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SHEMIA FAGAN  
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CHERYL MYERS  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION  
STEPHANIE CLARK  
DIRECTOR  
  
800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 581  
OREGON DEPARTMENT OF EDUCATION

**FILED**  
03/30/2021 4:08 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Use of Polystyrene

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/20/2021 10:00 AM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Jeremy Wartz  
503-947-5736  
jeremy.wartz@state.or.us

255 Capitol St NE  
Salem, OR 97310

Filed By:  
Jeremy Wartz  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 04/22/2021

TIME: 10:00 AM

OFFICER: Jeremy Wartz

ADDRESS: ODE

255 Capitol St NE

Salem, OR 97310

SPECIAL INSTRUCTIONS:

Check the ODE website, State Board  
Proposed OARs, for the ZOOM  
meeting information and link for the  
public hearing.

NEED FOR THE RULE(S):

ORS 336.445 prohibits school district to use of polystyrene foam in the service of any meal. Further, ORS 336.445 gives the State Board of Education authority to adopt rules for administering this policy. The proposed new rules administer this policy and includes defined terms used throughout, statement of the prohibited use of polystyrene, what is an allowable exemption and waiver, and what the Department can do if it finds a school district in violation of the rules.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

All relevant documents will be readily available under the State Board of Education's website, Boardbook, in the April 2021 meeting. Draft rules will also be available on ODE's website State Board Proposed OARs.

FISCAL AND ECONOMIC IMPACT:

There may be a negative fiscal impact on school districts who are using polystyrene foam products in food and beverage service. However, school districts with a severe negative impact may qualify for a waiver or exemption if they are

participating in a recycling program or can show financial hardship.

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**COST OF COMPLIANCE:**

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There may be a negative fiscal impact on school districts who are using polystyrene foam products in food and beverage service. However, school districts with a severe negative impact may qualify for a waiver or exemption if they are participating in a recycling program or can show financial hardship.

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**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

Small businesses were not involved in the development of these rules.

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**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES**

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**RULES PROPOSED:**

581-051-0350, 581-051-0355, 581-051-0360, 581-051-0365

ADOPT: 581-051-0350

RULE SUMMARY: ORS 336.445 prohibits the use of polystyrene foam in the service of any meal and allows the Department to adopt rules for administering this policy. The proposed rule defines the terms used throughout the set of rules related to the use of polystyrene.

**CHANGES TO RULE:**

581-051-0350

Use of Polystyrene: Definitions

The following definitions apply to OAR 581-051-0350 to OAR 581-051-0365:¶¶

(1) "Department" means the Oregon Department of Education.¶¶

(2) "Financial hardship" means a situation unique to the school district that would cause significant economic hardship to that district.¶¶

(3) "Polystyrene" means and includes expanded polystyrene which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes clear or solid polystyrene, which is known as "oriented polystyrene".¶¶

(4) "Prepared foods and beverages" mean any food or beverage prepared for service using any cooking or food preparation technique. This does not include any raw foods unless those foods are ready to eat products.¶¶

(5) "Products" mean food and beverage service containers designed for single use including: hot and cold beverage cups, bowls, cartons, hinged "clamshell" containers, cups, lids, plates, trays, or any other product designed or used to temporarily store or transport prepared foods or beverages.¶¶

(6) "Recyclable material" has the same meaning as defined in ORS 459.005.¶¶

(7) "Recycling" has the same meaning as defined in ORS 459.005.¶¶

(8) "Reuse" has the same meaning as defined in ORS 459.005.¶¶

(9) "School district" has the same meaning as defined in ORS 330.005.

Statutory/Other Authority: ORS 336.445

Statutes/Other Implemented: ORS 336.445

ADOPT: 581-051-0355

RULE SUMMARY: ORS 336.445 prohibits the use of polystyrene foam in the service of any meal and allows the Department to adopt rules for administering this policy. The proposed rule prohibits school districts from using polystyrene beginning in the 2021-2022 school year.

CHANGES TO RULE:

581-051-0355

Use of Polystyrene: Prohibited Use

Beginning in the 2021-2022 school year, all school districts are prohibited from providing prepared foods and beverages in products made from polystyrene on school campuses except as provided in OAR 581-051-0360.

Statutory/Other Authority: ORS 336.445

Statutes/Other Implemented: ORS 336.445

ADOPT: 581-051-0360

RULE SUMMARY: ORS 336.445 prohibits the use of polystyrene foam in the service of any meal and allows the Department to adopt rules for administering this policy. The proposed rule outlines exemptions and waivers for the prohibited use of polystyrene.

CHANGES TO RULE:

581-051-0360

Use of Polystyrene: Exemptions and Waivers

The following are acceptable exemptions and waivers to the prohibited use of polystyrene:¶

(1) Recycling: If a district has developed a method for recycling polystyrene products, then the use is authorized.¶

(2) Previously Purchased Products and Contracts:¶

(a) If there are polystyrene products remaining in stock that were purchased prior to the 2021-2022 school year, the use is authorized until they are exhausted.¶

(b) If the district has contracted for the use of polystyrene products prior to the 2021-2022 school year, and cannot substitute polystyrene products for non-polystyrene products, the use is authorized through the end of the contract period.¶

(3) Financial Hardship Waiver Applications:¶

(a) Upon showing by a school district that the conditions of this rule would cause undue financial hardship, the Department may defer the prohibitions of this rule.¶

(b) If a school district is approved, the waiver is effective as of the date of application.¶

(c) School districts must:¶

(i) Apply for a waiver in the form and manner designated by the Department. ¶

(ii) Include all information necessary for the Department to make its decision, including but not limited to, documentation showing the factual support for the claimed waiver.¶

(d) The Department must publish each year between July 1 and June 30th:¶

(i) Instructions for the waiver applications process, and¶

(ii) A list of school districts approved for waivers.

Statutory/Other Authority: ORS 336.445

Statutes/Other Implemented: ORS 336.445

ADOPT: 581-051-0365

RULE SUMMARY: ORS 336.445 prohibits the use of polystyrene foam in the service of any meal and allows the Department to adopt rules for administering this policy. The proposed rule outlines requirements for school districts who violate the prohibited use of polystyrene.

CHANGES TO RULE:

581-051-0365

Use of Polystyrene: Violations

Any district found violating this rule must:

(1) Be provided technical assistance by the Department, and

(2) Submit a corrective action plan to the Department.

Statutory/Other Authority: ORS 336.445

Statutes/Other Implemented: ORS 336.445