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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 603
DEPARTMENT OF AGRICULTURE

FILED
04/29/2019 2:47 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Permanent rules for Brassicaceae general production and restricted Willamette Valley Protected District

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/21/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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635 Capitol St NE
Salem, OR 97301

Filed By:
Sean Fornelli
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/29/2019

TIME: 4:00 PM - 7:00 PM

OFFICER: Steven Harrington

ADDRESS: Oregon Department of
Agriculture

635 Capitol St NE

Basement Hearing Room

Salem, OR 97301

NEED FOR THE RULE(S):

The Department finds that it is necessary to provide the location and conditions for the control area as specified in this rule to the public and growers to facilitate the orderly production of crops affected by the isolation area and protected district. The information provided protects Brassicaceae growers in the isolation area and protected district in a manner that prevents plant disease and is protective of growth of rapeseed seed crops grown for edible oil production.

The rules also provide regulations applicable to the seeding and growing of Brassicaceae for any purpose in the general production area to manage these crops in such a way as to prevent disease.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon State University report produced with funding from 2013 House Bill 2427 provided to assess the potential for co-existence between canola and other Brassicaceae seed crops in the Willamette Valley which can be located at <https://oda.direct/canola>.

Meeting notes from Rules Advisory Committee meetings on February 15, February 22, March 8, and April 18, 2019 which are available from the Department.

FISCAL AND ECONOMIC IMPACT:

The Department does not anticipate impact on other state agencies, units of local government, or the general public.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The Department considered available information to project any significant economic effect on businesses including the cost of compliance. Based on available information the Department is unable to estimate the number of small businesses that may be subject to this rule, because the rule applies to all individuals or businesses that produce Brassicaceae within Oregon as well as to those individuals or businesses that transport, distribute, and sell Brassicaceae in Oregon. The available information did not provide any record of the number of persons or businesses that may grow the crops associated with the production requirements of these rules. The cost of compliance with the rules will depend on current practices and their location within either the general production area or the protected district for individual growers. The rules will predominantly affect small businesses that produce, handle, process, or transport Brassicaceae within the Willamette Valley and the state of Oregon.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The proposed rules require submission of an application to the Department and receipt of an approval permit from the Department in order to grow rapeseed outside of the isolation area but within the Willamette Valley Protected District.

c. Equipment, supplies, labor and increased administration required for compliance:

The cost of compliance with the rules, including purchase or use of equipment, labor will depend on current practices and their location within either the general production area or the protected district for individual growers. The administrative costs of complying with the permit requirements within the Willamette Valley Protected District are minimal as there is no application fee for a permit.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses from the Willamette Valley participated in multiple advisory committee meetings that assisted in the development of the proposed rules

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

603-052-0861, 603-052-0862, 603-052-0870, 603-052-0880, 603-052-0882

AMEND: 603-052-0861

RULE SUMMARY: The rules define protected districts for Brassicaceae including rapeseed and provide regulations applicable to the seeding and growing of Brassicaceae for any purpose in the general production area and Willamette Valley Protected District. All land not in a protected district will be regulated as the general production area. Growth of

rapeseed seed crops for edible oil production requires special care and isolation. Any production of canola within the Willamette Valley Protected District will require a permit from the Department.

CHANGES TO RULE:

603-052-0861

Brassicaceae General Production Area/Protected Districts ¶

The seeding and growing of Brassicaceae by any person for any purpose in the state of Oregon shall be subject to the regulations of the general production area and, if applicable, a protected district as described in these rules.

~~The Willamette Valley Protected District as described in HB 2427 (2013) is governed by 2013 Oregon Laws Chapter 724.~~

Statutory/Other Authority: ORS 561.190, 561.510-561.600, 570.305, 570.405, 570.410-570.415, 570.450

Statutes/Other Implemented: ORS 570.405-570.415, 570.450

AMEND: 603-052-0862

RULE SUMMARY: The rules define protected districts for Brassicaceae including rapeseed and provide regulations applicable to the seeding and growing of Brassicaceae for any purpose in the general production area and Willamette Valley Protected District. All land not in a protected district will be regulated as the general production area. Growth of rapeseed seed crops for edible oil production requires special care and isolation. Any production of canola within the Willamette Valley Protected District will require a permit from the Department.

