



**2020**

**Recreational Marijuana  
SB 218 Legislative Report  
Issuance of Marijuana Production Licenses**

Oregon Liquor Control Commission

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## Executive Summary

*Senate Bill 218 (2019) (SB 218) was signed into law in the 2019 Regular Session of the Oregon Legislature and gave the Oregon Liquor Control Commission (OLCC), the agency responsible for regulating the recreational marijuana market in Oregon, the ability to refuse to issue initial marijuana production licenses based on the supply of and demand for marijuana through January 2, 2022. SB 218 made further clarifications that applications will be processed if they were received on or before June 15, 2018 and submitted a land use compatibility statement (LUCS) within 21 days of the effective date of the measure. As such, applications received after June 15, 2018, and those without a LUCS 21 days after the effective date, will be inactivated. OLCC was also required to further define, by administrative rules, timelines for the processing of production licenses and report annually to the Legislative Assembly on the impacts to the industry.*

2020 has been a year fraught with challenges driven by the COVID-19 pandemic and wildfires throughout Oregon. Challenges included reduced staffing beyond already insufficient staffing levels, implementing remote working of an entirely in-office workforce, emergency rulemaking, just to name a few.

In the face of these challenges the marijuana licensing program implemented a complete program evaluation in March of 2020 resulting in a three-phase, year-long improvement effort. This effort has been largely successful in reducing timelines for processing new applications, change requests and annual license renewals. Because of this as of December 15, 2020, all applicants waiting to be licensed have received contact by the Oregon Liquor Control Commission (OLCC) and all applicants wishing to be assigned have been assigned.

OLCC continues to work through outstanding applications and as of the submission of this report no longer has applicants who are ready waiting beyond 60 days to be assigned. Additionally, new license application processing time has been reduced from 146 days in Q3 2019, to 91 days in Q3 2020.

With the improvements made during 2020 OLCC anticipates being able to process all outstanding producer applications by July 1, 2021. Preliminary supply and demand data suggest a continued trend of excess supply compared to the in-state retail demand for marijuana items. The full impact in relation to supply and demand will be more fully examined in the February 2021 Supply and Demand report. Because of the remaining 232 producer applications to be processed, it is still difficult to determine how SB218 truly impacts the marijuana industry. Nonetheless the results since the passage of the law are consistent with the general intentions of the Legislature and expectations of the Commission.

To obtain a paper copy of this report contact the Oregon Liquor Control Commission's Recreational Marijuana program at [marijuana@oregon.gov](mailto:marijuana@oregon.gov).

Published online at <https://marijuana.oregon.gov> under the “[Legislative Reports](#)” header.

## Introduction

2019 Oregon Laws, Chapter 419 (SB 218), requires the Oregon Liquor Control Commission (OLCC) to submit an annual report to an interim committee of the Legislative Assembly related to economic development by December 31 regarding the effects of the bill on the marijuana industry.

## Continued Licensing Pause

The Oregon Liquor Control Commission's Marijuana Program is currently operating under a "licensing pause" for new license applications. This pause was originally implemented by policy and announced on May 30, 2018 with an effective date of June 15, 2018<sup>1</sup>. The goal was to focus staff resources on services for existing licensed business by prioritizing applications for changes of ownership, changes of location, renewals, and other such services due to a growing backlog of these requests and new license applications.

On January 31, 2019, as required by ORS 475B.548, the Commission filed a report to the Legislative Assembly on the supply and demand of marijuana within the state of Oregon.<sup>2</sup> A key finding of that report included the Oregon-based marijuana supply exceeded demand, with the reported amount of marijuana items available within the regulated market being 6.5 times the annual demand.

In 2019, the Oregon Legislature passed SB 218, adopting specific timelines for inactivation of Producer applications submitted or remaining incomplete after June 15, 2018.

The Commission then implemented the licensing pause for Producers formally in rule.<sup>3</sup>

**The impacts of Senate Bill 218 on the state of marijuana licensing therefore fall into two main categories:**

- 1. Improving the timely processing of license applications.**
- 2. Reducing the rate of growth of marijuana production in the State of Oregon in response to a documented excess of supply as compared to demand.**

On the first category, changes in policy, rule, and practice have reduced processing time of all application types to an average of less than 75 days as of December 2020. Overall processing times have been reduced from a previous high of 146 days in the third quarter of 2019, to 91 days in the third quarter of 2020. Streamlined screening processes have resulted in an elimination of unassigned backlogged applications for responsive applicants.

