

# **Small Business Economic Impact Statement**

Chapter 314-55  
Rules Concerning Marijuana Quality Assurance  
Testing and Product Requirements

September 30, 2020  
*Supplemental CR 102*

## **SECTION 1:**

**Describe the proposed rule, including a brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

In early 2018, several stakeholders, including medical marijuana patients, consumers, and licensees, urged WSLCB to require producers and processors to test recreational crops for pesticides and heavy metals. These partners asserted that such a move, already adopted in other states, would inspire confidence among consumers, increase access to medically compliant products, and bolster sales.

In August 2018, the WSLCB began the initial stages of rule development regarding marijuana quality control and product requirements. Among the rule changes being considered was whether all marijuana products be tested for pesticides and heavy metals.

The proposed rules are necessary to align current marijuana testing standards with the testing requirements described in existing Washington State Department of Health (DOH) Marijuana Product Compliance regulations, located in chapter 246-70 WAC. These proposed rule revisions are anticipated to increase testing efficiencies, safety and quality for all marijuana products produced and sold in Washington State.

WSLCB filed a CR101 on August 18, 2018 to consider rule changes to chapter 314-55 WAC regarding quality assurance testing and product requirements. The CR101 described the following topic areas to be considered for rule development and revision:

- Lot and batch sizes;
- Fields of testing and pass/fail level adjustments;
- Potency testing requirements;
- Pesticide testing requirements for all marijuana products;
- Heavy metals testing requirements;
- Sample deduction requirements;
- General testing rule adjustments;
- Product, THC (tetrahydrocannabinol) serving limits, and packaging requirements; and
- Other related rule changes that may be necessary or advisable.

While the supplemental proposed rules consist of substantive changes to both WAC 314-55-101 and WAC 314-55-102, the requirements determined most likely to result in costs to businesses are the inclusion of testing requirements for pesticides and heavy metals. Therefore, these proposed testing requirements are the focus of this analysis of potential impacts on small businesses as they are defined in RCW 19.35.030.

RCW 19.85.030 requires that the relevant agency prepare a small business economic impact statement (SBEIS) if the proposed rule “will impose more than minor costs on businesses in an industry.”<sup>1</sup> “Minor cost” cost is defined in RCW 19.85.020 as a cost per business that is less than 0.3 percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.<sup>2</sup> These calculations are statutorily defined, and the agency is required to comply with these specific requirements, despite stakeholder suggestion to the contrary.

The guidelines for preparing an SBEIS are included in RCW 19.85.040.<sup>3</sup> The WSLCB also utilized the more specific guidance and resources provided by Washington State’s Office for Regulatory Innovation and Assistance (ORIA).<sup>4</sup> Consistent with SBEIS Frequently Asked Questions guidance, agencies are required to consider costs imposed on businesses and costs associated with compliance with the proposed rules.<sup>5</sup> Agencies are not required under chapter 19.85 RCW to consider indirect costs that are not associated with compliance with the rule.

This document describes the WSLCB analysis of potential, estimated economic impacts of revisions to WAC 314-55-101 and WAC 314-55-102 on small businesses in Washington State as small business is defined in RCW 19.35.030. The sequence of this analysis below follows templates provided by ORIA, and generally, chapter 19.85 RCW.

## **SECTION 2:**

### **Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

The proposed rules primarily affect two types of licensed businesses involved in the marijuana industry in Washington State: licensed producer/processors, who bear the direct costs of additional testing requirements; and accredited marijuana testing laboratories, who conduct testing of marijuana products.<sup>6</sup> Table 1 presents the number of entities in Washington State for each of these types of businesses, and the actual number of licensed marijuana processors and producers.

Table 1

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<sup>1</sup> RCW 19.85.030 Agency Rules – Small Business economic impact statement reduction of costs imposed by rule. Accessed September 25, 2020 at: <https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.

<sup>2</sup> RCW 19.85.020 Definitions. Accessed September 25, 2020 at: <https://app.leg.wa.gov/rcw/default.aspx?cite=19.85.020>.

<sup>3</sup> RCW 19.85.040 Small business economic impact statement—Purpose—Contents. Accessed January 8, 2020 at: <https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>.

<sup>4</sup> ORIA. 2019. Regulatory Fairness Act Support. Accessed September 25, 2020 at: [https://www.oria.wa.gov/site/alias\\_oria/934/regulatory-fairness-act-support.aspx](https://www.oria.wa.gov/site/alias_oria/934/regulatory-fairness-act-support.aspx).

