

WSR 24-17-051  
PROPOSED RULES  
LIQUOR AND CANNABIS  
BOARD

[Filed August 14, 2024, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-06-079.

Title of Rule and Other Identifying Information: Rule making to amend WAC 314-55-096 concerning vendor, educational, and internal quality samples.

Hearing Location(s): On September 25, 2024, at 10:00 a.m. All public liquor and cannabis board (board) activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom headquarters building at 1025 Union Avenue, Olympia, WA 98504, will be open for in-person attendance and the public may also log in using a computer or a device, or call in using a phone to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and agency participants may continue to appear virtually. For more information about board meetings, please visit [https://lcb.wa.gov/Boardmeetings/Boardmeetings/](https://lcb.wa.gov/Boardmeetings/Boardmeetings)

Date of Intended Adoption: No earlier than October 9, 2024.

Submit Written Comments to: Cassidy West, Policy and Rules Manager, P.O. Box 48030, Olympia, WA 98504-3080, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov), fax 360-704-5027, beginning August 14, 2024, 12:00 p.m., by September 25, 2024, 12:00 p.m.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email [anita.bingham@lcb.wa.gov](mailto:anita.bingham@lcb.wa.gov), by September 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal aims to amend the regulations regarding vendor, educational, and internal quality samples in WAC 314-55-096 to streamline requirements, reduce the regulatory burden on licensees, and ensure accountability and public safety. The proposed changes are expected to improve efficiency in cannabis sampling processes while maintaining high standards for public safety and product quality. Key changes being proposed are outlined below:

1. **Unified Sample Category - "Trade Samples":** This category merges vendor and educational samples to reduce regulatory complexity and better align with industry practices.

2. **Representative Sample Sizes:** Ensures that trade samples reflect the smallest marketable product size to accurately represent consumer products, aiding in more informed business decisions.

3. **Quarterly Provision Limits:** Transitioning to quarterly limits accommodates the operational cycles of producers, particularly those with seasonal outdoor production schedules.

4. **Equivalency Standards for Different Product Types:** Standard limits across various product types ensure fair and consistent sampling practices.

5. **Traceability and Recordkeeping:** All trade samples must be documented in the state's traceability system, including detailed re-

cords of product type, trade name, and the receiving licensee. This ensures transparency and facilitates compliance monitoring.

6. **Designated Storage Areas:** Trade samples must be stored in designated areas separate from nonsample inventory. This separation is crucial for preventing contamination and ensuring samples are easily identifiable for audit and compliance checks.

7. **Employee Sampling:** Employees of licensees can receive up to 15 trade sample units per calendar quarter. These samples must be used strictly for educational purposes and are not to be used as compensation or incentives.

8. **Limits on Sample Distribution:** Producers can distribute up to 96 trade sample units of cannabis per calendar quarter to processors, allowing comprehensive product assessment. Processors may provide up to 120 trade sample units of various cannabis products to retailers per quarter, facilitating extensive staff training and product familiarization.

9. **Sample Jar Modifications:** Changes include requirements for sample jars to be transparent, allowing customers to view and smell the product. This modification enhances consumer interaction with the product without compromising safety. The proposal also changes requirements for handling useable cannabis when it is no longer needed on display in the sample jar. The rule proposes two additional options for retailers: (1) To give the useable cannabis to current employees, which will count towards the employee's allotment; and (2) to dispose the cannabis in accordance with the requirements in WAC 314-55-097. These options are in addition to retailers transferring the cannabis back to the originating processor who provided it, as outlined in the existing rule.

The proposed changes are designed to offer multiple benefits, including, but not limited to:

1. Simplified compliance with standardized sample sizes and reduced administrative burden and overhead costs.

2. Enhanced understanding and education of budtenders regarding cannabis products.

3. More practical and efficient sampling processes that reflect operational realities of the cannabis industry.

Reasons Supporting Proposal: Rule making is needed to update the sampling framework to reflect current industry practices and reduce regulatory burdens while ensuring accountability and public safety. The proposed rule aims to align the sampling regulations more closely with industry realities and operational needs.

Statutory Authority for Adoption: RCW 69.50.342.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed changes reflect input from various stakeholders, including industry members and public health partners, seeking to balance business needs with public health concerns.

