



## Supplemental CR-102 Memorandum

### Regarding Proposed Amendments to WAC 314-55-570 related to the Social Equity in Cannabis Program.

Date: October 23, 2024  
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#### Background

Rules are being amended in [Chapter 314-55 of the Washington Administrative Code \(WAC\)](#) to implement [Engrossed Second Substitute Senate Bill \(E2SSB 5080\) \(chapter 220, Laws of 2023\)](#), related to expanding and improving the Social Equity in Cannabis Program. 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.

## **Rule Development Process**

The Washington State Liquor and Cannabis Board (LCB) filed the CR-101 initiating the rulemaking on November 8, 2023 ([WSR 23-23-062](#)). The informal comment period was open until February 4, 2024.

Rule development input and collaboration included agency staff from multiple divisions, cannabis industry representatives, community members, Department of Commerce, public health, and the Attorney General's Office.

## ***Public Engagement***

To inform the first draft of these proposed rules extensive stakeholder engagement was held, as follows:

- A survey was administered to applicants who participated under [House Bill \(HB\) 2870, \(chapter 236, laws of 2020\)](#), 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.
- A series of engagement sessions were held on May 15, and 22, 2024 to provide 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.

## **Rule Proposals (CR-102)**

The proposed rule filed on August 6, 2024, encompass 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 also 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.

On July 31, 2024, the Board approved filing proposed rules (CR-102) implementing E2SSB 5080. The rules were filed on August 6, 2024, as [WSR 24-16-130](#) and the public hearing on proposed rules was held on September 25, 2024. Two stakeholders testified at the hearing and eleven comments were received on the proposed rules during the formal public comment period.

The updated proposal incorporates feedback received during the formal comment period, including testimonies provided during the public hearing. 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.

## **Need for Rule Changes**

Rule changes are necessary to align the existing social equity rules under [WAC 314-55-570](#) with the statutory changes to the social equity program resulting from [E2SSB 5080](#).

## **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 Administrative Procedures Act (APA) in [chapter 34.05 RCW](#). This rule is exempt from the cost impact analysis because the content of the rule is explicitly and specifically dictated by statute (see [RCW 34.05.310](#)). These rules are explicitly authorized under [RCW 69.50.335](#).

## **Description of Rule Changes**

The proposed rules are intended to expand and improve the Social Equity in Cannabis Program as directed by [Engrossed Second Substitute Senate Bill \(E2SSB\) 5080, chapter 220, Laws of 2023](#). This includes revising definitions, adjusting eligibility criteria, refining the application and scoring processes to ensure a more equitable distribution of cannabis licenses to individuals from

communities impacted by the enforcement of previous Drug War policies. The proposed rules modify [WAC 314-55-570](#), as follows:

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.
2. **Social Equity Registrant:** 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 submits application materials to the social equity contractor to be reviewed and scored based on the scoring rubric and has received a preliminary letter of approval by the board.
3. **Registration 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. The registration windows are open for thirty (30) calendar days and there are separate registration windows for retail licenses and non-retail licenses.

Additionally, the existing rules state the Board has sole discretion to re-open the registration window, whereas the proposed rules detail the factors the Board will consider when deciding whether to re-open the registration window. These factors are relevant to the policy change related to license allocation based on county thresholds.

4. **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.
5. **Affidavits:** The rule outlines the circumstances under which affidavits may be used to demonstrate a qualification.
6. **Social Equity Contractor Review:** The rule change simplifies and clarifies the process for the review of application materials submitted by the registrant to make an eligibility determination for the social equity in cannabis program.

7. **Initial and Final Score:** The rules provide registrants with a remedy period after the initial scoring process. This means once the social equity contractor issues an initial score with an explanation of the score, registrants have an opportunity to submit supplemental documentation for consideration to potentially improve their final score. This change provides additional transparency in the scoring process and increases accessibility.
8. **Board Notification:** This section is amended to provide transparency as to the different notifications an applicant receives related to moving forward in the application process or not.
9. **No Time Restrictions:** These rules provide more flexibility for social equity applicants to secure a location and financing, reducing barriers to entry.
10. **2870 License Mobility:** The proposal offers broader location opportunities to locate the initial retail license statewide, under specific conditions, for social equity applicants unable to secure a location in the original city, town, or county where the applicant applied for their social equity license. Effective January 01, 2026, a social equity applicant licensed under the qualification of HB 2870, will be able to locate the initial unopened business to a different county, if the licensee's original score from their HB 2870 application exceeds the lowest awarded score for licenses issued in the desired county. This approach promotes statewide mobility for all applicants, fostering fairness without creating disparities between those who qualified under HB 2870 and those who qualify under E2SSB 5080.

