



Maryland Department of Agriculture

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MARYLAND DEPARTMENT OF AGRICULTURE

LEGISLATIVE COMMENT

DATE: March 4, 2020

BILL NUMBER: HOUSE BILL 1442

SHORT TITLE: ENVIRONMENT – EXPANDED POLYSTYRENE FOOD SERVICE
PRODUCTS – DEFINITION

MDA POSITION: INFORMATION

EXPLANATION:

House Bill 1442 alters the definition of “expanded polystyrene food service product” to exclude specified egg cartons shipped into or within the State. As a result, these egg cartons are no longer subject to restrictions on the sale of expanded polystyrene food service products.

BACKGROUND INFORMATION:

Maryland agricultural businesses that produce and pack eggs into cartons distribute their product widely both domestically and for export to other countries. Most of the eggs produced and packed in Maryland are shipped out of state while the majority of the eggs (approximately 70%) consumed in Maryland are produced and packed in other states. Currently the Maryland Department of Agriculture (MDA) has 112 commercial egg producers and packers registered to pack eggs for distribution in Maryland, however, only six of these packers are in Maryland. The six commercial producer/packers of eggs account for 95% of Maryland’s egg production. Eggs are packed into cartons as a raw agricultural commodity that must be cooked or otherwise prepared by the consumer at home before consumption and are not ready to eat when they leave the packing facility. Compliance with the law as currently enacted will create significant economic and operational hardships for these Maryland businesses. The proposed legislation only addresses the shipment of egg cartons into and within the state and does not address the fiscal and operational impact on Maryland businesses that pack eggs into the cartons that may be sold in Maryland.

The current enacted legislation is focused on eliminating improper disposal of polystyrene products generally used for ready-to-eat foods. Foam and fiber cartons are designed to transport eggs without breakage from the packer to wholesalers, retail stores, restaurants, cafeterias, and other locations that will either distribute the eggs to food service locations or prepare the eggs for consumption or sale directly to the consumer. More than likely, the empty cartons will then be properly disposed of in household or commercial waste collection unlike containers for ready to eat foods that are frequently consumed in picnic areas, cars, or other outdoor areas and left behind.

There are many scenarios where the Maryland producer/packer has no way of knowing where eggs they have packed will be delivered. Many of these eggs are packed into cartons provided by retail grocery store chains that are branded for regional and/or national distribution and bear the name and address of the grocery store chain. In many cases, distribution from the packer goes to a warehouse located in another state and the eggs will be delivered by the warehouse to stores in multiple states including Maryland. In this case, the Maryland business has unknowingly packed eggs that will be sold in Maryland in a polystyrene carton provided by their customer. In some cases, a grocery store chain with an out-of-state warehouse may decide to no longer purchase eggs from the Maryland business to avoid compliance issues with eggs being packed in polystyrene in Maryland and being distributed to retail locations for sale in Maryland. The Maryland business would lose these sales to out-of-state businesses that sell eggs inside and outside of Maryland.

Maryland egg producer/packers have stock cartons that are produced in bulk quantity for distribution to their Maryland location(s) and their packing plants that are in other states. As federal and state laws require the name and address of the distributor or packer to be on all cartons of eggs, most use the address of their corporate headquarters regardless of which location packs the eggs. In some cases, the corporate headquarters is in Maryland and a Maryland address is on the carton, but the eggs are packed into the carton in another state. In other cases, the corporate headquarters is not in Maryland, so the address is out of state, but the eggs are packed into the carton in Maryland. These cartons of eggs are distributed not only in Maryland but to multiple states. Restricting the types of cartons, a Maryland location use to pack eggs will have a significant operational and fiscal impact on these businesses.

In general, shell eggs are placed into cartons by agricultural businesses that also manage/own the poultry flocks and are not considered “food service businesses” as defined in the Health Article. These businesses are not currently regulated by the Maryland Department of Health, a local health department or a local environmental department. These agricultural businesses are regulated by MDA as “packers.” As defined in §4-301(e), “Packer” means any person who places shell eggs in the original case, carton, or container that is used to hold eggs for distribution or sale to a consumer.” The Agriculture Article also includes requirements for carton labeling enforced by MDA. Enforcement by the local health department or local environment departments of polystyrene carton requirements would place an additional regulatory burden on egg packers.

If you have additional questions, please contact Cassie Shirk, Director of Legislation and Governmental Affairs, at cassie.shirk@maryland.gov or 410-841-5886.