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Cassidy West, Policy and Rules Manager, 1025 Union Avenue, Olympia, WA 98504, 360-878-4235; Implementation and Enforcement: Chandra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The subject of the proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328 (5) (c).

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance.

While the proposed rule simplifies some aspects, such as eliminating the need for special sample unit sizes, they introduce costs related to additional labeling, storage, and enhanced recordkeeping requirements. These costs may be partly offset by the elimination of the need for special sample sizes and the simplification of product tracking. Additionally, there may be costs associated with destroying existing sample units that do not comply with new rules, once effective. A transition period of six months will be provided to adjust to the new regulations, helping to mitigate potential financial impacts on businesses.

Using United States Census North American Industry Classification System (NAICS) code 111918 for cannabis grown in an open field, NAICS describes this code for "This U.S. industry comprises establishments primarily engaged in one of the following: (1) Growing crops (except oilseeds and/or grains; vegetables and/or melons; fruits and/or tree nuts; greenhouse, nursery, and/or floriculture products; tobacco; cotton; sugarcane; hay; sugar beets; or peanuts); (2) growing a combination of crops (except a combination of oilseed(s) and grain(s); and a combination of fruit(s) and tree nut(s)) with no one crop or family of crops accounting for one-half of the establishment's agricultural production (i.e., value of crops for market); or (3) gathering tea or maple sap." The NAICS code description at <https://www.census.gov/naics/?input=cannabis&year=2022&details=111998> identifies cannabis grown in an open field as an example of a business that uses this code.

Using NAICS code 424590 for cannabis merchant wholesalers, NAICS describes this code for "This industry comprises establishments primarily engaged in the merchant wholesale distribution of farm products (except grain and field beans, livestock, raw milk, live poultry, and fresh fruits and vegetables)." The NAICS code description at <https://www.census.gov/naics/?input=cannabis&year=2022&details=424590> identifies cannabis merchant wholesalers as an example of a business that uses this code.

The liquor and cannabis board (LCB) applied NAICS codes 453998 for marijuana stores. The industry descriptions for these codes is presented in the table below, and can be accessed at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>.

LCB applied a default cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Per RCW 19.85.020(2), a minor cost means a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.

According to department of revenue data from 2023, the total gross business income for NAICS code 459991 was \$647,617,610 for 493 businesses. That produces an average annual gross business income of \$1,313,625.98. Three-tenths of one percent of \$1,313,625.98 is \$3,940.877, rounding up to \$3,940.88.

The remainder of the data is provided by reference to the minor-cost threshold calculator provided by the office of regulatory innovation and assistance available at [https://www.oria.wa.gov/Portals/\\_oria/VersionedDocuments/RFA/Regulatory\\_Fairness\\_Act/Minor-Cost-Threshold-Calculator.xlsx](https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/Minor-Cost-Threshold-Calculator.xlsx).

2022 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll (Threshold)	0.3% of Avg Annual Gross Business Income (Threshold)
111419	\$500.00	Cannabis, grown under cover	Other Food Crops Grown Under Cover	\$3,259.51	\$3,259.51 2021 Dataset pulled from ESD	\$3,195.50 2021 Dataset pulled from DOR
111998	\$500.00	Cannabis, grown in an open field	All Other Miscellaneous Crop Farming	\$11,775.64	\$11,775.64 2021 Dataset pulled from ESD	\$2,882.31 2021 Dataset pulled from DOR
424590	\$500.00	Cannabis merchant wholesalers	Other Farm Product Raw Material Merchant Wholesalers	\$8,809.55	\$3,948.77 2021 Dataset pulled from ESD	\$8,809.55 2021 Dataset pulled from DOR
459991	\$500.00	Marijuana stores, recreational or medical	Tobacco, Electronic Cigarette, and Other Smoking Supplies Retailers	\$3,940.88	Unavailable*	\$3,940.88 2023 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the threshold for any of the potential NAICS codes applicable to cannabis licensees. Therefore, implementation of this amended rule is not anticipated to result in more-than-minor costs on businesses as defined in RCW 19.85.020(2).

