Candy, Soft Drink, Dietary Supplement, & Prepared Food Quick Guide

What is Candy?

Preparation of:

- Sugar, honey, or other natural or artificial sweeteners
- Combined with chocolate, fruit, nuts, or other ingredients or flavorings
- In the form of bars, drops, or pieces

Candy does not include a preparation that contains flour or requires refrigeration.

Product	Candy	Not Candy
Licorice		X (contains flour)
Marshmallows	X	
Ice cream sandwich		X (requires refrigeration)
Pixie Sticks		X (not sold in the form of bars, drops, or pieces)
Honey roasted peanuts	X	

What is a Soft Drink?

A beverage that contains a natural or artificial sweetener

Does not include:

- Alcoholic beverages (0.5% or more alcohol)
- Beverage that contains milk or milk products; soy, rice, or similar milk substitutes
- Beverage that contains more than 50% vegetable or fruit juice

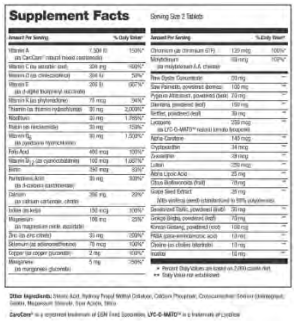
Product	Soft Drink	Not a Soft Drink
Iced Tea (unsweetened)		X (does not contain a sweetener)
Iced Tea (sweetened)	X	
Fruit Drink (more than 50% fruit juice)		X
Strawberry Milk		X (contains milk)

What is a Dietary Supplement?

A product intended to supplement a person's diet that meets all of the following:

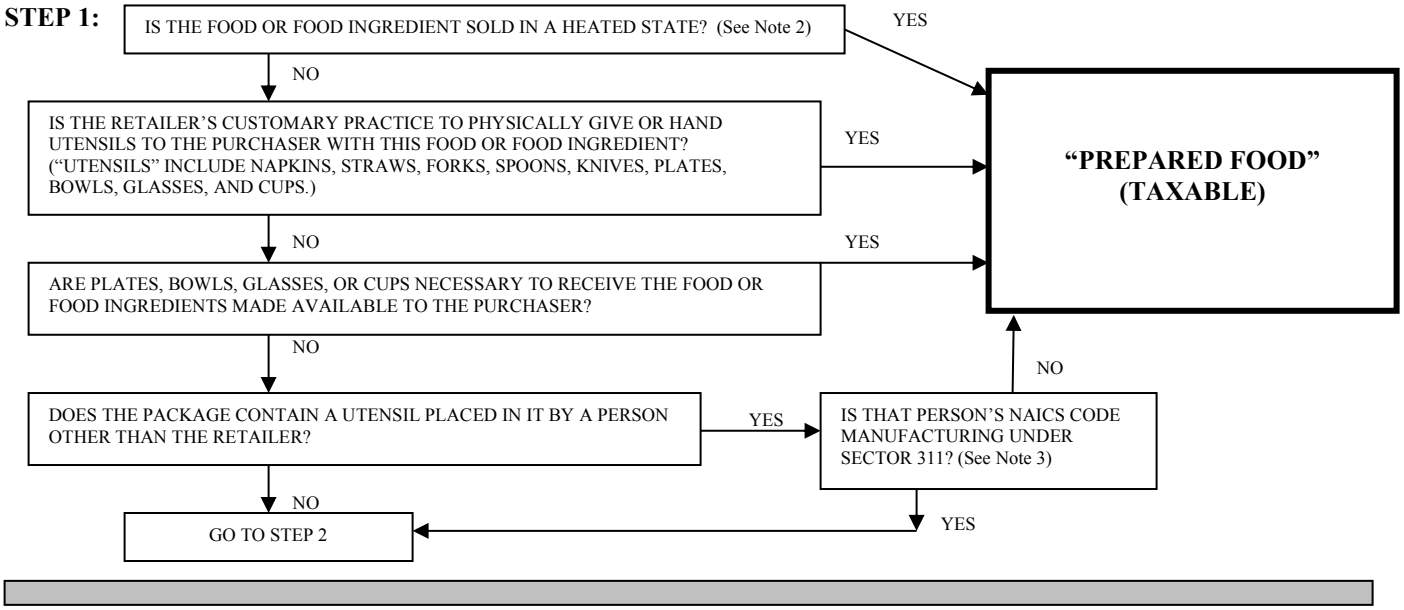
- Contains a vitamin, mineral, herb, botanical, amino acid or other dietary substance to supplement the diet,
- Is intended for ingestion in tablet, powder, capsule, gel-cap or if not in such forms, not represented as conventional food or intended to be sole item of a meal or diet, and
- Is labeled as a dietary supplement (21 C.F.R 101.36)

