



Washington State
Liquor and Cannabis Board

Date: March 29, 2023

To: David Postman, Board Chair
Ollie Garrett, Board Member
Jim Vollendroff, Board Member

From: Daniel Jacobs, Policy and Rules Coordinator for
Kathy Hoffman, Policy and Rules Manager

Copy: Rick Garza, Agency Director
Toni Hood, Deputy Director
Justin Nordhorn, Director of Policy and External Affairs
Becky Smith, Director of Licensing
Chandra Brady, Director of Enforcement and Education

Subject: **Approval to adopt an emergency rule (CR103E) regarding WAC 314-55-570(3)(a), (b) and (c) – Social Equity Application Window**

On March 1, 2023, the LCB opened a 30-day window to accept applications for the Social Equity in Cannabis program consistent with WAC 314-55-570 generally, and WAC 314-55-570(3)(a), (b), and (c) specifically. The 30-day application window was scheduled to close on March 30, 2023.

Immediate adoption of this temporary rule is necessary to preserve the general welfare including commerce and business as they relate to the Social Equity in Cannabis Program, its application process and program applicants by ensuring a fair and equitable opportunity for Washingtonians to participate in the program, including those who were disproportionately impacted by the war on drugs.

The Board has specific authority under RCW 69.50.335 to adopt rule concerning the application process for the Social Equity in Cannabis Program. The Board also has authority to adopt emergency rules under RCW 34.05.350 for the preservation of public health, safety or general welfare. This emergency rule:

- Temporarily extends the current 30-day application window for social equity applicants to 58 days.

- As the result of an unexpected and unforeseeable delay in processing new business entity applications, provides an equitable opportunity for social equity program applicants to complete the application process.

This emergency rule does **not** revise or otherwise change any other requirement of the existing social equity program application process, including submission of all required materials as described in rule.

Process

On behalf of the Policy and Rules Manager, the Policy and Rules Coordinator requests that the Board adopt the emergency rule as presented, and requests approval to file this emergency rule with the Washington State Office of the Code Reviser. A CR103E Memorandum on this rule was presented at the Board meeting on March 29, 2023, and is attached to this order.

If adopted, the timeline for the rule making process is outlined below:

March 29, 2023	Board is asked to adopt the emergency rulemaking order (CR-103E) as described above.
March 29, 2023	Emergency rule becomes effective.
May 10, 2023	Emergency rule withdrawal during regularly scheduled Board meeting.

_____ Approve _____ Disapprove _____
 David Postman, Chair Date

_____ Approve _____ Disapprove _____
 Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
 Jim Vollendroff, Board Member Date

Attachment: CR103E Memorandum



CR 103E Memorandum

Emergency rule (CR 103E) regarding WAC 314-55-570(3)(a), (b) and (c) – Social Equity Application Window

Date: March 29, 2023
Presented by: Daniel Jacobs, Policy and Rule Coordinator for
Kathy Hoffman, Policy and Rules Manager

Background

On March 1, 2023, the Board opened a 30-day window to accept applications for the Social Equity in Cannabis Program consistent with WAC 314-55-570 generally, and WAC 314-55-570(3)(a), (b), and (c) specifically. The 30-day application window was scheduled to close on March 30, 2023.

As part of the Social Equity in Cannabis Program application process, some applicants seek to form a new business entity by applying for certification as a limited liability company or similar business structure through the Washington Secretary of State's office. On or about March 20, 2023, LCB learned that there had been an unforeseeable and unexpected delay at the Washington Secretary of State's Office, resulting in a new business entity application processing backlog of over 10 days. The LCB believes that delay in processing is likely to impact the timely completion of all necessary requirements for some Social Equity Program applicants who are seeking to form a new business entity. For this reason, the LCB finds that an immediate temporary extension of the application window from 30 to 58 days is necessary to provide equitable opportunity for potential participants to complete the social equity application process.

The 58-day period aligns with the operational practices of the Washington State Department of Revenue's Business Licensing Services (BLS), the entity who accepts and processes LCB licensing applications. As an operational matter, BLS is required to close the application window on a Thursday, meaning that the application window will close on April 27, 2023, at 5:00 p.m.

Reasons why rules are needed:

Immediate adoption of this temporary rule is necessary to preserve the general welfare including commerce and business as they relate to the Social Equity in Cannabis Program, its application process and program applicants by ensuring a fair and equitable opportunity for Washingtonians to participate in the program, including those who were disproportionately impacted by the war on drugs.

