



HHS Public Access

Author manuscript

Am J Prev Med. Author manuscript; available in PMC 2016 September 01.

Published in final edited form as:

Am J Prev Med. 2015 September ; 49(3): 428–436. doi:10.1016/j.amepre.2015.02.027.

The Supplemental Nutrition Assistance Program:

Analysis of Program Administration and Food Law Definitions

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Abstract

Under the current version of the Supplemental Nutrition Assistance Program (SNAP), participants can purchase virtually any food or beverage (collectively, food). Research indicates that SNAP recipients may have worse dietary quality than income-eligible nonparticipants. Policymakers have urged the U.S. Department of Agriculture (USDA) to pilot SNAP purchasing restrictions intended to support a healthier diet, and state legislators have proposed similar bills. The USDA rejected these invitations, stating that it would be administratively and logistically difficult to differentiate among products, amid other concerns. However, the USDA's Dietary Guidelines for Americans and the Supplemental Nutrition Program for Women, Infants, and Children (WIC) do just that. Further, state governments define and differentiate among foods and beverages for tax purposes. This paper reviews several factors intended to inform future policy decisions: the science indicating that SNAP recipients have poorer diet quality than income-eligible nonparticipants; the public's support for revising the SNAP program; federal, state, and city legislators' formal proposals to amend SNAP based on nutrition criteria and the USDA's public position in opposition to these proposals; state bills to amend eligible foods purchasable with SNAP benefits; state retail food tax laws; and the retail administration and program requirements for both WIC and SNAP. The paper finds that the government has a clear ability to align SNAP benefits with nutrition science and operationalize this into law.

Introduction

Formerly known as the Food Stamp Program, the Supplemental Nutrition Assistance Program (SNAP) is the nation's largest food assistance program, serving approximately 47 million people.¹ SNAP is administered jointly by the U.S. Department of Agriculture (USDA) and state governments. The program began as a pilot to assist food insecure people following the Great Depression and aligned benefits with farm surpluses.² In 1964, the permanent program was enacted; the House version would have prohibited the purchase of

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No financial disclosures were reported by the authors of this paper.

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soft drinks and “luxury foods” but these limitations were not incorporated.³ Participants can purchase any food or beverage (collectively, food) except for ready-to-eat “hot foods” (unless they participate in a special program), alcohol, and dietary supplements.⁴ SNAP allotments are based on the “Thrifty Food Plan” model, which anticipates participants can access ingredients and a place and time to cook.²

SNAP is reauthorized pursuant to the Farm Bill. In 2008, Congress changed the program’s name to SNAP; it declared that SNAP’s purpose is to “permit low-income households to obtain a more nutritious diet” to raise their “levels of nutrition” and alleviate “hunger and malnutrition.”⁵ Congress reiterated the goal of providing eligible households an “opportunity to obtain a more nutritious diet” in the text of the law.⁶ Despite Congress’ declarations, there are no nutrition standards accompanying the redemption of SNAP benefits. There is thus significant debate over whether the program should be one of true nutrition assistance or function as an in-kind cash transfer.^{7,8}

In 2008, Congress also authorized the USDA to pilot SNAP incentive programs. The USDA created the Healthy Incentives Pilot (HIP), which provided financial incentives to purchase targeted fruits and vegetables, resulting in increased produce purchases among HIP participants.⁹ The USDA also permits jurisdictions to more permanently provide extra dollars for produce purchased at farmers’ markets^{10,11} and grocery stores.¹² However, more restrictive options have been posited and are the subject of this paper, including revising SNAP to align with the Dietary Guidelines for Americans (DGAs),¹³ removing certain food items from coverage,^{14–16} and modeling SNAP after the Supplemental Nutrition Program for Women, Infants, and Children (WIC).^{17,18}

Policymakers have urged the USDA to pilot programs with purchasing restrictions to support a healthier diet.^{13,19} The USDA rejected these invitations, arguing, among other concerns discussed below, that doing so would pose substantial administrative challenges.^{20–22} The federal government, however, currently designates foods as nutritious for WIC and many states distinguish among food items for taxation purposes. Further, legislators have proposed bills that would designate specific foods as ineligible for purchase with SNAP benefits.²³ This legislative history is rich with workable definitions and administrative achievements that can provide a basis for SNAP classifications among foods.

