

GUIDANCE ON POLYSTYRENE FOAM FOOD SERVICE CONTAINER BAN

This document describes [38 MRSA Chapter 15-A](#), a statewide law banning the use of disposable polystyrene foam food service containers by covered establishments. The Department of Environmental Protection will update this guidance document as additional questions are received.

Question 1: When does the law take effect, and what will it change?

Answer: 38 MRSA Chapter 15-A will be enforced as of July 1, 2021. Once the law is in effect, a covered establishment may not process, prepare, sell or provide food or beverages in or on a disposable food service container that is composed partly or entirely of polystyrene foam.

Question 2: What is a “disposable food service container”?

Answer: Any service ware designed for one-time use, such as for take-out foods, beverages, bakery products or leftovers from partially consumed meals prepared by covered establishments is considered a disposable food service container. Raw proteins such as meat, poultry, seafood and eggs and some pre-packaged food are currently exempted, but will be included at a later date (see Questions 4 and 5).

Question 3: What is “service ware”?

Answer: A container, bowl, plate, tray, carton, cup, lid, sleeve, stirrer or other item designed to be used to contain, transport, serve or consume prepared foods.

Question 4: Does this law apply to service ware for foods that are not ready-to-eat?

Answer: Yes. In this case, “prepared” refers to making food ready for sale and includes manufacturing, processing, packaging, storing or holding before sale or otherwise preparing food for sale to consumers.

Question 5: Are there exemptions for certain uses or situations?

Answer: Yes. Disposable polystyrene containers may be used for the following purposes or in the following situations:

- Polystyrene foam coolers or ice chests used for processing or shipping seafood;
- In the event of an emergency, as determined applicable by the department, covered establishments may use disposable polystyrene foam food service ware for the immediate preservation of public health or safety.
- Lastly, the following temporary exemptions implemented via emergency legislation¹ in June of 2021 will be repealed on **July 1, 2025**:
 - Retail food and beverages prepackaged at wholesale in disposable food service containers composed in whole or in part of polystyrene foam when not repackaged by the retailer;
 - Polystyrene foam trays and cartons for “raw proteins” including raw eggs, seafood, meat, and poultry.

¹ See H.P. 1214, L.D. 1631, “[An Act To Amend the Laws Banning Polystyrene Foam To Exclude Packaging for Meat, Poultry, Fish, Seafood and Eggs](#)” for more information.



Question 6: How are wholesalers of food products impacted by this law?

Answer: As noted above, the law includes a temporary exemption for the sale at retail of prepackaged food products purchased by a retailer at wholesale.

- Retailers may sell food products purchased from wholesalers that are packaged in polystyrene foam and sell directly to the consumer if the retailer does not disturb the original polystyrene foam packaging.
- If a retailer re-packages the product, the retailer must comply with this law and not use polystyrene foam packaging. Addition of a retail pricing label only does not constitute re-packaging.

This exemption is in effect until July 1, 2025, at which time items purchased prepackaged at wholesale by a retailer may no longer be sold at retail if the packaging is composed partly or entirely of polystyrene foam.

Question 7: Are compostable, plant-based, or biodegradable disposable foam food service containers exempt under this law?

Answer: Whether derived from petroleum or plant-based sources, even compostable or biodegradable foam disposable food service containers may be made with a polystyrene and/or styrene additive. This is in order to provide extruded foam with the desired expansion properties and these products would not be exempt. However, foam food service containers that are not formulated with styrene continue to be exempt under this law.

Question 8: Who does not need to comply with this law?

Answer: Licensed hospitals² and any “meals on wheels” programs that receive funding from the Department of Health and Human Services are not covered establishments under this law.

Question 9: Who needs to comply with this law?

Answer: The following are covered establishments that must comply with this law:

- Food establishments including a factory, plant, warehouse or store in which food and food products are manufactured, processed, packed, or held prior to sale and a caregiver or a registered dispensary that prepare food containing marijuana for medical use;
- Food establishments³ also include businesses that prepare food and food products which are shipped to Maine customers through the mail or other delivery services (FedEx, United Parcel Service, etc.) or through their own delivery services;
- Eating establishments, which include any place where food or drink is prepared and served or served to the public for consumption on or off the premises;
- An agricultural fair;
- A farmers' market;
- A food pantry, church, or community organization that provides food or beverages without charge; and

²Specifically, any hospital licensed under Title 22, chapter 405 or a so-called meals on wheels establishment funded in whole or in part directly or indirectly by the Department of Health and Human Services to provide meals at dispersed locations from central kitchen facilities.

³For more information, see: food establishment, as defined in Title 22, section 2152, subsection 4-A; eating establishment as defined in Title 22, section 2491 including “places in the entertainment, hospitality, recreation, restaurant and tourism industries; catering establishments; correctional facilities; mobile eating places; public and private schools; retail frozen dairy product establishments; and workplace eating establishments and places where food is prepared for vending machines dispensing food other than in original sealed packages”; agricultural fair as defined in Title 7, section 81, subsection 1; farmers' market as defined in Title 7, section 415, subsection 1, paragraph A.

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- A boarding home, retirement home, independent living place or nursing home.

Question 10: How are companies that provide mail-delivery or other parcel delivery system (UPS, FedEx, food product specific delivery trucks) food products or meal kits impacted by this law?

Answer: The exemption for polystyrene foam does not apply to mail or other direct delivery meal kits or food products ready for sale, as the point of sale for meal kits is in Maine with sales directly to consumers, just as with products sold in the retail environment.

Companies that provide mail-delivery or other direct-to-consumer delivery of meal kits or food products must comply with this law and cease the use of polystyrene foam

containers, coolers, or ice chests in meal delivery kits purchased by Maine consumers once the law goes into effect.

Question 11: Will covered establishments still be allowed to sell packaged disposable polystyrene foam containers for home use?

Answer: Yes. This law does not ban the sale of packaged polystyrene items (plates, cups, bowls, etc.) intended for home use.

Question 12: Will municipal polystyrene foam ordinances remain in place when the statewide law passes?

Answer: Municipal ordinances that **do not contradict** the statewide law will remain in place, as per [30-A M.R.S.A. § 3001](#).



For Questions Regarding the Polystyrene Foam Food Service Container Ban:

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