business” includes school cafeterias, including day cares, preschools, and universities is supported. In Fiscal Year 2023, New Jersey schools participating in the Federal school food programs served 111,141,778 school lunches, 56,981,771 breakfasts, 36,637,764 child or adult care meals, and 4,690,011 summer meals. Therefore, if schools, universities, and day cares were permitted to use single-use plastic bags, foam food service products, and unrestricted straws, they would generate a substantial amount of plastic waste. Also, regulating schools, universities, and day cares will encourage children to reduce and reuse waste at a young age. (16)

RESPONSE: The Department acknowledges the commenter’s support.

38. COMMENT: While clarifying the definition of “food service business” to include both school cafeterias and businesses that provide food services to government entities is supported, this definition should also include private schools, preschools, and universities. (15)

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RESPONSE: As provided in the adopted rules at N.J.A.C. 7:26L-1.4, “food service business” means a business that sells or provides food for consumption on or off the premises, and includes, but is not limited to, any restaurant, café, delicatessen, coffee shop, convenience store, grocery store, vending truck or cart, food truck, farm market or stand, movie theater, or business or institutional cafeteria, including those operated by or on behalf of any governmental entity, school cafeterias, and businesses that provide service to those entities. This definition further states that a school means an establishment for teaching and learning, including, but not limited to, preschool, day care center, elementary school, junior high or middle school, high school, vocational/technical, college, and university. The definition does not distinguish between public and private establishments and applies to any “establishment for teaching and learning,” the examples of which specifically include preschools and universities.

Grocery Store; Restaurants and Small Vendors

39. COMMENT: Restaurants and small vendors, such as food trucks and farmers’ markets, should be treated the same as a grocery store. Customers of restaurants and all other retail establishments can utilize their own reusable bags. Since 2014, online food ordering has increased at a 300 percent faster rate than dine-in options, furthering plastic pollution. (15)

RESPONSE: As explained in the notice of proposal Summary, the rules define “grocery store” as this term is defined in the Act. See 56 N.J.R. at 450. A grocery store is included in the definition of “store.” See adopted N.J.A.C. 7:26L-1.4. Therefore, a grocery store may not provide or sell a single-use plastic carryout bag or a single-use paper carryout bag to a customer.

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A food service business may not provide a single-use plastic carryout bag to a customer.

N.J.A.C. 7:26L-1.3(a)1. A food service business is defined to include a restaurant, food truck, and a farm market or stand. Therefore, restaurants, food trucks, and farmers' markets may not provide a single-use plastic carryout bag to a customer. However, because they are not a "grocery store," they may provide a single-use paper carryout bag to a customer. These definitions and prohibitions are consistent with the Act.

Definition of Store; Other Retail Establishments and Independent Vendors

40. COMMENT: The Department should clarify the meaning of "other retail establishment" within the definition of "store" to address whether small, independent vendors, such as those operating at farmers' markets, festivals, and other community events, are classified as a "person" or as a "retail establishment." A "person" is only subject to the ban on distributing foam food service products while a "retail establishment" may not distribute foam products or single-use plastic bags. As these independent vendors often sell their products at outdoor venues and could generate a substantial amount of single-use plastic waste and litter, they should be classified as a "retail establishment" so that they are subject to the single-use bag prohibition. Therefore, the definition of "store" should include "any grocery store, convenience store, liquor store, drug store, or other retail establishment, including independent vendors who sell food, crafts, or merchandise in public spaces." (16)

RESPONSE: The definition of "store" means "any grocery store, convenience store, liquor store, pharmacy, drug store, or other retail establishment." The term "other retail establishment" includes any retail business that sells food, goods, or merchandise. If a small, independent

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vendor is a retail business that sells food, goods, or merchandise, whether at a farmers' market, festival, or other community event, the vendor is a "store" and is prohibited from providing or selling a single-use carryout plastic bag to a customer.

Markets, fairs, farms, etc., that host independent vendors would fall within the definition of a "retail establishment." Based on this, the Department does not agree that a clarification of the definition of "store" is necessary. The Department notes that pursuant to N.J.A.C. 7:26L-1.3(a)1, the ban on providing or selling a single-use plastic carryout bag to a customer applies to a store or food service business. As explained in the Response to Comment 39, the definition of food service business includes food trucks, farm markets, and farm stands. The definition also includes vending trucks and carts. As vendors who sell food at outdoor venues are included in the definition of "food service business," they may not provide or sell a single-use plastic carryout bag to a customer, regardless of whether they are an "other retail establishment" and therefore a "store."

