



Social Equity Program Draft Report

Please note: This is a draft, in-progress report being developed with input from the Social Equity Program Advisory Work Group. No content contained herein should be construed to represent the opinions or positions of the State Licensing Authority or the Governor's Office.

Background

At the June 26, 2023 Social Equity Program Advisory Work Group meeting, the Marijuana Enforcement Division (Division or MED) proposed a collaborative stakeholder plan to be carried out through the rest of the year with the goal of creating a report of findings that, if implemented, could promote access to and the effectiveness of the state's social equity program. The objective of this proposal was to continue moving the state's cannabis industry towards increased diversity and building an industry more reflective of Colorado's demographics.

Throughout the summer, the Division has solicited feedback and input from work group members and the public related to opportunities for improvement. The opportunities outlined below reflect initial findings, considerations for implementation, and areas where the Division needs further feedback. The Appendix section, located below the initial findings, contains proposals that were submitted but are outside of the Division's scope. They are included here and will also be included in an appendix to the final report.

*The Division is seeking further feedback from the work group and the public as we refine these findings and develop a final report. **Feedback and proposed statutory language are greatly appreciated and can be sent to us using [this online form](#).***



Legislative Opportunities

Opportunity #1: Micro-Cultivation Licenses

Stakeholders identified one challenge in the current regulated marijuana framework related to start-up costs for regulated marijuana cultivation licenses, the requirements tied to regulated marijuana production at large scale facilities, and general license saturation across the state. To address these concerns, stakeholders suggest revising the Code to allow or promote alternative cultivation business models. With this in mind, stakeholders suggest legislation could add a new micro-cultivation license type to the Colorado Marijuana Code, restricted exclusively to Social Equity Licensees. Alternatively, the State Licensing Authority could add micro-cultivations as a separate tier to existing cultivation privileges through rule revisions; however, that new tier would not be restricted to Social Equity Licensees. This license type or new tier could be based on the number of plants allowed and the square footage of the facility. Micro-cultivators could act as “boutique” cultivators and fill a market niche. If added as a new license type, this would require statutory changes to Section 44-10-401, C.R.S., adding new license types, as well as Sections 44-10-502 and 44-10-602, C.R.S., by adding or clarifying license privileges. One consideration, however, is that if a new license type is added statutorily, it may have limited interest from local jurisdictions.

Areas requiring further feedback from the work group:

- How should micro-cultivation be defined? What would be the maximum number of plants permitted? What would distinguish this license type from a tier 1 Retail Marijuana Cultivation Facility that currently allows for 1,800 plants, or in other words, what would be the benefit of this new license type?
- Would these exist as standalone businesses, or should multiple micro-cultivators be permitted to co-locate and share licensed premises?

Opportunity #2: Expand the Definition of “Private Residence” for the Purposes of Regulated Marijuana Delivery

Currently, under the Marijuana Code, Regulated Marijuana delivery may only take place at private residences. This restriction was put into place in the enabling legislation, HB 19-1234, and remains in effect today. Stakeholders have identified



this restriction as overly burdensome and limiting in the opportunities they have to make deliveries to people who may be visiting Colorado or residing in places that do not squarely fit within the definition of “private residence.” Legislation could remove the requirement that delivery can only be made to a “private premises where a person lives,” and expand the definition to include any place of habitation whether temporary or permanent. This would require statutory changes to Sections 44-10-501, 44-10-505, 44-10-601, and 44-10-605, C.R.S., to redefine or replace the term “private residence.” Alternatively, the Division could attempt to achieve this objective through rule revisions. One consideration with this opportunity, however, is that delivery is not exclusive to Social Equity Licensees. Additionally, the Division would need to conduct further stakeholdering with affected parties, such as the hotel industry.

Areas requiring further feedback from the work group:

- It’s often the case that hotels with a liquor license have the licensed premises extended to the entire hotel, including the guest rooms, which would prevent delivery to those hotels. How could this be addressed, and if it cannot, would there still be a benefit to making this change?

