



NOTICE OF ADOPTION OF INTERPRETIVE STATEMENT

Title of Interpretive Statement: Measuring Cannabis Plant Canopy – Interpretive Statement Number IS 23-01.

Issuing Entity: Washington State Liquor and Cannabis Board

Subject Matter: This interpretive statement is offered to confirm and provide additional guidance on the agency's interpretation of cannabis plant canopy as defined in WAC 314-55-010(31) and indoor and outdoor cannabis plant canopy production area as described in WAC 314-55-075.

Effective Date: April 7, 2023

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 07, 2023

TIME: 8:09 AM

WSR 23-09-010



Interpretive Statement

Title:	Measuring Cannabis Plant Canopy	Number: IS 23-01
References:	RCW 69.50.325 RCW 69.50.331 RCW 69.50.342 RCW 69.50.345 WAC 314-55-010 WAC 314-55-075	
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Effective Date:	April 7, 2023	
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INTRODUCTION

This interpretive statement is offered to confirm and provide additional guidance on the agency’s interpretation of cannabis plant canopy as defined in WAC 314-55-010(31) and indoor and outdoor cannabis plant canopy production area as described in WAC 314-55-075.

SUMMARY

Cannabis plant canopy is the square footage dedicated to live plant production, including areas between plants, pathways, walkways, and empty space between rows that allow for airflow, light, growth, access for watering, trimming and other activities associated with cannabis plant production. WAC 314-55-010(31). If plant propagation occurs on multiple levels, each level is considered to be part of the total canopy licensed for a location. The square footage of the area will be multiplied by the number of levels to arrive at the total square footage of canopy. Vehicle access roads and fallow areas where there is no cannabis plant production are not considered to be cannabis plant canopy.

BACKGROUND

WAC 314-55-075 concerning cannabis producer licensing became effective in November 2013 as part of the original implementation of Initiative 502 (I-502). Over time, the section has been revised in various ways, such as removing language referencing the original producer license application window in 2018, and more recently, expanding production space for tier 1 producers from 2,000 square feet to 4,000 square feet in 2021.¹ However, the basic structure of the section has largely remained the same since its

¹ See Appendix A.

inception. Similarly, WAC 314-55-010(31) defining “plant canopy” has not changed since the original implementation of I-502.

In late 2017, LCB Board members requested a canopy survey to analyze licensed space usage. Two reports, issued in March 2019 and June 2020 noted that among other findings, a uniform understanding of cannabis plant canopy measurement had yet to be achieved. Specifically, the June 2020 report concluded that “[f]urther describing canopy measurement with a list of best practices designed to support compliance through agency-initiated clarifying guidance or interpretive statement may assist both the agency and industry in navigating the complexities and nuances of plant canopy.”²

In November 2021, the LCB Enforcement and Education division issued a protocol designed to support statewide consistency and understanding of both WAC 314-55-010(31) and WAC 314-66-075. A follow up document summarizing the protocol and entitled “Measuring Plant Canopy” was released in April 2022.

Between April and June of 2022, some licensees and stakeholders raised concerns about the protocol, specifically as it related to pathways between rows of plants in the overall canopy measurement. Following discussion, the possibility of rule development emerged as an approach to addressing those concerns. On June 30, 2022, cannabis licensees and stakeholders were notified that the protocol related to canopy enforcement would be paused while those internal and external conversations regarding the concern and the potential for rulemaking continued.³

In October and November 2022, LCB hosted two virtual interactive engagement sessions to better understand stakeholder and licensee concerns and to inform potential rule development. The majority of session attendees requested consistent application of current rule. While other suggestions were provided, given the support of the majority of attendees for the current rule, the agency withdrew its preproposal statement of inquiry filed as WSR 22-18-058 on August 31, 2022, at the March 15, 2023, regularly scheduled board meeting, and issues this interpretive statement.

STATUTORY AUTHORITY

RCW 69.50.325 describes cannabis producer license privileges and responsibilities for the production, delivery, distribution and sale of cannabis consistent with chapter provisions and rules adopted to implement and enforce it.