On the second category, preliminary supply and demand data suggest a continued trend of excess supply compared to the in-state retail demand for marijuana items. The full impact in relation to supply and demand will be more fully examined in the 2021 Supply and Demand report to be submitted to the Legislative Assembly under ORS 475B.548.

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<sup>1</sup> Informational Bulletin on License Application Processing Pause

([https://www.oregon.gov/olcc/marijuana/Documents/Application\\_Pause\\_FAQ\\_Final.pdf](https://www.oregon.gov/olcc/marijuana/Documents/Application_Pause_FAQ_Final.pdf))

<sup>2</sup> 2019 Recreational Marijuana Supply and Demand Legislative Report

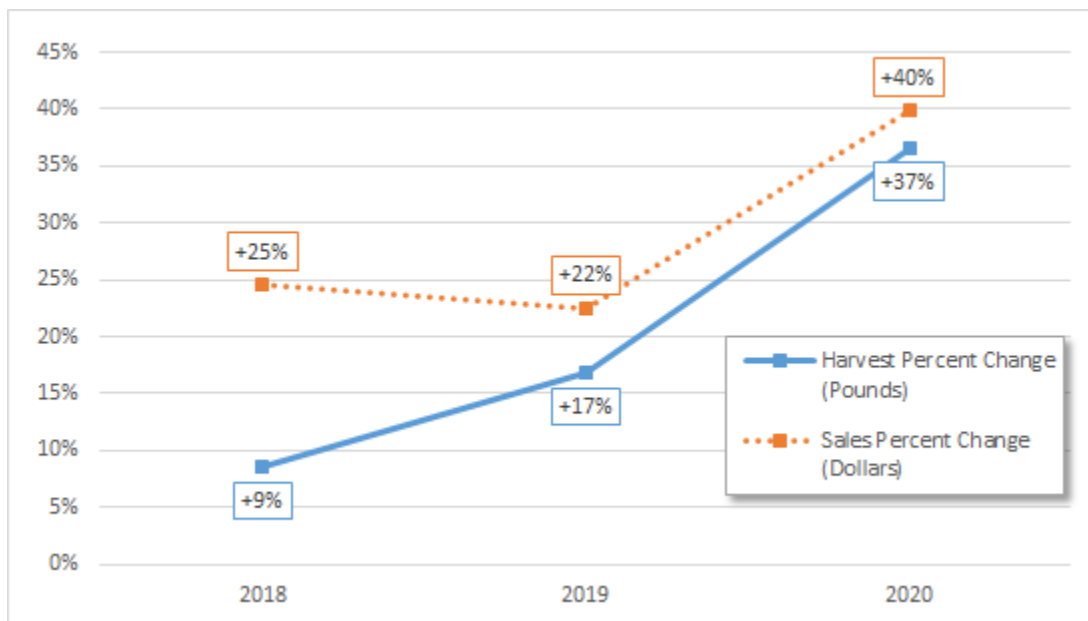
([https://www.oregon.gov/olcc/marijuana/Documents/Bulletins/2019%20Supply%20and%20Demand%20Legislative%20Report%20FINAL%20for%20Publication\(PDFA\).pdf](https://www.oregon.gov/olcc/marijuana/Documents/Bulletins/2019%20Supply%20and%20Demand%20Legislative%20Report%20FINAL%20for%20Publication(PDFA).pdf))

<sup>3</sup> <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7102914>

## Overview of Impacts

### Harvests

The pause on issuance of new producer licenses as a result of SB 218 could be reasonably predicted to have an impact on growth of the overall supply of harvested marijuana in the state, with a range from reduced growth to stagnation or even reduced supply. However, year-over-year trends in the total amount of marijuana harvested across all producer licenses tells a different story, with the percentage change from year to year appearing to accelerate. From 2018 to 2019, total harvest amounts increased by over 15%. During the same period from 2019 to 2020, amounts increased by over 35% from the previous year (*Fig 1.*)



**Figure 1:** January to November year-over-year percentage change in harvest weight (pounds) vs. overall retail sales by dollars.

However, during those same periods of time, demand as reflected by total sales in dollars showed different trends, with growth continuing at a reduced rate from 2018 to 2019 and an increase from 2019 to 2020. While these trends appear to be converging, with sales increasing roughly in proportion to increased supply (or vice versa,) data from 2019-2020 show growth in production increasing somewhat more rapidly than growth in sales.

