§ 27-3005. Exemptions and waivers.

1. Notwithstanding any inconsistent provision of law, this title shall not apply to:

(a) Prepackaged food filled or sealed prior to receipt at a covered food service provider; or

(b) Raw meat, pork, seafood, poultry or fish sold for the purpose of cooking or preparing off-premises by the customer; or

* (c) Expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are used for cold storage for:

(i) drugs and medical devices as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.);

(ii) animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and other packaging materials regulated by the United States department of agriculture under the virus, serum, toxin act (21 U.S.C. 151-159), including vaccines;

(iii) tissues as defined in section forty-three hundred sixty of the public health law or biological products as defined in the federal Public Health Service Act (42 U.S.C. Sec 262);

(iv) temperature-sensitive samples, cultures or specialized laboratory reagents requiring cold storage during shipment, either delivered to or received from:

(A) the department of agriculture and market's food laboratory pursuant to its duties under the agriculture and markets law; or

(B) laboratories for testing to help ensure human health, animal health, and/or food safety pursuant to statutory or regulatory requirements of, or standards established under, programs administered by the department, the department of health, the department of agriculture and markets, the United States department of agriculture and/or the United States food and drug administration; or

(v) microbial cultures used for dairy, meat, or fermented beverage manufacturing and requiring cold storage during shipment or delivery to dairy or meat processing plants or breweries and wineries as defined in section three of the alcoholic beverage control law.

* NB Effective until January 1, 2030

* (c) Expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are used for cold storage for:

(i) drugs and medical devices as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.);

(ii) animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and other packaging materials regulated by the United States department of agriculture under the virus, serum, toxin act (21 U.S.C. 151-159), including vaccines;

(iii) tissues as defined in section forty-three hundred sixty of the public health law or biological products as defined in the federal Public Health Service Act (42 U.S.C. Sec 262); or

(iv) temperature-sensitive samples, cultures or specialized laboratory reagents requiring cold storage during shipment, either delivered to or received from:

(A) the department of agriculture and market's food laboratory pursuant to its duties under the agriculture and markets law; or

(B) laboratories for testing to help ensure human health, animal health, and/or food safety pursuant to statutory or regulatory requirements of, or standards established under, programs administered by the department, the department of health, the department of agriculture and markets, the United States department of agriculture and/or the United States food and drug administration.

* NB Effective January 1, 2030 until January 1, 2035

* (c) Expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are used for cold storage for:

(i) drugs and medical devices as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.);

(ii) animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and other packaging materials regulated by the United States department of agriculture under the virus, serum, toxin act (21 U.S.C. 151-159), including vaccines; or

(iii) tissues as defined in section forty-three hundred sixty of the public health law or biological products as defined in the federal

Public Health Service Act (42 U.S.C. Sec 262).

* NB Effective January 1, 2035

2. Any facility, regardless of its income, including soup kitchens, food pantries and places of worship, operated by a not-for-profit corporation or by a federal, state, or local government agency that provides food to needy individuals at no or nominal charge, and any covered food service provider having an annual gross income under five hundred thousand dollars per location as stated on the income tax filing for the most recent tax year and that: (a) does not operate ten or more locations within the state; and (b) is not operated pursuant to a franchise agreement may request from the department, in a manner and form established by the department, a financial hardship waiver of the requirements of section 27-3003 of this title. Such waiver request may apply to one or more disposable food service containers sold, offered for sale, or distributed by any such covered food service provider. The department shall grant a waiver if such covered food service provider demonstrates that there is no alternative product of comparable cost that is not composed of expanded polystyrene foam and that the purchase or use of an alternative product that is not composed of expanded polystyrene foam would create an undue financial hardship. Such financial hardship waiver shall be valid for twelve months and shall be renewable upon application to the department.