

### **139.485 Exemption of food items -- Definitions.**

- (1) Except as otherwise provided, the terms "retail sale," "use," "storage," and "consumption" as used in this chapter shall not include the sale, use, storage or consumption of food and food ingredients for human consumption.
- (2) The term "food and food ingredients" as used in subsection (1) of this section means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" shall not include:
  - (a) Alcoholic beverages;
  - (b) Tobacco;
  - (c) Candy;
  - (d) Dietary supplements;
  - (e) Soft drinks; and
  - (f) Prepared food.
- (3) For purposes of this section:
  - (a) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume;
  - (b) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;
  - (c) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include:
    1. Any preparation containing flour; or
    2. Any item requiring refrigeration;
  - (d) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:
    1. Contains one (1) or more of the following dietary ingredients:
      - a. A vitamin;
      - b. A mineral;
      - c. An herb or other botanical;
      - d. An amino acid;
      - e. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
      - f. A concentrate, metabolite, constituent, extract, or combination of any ingredient described above;
    2. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

3. Is required to be labeled as a dietary supplement, identifiable by the "Supplement facts" box found on the label as required pursuant to 21 C.F.R. 101.36;
- (e) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume;
  - (f) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment;
  - (g) "Prepared food" means:
    1. Food sold in a heated state or heated by the retailer;
    2. Two (2) or more food ingredients mixed or combined by the retailer for sale as a single item except food that is only cut, repackaged, or pasteurized by the retailer, eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of the FDA Food Code so as to prevent food-borne illnesses; or
    3. Food sold with eating utensils provided by the retailer, including plates, knives, forks, spoons, glasses, cups, napkins, or straws;
  - (h) Notwithstanding paragraph (g) of this subsection, "prepared food" shall not include the following items if sold without eating utensils provided by the seller:
    1. Food sold by a seller whose proper primary North American Industry Classification System classification is manufacturing in sector 311, except subsector 3118; or
    2. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
- (4) Notwithstanding the provisions of subsection (1) of this section, "food and food ingredients" sold through vending machines or nonmechanical self-service vending systems shall be subject to the tax imposed by this chapter.

**Effective:** July 1, 2007

**History:** Amended 2007 Ky. Acts ch. 141, sec. 10, effective July 1, 2007. -- Amended 2003 Ky. Acts ch. 124, sec. 22, effective July 1, 2004. -- Amended 1994 Ky. Acts ch. 65, sec. 17, effective July 15, 1994. -- Created 1972 Ky. Acts ch. 62, Pt. I, sec. 1, effective October 1, 1972