



New York State Department of Environmental Conservation
Division of Materials Management

2022

FINANCIAL HARDSHIP WAIVER REQUEST FORM
Expanded Polystyrene Foam Container and Polystyrene Loose Fill
Packaging Ban

This form is to be used by eligible covered food service providers and facilities to apply for a waiver from the requirements of subdivision 1 of section 27-3003 of the Environmental Conservation Law (ECL) for one or more disposable food service containers sold, offered for sale, or distributed in New York State.

Prior to completing this Expanded Polystyrene Foam Container Hardship Waiver Request Form, please review the law regarding requirements and eligibility. For more information about the law, regulations, hardship waiver, and exemptions visit <https://on.ny.gov/FoamFreeNY>. Questions? E-mail foamban@dec.ny.gov

I. General Information

Under the [Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Ban](#), **effective January 1, 2022**, no covered food service provider or store will be allowed to sell, offer for sale, or distribute disposable food service containers that contain expanded polystyrene foam (EPS foam) in New York State. However, eligible covered food service providers and facilities may apply for a 12-month financial hardship waiver from certain requirements.

Covered food service providers and facilities that sell or distribute ready-to-eat prepared food and beverages and meet the eligibility criteria may request a financial hardship waiver for single-use, disposable foam food service containers through this form. Waivers granted will be valid for one year. The submission of this waiver request form does not guarantee approval of a waiver.

II. Eligibility Criteria

A covered food service provider is defined as any person engaged in the business of selling or distributing prepared food and beverages for on premises or off premises consumption.

Am I a covered food service provider? Visit: <https://on.ny.gov/FoamFreeNY>

To be eligible to use this form, a covered food service provider or facility must be located in or operating within New York state and must be located outside of New York City. For information and waiver applications regarding New York City's foam ban visit: nyc.gov/foamban

Additionally, a covered food service provider or facility must be located in a county that is not implementing a local county law banning the sale or distribution of EPS foam containers or packaging after January 1, 2022. For more information, contact your county.

Individuals, businesses, and organizations that do not meet the criteria specified in this section are not eligible to apply for a financial hardship waiver.

1. Facilities that provide food to food insecure individuals

Any facility, regardless of income, operated by a not-for-profit corporation, federal, state, or local government agency that provides food/meals to food-insecure individuals may apply for a renewable 12-month financial hardship waiver.

2. Covered food service providers that do not provide food to food insecure individuals

Covered food service providers that have an annual gross income under \$500,000 per location, do not operate 10 or more locations in New York, and are not franchises may apply for a renewable 12-month financial hardship waiver.

III. Instructions

All eligible covered food service providers and facilities must complete Part A of the waiver request form and the Certification in Part C. Covered food service providers who do not provide food/ meals to food insecure individuals but meet other eligibility criteria must also complete Part B of the form.

All information and documents for covered food service providers and facilities necessary for the New York State Department of Environmental Conservation (Department) to make a determination must be included. The Department reserves the right to request supporting documents in order to make a determination. Please answer each question in the request form. If a business entity (such as a corporation, limited partnership, limited liability company, limited liability partnership, general partnership, or sole proprietorship) owns the facility or covered food service provider, please indicate the name exactly as it appears on any certificates filed with the New York State Department of State and/or with the county clerk in each county in which the entity conducts or transacts business.

Retain a copy of the confirmation email you receive after submitting the request form to demonstrate that your request is pending evaluation. The Department will issue a written approval or denial of a waiver to the email address indicated in Part A of the form.

Information submitted for a waiver request may be shared publicly by the Department pursuant to the Freedom of Information Law (FOIL). *For information about the Freedom of Information Law visit: <https://www.dec.ny.gov/public/373.html>.* The Department may also share the information in the waiver request with the New York State Department of Taxation and Finance or other relevant agencies to verify information submitted on the form.

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Part A

Must be completed by all eligible covered food service providers and facilities.

I. Facility or Covered Food Service Provider Information

1. General Information

Owner Name (Full name, if an individual) _____

Name of Business or Organization: _____

Primary Business Contact and Title: _____

Email: _____ Phone Number: _____

Address of Business/ Organization : _____

City/ Town _____ State: _____ Zip code: _____

County: _____

Does the business/ organization do business under any other names? Yes No

If Yes, please list: _____

2. Type of Covered Food Service Provider or Facility

Please select the type of facility or covered food service provider applying for this waiver.

