



New York State Department of Environmental Conservation
Division of Materials Management

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 Environmental Conservation Law (ECL) § 27-3003(1) and 6 NYCRR Subpart 353-2, for one or more disposable food service containers sold, offered for sale, or distributed in New York State.

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

Prior to completing this request form, please review the law regarding requirements and eligibility. For more information about the law, regulations, financial hardship waiver, and exemptions visit <https://on.ny.gov/FoamFreeNY>.

Questions? E-mail: foamban@dec.ny.gov

Financial Hardship Waiver Renewals: Covered food service providers and facilities who would like to renew an approved request must provide an updated request by filling out this form and checking the “renewal” box. Waiver renewal applications must be received by the Department at least 60 days prior to expiration dates listed on the previously approved waiver.

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 is 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.

Even if a covered food service provider or facility has an approved financial hardship waiver it will not be able to purchase EPS foam products from a retail or wholesale store in New York State. No store (retail or wholesale) is allowed to sell, offer for sale, or distribute disposable food service containers or loose fill packaging that contains expanded polystyrene foam, in New York State. This applies to any non-food retail or wholesale establishment, and includes online sales to customers in New York State, and sales or distribution to covered food service providers or facilities that have approved financial hardship waivers.

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. If you are not sure whether you are a covered food service provider, please 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 in New York State, but cannot be located in New York City. (New York City has its own foam ban.) 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

A facility or covered food service provider must meet all parts of one of the definitions below (either #1 or #2).

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 (Group 2) but meet other eligibility criteria must also complete Part B of the form. Please answer each question on the request 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. **The Department cannot process a waiver request unless ALL required information is provided; if you fail to complete all required parts of this request form, it will be returned to you for completion. If you have questions about the form, contact foamban@dec.ny.gov.**

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 automatic reply 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) unless you request that the Department except certain confidential business information from disclosure pursuant to Public Officers Law §87(2) and the Department's FOIL regulations at 6 NYCRR § 616.7. *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.

Financial Hardship Waiver Renewals: Covered food service providers and facilities who would like to renew an approved request must provide an updated request by filling out this form and checking the "renewal" box. Waiver renewal applications must be received by the Department at least 60 days prior to expiration dates listed on the previously approved waiver.

Please complete the checklist at the end of this form before submitting your request to foamban@dec.ny.gov to make sure you have a complete form and have provided all required information.

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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

All questions in this section must be answered. The Department cannot process a waiver request unless ALL required information is provided; if you fail to complete all required parts of this request form, it will be returned to you for completion. If you have questions about the form, contact foamban@dec.ny.gov.

1. General Information

New Request

Renewal

Correction or Update

If this is a renewal please provide the ID number listed on your previously approved waiver:

Owner Name (Full name, if an individual)_____

Name of Business or Organization: _____

Primary Business Contact and Title: _____

Email: _____ Phone Number: _____

Address of Business/ Organization

*cannot be a P.O box

*must be the address of the premises where the food is prepared and placed in containers.

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.

- | | | |
|---|--|--|
| <input type="checkbox"/> Restaurant | <input type="checkbox"/> Deli | <input type="checkbox"/> Hospital |
| <input type="checkbox"/> Grocer | <input type="checkbox"/> Coffee shop | <input type="checkbox"/> Elementary school |
| <input type="checkbox"/> Food truck | <input type="checkbox"/> Caterer | <input type="checkbox"/> Secondary school |
| <input type="checkbox"/> Other mobile establishment | <input type="checkbox"/> Adult care facility | <input type="checkbox"/> Nursing home |
| <input type="checkbox"/> Community meal program | <input type="checkbox"/> College or university | <input type="checkbox"/> Food pantry |
| <input type="checkbox"/> Other (please specify) | | |

II. Eligibility

Select either Group 1 or Group 2 (you cannot select both). Check all boxes that apply in the group you select.

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 in "a." and at least one of the requirements in "b" below. (check all that apply):

- a. The facility provides food to food insecure individuals at no or nominal charge
- b. The facility is operated by any one of the following:
 - federal government agency
 - state government agency
 - local government agency
 - 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. **annual gross income means total income from all sources (e.g. selling goods or services) before subtracting taxes and other expenses.*

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. Location and Operation

a. Is the covered food service provider or facility located in or operating in New York State?

Yes No

b. Is the covered food service provider or facility located in New York City?

Yes No

c. If the answer to question 2a. 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.

d. If the answer to question 2.b is “yes”, discontinue filling out this request and visit nyc.gov/foamban for information and waiver applications for New York City’s foam ban.

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

All questions in this section must be answered, even if the covered food service provider or facility is only using up its current stock of EPS foam containers. If you have questions about the form, contact foamban@dec.ny.gov.