Definition of Plastic

Bioplastic and/or Certified Compostable Plastic

41. COMMENT: Including bioplastic and compostable plastic certified pursuant to ASTM D6400 in the definition of "plastic" is supported. Commercially available compostable and bioplastic materials are only compostable in industrial facilities, which do not exist in New Jersey. Also, one study has shown that producing industrially compostable plastics has a negative environmental impact as the process requires pesticides and fertilizers and is very similar to the process used to produce traditional plastics. (3)

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42. COMMENT: The Department is commended for clarifying that bioplastics and compostable materials certified pursuant to the ASTM D6400 standard meet the definition of “plastic.” These products require industrial composters to break down, which is not appropriate. They are examples of greenwashing as the production, use, and disposal of these bags are often at least as toxic for the environment as traditional plastics. (15)

43. COMMENT: Including bioplastic and compostable plastic certified pursuant to ASTM D6400 in the definition of “plastic” is strongly supported. These materials cannot be recycled or broken down by residential or municipal composting. They are only compostable in an industrial facility, but New Jersey does not currently have any such facilities. As a result, these materials must be either landfilled or incinerated. In landfills, bioplastics do not decompose correctly, meaning they are more likely to produce methane, which is a more powerful greenhouse gas than carbon dioxide. Landfilled or littered bioplastics and compostable plastics can also break down into micro and nanoplastics. Incinerating compostable plastics and bioplastics causes air pollution. In the marine environment, bioplastics break down too slowly to avoid environmental impacts on marine wildlife and ecosystems. (16)

RESPONSE TO COMMENTS 41, 42, and 43: The Act defines plastic as “a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shapes during the life cycle and after disposal.” N.J.S.A. 13:1E-99.127. The adopted rules, at N.J.A.C. 7:26L-1.4, include the same definition and further specify that plastic includes compostable plastic certified pursuant to ASTM D6400. The Department included these types of plastic in the definition of plastic to provide clarity. Materials certified to the ASTM D6400

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standard are plastics designed to be composted in municipal and industrial aerobic composting facilities. See 56 N.J.R. at 450. As the ASTM standard applies to plastics and products made of plastics, these materials meet the statutory definition of plastic, regardless of whether the material is compostable. See N.J.S.A. 13:1E-99.127.

The Department also proposed to include bioplastics and plastic made with non-petroleum source material in the definition of “plastic” based on the Department’s determination that these materials also meet the statutory definition of plastic. As explained in the Response to Comment 47, the Department is modifying the definition of “plastic” to remove the references to bioplastics and plastic made with non-petroleum source material as unnecessary.

44. COMMENT: The rules, as proposed, appear to expand the Act’s definition of “plastic” to prohibit the specific use of compostable and bioplastic materials, which is appreciated. There was significant testimony at the Legislature about bioplastics. Excluding bioplastic and compostable bags is a systems issue. These materials essentially act as plastic in the environment because New Jersey lacks sufficient anaerobic facilities to optimally process these materials. (5)

45. COMMENT: Altering the definition of “plastic” in the rules to include “compostable plastic certified pursuant to ASTM D6400 and bioplastic, or plastic made with non-petroleum source material” results in disallowing carryout bags made using these materials. The Department’s concern that, “... none of the composting facilities necessary to process these materials is currently located in New Jersey” is understandable. However, various types of bioplastic/plant-based bags do not require composting facilities. The Department should engage in additional research before making this determination. It is premature for the Department to preclude all

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bioplastic bags from use in New Jersey, especially as future technologies might yield different types of materials, infrastructure, and processes. (4 and 11)

46. COMMENT: Although the rules currently include bioplastic and compostable plastic certified pursuant to ASTM D6400 in the definition of "plastic," the notice of proposal Summary suggests that the Department may exclude these materials from this definition in the future if industrial composting facilities were to be established in New Jersey. Compostable plastic and bioplastics should be considered the equivalent of traditional plastic, regardless of whether New Jersey has industrial composting facilities. Compostable plastic and bioplastics are of dubious environmental value. They are often made of monocultured feedstocks, which trigger land use and soil quality concerns. The ability of materials that are technically biodegradable to break down in practice depends on a variety of environmental factors. Some types of bioplastics have greater environmental impacts than traditional petroleum-based plastic. For example, in a comparative life cycle analysis study, polylactic acid had the highest potential to cause eutrophication as it requires fertilizer use. Polyhydroxyalkanoate resulted in the greatest acidification impact. Bio-polyethylene terephthalate (a hybrid bio/petroleum polymer) had the greatest ecotoxicity and human carcinogen potential because its production requires agriculture, fermentation, and multiple chemical processing steps, most of which are the same as traditional plastic after sugar starch is converted to ethanol. In terms of ozone depletion, all the bioplastics studied had higher impacts than traditional plastics. The best policy to reduce single-use plastic waste is to continue to ban single-use bags, regardless of whether they are made from plant-based or petroleum-based polymers. (16)

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RESPONSE TO COMMENTS 44, 45, and 46: In the notice of proposal Summary, the Department explained that compostable plastics are an environmentally effective substitute for single-use plastics only if the material is actually composted at the end of the lifecycle. The Department also explained that there are no composting facilities necessary to process these materials in the State. Regardless of whether such composting facilities are located in the State, the certified plastic is plastic, as defined, and, therefore, subject to the rules.