CHANGES TO RULE:

603-052-0862

Definitions ¶¶

Unless the context requires otherwise, the following terms are defined as indicated:¶¶

- (1) "Blackleg" means the disease of crucifer crops and Brassicaceae species caused by the fungi *Leptosphaeria maculans* (asexual stage = *Phoma lingam*) and *Leptosphaeria biglobosa*.¶¶
- (2) "Brassicaceae" means any genera and species in the plant family Brassicaceae including, but not limited to, all species of *Brassica* and *Sinapis*, and *Raphanus sativus* and excluding the ornamental genera *Arabis*, *Erysimum*, and *Iberis*.¶¶
- (3) "Cover crop ~~b~~Brassica" means any species member of Brassicaceae that is grown as a cover crop and is not allowed to flower.¶¶
- (4) "Department" means the State Department of Agriculture.¶¶
- (5) "Director" means the Director of the Department or the Director's duly authorized ¶¶ representative.¶¶
- (6) "Field" For the purpose of this rule a field is defined as a commercial production area in which Brassicaceae are planted directly into the ground. A field may include one or more contiguous plots of land managed as a single unit. These plots may be separated by an unimproved farm road, ditch or hedgerow.¶¶
- (7) "Forage ~~b~~Brassica" means ~~any species~~ species member of Brassicaceae that is grown for animal/livestock feed and is not allowed to flower.¶¶
- (8) "Land manager" means any person who is legally responsible for the maintenance, use, and development of resources for a section of land or piece of property.¶¶
- (9) "Person" means an individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.¶¶
- (10) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in, and is entitled to receive all or any part of the proceeds from the sale of any commodity produced on that land.¶¶
- (11) "Rapeseed " means plants of the species *Brassica napus*, *Brassica rapa*, *Brassica juncea*, or other *Brassica* species grown for the purpose of edible or industrial oil production. Canola is a rapeseed and means any plant of the genus *Brassica* in which seeds having a high oil content are the primary economically valuable product and ~~that have a high erucic acid content suitable for industrial uses or a low erucic acid content suitable for edible oils.~~ Statutory/Other Authority: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415, 570.450 Statutes/Other Implemented: ORS 570.405 - 570.415, 570.450

AMEND: 603-052-0870

RULE SUMMARY: The rules define protected districts for Brassicaceae including rapeseed and provide regulations applicable to the seeding and growing of Brassicaceae for any purpose in the general production area and Willamette Valley Protected District. All land not in a protected district will be regulated as the general production area. Growth of rapeseed seed crops for edible oil production requires special care and isolation. Any production of canola within the Willamette Valley Protected District will require a permit from the Department.

CHANGES TO RULE:

603-052-0870

General Production Area ¶

All lands in Oregon constitute the General Production Area for the purposes of controlling pests and diseases of Brassicaceae. Brassicaceae production in the General Production Area is subject to the following best management practices:¶

(1) All Brassicaceae seed stock intended for planting for commercial or home use in the General Production Area must be accompanied by an official test report stating that the untreated seed is from a seed lot that has been tested and found free from blackleg. Only seed stock or transplants from seed stock that has tested free of blackleg may be planted or sold within the General Production Area. Producers must maintain a copy of the official test reports for a minimum of three (3) years from the time of planting.¶

~~(2) To prevent buildup of blackleg, blackrot, and other diseases and pests, Brassicaceae crops may not be grown in the General Production Area but transported into or through protected districts are subject to the transport and same field more often than two years in every five years.¶~~

¶

~~(3) All planting, harvest, and transportation equipment shall be cleaned to prevent any inadvertent spread of Brassicaceae plant material from the field.¶~~

~~(4) All unbagged loads of Brassicaceae seed stock transported must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss.¶~~

~~(5) Any volunteer or uncontrolled Brassicaceae in or within a quarter mile of production fields must be prevented from flowering by the producer.¶~~

~~(6) The Department may as it deems necessary, inspect or cause to be inspected any field crops, areas in or around production fields, or any other requirements of the protected district through which the Brassicaceae is transported within the General Production Area for Brassicaceae infected with blackleg. Such inspections will be carried out during normal business hours and consent may be sought for entry into fields or other areas. Inspection may include the taking of samples as may be necessary to determine whether plants are infected with blackleg.¶~~