This paper reviews several factors that could inform future policy decisions: the science indicating that SNAP recipients have poorer diet quality than income-eligible nonparticipants; public support for revising the SNAP program; federal, state, and city legislators’ formal proposals to amend SNAP based on nutrition criteria and the USDA’s position in opposition; state bills to amend SNAP; state retail food tax laws; and the retail administration and program requirements for both WIC and SNAP. The paper finds that the government has a clear ability to align SNAP benefits with nutrition science and operationalize this into law.

SNAP Recipients' Diet Quality

Diet quality is often a function of SES,²⁴ but individuals who participate in SNAP have a different diet quality than income-eligible nonparticipants. Public health studies indicate SNAP participation is associated with the purchase of less healthy food. Food insecurity advocates, most notably the Food Research Action Center (FRAC) disagree with this conclusion⁸; however, there is agreement that among children, SNAP recipients are not more obese and do consume more of several micronutrients than nonparticipants.^{8,25}

Nationally representative studies using National Health and Nutrition Examination Survey data are informative. Child SNAP recipients consume more sugary beverages, processed meats, and high-fat dairy products, but fewer nuts, seeds, and legumes than income-eligible nonparticipants.²⁵ Similarly, adult SNAP recipients consume more fruit juice, potatoes, red meat, and sugary beverages, but fewer whole grains than income-eligible nonparticipants.²⁶ In another study, SNAP participants had lower dietary quality scores overall, and consumed significantly fewer fruits, vegetables, seafood, and plant proteins, but significantly more added sugar than income-eligible nonparticipants.²⁷

Studies analyzing specific regions and smaller populations have come to similar conclusions. In one study comparing the grocery store purchases of SNAP and WIC households in New England, SNAP households purchased more than double the amount of sugary beverages per month (399 ounces) than WIC households (169 ounces), 72% of which were paid for with SNAP dollars.²⁸ In a 3-month study, new SNAP participants significantly increased their consumption of refined grains compared with low-income people who did not join.²⁹ In a study of Hispanic Texan women, SNAP participants consumed 26% more sugary beverages and 38% more sweets and desserts than low-income nonparticipants.³⁰

It is unclear what drives the differences in diet between SNAP participants, as opposed to income-eligible nonparticipants and other low-income nonparticipants. These differences may not be caused by SNAP participation. Nonetheless, these studies indicate that SNAP is not successfully raising the food quality purchased by participants.^{31,32}

Public Support

The public has indicated support for program restructuring. In one survey of more than 3,000 adults, 69% of the public and 54% of SNAP participants supported removing sugary drinks from SNAP eligibility.³³ In another survey of 522 SNAP stakeholders, 78% of respondents agreed that soda, and 74% agreed that “foods of low nutritional value” such as candy and sugar-sweetened fruit drinks should not be eligible for purchase with benefits.³⁴ Seventy-seven percent of respondents believed that SNAP benefits should be consistent with the DGAs, and 54% thought that SNAP should be reformulated into a defined food package similar to WIC.³⁴

Formal Proposals to Amend SNAP and the USDA's Position

Several policymakers have requested that the USDA permit trials differentiating between healthy and unhealthy food under SNAP. Minnesota requested a waiver for soft drinks and

taxable candy; New York City (NYC) sought to engage in a 2-year demonstration project to remove sugary beverages from SNAP coverage.¹⁹ The USDA rejected these proposals, noting for NYC that the scale and scope was too large, there was little evidence that retailers were prepared to operationalize the change, the proposal lacked a process to determine product eligibility and dissemination, and the evaluation design was inadequate.²⁰ The USDA pointed to HIP as a model pilot program.²⁰

In 2013, Senators Harkin and Coburn attempted to amend the Farm Bill to allow SNAP demonstration projects in two states to promote the purchase of healthier food.³⁵ The amendment failed to pass, so the Senators urged the USDA to engage in two demonstration projects on its own.¹³ The Senators suggested such projects should “limit the use of SNAP benefits for the purchase of foods or beverages that the [DGAs] identify as foods, beverages, or food components that (1) are consumed in excessive amounts and (2) may increase the risk of chronic diseases or conditions.”¹³ The USDA rejected this request.

