

## Chapter 13: [Financial Hardship Waiver of Prohibition of Use of Certain Expanded Polystyrene Items]

**Editor's notes:** the bracketed chapter title above was provided by the editor as an aid for the user and is not an official part of the rule as promulgated by DSBS.

The waiver described in this chapter pertains to provisions and requirements set forth in Administrative Code §16-329.

### § 13-01 Definitions.

As used in these rules, the following terms shall have the following meanings:

**Applicant** means a business or not-for-profit corporation which has applied for a financial hardship waiver.

**Business** means any food service establishment, mobile food commissary, or store that is not a not-for-profit corporation.

**Acknowledgement Letter** means the letter sent by DSBS to an applicant notifying the applicant of its pending application for a financial hardship waiver.

**City** means the City of New York.

**Commissioner** means the Commissioner of the New York City Department of Small Business Services or his or her designee or his or her successor in function.

**Comparable alternative product** means a product to be used by the business or not-for-profit corporation in place of an expanded polystyrene single service item prohibited by §16-329 of the Administrative Code or any successor provision.

**Day** means a calendar day unless otherwise specified.

**Denial** or **Denied** means a determination by DSBS that an applicant is not eligible for a financial hardship waiver.

**DSBS** means the New York City Department of Small Business Services or its successor in function.

**DSNY** means the New York City Department of Sanitation or its successor in function.

**DSNY Commissioner** means the commissioner of the New York City Department of Sanitation or his/her designee or his/her successor in function.

**Expanded polystyrene** means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Such term shall not include rigid polystyrene.

**Food service establishment** means a premises or part of a premises where food is provided directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle. Food service establishment shall include, but not be limited to, full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts and cafeterias.

**Mobile food commissary** means any facility that:

1. disposes of solid waste generated by the operation of a food service establishment that is located in or is a pushcart, stand or vehicle; or
2. supplies potable water and food, whether pre-packaged or prepared at the mobile food commissary, and supplies non-food items.

**Store** means a retail or wholesale establishment other than a food service establishment.

**Undue financial hardship** means that an applicant has demonstrated any of the following, based on submitted financial projections:

1. The cost of using a comparable alternative product will result in an increase of more than 5% of the business's annual cost of operations;
2. The increased costs will result in the elimination of at least one employee; or
3. The increased cost will result in a reduction in annual net profit of more than 5%.

(Added City Record 6/23/2015, eff. 7/23/2015)

### § 13-02 Application for a Waiver.

(a) To be eligible for consideration of a financial hardship waiver, a business must:

(1) Submit its tax returns for the most recent tax year, which must demonstrate that the business had an annual gross income of less than five hundred thousand dollars per location for such year;

(2) Provide a list of expanded polystyrene single service items used by the business for which a waiver is sought;

(3) Provide a list of comparable alternative products that cost more than the expanded polystyrene single service items the business currently uses;

(4) Provide a detailed explanation of why the use of comparable alternative products creates an undue financial hardship for the business; and,

(5) Provide any additional information related to the waiver request as requested by DSBS or DSNY.

(b) Applicants that are not-for-profit corporations must:

(1) Submit a certificate of incorporation demonstrating that the applicant is a not-for-profit corporation;

(2) Submit a current Form 990 filed with the Internal Revenue Service;

(3) Provide a list of expanded polystyrene single service items used by the not-for-profit corporation for which a waiver is sought;

(4) Provide a list of comparable alternative products that cost more than the expanded polystyrene single service items the not-for-profit corporation currently uses;

(5) Provide a detailed explanation of why the use of comparable alternative products creates an undue financial hardship for the not-for-profit corporation; and

(6) Provide any additional information related to the waiver request as requested by DSBS or DSNY.

(Added City Record 6/23/2015, eff. 7/23/2015)

### **§ 13-03. Waiver Determinations.**

(a) Determinations by the DSBS Commissioner approving or denying an applicant's waiver request, made in consultation with the DSNY Commissioner, shall be made in writing on the basis of all the circumstances presented by the applicant.

(b) A copy of the waiver determination shall be sent to the applicant and filed with DSBS and DSNY. Such determinations shall be made available for public inspection upon request.

(c) Waivers shall be valid for twelve months from the date of determination and shall be renewable upon written application to DSBS. All determinations shall be final.

(d) Applicants receiving a denial of a waiver request may reapply after twelve months from the date of the denial of the initial application. Applicants receiving a denial of a waiver request or a renewal request shall have two months from the date of the denial to come into compliance with section 16-16-329329 of the Administrative Code.

(e) DSBS will send applicants an acknowledgment letter notifying the applicant of receipt of its pending application for a financial hardship waiver within twenty calendar days from the date of receipt of a waiver request application. A pending application for a financial hardship waiver or application for renewal of a waiver shall be a defense to any notice of violation issued pursuant to §16-329 Administrative Code to which such pending application relates and such notice of violation shall be dismissed.

(Added City Record 6/23/2015, eff. 7/23/2015)

### **§ 13-04. Renewals.**

A business may request renewal of a waiver no later than 30 days before the termination date of the waiver. A request for renewal shall certify that there has been no material change with respect to the relevant facts or circumstances that existed at the time the initial waiver was granted. Any application submitted after the termination date or less than 30 days before the termination date of the waiver shall be treated as a new application.

(Added City Record 6/23/2015, eff. 7/23/2015)