A copy of the detailed cost calculations may be obtained by contacting Cassidy West, 1025 Union Avenue, Olympia, WA 98504, phone 360-878-4235, fax 360-704-5027, TTY 711 or 1-800-833-6388, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

August 14, 2024  
David Postman  
Chair

**OTS-5756.1**

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

**WAC 314-55-096 ((Vendor, educational)) Trade samples, retail display samples, and internal quality control samples.** (1) **((Vendor)) Trade samples:** ((Producers or processors may provide free)) Trade samples are samples of useable cannabis, cannabis-infused products, and cannabis concentrates ((to negotiate)), as described in this section, provided for free for the purpose of negotiating a sale and providing education to budtenders engaged in selling cannabis products at retail.

(a) Trade samples may be provided by a producer to a processor, or by a processor to a retailer.

(b) Trade samples must be provided free of charge to the receiving licensee.

(c) Trade samples may only be provided to a licensee that has requested the trade sample or is consenting to receiving the trade sample.

(d) Trade samples may be used for:

(i) Negotiating a sale on product ((the retail licensee does not currently carry. All vendor sample limits are)) not currently carried by the cannabis licensee;

(ii) Educating budtenders on new products the cannabis retailer has not previously offered for sale to the public; and

(iii) Educating new budtenders on existing products the retailer sells.

(e) A trade sample unit must:

(i) Be representative of the product being offered for sale on the market;

(ii) Not be larger than the smallest unit offered for individual sale at retail;

(iii) Not exceed the following amounts per unit:

(A) 3.5 grams of cannabis;

(B) One gram of cannabis concentrate;

(C) 100 milligrams of cannabis-infused product in solid or liquid form meant to be ingested orally, applied topically, or otherwise taken into the body containing not more than 10 milligrams of active delta-9 THC per serving consistent with the limits provided in WAC 314-55-095.

(f) The limits on the amount of trade samples offered to cannabis licensees are based on calendar ((months)) quarters.

(i) Producers may not provide any one licensed processor more than 96 trade sample units of cannabis flower per calendar quarter.

(ii) Processors may not provide any one licensed retail business more than 120 trade sample units of any combination of useable cannabis, cannabis concentrates, or cannabis-infused products per calendar quarter.

(g) The producer or processor must:

(i) Record the amount of each ((vendor)) trade sample provided by product type and the ((processor or retailer receiving the sample)) trade name of the receiving licensee in the state's traceability system((The outgoing sample must be clearly labeled));

(ii) Clearly label each outgoing sample as a "((vendor)) trade sample" ((to negotiate a sale and recorded)) and itemize trade samples on a separate transport manifest from products intended for resale;

All trade samples must be packaged and labeled in accordance with the requirements in WAC 314-55-105, and include an additional label affixed to the package with the following statement in a style or type of lettering that is bold, clear, and conspicuous when compared with other type, lettering or graphics, and does not obscure other required labeling information: "TRADE SAMPLE - NOT FOR RESALE OR DONATION."

(iii) Locate and store all trade samples in a designated area on the licensed premises, separate from nonsample products being sold to another licensee;

(iv) Not provide trade samples as a condition for a retailer to purchase the producer or processor's products or in any manner that would cause undue influence over another licensee or industry member;

(v) Provide the license receiving trade samples of cannabis with the certificate of analysis for all quality assurance and quality control tests conducted on the lot or batch from which the sample was derived;

(vi) Disclose all chemicals applied to the growing medium and the plants during production and or processing as applicable including, but not limited to, pesticides, fungicides, herbicides, rodenticides, nutrients, fertilizers, and pH control; and

(vii) Disclose all solvents and other chemicals, that were used during the processing of a cannabis concentrate or cannabis-infused product including, but not limited to, additives and ingredients.

(h) The receiving licensee must receive the ((vendor)) trade sample in the traceability system prior to sampling.

~~((a) Vendor))~~ (i) Trade samples may only be given to and used by licensees or current paid 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)) the licensee as detailed in a licensee's written business policy.

~~((b) Producers may not provide any one licensed processor more than eight grams of cannabis flower per month free of charge for the purpose of negotiating a sale.~~

~~(c) Processors may not provide any one licensed retailer more than eight grams of useable cannabis per month free of charge for the purpose of negotiating a sale.~~

~~(d) Processors may not provide any one licensed retailer more than eight units of cannabis-infused products in solid form meant to be ingested orally or otherwise taken into the body per month free of charge for the purpose of negotiating a sale. No single unit may exceed 10 mg of THC.~~

~~(e) Processors may not provide any one licensed retailer more than eight units of cannabis-infused product in liquid form meant to be eaten, swallowed, or otherwise taken into the body per month free of charge for the purpose of negotiating a sale. No single unit may exceed 10 mg of THC.~~