Opportunity #3: Allow Vending Machines in Hospitality and Retail Sales Licenses

As identified during work group meetings and the 2023 rulemaking session, statutory language expressly allows automated dispensing machines selling regulated marijuana on the licensed premises at Regulated Marijuana Stores, but this same express language is not included in the Retail Marijuana Hospitality and Sales business license provisions. Legislation could expressly allow vending machines (also referred to in statute and rules as “automated dispensing machines”) in Retail Marijuana Hospitality and Retail Sales Business’ licensed premises to align with Medical Marijuana Store and Retail Marijuana Store license privileges. Stakeholders noted this could potentially reduce overhead costs as the business would not need as many employees, and this could also provide an additional source of revenue. Section 44-10-610, C.R.S. would need to be revised to expand allowances for automatic dispensing machines, which currently only apply to Regulated Marijuana Stores, to also apply to Retail Hospitality and Sales Businesses. Lastly, this idea was presented as a potential rule change to the September 18, 2023



Legislation Implementation and Hospitality rulemaking work group. While some work group members claimed that this change could not and should not be done through rulemaking, but rather through the legislative process, concerns were also raised surrounding how to monitor for over intoxication by consumers that purchase through vending machines.

Opportunity #4: Changes to the Accelerator Program

The Division has observed limited participation in the Accelerator Program that was established in 2019 through SB 19-224. Based on this experience and stakeholder feedback, there may be opportunities to increase participation in the Social Equity Program through the Accelerator license types with statutory changes. The objective of the following statutory changes would be to increase the value of and participation in the Accelerator Program. There are currently four concepts:

Concept 1: Expand the accelerator program to allow all retail business license types to participate. The program is currently restricted to Accelerator Stores, Accelerator Cultivation Facilities, and Accelerator Manufacturers, and excludes Retail Marijuana Transporters, Marijuana Hospitality Businesses, Retail Marijuana Hospitality and Sales Businesses, Retail Marijuana Testing Facilities, and Retail Marijuana Business Operators.

- *Relevant / required statutory changes:* Sections 44-10-103 (definitions), 44-10-401 (add new license types), and 44-10-600 Series, C.R.S. (allow transfers to/from Accelerator Licensees, add new subsections).
- *Areas requiring further feedback from the work group:*
 - Would adding particular license types create more benefit than others? Have licensees or potential licensees expressed interest in any of these license types, either to participate as an Accelerator-Endorsed Licensee or an Accelerator Licensee?
 - How would this model work with licensees who do not have a Licensed Premises, such as Operators and some Transporters?



Concept 2: Allow non-like regulated marijuana business type licenses to partner (e.g., allow a Cultivation Licensee to host a Store Licensee).

- *Relevant / required statutory changes:* Sections 44-10-103 (definitions), 44-10-601 through 44-10-606 (add or clarify license privileges), 44-10-607, 44-10-608 and 44-10-611, C.R.S. (add or clarify license privileges)
- *Areas requiring further feedback from the work group:*
 - Operators and some Transporters do not have Licensed Premises. How would this model work with these license types?
 - The Marijuana Rules do not currently permit non-like type business licenses to share space within a Licensed Premises. The license privileges are separate and distinct. What rule changes could be made for this model to be operable while protecting public health and safety?
 - It is unclear what the benefit would be to the Accelerator Licensee in terms of getting technical support from an Accelerator-Endorsed Licensee of a different license type. At the same time, it is unclear how the Accelerator-Endorsed Licensee would empower or teach an Accelerator Licensee of a different license type. The current model is intended to incubate and train Accelerator Licensees.

Concept 3: Remove the operational timeframe restriction for endorsement holders.

- *Relevant / required statutory changes:* Section 44-10-203(2)(203)(aa), C.R.S.
- *Areas requiring further feedback from the work group:*
 - Currently, if a Licensee does not meet the requirement of two years of operating a Regulated Marijuana Business, there are other ways to demonstrate qualification outlined in Rule 2-285(B)(2). First, are those alternative ways to demonstrate qualification inadequate, and second, could the rule be changed to make it more operable for licensees interested in an accelerator endorsement?



