



# Washington State Liquor and Cannabis Board

## Collaborative Rulemaking Discussion Vendor and Educational Samples WAC 314-55-096

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# Washington State Liquor and Cannabis Board

**Meeting Goal:** To engage in a collaborative discussion with stakeholders about a new proposed regulatory framework for vendor and educational samples.



## Trade Samples

**New Proposed Regulatory Framework:** Combine vendor and educational samples into one category – “Trade Samples”

*“Trade sample” means a limited, specified amount of cannabis or cannabis products at no charge that has been designated by the licensee to be provided to another licensee for the purpose of either:*

- (i) Negotiating the sale on a product a licensee does not already carry;*
- (ii) Establish a new business relationship; ~~or~~*
- (iii) To educate employees at a retail outlet about products the retailer currently carries; **or***
- (iv) **To provide to employees for the purpose of product promotion and targeted advertising.***



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## Trade Samples – Examples from Other States

*(New Slide)*

### California

[§15041.\(2\)\(b\)](#). Trade Samples. Cannabis or cannabis products that have been designated as trade samples may be provided from one licensee to another licensee for the purpose of providing the recipient licensee with product information to aid in making purchasing decisions about new or existing cannabis or cannabis products.

[§15041.4\(h\)](#) Providing Trade Samples. (h) A licensee may provide cannabis and cannabis products that have been received from another licensee as a trade sample to an employee for that employee's inspection or consumption.



## Representative Samples

- Allow samples to be representative of products that will be sold to other licensees or to customers at a retail outlet.
  - Samples must be tracked as inventory in the traceability system and designated as a “trade sample” when removed from inventory.
    - Invoice and manifest must accompany sample when transferred from one licensee to another licensee.
      - Separate invoice for samples – easier to reject manifest and driver doesn’t have to wait until product is reviewed
  - Special sample units with their own SKUs no longer required.
  - Samples may be furnished only in their original packages or containers as produced by the licensee.
  - Packaging Labeling
    - Option - Additional sticker required on outer package that states, “**Trade Sample – Not for Resale.**”
      - Font 1/8<sup>th</sup> inch (10 pt. font or whatever NIST guidelines are)
      - **Bold** text
      - May not obscure any labeling information required by [WAC 314-55-105](#).
      - **Retailer must reject if not labeled correctly**
    - **Option – Different than product so can’t be resold (plain packaging)**
      - **Difficult for processors – want to sample products that are representative to assess display, important for budtender to know packaging for consumer experience, etc.**
      - **Important for budtenders to know ingredients in products**



# Employee Samples

(1)(a) ~~Vendor~~ **Trade** samples may only be given to and used by licensees or employees of licensees who have product ordering authority or employees who provide input on product to licensees or employees of licensees who have purchasing authority to inform purchasing decisions as detailed in a written business policy.

**New proposed language:** *"Trade samples may only be given to and used by licensees or employees of licensees as detailed in a written business policy."*

- An employee samples cannot exceed personal possession limits in a         ?



## Employee Samples

- Trade samples may be provided to employees for educational purposes or targeted advertising (i.e., to promote sales of product).
- Cannabis and cannabis products provided to employees as trade samples must be properly recorded in the track and trace system. The transaction shall be recorded as a package adjustment when provided to the employee. The adjustment note must include the name or licensee-assigned employee number of the employee and the date and time the cannabis and cannabis products were provided to the employee.
- Cannabis and cannabis products provided to employees as trade samples shall not be sold, given away, or otherwise transferred by the employee to any person.
- Transportation of trade samples must be conducted in accordance with rules.



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## OPTION 1: Sample limits – Useable Cannabis and Pre-rolls (*End product*)