The USDA’s position is that Congress would need to revise SNAP but has avoided doing so because “designating foods as luxury or non-nutritious would be administratively costly and burdensome.”²¹ Formal requests and the bills discussed below are not based on concerns over “luxury” food items, but rather to revise the program to provide nutritionally relevant assistance. However, the USDA independently argues that: there are no clear standards to define foods as healthy or not; food restrictions would pose substantial implementation challenges due to the tasks of identifying, evaluating, and tracking foods; participants could still purchase food with their own money leading to little change; and no evidence exists to indicate that SNAP contributes to negative dietary outcomes.²² However, these arguments are subject to challenge.

First, nutrition science provides clear standards to determine the healthfulness of certain foods,^{17,31} and the WIC program does exactly this by implementing scientifically based distinctions, as discussed below. Further, the USDA’s DGAs distinguish among foods based precisely on healthfulness, by encouraging the consumption of fruits, vegetables, whole grains, seafood, and low-fat dairy, and discouraging specific foods high in sodium, saturated fats, trans fats, cholesterol, added sugars, and refined grains.³⁶ Second, the literature reviewed above regarding the quality of food purchased by SNAP recipients provides strong evidence that SNAP may contribute to negative dietary quality. Third, studies on SNAP recipients’ purchasing habits refute the USDA’s position that SNAP recipients will use enough of their own money to compensate for a restriction on purchasable items.^{14,28,37} Finally, the very purpose of a pilot program would be to empirically test and study these assumptions, so it would be important to design and evaluate a pilot with this goal. Thus, the outstanding question addressed in this paper is whether there are true identification, administrative, and implementation challenges associated with legislatively designating certain food as not purchasable with SNAP benefits.

State Bills to Amend SNAP

A review of the state bills proposed during the 2013–2014 legislative session³⁸ reveals that state legislators find it both possible and preferable to designate certain foods as ineligible

under SNAP based on poor nutritional quality. Legislators proposed a range of bills that would permit their states to seek a waiver from the USDA, conduct a pilot program, or pass a resolution urging Congress to remove certain foods from SNAP eligibility. These bills died in committee prior to public debate, thus the specific reason for non-passage is not readily available but news reports indicate similar concerns were expressed as those argued by the USDA.^{39,40} However, the number and variety of bills reveal legislators' broad interests in addressing this issue across the country.

Several bills did not specify which foods they would target^{41–45}; other bills did, identifying products as foods of minimal nutritional value,^{46–48} “nonfood,”⁴⁹ “unhealthy,”⁴⁸ or “antithetical to the purpose of the program.”⁵⁰ The following states' bills specified the following foods: Illinois, carbonated soft drinks, snack cakes, candies, chewing gum, flavored ice bars, fried, high-fat chips^{46,47}; Missouri, energy drinks⁵¹; West Virginia, soft drinks, carbonated beverages, candy, cookies, crackers, ice cream^{49,52}; California, calorically sweetened beverages⁵³; and South Carolina, soft drinks, candy, high-fat chips.⁴⁸ A Maine bill would have prohibited the purchase of taxable foods,⁵⁰ which include products not “consumed for human nourishment,” including soft drinks, iced tea, sodas, fountain beverages, candy, confections, and prepared food.⁵⁴ An Indiana bill would have required the state to “consider the food limitations set forth” in WIC to determine nutritional guidelines for SNAP.⁵⁵

In summary, state legislators have proposed to restrict the purchase of certain products with SNAP. One might infer that these legislators are willing to deal with whatever administrative challenges that may exist in restructuring benefits. The products listed in these bills include: soft drinks, carbonated beverages, sweetened beverages, soda, energy drinks (hereafter collectively, sweetened beverages), iced tea, candy, confections, gum, flavored ice bars (e.g., popsicles), ice cream, fried or high-fat chips, crackers, snack cakes, and cookies.

State Tax Laws

States have various food retail sales tax laws; many distinguish between necessity and non-necessity food, the latter of which is taxed at a higher rate. It is important to note that food purchased with SNAP benefits is exempt from state and local sales taxes, so participants do not pay sales taxes on food regardless of the tax rate.⁶ These tax laws reveal that states regularly differentiate among foods items and successfully undertake the administrative tasks associated with defining the food that makes up each category.