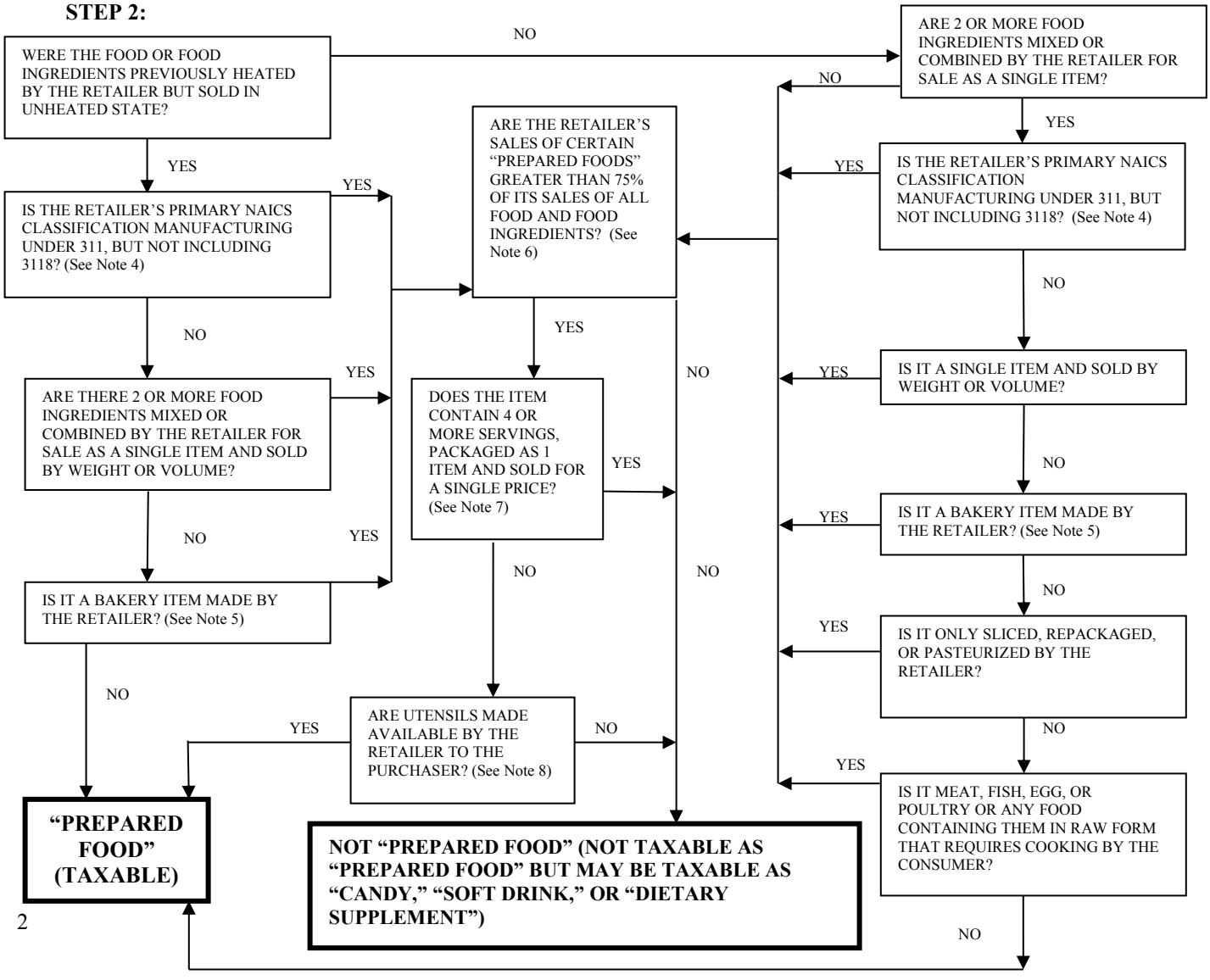
Dietary supplements can be identified by the "Supplement (al) Facts" box found as opposed to a "Nutrition (al) Facts" box found on the product labels:



ARE YOU SELLING "PREPARED FOOD"?

(This flowchart only helps you determine if the "food and food ingredient" (See Note 1) being sold meets the definition of "prepared food" provided in sec. 77.51(10m), Wis. Stats.)





Notes To "Prepared Food" Flowchart

1. "Food and food ingredient" means a substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested or chewed for its taste or nutritional value. "Food and food ingredient" includes beverages, but not alcoholic beverages. "Food and food ingredient" does not include tobacco.

2. Food and food ingredients are sold in a heated state if they are sold at a temperature higher than the room temperature.

3. A business' code under the North American Industry Classification System (NAICS) is based on that business' primary business activity. NAICS subsector 311 covers all food manufacturing businesses.

4. A business' code under the North American Industry Classification System (NAICS) is based on that business' primary business activity. NAICS subsector 311 covers all food manufacturing businesses and industry group number 3118 covers bakeries and tortilla manufacturing.

5. Bakery items include breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

6. For purposes of computing the 75%, the **numerator** is made up of the retailer's sales of food and food ingredients:

   (a) That are sold heated;
   (b) That were heated by the retailer but sold unheated, but not including:
   - The retailer's sales of bakery items,
   - Two or more food ingredients mixed or combined by the retailer for sale as a single item if the retailer's primary NAICS code is manufacturing under subsector 311 but not including bakeries and tortilla manufacturers under industry group number 3118, and
   - Two or more food ingredients mixed or combined by the retailer for sale as a single item and sold unheated by weight or volume

   (c) Two or more food ingredients mixed or combined by the retailer for sale as a single item, but not including:
   - The retailer's sales of bakery items,
   - Two or more food ingredients mixed or combined by the retailer for sale as a single item if the retailer's primary NAICS code is manufacturing under subsector 311 but not including bakeries and tortilla manufacturers under industry group number 3118,
   - Two or more food ingredients mixed or combined by the retailer for sale as a single item and sold unheated by weight or volume,
   - Items that are only sliced, repackaged, or pasteurized by the retailer, or
   - Eggs, meat, fish, poultry or any food item containing them in raw form that requires cooking by the consumer.

   (d) Food and food ingredients for which plates, bowls, glasses, or cups are necessary to receive the food and food ingredients.

   The **denominator** is made up of all of the retailer's sales of food and food ingredients.

7. Serving sizes are based on the information contained on the label of each item sold, except that if the item does not contain a label, the serving size is based on the retailer's reasonable determination.

8. Utensils are not considered to be "made available" by the retailer to the purchaser solely by virtue of a utensil being placed in the package along with the food item by a person other than the retailer. "Utensils" include napkins, straws, forks, spoons, knives, plates, bowls, glasses, and cups.