- **14g per harvest lot**, as defined in [WAC 314-55-010](#):
  - A producer may provide each processor licensee 14g per harvest lot.
    - Is it better to do it by lot?
      - Samples per tested lot
    - Harvest on different days does not constitute different product if all other characteristics remain.
    - Need to clearly define “new product”
    - Per month limit
    - Per strain
    - Per SKU (different strain, what else? Must define what constitutes a “SKU”)
  - A processor may receive 14g per harvest lot from each producer licensee.
  - A processor may provide each retailer 14g per harvest lot.
  - A retailer may receive 14g per harvest lot from each processor licensee.
- **Employee Sample Limit - 1g per harvest lot**
  - Option – Allow purchasing samples from producer/processors and give to budtenders at cost
- [WAC 314-55-010\(14\)](#) "**Harvest**" means the cannabis plant material derived from plants of the same strain that were cultivated at the same licensed location and gathered at the same time.
- [WAC 314-55-010\(11\)](#) "**End product**" means a cannabis product that requires no further processing prior to retail sale.
- [WAC 314-55-010\(ww\)](#) "**Useable cannabis**" means dried cannabis flowers. The term "useable cannabis" does not include either cannabis-infused products or cannabis concentrates.
- [WAC 314-55-010\(20\)](#) "**Lot**" means either of the following:
  - (a) The flowers from one or more cannabis plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or
  - (b) The trim, leaves, or other plant matter from one or more cannabis plants. A single lot of trim, leaves, or other plant matter cannot weigh more than 15 pounds.





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## Option 1: Sample limits – Cannabis for Extraction (*Intermediate product*)

- **Flower** - 5 lb. per harvest lot, as defined in [WAC 314-55-010](#).
  - A producer may provide each processor 5 lbs. of cannabis flower per harvest lot.
  - A processor may receive 5 lbs. of cannabis flower per harvest lot from each producer licensee.
- **Trim/shake** – 10 lbs. per harvest lot.
  - A producer may provide each processor 10 lbs. of cannabis trim/shake harvest lot.
  - A processor may receive 10 lbs. of cannabis trim/shake per harvest lot from each producer licensee.
- **Fresh frozen** – 20 lbs. per harvest lot.
  - A producer may provide each processor 20 lbs. of fresh frozen per harvest lot.
  - A processor may receive 20 lbs. per harvest lot of fresh frozen cannabis from each producer licensee.
- [WAC 314-55-010\(14\)](#) "**Harvest**" means the cannabis plant material derived from plants of the same strain that were cultivated at the same licensed location and gathered at the same time.
- [WAC 314-55-010 \(16\)](#) "**Intermediate product**" means cannabis flower lots or other material lots that have been converted by a cannabis processor to a cannabis mix lot, cannabis concentrate or cannabis-infused product that must be or are intended to be converted further to an end product.
- [WAC 314-55-010\(20\)](#) "**Lot**" means either of the following:
  - (a) The flowers from one or more cannabis plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or
  - (b) The trim, leaves, or other plant matter from one or more cannabis plants. A single lot of trim, leaves, or other plant matter cannot weigh more than 15 pounds.



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## OPTION 1: Sample Limits – Cannabis Concentrates (*End product*)

- **7g per ~~batch~~ SKU**, as defined in [WAC 314-55-102\(4\)\(c\)\(ii\)](#).
  - A retailer may receive 7g of cannabis concentrate (e.g., distillate or rosin) ~~batch~~-SKU from each processor licensee.
  - A processor may provide each retailer licensee 3.5g of cannabis concentrate per ~~batch~~-SKU .
  - Employee sample limit – **1g per ~~batch~~-SKU**
  - **Consideration for determining sample limits: Per SKU per budtender per month for each retailer**
    - What defines a SKU? Same type, flavor, production date, ingredients, etc.

### AND

- **7 units ~~batch~~ SKU**– No unit may exceed 1g.
  - A retailer may receive 7 units of cannabis concentrate (e.g., vape cartridge or syringe) per batch from each processor.
  - A processor may provide each retailer 7 units per batch of cannabis concentrate.
  - Employee sample limit – **1 unit per ~~batch~~-SKU**
- [WAC 314-55-102\(4\)\(c\)\(ii\)](#) For the purposes of this section, a **batch** is defined as a single run through the extraction or infusion process;
- [WAC 314-55-010\(11\)](#) "**End product**" means a cannabis product that requires no further processing prior to retail sale.
- [RCW 69.50.101 \(e\)\[\(5\)\]](#) "**Cannabis concentrates**" means products consisting wholly or in part of the resin extracted from any part of the plant Cannabis and having a THC concentration greater than ten percent.