~~(f) Processors may not provide any one licensed retailer more than eight units of cannabis-infused products meant to be applied topically per month free of charge for the purpose of negotiating a sale.~~

~~(g) Processors may not provide any one licensed retailer more than two units of cannabis-infused extract meant for inhalation or infused cannabis mix per month free of charge for the purpose of negotiating a sale. No single unit may exceed 0.5 g.~~

~~(h) A cannabis producer must make quality assurance test results available to any processor receiving samples to negotiate a sale. The producer must also provide a statement that discloses all pesticides applied to the cannabis plants and growing medium during production.~~

~~(i) A cannabis processor must make quality assurance test results available to any retailer receiving samples to negotiate a sale. If a cannabis extract was added to the product, the processors must disclose the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract.~~

~~(j) **Vendor sample labeling:** All vendor samples must be clearly labeled as a vendor sample and meet all labeling requirements of the product to be sampled.~~

~~(i) The unique identifier number generated by the traceability system;~~

~~(ii) The UBI number of the licensed entity providing the sample; and~~

~~(iii) Weight of the product in ounces and grams or volume as applicable.~~

~~(2) **Education sampling.** Processors)) (i) Trade samples may not be sold, and only be given free of charge to paid employees of the licensed business.~~

~~(ii) Trade samples may not be provided as employee compensation, as an incentive, or reward.~~

~~(j) Cannabis retailers:~~

~~(i) Must not require a producer or processor to provide free trade samples as a condition for purchasing a licensee's products or in any manner that would cause undue influence over another licensee or industry member.~~

~~(ii) Must locate trade samples in a designated area on the licensed premises, separate from nonsample products for resale, and be clearly identified as trade samples.~~

~~(iii) May provide free trade samples of useable cannabis, cannabis-infused products, and cannabis concentrates to ((retail licensees to give to the licensee's)) current paid employees ((for educational purposes. Products being sampled must be carried by)) of the licensed retailer. ((The processor))~~

~~(iv) Must track all incoming and outgoing trade sample inventory in the state traceability system by product type.~~

~~(v) Must record the sample amount ((of each sample and the retailer receiving the sample)) being provided to each employee in the traceability system including the product type and the name of the employee receiving the sample. ((The outgoing sample must be clearly labeled as "education sample" and recorded on a transport manifest. Once the retailer receives the))~~

~~(vi) Must not provide more than 15 sample((, the retailer must accept the sample in the traceability system prior to distributing samples to the retailer's employees. All employees at a licensed retail location who receive educational samples must be entered into the traceability system for the purpose of distributing education samples.~~

~~(a) Retailers are restricted to receiving a maximum of 100 sample units per calendar month. No more than 10 sample units may be provided to any one employee per calendar month.~~

~~(b) The maximum size of education samples are:~~

~~(i) Useable cannabis, cannabis mix, and infused cannabis mix — One unit not to exceed 0.5 g.~~

~~(ii) Cannabis infused solid or liquid product meant to be ingested orally or otherwise taken into the body — One unit not to exceed 10 mg THC.~~

~~(iii) Cannabis-infused extract for inhalation — One unit not to exceed 0.25 g.~~

~~(iv) Cannabis-infused products for topical application — One unit not to exceed 16 ounces.~~

~~(c) Distribution and consumption of all educational samples is limited to retail employees who directly sell product to retail customers. Retail employees who are not involved in direct sales to customers are not eligible for education samples.~~

~~(d) Cannabis retail licensees are prohibited from providing educational samples to their employees as a form of compensation.~~

~~(e) A cannabis processor must make quality assurance test results available to any retailer receiving education samples. If a cannabis extract was added to the product, the processors must disclose the~~

~~type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract.~~

~~(f) **Education sample labeling:** All education samples must be clearly labeled "education sample" and include the following information on the label:~~

- ~~(i) The unique identifier number generated by the traceability system;~~
- ~~(ii) The UBI number and trade name of the licensed entity providing the sample;~~
- ~~(iii) Product name or strain name for useable cannabis;~~
- ~~(iv) Weight of the product in ounces and grams or volume as applicable; and~~
- ~~(v) Potency labeled as required under WAC 314-55-105.~~

