



# RULE-MAKING ORDER

**CR-103 (June 2004)**  
**(Implements RCW 34.05.360)**

**Agency:** Department of Revenue

- Permanent Rule**
- Emergency Rule**

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes
  - No
- If Yes, explain:

**Purpose:** RCW 82.08.0293 and 82.12.0293 provide a retail sales tax and use tax exemption for food and food ingredients. In 2004, the legislature amended these statutes to alter the definitions used to determine whether a particular food or food ingredient qualifies for the exemptions. The amendments were made in compliance with the national Streamlined Sales and Use Tax Agreement (SSUTA). Rule 244 has been amended to incorporate these statutory changes and the final interpretations adopted by the SSUTA advisory council regarding sales of food and food ingredients with utensils.

**Citation of existing rules affected by this order:**

Repealed:  
 Amended: WAC 458-20-244 Food and food ingredients  
 Suspended:

**Statutory authority for adoption:** RCW 82.32.300 and 82.01.060(2)

**Other authority :**

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR **06-22-092** on **November 1, 2006**.  
 Describe any changes other than editing from proposed to adopted version: **See attached.**

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: **An analysis was not prepared.**

**EMERGENCY RULE ONLY**

- Under RCW 34.05.350 the agency for good cause finds:
- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
  - That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**Date adopted:**

**Filed: May 14, 2007**

**NAME (TYPE OR PRINT)**

Janis P. Bianchi

**Time: 1:26 p.m.**

**SIGNATURE**

**WSR: 07-11-066**

**TITLE** Assistant Director,  
Interpretations and Technical Advice Division

**The above information was input by DOR**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	<u>1</u>	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	<u>1</u>	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	<u>1</u>	Repealed	_____



STATE OF WASHINGTON  
DEPARTMENT OF REVENUE

Attachment to CR-103 Rulemaking Order  
for  
WAC 458-20-244 Food and Food Ingredients

Changes other than editing from proposed to adopted version:

**Subsection 4(b)**—The following underlined language was added for clarification purposes (in accordance with current statutory language):

Items that contain eggs, fish, meat, or poultry, in a raw or undercooked state requiring cooking as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness; or

**Subsection 4(c)(iii)**— The following underlined language was added to clarify that food prepackaged with a utensil by a manufacturer is subject to retail sales tax if sold by a person predominately selling prepared food (in accordance with SSUTA issue paper and library of definitions).

(iii) **Seller of predominantly prepared food makes utensils available.** All food and food ingredients sold at an establishment are "sold with utensils provided by the seller" if the seller makes utensils available to its customers and the seller is in the business of selling predominantly prepared food. This includes food prepackaged with a utensil by a manufacturer classified under sector 311 of the NAICS. A seller is in the business of selling predominantly prepared food if the seller's gross sales of prepared food under (a), (b), and (c)(ii) of this subsection equal more than seventy-five percent of the seller's gross sales of food, food ingredients, soft drinks and dietary supplements.

**Subsection 4(d)**—Added the following prepared food example as subsection 4(d)(iii).

**(iii) Example 3.**

A pizza restaurant sells whole hot pizzas, hot pizza by the slice, and unheated ready-to-bake pizzas. The whole hot pizzas and hot pizza sold by the slice, including delivered pizzas, are "prepared food" because these items are sold in a heated state. If the unheated ready-to-bake pizzas are prepared by the seller, they are "prepared food" because the seller has mixed or combined two or more food ingredients. This is true even through some ingredients in the unheated pizzas are raw or uncooked, because those ingredients do not require cooking to prevent foodborne illness. If the unheated ready-to-bake pizzas are prepared by a manufacturer other than the seller, they will be taxable as "prepared food" only if the sold with utensils provided by the seller.

**Subsection 5(a)**—The following underlined language was added to clarify how tax applied to combined sales.

(a) **Combined sales.** Where two or more distinct and identifiable items of tangible personal property, at least one of which is a food or food ingredient, are sold for one nonitemized price that does not vary based on the selection by the purchaser of items included in the transaction:

**Subsection 5(b)(ii)**—This example (a retailer selling a decorative jar containing candy) was modified ("fifteen dollars" changed to "twelve dollars"), so that the selling price matches the combined selling prices of the jar and candy if separately sold.



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**Subsections 4(c)(iii), 4(c)(iii)(A), 4(d)(i), and 4(d)(ii).** The term “seller of predominantly prepared food,” (defined as a seller whose gross sales of prepared food under (a), (b), and (c)(ii) of subsection 4 equal more than seventy-five percent of the seller's gross sales of food, food ingredients, soft drinks and dietary supplements) was omitted as a defined term in the rule. Instead, the rule refers to sellers with “more than 75% prepared foods sales.” This change is consistent with the exemption statutes and the SSUTA definitions, and avoids the use of the term “predominantly,” which may have legal connotations associated with it which are inapposite in this rule. In addition, the language discussing the calculation method has been amended to clarify that prepared foods are included in both the numerator and the denominator of the calculation, and to avoid implying that soft drinks are not a “food or food ingredient.”

**Subsection 8(b)**—Tax in gross totals for Seattle and Spokane calculations were corrected in accordance with received comments.