

701—20.1(422,423) Foods for human consumption. Foods for human consumption which may be purchased with food coupons shall be exempt from tax regardless of whether the retailer from whom the foods are purchased is participating in the food coupon program. On or after July 1, 1985, candy, candy-coated items, candy products and certain beverages, which are described in subrule 20.1(3) and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

20.1(1) Foods eligible for food coupons. These foods shall include all foods which may be purchased with food coupons issued by the United States Department of Agriculture under the regulations in effect on July 1, 1974. Most products can easily be classified either as food or food products or as nonfood items. There are, however, certain items that are not readily distinguishable as food or nonfood and may present problems in judgment. The following guidelines apply to some of the more unique categories of eligible foods about which questions may arise and to those special categories of items which are eligible for purchase with food stamps. The list is not to be considered all-inclusive:

a. Garden seeds and plants. Seeds and plants for use in gardens to produce food for consumption may be purchased with food coupons. Seeds and plants eligible for purchase with food coupons include vegetable seeds and food-producing plants such as tomato and green pepper plants and fruit trees. In addition, food-producing roots, bushes, and bulbs (e.g., asparagus roots and onion sets) are eligible food items. Seeds and plants used to produce spices for use in cooking foods may also be purchased with food coupons.

b. Distilled water and ice. These items, although having some nonfood usages, are largely used as food or in food for human consumption. Unless these items are specifically labeled for nonfood use or the recipient indicates they will be used for other than human consumption, they are eligible and may be purchased with food coupons. On or after July 1, 1985, distilled water and certain other beverages, which are described in paragraph 20.1(3)“b” and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

c. Specialty foods. This category of eligible foods includes special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, infant formulas, and certain foods commonly referred to as health food items. These items are food products which are substituted for more commonly used food items in the diet, and thus they are eligible for purchase with food coupons. Examples of items in this category of eligible foods are Metrecal, Enfamil, Sustegen, wheat germ, brewer’s yeast, sunflower seeds which are packaged for human consumption, and rose hips powder which is used for preparing tea. It is not possible to formulate a comprehensive list of eligible specialty foods. The guideline to be used to determine the eligibility of specific items is the ordinary use of a product.

NOTE: If the product is primarily used as a food or in preparing food, then it is an eligible item; if it is primarily used for medicinal purposes as either a therapeutic agent or a deficiency corrector and only occasionally used as a food, the product is not an eligible item. On or after July 1, 1985, candy, candy-coated items, candy products, and certain beverages, which are described in subrule 20.1(3) and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

d. Snack foods. These products are food items and, therefore, are eligible. Typical examples of snack foods are candy, soft drinks, potato chips, and chewing gum. On or after July 1, 1985, candy, candy-coated items, candy products, and certain beverages, which are described in subrule 20.1(3) and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

e. Others. There are certain eligible food items which are normally consumed only after being incorporated into foods and other ingredients. Since these items then become part of a food for human consumption, they are eligible items. An example is pectin. Pectin is the generic term for products marketed under various brand names and commonly used as a base in making jams and jellies. When pectin is incorporated into jams or jellies, it becomes part of a food for human consumption and, therefore, is an eligible food item. Other examples are lard and vegetable oils.

The following general classifications of food products are also exempt from tax unless taxable as prepared food—see rule 20.5(422,423):

- Bread and flour products
- Cereal and cereal products
- Cocoa and cocoa products, unless taxable in the form of candy as in paragraph 20.1(3) “a”
- Coffee and coffee substitutes
- Dietary substitutes (see paragraphs 20.1(1) “c” above and 20.1(2) “a” below)
- Eggs and egg products
- Fish and fish products
- Frozen foods
- Fruits and fruit products including fruit juices, unless taxable as a beverage as in paragraph 20.1(3) “b”
- Margarine, butter, and shortening
- Meat and meat products
- Milk and milk products including packaged ice cream products
- Spices, condiments, extracts, and artificial food coloring
- Sugar and sugar products and substitutes, unless taxable in the form of candy as in paragraph 20.1(3) “a”
- Tea
- Vegetables and vegetable products

Products which are made with ingredients identical to those which are eligible for purchase with food coupons, unless taxable as candy, candy-coated items, candy products, or beverages described in subrule 20.1(3) or prepared food as in subrule 20.5(2).

20.1(2) *Products not eligible for purchase by food coupons.* Various products may not be purchased with food coupons issued by the United States Department of Agriculture and, therefore, are not exempt from tax. They include, but are not limited to, the following:

a. Vitamins and minerals. Vitamins and minerals, which are marketed in various forms such as tablets, capsules, powders, and liquids, serve as supplements to food or food products rather than as foods, and, therefore, are not eligible for purchase with food coupons. Vitamins and minerals are also present in natural foodstuffs, and certain vitamins and minerals have been determined to be essential to nutrition. However, because these essential vitamins and minerals occur naturally in foods, a good diet will include a variety of foods that together will supply all nutrients needed. Therefore, a nutritionally adequate diet as provided for in the Food Stamp Act may be obtained without the use of specially formulated vitamin and mineral preparations and other specially formulated therapeutic products. Since these products serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible for purchase with food coupons. In addition to vitamin and mineral tablets or capsules, this category includes products such as cod liver oil, which is used primarily as a source of vitamins A and D. It is not possible to provide a comprehensive list of other such items which are primarily used for medicinal purposes or as health aids and which may be stocked by authorized firms.