~~(37) Any volunteer or uncontrolled Brassicaceae in and around production fields that is determined by the Department to be infected with blackleg may be declared a Public Nuisance as described in Section (48) and, as such, must be rogued out or otherwise eliminated by the producer or the land manager.¶~~

~~(48) Any field that is determined after official inspection and testing by the Department to be infected with blackleg may be determined to be a Public Nuisance subject to the Public Nuisance abatement processes described in ORS 570.170 through 570.180.¶~~

~~(59) The Department and other interested parties shall review these General Production Area requirements biennially every five (5) years for accuracy and effectiveness.¶~~

~~NOTE: Information on laboratories in Oregon approved by the Department for conducting official seed tests is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, 503-986-4620.~~

~~Statutory/Other Authority: ORS 561.190, 570.405~~

~~Statutes/Other Implemented: ORS 561.190, 570.405, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415, 570.450~~

AMEND: 603-052-0880

RULE SUMMARY: The rules define protected districts for Brassicaceae including rapeseed and provide regulations applicable to the seeding and growing of Brassicaceae for any purpose in the general production area and Willamette Valley Protected District. All land not in a protected district will be regulated as the general production area. Growth of rapeseed seed crops for edible oil production requires special care and isolation. Any production of canola within the Willamette Valley Protected District will require a permit from the Department.

CHANGES TO RULE:

603-052-0880

Protected Districts; Prohibitions ¶¶

(1) ~~Growth~~Production of rapeseed seed crops for edible or ~~industrial oil production~~ requires special care and isolation. ~~Rapeseed~~Canola may be grown within the following protected districts only in accordance with those rules governing each protected district, ~~except that rapeseed grown in the Willamette Valley Protected District as described in HB 2427 (2013) is governed by 2013 Oregon Laws Chapter 724.~~ The following are protected districts:¶¶

- (a) Willamette Valley Protected District;¶¶
- (b) Central Oregon Protected District;¶¶
- (c) Northeast Oregon Protected District;¶¶
- (d) Malheur/Idaho Protected District.¶¶

(2) No person shall violate any provision of those rules governing each protected district.

Statutory/Other Authority: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415, 570.450

Statutes/Other Implemented: ORS 570.405 - 570.415, 570.450

AMEND: 603-052-0882

RULE SUMMARY: The rules define protected districts for Brassicaceae including rapeseed and provide regulations applicable to the seeding and growing of Brassicaceae for any purpose in the general production area and Willamette Valley Protected District. All land not in a protected district will be regulated as the general production area. Growth of rapeseed seed crops for edible oil production requires special care and isolation. Any production of canola within the Willamette Valley Protected District will require a permit from the Department.

CHANGES TO RULE:

603-052-0882

Willamette Valley Protected District ¶

~~This Willamette Valley Protected District as described in HB2427 (2013) is governed by 2013 Oregon Laws Chapter 724. The Willamette Valley Protected District is as provided in the Oregon Department of Agriculture's (2013) map available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, 503-986-4552(1) "Willamette Valley Protected District" means the area encompassed within a rectangle formed by the point in Tillamook County that is the northwest corner of township 1 north, range 6 west, the point in Multnomah County that is the most northeastern point of township 1 north, range 2 east within Oregon, the point in Lane County that is the southeast corner of township 19 south, range 2 east and the point in Lane County that is the southwest corner of township 19 south, range 6 west.¶~~

~~(2) The following area is designated as the Isolation Area within the Willamette Valley Protected District: Starting at the SW corner of T17S-R04W head east following the township line between T17S and T18W to the SE corner of Section 33, T17S-R02W;¶~~

~~Head north along the section line between 33 and 34 in T17S-R02W to the SW corner of section 15 in T17S-R02W;¶~~

~~Head east along the section line to the SE corner of Section 15, T17S-R02W;¶~~

~~Head north along the section to the SW corner of Section 2, T17S-R02W;¶~~

~~Head east along the section line to the SE corner of Section 2, T17-R02W;¶~~

~~Head north along the section line to the SW corner of Section 25, T16S-R02W;¶~~

~~Head east along the section line to the SE corner of Section 29, T16S-R01W;¶~~

~~Head north along the section line to the NE corner of Section 17, T16S-R01W;¶~~