Concept 4: Remove the requirement that the Licensed Premises be provided by the endorsement holder.

- *Relevant / required statutory changes:* Sections 44-10-103 (definitions), 44-10-203(2)(203)(aa) (clarify license privileges), 44-10-607, 44-10-608, and 44-10-611, C.R.S. (clarify license privileges)
- *Areas requiring further feedback from the work group:*
 - One consideration is that this would require the Accelerator Licensee to submit an application prior to partnering with an Accelerator-Endorsement Holder.

Opportunity #5: Create a License Type for Independent Delivery

During the 2023 Legislative Session through House Bill 23-1020, and in subsequent work group meetings, stakeholders focused on looking for new opportunities in the Regulated Marijuana industry for Social Equity Licensees, recognizing market saturation. In this vein, stakeholders provided significant feedback regarding license opportunities through new license types, predominantly through independent delivery. Legislation could create a new license type or a new subtype of Regulated Marijuana Store license that allows for delivery direct to consumers at their private residence by a Licensee that does not possess a brick and mortar store. The Licensee would not have a storefront that customers could visit but would rather make solely online sales to consumers and maintain a Licensed Premises for storage and order preparation. Section 44-10-203(2)(dd), C.R.S. would need to be revised to add this new license type or subtype. Sections 44-10-501 and 44-10-601, C.R.S. would need to be updated with new license privileges, as would Sections 44-10-505 and 44-10-605, C.R.S. to add new transfer/delivery privileges. Sections 44-10-502, 44-10-503, 44-10-602, and 44-10-603, C.R.S. would need updating with new transfer privileges. Alternatively, new sections could be added to the 44-10-500 Series and 44-10-600 Series for a new license type.

Although House Bill 23-1020 was lost in the 2023 Legislative Session, the Division committed to working with bill proponent stakeholders in the off-session who intend to bring forth similar legislation this next legislative session.

Areas requiring further feedback from the work group:



- One consideration is that if this proposed license is not a type of Regulated Marijuana Store license, but rather an all-new license type, there are constitutional implications regarding excise taxes that may bar the new license type from purchasing directly from Regulated Marijuana Cultivation Facilities. This and other concerns continue to be discussed between House Bill 23-1020's proponents and several involved agencies.

Opportunity #6: Social Equity Eligibility Criteria

Since SB 19-224 and HB 20-1424, the Regulated Marijuana Code has included specific eligibility requirements for applicants to qualify for a Social Equity License. The implementation of these eligibility requirements has presented complexities for both applicants and the Division, so during work group meetings and 2023 legislation, stakeholders and the Division expressed interest in reviewing and evaluating opportunities to clarify, revise, or remove, or add eligibility requirements to the Marijuana Code. The objective of these changes would be to better align the social equity requirement criteria to better assist those who have suffered from the decades of criminal enforcement of marijuana laws. There are currently four concepts:

(Note: All identified concepts here would require statutory changes in Section 44-10-308, C.R.S.)

Concept 1: Remove the Colorado residency requirement. Litigation elsewhere has overturned similar requirements in other states and jurisdictions already.

Concept 2: Update the eligibility criteria to limit the ability of existing owners, who have already benefited from owning a Regulated Marijuana Business, to apply.

- *Areas requiring further feedback from the work group:*
 - Expired/surrendered owners who must or choose to reapply would no longer be able to, including owners who accidentally expire. How could this be addressed?



- Should the existing number of licenses held be taken into account?

Concept 3: Expand the Disparate Impact Area / Opportunity Zone timeframe to include 1980-2021 (the general time frame of criminal enforcement of marijuana laws up to when the Social Equity Program started), and reduce the time required to be a resident of a Disparate Impact Area / Opportunity Zone from 15 years to 5 years. A one-time update to the Disparate Impact Area / Opportunity Zone map would require support from the Department of Local Agencies.