RCW 69.50.331 concerning cannabis license application provides that every license issued under the chapter is subject to all conditions and restrictions imposed by the chapter or by rules adopted by the board to implement and enforce this chapter.

RCW 69.50.342 describes the board’s general rulemaking authority related to the production, processing and sale of cannabis products.

RCW 69.50.345 describes the board’s specific rulemaking authority related to cannabis producer, processor and retailer licensing.

² [2020 Canopy Report March 2020 \(wa.gov\)](https://www.wa.gov)

³ [Pathways in Canopy Measurement \(govdelivery.com\)](https://govdelivery.com)

RELEVANT REGULATION

WAC 314-55-010(31) defines “plant canopy” as:

the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

WAC 314-55-075 describes cannabis producer license privileges, requirements, and fees, including the maximum amount of space for cannabis production for each tier. The rule also provides that applicants must designate the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy, as that term is defined in WAC 314-55-010(31).

ANALYSIS

As noted above, rules that govern canopy, specifically WAC 314-55-075, were initially promulgated in October 2013, and have been amended several times.⁴

While rule language concerning the total maximum amount of space for cannabis production was ultimately reserved for a later date, the only change to rules concerning production capacity for each tier was the expansion of plant canopy square footage for Tier 1 cannabis producers from 2,000 square feet to up to 4,000 square feet in August 2021.

The definition of cannabis “plant canopy” has not changed since 2013.

Defining Cannabis Plant Canopy

Cannabis plant canopy is defined in WAC 314-55-010(31) and consists of a two-part description of what cannabis plant canopy includes and does not include. Cannabis plant canopy includes the **“square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area.”** Cannabis plant canopy **“does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.”** (Emphasis added). This section breaks down and analyzes each part of this definition.

Square Footage

The phrase “square footage” is a commonly used term, primarily in real estate, that refers to the **measurement or dimensions of an area**. For example, RCW 82.08.820(2)(j) concerning warehouses defines “square footage” in relevant part as “the product of the two horizontal dimensions of each floor of a specific warehouse. *The entire footprint of the warehouse must be measured in calculating the square footage*” (emphasis added). In other words, square footage refers to the closed line or lines that bound an area, or the outline that surrounds a closed area that measure the outer limits of that area.

⁴ See Appendix A.

In the warehouse context, square footage does not refer to the *goods* stored in the warehouse, their placement or movement within the warehouse, but the area in which those goods are stored, placed, stacked or moved. The square footage of that area remains static.

Dedicated to Live Plant Production

In the cannabis plant production context, the specific area that remains static, or square footage defined as plant canopy is the area dedicated to live plant production, or the area in which plants are grown and the activities associated with growing plants occurs. In the agricultural context, *production refers to a series of activities* that result in a product that will ultimately be sold at retail⁵ (emphasis added). Specifically, agricultural production includes activities such as cultivating soil, planting, raising and harvesting crops, and businesses involved in agriculture include but are not limited to farms, greenhouses and nurseries. These activities and business types are present in cannabis production.

Such as Maintaining Mother Plants, Propagating Plants from Seed to Plant Tissue, Clones, Vegetative of Flowering Area

The activities of production as they pertain to cannabis producers is described in the definition of canopy (WAC 314-55-010(31)), offering that activities “**such as** maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area” may be considered to be production.

“Such as” is an adverb that means **for example** and is used to introduce an example or series of examples.⁶ However, the term “such as” does not imply or suggest an exhaustive list of examples, nor does it exclude or limit additional examples. Other activities, like trimming, accessing plants for watering or fertilization, spacing plants for light and growth, and the movement of a licensee to engage in these production activities of a like type and kind are illustrative of the list provided in rule, because they are associated with plant production. For this reason, live cannabis plant production is not limited to plant growth alone, the size of the plant, where plants are placed or if the leaves of different cannabis plants contact and form a “canopy” as that term is defined in horticulture.⁷ Rather, it refers to the wide range of activities associated with live cannabis plant production. Consistent with rule, it also includes dedicated clone and mother plant production areas, and plant propagation that occurs in a multilevel structure.

