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Florida to phase out use of polystyrene as food packaging over safety concerns

U.S – The Florida Department of Agriculture and Consumer Services has begun rulemaking to phase out the use of polystyrene products in Florida grocery stores, markets, convenience stores, and other regulated businesses.

Agriculture Commissioner Nikki Fried announced the major consumer and environmental policy initiative at a press conference in Sarasota.

For 100 years, polystyrene food packaging products like Styrofoam cups, plates, and to-go boxes have been inexpensive and widely available. However, studies have shown that chemicals within polystyrene foam may be linked to cancer, vision and hearing loss, birth defects, respiratory irritation, and damage to the liver, kidneys, and spleen, among other health effects, as well as serious, long-lasting environmental and animal health effects.

The department's draft rule, 5K-4.045, will begin a multi-year phase-out of polystyrene packaging beginning in 2022, with a maximum allowable amount of polystyrene to be sold or distributed decreasing each year. The draft rule will also require regulated entities to file an annual report of the amount of polystyrene sold or distributed that year.

The department is currently undergoing the rulemaking process, to include workshops and public comment periods. According to *The Packer*, the rule will be established and enforced through the department's statutory authority, Chapter 500.90, Florida Statutes.

The Commissioner commented that polystyrene may be convenient, but there is a hidden danger to public health from these disposable consumer products. Chemicals in polystyrene are not only linked to human and animal health concerns, but because these petroleum-based products take at least 500 years to decompose, their negative effects continue long after they're thrown away.

"As Florida's consumer protection and food safety agency, we have an opportunity to help consumers and companies make a positive change. That's why I'm excited to announce that we have started the rulemaking process to phase out the use of polystyrene food packaging at the 40,000 grocery stores, markets, and convenience stores that we regulate in Florida," said Commissioner Fried.

He added that by increasing demand for cost-effective alternative products, this is a huge opportunity to create Florida jobs, at Florida businesses, using Florida-grown crops to create next-generation products that are made in Florida. Fried noted that the vision to phase out polystyrene until reaching zero within this decade is a monumental change for consumers, health, and the environment, joining a third of U.S. states in taking action on this issue.

"Today, I am so happy to see the Florida Department of Agriculture and Consumer Services working toward the adoption of rules to begin to phase out polystyrene foodware in grocery and convenience stores across our state. They are demanding a shift in rules, products used, and extended producer responsibilities as part of our resiliency and sustainability plans into our future," said Nicole de Venoge, Florida Policy Manager at the Surfrider Foundation.

This follows New York's decree to ban restaurants and other food service providers from using polystyrene foam containers starting in January. The state ban also includes loose fill packaging, known as packing peanuts. A ban is already in place in Suffolk County, which prohibits the use of polystyrene foam containers unless it contains meat, eggs or other raw food items.

Notice of Proposed Rule

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Food Safety

RULE NOS.: RULE TITLES:

5K-4.020 Food Permits; Requirements and Fees

5K-4.035 Guidelines for Imposing Administrative Penalties

5K-4.045 Sale or Distribution of Polystyrene

PURPOSE AND EFFECT: The purpose of this rulemaking is to establish regulations covering the sale or distribution of food or beverages in polystyrene packaging at food establishments permitted under Chapter 500, F.S.

SUMMARY: A new rule (5K-4.045) is being created which phases out the sale or distribution of food or beverages in polystyrene packaging at food establishments permitted under Chapter 500, F.S. 5K-4.020 requires a revision to the Food Permit Application form to include annual reporting of polystyrene use in regulated activities. 5K-4.035 requires a revision to address minor violations of 5K-4.045.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the Agency.

The SERC concludes that economic impacts are likely to be incurred by affected entities as a result of the proposed rule. The SERC concluded that the rules will likely directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within one year after implementation. The SERC concluded that the rules will likely have an adverse impact on economic growth, private-sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. The SERC concluded that the rules will have an adverse impact on small business but will have a negligible impact on small cities or small counties. No regulatory alternatives have been submitted pursuant to Section 120.541(1)(a), F.S.

The Agency has determined that the proposed rule is expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein:

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 500.09, 500.12, 500.12(1)(b), 500.12(1)(f), 570.07(23) FS.

LAW IMPLEMENTED: 500.03, 500.04, 500.09, 500.10, 500.12(1)(a), (b), (c), (d), (f), 500.12(2), 500.12(7), 500.121, 500.147, 500.459, 500.171, 500.172, 500.173, 500.174, 500.177, 500.60, 500.90, 570.15 FS.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: November 15, 2021, 9:00 a.m. to 10:30 a.m.

PLACE: The Florida Hotel and Conference Center, 1500 Sand Lake Road, Orlando, FL 32809.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Trevor Walls by email at Trevor.Walls@FDACS.gov.