~~Head west along the section line to the NW corner of Section 13, T16S-R02W;¶~~

~~Head south along the section line to the SW corner of Section 13, T16S-R02W;¶~~

~~Head west along the section line to the NW corner of Section 22, T16S-R02W;¶~~

~~Head south along the section line to the SW corner of Section 27, T16S-R02W;¶~~

~~Head west along the section line to the NW corner of Section 32, T16S-R02W;¶~~

~~Head south along the section line to the NE corner of Section 18, T17S-R02W;¶~~

~~Head west along the section line to the point where the centerline of I5 crosses the section line between Section 10, T17S-R03W and Section 15, T17S-R03W;¶~~

~~Head north following c to the point where it crosses the section line between Section 33, T16S-R03W and Section 28, T16SR03W;¶~~

~~Head west along this section line to the range line between R04W and R03W;¶~~

~~Head north along this range line until Coburg Road crosses this range line, then follow the road centerline of Coburg Road north until Coburg Road crosses the section line between Section 22, T15S-R04W and Section 15, T15S-R04W;¶~~

~~Head west along this section line to the NW corner of Section 22, T15S-R04W;¶~~

~~Head north along the section line until the road centerline of Highway 99E/Albany-Junction City Highway, crosses this section line;¶~~

~~Follow the road centerline of Highway 99E/Albany-Junction City Highway, in a general northerly direction until it intersects with Highway 228/Halsey-Sweet Home Highway.¶~~

Follow the road centerline of Highway 228/Halsey-Sweet Home Highway, until it intersects with the road centerline of I5 between Section 33, T13S-R03W and Section 4, T14S-R03W;¶

Follow the road centerline of I5 north direction, until it crosses the township line between T12S-R03W and T11S-R03W;¶

Head east along this township line to the SE corner of T11S-R02W;¶

Head north along the range line between T11S-R02W and R11S-R01W, to the NE corner of Section 24, T10S-R02W;¶

Head east along the section line to the SE corner of Section 18, T10S-R01W;¶

Head north along the section line to the SE corner of Section 30, T09S-R01W;¶

Head east along the section line to the SE corner of Section 26, T09S-R01W;¶

Head north along the section line to the road centerline of Highway 22/North Santiam Highway crosses the section line, between Sections 11 & 12, T09S-R01W;¶

Head northwesterly following the road centerline of Highway 22/North Santiam Highway to a point where the road centerline crosses the section line between Sections 30 & 29 T08S, R01W;¶

Head north along the section line to the SE corner of Section 19, T07S-R01W;¶

Head east along the section line to the SE corner of Section 20, T07S-R01W;¶

Head north along the section line to the SE corner of Section 8, T07S-R01W;¶

Head east along the section line until the road centerline of Cascade Highway, crosses the section line between Sections 9 and 16, T07S-R10W;¶

Follow the road centerline of Cascade Highway/Highway 213, in a northeasterly direction until it crosses the section line between Sections 18 and 19, T05S-R02E;¶

Head east along the section line until this section lines crosses the Molalla River near the SE corner of Section 15, T05S-R02E;¶

Follow the Molalla River north until it crosses the road centerline of Cascade Highway/Highway 213, in Section 29, T04S-R02E;¶

Head north following the road centerline of the of Cascade Highway/Highway 213, to a point where the road centerline crosses the section line between Sections 21 and 16, T03S-R02E;¶

Head west following the section line to a point where the section line crosses the centerline of the Willamette River, between Sections 15 and 22, T03S-R01E;¶

Follow the Willamette River upstream to a point where the centerline of the Willamette River crosses the township line between T03S-R01W and T04S-R01W;¶

Head west along this township line to a point where the road centerline of Highway 47/Tualatin Valley Highway crosses this township line near Section 3, T04S-R04W;¶

Head south along the road centerline of Highway 47/Tualatin Valley Highway, to a point where it intersects with the road centerline of Highway 99W/Pacific Highway West in Section 10, T04S-R04W;¶

Follow the road centerline of Highway 99W/Pacific Highway West in a southwesterly/south direction until it intersects with the road centerline of Highway 18/Salmon River Highway in Section 29, T04S-R04W;¶