<sup>5</sup> WA Attorney General Office. 2019. Small Business Economic Impact Statements – Frequently Asked Questions. Accessed September 25, 2020 at: [https://www.oria.wa.gov/Portals/\\_oria/VersionedDocuments/RFA/Regulatory\\_Fairness\\_Act/DRAFT\\_SBEIS\\_FAQ.pdf](https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/DRAFT_SBEIS_FAQ.pdf).

<sup>6</sup> While retailers may be affected by some minor changes to packaging labeling requirements under the proposed rules, these costs are considered likely to be minimal (Personal communication with WSLCB staff, March 14, 2019); thus, impacts to retailers are not considered in this analysis.

Type of Business	# of Businesses In Washington	Percentage of Businesses Considered “Small” <sup>3</sup>	Average Annual Sales <sup>2</sup>	Minor Cost Threshold (0.3%) Average Annual Sales
Marijuana Producer, Processor	801 <sup>1</sup>	98%	\$1,466,109	\$4,398
Notes: <sup>1</sup> Represents the number of Marijuana producer/processors reporting sales in LEAF between 2018/01 and 2020/08 <sup>2</sup> Average annual sales for producer/processors based on total sales divided by the number of business that reported sales, lab tests, and employment.				

Note that for licensing purposes, different tiers of producers are defined in WAC 314-55-075;<sup>7</sup> however, for purposes of the small business economic impact statement, under the RCW 19.85.030, small business is defined as “any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has 50 or fewer employees.”<sup>8</sup>

Also note that this is an updated version of the original table offered in the first SBEIS project. The minor cost threshold, even when relying on annual sales, is similar to analogous revenue as noted below.

When this SBEIS was originally drafted in 2019, there was uncertainty regarding how to classify marijuana processors and producers within the NAICS nomenclature since there are no codes assigned to either of these business types. However, since that time, best practice guidance from ORIA indicates that for emerging and un-coded industries, the most analogous NAICS code are appropriate to conduct analysis consistent with chapter 19.35 RCW. To complete Table 2, the *estimated, probable cost* of compliance, is calculated in Table 2, and applied here, but with the following caveats:

- Interviews conducted in 2019 with a cross section of licensed processors and producers self-reported a wide range in the number of samples tested annually (72 on the low end, and 2,090 on the high end). Interview participants included a sun grower and several indoor processor/producers across all three tiers.
- In contrast, traceability data from January 2020 indicates the number of samples tested for 2019 averaged 184 annually.
- This disparity in self-reported sample testing and traceability data that to an extent, is also self-reported underscores the challenge of precisely estimating compliance cost impact at this time. *These are estimates.*
- Monthly compliance costs may vary based on the number of harvests, business model and size, and other factors that vary widely across tiers. For purposes of estimating an

<sup>7</sup> See [https://lcb.wa.gov/mjlicense/producer\\_license\\_discriptions\\_fees](https://lcb.wa.gov/mjlicense/producer_license_discriptions_fees). Tier 1 allows for 2,000 square feet or less of dedicated plant canopy; Tier 2 allows for between 2,000 and 10,000 square feet or less of dedicated plant canopy; and, Tier 3 allows for between 10,000 and 30,000 square feet or less of dedicated plant canopy.

<sup>8</sup> RCW 19.85.020 Definitions. Accessed September 25, 2020 at: <https://app.leg.wa.gov/rcw/default.aspx?cite=19.85.020>.

average compliance cost, these are represented in Table 1. Under this analysis, the *monthly* cost of compliance does not exceed any of the minor cost thresholds. However, in Table 3, *annual* costs exceed minor cost thresholds.

Table 2

2017 Industry NAICS Code	Estimated <i>Monthly</i> Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll . (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
111 <sup>9</sup>	\$ 3,450	Marijuana Producers	Crop Production	\$4,082.13	\$4,082.13 2018 Dataset pulled from ESD	\$2,993.38 2018 Dataset pulled from DOR
312 <sup>10</sup>	\$ 3,450	Marijuana Processors	Beverage and Tobacco Product Manufacturing	\$5,766.61	\$5,342.91 2018 Dataset pulled from ESDS	\$5,766.61 2018 Dataset pulled from DOR

Table 3

2017 Industry NAICS Code	Estimated <i>Annual</i> Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll . (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
111	\$ 41,400	Marijuana Producers	Crop Production	\$4,082.13	\$4,082.13 2018 Dataset pulled from ESD	\$2,993.38 2018 Dataset pulled from DOR
312	\$ 41,400	Marijuana Processors	Beverage and Tobacco Product Manufacturing	\$5,766.61	\$5,342.91 2018 Dataset pulled from ESDS	\$5,766.61 2018 Dataset pulled from DOR

Because labs are not required to comply with these rules, additional analysis was not conducted.