The Bridging the Gap Research Program's Beverage and Snack Taxes data set captured the tax laws of all 50 states and Washington DC (collectively, states) for 2014.^{56,57} Thirteen states tax all food at general sales tax rates. Many states tax certain food items at a higher rate regardless of whether food is taxed. This distinction is referred to as “disfavored” tax status.⁵⁸ Twenty-three states have disfavored status for sweetened beverages,⁵⁶ 18 states disfavor candy and confections, 15 disfavor gum, four disfavor ice cream, and two states disfavor popsicles.⁵⁷ Currently, no state categorically taxes “snack foods,” but Maine^{54,59} and DC^{60,61} previously disfavored snack items with both jurisdictions repealing their tax in 2000.^{62,63}

Most states do not have an exact definition of food, but rather provide extensive lists of what qualifies as food or exclusions to non-taxable foods.⁵⁷ A few states loosely align the taxable definition of food with the federal definition of food for the SNAP program.⁵⁷ The U.S. Food and Drug Administration, USDA, and state tax law definitions are listed in Table 1.

No state explicitly defines gum, ice cream, or popsicles.⁵⁷ Conversely, many states define taxable beverages⁵⁷; the most common is for “soft drinks” and mirrors the Streamlined Sales and Use Tax Agreement (SSUTA), which was created by a Board founded by the National Governor’s Association and the National Conference of State Legislatures to simplify tax collection across states and support cross-state retailers.⁶⁴ Thus, the SSUTA definitions support these purposes. The SSUTA defines “soft drinks” as “non-alcoholic beverages that contain natural or artificial sweeteners,” but does “not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.”⁶⁵ The states’ varying definitions for taxable beverages (often with different percentages for juice) are listed in Table 1.

The majority of states that tax candy use the SSUTA definition, which defines candy as “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,” not requiring refrigeration and not including “any preparation containing flour.”⁶⁵ The result of excluding flour products from the definition is that many candy items are not taxed (e.g., Nestle Crunch, Twizzlers, Twix), but non-candy items are taxed as candy (e.g., granola and cereal bars).¹⁰⁵ The impetus for the rule was that the Board found it difficult to differentiate between candy and cookies, the latter which states wanted to treat as general food for tax purposes.¹⁰⁶ However, in the most straightforward terms, cookies are grain-based desserts, which can be differentiated. For example, the DGAs list cake, cookies, pie, cobbler, sweet rolls, pastries, and donuts as grain-based desserts.³⁶ For SNAP purposes, utilizing a definition of candy without the flour-disqualifier would align with nutrition standards and be more straightforward for administrative purposes. Other states’ definitions could be considered and are noted in Table 1.

In terms of snack foods, Maine⁵³ and DC⁶¹ previously categorically taxed snack foods and both listed the exact foods subject to their tax. The overlapping products captured by both jurisdictions’ laws included: chips, popcorn, pork rinds, pretzels, cheese puffs, doughnuts, cookies, crackers, individual pastries, cakes, pies, and marshmallows. Table 2 sets forth the full definitions of “snack food” by both and two states’ laws that do not tax snack foods but still define them.

In sum, the current tax laws distinguish sweetened beverages, candy and confections, gum, ice cream, and popsicles for disfavored tax status. This is a more limited list than the foods specified in state bills to be ineligible for SNAP coverage, which additionally include fried or high-fat chips, crackers, snack cakes, and cookies; however, these would be included if the Maine and DC snack food taxes were considered. Moreover, the 13 states that tax food in general tax all of the aforementioned products. States successfully define and differentiate among foods and administer taxes based on these distinctions.

WIC Retail Administration

WIC is a USDA program that provides federal funds to states agencies to administer a range of benefits to low-income pregnant and postpartum women, infants, and children up to age 5 years who are at nutritional risk.¹⁰⁷ The WIC food package includes an established set of food specifically selected for its nutritional benefits.¹⁰⁸ In most states, participants receive paper vouchers that are redeemed at authorized WIC retailers for specified items.