47. COMMENT: The proposed rules ban the use of bioplastics because “the Department has determined that these plastics meet the definition of plastic in the statute, as they are a synthetic material that is made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shape during the life cycle and after disposal.” However, this rationale is not supported by either the statute or the underlying science.

The Act does not prohibit single-use bags but rather single-use plastic bags. For a single-use bag to be banned pursuant to the proposed rules, the bag must meet the Act’s definition of “plastic,” which includes all of the following criteria: 1. The material must be synthetic; 2. The material must be made from linking monomers through a chemical reaction to create an organic polymer chain; 3. The material can be molded or extruded at high heat into various solid forms; and 4. It must retain its defined shapes during its life cycle and after disposal. If a single-use bag does not meet all four of these criteria, it is not plastic.

The proposed rules cannot ban all “bioplastics,” which is not a scientifically specific term as it can refer to both fossil fuel-based plastics and plant-based plastics, as well as to both

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compostable and non-compostable materials. Single-use bioplastic bags exist that contain biomass extractions that yield nonsynthetic natural polymers or non-synthetic natural poly mesh. As these non-synthetic natural polymers are not “synthetic,” they do not meet the full definition of plastic and, thus, cannot be banned pursuant to the rules regardless of whether they are compostable or whether they may end up in landfills or as litter. Sufficient facilities to compost the material is not a requirement in the definition of plastic and, thus, cannot be grounds for whether a product should be banned pursuant to the rules.

The Department needs to amend the proposed rules to allow for single-use bags that are not synthetic or do not otherwise meet the definition of “plastic.” Regardless of its good intentions, the Department does not have the authority to expand its reach beyond the words of the statute to ban additional bags. (4)

RESPONSE: As explained in the Response to Comments 41, 42, and 43, the rules define “plastic” to mean a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shapes during the life cycle and after disposal. See adopted N.J.A.C. 7:26L-1.4. The definition follows the statutory definition at N.J.S.A. 13:1E-99.127. A product subject to these rules that meets the definition of “plastic” is regulated pursuant to these rules. If a product does not meet the definition of “plastic,” it is not regulated pursuant to these rules.

The Department also proposed to include bioplastics and plastics made with non-petroleum source material in the definition. However, the Department is not adopting this portion of the definition of “plastic” because it is unnecessary and potentially confusing. A material is a

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“plastic,” as defined at N.J.S.A. 13:1E-99.127 and adopted N.J.A.C. 7:26L-1.4, if, regardless of the source from which the material is made, the material is produced by synthesis (thus a “synthetic material”) and “made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shapes during the life cycle and after disposal.” As explained in the Response to Comments 49 through 56, the Act and rules apply to a bag, whether plant-based, biodegradable, or compostable, that meets this definition of plastic and is a carryout bag as defined.

Plant-Based and/or Home-Compostable Bags

48. COMMENT: The Department should consider allowing plant-based bags even if they meet the definition of “plastic” as they have many benefits over fossil fuel-based plastics, including reduced carbon emissions and the ability to be composted. For example, in the City of Seattle, all food waste must be separated and placed in compostable bags for eventual composting along with the food waste. (4)

RESPONSE: A single-use plastic carryout bag that meets the definitions of “plastic” and “carryout bag” is subject to the rules. The definition of “carryout bag” excludes certain types of bags based on use, not material, consistent with the Act.

49. COMMENT: The Department should include and approve a category in the proposed rules to allow for plant-based, home-compostable bags, which contain zero plastics and benefit the

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environment by eliminating plastic waste. The benefits of these single-use bags significantly outweigh the reusable plastic alternatives allowed pursuant to the proposed rules. (9)

50. COMMENT: The Department should include and approve a category for plant-based, home compostable bags that do not contain any plastic. These single-use bags are a great, immediate solution for retailers as they offer the look, feel, features, and efficiency of single-use plastic bags, but they are usually stronger than their plastic counterparts. The Department should offer products that are certified as 100 percent plant-based and home-compostable as a choice to consumers. (1 and 10)

51. COMMENT: Allowing home-compostable bags would be supported, provided the bags are truly able to break down in a local composting machine. (3)

52. COMMENT: Allowing the use of plant-based products is supported, provided the bag is not a bioplastic or compostable material certified pursuant to the ASTM D6400 standard. (15)

53. COMMENT: The Department should not ban home-compostable, plant-based solutions, which decompose naturally without the need for specialized composting facilities pursuant to the proposed rules. These bags look and feel like plastic, but if they go into the backyard or a landfill, they break down in an average of about 180 days, and when they break down, they do not leave any nanoplastics or microplastics behind. Instead, they naturally enrich the soil by providing food for the soil's microorganisms. (9)