“Minor cost” is defined in RCW 19.85.020 as a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. As revenue information is more readily available than payroll, the analysis calculates minor cost thresholds based on sales of business entities in the affected industries. The minor cost threshold is \$4,082 for producer and \$5,766.61 for processors, based on the total revenue reported by analogous industries. Since these are the most recent and publicly available data points, these were used for this calculation.

Because each of these values falls well above \$100, the statutory minimum threshold for “minor cost,” we utilize these values in the analysis that follows.

<sup>9</sup> **111 Crop Production**

Industries in the Crop Production subsector grow crops mainly for food and fiber. The subsector comprises establishments, such as farms, orchards, groves, greenhouses, and nurseries, primarily engaged in growing crops, plants, vines, or trees and their seeds.

<sup>10</sup> **312 Beverage and Tobacco Product Manufacturing**

Industries in the Beverage and Tobacco Product Manufacturing subsector manufacture beverages and tobacco products. The Tobacco Manufacturing industry group includes two types of establishments: (1) those engaged in redrying and stemming tobacco and (2) those that manufacture tobacco products, such as cigarettes and cigars.

## SECTION 3:

**Analyze the *probable* cost of compliance. Identify the *probable* costs to comply with the proposed rule, including: cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sale or revenue.**

Complying with the proposed rule changes requires that marijuana products be tested for pesticides and heavy metals, in addition to existing testing protocols. This analysis relies on information gathered through outreach to businesses, WSLCB data, and analogous industry data to estimate the potential costs of the proposed rule. It is anticipated that rather than increased administrative costs, compliance costs are associated with the initial increase in testing costs.

For producer/processors, each marijuana flower lot or batch of intermediate product (e.g., concentrate, extract, or oil) will require additional testing in the form of screening for pesticides and heavy metals. During initial interviews, producer/processors indicated that they would be unable to pass these additional testing costs on to retailers in the form of higher prices.<sup>11</sup> This was further expressed during the two Listen and Learn sessions occurring in April and August of 2019, as well as through written comment.

For purposes of this analysis it is assumed that these costs will not be passed on to retailers or consumers at this time. This is a conservative assumption, in that it will lead to greater estimated impacts on businesses. If producer/processors *are* able to pass on the costs of testing, then the impacts would more likely be borne by consumers.

When the original CR 102 was filed for this project, labs charged approximately \$120 to \$125 per sample for pesticides testing; per sample costs for testing for heavy metals was listed on one website at \$70 and another at \$120.<sup>12</sup> Based on interviews with a subset of producer/processors and prices available from labs, we estimate the potential range of testing costs per sample to add pesticides and heavy metals screening; these costs are expected to range from \$165 to \$400.<sup>13</sup> These figures have not changed for purposes of supplemental proposal calculations, although with the added option to test up to ten pound lots, the annual cost of compliance may be reduced since testing frequency will decline. However, the proposed rules do not prevent or preclude licensees from continuing to test five pound lots.

In order to estimate annual compliance costs for producer/processors, information on the number of samples tested annually is needed. It is difficult to generalize the average number of

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<sup>11</sup> Based on interviews with a subset of producer/processors. Significant additional research would be required to confirm or refute this assumption. For example, research might include the identification or development of elasticity estimates for this evolving market, as well as information about current profit margins in this industry. This information, if available, could be used to determine which actors (producers or consumers) are most likely to bear the costs of the rule changes.

<sup>12</sup> Personal communication with labs (April 2019) and WSLCB staff (March 2019, January and September 2020); also, online research from testing labs websites.

