This document describes 38 MRSA Chapter 15-A, a statewide law banning the use of disposable polystyrene foam food service containers by covered establishments. The Department of Environmental Protection will update this guidance document as additional questions are received.

Question 1: When does the law take effect, and what will it change?

*Answer:* 38 MRSA Chapter 15-A goes into effect on January 1, 2021. Once the law is in effect, a covered establishment may not process, prepare, sell or provide food or beverages in or on a disposable food service container that is composed partly or entirely of polystyrene foam.

Question 2: What is a “disposable food service container”?

*Answer:* Any service ware designed for one-time use, such as for take-out foods, beverages, packaged meat, eggs, bakery products or leftovers from partially consumed meals prepared by covered establishments is considered a disposable food service container.

Question 3: What is “service ware”?

*Answer:* A container, bowl, plate, tray, carton, cup, lid, sleeve, stirrer or other item designed to be used to contain, transport, serve or consume prepared foods.

Question 4: Does this law apply to service ware for raw meat, eggs or other foods that are not ready-to-eat?

*Answer:* Yes. In this case, “prepared” refers to making food ready for sale and includes manufacturing, processing, packaging, storing or holding before sale or otherwise preparing food for sale to consumers.

Question 5: Who does not need to comply with this law?

*Answer:* Licensed hospitals¹ and any “meals on wheels” programs that receive funding from the Department of Health and Human Services are not covered establishments under this law.

Question 6: Who needs to comply with this law?

*Answer:* The following are covered establishments that must comply with this law:

- Food establishments including a factory, plant, warehouse or store in which food and food products are manufactured, processed, stored or held before sale.

¹Specifically, any hospital licensed under Title 22, chapter 405 or a so-called meals on wheels establishment funded in whole or in part directly or indirectly by the Department of Health and Human Services to provide meals at dispersed locations from central kitchen facilities.
packed, or held prior to sale and a caregiver or a registered dispensary that prepare food containing marijuana for medical use;

- Food establishments\(^2\) also include businesses that prepare food and food products which are shipped to Maine customers through the mail or other delivery services (FedEx, United Parcel Service, etc.) or through their own delivery services;
- Eating establishments, which include any place where food or drink is prepared and served or served to the public for consumption on or off the premises;
- An agricultural fair;
- A farmers’ market;
- A food pantry, church, or community organization that provides food or beverages without charge; and
- A boarding home, retirement home, independent living place or nursing home.

**Question 7: How are producers or wholesalers of raw meat, eggs, or other food products located within the State of Maine impacted by this law?**

**Answer:** Any facility located in Maine that meets the definition of a food establishment must comply with the ban regardless of their product being sold in or out of the State. Food establishments located in Maine that package food products for sale within or outside of Maine must comply with this law and cease the use of polystyrene foam trays.

**Question 8: How are wholesalers of food products located out of State impacted by this law?**

**Answer:** The law includes an exemption for the sale at retail of prepackaged food products that were purchased by a retailer at wholesale.

- Retailers may sell food products purchased from out of State wholesalers that are packaged in polystyrene foam and sell directly to the consumer if the retailer does not disturb the original polystyrene foam packaging.
- If a retailer re-packages the product, the retailer must comply with this law and not use polystyrene foam packaging. Addition of a retail pricing label only does not constitute re-packaging.

**Question 9: How are companies that provide mail-delivery or other parcel delivery system (UPS, FedEx, food product specific delivery trucks) food products or meal kits impacted by this law?**

**Answer:** The exemption for polystyrene foam does not apply to mail or other direct delivery meal kits or food products ready for sale, as the point of sale for meal kits is in Maine and therefore required to be compliant. Companies that provide mail-delivery or other direct to consumer delivery of meal kits or food products must comply with this law and cease the use of polystyrene foam containers, coolers, or ice chests in meal delivery kits purchased by Maine consumers once the law goes into effect.

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\(^1\) For more information, see: food establishment, as defined in Title 22, section 2152, subsection 4-A; eating establishment as defined in Title 22, section 2491 including “places in the entertainment, hospitality, recreation, restaurant and tourism industries; catering establishments; correctional facilities; mobile eating places; public and private schools; retail frozen dairy product establishments; and workplace eating establishments and places where food is prepared for vending machines dispensing food other than in original sealed packages”; agricultural fair as defined in Title 7, section 81, subsection 1; farmers’ market as defined in Title 7, section 415, subsection 1, paragraph A.
Question 10: Are there exemptions for certain uses or situations?

**Answer:** Yes. Disposable polystyrene containers may be used for the following purposes or in the following situations:

- Polystyrene foam coolers or ice chests used for processing or shipping seafood;
- Retail food and beverages prepackaged at wholesale in disposable food service containers composed in whole or in part of polystyrene foam when not repackaged by the retailer;
- In the event of an emergency, as determined applicable by the department, covered establishments may use disposable polystyrene foam food service ware for the immediate preservation of public health or safety.

Question 11: Will covered establishments still be allowed to sell packaged disposable polystyrene foam containers for home use?

**Answer:** Yes. This law does not ban the sale of packaged polystyrene items (plates, cups, bowls, etc.) intended for home use.

Question 12: Will municipal polystyrene foam ordinances remain in place when the statewide law passes?

**Answer:** Municipal ordinances that do not contradict the statewide law will remain in place, as per 30-A M.R.S.A. § 3001.