The Board has specific authority under RCW 69.50.335 to adopt rule concerning the application process for the Social Equity in Cannabis Program. The Board also has authority to adopt emergency rules under RCW 34.05.350 for the preservation of public health, safety or general welfare. This emergency rule:

- Temporarily extends the current 30-day application window for social equity applicants to 58 days.
- As the result of an unexpected and unforeseeable delay in processing new business entity applications, provides an equitable opportunity for social equity program applicants to complete the application process.

This emergency rule does **not** revise or otherwise change any other requirement of the existing social equity program application process, including submission of all required materials as described in rule.

Process

Consistent with RCW 34.05.350, any agency may find that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. This rule change is exempt from the filing of a CR 101, analytical, and public hearing requirements.

An emergency rule adopted under RCW 34.05.350 takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption and may not remain in effect for longer than one hundred twenty days after filing.

Notice will be sent to all who have indicated that they want to receive notice of rule activity and posted to the Board's website.



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) _____

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

- Yes No If Yes, explain:

Purpose: WAC 314-55-570(3)(a),(b), and (c) – Social equity application process – application window. The Washington State Liquor and Cannabis Board (Board) has adopted an emergency rule to amend WAC 314-55-570(3)(a),(b), and (c) that temporarily extends the current initial application window from 30 days to 58 days.

Citation of rules affected by this order:

New:
Repealed:
Amended: WAC 314-55-570(3)(a), (b), and (c)
Suspended:

Statutory authority for adoption: RCW 69.50.335; RCW 69.50.342.

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

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

Reasons for this finding:

On March 1, 2023, the Board opened a 30-day window to accept applications for the Social Equity in Cannabis Program consistent with WAC 314-55-570 generally, and WAC 314-55-570(3)(a), (b), and (c) specifically. The 30-day application window was scheduled to close on March 30, 2023.

As part of the Social Equity in Cannabis Program application process, some applicants seek to form a new business entity by applying for certification as a limited liability company or similar business structure through the Washington Secretary of State's office. On or about March 20, 2023, LCB learned that there had been an unforeseeable and unexpected delay at the Washington Secretary of State's Office, resulting in a new business entity application processing backlog of over 10 days. The LCB believes that delay in processing is likely to impact the timely completion of all necessary requirements for some Social Equity Program applicants who are seeking to form a new business entity. For this reason, the LCB finds that an immediate temporary extension of the application window from 30 to 58 days is necessary to provide equitable opportunity for potential participants to complete the social equity application process.

The 58-day period aligns with the operational practices of the Washington State Department of Revenue's Business Licensing Services (BLS), the entity who accepts and processes LCB licensing applications. As an operational matter, BLS is required to close the application window on a Thursday, meaning that the application window will close on April 27, 2023, at 5:00 p.m.

Immediate adoption of this temporary rule is necessary to preserve the general welfare including commerce and business as they relate to the Social Equity in Cannabis Program, its application process and program applicants by ensuring a fair and equitable opportunity for Washingtonians to participate in the program, including those who were disproportionately impacted by the war on drugs.

The Board has specific authority under RCW 69.50.335 to adopt rule concerning the application process for the Social Equity in Cannabis Program. The Board also has authority to adopt emergency rules under RCW 34.05.350 for the preservation of public health, safety or general welfare. This emergency rule:

- Temporarily extends the current 30-day application window for social equity applicants to 58 days.
- As the result of an unexpected and unforeseeable delay in processing new business entity applications, provides an equitable opportunity for social equity program applicants to complete the application process.

This emergency rule does **not** revise or otherwise change any other requirement of the existing social equity program application process, including submission of all required materials as described in rule.

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

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

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

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

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency's own initiative:

New	___	Amended	<u>1</u>	Repealed	___
-----	-----	---------	----------	----------	-----

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted using:

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

Date Adopted: March 29, 2023	Signature: Place signature here
Name: David Postman	
Title: Board Chair	

AMENDATORY SECTION (Amending WSR 22-21-058, filed 10/12/22, effective 11/12/22)

WAC 314-55-570 Social equity in cannabis program. (1)

Definitions.

(a) **"Disproportionately impacted area (DIA)"** means a census tract within Washington state where community members were more likely to be impacted by the war on drugs. These areas are determined using a standardized statistical equation to identify areas of high unemployment, low income, and demographic indicators consistent with populations most impacted by the war on drugs, including areas with higher rates of arrest for drug charges. The board will provide maps to identify disproportionately impacted areas. The maps will reflect census tracts from different time periods to account for gentrification.

(b) **"Family member"** means:

(i) A biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the applicant stands in loco parentis (in place of the parent), is a legal guardian, or is a de facto parent, regardless of age or dependency status;

(ii) Grandchild, grandparent, parent, or sibling of a child as defined in (b)(i) of this subsection;

(iii) Spouse or domestic partner;

(iv) Any individual who regularly resides in the applicant's home or where the relationship creates an expectation that the applicant care for the person and that individual depends on the applicant for care, or that the individual care for the applicant and that the applicant depends on the individual for care.