<sup>13</sup> Costs vary depending on whether they are for individual tests or incremental costs for a suite of tests; this range includes producer/processors expected testing costs as well as prices posted by laboratories. We note that for the two labs for which testing costs were available, prices ranged from \$165 - \$240.

samples tested, as business models vary greatly. For example, the number of samples tested on an annual basis may vary based on factors such as the size of an operation or harvest, the type of production (such as outdoor grows that harvest once or twice per year), and testing choices in terms of batch/lot size (e.g. small producers may choose to test only once they have a ten pound lot). Based on information gathered through initial interviews, follow up discussions during Listen and Learn sessions, and staff research, we estimate annual low-end and high-end costs of additional testing per producer/processor.<sup>14</sup> These estimates are presented in Table 4 below:

Table 4:

Scenario	Number of Samples Tested Annually	\$165 Per Sample <sup>3</sup>	\$225 Per Sample <sup>1</sup>	\$400 Per Sample <sup>1</sup>
Low # of Samples	72 <sup>1</sup>	\$5,940	\$8,100	\$14,400
High # of Samples	2,080 <sup>1</sup>	\$171,600	\$234,000	\$416,000
Average # of Samples	184 <sup>2</sup>	\$30,360	\$41,400	\$73,600
Notes:				
<sup>1</sup> Estimates based off of information collected in interviews by Industrial Economics Incorporated, Spring 2019 under assumption of samples from a five pound lot. These figures have not been revised since increasing lot size is optional, will reduce sampling frequency, and could ultimately result in annual cost reduction.				
<sup>2</sup> Figures based on traceability data, 1/2020				
<sup>3</sup> Cost based on currently available pricing in Washington state, 9/2020				

Source: Estimates of number of tests, and costs for pesticide and heavy metals testing based on information collected in interviews with labs and producer/processors and online research into testing prices.

The cost estimates in Table 4 are subject to a variety of caveats, including the following:

- Some producer/processors are already testing for pesticides for various reasons (e.g., already producing medically compliant products, consumer/retailer demand, and interest in pesticide-tested products). To the extent producers are already incurring pesticide testing costs, the overall incremental compliance costs of the proposed rule would be lower.
- Prices that will be charged for pesticide and heavy metals testing once these tests are required are uncertain. As more labs begin offering testing, pricing could change. Labs continue to indicate that there is a race to the bottom for pricing for marijuana testing, and labs have recently cut their prices for testing for the suite of quality control tests currently required under WAC 314-55-102.
- Licensees are not precluded from drawing four samples from a five pound lot. This estimate assumes that increasing the lot size to ten pounds, from which a minimum of

<sup>14</sup> We note that while our interviews provided an understanding of the likely range of samples tested annually by Tier 1 and Tier 2 producer/processors in a variety of settings, including indoor and sun grown, due to the limited number of interviews and lack of response from Tier 3 producers/processors, we lack similar information for larger producer/processor operations.

eight samples must be drawn may result in cost reduction since testing would occur less frequently.

The proposed rules do not require labs to offer testing of pesticides or heavy metals. However, to remain viable under the proposal, labs may need to obtain the equipment needed for these additional tests, and seek certification for them. If they chose not to obtain pesticides and heavy metals certifications, they may experience a loss in business as customers opt for testing with other labs offering the full suite of required tests. Currently, four labs are certified to test for pesticides, and one is currently certified to test for the required pesticides and heavy metals. Through discussions with industry representatives, it appears many of the existing labs are considering purchasing the necessary equipment and becoming certified to perform the additional tests. This decision suggests that those labs believe offering these tests is a good business decision, and they will be able to recoup the costs of certification through the fees they will charge for conducting testing over time.<sup>15</sup>

Given the nascent status and current competitive nature of the marijuana industry, it is unclear how the market will react to new testing requirements. For example, in the short run some labs appear to be charging prices that do not likely cover incremental operating costs. This business strategy is likely not sustainable.

WSCLB is not required under RCW 19.85 to consider indirect costs potentially resulting from the proposed regulation. Costs of certification, and/or any loss in sales to testing labs as a result of the proposed rule are considered an indirect impact of the rulemaking, not a direct compliance cost. However, given that all of the marijuana testing labs are small businesses, we present these costs in context for purposes of this analysis.

Additionally, the proposed rules do not change or alter the laboratory accreditation process, revise any testing method or methodology development or validation processes, or require the acquisition, upgrade or purchase of any equipment. Currently, the WSLCB's authority to regulate marijuana testing labs is limited solely to accreditation which will eventually be a function of the Department of Ecology; however, **WSLCB remains statutorily required to establish and maintain standards for product testing, even after accreditation is transferred.** Further, testing labs in Washington State independently select and utilize various business and operating models. While the proposed rules increase required testing for marijuana **products**, they *do not* require testing labs to offer the full suite of proposed tests. As noted previously, whether or not the proposed full suite of tests is offered by a testing lab is a business decision to be made by each testing lab.

