

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

COUNTY OF MAUI

Adoption of Title 17, Subtitle 04, Chapter 402

County of Maui Administrative Rules

1. Title 17, Subtitle 04, Chapter 402, County of Maui Administrative Rules, entitled "Rules Relating to Polystyrene Foam Food Service Containers", is adopted to read as follows:

“COUNTY OF MAUI ADMINISTRATIVE RULES

TITLE MC-17

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

SUBTITLE 04

ENVIRONMENTAL PROTECTION & SUSTAINABILITY

CHAPTER 402

RULES RELATING TO POLYSTYRENE FOAM FOOD SERVICE CONTAINERS

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§17-402-1 Title. The rules of this chapter shall be known as the "Rules Relating to Polystyrene Foam Food Service Containers". [Eff 12/31/18] (Auth: HRS §§91-2, 46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.030(A) (Imp: HRS §91-2)

§17-402-2 Purpose. These rules shall govern administrative procedures related to chapter 20.26, Maui County Code. [Eff 12/31/18] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.010) (Imp: HRS §91-2, MCC §20.26.010)

§17-402-3 Definitions. For the purpose of these rules, unless it is plainly evident from the context that a different meaning is intended, the words and phrases used herein are defined as follows:

“Affordable” means that a non-polystyrene foam food service container costs less than 140 percent of the cost of an equivalent polystyrene foam food service container.

“Department” means the department of environmental management.

“Director” means the director of environmental management or the director’s authorized representative.

“Food provider” means any entity or person providing prepared food for consumption within the County, including any store, shop, sales outlet, restaurant, bar pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food truck, catering vehicle or cart, or roadside stand.

“Food service container” means all plates, trays, cups, bowls, cartons, and hinged or lidded containers (clamshells) on or in which any foods or beverages are placed or packaged or intended to be placed or packaged and designed for one-time use.

“Polystyrene foam” means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by techniques including fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam does not include clear or solid polystyrene (oriented polystyrene).

“Prepared food” means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique, including chopping, slicing, mixing, brewing, freezing, or squeezing, and or otherwise prepared for consumption. [Eff 12/31/18] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.020)

§17-402-4 Prohibition. Unless exempt under §17-402-5:

- (1) Food providers shall not sell, use, provide, or offer the use of polystyrene foam food service containers.

- (2) Polystyrene foam food service containers shall not be sold, used, provided, or offered for use at any County facility, County-authorized concession, County-sponsored or County-permitted event, or County program.
- (3) Polystyrene foam food service containers shall not be offered for sale or sold in the County. [Eff 12/31/18] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.040)

§17-402-5 Exemptions. This chapter shall not apply to the following:

- (1) Polystyrene foam food containers used for raw or butchered meats, poultry, fish, or eggs unless provided for consumption without further food preparation (e.g., sashimi and poke).
- (2) Polystyrene foam coolers and ice chests specifically designed and manufactured for multiple re-use.
- (3) Foam blocks or pieces used as protective packaging during shipping (e.g., packing peanuts).
- (4) Packaging in situations unique to the type of food, where there are no reasonable alternatives to polystyrene foam food service containers, provided the food provider applies for an exemption pursuant to §17-402-6 and such exemption is granted by the director.
- (5) Packaging in situations unique to the food provider, where compliance with this chapter would cause significant hardship and there is no affordable alternative to polystyrene foam food service containers, provided the food provider applies for an exemption pursuant to §17-402-7 and such exemption is granted by the director.
- (6) The sale of polystyrene food service containers to food providers pursuant to an exemption described in this section.
- (7) Packaging in any situation deemed by the County to be an emergency requiring the immediate preservation of life, health, property, safety, or essential public services. This exemption shall be in place until the emergency has ceased or the mayor has determined the exemption is no longer applicable to the situation. [Eff 12/31/18] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.050)

§17-402-6 Application for exemption under §17-402-5(4) for packaging in situations unique to the type of food. A food provider may submit an application, preferably on the form provided by the director, and shall set forth with specificity:

- (1) The name, address, and copy of the food provider's most current business registration certificate (business license).

- (2) A description of the polystyrene foam food service container(s) at issue, including an estimate of the monthly quantity of the polystyrene foam container(s) used.
- (3) The factual basis to support the requested determination that there is no reasonable alternative to the use of polystyrene foam food service containers, which, for example, may include packaging necessary for safely containing food that is of significantly high or low temperature; specific transportation requirements or safeguards; or franchising agreements that contractually require use of polystyrene foam food service containers without the ability to use alternative products.
- (4) Copies of all exemptions issued to the applicant under this chapter.
- (5) If an exemption is granted under this section, the polystyrene foam food service containers may only be used for the specific food item(s) identified in the application. [Eff 12/31/18] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.050(D))

§17-402-7 Application for exemption under §17-402-5(5) for packaging in situations unique to the food provider. (a) To qualify for an exemption under 17-402-5(5), an applicant must be a food provider with a gross annual income of less than \$500,000 per location, as shown on the applicant's annual income tax filing for the most recent tax year. To qualify under this section, the applicant must not be a franchisee, part of a chain food service establishment, or a chain store.

(b) A food provider may submit an application, preferably on the form provided by the director, and shall set forth with specificity:

- (1) The name, address, and copy of the food provider's most current business registration certificate (business license).
- (2) The polystyrene foam food service container(s) at issue, including why the food provider requires the product(s) and an estimate of the monthly quantity of the product used.
- (3) The factual basis to support the requested determination that use of compliant food service containers would cause the applicant significant hardship and there is no affordable compliant alternative.
- (4) Copies of all previous exemptions issued to the applicant under this chapter.

(c) In considering whether the applicant may experience a significant hardship, the director may consider factors such as the applicant's gross revenue, adjusted gross income, or average operating profit for the preceding five years; the cost to switch to non-polystyrene food service containers; and the effect of compliance on applicant's cost to operate its existing business. [Eff 12/31/18] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.050)

§17-402-8 Duration, renewal, and revocation of exemptions. (a) Initial exemptions are valid for a maximum period of two years, except shorter periods may be approved by the director.

(b) Applications to renew exemptions shall be submitted to the department no less than thirty days prior to the expiration of the exemption. Exemption renewals may be granted for up to two years upon a showing that the applicant continues to meet all applicable requirements.

(c) Exemptions may be revoked upon the director's finding that the basis for the exemption is no longer valid or the applicant has otherwise violated this chapter. [Eff 12/31/18] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.030)

§17-402-9 Appeal. A person aggrieved by the director's decision may appeal the director's decision by filing with the board of variances and appeals a notice of appeal no later than thirty days from the date of mailing of the director's decision pursuant to the appeal procedures set forth in chapter 19.520, Maui County Code. [Eff 12/31/18] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.030)

§17-402-10 Violations and penalties. This chapter shall be enforced pursuant to section 19.530.030, Maui County Code." [Eff 12/31/18] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.060)

2. Chapter 402, "Rules Relating to Polystyrene Foam Food Service Containers", shall take effect on December 31, 2018.

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