Unlike for SNAP, Congress directs the USDA to amend the WIC food package “to reflect nutrition science, public health concerns, and cultural eating patterns” at least every 10 years “to reflect the most recent scientific knowledge.”¹⁸ In 2005, IOM issued a report suggesting the USDA revise the WIC food package to encourage a healthier diet and match dietary guidance for infants and children.¹⁰⁹ Based almost entirely on these recommendations, the USDA issued proposed rules and interim requirements.¹¹⁰ WIC state agencies successfully implemented these changes by 2009.¹¹¹ In March 2014, the USDA issued a final rule strengthening WIC nutritional requirements to increase the allotment of whole grains, fruit, and vegetables; reduce juice; exclude white potatoes; and replace whole milk with low-fat or nonfat milk.¹¹²

Retailers must compare the WIC food voucher with the chosen product to determine coverage, which is based on product quantity, qualities (e.g., Jack mackerel is an approved canned fish option but King mackerel is not),¹¹² and nutrition content (e.g., approved milk fat percentages vary based on the child–recipient’s age).¹¹³ Retailers must differentiate among the products and check them against the voucher at the point of purchase. When the government changed the WIC package, retailers adjusted to new requirements and states created WIC training guides to assist vendors.¹¹⁴

The alignment of the WIC package with nutrition science has been at least partially credited for improved diets among low-income preschool children and their families, resulting in lower obesity rates.^{115,116} Further, the revised package was found to significantly improve the availability and variety of healthy foods in WIC-authorized stores which additionally benefited the greater community.¹¹⁷

SNAP Retail Administration

SNAP benefits may be redeemed for any item covered by the USDA’s definition of food (Table 1). SNAP benefits are issued through Electronic Benefits Transfer (EBT) cards, which are similar to debit cards and automatically deduct the purchase price (without sales taxes) from the customer’s account and deposit it into the retailer’s bank account.¹¹⁸ Large stores code and categorize all food with information including whether the product is subject to sales tax and purchasable with SNAP benefits.²⁸ These stores use scanners at checkout so employees do not need to manually separate SNAP food from nonfood items. Small stores that do not have an electronic register and scanning system must separate eligible foods from nonfood items for SNAP and sales tax purposes and tally the amount manually (e.g., with a cash register).¹¹⁸ The USDA has a training guide and staff available to assist retailers.¹¹⁹

USDA data show that 82% of all SNAP benefits are redeemed at supermarkets, large grocers and superstores, and that 96.3% of all SNAP beneficiaries shop at these stores at least once each month.¹²⁰ Administratively, if SNAP was revised to include nutrition standards, implementation issues would likely be limited to the small stores without electronic registers and scanning systems. However, amendments made to SNAP through the 2014 Farm Bill, the Agricultural Act of 2014, will likely result in some smaller stores phasing out their acceptance of SNAP benefits. First, the USDA increased the minimum inventory necessary to qualify as a SNAP retailer.¹²¹ SNAP retailers must offer for sale, on a continuous basis, a variety of at least seven foods in each of the four staple food categories (meat, poultry, or fish; bread or cereals; vegetables or fruit; and dairy products) including perishable foods in at least three of the categories, or the retailer's total sales must derive from more than 50% staple foods.⁴ Second, the USDA previously provided EBT equipment free of charge; now, for-profit and non-farmers' market retailers must pay 100% of the costs of acquiring and implementing EBT equipment, supplies, and services.¹²² Therefore, it is likely that the number of retailers without electronic systems will decline and fewer stores would face administrative barriers to carrying out changes to SNAP.

Discussion

Any changes to SNAP would need to be authorized or mandated by the federal government, and carried out at the state or local level. Congress can require the USDA to either pilot a program as it did to support the USDA's HIP,⁹ or engage in notice and comment rulemaking to amend SNAP guidelines, perhaps to "reflect nutrition science, public health concerns, and cultural eating patterns," as it did with WIC.¹⁸ Through this process, the USDA can assess stakeholders' interests, gain the public's perspective, and tailor the food definitions according to nutrition science.

