

# GAO Topic of the Month – September 2022

## FOOD & BEVERAGE PURCHASES



### Background

Food and beverages may be purchased by and/or for individuals in authorized state travel status and by agencies who have statutory authority to provide food and beverages to those in their care. There are very limited circumstances where food and beverages may be purchased with public money outside of these situations. This month’s topic addresses the rare circumstances when it may be permissible to provide or reimburse food and/or beverages using public money. These four (4) circumstances include food and beverages provided at State-hosted events, Board and Commission Meetings, Certain Training Activities, and During Emergencies.

In general, the State should not provide food and/or beverages at State-hosted events. Upon rare occasions, it can be in the best interest of the State to provide a meal to those not in travel status at a State-hosted event, at a Board or Commission meeting, participating in certain training activities, and involved in “emergency situations.” Each one of these special circumstances carry extensive requirements that must be followed when food and/or beverages are provided using public money. It is imperative that these requirements are understood prior to considering or authorizing any food or beverage purchases.

All of the situations require written documentation that may include demonstrating that the “gift clause” is not being violated, a cost-benefit analysis demonstrating the savings to the State, or documentation of the circumstances that resulted in the necessity for the emergency. All situations have numerous requirements including who is allowed to partake, who is allowed to authorize the purchase, where the food is allowed to be consumed, how long the individuals must be at the event or situation, and what documentation and retention is necessary. All of these situations require additional approvals, such as an agency head or deputy agency head and documentation that must be retained and provided for audit purposes.

### SAAM

There are four (4) SAAMs that address the requirements and circumstances in which food may be provided using public money:

- **SAAM 8010 – Food and Beverages at State-hosted Events**
- **SAAM 8011 – Food and Beverages at Board and Commission Meetings**
- **SAAM 8012 – Food and Beverages at Certain Training Activities**
- **SAAM 8013 – Food and Beverages Provided During Emergencies**

Each SAAM must be reviewed for the specific details and requirements. The summaries below are not all inclusive and do not provide all the necessary requirements or considerations. Travel expenditure object codes should not be used if individuals are not in travel status.

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### **SAAM 8010 – Food and Beverages at State-hosted Events:**

*In general, the State should not provide food and/or beverages at State-hosted events. Article IX, Section 7 of the Arizona Constitution, the “gift clause,” prohibits the giving of gifts, loans, etc. to individuals. In addition, the notes to this article state, “Public funds are to be expended only for public purposes and cannot be used to foster or promote purely private or personal interests of any individual.” In this section of SAAM, “to provide food and/or beverages,” means to furnish such comestibles at the expense of the State, no matter the funding source. A State-hosted event is one that is hosted by, arranged by, or organized by an agency. A State-hosted event is one in which the State directly or indirectly pays the vendor or vendors who provide meals and/or beverages and/or the facilities in which the event is held, even when the original funding source is an entity or entities other than the State.*

Key requirements include but are not limited to the following:

- An agency **may** provide food and/or beverages at a State-hosted event when: It demonstrably serves a public purpose **and** the “gift clause” is not violated.
- The provision of food and/or beverages serves the public purpose and does not violate the “gift clause” must be determined before providing food and/or beverages. Such determination **must be documented** and the documentation retained and available for audit in accordance with the LAPR’s retention guidelines for accounting records.
- Public hearings are quasi-judicial gatherings that do not normally include the serving of food and/or beverages. Therefore, food and/or beverages should not be provided at hearings.
- Food and/or beverages served at meetings are not to be paid for with State funds.

### **SAAM 8011 – Food and Beverage at Board and Commission Meetings:**

*Upon rare occasions, it can be in the best interest of the State to provide a meal to those not in travel status at a meeting of board members. This section of SAAM sets forth the conditions and limitations that apply to serving food and beverages at meetings of the members of State boards. These meetings should be conducted in a manner that reduces the cost to the State, and the meeting should not be purposely lengthened or manipulated to comply with the terms and restrictions of the policy. The policy also defines the “business of the meeting” and who is eligible to be included. See the SAAM for additional information and the proper recording of the expenditure. The cost of the meals is to be recorded using expenditure object 6711.*

Key requirements include but are not limited to the following:

- The purpose of the meeting is to conduct official State business.
- The meeting, including any time allowed for breaks, must last at least ten (10) hours from the time it convenes until the time it adjourns.
- The actual time devoted to the “business of the meeting” (i.e., not allocated to meals or other non-business activities) must consume at least nine (9) hours during the meeting. No single break during the meeting shall exceed thirty (30) minutes in length. (See the SAAM for activities that are and are not allowable to be included as “business of the meeting.”)

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- No person not in travel status and provided a meal at the State’s expense shall leave the building in which the meeting is held while the meeting is in session, and those receiving meals must not leave the meeting room except for brief breaks.
- Meals must be served and consumed on premises.
- An agenda and minutes for the meeting, showing scheduled start and end times and events must be prepared and retained.
- A list of all board or commission members as well as other State employees who received a meal must be prepared and retained. This list should also indicate which of those who received a meal were and were not in travel status.
- A cost-benefit analysis demonstrating the savings to the State and receipts are required and must be retained for audit. The agency head, deputy agency head, or agency CFO must approve the payment.