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## OPTION 1: Sample Limits – Cannabis Concentrates for further processing (*Intermediate product*)

- g per batch or SKU as defined in [WAC 314-55-102\(4\)\(c\)\(ii\)](#).
  - How is SKU defined? Same ingredients, processing technique, processing date?
- **New allowance** – Processor to processor sampling to negotiate a sale or establish a new business relationship.
  - Besides cannabis concentrates, what are some other product categories (e.g., cannabis-infused products) that processors should be able to provide to other processors as samples?
  - What is the minimum of samples that would be required for each category of cannabis product for sampling to be effective?
- [WAC 314-55-010 \(16\)](#) "**Intermediate product**" means cannabis flower lots or other material lots that have been converted by a cannabis processor to a cannabis mix lot, cannabis concentrate or cannabis-infused product that must be or are intended to be converted further to an end product.
- [WAC 314-55-102\(4\)\(c\)\(ii\)](#) For the purposes of this section, a **batch** is defined as a single run through the extraction or infusion process;
- [RCW 69.50.101 \(e\)\[5\]](#) "**Cannabis concentrates**" means products consisting wholly or in part of the resin extracted from any part of the plant Cannabis and having a THC concentration greater than ten percent.



# Washington State Liquor and Cannabis Board

## OPTION 1: Sample Limits – Solid and Liquid Edibles (*End product*)

- **7 units per batch SKU**, as defined in [WAC 314-55-010](#).
  - 7 units – too small
    - More than 7 needed for product launches, so can provide to all budtenders.
  - Per budtender limit
    - What is the average # of budtenders per retail outlet? Would this be an appropriate way to consider limiting amount of samples a store can receive?
  - What defines SKU? Same flavor, processing date, same ingredients, etc.?
- [WAC 314-55-010\(2\)](#) "Batch" means a quantity of cannabis-infused product containing material from one or more lots of cannabis.
- [WAC 314-55-010\(11\)](#) "End product" means a cannabis product that requires no further processing prior to retail sale.
- [RCW 60.50.101\(k\)](#) "Cannabis-infused products" means products that contain cannabis or cannabis extracts, are intended for human use, are derived from cannabis as defined in subsection (d) of this section and have a THC concentration no greater than ten percent. The term "cannabis-infused products" does not include either useable cannabis or cannabis concentrates.
- [RCW 69.50.101\(zz\)](#) "Unit" means an individual consumable item within a package of one or more consumable items in solid, liquid, gas, or any form intended for human consumption.
  - New definition of "unit" effective July 24, 2023, pursuant to Engrossed Second Substitute Senate Bill (E2SSB) 5367 concerning the regulation of products containing THC ([chapter 365, Laws of 2023](#)).



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## OPTION 1: Sample Limits – Topicals

*(End product)*

- oz. per batch or        units per batch of cannabis-infused product intended for topical application.
- [WAC 314-55-010\(2\)](#) "**Batch**" means a quantity of cannabis-infused product containing material from one or more lots of cannabis.
- [WAC 314-55-010\(11\)](#) "**End product**" means a cannabis product that requires no further processing prior to retail sale.
- [RCW 60.50.101\(k\)](#) "**Cannabis-infused products**" means products that contain cannabis or cannabis extracts, are intended for human use, are derived from cannabis as defined in subsection (d) of this section and have a THC concentration no greater than ten percent. The term "cannabis-infused products" does not include either useable cannabis or cannabis concentrates.



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## OPTION 2: Sample limits – Aggregate Amounts (per licensee)

Instead of limiting the number of allowable samples per new product (i.e., harvest or batch, as applicable), should samples be limited based on an aggregate amount that may be received from a producer or processor within a specified time (e.g., calendar month or quarterly)?

- Dried cannabis **flower** (*End product*) - **28g (1oz.) per month or 4oz. per quarter** from each licensee.
  - 10g – 1 oz.
  - Once a year can sample more or longer time-span (quarter)
- Dried cannabis **trim/shake** (*Intermediate product*) – **2oz. per month or 8oz. per quarter** from each licensee.
- **Fresh frozen cannabis** (*Intermediate product*) – **5lbs. per month or 20lbs. per quarter** from each licensee.
- Cannabis **concentrates** (*End product*) – **14g or 14 (1g)units per month or 56g or 56 (1g units) per quarter** from each licensee.
- Cannabis **concentrates** (*Intermediate product*) – **\_\_\_\_\_g per month or \_\_\_\_\_g per quarter** from each licensee.
- Cannabis-infused products (**Solid or Liquid Edibles** – *End product*) – **14 units per month or 56 units per quarter** from each licensee.
  - 14 units too small
  - Oregon 36 units/month per processor
  - 30-50 units per month per processor good range
- Cannabis-infused products (**Topicals** – *End product*) – **\_\_\_\_\_oz. or \_\_\_\_\_units per month** from each licensee.