This wide range of activities occurs within the square footage dedicated to plant growth, or the **area** where the activity of cannabis production occurs. Licensees determine how plants will be placed, the amount of space needed between plants for effective production, and whether that space will expand or narrow as plants mature. However, the amount of plant canopy – the square footage or the footprint of the canopy – does not change. The plants may be thinned and pathways between them narrowed, but this activity does not change the size or measurement of the area in which that activity occurs.

Additionally, many states that have legalized both medical and adult use markets, have relied on the term to describe this unique cannabis production area.⁸

⁵ [Defining Agricultural Production | Minnesota Department of Revenue \(state.mn.us\)](#)

⁶ [Such as Definition & Meaning - Merriam-Webster](#)

⁷ [Canopy Definition & Meaning | Dictionary.com](#)

⁸ See Appendix B for a listing of states relying on “plant canopy” as a term of art to define cannabis plant production area.

For these reasons, “plant canopy” does not refer to the cannabis *plants* produced in the specific area identified as plant canopy, the placement or movement of those plants within the plant canopy or the size of the plants. By definition, plant canopy does not expand or contract based on plant maturity or immaturity. Plant canopy refers to the entire area, or the square footage in which cannabis plants are grown, placed, or moved, the activity associated with that movement, and the space in which that movement occurs.

Cannabis Plant Canopy Does Not Include Areas Such as Space Used for the Storage of Fertilizers, Pesticides, or Other Products, Quarantine, Office Space, etc.

As noted above, “such as” is an adverb that means **for example** and is used to introduce an example or series of examples.⁹ However, the term “such as” does not imply or suggest an exhaustive list of examples, nor does it exclude or limit examples not specifically listed. Here, a list of areas that *are not* considered to be canopy are offered. These include, but are not limited to storage areas, areas where plants may be quarantined, office space, and similar areas that are not listed, such as vehicle access roads where plants are not grown and that exist outside of the licensed plant canopy. This aligns with similar measurements of agricultural activity, such as storing or preserving raw materials before the start of the production process, or storing, preserving handling or moving finished goods.

Areas that are fallow,¹⁰ meaning land that is normally or usually cultivated, but is allowed to lie idle during a growing season are not considered to be cannabis plant canopy during any time the area is fallow.

Measuring Cannabis Plant Canopy

WAC 314-55-075 identifies the specific areas identified as plant canopy as it is defined in WAC 314-55-010(31), by square footage, and specific tier size:

WAC 314-55-075 (6) provides that the maximum amount of space for cannabis production cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

- (a) Tier 1 – Less than 4,000 square feet;
- (b) Tier 2 – Four thousand square feet up to 10,000 square feet; and
- (c) Tier 3 – Ten thousand square feet up to 30,000 square feet.

Cannabis producer applicants select and designate the size category, or tier of the production premises in their operating plan at the time of application. The agency provides forms for each of these plan types to assure consistency in the application process.

For cannabis producer and producer/processor applicants, operating plans describe how the proposed business meets security and traceability requirements, how product will be transported to and from the

⁹ [Such as Definition & Meaning - Merriam-Webster](#)

¹⁰ <https://www.merriam-webster.com/dictionary/fallow>

business, and important to this analysis, a description of the operation and premises. This section asks applicants to identify whether the grow will be indoor or outdoor, identify size category (plant canopy), identify the total square footage of the entire licensed premises, list the total square feet dedicated to adult use or medical use product, verify the type of fencing used to encompass an outdoor grow, and verify whether soil amendments will be used consistent with applicable rule. Applicants attach floor plans to the completed operating plan, and identify additional specifics, such as the area or areas where cannabis will be grown, where fencing and doors will be installed, surveillance camera and security alarm placement, and other details. Production methods, protocols and associated activities are not identified in the operating or floor plans.

