

**NOTICE OF PROPOSED EXPEDITED RULEMAKING**

**TITLE 15. REVENUE**

**CHAPTER 10. DEPARTMENT OF REVENUE – GENERAL ADMINISTRATION SECTION**

**PREAMBLE**

<b>1. Article, Part, or Section Affected (as applicable)</b>	<b>Rulemaking Action</b>
R15-5-1860. Definitions	Amend

**2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general), the implementing statute (specific):**

Authorizing statute: A.R.S. § 42-1005(A)(1).

Implementing statutes: A.R.S. § 42-5102, A.R.S. § 42-5106.

**3. The agency’s contact person who can answer questions about the rulemaking:**

Name: Lisa Querard

Address: 1600 W. Monroe St., Mail Code 1300, Phoenix, AZ 85007

Telephone: (602) 716-6813

Fax: (602) 716-7996

E-mail: lquerard@azdor.gov

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**4. An agency’s explanation why the proposed expedited rule should be made, amended, repealed, or renumbered under A.R.S. § 41-1027(A) and why expedited proceedings are justified under A.R.S. § 41-1001(16)(c):**

HB2371 (Laws 2018, chapter 286) amended A.R.S. § 42-5102(A)(5) to remove “a mobile facility, motor vehicle or other such conveyance” from the list of retailers permitted to sell tax exempt

food. As a result, A.A.C. R15-5-1860(12)(v) which defines a qualified retailer as including “a mobile facility, motor vehicle or other such conveyance” is outdated. The Department’s proposed expedited rule amendment removes that term from A.A.C. R15-5-1860(12)(v).

A.R.S § 41-1027(A)(6) provides that an agency is permitted to make expedited rules if the proposed rule amendment would not increase the cost of regulatory compliance, increase a fee or reduce the procedural rights of persons. In addition to removing an outdated reference, the proposed rule amendment would not increase the cost of regulatory compliance, increase a fee or reduce the procedural rights of persons. Therefore, it qualifies for the expedited rulemaking process under A.R.S. § 41-1027(A)(6).

The Department received a rulemaking waiver from the Governor’s Office on August 14, 2018.

**5. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.**

Not applicable.

**6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable.

**7. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2):**

Pursuant to A.R.S. § 41-1055(D)(2), an agency is not required to prepare an economic, small business and consumer impact statement where the agency is submitting proposed expedited rulemakings. Thus, no economic impact statement is required with this rulemaking.

**8. The agency's contact person who can answer questions about the preliminary summary of the economic, small business and consumer impact of the proposed expedited rule:**

Name: Lisa Querard  
Address: 1600 W. Monroe St., Mail Code 1300, Phoenix, AZ 85007  
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**9. The time, place and nature of the proceedings for the making, amendment or repeal of the rules and how persons may provide written comment to the agency on the proposed expedited rules under A.R.S. § 41-1027(E):**

Persons may submit questions or comments in writing to the contact person listed in section 3 of this Notice of Proposed Expedited Rulemaking within 30 days after publication hereof.

**10. Any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additional matters shall include but are not limited to:**

**a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A), and whether a general permit is used and if not, the reasons why a general permit is not used:**

The rules do not require a permit.

**b. Whether a person submitted an analysis to the agency that compares the rule's im-**

**pact of the competitiveness of business in this state to the impact on business in other states:**

No such analysis was submitted.

**11. A list of any incorporated by reference material as specified in A.R.S. §41-1028 and its location in the rules:**

Not applicable.

**12. The full text of the rules follows:**

**TITLE 15. REVENUE**

**CHAPTER 15. DEPARTMENT OF REVENUE – TRANSACTION PRIVILEGE AND USE TAX SECTION**

**ARTICLE 18.1. SALES OF FOOD**

R15-5-1860. Definitions

## ARTICLE 18.1. SALES OF FOOD

### R15-5-1860. Definitions

For the purpose of these rules, unless the context requires otherwise, the following definitions will apply:

1. "Accessory food items" means coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices, and other non-staple foods.
2. "Attendant" means a person, generally the employee of the retailer, who waits on the customers, or tends to their needs.
3. "Automatic retailer" means a coin operated mechanical device or system which sells tangible personal property. Such device or system must itself vend or sell the items, i.e., a device or system which delivers the subject of the sale, or by automatic action physically delivers the thing sold. Vending machines are considered automatic retailers.
4. "Caterer" means a person engaged in the business of serving meals, food and drinks on the premises used by his customer, but does not include employees hired by the hour of day.
5. "Delicatessen" means a business which sells specialty food items, such as prepared cold meats, perishable food and grocery items kept under refrigeration.
6. "Facilities for the consumption of food" means appropriate furniture, tableware, or parking areas for sitting both in or on the premises of the business, either in or out of a motor vehicle.
7. "Food"
  - a. Under A.R.S. § 42-1387, the Department is required to promulgate rules defining food as those items that may be purchased from an eligible grocery business with food coupons, but in no event may such definition of food include food for consumption on the premises, alcoholic beverages or tobacco. Even though alcoholic beverages and food for consumption on the premises may be intended for human consumption, such items are not considered food by the statutory provisions. In these rules, items that are considered food by the Statutes, and therefore tax exempt if sold by a qualified retailer, shall be referred to as "tax exempt foods." Other

items that may be intended for human consumption but are excluded from the definition of food by the Statute, and are therefore subject to the Sales Tax, shall be referred to herein as “taxable foods.”