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## Option 3: Sample Limits – Aggregate Amounts

(per specified time frame – month or quarter)

A licensee may receive the following aggregate amounts of trade samples per month or per quarter from all licensees:

- Dried cannabis **flower** (*End product*) – **2lbs. per month or 8lbs. per quarter.**
- Dried cannabis **trim/shake** (*Intermediate product*) – **4lbs. per month or 16oz. per quarter.**
- **Fresh frozen** cannabis (*Intermediate product*) – **20lbs. per month or 80lbs. per quarter.**
- Cannabis **concentrates** (*End product*) – **2oz. (56g) or 56 (1g)units per month or 224g or 224 (1g units) per quarter.**
- Cannabis **concentrates** (*Intermediate product*) – **\_\_\_\_\_g per month or \_\_\_\_\_g per quarter** from each licensee.
- Cannabis-infused products (**Solid or Liquid Edibles** – *End product*) – **56 units per month or 224 units per quarter.**
- Cannabis-infused products (**Topicals** – *End product*) – **\_\_\_\_\_oz. or \_\_\_\_\_units per month.**



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## Sample Limits – Examples from Other States

*(New Slide)*

### **California - §15041.7. Trade Sample Limits.**

- A licensee is limited to designating the following aggregate amounts of cannabis and cannabis products as trade samples in a calendar month period:
  - 2 lbs. of dried flower
  - 900 individual units of manufactured and nonmanufactured products
  - 18 seeds, 12 seedlings, and 8 cuttings or tissue cultures per strain
- A licensee is limited to providing the following aggregate amounts of cannabis and cannabis products as trade samples to each recipient in a calendar month:
  - 5 grams per strain, up to 6 strains (30g) of dried cannabis flower
  - 5 individual units as packaged for retail sale, up to 6 product lines (30 units) of manufactured and nonmanufactured
  - 6 strains of propagated materials, seeds, and immature plants
- A licensee may provide one (1) product line to each employee per calendar month





# Washington State Liquor and Cannabis Board

## Sample Limits – Examples from Other States

*(New Slide)*

Oregon - [845-025-1330 Trade Samples](https://www.oregon.gov/OSL/TradeSamples)

- Licensee may provide the following aggregate amounts of trade samples to each licensee within a calendar month period:
  - 5g per strain, up to 6 strains (30g)
  - 5g of cannabinoid or hemp concentrates and extracts
  - 5 units per cannabinoid product line, up to 6 cannabinoid product lines
- A wholesale licensee is limited to providing the following aggregate amounts of trade samples per originating licensee to an individual recipient licensee in a calendar month:
  - 5g per strain, up to 6 strains (30g)
  - 5g of cannabinoid or hemp concentrates and extracts
  - 5 units per cannabinoid product line, up to 6 cannabinoid product lines



# Washington State Liquor and Cannabis Board

## Sample Limits – Examples from Other States

*(New Slide)*

### Maine

- [6.1.1 Regulation of Trade Samples](#). A licensee is limited to providing the following aggregate amounts of *trade samples* to an individual recipient licensee in a calendar month:
  - Edibles containing 5g (500mg) of THC – divisible into servings 10mg or less.
  - Cannabis concentrate containing 5g (500mg) of THC
  - 2.5 oz. of cannabis
- [6.2.1 Employee Sampling](#). A licensee may provide samples of cannabis and cannabis products to its employees for the purposes of research and development or employee education.
- [6.2.2 Employee Sample Limits](#). A licensee is limited to providing the following sample amounts to each individual employee:
  - 2.5oz. Of a combination of useable cannabis and cannabis concentrate, but no more than 5g of a cannabis concentrate, in a 90-day period.
  - Edibles provided to employees may not contain more than 100mg of THC, which must be easily divisible into servings of 10mg of THC or less.