54. COMMENT: The Department should not ban plant-based solutions that are certified as home-compostable by third-party labs, which means they do not require a special facility to decompose. There is a difference between home-compostable, plant-based bags, and bags that are just compostable. While there are various definitions and compositions for plant-based

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products and many still include plastic in their ingredients, bags that are truly made from 100 percent plant-based, home-compostable materials do not leave any nanoplastics or microplastics behind when they decompose. These bags will break down within 180 days in backyard gardens and compost heaps. If placed in a landfill, they may take a little longer than 180 days to break down, but they will not leave any toxins or microplastics behind. Instead, plant-based, home-compostable bags disintegrate into rich, non-toxic nutrients that add to the soil and aid in the growth of plants and the planet. (1)

55. COMMENT: The Department should not ban single-use, home-compostable, plant-based bags pursuant to the rules. Perhaps the Department does not understand the difference between biodegradable bags, industrial-compostable bags, and home-compostable bags. A biodegradable bag contains plastic, and when it degrades, it leaves plastic behind, which is not good for the environment. Everything is biodegradable, including cars and computers. Certain products may take hundreds of thousands of years to degrade, but they are still biodegradable. For this reason, in 2024, California, along with some national retailers, prohibited labeling products with the term “biodegradable.”

A product that is labeled as “industrial-compostable” can break down without leaving plastic behind, but to do so, it must be sent to a special facility that can provide the right heat, moisture, and pressure to properly decompose the product. Only 185 of these industrial-compostable facilities exist in the entire nation, but for this process to be effective, studies show that each state would need 185 facilities. Therefore, neither biodegradable nor industrial-compostable bags are a solution to traditional single-use plastic bags.

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However, home-compostable, plant-based products are a good solution as they do not contain any plastic, and they do not require any special facility to decompose. They can be discarded in home composters or gardens and will break down within 90 to 180 days, becoming food for microorganisms without leaving any nanoplastics or microplastics behind. If you fill a home-compostable, plant-based bag with water and leave it for a few days, it will still be holding the same amount of water when you come back. However, if you put that bag into the ground, the microorganisms will eat it. These bags break down quickly because they are food for microorganisms. Even if these bags end up in a landfill, they decompose within days, unlike plastics, which take years to decompose. (10)

56. COMMENT: The Department should not prohibit single-use, home-compostable bags pursuant to the proposed rules. The Department should evaluate the benefits of home-compostable products and their positive effects and assumptions on reducing costs on existing waste management and recycling systems in New Jersey. (9)

RESPONSE TO COMMENTS 49 THROUGH 56: As explained in the Response to Comments 41, 42, and 43, consistent with the Act, the adopted rules, at N.J.A.C. 7:26L-1.4, define plastic to be a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms, retaining their defined shapes during their life cycle and after disposal. See N.J.S.A. 13:1E-99.127. The prohibitions and limitations of the Act and the rules apply to a bag — whether plant-based, biodegradable, or compostable — that meets this definition of “plastic” and is a “carryout bag” as defined. If a bag does not meet these definitions, then the prohibitions and limitations of

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the rules do not apply. The adopted rules must be consistent with the Act, which bans a store or food service business from providing or selling a single-use plastic carryout bag to a customer.

Testing

57. COMMENT: The Department should provide the process for getting home-compostable bags approved in New Jersey along with the specific criteria that must be met. (9)

58. COMMENT: The Department should provide detailed information on the testing and documentation required for home-compostable bags to be recognized as compliant pursuant to the proposed rules. (9)

RESPONSE TO COMMENTS 57 AND 58: As explained in the Response to Comments 41, 42, and 43, consistent with the Act, the adopted rules, at N.J.A.C. 7:26L-1.4, define plastic to be a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms, retaining their defined shapes during their life cycle and after disposal. See N.J.S.A. 13:1E-99.127. The prohibitions and limitations of the Act and the rules apply to a bag — whether home-compostable — that meets this definition of “plastic” and is a “carryout bag” as defined. If a bag does not meet these definitions, then the prohibitions and limitations of the rules do not apply. See the Response to Comments 49 through 56. Testing and documentation that would be required for a home compostable bag is beyond the scope of this rulemaking.

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Exemption for Polystyrene Foam Trays

General Support of Extension Provisions

59. COMMENT: The Department is commended for including the process at N.J.A.C. 7:26L-2.2 that provides for the Department, upon its own initiative, to extend an exemption, for one year or beyond, if it determines that there is no cost-effective and readily available alternative for the item. (6)

60. COMMENT: The provisions in the proposed rules that establish a formal process for seeking future extensions to implement the polystyrene bans for raw meat, fish, and prepackaged items, if the Department determines that there continues to be no cost-effective and readily available alternative products, are supported. Retailers are facing numerous challenges as they seek alternatives. Many alternatives are not appropriate due to food safety or product quality and integrity concerns, are cost prohibitive, and are not available in the volume necessary for all suppliers to comply with the law. For instance, some alternative products are causing discoloration of raw meat, and further testing is needed to determine the cause of the discoloration and whether food safety or product integrity concerns exist. Additionally, some manufacturers of the foam alternatives have noted concerns with their ability to scale up these products for all retailers that would need these trays. In short, it is anticipated that the continuing challenges will result in the need for future extensions. (4 and 11)

RESPONSE TO COMMENTS 59 AND 60: The Department acknowledges the commenters' support of the adopted rules.