- b. “Food” means: Items intended for human consumption. Food is deemed to be intended for human consumption when its intended or ordinary use is as a food for human consumption or is an ingredient used in preparing food for human consumption. For example, even though animal food may be used by some humans, its ordinary or intended use is not for human consumption. Also, even though vitamins and other medication may be ingested, its intended or ordinary use is as a health aid or therapeutic agent or a deficiency corrector and is not intended for use as food. Following is a numeration of items which the Department does not consider food for human consumption:
    - i. Pet food and supplies
    - ii. Cosmetics and grooming items
    - iii. Tobacco products
    - iv. Soaps and paper products and household supplies
    - v. Dietary supplements such as vitamins or protein supplements
    - vi. Medicines
    - vii. Fertilizer
8. “Food for consumption on the premises”
- a. “Food for consumption on the premises” means the following:
    - i. Hot prepared food, including products, items or ingredients of food which are prepared and sold or are intended to be sold in a heated condition. This also includes a combination of hot and cold food items or ingredients if a single price is charged by the retailer.
    - ii. Hot or cold sandwiches including frozen sandwiches.
    - iii. Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters and within parking areas (for in-car consumption).

- iv. Food served with trays, glasses, dishes or other tableware. Food which is generally selected by the customer from available displays and then taken by the customer to a checkout stand for payment is not considered to be served by the retailer.
  - v. Beverages sold in cups, glasses or open containers. Beverages shall include items such as milk shakes and ice cream floats.
  - vi. Food sold by caterers.
  - vii. Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events, and other shows or contests and any businesses which charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction. While food for consumption on the premises includes any food sold within the premises of certain businesses, including businesses that charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction, food for consumption on premises does not include sales of tax exempt food by a qualified retailer within the premises of a full time educational institution that charges tuition for a full course of studies.
- b. Any item enumerated in subparagraph (a) which is sold on a take-out or to-go basis is still considered to be food for consumption on the premises and therefore taxable.
9. "Food intended for home consumption" means food, other than food for consumption on the premises, which is usually intended to be consumed at home. Unless the taxpayer can establish to the contrary, food delivered by a retailer to an office or other business establishment shall not be considered food intended for home consumption.
10. "Home" means a natural person's usual or habitual dwelling place, including rest homes, nursing homes, jails and other such institutions.
11. "Premises" means the total space and facilities, including buildings, grounds and parking lot that are made available for use by the retailer for the purpose of consuming food sold by such retailer.
12. "Qualified retailer"

- a. A qualified retailer or qualified retail business is one that may be eligible to sell tax exempt food without including the sale of tax exempt food items in its taxable base. A retailer other than a qualified retailer must pay a tax measured by the sale of otherwise exempt food even though the sale of such items would be exempt if sold by a qualified retailer.
- b. Qualified retailers are:
  - i. An eligible grocery business, which includes retailers who are eligible to participate in the United States Department of Agriculture Food Stamp Program, whether such retailer actually participates in the food stamp program. If a retailer is eligible to participate in the food stamp program, but does not participate in such program, such retailer may only be an eligible grocery business if the retailer first makes application to the Department to sell food tax exempt. Examples of retailers that might be considered eligible grocery businesses include:
    - (1) Grocery stores;
    - (2) Convenience stores;
    - (3) Butcher shops;
    - (4) Bakeries;
    - (5) Dairy stores;
    - (6) Cheese stores;
    - (7) Farmer's markets.
  - ii. Retailers whose primary business is not the sale of food, but who sell food in a manner similar to grocery stores. This category includes stores such as department stores, drug stores, and gas stations.
  - iii. Retailers who sell food and who do not provide any facilities for consumption of food on the premises. This category may include certain health food stores, and certain outlets retailing soda and other similar beverages in bottles or cans, but not cups.
  - iv. Delicatessen business, if such retailer conducts his business so that the sale of tax exempt foods and other taxable items may be separately accounted for,

through, for example, the use of two (2) cash registers, or a cash register with at least two (2) tax computing keys which are used to record taxable and tax exempt sales.

- v. A retailer who is a street or sidewalk vendor who uses a pushcart, ~~mobile facility, motor vehicle, or other such conveyance. Such retailers include:~~
    - ~~(1) Snackmobile;~~
    - ~~(2) Chuck wagon;~~
    - ~~(3) Mobile hot dog stands.~~
  - vi. Vending machines and other automatic retailers.
13. "Staple food" means those food items intended for home preparation and consumption, which includes meat, poultry, fish, bread and bread stuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products.
14. "Taxable foods" are items which may be intended for human consumption, but are still subject to the Sales Tax when sold. Examples of taxable foods would be alcoholic beverages, and food for consumption on the premises.
15. Tax-exempt foods
- a. "Tax exempt foods" are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1979, to be purchased with food coupons issued by the United States Department of Agriculture.
  - b. Tax-exempt food shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1979.
  - c. The following are examples of items which the Department will consider as tax exempt food:
    - bread and flour products
    - vegetables and vegetable products
    - candy and confectionery

sugar, sugar products and substitutes  
cereal and cereal products  
butter, oleomargarine, shortening and cooking oils  
cocoa and cocoa products  
coffee and coffee substitutes  
milk and milk products  
eggs and egg products  
tea  
meat and meat products  
spices, condiments, extracts and food colorings  
fish and fish products  
frozen foods  
soft drinks and soda (including bottles on which a deposit is required to be paid)  
fruit and fruit products  
packaged ice cream products  
dietary substitutes  
ice cubes and bottled water including carbonated and mineral water  
purchases of seed and plants for use in gardens to produce food items for personal consumption

16. "Two tax computing keys" shall mean the mechanical or electronic function in a cash register which can separately record and accumulate taxable and nontaxable items without having the items presorted.