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.				
6.				
7.				

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:

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 using up supply, the covered food service provider or facility anticipates using up their current supply by:

(date) _____ N/A _____

c. If not using up supply, where does the covered food service provider or facility plan to obtain EPS foam containers?

Name _____

Address or website _____

IV. Alternative Product Analysis

All questions in this section must be answered, even if the covered food service provider or facility is only using up its current stock of EPS foam containers. If you have questions about the form, contact foamban@dec.ny.gov.

1. Please list a comparable alternative product for each container that was listed in the table in section III. Disposable EPS Foam Food Service Containers for Which a Waiver is Requested 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 and review [DEC's Reference Guide to EPS Foam Alternatives](#) for more information about choosing alternative containers, if needed.

____ 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.					
5.					
6.					
7.					

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:

To complete section IV, provide responses to questions 2 and 3 below:

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.

All parts of this section are required for Group 2. The Department cannot process a waiver request unless ALL required information is provided; if you fail to complete all required parts of this request form, it will be returned to you for completion. If you have questions about the form, contact foamban@dec.ny.gov.

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. **If this information was provided in Part A, please indicate that here.**

_____ 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.

A tool to calculate Undue Financial Hardship can be found to the left of this page as an attachment of an Excel spreadsheet called [Undue Financial Hardship Calculator](#). You may use this tool, or use the fillable boxes in Part B(II). If you choose to use the calculator tool, please click the paperclip icon to the left and then open the Undue Financial Hardship Calculator, enter information, and save the Excel spreadsheet which will be saved as an attachment to this PDF.

_____ I am using the attached Undue Financial Hardship Calculator tool

1. An undue financial hardship may be demonstrated by showing one or more of the following. Please review all options (a, b, or c) and then choose all that apply.

a. _____ Increased costs are expected to result in at least a five percent (5%) increase of business operating costs

_____ Check here if the information in provided in Part B(II) is confidential business information that you request to be excepted from public disclosure if it is requested pursuant to the Freedom of Information Law, because, if disclosed, it would cause substantial injury to the competitive position of your commercial enterprise/business.

Subtract what your **total business operating costs** would be using foam containers from your **total 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.

_____ box 1 **total** business operating costs if using alternative containers

_____ box 2 **total** business operating costs using foam containers

_____ box 3 Subtract **business operating costs** using foam containers from your **business operating costs** using alternative containers (box 1- box 2)

_____ box 4 (This number is box 3 ÷ box 2)

_____ box 5 **percent change** (box 4 x 100)

If this 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.

_____ Check here if the information in in Part B(II) is confidential business information that you request to be excepted from public disclosure if it is requested pursuant to the Freedom of Information Law, because, if disclosed, it would cause substantial injury to the competitive position of your commercial enterprise/ business.

Subtract what your **total operating profits** would be using alternative containers from your **total operating profits** using foam containers; divide that amount by your business operating profits 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.

_____ box 1 operating profits using foam containers

_____ box 2 operating profits using alternative containers

_____ box 3 Subtract total operating profits using alternative containers from total operating profits using foam containers (box 1 - box2)

_____ box 4 (this number is box 3 ÷ box1)

_____ box 5 percent change (box 4 x 100)

If this number is equal to or greater than 5, 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 (a, b, c) 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.

I understand that a store (retail or wholesale) cannot sell, offer for sale, or distribute disposable food service containers that contain expanded polystyrene foam in New York State. This includes selling, offering for sale, or distributing these containers to covered food service providers and facilities with an approved financial hardship waiver.

_____ Signature: _____

If you are unable to provide a written or electronic signature above, you may check the box instead. By checking the box next to "Signature," I hereby indicate my intent to electronically sign and submit this Certification Form, and that I have the authority to sign this form on behalf of the covered food service provider/facility.

Name of responsible official that is certifying _____

Title of responsible official that is certifying: _____

Date: _____

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

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Checklist

The Department cannot process a waiver request unless ALL required information is provided. Prior to submitting this form, check all applicable boxes below indicating that you have completed all relevant parts to this form.

Part A (must be completed by eligibility Group 1 and Group 2)

- General Information
- Type of Covered Food Service Provider or Facility
- Eligibility (Group 1 or Group 2)
- Location and Operation
- Current and future EPS foam container supply information
- Table listing all EPS Foam Food service containers for which a waiver is requested
- Table listing comparable alternative products for each EPS foam food service container and other alternative product analysis questions

Part B (must be completed by eligibility Group 2)

- Explanation demonstrating that there is no alternative product of comparable cost that is not composed of EPS foam
- Undue financial hardship calculations and explanation

Part C (must be completed by eligibility Group 1 and Group 2)

- Certification checkbox or signature
- Name and Title of responsible official
- Date

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