# Washington State Liquor and Cannabis Board

## Sample Limits – Examples from Other States

*(New Slide)*

### Massachusetts

- [935 CMR - 187\(13\)](#) A cultivator is limited to providing the following aggregate amount of Vendor Samples to a manufacturer or retail licensee in a calendar month.
  - 4g per strain, up to 7 strains (28g)
- [935 CMR - 187\(8\)](#) A manufacturer is limited to providing the following aggregate amounts of Vendor Samples:
  - 5g of concentrate or extract
  - 500mg of edibles, not to exceed 5mg of THC per serving.
  - 5 units of cannabis product per product line, up to 3 product lines

### Michigan

- [R420.508\(6\)](#) Cultivator and producer are limited to transferring the following aggregate amounts of trade samples to another licensee in a 30-day period:
  - 2.5 ounces of cannabis
  - 15g of concentrate
- [R420.508\(8\)](#) A producer or cannabis sales location may distribute trade samples to employees within a 30-day period:
  - 28g (1 oz)
  - 6g of concentrate
  - 2,000 mg of cannabis-infused products



# Washington State Liquor and Cannabis Board

## Sample Records – Examples from Other States

*(New Slide)*

**Nevada** - [8.010 Required written disclosure with each lot of usable cannabis; provision of free samples to cannabis sales facility; applicability of provisions governing excise tax on cannabis to free samples.](#)

1. A cannabis cultivation facility must disclose in writing with each lot of usable cannabis provided to a cannabis sales facility:
  - (a) All soil amendments, fertilizers, pesticides, and other crop production aids applied to the growing medium or cannabis plant included in the lot; and
  - (b) The name of the cannabis testing facility which performed the required quality assurance tests and the certificate of analysis for the lot.



## Sample Limits – Examples from Other States (*New Slide*)

### Vermont

- [2.3.9\(a\)](#) Cultivators may provide vendor samples of cannabis flower to other licensees in the following aggregate amounts in a calendar month:
  - 4g per strain of flower per vendor, up to 7 strains per vendor (28g per vendor)
- [2.3.9\(b\)](#) Samples provided to employees will be limited to the following aggregate amounts per calendar month:
  - 4g per strain for each employee, up to 7 strains (28g per employee, per calendar month)
- [2.3.9\(c\)](#) A cultivator may provide samples to bona fide evaluative contests with express authorization by the Board in the following aggregate amounts per evaluative contest:
  - 8g per strain of flower, up to 7 strains (56g)



# Washington State Liquor and Cannabis Board

## Sample Records – Examples from Other States

*(New Slide)*

### Massachusetts

- [935 CMR – 196\(12\)\(d\)](#) A retailer is limited to providing the following aggregate amounts of samples to all employees in a calendar month:
  - 4g of flower per strain, up to 7 strains (28g/month)
  - 5g of concentrates and extractions, includes tinctures.
  - 500mg of edibles, not to exceed 5mg of THC per serving.
  - 5 units of sale per cannabis product line and no more than 6 individual product lines.
- [935 CMR – 196\(12\)\(d\)\(4\)](#) For purposes of 935 CMR 500.140(15), a Cannabis product line shall mean items bearing the same Stock Keeping Unit Number.



## Regulatory Trade-offs

As a trade-off for additional flexibility, allowances, and increased sample limits, what are some new requirements that may be considered?

- **Record-keeping** may include:
  - Invoice, manifest, and other accounting documents that provide adequate traceability for samples provided to and received by licensees and employees of licensees;
  - Employee training documents;
  - Sample feedback forms;
    - Too burdensome
  - Written business policy; and
  - Quarterly reports.
- **Quarterly report** provided to LCB that may include:
  - (a) All of the samples provided to other licensees and employees or licensees that includes identification of licensee by business name and license number; (b) identification of employees of licensees to which samples are provided; (c) product brand; (d) unique identifier assigned to sample (SKU or batch number); (e) date samples were provided; (f) quantity of samples provided (net weight or number of sample units); and (g) reason for sample (negotiate a sale, establish a new business relationship, or educate employees/targeted marketing).



# Washington State Liquor and Cannabis Board

## Regulatory Trade-offs – Employee Training

### Option - Training for employees

- **Responsible vendor (legislation required) or medical endorsement consultant**
- Training may include:
  - Characteristics of the cannabis products (cultivar, effects, flavor, smell, etc.);
  - Methods of/directions for handling, storing, and presenting cannabis products to customers at retail outlet;
  - Information about the cannabis product (how it is grown/produced and ingredients) that may be helpful in determining whether a licensee or customer should purchase the product; and
  - Potential health and safety risks, including:
    - (a) Risks associated with excessive consumption; (b) delayed onset of edibles and differences in potency of smokable or inhalable cannabis products versus ingestible products (e.g., 11-hydroxy THC is stronger/more potent than THC); (c) risks associated with mixing prescription medicines or alcohol; and (d) dangers associated with driving or operating heavy machinery while intoxicated.
  - Criminal penalties associated with diversion of samples to a licensee, employee, or other person for which the sample was not intended.
- What are some other training topics to consider?
- Training for employee sampling may be included as part of any training employees receive during onboarding.
- Training records:
  - Trainer and trainee must include name of licensees and employees that provided and received training, date training is provided, and signature attesting all required topics were covered; and that the trainee understands all information provided by the training and understands responsibilities associated with sampling activities.
  - Training curriculum (topics covered in training)