When the applicant selects a size category, or the plant canopy is selected, an applicant chooses one of the three tiers described in rule. The definition of plant canopy and the tier structure contemplate propagation occurring on a single level, or single-story structure within the square footage of the selected tier. For purposes of measuring plant canopy, the square footage of this single level area is considered to be the cannabis plant canopy. However, if plant propagation occurs on multiple levels, each level is considered to be part of the total canopy licensed for the location. The square footage of the area will be multiplied by the number of levels to arrive at the total square footage of canopy.

CONCLUSION

Cannabis plant canopy is the square footage dedicated to live plant production, including areas between plants, pathways, walkways, and empty space between rows that allow for airflow, light, growth, access for watering, trimming and other activities associated with cannabis plant production. If plant propagation occurs on multiple levels, each level is considered to be part of the total canopy licensed for a location. The square footage of the area will be multiplied by the number of levels to arrive at the total square footage of canopy. Vehicle access roads and fallow areas where there is no cannabis plant production are not considered to be cannabis plant canopy.

APPENDIX A

WSR	EFFECTIVE DATE	AMENDMENT
14-10-044	May 31, 2014	Expanded production and wholesale activity between licensed producers to include harvest, trim, drying, curing and packaging; expanded sales between licensed producers to include plants, seeds and plant tissues.
15-11-107	June 20, 2015	Expanded the maximum amount of space for cannabis production from two million square feet to eight and one-half million square feet based on marketplace demand and Board approval. (Originally proposed as emergency rule on February 25, 2015 as WSR 15-06-029)
15-19-165	September 23, 2015	Emergency rule: Struck language regarding total maximum amount of space for cannabis production; reserved determination for a later date. (Refiled on January 6, 2016 as WSR 16-03-001 , and on April 6, 2016 as WSR 16-08-123)
16-11-110	June 18, 2016	Added requirement that outdoor grow must be physically separated by at least twenty feet from another licensed outdoor grows, and that grows many not share common walls or fences. Permanently struck language regarding total maximum amount of space for cannabis production; reserved determination for a later date (consistent with previous emergency rules).
16-19-102	October 22, 2016	Added allowance for licensed cannabis producers to sell cannabis plants to members of a registered cooperative under the conditions of WAC 314-55-410.
18-22-055	December 1, 2018	Added several allowances, including the sale of immature plants or clones and cannabis seeds to qualifying patients or designated providers, and to licensed cannabis researchers; updated annual license fee; indicated that application window for cannabis producer licenses in closed added provisions regarding adulteration of usable cannabis; added requirement that cannabis producers must make quality assurance tests available to and processor purchasing product and must label with lot number, UBI number, and product weight.
21-14-113	August 7, 2021	Expanded the plant canopy square footage allowed for Tier 1 cannabis producers from 2,000 square feet to up to 4,000 square feet.

APPENDIX B

- California provides that “Canopy means the designated area(s) at a licensed premises, except nurseries and processors, that will contain mature plants at any point in time, as follows: (1) *canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including the space(s) within the boundaries*; (2) canopy may be noncontiguous but each unique area included in the total canopy calculation.¹¹ (emphasis added)
- Illinois proposes to define “production” in the context of cannabis as “planting, cultivating, tending or harvesting” cannabis (see 720 ILCS 550/3.(j)).
- Indiana proposes to define “cannabis canopy” as the surface *area used to grow cannabis plants calculated in square feet and measured using the outside boundaries of any area that includes cannabis plants, including the space within the boundaries* (see House Bill (HB) 1248, introduced January 11, 2023, emphasis added).
- Vermont defines “plant canopy” as the square footage dedicated to live plant production and does not include areas such as office space or areas used for the storage of fertilizers, pesticides, or other products” (V.S.A. §861(24)).
- Massachusetts defines “Mature plant canopy” as the total surface area within a cultivation area where mature marijuana plants are growing. The surface area of the mature plant canopy must be calculated in square feet and measured using outside boundaries of the area and *must include all of the area within the boundaries....*(22 MRSA §2422, sub §7-B, emphasis added).

¹¹ [Cannabis Cultivation Regulations – 01/16/2019](#)