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Longer Extension Periods

61. COMMENT: The one-year extension to allow use of polystyrene foam trays for packaging raw meat, fish, and poultry and to allow New Jersey retailers to accept products pre-packaged in polystyrene from other states is appreciated. However, the ability to procure alternative products is limited and expected to last for years due to costs, lack of availability of alternative products, interstate commerce challenges, and food safety. The Department is encouraged to include an indefinite or multi-year extension of the exemptions.

The Department has received clear and compelling evidence that there is no cost-effective and readily available product to replace polystyrene foam trays for raw proteins, as well as evidence that this will not change for some time. The alternative products are, on average, 250 percent more expensive than a polystyrene tray for raw proteins and are not readily available in the quantity needed for the New Jersey marketplace. Pricing and availability will not change before May 4, 2025. For this reason, all other states with a polystyrene ban, except Maine and New Jersey, have permanently exempted trays for raw proteins.

The Department should take this market reality into account and provide certainty to the food processing and retail community by indefinitely extending the exemption date until the Department has clear and convincing evidence that a cost-effective and readily available alternative exists. Alternatively, the Department could provide a multi-year extension of the exemption until May 4, 2028, pursuant to the same standard and based upon the information the Department has received. (6)

62. COMMENT: Every other state with a polystyrene ban has permanently exempted pre-packaged products, and all states except Maine have exempted raw meat/fish trays. It will be

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challenging for New Jersey to impose the prohibition on foods pre-packaged by the manufacturer moving forward as it is not economical or practical to expect national manufacturers of foods packaged outside of New Jersey to switch to alternative products for one state. (4 and 11)

RESPONSE TO COMMENTS 61 AND 62: The Act authorizes the Department to extend an exemption set forth in the statute for a period of up to one year based on a written determination that there is no cost-effective and readily available alternative for the item. See N.J.S.A. 13:1E-99.129. Based on documentation provided by retailers and manufacturers demonstrating the lack of a cost-effective, readily available alternative for raw meat and fish trays, along with food pre-packaged by the manufacturers, the Department extended the polystyrene exemption until May 4, 2026. The extension was given to allow more time to transition away from polystyrene foam food service products. The Department is limited by the requirements of the Act, which did not include or allow permanent exemptions or indefinite or multi-year extension of an exemption. Therefore, the Department is unable to include such provisions in the rules. The Department will review any potential exemption extensions on a yearly basis.

No Exemption or Extended Exemption for Raw Meat and Fish Should Be Allowed

63. COMMENT: The rules should not exempt polystyrene trays for raw meat and fish as they shed toxic nanoplastics and microplastics into the food with unknown health impacts. Other packaging options existed before polystyrene was developed. (14)

64. COMMENT: The language pertaining to exemptions for polystyrene foam food service products should be tightened to eliminate loopholes. The Act bans polystyrene for a reason, and the use of polystyrene trays needs to be eliminated. Therefore, the Department should not extend

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exemptions for the use of polystyrene in any food related products, such as “meat and fish trays for raw or butchered meat, including poultry or fish that is sold from refrigerator or similar retail appliance; and any food product pre-packaged by the manufacturer with a polystyrene foam food service product.” (15)

RESPONSE TO COMMENTS 63 AND 64: The Act bans a person or food service business from selling in the State any polystyrene foam food service product and a food service business from providing or selling food in a polystyrene foam food service product but specifically exempted certain products until May 4, 2024. Exempted products include meat and fish trays for raw or butchered meat, including poultry, or fish that is sold from a refrigerator or similar retail appliance, as well as any food product pre-packaged by the manufacturer with a polystyrene foam food service produce. Therefore, the adopted rules include the same exemptions, consistent with the Act. See N.J.S.A. 13:1E-99.129.

The Act also authorizes the Department to extend or grant a waiver of any statutorily granted exemption for additional periods not to exceed one year based on the statutory requirements. See N.J.S.A. 13:1E-99.129. The Department may extend an exemption upon a written determination that there is no cost-effective and readily available alternative for the item. The rules provide that the Department may extend the exemptions on its own initiative or in response to an application. See adopted N.J.A.C. 7:26L-1.6 and 2.2. The Department may also waive the provisions for a person or food service business for up to one year if there is no feasible and commercially available alternative for a specific product or if the person or food service business has less than \$500,000 in gross annual income and there is no reasonably affordable, commercially available alternative to the product.