# Regulatory Trade-offs

- **Written business policy** for sampling may include:
  - Policies and procedures for providing samples to other licensees and employees of licensees;
  - Policies and procedures for licensees and employees of licensees receiving samples; and
  - Policies and procedures related to employee training that may be required for employees to participate in trade sampling activities.
- Per [WAC 314-55-096\(1\)\(a\)](#), licensees should already have a written business policy that details licensees and employees of licensees who have product ordering authority or employees who provide input on product to licensees or employees of licensees who have purchasing authority to inform purchasing decisions.



# Washington State Liquor and Cannabis Board

## Regulatory Trade-offs – Employee Training – Examples from Other States *(New Slide)*

**Michigan** [R 420.602\(d\)](#) Train employees in accordance with an employee training manual. Copies of this manual must be maintained and be made available to the agency upon request.

The employee training manual must include, but is not limited to, all of the following:

- (i) Employee safety procedures.
- (ii) Employee guidelines.
- (iii) Security protocol
- (iv) Educational training, including, but not limited to, marijuana product information; dosage and purchasing limits, if applicable; and educational materials.

(e) A marijuana business under the MRTMA that sells or transfers marijuana to an individual 21 years of age or older shall include in the employee training manual a responsible operations plan. Copies of this plan must be maintained and be available to the agency upon request. A responsible operations plan must include a detailed explanation of how employees will monitor and prevent all of the following:

- (i) Over-intoxication.
- (ii) Underage access to the establishment.
- (iii) The illegal sale or distribution of marijuana or marijuana products within the establishment.
- (iv) Any potential criminal activity on the premises, as applicable.

(f) Establish point of sale or transfer procedures for employees at marijuana sales locations performing any transfers or sales to marijuana customers. Copies of these procedures must be maintained and be made available to the agency upon request. The point of sale or transfer procedures must include, but are not limited to, all of the following:

- (i) Training in dosage.
- (ii) Marijuana product information.
- (iii) Health or educational materials.
- (iv) Point of sale training.
- (v) Purchasing limits.
- (vi) Cannabidiol (CBD) and tetrahydrocannabinol (THC) information.
- (vii) Serving size.
- (viii) Consumption information, including any warnings.

(g) Screen prospective employees against a list of excluded employees maintained by the agency in accordance with R 420.808a(6).



## Regulatory Trade-offs – Examples from Other Industries

*(new slide)*

### 21 CFR Sec. 203.34 Policies and procedures; administrative systems.

Each manufacturer or authorized distributor of record that distributes **drug samples** shall establish, maintain, and adhere to **written policies and procedures** describing its administrative systems for the following:

- (a) Distributing drug samples by mail or common carrier, including methodology for reconciliation of requests and receipts;
- (b) Distributing drug samples by means other than mail or common carrier including the methodology for:
  - (1) Reconciling requests and receipts, identifying patterns of nonresponse, and the manufacturer's or distributor's response when such patterns are found;
  - (2) Conducting the annual physical inventory and preparation of the reconciliation report;
  - (3) Implementing a sample distribution security and audit system, including conducting random and for-cause audits of sales representatives by personnel independent of the sales force; and
  - (4) Storage of drug samples by representatives;
- (c) Identifying any significant loss of drug samples and notifying FDA of the loss; and
- (d) Monitoring any loss or theft of drug samples.



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## Regulatory Trade-offs – Examples from Other States

*(New Slide)*

### Massachusetts

- [935 CMR – 186\(12\)\(h\)](#) **Policies and procedures for developing and providing Vendor Samples** to a Marijuana Product Manufacturer, a Marijuana Retailer or a Delivery Operator. Policies and procedures shall include methods by which the Marijuana Cultivator will adequately track, record, and document all Vendor Samples developed on, or provided from, the licensed Premises in satisfaction of 935 CMR 500.120(13);
- [935 CMR – 196\(12\)\(e\)](#) Upon providing a Vendor Sample to an employee, the Marijuana Retailer shall **record**:
  1. The reduction in quantity of the total weight or item count under the unique alphanumeric identifier associated with the Vendor Sample;
  2. The date and time the Vendor Sample was provided to the Employee;
  3. The agent registration number of the employee receiving the Vendor Sample; and
  4. The name of the Employee as it appears on their agent registration card.