Removing geographical constraints that have impeded the establishment of social equity cannabis businesses advances the program's objectives of increasing diversity in cannabis business ownership and allowing for greater representation of historically marginalized communities.

11. **Right to Appeal:** Appeal rights are clearly established for applicants withdrawn or denied a license.
12. **Title Certificate Holders (TCH):** The rule allows title certificate holders to reinstate their licenses under the social equity program with an eligibility determination versus a qualifying application score. This provides relocation options for title certificate holders to re-enter the market while providing considerations reflecting public feedback on inclusivity and equitable access to licensing opportunities. The rules provide the TCH must meet the requirements of a social equity applicant, including the 51% ownership requirements to reinstate their license. It also provides that TCHs qualifying for the program may reinstate the TCH privilege for an initial license anywhere in the county where it was originally issued, consistent with existing regulations.

13. **Local Authority Objections:** Local authorities 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.
14. **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. These thresholds are not caps but intended to be an economic evaluation to inform applicants about research information current market conditions and future projections of the number of licenses sustainable based on consumer demand.
15. **Conflict of Interest:** Conflict of interest safeguards were added to reduce risk of any preferential treatment between the third-party vendor and
16. **Social equity plan reimbursement:** Adopting section 2 of E2SSB 5080 to clarify reimbursement for licensing fees.

## **Differences Between Initial Proposal and Supplemental Proposal**

The following substantive modifications were made to the proposed rules approved by the Board on July 31, 2024 and filed with the Code Reviser on August 6, 2024 as [WSR 24-16-130](#):

### ***Registration Window***

The updated proposal has a separate registration window for retailers and non-retail licenses (producers and processors) to allow registrants who did not get selected for a retail license, an additional opportunity to register for a non-retail license.

### ***Scoring Rubric***

The goal of the scoring rubric was to provide registrants point accumulation based on the level of impact a person may have experienced based on the war on drugs, and link impacts to qualifications established in statute. Scoring was developed and drafted based on a general assessment of direct impacts to an applicant, and stakeholder feedback from verbal, written, and survey submissions. To ensure familiarity of scores compared to previous rules and proposed changes, the scores in each category match the overall percentage weight on a 300-point scale.

1. Lived in a disproportionately impacted area (DIA) [20% of total score]: This was weighted as the second highest impact to applicants, as the evaluation is limited a specific timeframe, and not all people living in a DIA had the same level of adverse impacts based on the war on drugs. This change was supported by stakeholder feedback.
2. Criminal arrests and conviction [50% of total score]: This category has the greatest direct impact to the applicant and their family and is not limited by time factors. Escalating scores were identified by level of adverse impacts of a conviction and subsequent disposition. This change was supported by stakeholder feedback.
3. Household income [15% of total score]: This category has limited direct impact representation of the war on drugs, as the evaluation is only for the one year prior to license application window, based on state statute.
4. Socially and Economically Disadvantaged [15% of total score]: Although the statute uses this as a qualification, this is the only qualification category that does not have specific impacts associated for scoring purposes. Scoring was designed to capture direct impacts, such as losing a cannabis business when law changes occurred in 2015, and previously qualifying as a social equity applicant under previous standards but did not receive a license. The weight of this category was determined based on balancing statutory specifics, direct impacts of cannabis law and enforcement, and stakeholder input. Stakeholder feedback was split on point evaluation for this category, with a majority not supporting substantial points. However, stakeholder feedback did demonstrate direct adverse impacts based on the loss of a business, and LCB felt this impact met the spirit of social and economic disadvantages.

### ***HB 2870 Applicants – License Mobility***

In the updated proposal, the effective date for allowing HB 2870 applicants who are unable to secure a location in the county where the license was initially issued is January 1, 2026. In the original proposal, the effective date is 90-days after the license application window closes. This approach provides a more equitable time frame for applicants applying under E2SSB 5080 to compete for locations statewide.

Setting a specific date for when licenses without a location can be moved to another location provides clarity for all license holders. The approach eliminates ambiguity about when those who applied under HB 2870 can start securing an initial location outside of county they had originally applied, allowing businesses to plan accordingly to secure an initial location with greater certainty. Furthermore, a specific date simplifies the process for overseeing and managing

relocations as it allows for better resource allocation and ensures all relocation applications are processed under the same regulatory framework.

### ***Title Certificate Holders***

The approach for license mobility requirements for Title Certificate Holders (TCH) in the updated proposal is consistent with the previously established board policy in the existing rule under [WAC 314-55-570](#). Although the license mobility requirements for a TCH is broader under the original proposal, the updated proposal affords the TCH an opportunity to reinstate their title certificate in addition to applying for a social equity license under provisions of E2SSB 5080.

Under the updated proposal, TCHs cannot modify the ownership structure after registering and submitting the application materials to the social equity contractor for an eligibility determination.