Changes to WIC were more politically palatable than that for SNAP. WIC is a significantly smaller program, but the beneficiary population is explicitly vulnerable mothers and young children. However, SNAP is still the nation's largest child-feeding program.¹²³ Fifty percent of beneficiaries are children¹ and most households receiving SNAP benefits include children, the elderly, or disabled adults.¹²⁴ Refining SNAP to reflect nutrition science and public health concerns is compatible with the aforementioned studies indicating that the program is not raising nutrition levels of food purchased by participants as intended.

The federal government successfully revised the WIC package¹¹² and states continuously update their food tax laws⁵⁷; both require revised definitions, administrative adjustments, and guidance for retailers.¹²⁵ Senators Harkin and Coburn argued that the "intricacies" involved in WIC administration "likely exceed any restrictions proposed by states" to amend SNAP.³⁵ Administrative changes did not dissuade the government from implementing modifications deemed necessary to improve the health of WIC participants or adjust state tax laws, and should not be a barrier to strengthening SNAP.

Foods that are not permitted to be purchased with WIC benefits, taxed through disfavored tax status, and explicitly mentioned in state bills seeking waivers from the USDA for exclusion from SNAP benefits include: sweetened beverages, candy, gum, ice cream, and

popsicles. This list can provide a foundation for a pilot program with the caveat that in order to support the public health rationale of a program revision, limiting “sweetened beverages” to calorically sweetened beverages would be more rational.

The remaining foods listed in state bills and covered by DC and Maine’s snack tax laws include fried or high-fat chips, crackers, snack cakes, and cookies. The DGAs suggest reducing consumption of these same foods.³⁶ Because more effort might be necessary to define these categories, the USDA might use the notice and comment process to refine the definitions and ensure they are based on nutrition science and stakeholders’ comments.

Future Research

Food choices are made within one’s community and low-income residents often have high access to inexpensive unhealthy foods.²⁴ Although more than 96% percent of SNAP beneficiaries have monthly access to large food stores,¹²⁰ many recipients still live in food deserts.² Future research is needed to determine whether the Farm Bill’s revisions to SNAP retailer requirements result in fewer small stores accepting SNAP benefits and whether this negatively or positively impacts healthy food access. Additionally, if the government revises SNAP, research would be valuable to determine if this improves the availability and variety of healthy foods in SNAP-authorized stores as occurred after revisions to WIC.^{15,117}

FRAC disagrees with the implementation of food restrictions on SNAP benefits, and the USDA and FRAC have argued that changes supported by this paper may be stigmatizing to SNAP recipients.^{8,22} This is an empirical assertion that should be tested during pilot studies.¹²⁶ It is noteworthy that neither the USDA nor FRAC raised similar objections to revising the WIC food package; FRAC fully supported the USDA’s amendments.¹²⁷

Conclusions

Food assistance in the U.S. is historically tied to a joint effort to address hunger and dispose of surplus commodities.² SNAP seeks to raise “levels of nutrition” to alleviate “hunger and malnutrition,” but Congress also found it would “strengthen the Nation’s agricultural economy.”⁵ Participants purchase processed food subsidized by the Farm Bill’s commodity program,²³ so food companies provide funding and lobby against reform.^{35,128,129} Congress should nonetheless abide by its commitment to raise the levels of nutrition among low-income households and require the USDA to pilot a program to provide meaningful nutrition assistance. Based on formal evaluation of the program’s outcomes, Congress may legislatively revise SNAP requirements or require the department engage in notice and comment rulemaking. The federal and state governments’ legislative history should be utilized to inform future SNAP policy and operationalize such changes in the law.

Acknowledgments

This paper was commissioned by the Robert Wood Johnson Foundation (RWJF) through its Healthy Eating Research program. Support was also provided to JFC. through the RWJF-supported Bridging the Gap Research Program at the University of Illinois at Chicago and through grant number R01DK089096 from the National Institutes of Diabetes and Digestive and Kidney Diseases (NIDDK), NIH. The authors wish to thank Tatiana Andreyeva for her insight into Supplemental Nutrition Assistance Program retail administration as well as Christina Sansone and Elizabeth Piekarz, J.D. for their research assistance.