(c) **"Median household income"** means the most recent median household income within the state of Washington as calculated by the United States Census Bureau.

(d) **"Person"** means a real human being, distinguished from a corporation, company, or other business entity.

(e) **"Preliminary letter of approval"** means an approval letter issued to a social equity program applicant for purposes of securing a grant from the department of commerce and a location and other necessities to complete the licensing process.

(f) **"Social equity program applicant"** means a person(s) who meets the requirements of the social equity program.

(g) **"Social equity contractor"** means a third party responsible to review and score social equity program applications.

(h) **"Social equity licensee"** means a person or entity that holds a social equity cannabis license or any person or entity who is a true party of interest in a social equity in cannabis license as described in WAC 314-55-035.

(i) **"Social equity plan"** means a plan that addresses the following elements including, but not limited to:

(i) A description of how issuing a cannabis retail license to the social equity applicant will meet social equity goals as described in statute;

(ii) The social equity applicant's personal or family history with the criminal justice system, including any offenses involving cannabis; and

(iii) Business plans involving partnerships or assistance to organizations or residents with connections or contributions to populations with a history of high rates of enforcement of cannabis prohibition.

(j) **"Social equity title certificate holder"** means a cannabis retail license title certificate holder that meets the requirements of a social equity program applicant as determined by the social equity contractor, and is unable to open for business in the city or county where the cannabis retail license is located.

(2) **Social equity applicant requirements.**

(a) To be considered for the social equity program under this chapter and RCW 69.50.335, the following requirements must be met by each applicant:

(b) At least a 51 percent majority, or controlling interest, in the applicant, must be held by a person, or persons, who has or have resided in Washington state for six months prior to the application date, consistent with RCW 69.50.331, and meets at least two of the following qualifications:

(i) **Qualification 1:** The social equity applicant or applicants have lived in a disproportionately impacted area in Washington state for a minimum of five years between 1980 and 2010; or

(ii) **Qualification 2:** The social equity applicant or a family member of the applicant has been arrested or convicted of a cannabis offense; or

(iii) **Qualification 3:** The social equity applicant's household income in the year prior to submitting the application was less than the median household income within the state of Washington as calculated by the United States Census Bureau.

(3) **Social equity application process.**

(a) **Application window.**

(i) The board will open the application window for an initial period of ((30)) 58 calendar days.

(ii) At its sole discretion, the board may reopen the application window:

(A) After initial evaluation of applications is received and locations are still available; or

(B) If additional allotments become available after the initial application window has closed pursuant to RCW 69.50.335.

(b) **Initial application requirements.**

(i) The social equity application must be submitted electronically through the department of revenue's business licensing online application system.

(ii) The social equity applicant must apply to the department of revenue's business licensing service within the ((30)) 58-day application window. All required information must be completed on the application and payment must be submitted within the ((30)) 58-day application window for the application to be accepted.

(iii) The social equity applicant, whether applying as a person, persons, or entity, may apply for a cannabis license only once during each application window described in subsection (4)(c) of this section.

(iv) An application to reinstate the license of a social equity title certificate holder will not be considered a new social equity license application. The social equity title certificate holder may submit an application for a social equity license and an application to reinstate their existing license through the social equity program.

(v) A location address is not required at the time of application.

(c) **Social equity contractor review.** Once the application window is closed, the social equity contractor will evaluate and prioritize all applications received within the ((30)) 58-day application window.

(i) The social equity applicant must select one county where they wish to operate their business and notify the social equity contractor of their selection in the form and manner required by the social equity contractor.

(ii) The social equity applicant must submit documentation verifying the eligibility requirements described in (c)(D)(viii) of this subsection to the social equity contractor in the form and manner required by the social equity contractor.

(iii) Examples of documentation that may verify eligibility requirements include, but are not limited to:

(A) School records, rental agreements, utility bills, mortgage statements, loan documents, bank records, or tax returns that show the applicant's address(es), or a signed declaration that includes the applicant's address(es) indicating that the applicant resided in a DIA; or

(B) The applicant's arrest or conviction records, or family member's arrest or conviction records and an affirmation of the familial relationship signed by the applicant and the family member; or

(C) The applicant's tax returns demonstrating their income for the prior year; or

(D) Any other documentation that verifies the eligibility requirements described in (c)(D)(viii) of this subsection.

(iv) If additional materials are needed, the social equity applicant will receive a letter electronically from the social equity contractor directing the applicant to submit additional application materials directly to the social equity contractor.