~~(3) A cannabis processor is not required to provide free samples to negotiate a sale or educational samples to a cannabis retail licensee, and a cannabis retail licensee may not require a cannabis processor to provide free sample to negotiate a sale or educational samples as a condition for purchasing the cannabis processor's products.~~

- ~~(4-)) units to any one employee within a calendar quarter.~~
- ~~(2) Retailers may not provide free samples to customers.~~

~~(3) **Internal quality control sampling:** Producers and processors may conduct limited self-sampling for quality control. All sample limits are based on calendar (~~months~~) quarters. Consuming samples for quality control may not take place (~~at a~~) on the licensed premises. Only the producer, processor, or their paid employees (~~of the licensee~~) may sample (~~the~~) cannabis flower, useable cannabis, cannabis-infused products, cannabis concentrates, and edible cannabis-infused product. The producer or processor must record the amount of each sample and the employee(s) conducting the sampling in the state's traceability system.~~

~~(a) Producers may sample (~~two grams~~) up to 14 grams of cannabis (~~flower~~) per (~~strain, per month~~) harvest, for internal quality control.~~

~~(b) Processors may sample (~~one unit~~) up to eight units per batch of (~~a new~~) cannabis-infused product meant to be ingested orally or otherwise taken into the body to be offered for sale on the market for internal quality control.~~

~~(c) Processors may sample up to (~~one unit~~) 3.5 grams per batch of (~~a new cannabis-infused extract for inhalation~~) cannabis concentrates to be offered for sale on the market for internal quality control. (~~No single sample may exceed 0.5 g.~~~~

~~(d) Processors may sample one unit per batch of a new cannabis mix packaged to be offered for sale on the market. No single sample may exceed 1 g.~~

~~(e) Processors may sample one unit per batch of a new infused cannabis mix to be offered for sale on the market. No sample may exceed 0.5 g.~~

~~(f) Processors may sample one unit per batch of a new cannabis-infused product for topical application to be offered for sale on the market. No sample may exceed 16 ounces.~~

- ~~(5) **Retailers may not provide free samples to customers.**~~
- ~~(6-))~~

~~(4) **Sample jars:**~~

- ~~(a) All sample jars must be labeled with the following:~~
- ~~(i) Information identifying it as a sample jar;~~



(ii) The UBI number of the licensed entity providing the sample;  
and  
(iii) Weight of the product in ounces and grams or volume as applicable.

(b) A processor may provide a retailer free samples of useable cannabis packaged in a transparent sample jar protected by a plastic or metal mesh screen to allow customers to view and smell the product before purchase. The sample jar may not contain more than ((three and one-half)) 3.5 grams of useable cannabis. The plastic or metal mesh screen must be sealed onto the container, and must be free of rips, tears, or holes greater than 2 mm in diameter.

(c) Neither the sample jar ((and)) or the useable cannabis within may ((not)) be sold, transferred, given away, or otherwise provided to a customer ((and must be returned to the licensed processor who provided the useable cannabis and sample jar.

~~(b) **Sample jar labeling:** All sample jars must be labeled with the following:~~

~~(i) The unique identifier number generated by the traceability system;~~

~~(ii) Information identifying whether it is a vendor sample or sample jar;~~

~~(iii) The UBI number of the licensed entity providing the sample;~~  
and

~~(iv) Weight of the product in ounces and grams or volume as applicable.~~

~~(c) A cannabis processor must make quality assurance test results available to any retailer receiving sample jars. The processor must also provide a statement that discloses all pesticides applied to the cannabis plants and growing medium during production.~~

~~(d) If a cannabis extract was added to the product, the processor must disclose to the retailer the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract).~~

(d) Any useable cannabis no longer needed for display in sample jars may either be:

(i) Given to paid employees of the retailer free of charge. The sample amount must be recorded in the state's traceability system and will count towards the employees maximum sample limit described in (1)(j)(vi) of this section;

(ii) Disposed in accordance with the requirements in WAC 314-55-097 and recorded in the state's traceability system, consistent with WAC 314-55-083; or

(iii) Returned to the processor that provided the sample, to be disposed in accordance with WAC 314-55-097 and recorded in the state's traceability system, consistent with WAC 314-55-083.

~~((7))~~ (5) **Transportation.** Outgoing and return ((vendor)) trade samples and sample jars must adhere to the transportation requirements in WAC 314-55-085.