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Table 1

Definitions

Term(s)	Food Drug & Cosmetic Act	USDA Definition	State tax law definitions
“Food”	“The term “food” means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.” ⁶⁶	SNAP Program Definition: “Food” means any food or food product for home consumption and seeds and plants for use in gardens to produce food for the personal consumption of the eligible household except it does not include alcoholic beverages, tobacco, hot foods or hot food products ready for immediate consumption other than those authorized pursuant to clauses that allow for prepared meals for specific persons, and for certain people living in Alaska, equipment necessary for subsistence hunting and fishing. ⁶⁷	Most states have no definition. States that align the definition of “food” for tax purposes with the “Federal Food Stamp Program,” sometimes with exceptions: MO, ⁶⁸ NM, ⁶⁹ SC, ⁷⁰ VA, ⁷¹ CO. ⁷²
“Soft Drinks” and related beverage definitions	No Definition	Dietary Guidelines for Americans 2010 Definition of “sugar-sweetened beverages:” “Liquids that are sweetened with various forms of sugars that add calories. These beverages include, but are not limited to, soda, fruit ades and fruit drinks, and sports and energy drinks.” ⁷³	<p>Most Common: “‘Soft drinks’ means nonalcoholic beverages that contain natural or artificial sweeteners. ‘Soft drinks’ do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.” CO,⁷⁴ CT,⁷⁵ IL,⁷⁶ IA,⁷⁷ IN,⁷⁸ KY,⁷⁹ MN,⁸⁰ NJ,⁸¹ NC,⁸² ND,⁸³ OH,⁸⁴ RI,⁸⁵ WA,⁸⁶ WV,⁸⁷ WI.⁸⁸</p> <p>WA State’s Department of Revenue interpreted this definition to include sports drinks, energy drinks, sweetened tea, lemonade, soda, tonic water, flavored water with sweeteners, and juice drinks with 50% or less fruit juice.⁸⁹</p> <p>DC uses a similar definition to the one above but does not tax any juice and specifies that coffee, coffee substitutes, cocoa, or tea are not taxed.⁹⁰</p> <p>Florida’s “soft drinks” definition includes beverages “commonly referred to as a ‘soft drink,’” or any noncarbonated drink made from milk derivatives or tea, if sold in cans or similar containers.⁹¹</p> <p>Texas defines “carbonated and noncarbonated packaged soft drinks” as “nonalcoholic beverages that contain natural or artificial sweeteners.”⁹²</p> <p>New York⁹³ and Maine⁵³ define soft drinks to include soft drinks, sodas or beverages ordinarily dispensed at soda fountains. Maine also taxes iced tea and coffee.⁹⁴ New York additionally taxes fruit drinks (whether or not carbonated) that contain less than 70% juice.⁹³ New York State’s Department of Taxation and Finance interprets its definition to additionally include flavored waters, flavored beverages (e.g., chocolate, vanilla, strawberry Yoo-hoo) non-alcoholic cocktail mixes and other drink mixes, energy drinks, and sports drinks.⁹⁵</p> <p>Pennsylvania taxes all nonalcoholic beverages, whether carbonated or not, made with or without syrup, “such as soda water, ginger ale, Coca Cola, lime cola, Pepsi cola, Dr. Pepper, fruit juice, orangeade, lemonade, root beer, or any and all preparations, commonly referred to as ‘soft drinks,’” except not included are fruit or vegetable juices/concentrates “containing not less than” 25% juice, coffee, coffee substitutes, tea, cocoa, milk or non- carbonated drinks made from milk derivatives.⁹⁶</p> <p>No definition: CA (carbonated beverages taxed),⁹⁷ MD (soft drinks, carbonated beverages taxed).⁹⁸</p>
“Candy”	No definition	No definition	<p>Most Common: “Candy” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” shall not include any preparation containing flour and shall require no refrigeration. CO,⁷⁴ IL,⁷⁶ IA,⁷⁷ KY,⁷⁹ MN,⁸⁰ NJ,⁸¹ NC,⁸² ND,^{83,99} RI,⁸⁵ TN,¹⁰⁰ WI.⁸⁸ According to the SSTUA, some products covered include: breath mints, chocolate chips, chocolate covered pretzels, candy apples, marshmallows, gum, caramel corn.¹⁰¹</p>