Costs associated with testing laboratories efforts to become certified to perform pesticides and heavy metals testing include a range of one-time and ongoing additional costs for the labs. The majority of the costs associated with a lab becoming certified to perform pesticides and heavy metals testing are related to the investment in equipment. Laboratories report that estimated costs for equipment needed to perform pesticides and heavy metals tests range from \$500,000 to \$1.3 million per business entity. In addition, there are a variety of other potential costs related to becoming certified for pesticides and heavy metals testing, including but not limited to:

- Rent or costs to purchase additional space to house equipment and store supplies;
- Improvements to space (e.g., duct work, electrical work);
- Operational costs including increased electricity costs, waste containers, consumables (e.g., solvents, standards);
- Payroll and benefits for additional scientists;
- Preventative maintenance contracts for equipment;
- Auditing costs (for certification); and,
- Miscellaneous (vibration proof benches).

## **SECTION 4:**

### **Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.**

Given the minor cost thresholds calculated in Section 2, and the compliance costs presented in Section 3, this rule is likely to impose more than minor costs on licensees. Based on the high-end costs of pesticide and heavy metals testing, if producer/processors perform more than five tests a year they will experience greater than minor costs; based on low-end testing cost estimates, producer/processors who perform more than 10 tests per year would exceed the minor cost threshold. The cost of equipment that labs would need to purchase to conduct testing would also exceed the minor cost threshold.

## **SECTION 5:**

### **Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.**

When proposed rule changes cause more than minor costs to small businesses, the RCW 19.85.040 requires an analysis that compares the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules to determine whether the costs are considered

disproportionate.<sup>16</sup> Data limitations prevent the identification of per entity compliance costs needed for this comparison. Specifically, we lack the detailed information needed to estimate average annual per entity costs, or a reasonable range of costs.

In particular, in order to calculate annual costs, we require information on a per entity basis describing the number of samples being tested per year. While we have some limited anecdotal information on the numbers of samples tested per year by individual producer/processors, we lack information on the myriad business models that could lead to a wide range in the number of samples tested per year, and thus a wide range of per entity compliance costs per year. Developing reliable estimates would require a comprehensive survey with a *reasonable* response rate, and even then, given the wide variability of business models and documented inconsistency in responses from licensees, per entity costs is difficult to determine.

It is important to note that nearly all of the businesses affected by the rule changes are considered small under chapter 19.85 RCW (i.e., businesses with fewer than 50 employees). In addition, small businesses may experience the effects of the rule differently than large businesses in terms of cost.

## **SECTION 6:**

**If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced, provide a clear explanation of why.**

The proposed rule changes include provisions that are intended to reduce the compliance costs for small businesses. These include:

- An incremental phase-in period that contemplates full compliance by February 1, 2022;
- Increasing lot size from five pounds to ten pounds, although licensees are not precluded from continuing to sample from five pound lotes; and
- Allowing labs to subcontract pesticide and heavy metals testing for a period of time.

It is difficult to accurately assess if small businesses will be disproportionately impacted by this rule proposal when there is both significant overlap and variance between the groups evaluated. As noted above, and throughout this SBEIS, most of the businesses impacted are small as defined by RCW 19.85.030.

In addition, WSLCB considered a range of suggestions from industry representatives, licensees, and others, including:

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<sup>16</sup> The RFA provides several options for comparing costs, including: (a) Cost per employee; (b) Cost per hour of labor; (c) Cost per one hundred dollars of sales (RCW 19.85.040(1)). In the absence of sufficient data to calculate disproportionate impacts, an agency whose rule imposes more than minor costs must mitigate the costs to small businesses, where legal and feasible, as defined in this chapter (RCW 19.85.030(4)).