Follow the road centerline of Highway 18/Salmon River Highway in a southwesterly direction to a point where it intersects with road centerline of Highway 153/Bellevue-Hopewell Highway near Section 21, T05S-R05W;¶

Follow the road centerline of Highway 153/Bellevue-Hopewell Highway east to a point where it intersects with the road centerline of Highway 99W/Pacific Highway West in Section 20, T05S-R04W;¶

Follow the road centerline of Highway 99W/Pacific Highway West south until it crosses the section line between Sections 20 and 29, T05S-R04W;¶

Head east along the section line to the SE corner of Section 24, T05S-R04W, which is also the range line between R04W and R03W;¶

Head south along the range line between R04W and R03W to the SW corner of T05W-R03W;¶

Head east along the township line between T05S-R03W and T06S-R03W to a point where the road centerline of Hopewell Rd NW crosses the township line;¶

Follow the road centerline of Hopewell Rd NW south to a point where the road intersects with the road centerline

of Highway 221/Salem-Dayton Highway in Section 17, T06S-R03W;¶
Follow the road centerline of Highway 221/Salem-Dayton Highway south to a point where the road centerline intersects the section line between Sections 5 and 8, T07S-R03W;¶
Head west along the section line to the NW corner of Section 7, T07S-R03W, which is also the range line between R03W and R04W;¶
Head south along the range line between R03W and R04W to a point where the range line crosses the road centerline of Highway 22/Willamina-Salem Highway;¶
Head west following the road centerline of Highway 22/Willamina-Salem, to a point where the road intersect the range line between T07S-R04W and T07S-R05W;¶
Head south along the range line between R04W and R05W to the SW corner of Section 30, T08W-R04W;¶
Head east along the section line to a point where the section line intersect the road centerline of Corvallis Road on the section between Sections 28 and 33, T08S-R04W;¶
Head south following the road centerline of Corvallis Road to a point where the road centerline intersect the section line between Sections 16 and 21, T09S-R04W;¶
Head west along the section line to a point where the section line intersect the road centerline of Highway 99W/Pacific Highway West;¶
Head south following the centerline of Highway 99W/Pacific Highway West to a point where the road centerline crosses the section line between Sections 12 and 13, T11S-R05W;¶
Head west along the section line to the NW corner of Section 16, T11S-R05W;¶
Head south along the section line to the NE corner of Section 32, T11S-R05W;¶
Head west along the section line to the NW corner of Section 35, T11S-R06W;¶
Head south along the section line to the SW corner of Section 23, T12S-R06W;¶
Head east along the section line to a point where the section line intersect the road centerline of Highway 99W/Pacific Highway West;¶
Head south following the road centerline of Highway 99W/Pacific Highway West, to a point where it intersects with the road centerline of Highway 200/Territorial Highway in Section 33, T14S-R05W;¶
Head south following the road centerline of Highway 200/Territorial Highway to a point where the road centerline crosses the township line between T15S-R05W and R16S-R05W;¶
Head east following the township line between T15S and T16S to the SE corner of T15S-R05W;¶
Head south following the range line between T16S-R04W and T16S-R05W to the SW corner of T17S-R04W, the point of beginning.¶

(3) The Department may establish a Willamette Valley Protected District advisory committee to advise and counsel the Department on the boundaries of the protected district, the type of rapeseed species and varieties which may be produced in the protected district and isolation area, and enforcement.¶

(4) Forage and cover crop brassica may be grown but shall not be allowed to flower.¶

(5) Production of canola outside the Isolation Area and within the Willamette Valley Protected District is allowed by permit only and must meet the following criteria:¶

(a) A completed application for canola production on a form provided by the Department must be submitted for fall planted canola no later than July 15th of the crop year or for spring planted canola no later than January 15th of the crop year.¶

(b) The application must include the following information: ¶

(A) The name and contact information of the applicant;¶

(B) The nearest address and global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate center of the growing field; and¶

(C) The number of acres of each field.¶

(c) The Department will either approve or deny the application via letter to the applicant by August 15th for fall planted canola or February 15th for spring planted canola.

Statutory/Other Authority: ORS 561.190, ORS 570.305, 570.405, 570.412, 570.415, 570.450

Statutes/Other Implemented: 2013 HB 2427, ORS 570.305, 570.405, 570.410, 570.412, 570.415, 570.450