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As the statutory deadline of May 4, 2024, has passed, any exemption may be extended for only one year at a time, based on the conditions and requirements set forth at N.J.A.C. 7:26L-2, which are consistent with the Act. The exemptions are not permanent but are intended to give the market time to develop alternatives that are readily available and cost-effective.

See also, the Response to Comments 61 and 62 regarding the Department's extension until May 4, 2026, and the need for the extension.

Exemption Determinations

65. COMMENT: The rule should clarify what factors the Department needs to consider when determining whether an exemption is necessary, and exemptions should be granted due to technological infeasibility, not cost-effectiveness. The exemption determination process should be similar to the Department's general waiver process, which does not consider cost unless it is an individual analysis of a small business's application. (3)

RESPONSE: Pursuant to adopted N.J.A.C. 7:26L-1.6, consistent with N.J.S.A. 13:1E-99.129, the Department may extend an exemption if it determines, in writing, that there is no cost-effective and readily available alternative for the item. The Act does not include a technological infeasibility requirement for an exemption to be extended. Therefore, the adopted rules do not include such a requirement.

As explained in the Response to Comments 63 and 64, the Department may extend an exemption on its own initiative or in response to an application. The requirements for an exemption extension application are set forth at adopted N.J.A.C. 7:26L-2.2. To apply for an exemption extension, a person or food service business must identify the item for the exemption

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extension and provide either a detailed cost analysis that there is no cost-effective alternative, or a detailed analysis that there is no readily available alternative. If the Department finds that there is no cost-effective and readily available alternative, either on its own initiative or in response to an application, the Department will extend the exemption.

See the Responses to Comments 66 and 67 regarding new categories or types of exempted products.

66. COMMENT: Allowing the Department to exempt additional polystyrene foam food service products at its discretion is opposed. According to both the United States Environmental Protection Agency and the National Institute of Health, amongst others, polystyrene has been associated with a number of health risks, including negative effects on the nervous system and hormones, as well as liver and nerve tissue damage. For instance, between 1990 and 2017, thyroid cancer increased by 90 percent. When the chemicals in polystyrene come into contact with the food that rests on it, as with the use of polystyrene trays, toxins leach into the food. Other options besides traditional plastic or polystyrene meat trays are available. For example, although polylactic acid, often referred to as PLA, is not an ideal material, it is made of corn and is, therefore, a far better material than polystyrene. (15)

RESPONSE: The Act authorizes the Department to exempt any polystyrene foam food service product that is not already exempted by the Act, as the Department determines is necessary.

N.J.S.A. 13:1E-99.129. Therefore, the adopted rules include an exemption for polystyrene foam food service products used for the health or safety of patients and residents used in hospitals, nursing homes, and correctional facilities. See N.J.A.C. 7:26L-1.6(a). As explained in the notice

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of proposal Summary, the Department included this category to allow such facilities enough time to find alternative, commercially available products without harming patients, residents, and employees. See 56 N.J.R. at 451.

The Department also included a general category of “any other polystyrene foam food service product as determined necessary by the Department,” consistent with the Act. See N.J.A.C. 7:26L-1.6 and N.J.S.A. 13:1E-99.129. See the Response to Comment 68 regarding exempting additional products.

67. COMMENT: The Act and the proposed rules both set forth language exempting “any other polystyrene foam food service product as determined necessary by the Department.” However, neither the Act nor the rules outline the factors that the Department must consider when making such a determination. The Department should clarify in the rules how the Department will create an exemption beyond those that are specifically listed in the statute.

To create an exemption, the Department should utilize the same approach that it is proposing to use when evaluating waiver applications, including determining that “there is no feasible and commercially available alternative for a specific polystyrene foam food service product” where “feasible” means “there is an alternative substance or product that serves the same purpose, or alternatives are available that prevent a risk of harm.” A lack of alternatives to polystyrene foam food service products that would serve the same purpose of the foam product or that would prevent harm are reasonable justifications for an exemption.

However, when granting an exemption or an extension to an exemption, the Department should only consider cost-effectiveness when a person or food service business has less than

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\$500,000 in gross income. Large companies should not be allowed to circumvent the prohibitions on foam food service products due to cost considerations because they have more resources to invest in environmentally preferable products. Additionally, “cost-effective” is a subjective standard. (16)

RESPONSE: As explained in the Response to Comment 66, the adopted rules include an exemption for polystyrene foam food service products used for the health or safety of patients and residents used in hospitals, nursing homes, and correctional facilities. See N.J.A.C. 7:26L-1.6(a). The Department included this category to allow such facilities enough time to find alternative, commercially available products without harming patients, residents, and employees. See 56 N.J.R. at 451. If a temporary exemption is requested for another product category or the Department determines that another product category should be temporarily exempted, the Department anticipates basing its determination on similar factors, including whether there is an alternative, commercially available product for the particular use. However, as explained in the Response to Comment 68, the Department intends to initiate rulemaking if it determines that any other polystyrene foam food service product should be exempted from the prohibitions at N.J.A.C. 7:26L-1.3.