### **SAAM 8012 – Food and Beverage at Certain Training Activities:**

*Upon rare occasions, it can be in the best interest of the State to provide a meal to those who, whether in travel status or not, are participating in certain training activities. These training activities may involve operations-based field exercises and discussion-based classroom sessions.*

*Typically, field exercises involve certain military, paramilitary, public safety, police, fire control, emergency management, and disaster recovery activities. It is important to recognize that most State agencies rarely, if ever, conduct or participate in field exercises of the type contemplated by this section of SAAM.*

Most educational events are not “training activities.” The majority of training activities conducted by the State should not involve meals being provided at the State’s expense. The training activities must be of a nature that their purpose can be severely frustrated or their cost significantly increased by interruptions for meal breaks that result in the participants leaving the training activity. Note that mere convenience or expediency will not suffice to justify the provision of food and beverages at a training activity—it must be unambiguously demonstrable that the benefit accrued to the State for providing meals outweighs the cost of providing such meals. Meals are not to be provided when a training activity can be conducted in a manner that would avoid the provision of meals and still effectively and economically accomplish its goals.

Key requirements include but are not limited to the following:

- Any training activity at which a meal is provided at the expense of the State must be of six (6) or more continuous hours in duration, not including travel time to and from the training site, interrupted only by one (1) meal break not longer than one half (1/2) hour and brief breaks for personal matters, to take telephone calls, etc. and except as otherwise specifically permitted, individuals receiving meals must not leave the training area.
- Meals must be served and consumed at the training site.
- The expending agency must obtain and retain a receipt for the actual cost of the food and beverages served.

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- The expending agency must obtain and retain a list of all training activity participants and dates of training activities. The list must contain the participants' names and organizational affiliations.
- An analysis that demonstrates the economic or operation benefit must be prepared, approved by the agency head or his delegate, available to the administrative agency, and retained for audit.
- See SAAM for additional requirements, limits, the proper recording and approval of the expenditure. The cost of the meals is to be recorded using expenditure object 6711.

### **SAAM 8013 – Food and Beverage Provided During Emergencies:**

*This section of SAAM defines what is meant by an “emergency” or “emergency situation” and outlines those emergency conditions under which a State employee, even when not in travel status, and others may be provided food and/or beverages at State expense in connection with an emergency situation.*

*An “emergency” or “emergency situation” (terms which are used interchangeably herein) involves a sudden, urgent and unforeseen occurrence requiring immediate action. An emergency often represents a danger to the public, to property, and/or to those responding to the situation. Moreover, the nature of the situation prohibits responders from leaving the scene until the emergency is satisfactorily resolved. In legal jargon, these emergencies or emergency situations are referred to as “exigencies” or “exigent circumstances.”*

Key requirements include, but are not limited to the following:

- The situation is extraordinary in that failure to provide food or beverages at the site of the emergency could endanger life or property and/or jeopardize employee and/or volunteer effectiveness **AND** an employee or volunteer could not have reasonably anticipated the need to plan for the provision of food or beverages.
- In an emergency and at the scene of that emergency, those to whom food or beverages may be provided include: 1) A State employee, whether or not in travel status, whose continuous presence at the scene of the emergency is required (e.g., a fire fighter at a conflagration). 2) An employee of another government (federal, state or local) needed at the scene to deal with the emergency. 3) A volunteer whose presence at the emergency is required and is approved by the State employee in the senior supervisory capacity at the scene. 4) A victim of the emergency, if the provision of food or beverages does not endanger the well-being of the victim. 5) A child rescued from an unhealthy or dangerous environment.
- The amount spent per person on food and/or beverages shall not exceed, for each four (4) hour period of the individual remains in an emergency situation, irrespective of the time of day the appropriate dinner or lunch reimbursement limitation as defined in the SAAM.
- No meals may be provided to those whose presence is not required at the location of the emergency.
- Meals must be served and consumed at the site of the emergency.

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- The expending agency must obtain and retain receipts for the actual cost of the food and beverages served and record the expenditure under object 6711. The use of the P-card is recommended.
- The expending agency must obtain and retain a list of all those to whom food or beverages were provided and determine the cost of the meal for each participant.
- The expending agency shall retain for audit and provide to the State Comptroller upon request all relevant records relating to the provision of food or beverages provided in connection with emergencies.
- See the SAAM for additional requirements, limits, approvals, etc.

### Conclusion

There are rare circumstances when it is permissible to provide food and beverages using public monies. In most situations, training, meetings, operations, etc. can be scheduled in a way that allow for meal breaks and/or for the individual to reasonably anticipate the need to plan for the provision of food or beverage. It is each agency's responsibility to be familiar with these circumstances and to ensure that all required documentation is obtained and maintained to support these purchases. All of these situations require additional documentation such as a cost-benefit analysis, details of the situation and participants, records of why the expense was necessary, and proper approvals. All of the documentation must be retained for audit purposes. Additionally, the expenditures must be recorded correctly and follow the policy restrictions and requirements. GAO Internal Audit and other auditors, including the Auditor General, may follow up with your agency to confirm that all requirements have been met for food and beverage purchases.

There are statutory consequences for improper spending of public monies, including A.R.S. § 35-211. Approval, allowance or payment of unauthorized claim; liability of parties; penalty - When any person who is obligated to approve, audit, allow or pay claims or demands upon the state, approves, audits, allows or pays, or consents to, or connives at, approving, auditing, allowing or paying a claim or demand against the state not authorized by law, such person, and the person in whose favor the claim or demand was made, shall be liable for any funds procured in such manner, plus twenty per cent of such amount and legal interest upon the amount paid from date of payment.

If you are considering having any of these expenses, review the SAAM in detail. If you have any questions about this topic, reach out to your agency contact who can provide assistance, or they can contact your agency's AFIS Liaison or GAO Internal Audit at [gaointernalaudit@azdoa.gov](mailto:gaointernalaudit@azdoa.gov). Questions about policies should be emailed to [gaopolicy@azdoa.gov](mailto:gaopolicy@azdoa.gov).