The acceleration in production growth may be attributable to a number of factors. As the market matures, new production techniques may allow for larger yields. ORS 475B.085 and Commission rules allow an existing producer license to increase canopy size each year until meeting the maximum tier. Finally, although the Commission ceased processing of new producer licenses received after June 15, 2018, the Commission has continued since that time and into December 2020 to *issue* new producer licenses for applications that were submitted prior to June 15, 2018.

### Process Improvement

The Commission adopted permanent rules establishing processing times for all application types. Effective January 1, 2020 assigned applications must complete the licensing process within 60 calendar days from being assigned. If an applicant is unable to complete the process within 60 calendar days, the application will be unassigned and placed on hold. Applications placed on hold for this reason will not be processed until the application is reassigned to a Commission staff member.

Applications which have been reassigned must complete the application process within a final 60 calendar day period. If this second 60 day requirement is not met the application is incomplete and may be inactivated. Both applicants and Commission staff have largely met these timelines. As of December 11, 2020 there were 7 applications on hold due to not meeting the 60 day processing timeline. Of those applications, only one is a producer application.

The impetus for the original licensing pause was to free staff time to focus on services for existing licensees as resource levels were insufficient to ensure timely processing of both new license applications as well as the various change actions under the existing rules and processes at that time.

In addition to incremental changes to streamline licensing processes since the effective date of the pause, over the course of 2020, Commission staff have made several changes impacting not just producer applicants but all license and license action types. These changes included the removal of duplicative and time-consuming processes, a focus on post-licensure rather than pre-licensure verifications of certain requirements, an enforced timeline to application completion, and an across-the-board streamlining of documentation requirements reducing pre-licensure paperwork burdens on applicants and enabling timely review and completion by Commission staff.

From the inception of the program, the number of days to process a marijuana license from the date of assignment has varied dramatically as the industry and agency alike matured. The time to issue a license averaged 90 days in 2016, 103 days in 2017, 143 days in 2018, and peaked in 2019 at 148 days. Due to the streamlining and program changes which occurred in 2020, as of December 15, 2020 the average time to issue a license throughout 2020 has been reduced to 116 days, with the third quarter and fourth quarters of 2020 showing 91 days and 61 days respectively.

### Backlog of Pending License Applications

By July 8, 2019, there were 841 applications pending assignment with submitted Land Use Compatibility Statements, 551 of which were applications for producer licenses. This represents the entirety of the licensing backlog for new license applications, though the Commission continued to accept and process applications for changes of ownership and other changes for existing licensed business for the 2,194 licensees that were active at the time.

By December 1, 2019, Commission staff had made some progress on the backlog, issuing a total of 354 licenses in that year for applications submitted prior to the pause date, 83 of which were producers. However, compared to the number of applications received in 2017 (1,700) and even pre-pause 2018 (1,435) this processing rate would be insufficient to prevent a new backlog from occurring when the pause is lifted after completing all pending actions.

As of this writing, the streamlined processes referenced in the previous section have resulted in a near-elimination of the backlog. Current assignment and processing timelines following the implantation of improvements over 2020 show an improvement over previous years. However, a significant influx of applications at a single time or a re-introduction of significant pre-licensing checks will limit these benefits.

## Impact

### Overall Producer Numbers

Since the effective date of June 15, 2018, the number of producer licenses in the state has increased rather than decreased. On June 1, 2018, there were 1,009 active producer licenses. This figure grew to 1,149 on December 1, 2019, and as of December 7, 2020, the total number of active producer licenses was 1,161. As intended by the Legislature, the Commission has continued to issue new producer licenses since the time of the pause due to the large number of pending applications that were validly received prior to the effective date of the pause.

Of licensed producers, some amount of attrition has occurred, but continued growth due to processing pre-pause license applications has surpassed this. Between September 2, 2020, and November 30, 2020, 211 producer license renewals were submitted. By contrast, during that same time, only five Producer licenses expired without renewal and of those five, four applied for changes of ownership prior to expiration resulting in new licenses taking their place.

By July 8, 2019, the deadline for pre-pause producer applicants to submit an approved Land Use Compatibility Statement, there were 511 producer applications pending assignment and processing. A large number of these pre-pause applications were submitted in the days leading up to the pause.

Since that time, the Commission continued prioritizing licensing actions for existing business, the timely processing of which demanded the majority of available staff resources. The issuance of new licenses that were not in relation to a change of ownership of an existing licensed business was therefore slow during this period, with 311 new producer licenses issued in total in 2018 and 121 in 2019.

