

For your information

The Oregon Liquor Control Commission has:

- Amended
 Adopted
 Suspended

OAR 845-025-2040
PERMANENT

Effective Date: February 1, 2020

Note: **Bold and underlined** = new text; ~~italics and strikethrough~~ = deleted text

845-025-2040

Production Size Limitations

(1) Definitions. For the purposes of this rule:

(a) "Mixed production" means a producer who has the privilege to grow marijuana both indoors and outdoors at the same licensed premises.

(b) "Producer type" means indoor production, outdoor production, or mixed production.

(c) "Production method" means indoor mature canopy, outdoor mature canopy, or immature canopy.

(d) "Production tier" means micro tier I, micro tier II, tier I, or tier II as described in section (3) of this rule.

(2) General Requirements.

(a) A producer must clearly identify proposed canopy sizes, production method, canopy measurements, and canopy shapes for all designated mature and immature canopy areas in the initial license application and at renewal.

(b) A mature marijuana plant, as defined in these rules, may only be located in an area designated as a mature canopy area.

(c) A producer must have written approval from the Commission prior to changing the location of a designated canopy area, the shape of a canopy area, producer type, production method, or production tier.

(d) A producer may only request a change to production type at the time the producer submits a renewal application.

(e) A producer engaging in mixed production may only request to increase its designated mature canopy of one production method by decreasing the designated mature canopy of another production method at the time the producer submits a renewal application.

(3) Maximum Mature Canopy Size Limits *for mature canopy area.*

(a) Indoor Production. Unless otherwise provided by these rules, the maximum mature canopy size limits for indoor production are:

- (A) Micro tier I: Up to 625 square feet.
- (B) Micro tier II: 626 to 1,250 square feet.
- (C) Tier I: 1,251 to 5,000 square feet.
- (D) Tier II: 5,001 to 10,000 square feet.

(b) Outdoor Production. Unless otherwise provided by these rules, the maximum mature canopy size limits for outdoor production are:

- (A) Micro tier I: Up to 2,500 square feet.
- (B) Micro tier II: 2,501 to 5000 square feet.
- (C) Tier I: 5,001 to 20,000 square feet.
- (D) Tier II: 20,001 to 40,000 square feet.

(c) Mixed Production. If a producer intends to have a mixture of indoor and outdoor mature canopy production For a producer engaging in mixed production, the Commission will determine the producer's tiers and mature canopy area by applying the following standards:

(A) A producer may produce marijuana indoors and outdoors at the same time on the same licensed premises. The Commission must be notified of a producer's plan to engage in the indoor and outdoor production of marijuana at the time of initial licensure or at renewal, and not at any other time. A producer who utilizes mixed production may only change designated canopy areas from one production type to another at the time the producer submits a renewal application.

(B) The Commission must approve the canopy size applicable to each method.

~~(C) The Commission will~~ use a 4:1 ratio, for outdoor and indoor respectively, to allocate canopy size limits under this section, not to exceed the sum canopy size limits set forth in section ~~(31)~~ of this rule. For example, if a Tier II producer in the first year of licensure has ~~5,000~~ 1,000 square feet of indoor mature canopy space area, then the producer may have up to ~~20,000~~ 36,000 square feet of mature outdoor canopy ~~space area~~ at the same time.

~~(4)(2) Immature Canopy Size Limits.~~ Unless otherwise provided by these rules, the maximum ~~canopy size~~ ~~limits~~ for immature canopy area for licenses issued or renewed after April 1, 2018 shall be:

- (a) 625 square feet for Micro tier I producers.
- (b) 1,250 square feet for Micro tier II producers.
- (c) 5,000 square feet for Tier I producers.
- (d) 10,000 square feet for Tier II producers.

~~(5)(3) Canopy Area Measurements and Shapes.~~

~~(a) Measurements.~~ Square footage of a canopy space area is measured horizontally starting from the outermost point of the furthest plant in a designated growing space canopy area and continuing around the outside of all plants located within the designated growing space canopy area. If immature plants are grown on racks or shelving within the immature canopy area, only the footprint of the area containing the immature plants will be used to calculate the immature canopy area. The total canopy area of mature plants grown on racks or shelving is measured to include each layer of plants as a separate canopy area.

