

PROPOSED RULE MAKING



CR-102 (June 2024) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

Original Notice

Supplemental Notice to WSR 24-16-130

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 23-23-062 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Title 314-55 WAC. Rule language is being proposed to WAC 314-55-570 to implement Engrossed Second Substitute Senate Bill (E2SSB) 5080, (chapter 220, Laws of 2023) to expand and improve the Social Equity in Cannabis Program, including revisions to the scoring and application process, county licensing thresholds, and local jurisdiction objections.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 4, 2024	10:00 A.M.	All public Board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The Board room headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance and the public may also login 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/Board_meetings

Date of intended adoption: December 18, 2024 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name Cassidy West, Policy and Rules Manager

Address PO Box 48030, Olympia WA 98504-3080

Email rules@lcb.wa.gov

Fax 360-704-5027

Other

Beginning (date and time) October 23, 2024, 12:00 PM

Assistance for persons with disabilities:

Contact Anita Bingham, ADA Coordinator, Human Resources

Phone 360-878-4235

Fax 360-664-9689

TTY 7-1-1 or 1-800-833-6388

Email anita.bingham@lcb.wa.gov

Other

Purpose of the proposal and its anticipated effects, including any changes in existing rules: 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 disadvantaged communities most adversely impacted by the War on Drugs.

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.

Reasons supporting proposal: The amendments seek to address historical disparities within the cannabis industry by providing greater opportunities for those impacted by the enforcement of cannabis prohibition. The rules aim to foster economic inclusivity and social restoration.

Statutory authority for adoption: RCW 69.50.331, RCW 69.50.335, RCW 69.50.345

Statute being implemented: RCW 69.50.335, as amended by E2SSB 5080, (chapter 220, Laws of 2023)

Is rule necessary because of a:

Federal Law? Yes No

Federal Court Decision? Yes No

State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: The agency recommends that these rules be implemented as proposed to fulfill the legislative intent of E2SSB 5080, ensuring a robust and equitable Social Equity in Cannabis Program.

Name of proponent: (person or organization)

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting Rules Manager	Cassidy West, Policy and	1025 Union Avenue, Olympia, WA 98504	360-878-4235
Implementation Licensing and Regulation	Rebecca Smith, Director of	1025 Union Avenue, Olympia, WA 9850	360-664-1753
Enforcement Enforcement and Education	Chandra Wax, Director of	1025 Union Avenue, Olympia, WA 9850	360-664-1726

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

No: Please explain: : A cost benefit analysis is not required under RCW 34.05.328 because the subject of the proposed rulemaking does not qualify as a significant legislative rule or other rule requiring a cost benefit analysis under RCW 34.05.328(5)(c)

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW 34.05.310(4)(e).

Explanation of how the above exemption(s) applies to the proposed rule: This rule proposal is exempt because it involves agency actions that are mandated by statute, implementing Engrossed Second Substitute Senate Bill (E2SSB 5080), chapter 220, Laws of 2023, to expand and improve the Social Equity in Cannabis Program, as described in RCW 69.50.331 and RCW 69.50.335

(2) Scope of exemptions: *Check one.*

- The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

Date: October 23, 2024

Name: David Postman

Title: Chair

Signature:

Place signature here