Concept 4: Expand income criteria to account for operational limitations and to consider participation in federal low-income programs to qualify.

- *Areas requiring further feedback from the work group:* Current “prior year income” language is problematic due to the timing of U.S. Census Bureau income tables being released in September. MED has tables for 2019 and 2021 and should have the table for 2022 in the near future.

Opportunity #7: Increase Division Funding for Social Equity Program Application and License Fees

The Division has heard feedback that financial assistance is critical to the success of the Social Equity Program. To help address this, legislation could create an annual appropriation from the General Assembly to cover the costs of Social Equity License application and license fees (new and renewal, individuals and businesses), to reduce start-up and operating costs for Social Equity Licensees. Section 44-10-801, C.R.S. (Marijuana Cash Fund and General Fund appropriations).

Areas requiring further feedback from the work group:

- The source of ongoing funding needs to be identified, as well as tracking requirements for the funds allocated.



Outreach Opportunities

Opportunity #8: Local Jurisdictions Social Equity Summit

The Division received feedback from the work group that there may be benefit in holding an educational session for local government officials, including elected officials, on the state's social equity program. While few local jurisdictions have implemented their own social equity program, this may be due to a lack of awareness surrounding the program. Additionally, work group members have identified difficulties with some local processes. While work group members have individually reached out to local governments for the purposes of education and awareness, such efforts could have a greater impact with the Division's collaboration and endorsement.

Planning

The Division will send out a survey to local jurisdictions and send out another survey to social equity licensees to identify barriers they face during the local licensing process. The survey results will help guide the agenda for the summit. Once responses have been collected, the Division will initiate the planning process.

To begin the process, the Division will hold a kick-off meeting with members of SEPAWG that represent local jurisdictions, members of SEPAWG who are social equity licensees, organizations representing local jurisdictions, and organizations representing social equity licensees. This initial meeting would identify other organizations or people who should be included in the planning process. The Division will also present a summary of the survey responses.

After the initial planning meeting the group will split into subcommittees to continue to work. Subcommittees would likely include (but are not limited to) general logistics, program and curriculum, and outreach and turnout. Subcommittees would be responsible for organizing the summit, identifying what tasks need to be completed and by who. At the first subcommittee meetings they will answer a series of questions designed to get the group started.



Timeline

The Division anticipates a six month timeline to successfully implement a Local Jurisdiction Social Equity Summit. This allows one month for the survey, and 5 months for the planning committee and subcommittees to meet. The planning committee will meet bi-monthly, and subcommittees will meet at least monthly.

Resources

This would require substantial Division resources to plan and execute. The Division anticipates the need to designate two staff members to facilitate and support the planning process. The Division will also need to allocate 5-7 staff members on the day of the summit.

Opportunity #9: Licensing Work Groups Specific to Social Equity Applicants

During the 2023 permanent rulemaking process, the Division heard concerns about the rigorousness of Colorado's licensing process relative to other states. To address this, the Division is planning to hold work groups to learn more about the specifics of these concerns and how process changes could be implemented to address them. Towards that end, the Division plans to hold a work group specifically focused on social equity applicants and small businesses generally.



Appendix

The Division received feedback from stakeholders through a variety of forums and methods. The Division determined the following concepts are outside the Division's and State Licensing Authority's scope of responsibilities and duties delegated in the Regulated Marijuana Code, sections 44-10-101 *et seq.*, C.R.S. However, these concepts may be informative to broader conversations about social equity in Colorado's cannabis framework.

1. Generally funding programs that address the effects of decades of criminal enforcement of marijuana laws on communities of color, including expungement of criminal records related to cannabis offenses, providing job training and financial assistance to individuals who were disproportionately impacted by the criminalization of marijuana, and investing in communities that were most affected.
2. Providing funding to local jurisdictions for the purposes of implementing their own social equity programs.
3. Reducing the building setback requirements imposed by local jurisdictions in their municipal codes.
4. Inventorying locations in local jurisdictions that are suitable for Social Equity Licensees and facilitating rental agreements and provisions at those locations.