~~(a) For licenses issued or renewed after April 1, 2018, a producer may:~~

(b) Maximum canopy areas allowed. A producer must either:

(A) Designate no more than 20 quadrilateral canopy areas including both immature and mature canopy areas at a licensed premises and clearly demarcate each canopy area with a physical boundary, wall, or marker at the outermost edge or each corner of each designated canopy space; those areas must be separated by a physical boundary such as an interior wall or by at least eight feet of open space.

(B) Designate no more than 20 canopy areas of any shape including both immature and mature canopy areas at a licensed premises and provide the Commission with a survey of the canopy space conducted by a Professional Land Surveyor licensed by Oregon State Board of Examiners for Engineering and Land Surveying that shows the total square footage each of mature and immature canopies are canopy is within the licensed applicable canopy size limits described in this rule.

~~(b) On an annual basis, the Commission will evaluate market demand for marijuana items, the number of person applying for producer licenses or licensed as producers and whether the availability of marijuana items in this state is commensurate with the market demand. Following this evaluation, the Commission may amend this rule as needed.~~

(6)(4) Canopy Size Limit — Designation and Increases Production Tier Changes.

~~(a) A producer must clearly identify designated mature and immature canopy areas and proposed canopy size in the initial license application and upon renewal. A producer may change a designated canopy area within a production type during the term of the license with prior written approval from the Commission, but a producer may only change canopy tiers at the time of renewal in accordance with this rule.~~

~~(b) A producer may submit a request to change canopy tiers at the time the producer submits an application for renewal of the license. The Commission will grant approval of the request to increase the canopy tier for the producer's next licensure term if:~~

~~(A) The producer's renewal application is otherwise complete;~~

~~(B) There are no bases to deny or reject the producer's renewal application;~~

~~(C) The producer has not already reached the applicable maximum canopy size set forth in section (2) of this rule; and~~

~~(D) During the preceding year of licensure, the producer has not been found to be in violation, and does not have any pending allegations of violations of ORS 475B.010 to 475B.545 or these rules.~~

(a) A producer licensed under ORS 475B.070 for at least one year may request to increase its approved production tier at any time after the first license year, up to the maximum production tier allowed under this rule. A producer must make a request for an increase in writing, in a form and manner prescribed by the Commission.

(b) The Commission may approve a request for a production tier increase if the Commission believes that granting the request does not present an increased risk of noncompliance with the provisions of ORS Chapter 475B and these rules and if the producer:

(A) Has not already been approved for a production tier increase during the current license year;

(B) Is not engaging in mixed production and proposing to alter the producer's mature canopy production methods as described in subsection (2)(e) of this rule;

(C) Is not proposing a number of additional canopy areas that exceed the maximum allowed under this rule;

(D) Submits an approved Land Use Compatibility Statement showing the increased production tier is not prohibited;

(E) Provides verification, in a form and manner prescribed by the Commission, that the producer has complied with all security measures described in OAR 845-025-1400 to OAR 845-025-1470 where any additional canopy area is proposed; and

(F) Is not under investigation by the Commission for suspected violations of any provision of ORS Chapter 475B or these rules and does not have pending administrative violations.

(c) A producer may not increase its production tier without prior written approval from the Commission.

(d) If the Commission determines a producer meets the requirements to increase its production tier at a time other than renewal, the producer must submit payment to the Commission for the difference in the fee paid by the producer at the prior renewal and the fee described in OAR 845-025-1160 for the increased tier size before the Commission will provide the producer with written approval.

(e) The Commission shall give a producer an opportunity to be heard if a request is rejected under this section.

(5) Mature marijuana plants may only be located within the designated canopy area.

(7)(6) Violations. An intentional violation of this rule is a Category I violation and may result in license revocation. All other violations are Category III violations.

(8) On an annual basis, the Commission shall evaluate market demand for marijuana items, the number of persons applying for producer licenses or licensed as producers and whether the availability of marijuana items in this state is commensurate with the market demand. Following this evaluation, the Commission may amend this rule as needed.

Statutory/Other Authority: ORS 475B.025, 475B.070 & 475B.085

Statutes/Other Implemented: 475B.085