



CR 102 Memorandum

Regarding Chapter 314-55 WAC: Modifications to Implement Engrossed Second Substitute Senate Bill 5080 Related to the Social Equity in Cannabis Program

Date: July 31, 2024
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Introduction

The memo outlines the proposed changes to the draft rules for the Social Equity in Cannabis Program. These proposed changes represent the culmination of extensive stakeholder engagement and consideration of community interests. Where available, research findings have been integrated into the rulemaking process to ensure that decisions are evidence based and aligned with best practices identified in similar regulatory environments. The proposed changes to the draft rules for the Social Equity in Cannabis Program are designed to address the feedback and concerns expressed by our diverse group of stakeholders. The proposed changes to the draft have been systematically developed to address the specific interests and concerns brought forth by the community and stakeholders involved in the cannabis industries process. These revisions aimed to enhance clarity and ensure fairness and increase accessibility within the Social Equity in Cannabis Program that aligns more closely with the legislative intent.

Background

The Social Equity in Cannabis Program is being expanded and improved through the implementation of Engrossed Second Substitute Senate Bill 5080 (E2SSB) 5080 passed in the 2023 legislative session. This legislation builds upon existing efforts to address disparities and injustices caused by the war on drugs, particularly in communities disproportionately impacted by cannabis prohibition and enforcement. The primary goal of the legislation is to further promote equity within the cannabis industry by providing increased opportunities for individuals from these affected communities to obtain a cannabis license.

The legislation mandates the creation of rules that enhance the participation of social equity applicants in the legal cannabis market. It provides the Washington State Liquor and Cannabis Board (LCB or Board) with the authority to clarify eligibility criteria established in E2SSB 5080, develop a scoring system for applications, and establish procedures for the application and licensing. The

legislation specifically calls for prioritizing applicants who have been disproportionately affected by the enforcement of cannabis related rule laws.

The scope of this rulemaking under the legislation includes expanding the eligibility criteria to encompass a broader range of individuals impacted by the war on drugs. Refining the application process to be more inclusive and accessible, and improving the verification methods for eligibility. This includes a clear framework for evaluating and scoring applications, setting requirements for ownership and control, and implementing measures to verify the eligibility of applicants. The rules also establish guidelines for using affidavits and other documentation to support claims of eligibility, ensuring that the process is both rigorous and accessible.

By leveraging statutory authority under E2SSB 5080, the LCB aims to create a more inclusive cannabis industry that reflects the diversity of Washington State and provides meaningful opportunities for those who have been most affected by past cannabis laws. This rule making effort seeks to expand and improve the Social Equity in Cannabis Program, ensuring it effectively addresses the economic and social disparities faced by marginalized communities. The CR-101 initiating rulemaking proceedings was filed on November 8, 2023, as WSR 23-23-062.

The proposed rules were developed in collaboration with representatives from LCB's Licensing and Regulation Division and LCB policy and rules team and was also supported by the LCB Research Program in gathering and analyzing data from community feedback.

Reason Rulemaking is Needed

Rulemaking is needed to implement Engrossed Second Substitute Senate Bill (E2SSB) 5080, (chapter 220, Laws of 2023), related to expanding and improving the Cannabis Social Equity Program. Modifications are required to WAC 314-55-570 to align the current regulations with the changes made to statute by the legislation.

Public Engagement

To inform the first draft of these proposed rules, a survey was administered to applicants who participated under House Bill 2870, the legislation that initiated the first round of social equity applications. The survey aimed to gather applicant feedback on the application experiences, highlighting the difficulties of the process such as obtaining necessary documentation and understanding the withdrawal process. These insights garnered from this survey were instrumental in shaping the initial rule proposal.

Following this first survey, the initial draft of the scoring rubric was presented during a regularly scheduled board meeting, and input from the community on the proposal was provided during these open public meetings. Additionally, a series of engagement sessions were held on May 15, and 22, 2024 provided stakeholders opportunities to engage LCB staff in discussions and ask questions related to the proposed rules. These sessions also provided a platform for stakeholders to discuss, critique and suggest further refinements to ensure the rules more effectively met the needs of potential applicants and aligned with the objectives of social equity.