# Washington State Liquor and Cannabis Board

## Regulatory Trade-offs – Examples from Other States

*(new slide)*

**Nevada** [\(8.010\(1\)\) Required written disclosure with each lot of usable cannabis; provision of free samples to cannabis sales facility; applicability of provisions governing excise tax on cannabis to free samples.](#) A cannabis cultivation facility must disclose **in writing** with each lot of usable cannabis provided to a cannabis sales facility:

- (a) All soil amendments, fertilizers, pesticides, and other crop production aids applied to the growing medium or cannabis plant included in the lot; and
- (b) The name of the cannabis testing facility which performed the required quality assurance tests and the certificate of analysis for the lot.



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## Regulatory Trade-offs – Examples from Other Industries

*(new slide)*

### § 203.35 Standing requests.

Manufacturers or authorized distributors of record shall not distribute drug samples on the basis of open-ended or standing requests, but shall require separate written requests for each drug sample or group of samples. An arrangement by which a licensed practitioner requests in writing that a specified number of drug samples be delivered over a period of not more than 6 months, with the actual delivery dates for parts of the order to be set by subsequent oral communication or electronic transmission, is not considered to be a standing request.



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## Regulatory Trade-offs – Examples from Other Industries

*(new slide)*

### 21 CFR§ 203.38 Sample lot or control numbers; labeling of sample units.

(a) Lot or control number required on drug sample labeling and sample unit label. The manufacturer or authorized distributor of record of a drug sample shall include on the label of the sample unit and on the outside container or packaging of the sample unit, if any, an identifying lot or control number that will permit the tracking of the distribution of each drug sample unit.

(b) Records containing lot or control numbers required for all drug samples distributed. A manufacturer or authorized distributor of record shall maintain for all samples distributed records of drug sample distribution containing lot or control numbers that are sufficient to permit the tracking of sample units to the point of the licensed practitioner.



# Washington State Liquor and Cannabis Board

## Additional Requirements

- Samples cannot be consumed on the licensed premises of a producer, processor, or retail outlet.
  - What is the liability associated with consuming intoxicating products for work not at work?
  - Are employees being paid when they sample products at home?
- Samples cannot be provided to consumers.
- Should samples of seeds, immature plants, or flowering plants that are being cultivated be allowed or prohibited?
  - If allowed, cannabis derived from seeds, clones, or propagated material from trade samples may not be sold, given away, or distributed to another licensee or employee of another licensee.
  - [California](#) prohibits mature (flowering) plants being provided as samples.
- Samples not consumed must be destroyed and documented as waste in accordance with the rules.
- Once the product is designated as a trade sample in the inventory tracking system, it cannot be changed (i.e., change designation). [§15041.3. Designating Trade Samples.](#)





## Additional Requirements

- Samples cannot be provided for any payment or consideration in contravention of sales and excise tax requirements.
- Samples cannot be provided as employee compensation or as a sales incentive.
- What else?



# Washington State Liquor and Cannabis Board

## Sample Jars of Useable Cannabis at a Retail Outlet

*(new slide)*

- Option – Allow portion of sample received be taken out by the retailer to put in sample jars for customers.
  - Instead of giving the sample back to the processor that provided the sample, it must be destroyed and tracked in compliance with WAC 314-55-083.
    - Must be destroyed when no longer have samples of that specific product (SKU, lot, etc. – TBD)
  - Only useable cannabis may be in sample jars.
  - Sample limit (net weight)       g
    - What is an appropriate sample size?
      - 3.5g?
- Option – Keep samples provided for sample jars a separate category (not a trade sample) and establish a limit for the size and number of samples a processor may provide each retailer.
- What are some other ways this could be conducted?