Restaurant	Deli	Coffee shop
Grocer	Other mobile establishment	
Caterer	Adult care facility	Nursing home
Food truck	Secondary school	College or university
Hospital	Food pantry	
Elementary school		
Community meal program		
Other (please specify below):		

II. Eligibility

1. Please indicate which eligibility criteria the facility/covered food service provider is applying under:

Group 1: Facility that provides food to food insecure individuals

The facility is eligible for a financial hardship waiver because it meets the following requirements (check all that apply):

The facility provides food to food insecure individuals at no or nominal charge

The facility is operated by any one of the following:

- a federal government agency
- state government agency
- local government agency
- a not-for-profit corporation authorized to conduct activities in New York State

Group 2: Covered food service provider non-franchise small business

The covered food service provider is eligible for a financial hardship waiver because it meets all of the following criteria (check all that apply):

The covered food service provider has an annual gross income under \$500,000 per location as stated on the income tax filing for the most recent tax year.

The covered food service provider does not operate 10 or more locations within New York State.

The covered food service provider is not operated pursuant to a franchise agreement.

2. Is the covered food service provider or facility located in or operating within New York state?

Yes No

3 a. Is the covered food service provider or facility located outside of New York City?

Yes No

b. If the answer to Question 3.a. above is "yes" please check with your county to make sure they are not implementing a local law that bans the sale or distribution of EPS foam containers after January 1, 2022. If your county will be implementing a local law after this date, you may not apply for this waiver and should consult the county about local laws.

III. Disposable EPS Foam Food Service Containers for Which a Waiver is Requested

1. Please provide a list and description of all disposable food service containers that contain EPS foam that the facility or covered food service provider wants to continue distributing in New York State, including information on container type, size, cost per unit, and quantity purchased per calendar year. If you need additional space to list all containers that you need a waiver for, please submit additional pages. Please follow the example provided below.

___ Check here if you are submitting additional, supporting documentation (*Optional*)
*Attach supporting documents with this application when submitting electronically

Container Type ¹	Container Size	Cost/ Unit ²	Quantity Purchased per Calendar Year (units)	Cost per Calendar Year
<i>e.g. Foam Cup</i>	<i>8 oz.</i>	<i>\$0.04/ unit</i>	<i>50,000</i>	<i>\$2,000.00</i>
1.				
2.				
3.				
4.				
5.				

1. Container type examples: cup, plate, tray, bowl, etc.

2. A unit is equal to a single item. If you would like to list price/ case, show the case price in the Additional Notes box and calculate the price per unit in the table.

Additional Notes:

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2. a. Is the covered food service provider or facility only seeking a waiver in order to use up their current supply of EPS foam containers instead of purchasing new, alternative containers?

Yes No

b. If yes, the covered food service provider or facility anticipates using up their current supply by:
(date)

IV. Alternative Product Analysis

1. Please list comparable alternative products for each container with information concerning container type, material, size, cost per unit, quantity and annual cost for purchasing the alternative container. Attach additional pages, if needed. Please follow the example below.

Check here if you are submitting additional, supporting documentation. *(Optional)*
**Attach supporting documents with this application when submitting electronically*

Container Type ¹	Material Type ²	Container Size	Cost/ Unit ³	Quantity to purchase per calendar year (units)	Cost per calendar year
<i>e.g. Insulated hot cup</i>	<i>Paper/ PLA</i>	<i>8 oz</i>	<i>\$0.12/ unit</i>	<i>50,000</i>	<i>\$6,000</i>
1.					
2.					
3.					
4.					

1. Container type examples: cup, plate, tray, bowl, etc.

2. Material type examples: #1 PET clear plastic, paperboard, molded fiber, aluminum, etc.

3. A unit is equal to a single item. If you would like to list price/ case, show the case price in the Additional Notes box and calculate the price per unit in the table.

Additional Notes:

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2. Check here if you have made all efforts to find the lowest cost alternatives available.