In determining whether to extend an exemption, the Department will consider if there is a cost-effective and readily available alternative for the item. See adopted N.J.A.C. 7:26L-1.6(b) and N.J.S.A. 13:1E-99.129(d). Cost-effectiveness is a factor to be considered pursuant to the Act and, therefore, is included in the adopted rules. An exemption pertains to an entire category of product type, see adopted N.J.A.C. 7:26L-1.6(a). Therefore, the Department will consider

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whether there is a cost-effective and readily available alternative for the item across the board, regardless of the size of the person or food service business that requests the extension.

68. COMMENT: The rules include a new exemption but do not clarify whether new exemptions will always be established through the rulemaking process with a public comment period or if they could be established through another form of official announcement. Establishing exemptions through rulemaking is preferable because that process allows the public to offer research and insights into the commercial feasibility of alternatives. Therefore, the Department should add a provision to the rules stating that new exemptions shall be created through a rulemaking pursuant to the New Jersey Administrative Procedure Act (APA) at N.J.S.A. 52:14B-1 et seq. (16)

RESPONSE: If the Department determines that any other polystyrene food service products should be exempt from the prohibitions at N.J.A.C. 7:26L-1.3, the Department will comply with the APA to exempt such products. It is unnecessary to include a provision in the rules that the Department will comply with the APA.

Application for an Extension

69. COMMENT: The Department should reduce the burden on an applicant who makes a request to extend an exemption. The submission of an additional, detailed cost and availability analysis should not be required to obtain a further extension. Instead, for any person or food service business that previously submitted a detailed cost and availability analysis and was granted an extension, the Department should accept a certification, under penalty of perjury, that the

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conditions warranting the extension have not changed. This would also reduce the burden on the Department as it is charged with reviewing the submissions. (6)

RESPONSE: Adopted N.J.A.C. 7:26L-2.2 sets forth the requirements for an application by a person or food service business seeking to extend an exemption for a product. If the relevant information has not changed, the applicant may provide the same analyses with its application. However, technology and costs can vary over time, and, therefore, reviewing each exemption extension request with up-to-date and accurate information at the time of the request is necessary.

Enforcement

70. COMMENT: The enforcement provision providing for right-of-entry by the Department, municipalities, and local health departments pursuant to the County Environmental Health Act is supported. Physical entry into establishments is the most effective way to determine compliance with, or violations of, the Act. Including municipalities and local health departments in enforcement will also ease the burden on the Department. (16)

RESPONSE: The Department acknowledges the commenter's support of the adopted rules.

Beyond the Scope of the Rulemaking

71. COMMENT: The best course of action is to do everything possible to eliminate plastic. (1 and 10)

72. COMMENT: The Department should be able to eliminate plastic. (8)

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73. COMMENT: The Act should be just the tip of the iceberg when it comes to combatting toxic plastic. Other actions would help, such as a bottle deposit law; rebuilding reuse mandates; an extended producer responsibility law mandating plastic reduction, including packaging and mylar balloons; and a requirement for bottle caps to be tethered, as they are in Europe. The plastic industry is expanding too fast to be controlled. The condition of New Jersey's beaches reveals the perfidious expansion of toxic single-use plastics. Single-use plastic bottles are ubiquitous, which must change. If additional actions are not taken, New Jersey will be swimming in, not a plastic sea, but a plastic soup. (14)

74. COMMENT: The Department should consider requiring synthetic plastic products be replaced with all-natural, compostable products. This requirement would have the immediate effect of reducing over 50 percent of plastic pollution from the environment and would shrink the footprint of New Jersey's landfills rather than building them up indefinitely. This improvement would result in a measurable reduction in less than a year and would continue to reduce plastic waste over time. By introducing such a policy, New Jersey would break new ground and provide a model for other states. This single effort could result in initiating an end to the use of most plastic products. The Department could run a study to confirm these expectations before initiating the policy Statewide. The plastic use methods could be compared to the various test locations year after year to determine what will work best in the future. (8)

75. COMMENT: The era of plastics should be over. Now is the time, and with the right legislation, the plastic problem can be reduced overnight by at least 40 to 60 percent. (9)

76. COMMENT: Animals living in ocean and waterway environments are dying from plastic in their bodies. These animals are unable to tell the difference between food and plastic, and they

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kill themselves by ingesting plastic bags and pieces of plastic. Therefore, all beverages should be packaged in glass, and the Department should take real steps to ensure that bags will not disintegrate into plastic particles. (12)

77. COMMENT: The Department should provide information regarding the support or resources that will be provided to manufacturers of plastic-free products to help transition away from plastics. The Department should also clarify if there are any incentives or programs in place to encourage businesses and consumers to adopt plastic-free products instead of plastic-based products. (9)