b. Health aids. Patent medicines and other products used primarily as health aids or therapeutic agents are not foods as defined by the Food Stamp Act and, therefore, may not be purchased with food coupons. Such products include aspirin, cough drops or syrups and other cold remedies, antacids, and all patent medicines or other products used as health aids. In addition to these commonly used health aids, any product used primarily for medicinal purposes is ineligible. An example of such products is slippery elm powder, a demulcent which is used to soothe sore throats.

c. Items not exempt. The following general classifications of products are subject to tax:

- Alcoholic beverages
- Dietary supplements (see paragraphs 20.1(1) “c” and 20.1(2) “a” above)
- Pet foods and supplies
- Household supplies
- Paper products

Soaps and detergents

Tobacco products

Cosmetics

Toiletry articles

Tonics

Lunch counter or prepared foods for consumption on the premises of the retailer.

Additionally, on or after July 1, 1985, the following classifications of products are subject to tax even when eligible for purchase with food coupons:

Foods prepared by the retailer which may be immediately consumed off of the premises of the retailer and that are sold hot or cold.

Candy, candy-coated items, and candy products as described in 20.1(3)“a.”

Certain beverages as described in 20.1(3)“b.”

20.1(3) *Candy, candy-coated items, candy products, and certain beverages.* Even when eligible for purchase with food coupons, candy, candy-coated items, candy products, and certain beverages are taxable on or after July 1, 1985, unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

a. Candy, candy-coated items, and candy products. Candy, candy-coated items and candy products are taxable on or after July 1, 1985, unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq. Candy, candy-coated items, and candy products include those products normally considered to be “candy.”

(1) *Candy.* Candy is a prepared food made of a sugar paste or syrup or other natural or artificial sweeteners often enriched and varied with coloring and flavoring and formed into various shapes.

(2) *Candy-coated items.* Candy-coated items are products like fruit or nuts which are dipped or otherwise substantially covered with candy and which would normally be considered candy.

(3) *Candy products.* Candy products include mixtures containing both candy and noncandy items. The inclusion of candy merely as an incidental ingredient in a product does not make the item a candy product.

(4) *Taxable candy, candy-coated items, and candy products.* Candy, candy-coated items, and candy products include: preparation of fruits, nuts or other ingredients in combination with sugar, honey or other natural or artificial sweeteners in the form of bars, drops or pieces; hard or soft candies including jelly beans, taffy, licorice, and mints; dried fruit leathers or other similar products prepared with natural or artificial sweeteners; cotton candy; candy breath mints; and mixes of candy pieces, dried fruits, nuts, and similar items.

(5) *Nontaxable items and products.* Candy, candy-coated items, or candy products do not include: jams, jellies, preserves, or syrups; frostings; dried fruits; marshmallows; unsweetened or sweetened baking chocolate in bars, pieces, or chips; breakfast cereals; prepared fruit in a sugar or similar base; ice cream or other frozen desserts covered with chocolate or similar coverings; caramel or other candy-coated apples or other fruit; candy-coated popcorn; cakes, cookies, and similar products covered with chocolate or other similar coating; candy primarily intended for decorating baked goods; and granola bars. However, these and similar items are taxable if sold as prepared food under subrule 20.5(2).

b. Beverages. In addition to alcoholic beverages, other beverages are taxable on or after July 1, 1985. Beverages are not taxed if purchased on or after October 1, 1987, with coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

(1) *Taxable beverages.* Taxable beverages are: effervescent and noneffervescent water sold in containers; soda and mineral bottled water; soft drinks carbonated and noncarbonated including but not limited to colas, ginger ale, near beer, and root beer; lemonade, orangeade, and all other drinks or punches with natural fruit or vegetable juice less than 15 percent by volume.

Beverage mixes and ingredients intended to be made into taxable beverages are taxable. See 20.1(3)“b”(2) for exceptions.

Beverage mixes or ingredients may be liquid or frozen, concentrated or nonconcentrated, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned or unseasoned. Concentrates intended to be

made into beverages which contain natural fruit or vegetable juice of less than 15 percent by volume are taxable.

(2) Nontaxable beverages are: tea, coffee, beverages that contain primary dairy products, or dairy ingredient bases, and beverages that contain natural fruit or vegetable juice of 15 percent or more by volume. However, these and similar beverages are taxable if sold as prepared food and drink under subrule 20.5(2).

Nondairy coffee “creamers” in liquid, frozen or powdered form are not beverages.

Sugar or other artificial or natural sweeteners sold separately are not taxable as beverage ingredients.

Specialty foods that are liquids or that are to be added to a liquid and that are intended to be a substitute in the diet for more commonly used food items are not beverages and are not taxable as beverages. These foods include infant formula.

This rule is intended to implement Iowa Code subsection 422.45(12).