3. Please explain how the purchase or use of alternative products that are not composed of EPS foam would create an undue financial hardship for the facility or covered food service provider. Attach additional pages, if needed.

Check here if you are submitting additional, supporting documentation. *(Optional)*
**Attach supporting documents with this application when submitting electronically*

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Part B

Complete Part B ONLY if you checked "Group 2 - Covered food service provider non-franchise small business" in the Eligibility section of Part A.

I. Comparable Cost of Alternative Containers

In addition to the requirements in Part A, a covered food service provider seeking a waiver under "Group 2: *Covered food service provider non-franchise small business*" must demonstrate there is **no product of comparable cost** that is not composed of EPS foam.

Comparable cost means any of the following:

- The purchase cost of the alternative is the same as the purchase cost of a comparable product that contains expanded polystyrene foam.
 - The purchase cost of the alternative is less than the purchase cost of a comparable product that contains expanded polystyrene foam.
 - The purchase cost of the alternative does not exceed a cost of 10% above the purchase cost of a comparable product that contains expanded polystyrene foam.
1. Please explain and, if needed, include documentation demonstrating that there is no alternative product of comparable cost that is not composed of EPS foam, and the purchase price of an alternative is more than 10% above the purchase cost of a comparable foam product.

Check here if you are submitting additional, supporting documentation. (*Optional*)

**Attach supporting documents with this application when submitting electronically*

II. Undue Financial Hardship

In addition to the requirements in Part A, a covered food service provider seeking a waiver under “Group 2: *Covered food service provider non-franchise small business*” must demonstrate more specifically how the purchase, distribution, or use of an alternative product would create an undue financial hardship.

1. An undue financial hardship may be demonstrated by showing **one or more** of the following. Please indicate which options apply.

- a. Increased costs are expected to result in at least a five percent (5%) increase of business operating costs
 - Formula: $(\text{Costs using an alternative} - \text{Costs using foam}) \div \text{Costs using foam} \times 100 = \text{percent change}$
Subtract what your business operating costs would be using foam containers from your business operating costs using alternative containers; divide that amount by your business operating costs using foam containers; and then multiply that number by 100.
 - If the number is equal to or greater than 5, then your business can demonstrate a 5% or greater increase in business operating costs.
- b. Increased costs are expected to result in reduction of at least five percent (5%) in operating profits
 - Formula: $(\text{Profits using an alternative} - \text{Profits using foam}) \div \text{Profits using foam} \times 100 = \text{percent change}$
Subtract what your operating profits would be using foam containers from your business operating profits using alternative containers; divide that amount by your business operating costs using foam containers; and then multiply that number by 100
 - If the number is 5 or greater, then your business can demonstrate a 5% or greater reduction in operating profits
- c. Covered food service provider can demonstrate unique circumstances particular to it that create an undue financial hardship

2. Please provide an explanation of the basis for your choice(s) above, including any calculations.

Check here if you are submitting additional, supporting documentation. (*Optional*)

**Attach supporting documents with this application when submitting electronically*

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PART C: CERTIFICATION

*** Must be completed by ALL eligible covered food service providers and facilities**

A full and complete request for a waiver must include a Certification Form signed by a responsible official. A responsible official is a president, vice president, secretary, treasurer, general partner, proprietor, principal executive officer, or any other person who performs policy or decision-making functions for and is authorized to legally bind the facility or covered food service provider that is requesting a financial hardship waiver. A waiver request will be rejected if this Certification is not completed. A waiver request will be denied or revoked if the facility or covered food service provider provides materially false, misleading, or inaccurate statements on the form or supporting papers.

Certification

I certify under penalty of law that information provided on this form and all attachments were prepared by me or under my direction or supervision and are true, accurate, and complete to the best of my knowledge and belief. I understand that materially false, misleading, or inaccurate information contained in this form or attachments will be cause for denial of this waiver request or revocation of a waiver. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations, and that any false statement made herein is punishable as a Class A misdemeanor pursuant Section 210.45 of the Penal law.

Signature: _____

Name (print): _____

Title: _____

Date: _____

Please make sure your waiver request is complete and submit this request form and any supporting materials to foamban@dec.ny.gov.