78. COMMENT: The Department should explain how it will address public misconceptions and confusion regarding the differences between various types of plastic-containing products and the differences between the processes for disposing the various types of plastic products and disposing compostable and biodegradable product alternatives. (9)

79. COMMENT: The Department should provide its short-term and long-term plans for achieving New Jersey's ultimate environmental goals. (8)

80. COMMENT: As a long-term solution to achieving sustainability in New Jersey, the Department should institute local compostable co-ops in each community to incorporate educational composting farms, allowing all New Jersey residents to participate in the practice of conservation. The benefits of this system are universal. The farms could operate as a composting center with animals contributing waste to the compost material. Educational tours and classes could be provided to school children and the public to inform them how of farms and composting centers play a vital role in everyday life. The farm could produce compost for public sale that is certified by university testing as free from microplastics. This would provide a standard for

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product certification. This State certification would automate enforcement and compliance with State environmental laws.

A series of contacts are available to assist in formulating these prototypes, including lab testing, certification processes, enforcement, and automated composting equipment. Introductory trial locations could demonstrate if this solution is ideal and could provide information necessary to implement any necessary improvements. (8)

RESPONSE TO COMMENTS 71 THROUGH 80: These comments are beyond the scope of this rulemaking. The adopted rules implement the Act, which prohibits stores and food service businesses from providing single-use plastic carryout bags to customers, grocery stores from providing single-use paper carryout bags to customers, people from selling any polystyrene foam food service product, and food service businesses from providing or selling food in a polystyrene foam food service product.

Summary of Agency-Initiated Changes Upon Adoption:

Exemption Time Period, N.J.A.C. 7:26L-1.6(a)

The Department proposed to exempt the following products from the prohibitions at N.J.A.C. 7:26L-1.3 until May 4, 2025: 1. tray used for raw or butchered meat, including poultry, or fish that is sold from a refrigerator or similar retail appliance; 2. a food product pre-packaged by the manufacturer in a polystyrene foam food service product; 3. a polystyrene foam food service product, used for the health or safety of a patient or resident of a hospital, nursing home, or correctional facility; and 4. any other polystyrene foam food service product as determined necessary by the Department. As explained in the notice of proposal Summary, the proposed

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deadline reflects the Department's extension given to the three statutory exemptions, as well as the additional category of products proposed to be exempted. See 56 N.J.R. at 451.

On February 3, 2025, the Department posted a notice to extend the exemptions until May 4, 2026, based on its determination that an extension is warranted. See <https://dep.nj.gov/wp-content/uploads/polystyrene-exemption-extensions-20250303.pdf>. The Department is modifying N.J.A.C. 7:26L-1.6(a) upon adoption to reflect the extended date of May 4, 2026, for the exemptions.

Miscellaneous

The Department is deleting "certain" from the heading of the new chapter as it is unnecessary. The Department is also revising the definition of "person" at N.J.A.C. 7:26L-1.4 upon adoption. As explained in the notice of proposal, the Department proposed to clarify the statutory definition of "person" to include a responsible corporate official. See 56 N.J.R. at 450. However, the proposed definition also added "food service business" to the definition, which was inadvertent. Therefore, the Department is revising the definition of "person" upon adoption to delete "food service business."

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements, include in the rulemaking document a Federal standards analysis. The adopted new rules are not promulgated pursuant to the authority of or to implement, comply with, or participate in any program established pursuant to Federal

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law, or pursuant to a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, no further analysis is required.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

CHAPTER 26L

***[CERTAIN]* SINGLE-USE PAPER AND PLASTIC CARRYOUT BAGS AND POLYSTYRENE FOAM FOOD SERVICE PRODUCTS**

SUBCHAPTER 1. GENERAL PROVISIONS

7:26L-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Carryout bag” means a bag that is provided by a store or food service business to a customer for the purpose of transporting groceries, prepared foods, or retail goods. “Carryout bag” shall not include:

1. - 2. (No change from proposal.)
3. A bag used solely to contain live animals, ***aquatic plants, and raw marine bait,*** such as fish ***[or]**,* insects*, or aquatic plants*** sold in a pet store ***or similar retail establishment***;

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4. - 10. (No change from proposal.)

...

“Person” means any individual, corporation, company, association, society, firm, partnership, joint stock company, *[food service business,]* or governmental entity. “Person” shall, for the purpose of enforcement of this chapter, include a responsible corporate official, which includes a managing member of a limited liability company or a general partner of a partnership.

“Plastic” means a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shapes during the life cycle and after disposal.

“Plastic” includes compostable plastic certified pursuant to ASTM D6400 (available at www.ASTM.org) *[and bioplastic, or plastic made with non-petroleum source material]*.

...

7:26L-1.6 Exemptions

(a) The following products are exempt from the prohibitions at N.J.A.C. 7:26L-1.3 until May 4,

[2025] ***2026***:

1.- 4. (No change from proposal.)

(b) (No change from proposal.)