



Food and
Nutrition
Service

Park Office
Center

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January 16, 2018

Retailer Policy and Management Division, SNAP
RPMD Policy Memorandum 2018-02

SUBJECT: Food Determinations – Eligible Foods (Excluding Meal Services)

Legislation: Food and Nutrition Act of 2008, Section 3(k)

Regulations: [7 CFR § 271.2](#) (definition of “eligible foods”)

Rule: N/A

IMPLEMENTATION DATE: January 17, 2018

OVERVIEW: This memorandum clarifies policy related to “eligible foods,” which are foods and other items that may be purchased with Supplemental Nutrition Assistance Program (SNAP) benefits. Section 3(k) of the Food and Nutrition Act of 2008 (the Act) and SNAP regulations at 7 CFR § 271.2 define eligible foods. This memorandum does not address meals that may be purchased with SNAP benefits from firms authorized to serve such meals, although these meals are also eligible foods.

In administering SNAP, FNS may categorize the same food differently, depending on the reason it is analyzing the food. For example, FNS may analyze a food to determine whether it is an eligible food, a staple food, an accessory food, or a prepared or heated food. Although all staple foods are eligible foods, some accessory and prepared/heated foods are not. Only accessory and prepared/heated foods that are not hot at the point of sale, and that are not intended for on-premises consumption, are eligible foods.

Staple foods and accessory foods are addressed in Policy Memoranda 2018-04 and 2018-05, respectively. Prepared/heated foods, used to determine if a firm is a restaurant and therefore ineligible to participate in SNAP, and also used for Criteria A and B determinations, are clarified in Policy Memorandum 2017-02.

CLARIFICATION: Eligible foods are foods and other items that may be purchased with SNAP benefits. Section 3(k) of the Act, and SNAP regulations, at 7 CFR § 271.2 (in the definition of “eligible food”), specify which foods and other items may, or may not be, purchased with SNAP benefits.

I. Eligible foods

Most food items intended for human consumption are eligible for purchase with SNAP benefits. Edible cooking ingredients that are normally consumed only after being incorporated into foods with other ingredients are eligible foods. Examples include lard, vegetable oils, and pectin (used as a base in jams or jellies). Also, vegetable products imparting flavor to food, such as corn husks, banana leaves, grape leaves, and lotus leaves, are eligible foods. In addition, items that may not be labeled as food, such as water, or bags of ice, are eligible foods. Generally, if an item is intended for human consumption, and it is not specifically excluded in Section III, below, it is considered an eligible food.

II. Non-Food Items Specifically Designated as Eligible

Certain non-food items are specifically designated as eligible to be purchased with SNAP benefits in the Act, in program regulations, or by policy, such as:

Garden Seeds and Plants: Seeds and plants used in gardens to produce food for human consumption are eligible foods. This includes the following items:

- Seeds for producing edible plants and edible plants (e.g., tomatoes and green pepper seeds or plants, and fruit trees);
- Edible food producing roots, bushes, and bulbs (e.g., asparagus crowns and onion bulbs); and
- Seeds and plants used to produce spices for use in cooking.

Hunting and Fishing Equipment Used in Remote Areas of Alaska: In Alaska, certain hunting and fishing equipment may be purchased with SNAP benefits by eligible households that reside in areas determined to have extremely limited access to retail food stores, and who rely substantially on hunting and fishing as a food source. The eligible households are issued identification cards which indicate their ability to purchase the equipment.

For those households, eligible equipment includes items such as nets, hooks, fishing lines and rods, harpoons, and knives. Equipment used for purposes of transportation (including gasoline and motor oil), clothing, or shelter are not eligible under this provision. Firearms, ammunition, and explosives are ineligible for purchase with SNAP benefits.

Military Commissary Surcharges: Military commissary surcharges established under Federal law may be paid for with SNAP benefits. SNAP clients receive a great value at commissaries because commissary pricing is “at cost.” Other retailers include overhead costs in the pricing of their foods. The military commissary surcharge, used for construction, repair, improvement, and maintenance of commissaries, is equivalent to this overhead, except that it is charged separately.

Container Deposits under State Law: Deposits for returnable food/beverage containers (bottles, cans, etc.) may be paid with SNAP benefits only if they are mandated by State law. Deposits added by manufacturers or retailers cannot be paid for with SNAP benefits, even if the fee is included in the shelf-price of the product.

Sales Tax Included in the Shelf Price of an Eligible Item: Sales tax included as part of the purchase price of an eligible item may be paid with SNAP benefits only if the tax is not charged separately at the point of sale or is not required to be shown separately on the cash register receipt.

III. Items that May Not be Purchased or Paid For with SNAP Benefits

There are some items specifically excluded from purchase with SNAP benefits, including some food items intended for human consumption. In general, the types of items listed below may not be purchased with SNAP benefits:

Alcohol: Any beverage labelled as containing any amount of alcohol is ineligible. This includes low-alcohol beers labelled as “non-alcoholic.” Food items containing alcohol, such as liquor-filled chocolates, are also ineligible.