(v) The social equity applicant must submit complete and accurate additional application materials directly to the social equity contractor within 15 business days of the date of the letter. It is the responsibility of the social equity applicant to comply with the

application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the social equity contractor.

(vi) If the application is determined to be incomplete by the social equity contractor, the social equity applicant will be provided with 14 days to submit a complete application. The social equity contractor will score the application based on the materials submitted within the time frame.

(vii) The social equity contractor will review the application materials, including the social equity plan provided by the social equity applicant to determine if the applicant meets the requirements of a social equity applicant.

(viii) After the social equity contractor determines that the requirements have been met, the social equity contractor will score social equity applications using the following scoring rubric to prioritize social equity applicants:

Social Equity Application Scoring Rubric		
Category	Eligibility Requirements	Point Scale
	1. Lived in a disproportionately impacted area (DIA)	40
	1a. How long have you lived in a DIA? 5y -10y = 20 points 10 + years = 40 points	40
	2. Convicted of a drug offense? (Self)	10
	2a. Convicted of a cannabis offense? (Self)	40
	3. Convicted of a drug offense? (Family)	5
	3a. Convicted of a cannabis offense? (Family)	5
	4. If you were convicted of a cannabis offense, what type of	80

Social Equity Application Scoring Rubric		
Category	Eligibility Requirements	Point Scale
	sentence did you receive: Fine = 10 points Served probation = 20 points Confined to home = 40 points Served time in jail or prison = 80 points	
	5. Did you or your family member's incarceration keep you from getting employment?	5
	6. Did you lose your home or ability to purchase a home or rent a home as a result of your convictions or arrests?	5
	7. Is your household income less than the median household income within the state of Washington as calculated by the United States Census Bureau?	40
	8. Did you own or operate a medical cannabis dispensary or collective garden, licensed as a business, prior to July 1, 2016 (10 points)? or Did you own and operate a medical cannabis dispensary or collective garden licensed as a business in a DIA (30 points)?	10 30 in a DIA
	9. Have you held or do you currently hold 51 percent majority/controlling interest of a state cannabis (marijuana) retailer license? No = 10 points Yes = 0 points	10
	Total Maximum Points	310 points

(ix) The social equity contractor will provide the board with a list of eligible and scored social equity applicants.

(x) Neither the social equity contractor nor its employees shall benefit from any license or licenses granted as a result of their review.

(d)(i) **Board review.** Social equity applicants that are scored highest by the social equity contractor within the county selected by the social equity applicant will be processed by the board.

(ii) In the event of a tie, the board will use a double blind lottery conducted by an independent third party to identify the application(s) that will be processed.

(e) **Preliminary letter of approval.** Once the social equity applications that will be processed are identified as described in this section, eligible social equity applicants will be issued a preliminary letter of approval.

(4) **Additional provisions.**

(a) **Time restrictions.** There are no time restrictions for a social equity applicant to select and secure a location.

(b) **Ownership changes.** Social equity applicants may not make ownership changes to an application after the application has been reviewed, scored, and prioritized by the social equity contractor.

(c) **Social equity applicants may apply for a social equity license once per application window.** If a social equity applicant applies more than once, the board will accept only the first application.

(d) **License mobility.** Social equity licenses that are currently designated to specific cities may be located anywhere within the county in which the city is located. However, the license may not be transferred outside of that county.

(e) **Qualifying for the social equity program will not result in or guarantee cannabis business license approval.** Social equity applicants must meet all license qualifications in WAC 314-55-077 and this chapter to receive a license.

(f) **License transfer and assumption.** Licenses awarded under this section may not be transferred or assumed within the first year of the license being issued. Licenses awarded under this section may only be transferred to or assumed by individuals or groups of individuals who meet the definition of a social equity program applicant for a period of five years from the date of the initial license was approved.

(5) **Social equity title certificate holders.** A title certificate holder that meets the requirements of a social equity program applicant as determined by the social equity contractor may reinstate their retail cannabis license anywhere within the county that they hold their title certificate.

(6) **Application withdrawal.** The board will withdraw a social equity application if:

(a) The social equity program application or additional materials are determined to be incomplete or incorrect by the social equity contractor;

(b) The social equity program application materials are not timely received by the social equity contractor;

(c) The social equity applicant is not selected to continue with the licensing application process; or

(d) The social equity applicant(s) requests withdrawal of the social equity program application at any time in the application process. The social equity applicant(s) must request withdrawal in writing. The voluntary withdrawal of a social equity program application does not result in a hearing right.

[Statutory Authority: RCW 69.50.335, 69.50.336, 69.50.342, and 2022 c 16. WSR 22-21-058, § 314-55-570, filed 10/12/22, effective 11/12/22.]