Insights from these discussions were crucial in developing the subsequent draft, which aimed to enhance inclusivity and fairness in the application process. Once feedback was evaluated and incorporated into the next draft of the proposed rules, an online survey accompanying a new draft was publicly disseminated and posted on the LCB's website to facilitate feedback on the subsequent draft. The survey was open from July 11, 2024 until July 19, 2024.

The proposed rule encompasses the community feedback by including detailed definitions and a clear, simplified, and transparent process for determining eligible applicants for the social equity program. The scoring rubric was refined to reduce barriers to entry and that targets individuals most impacted by the enforcement of cannabis prohibition policies; and provisions are added to enhance accessibility and economic opportunity, including allowing affidavits to demonstrate eligibility for specified criteria, an appeal process, and adjustments to license mobility requirements

The ongoing refinement of rules shows LCB's commitment to an inclusive process for the Social Equity in Cannabis Program to address historical disparities in the industry.

Description of Proposed Rule Changes

Amendments to WAC 314-55-570 Social Equity in Cannabis Program:

1. Definitions: Definitions are amended to enhance clarity, inclusivity, and conform with statute: "disproportionately impacted area," "social equity plan," "family member," "median household income," "preliminary letter of approval," "social equity contractor" and "social equity program applicant. A new definition for social equity registrant was created and the definition for social equity applicant modified to distinguish two phases of the application process. A social equity registrant is an individual who has registered to be evaluated for qualification under the social equity criteria. A social equity applicant is an individual who has submitted an application for eligibility for the social equity program, has been evaluated and scored by the social equity contractor based on the scoring rubric, and received a preliminary letter of approval by the board.

2. Initial application process: The initial application process has been amended to provide for registration through an online portal to reduce barriers to entry associated with the eligibility screening for the social equity program, such as financial costs and compliance burden associated with applying for a business license through other state agencies before the social equity contractor scoring evaluation.
3. Scoring Rubric: The scoring rubric is adjusted to focus on the four areas of qualification for the social equity program identified in E2SSB 5080. The scoring rubric criteria are modified to more equitably consider the obstacles encountered by candidates from marginalized communities, in response to feedback from the community advocating for a nuanced evaluation of qualifications and circumstances.
4. License Mobility: Changes to the license mobility requirements involve allowing HB 2870 applicants who have not secured a location within 90 days after the closure of the 5080 application window to locate their license to a different county from its original allocation.
5. Right to Appeal: Appeal rights are clearly established for applicants withdrawn or denied a license.
6. Title Certificate Holders: The rule allows title certificate holders to reinstate their licenses under the social equity program with eligibility determination and relocation options, providing avenues for title certificate holders to re-enter the market under social equity considerations reflecting public feedback on inclusivity and equitable access to licensing opportunities.
7. Local Objection: Local jurisdictions can object to the location of proposed cannabis retail licenses based on preexisting ordinances limiting retail outlet density. The Board will give substantial weight to these objections.
8. County Thresholds: E2SSB 5080 required the LCB to identify thresholds for the number of producer, processor, and retailer licenses in each county. The rule establishing the county thresholds will be evaluated every three years beginning in 2029 and will be published on the LCB's website. Established thresholds indicate the number of potentially viable licenses by county based on an analysis of market conditions and other relevant factors conducted by a third-party economist.
9. Conflict of Interest: Conflict of interest safeguards were added to reduce risk of any preferential treatment between the third-party vendor and applicants or licensees.

Estimated Costs of Compliance

Chapter 19.85 RCW, the Regulatory Fairness Act, provides that agencies are required to consider costs imposed on businesses and costs associated with compliance with proposed rules unless an exemption is provided under the chapter 34.05 RCW, the Administrative Procedures Act.

Specifically, RCW 19.85.025(3) provides that the Regulatory Fairness Act does not apply to the adoption of rule if the content of the rule is explicitly and

specifically dictated by statute (see RCW 34.05.310(4)(e)). These rules are explicitly authorized under RCW 69.50.335.