### Producer Readiness

SB 218 required that all producer applicants demonstrate readiness to the Commission by requiring that those applicants supply an approved Land Use Compatibility Statement (LUCS) for their proposed location no later than July 6, 2018. The Commission is obligated to inactivate any application which did not include this information by the deadline. Between June 15, 2018, and October 31, 2020, the Commission inactivated approximately 540 Producer license applications due to incompleteness. In addition to inactivating for failure to supply the LUCS, the Commission may also inactivate applications that were not complete for other reasons, such as an applicant's failure to respond to requests for required documentation or information to complete the licensing process. Although the Commission rules provide such applicants an opportunity for reconsideration, the majority of applicants do not request reconsideration for inactivation.



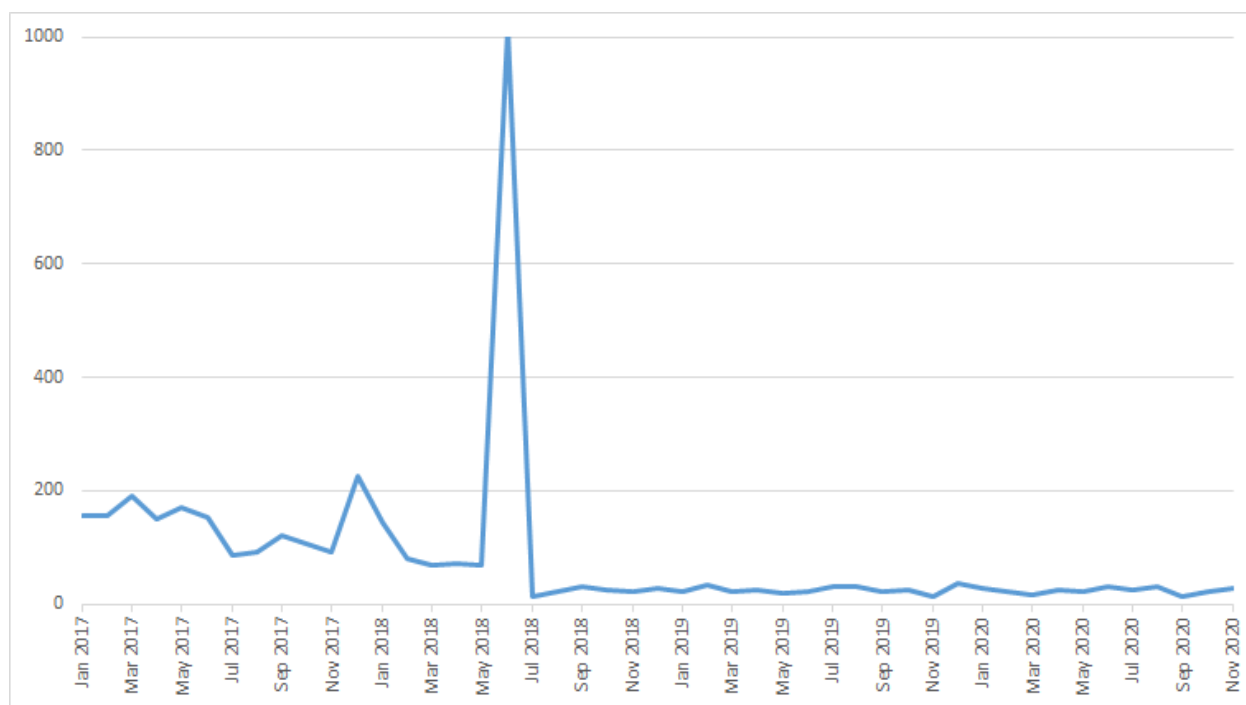
As of December 2020, the majority of producer applications received prior to the date of the licensing pause have been assigned, with deadlines for completion no later than the end of January 2021. As of December 14, 2020, this accounts for a total of 232 new producer (not change of ownership) applications to be completed by that time. Because Commission rules allow for one additional reassignment if an applicant is unable to complete the licensing process within 60 days of assignment to an investigator, it is possible some number of pre-pause producer license applications will be pending completion after January 2021.

### Unintended Consequences

In spite of production growth outpacing sales growth (see Fig. 1), there remains some demand from potential applicants to enter into the market as new producers or from existing licensees to expand their operations by adding additional producer licenses. Examining the specific reasons for this demand is beyond the scope of this report, but data suggest there remains a demand from the industry for some number of additional producer licenses in this state.