# Washington State Liquor and Cannabis Board

## Sample Jars – Examples from Other States

*(New Slide)*

- [Alaska \(3 AAC 306.325\(d\)\) Access restricted at retail marijuana store](#). If a retail marijuana store displays marijuana to a consumer for the purpose of smelling the marijuana before purchase, the retail marijuana store shall package the marijuana in a sample jar that is protected by a plastic, metal, or other protective mesh screen, and the jar must remain in the monitored custody of the retail marijuana store during consumer inspection.
- [Alaska \(3 AAC 306.460\(a\). Samples](#) A marijuana cultivation facility may provide a free sample of marijuana to a retail marijuana store if packaged in a sample jar containing not more than three and one-half grams of marijuana and protected by a plastic or metal mesh screen to allow the retail marijuana store to smell the product before purchase.
- [Nevada \(8.010\)\(2\)](#) A cannabis cultivation facility may provide a cannabis sales facility free display samples of usable cannabis packaged in a sample jar protected by a plastic or metal mesh screen to allow consumers to smell the product before purchase. A sample jar may not contain more than 3.5 grams of usable cannabis. The sample jar must not be left unattended and must be sealed shut. The sample jar and the usable cannabis within may not be sold to a consumer and must be either returned to the cannabis cultivation facility which provided the usable cannabis and sample jar or destroyed by the cannabis sales facility after use and documented by the cannabis sales facility using its inventory control system pursuant to NCCR 6.080. A cannabis production facility may provide uninfused edibles as display samples.
- [New York \(e\)\(3\)](#) A retail dispensary may display, in secure, locked cases, samples of each cannabis product offered for sale. Authorized employees may remove samples from the display case and provide it to the cannabis consumer for inspection, provided the cannabis consumer may not consume or otherwise use or remove the sample from the retail dispensary.



## Sample Jars – Examples from Other States (*New Slide*)

### Missouri

- [19 CSR 100-1.180\(I\)](#) Dispensary facilities may securely display samples of each marijuana product offered for sale.
  1. Marijuana product used as a display sample may not be dispensed to consumers, qualifying patients, or primary caregivers.
  2. A facility agent may remove the sample from the secure display to allow a consumer, qualifying patient, or primary caregiver to inspect the display sample but shall immediately return the sample to the secure display once such inspection is complete.
  3. Display samples shall be destroyed in accordance with this chapter within five (5) business days of the inventory associated with the mandatory test sample tag number being finished;



# Transitioning to a new framework

- What happens to existing sample units when the new framework goes into effect? (i.e., 'give-away' period)
- How long should the 'give-away' period last?



# Alcohol Samples

- [WAC 314-64-08001 Procedures for providing spirit samples to authorized retail licensees and their employees for the purpose of product promotion.](#)
  - 1 sample (750 ml) may be provided to each licensee.
  - Samples may only be provided on products that have not been purchased by the retail licensee within 12 months from the distiller or their agent or existing products with a change in alcohol proof or formula may be sampled.
  - Invoice required for each sample provided to another licensee.
  - Samples must be traceable as inventory.



## Alcohol Samples

- [WAC 314-64-080 Procedures](#). Procedures for furnishing samples of beer and wine for the purpose of negotiating a sale.
  - Samples may only be provided in original packaging or containers as produced by the manufacturer or bottler.
  - Samples may be provided to retailer who has not previously purchased the brand and type or vintage year from the supplier furnishing the sample.
  - 72-ounce samples of any brand and type of beer.
  - One liter of any brand and type of wine.
  - Sample containers, cartons, and shipping documents must be identified as “**Samples for licensees.**”



# Alcohol Samples

- [WAC 314-64-090 Accounting.](#)
  - Complete records of the disposition of samples must be maintained at the place of business.
  - Records must show (a) the name and address of the licensee from whom the samples were furnished; (b) the brand name and type; (c) quantities furnished to each licensee; and (d) date samples were provided.
  - Records must be maintained for two years and must be available during business hours for inspection and copying by members of the board or their accredited representatives.





# Alcohol Samples

- [RCW 66.28.040 Giving away of liquor prohibited—Exceptions.](#)
  - Samples may be provided for negotiating a sale or for instructional purposes.
- [RCW 66.28.150 Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct courses of instruction on beer and wine.](#)
  - Instruction or education may be provided to licensees and their employees about beer, wine, or spiritous liquor, including, but not limited to the history, nature, values, and characteristics of the alcohol, the use of wine list, and the methods of presenting, serving, storing and handling alcohol, and what wines go well with different types of food.



# Washington State Liquor and Cannabis Board

Thank You!