THE FULL TEXT OF THE PROPOSED RULE IS:

5K-4.020 Food Permits; Requirements and Fees.

(1) No change.

(2) Food permits. The Department shall not issue a food permit to a Food Establishment until the following conditions are met:

(a) The Food Establishment submits a complete Food Permit Application, FDACS-14306 (Rev. ~~8/21~~^{4/19}) to the Department, either online or by mail as indicated on the form. Food Permit Application, FDACS-14306 (Rev. ~~8/21~~^{4/19}) is incorporated by reference and available online at <https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>.

~~<https://www.flrules.org/Gateway/reference.asp?No=Ref-11718>~~.

(b) through (e) No change.

(3) through (7) No change.

Rulemaking Authority 500.09, 500.12(1)(b), 500.12(1)(f), 570.07(23) FS. Law Implemented 500.04, 500.09, 500.10, 500.12(1)(a), (b), (c), (d), (f), 500.12(2), 500.12(7), 500.121, 500.171, 500.172, 500.177, 570.15 FS. History—New 1-10-93, Formerly 5E-6.020, Amended 8-8-95, 3-11-98, 3-6-01, 10-30-01, 1-1-03, 11-1-04, 11-5-07, 10-28-08, 3-1-09, 3-24-14, 3-16-20, _____.

5K-4.035 Guidelines for Imposing Administrative Penalties.

(1) Through (8) No change.

(9) Penalties.

(a) Minor Violation. Any Department investigation or inspection which reveals violations of this Rule Chapter in which the Department determines that the violator was unaware of the rule or unclear as to how to comply with it will result in the issuance of a Notice of Non-Compliance as the Department’s first response to the violation. For the purposes of this rule, the following violations shall be considered minor and shall result in the issuance of a notice of noncompliance:

1. through 8. No change.

9. Violations to Rule 5K-4.045, F.A.C., where the violation has a low potential for causing economic or physical harm to a person; adversely affecting the public health, safety, or welfare; or creating a significant threat of such harm, if left uncorrected.

(b) No change.

(10) through (11) No change.

Rulemaking Authority 500.09, 500.12, 570.07(23) FS. Law Implemented 500.04, 500.09, 500.90, 500.121, 500.171, 500.172, 500.173, 500.174, 500.177 FS. History—New 3-16-20, Amended _____.

5K-4.045 Sale or Distribution of Polystyrene.

(1) Definitions.

(a) “Baseline year” means the calendar year 2022.

(b) “Existing Food Establishment” means a person or entity issued a food permit on or before the effective date of this rule.

(c) “New Food Establishment” means a person or entity issued a food permit after the effective date of this rule. This term includes an Existing Food Establishment that is required to apply for a new food permit in accordance with rule 5K-4.020(4)(a), F.A.C.

(d) “Polystyrene” means a thermoplastic petrochemical material utilizing the styrene monomer, including polystyrene foam or expanded polystyrene, processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding and extrusion-blow molding (extruded foam polystyrene). The International Resin Identification Code assigned to foam polystyrene is “6.” Foam polystyrene food ware may be identified by a “6” or “PS,” either alone or in combination with other letters. The regulations and prohibitions relating to foam polystyrene in this rule are intended to apply regardless of the presence or absence of an International Resin Identification Code on the food ware.

(2) Each Food Establishment shall file an annual report with its Food Permit Application, FDACS-14306 (Rev. 8/21) setting forth the amount of Polystyrene packaging, by unit count, that such Food Establishment sold or distributed food or beverages in during the preceding reporting period.

(3) Upon the effective date of this rule, it shall be unlawful for a New Food Establishment to sell or distribute any food or beverage in Polystyrene packaging. Effective on January 1 of each year specified below, it shall be unlawful for an Existing Food Establishment to sell or distribute any food or beverage in Polystyrene packaging in an annual quantity greater than the relevant percentage specified in Table 1. The percentages in Table 1 refer to a maximum allowable production as a percentage of the quantity of the substance sold or distributed by the Food Establishment concerned during the baseline year.

Table 1

<u>Date</u>	<u>Polystyrene</u>
<u>2022</u>	<u>100%</u>
<u>2023</u>	<u>66%</u>
<u>2024</u>	<u>33%</u>

2025

0%

(4) Penalties. Violations of this rule will be evaluated and penalties imposed in accordance with Rule 5K-4.035, F.A.C.

Rulemaking Authority 500.09, 500.12, 570.07(23) FS. Law Implemented 500.60, 500.90, 500.147, 500.459 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Chris Hilliard, Chief of Food Inspection

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Nicole "Nikki" Fried

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 4, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 20, 2021