### Surge in Applications

The Commission announced the licensing pause on May 30, 2018, with a communicated effective date of June 15, 2018. This resulted in a surge of license applications leading up to the date of the pause, with 424 applications being received on June 15. Compared to previous averages, it is clear that this surge was directly related to the pause itself. (Fig. 2, below.)



**Figure 2:** License applications received by month and year.

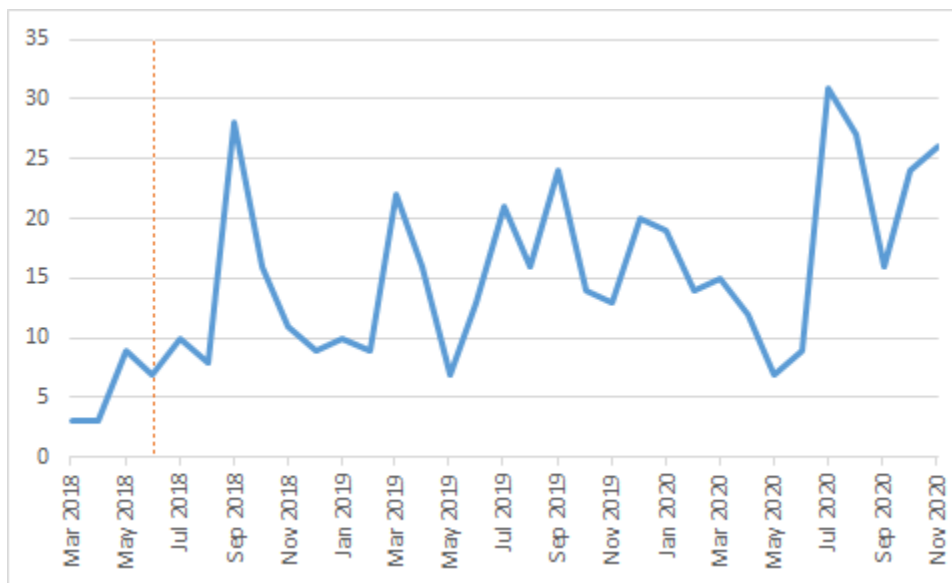


### Secondary Markets

Following the pause, Commission staff began to receive increasing numbers of requests to change the stated ownership and location listed on pending license applications. Although occasional changes in proposed business structure (such as adding a new partner prior to the application being processed) were not unusual, the nature of these requests became more often to wholly change the ownership and or location. Applicants were effectively selling their applications and their “place in line.” The issue became prevalent enough that the Commission included these actions as “prohibited changes” when adopting rules to implement SB 218.<sup>4</sup>

Commission staff expected to similarly see an increase in the number post-licensure changes of ownership and location application from existing applicants. The Commission’s prioritization on services for existing licensees incentivized applicants to enter the market through a change of ownership of an existing licensed business rather than a wholly new applicant, since the wait times from receipt to assignment for a change of ownership as compared to a new license application were significantly shorter. As of the date of the pause and the later effective date of SB 218, this became not only an incentive but the only avenue to enter the market as a producer. There was a slight increase in the number of change of ownership and change of location applications submitted following the effective date of the pause.

Changes of location requests were similarly impacted. In addition to existing licensees’ requests to change location, many new owners sought to change location of a recently-acquired business.



**Figure 3:** Combined change of ownership and change of location applications received 2018-2020

<sup>4</sup> Temporary Administrative Order OLCC 12-2019  
(<http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/6949310>)

## Closing

With the improvements made during 2020 OLCC anticipates being able to process all outstanding producer applications by July 1, 2021. However, because of the remaining 232 producer applications to be processed, it is still difficult to determine how SB 218 truly impacts the marijuana industry.

SB 218 has not yet reduced license growth, but it did allow for an orderly reset of OLCC licensing practices. Separately, SB 218 may have had impacts on the stability of the consumer market. A broader view of the state of the market and numerous factors affecting its stability will be examined in the 2021 Supply and Demand report.

Without changes, the licensing pause under SB 218 will sunset on January 2, 2022. When the sunset occurs, the recreational marijuana licensing system would be open to qualified entrepreneurs entering a competitive market unencumbered by overly lengthy licensing and renewal delays. This general result seems consistent with overall expectations of the Commission and Legislature.