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Term(s)	Food Drug & Cosmetic Act	USDA Definition	State tax law definitions
			<p>New York defines candy and confectionery to include, without limitation, candy of all types; chocolate (plain or mixed with other products); glazed or sugar-coated fruits, nuts, peanuts, popcorn or other products; chewing gum; mints; lollypops; fruit flavored sticks; fruit drops; licorice; pastilles; cotton candy; marzipan; halvah and any similar product regarded as candy or confectionery based on its normal use or as indicated on the label or in the advertising thereof.¹⁰²</p> <p>Florida's defines "Candy and any similar product regarded as candy or confection, based on its normal use, as indicated on the label or advertising thereof."⁹¹</p> <p>Maine's statute does not define candy or confections,⁵³ but the Maine Revenue Service definition follows: Candy includes products "traditionally be considered candy or candy bars," including "bars primarily containing candy or chocolate, such as Twix® bars and Kudo® bars," or any "jelly-like" substance primarily containing sugar, corn syrup, or a sugar derivative, such as Gummie Bears® and jelly beans will be considered candy and subject to tax. "Primarily containing" is considered to be the first ingredient listed on the list of ingredients in the product. (If the first ingredient is fruit or fruit juice/extract, it is not subject to the tax. Granola and snack bars that list granola, cereal, oats or fruit as the primary ingredient would not be considered candy even if they are chocolate covered.) "Candy and confections also include snack foods such as popcorn, potato chips, nuts, raisins, pretzels, etc., that are coated with chocolate, yogurt, caramel, or carob. Candied and glazed fruit, fudge, chewing gum and breath mints are also considered confections subject to tax."¹⁰³</p> <p>No definition of candy or confections: MD,⁹⁸ CT,⁷⁵ IN,¹⁰⁴ TX.⁹²</p>

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Table 2

Snack Foods

State	Examples of State Tax Law Definition Without a Corresponding Tax	State	Repealed State Tax Laws' Definition
Texas	Does not tax "snack items" but defines it to include: (1) breakfast bars, granola bars, nutrition bars, sports bars, protein bars, or yogurt bars, unless labeled and marketed as candy; (2) snack mix or trail mix; (3) nuts, unless candy-coated; (4) popcorn; and (5) chips, crackers, or hard pretzels. ⁹²	DC 1999 law	"Snack food" includes, but is not limited to, potato chips and sticks; corn or tortilla chips; pretzels; cookies; popped popcorn; pork rinds; cheese puffs and curls; crackers; fabricated snacks; snack cakes and pies, such as donuts, cake and pie slices, and other pastries that are baked or fried in, or sliced into, individual serving sizes; candy; chewing gum; nuts and edible seeds; marshmallows; mixtures that contain one or more snack foods; soft drinks; and fruit or vegetable drinks that contain less than 15% natural fruit or vegetable juice by volume. "Snack food" includes only those items that are sold suitable for consumption without further processing such as heating, cooking, or thawing. ⁹⁰
Maryland	Does not tax "snack food" but defines it to include: (i) potato chips and sticks; (ii) corn chips; (iii) pretzels; (iv) cheese puffs and curls; (v) pork rinds; (vi) extruded pretzels and chips; (vii) popped popcorn; (viii) nuts and edible seeds; or (ix) snack mixtures that contain one or more of the foods listed above. ⁹⁸	Maine 1999 law	"Snack food" means any item that is ordinarily sold for consumption without further preparation or that requires no preparation other than combining the item with a liquid; that may be stored unopened without refrigeration, except that ice cream, ice milk, frozen yogurt and sherbet are snack foods; that is not generally considered a major component of a well-balanced meal; and that is not defined in this section as a grocery staple. "Snack food" includes, but is not limited to, corn chips, potato chips, processed fruit snacks, fruit rolls, fruit bars, popped popcorn, pork rinds, pretzels, cheese sticks and cheese puffs, granola bars, breakfast bars, bread sticks, roasted nuts, doughnuts, cookies, crackers, pastries, toaster pastries, croissants, cakes, pies, ice cream cones, marshmallows, marshmallow creme, artificially flavored powdered or liquid drink mixes or drinks, ice cream sauces including chocolate sauce, ready-to-eat puddings, beef jerky, meat bars and dips. ⁵³