EXCEPTION: Cooking ingredients and extracts that contain alcohol, such as cooking wine, wine vinegar, and vanilla extract, are eligible foods.

Tobacco and Nicotine Delivery Products: All tobacco products, including cigars, cigarettes, snuff, and chewing tobacco are ineligible. Likewise, all nicotine delivery products, including e-liquid for electronic cigarettes, are ineligible.

Hot Food: Foods and beverages that are hot at the point of sale are ineligible. This includes, for example, chicken that has been broiled, fried, barbecued, or roasted; shrimp that has been steamed or fried; crab or lobster that has been steamed; soups, stews, and chili; and beverages such as coffee, tea, and cocoa.

Foods Prepared and Sold for On-Premises Consumption: Prepared foods intended for on-premises consumption are ineligible foods. It should be noted, however, that prepared foods intended for off-premises consumption are eligible, as long as they are not hot at the point of sale.

Firearms, ammunition, and explosives: Firearms, ammunition, and explosives are ineligible for purchase with SNAP benefits.

Medicines and Dietary Supplements: Patent medicines and other products used as health aids, such as aspirin, cough drops or syrups and other cold remedies, and antacids are ineligible for purchase with SNAP benefits.

Dietary supplements, including but not limited to, vitamins, minerals, and other therapeutic products that carry a Supplement Facts label, instead of a Nutrition Facts label, are also ineligible for purchase with SNAP benefits. This includes dietary supplements that resemble foods or beverages, such as energy bars or protein drinks that have a Supplement Facts label. Since dietary supplements are intended to supplement the diet, they are not considered foods.

Product manufacturers label their products based on the Food and Drug Administration guidelines. Any questions or concerns about a product's label should be addressed to the product manufacturer.

Live Animals: Live animals are generally ineligible for purchase with SNAP benefits because they may be used as livestock or pets. SNAP benefits may not be used to pay any costs or fees for slaughtering live animals, or any separate charge for processing meat, poultry, or seafood.

EXCEPTIONS:

- Shellfish (lobster, crabs, clams, etc.) may be purchased live;
- Fish may be purchased live at the point-of-sale, as long as the fish are removed from water prior to removal from the premises of the seller; and
- Other animals (including birds) that are live at the point-of-sale may be purchased with SNAP benefits if they are slaughtered prior to removal from the premises of the seller.

Gift Baskets: Sometimes eligible food items may be packaged together with ineligible non-food items. For example, seasonal items such as Easter baskets, Christmas stockings, and special occasion items such as gift baskets, wedding cakes, and the like, are not eligible if the value of the nonfood items clearly amounts to more than 50 percent of the purchase price. For example, if a gift basket containing a stuffed bear and a small box of chocolates packaged together retails for \$14.99, the item would be ineligible because the value of the toy is more than 50 percent of the purchase price. Gift packages with items containing alcohol (except cooking ingredients), tobacco, or pet food and/or pet toys are always ineligible for purchase with SNAP benefits.

Non-food Items: Unless specifically designated as eligible, non-food items may not be purchased with SNAP benefits. Ineligible non-food items include, but are not limited to:

- Gardening soil, fertilizer, peat moss, and other gardening supplies;
- Cleaning and paper products;
- Soaps and toiletry articles;
- Cooking utensils;
- Gasoline;
- Hardware;
- Clothing;
- Food preservation equipment, such as pressure cookers, canning jars and lids, paraffin, freezer containers, and wrapping paper; and

- Items not intended for human consumption even if they may sometimes be used for human consumption, such as laundry starch and pet foods (including bird seed). This includes any product specifically labeled for use other than human consumption, such as decorative dye used on hard-boiled eggs, which is labeled for this use only.

Fees: Fees, unless specifically permitted, may not be paid with SNAP benefits. Below are examples of fees that may not be paid with SNAP benefits:

- Retailer fees for the delivery of food or food products; and
- Grocery bag fees charged by States or retailers.

EXCEPTION: Military commissary surcharges and container deposits required under State law may be paid with SNAP benefits, as described in Section II.

Sales Tax: Generally, sales tax may not be charged for items paid with SNAP benefits and SNAP benefits may not be used to pay a sales tax. Accepting SNAP benefits for sales tax, when prohibited, is a program violation. If a SNAP recipient uses a combination of SNAP benefits and cash or other tender to make a purchase, a firm may charge sales tax on the items paid with cash or other tender, though this tax may not be paid with SNAP benefits.

EXCEPTION: Sales tax included in the shelf price of an eligible item may be paid with SNAP benefits in limited circumstances, as described in Section II.

Questions about specific food products, or any other questions regarding this memorandum, should be directed to the Retailer Policy and Management Division at RPMDHQ-WEB@fns.usda.gov.



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