- Testing by lot system that is currently in place for other types of testing does not make sense. They suggested a range of other options including:
  - Regular third-party testing periodically (e.g. quarterly or once a month). Could have the producer/processors pay for this system.
  - For pesticides and heavy metals, allow processors to conduct one test of the concentrate for each harvest from each producer. This could reduce impacts because these testing costs get passed on to the producer and if the testing costs are increased significantly it may cause small businesses to choose not to make concentrates, and processors will lose business.
- Consider exemption for indoor growers for heavy metals testing; heavy metals should not be an issue for indoor growers because they are only using nutrients that have been approved and previously screened.
- Consider an exemption for new product development. Testing costs could make it cost prohibitive to grow small lots of new strains.
- Consider changes to the pesticide standards being proposed. Ensure that the limits are reasonable and science-based; need to consider different limits for different types of uses (e.g. ingestion vs. inhalation). Interviewees and commenters mentioned concerns about the pesticide standards being proposed being too stringent and the costs of failure for small businesses who then may lose the value of an entire lot.
- Consider an education campaign to inform retailers and consumers of the benefits of pesticides and heavy metals testing; could help increase prices to allow for producer/processors to pass on some of the increased cost of testing.
- Consider testing soil for heavy metals as opposed to plants;
- Create carve-outs, exemptions, and specialized criteria for sun growers who engage in “sustainable farming practices.”
- Recalculate costs based on methods other than those required by chapter 19.85 RCW.
- Revise rules outside of the rule development process and chapter 34.05 RCW; consider “intangibles,” such as when “...a farmer can no-longer earn a living off their land and when a small business owner who is passionate about what they do can longer do the thing they love for work. The world is a better place when more people get to follow their dreams & passion.”
- Keep lot size the same. Doing so will impact Tier 1 producers less.
- Consider only end product testing.
- Consider graduated lot sizes.
- Consider using WSDA lab for random pesticide and heavy metal testing.

## **SECTION 7:**

## **Describe how small businesses were involved in the development of the proposed rule.**

Throughout the rule development process, the WSLCB has engaged with businesses likely to be affected by the rule, and who volunteered to participate in the process. To support development of the SBEIS, a subset of six producer/processors spanning a range of both tiers and types of producers was contacted; interviews were conducted with two producers, one processor, and one producer/processor. In addition, interviews were conducted with three testing laboratories. Additional opportunity for public comment will be available when the proposed rule is published. Indoor and outdoor farmers, including sun growers, were included in the interviews.

During the rule development process, the WSLCB hosted two “Listen and Learn” sessions, one in April 2019 and the second in August 2019, inviting industry discussion and feedback on the proposed rules, and discuss potential mitigation strategies. The WSLCB’s stakeholder process encouraged interested parties and industry partners to:

- Identify burdensome areas of existing and proposed rules;
- Proposed initial or draft rule changes; and
- Refine those changes.

Although the WSLCB broadly messaged these sessions (messaging went directly to *all* licensees, as well as over 10,000 GovDelivery subscribers), few processors and producers attended the sessions. This rule project was the first employing the “Listen and Learn” model, and attendees were initially unfamiliar with not only the model, but the process, although detailed agendas were provided well in advance of each meeting.

These heavily facilitated sessions followed two thought streams: the first asked attendees to review draft conceptual rules offered well in advance of the meeting and provide feedback or specific rule language, specifically indicating what they liked, didn’t like, and what they proposed in the way of a solution. No rule language revisions were offered by attendees at either session. Solutions ranged from suggesting that figures and language be more concise in general without offering example, to unsupported assertions that adding pesticides and heavy metals to the suite of required tests would put certain producers out of business.

All comments received during these sessions were curated to the extent possible, although developing themes from sessions was difficult based on the broad range of comments. The proposed rules went through several stages of edits, review, discussion, and then further refinement before arriving at the initial proposal. The end result of this process are proposed rules that are offered as a framework and guidance for testing marijuana products that supports the overarching WSLCB goal of public health and safety.

A summary of the description of issues related to the proposed rule set and how the agency collaborated with stakeholders and industry partners to mitigate potential burden associated with rule compliance is more fully described in the Significant Analysis prepared consistent with RCW 34.05.328, including a phase-in plan, and offered as part of this initial rule proposal.

## **SECTION 8:**

### **Identify the estimated number of jobs that will be created or lost as a result of compliance with the proposed rule.**

While the impacts to individual producer processors may depend on their ability to pass on increased testing costs (in the form of higher prices to retailers), the proposed rule is not expected to affect the amount of marijuana produced. Thus, the proposed rule is unlikely to affect the overall number of employees of producer/processors or retailers. For example, if increased testing costs lead some smaller entities to cease production, other entities may produce larger volumes.

While it would be an indirect effect, the proposed rule may result in some limited additional employment in the labs conducting testing. In order to conduct the testing, a lab adding this testing capability may need to hire one or two additional scientists or technicians to operate equipment and conduct tests. The extent of potential employment gains are uncertain, but given the small number of labs in the industry (currently 14 certified labs) any employment gains would likely be limited.