

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form

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Department of Agriculture
Agency and Division

603
Administrative Rules Chapter Number

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RULE CAPTION

Amendments clarify definitions, require seed testing only, and change enforcement to Public Nuisance process.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
7-18-16	1:00 p.m.	Oregon Department of Agriculture, Hawthorne Facility, 151 Hawthorne	Gary McAninch

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

OAR 603-052-0862, 603-052-0870

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450

Other Authority:

Statutes Implemented:

561.190, 561.510 - 561.600, 570.170 - 570.180, 570.305, 570.405, 570.410 - 570.415 & 570.450

RULE SUMMARY

The proposed amendments would add a definition for "Land Manager" and clarify the definitions for "Field", "Department", and "Director" in OAR 603-052-0862. For OAR 603-052-0870, the proposed amendments expand the regulatory requirements for blackleg testing to include seed and transplants for home/personal use, and remove the requirements for seed treatment prior to planting and for mandatory crop rotation. Finally, the regulatory response to fields and volunteer Brassicaceae officially confirmed as infected with blackleg have been changed to the Public Nuisance process as described in ORS 570.170 to 570.180.

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.

07-22-2016 5:00 p.m.
Last Day (m/d/yyyy) and Time for public comment

Sue Gooch
Rules Coordinator Name

Susan.C.Gooch@state.or.us
Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
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603
Administrative Rules Chapter Number

Amendments clarify definitions, require seed testing only, and change enforcement to Public Nuisance process.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending OAR 603-052-0862, 603-052-0870

Statutory Authority:

ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450

Other Authority:

Statutes Implemented:

561.190, 561.510 - 561.600, 570.170 - 570.180, 570.305, 570.405, 570.410 - 570.415 & 570.450

Need for the Rule(s):

Blackleg attacks all members of the Brassicaceae family grown for commercial or home use, including crucifers grown for vegetable seed, oil, forage, and the fresh market. The proposed amendments would add a definition for "Land Manager" and clarify the definitions for "Field", "Department", and "Director" in OAR 603-052-0862 to enable better understanding of the regulations and to whom they apply. For OAR 603-052-0870, the proposed amendments expand the regulatory requirements for seed testing to include seed and transplants for home/personal use, and remove the requirements for seed treatment prior to planting and for mandatory crop rotation. Finally, the regulatory response to fields and volunteer Brassicaceae officially confirmed as infected with blackleg have been changed to the Public Nuisance process as described in ORS 570.170 to 570.180. This change allows the Agency greater flexibility in responding to complaints about infected plants and gives the affected producer/land manager a formal process to respond to the Agency's strictures.

Documents Relied Upon, and where they are available:

1) Zhou, Y., B.D.L. Fitt, S.J. Welham, N. Evans, and P. Gladders (2000), Plant Pathology 49, 487-497; 2) Sprague, S.J., J.A. Kirkegaard, B.J. Howlett, and J. Graham (2010), Crop & Pasture Science 61, 50-58; 3) Oregon State University Plant Clinic, Services and Fees, <http://plant-clinic.bpp.oregonstate.edu/services-and-fees>; 4) Beeles, E., 2015, Oregon Agripedia: 2015 Edition, Oregon Department of Agriculture, 215 pp. 5) 2015-2019 Collective Bargaining Agreement between DAS and SEIU: Special Agencies Coalition, 122 pp.; 6) OAR 603-052-1150: Laboratory testing fees, <http://www.oregon.gov/ODA/programs/PlantHealth/Pages/LabServices.aspx>; 7) Fitt, B.D.L., H. Brun, M.J. Barbetti, and S.R. Rimmer (2006), European Journal of Plant Pathology 114, 3-15; 8) Pscheidt, J.W., and C.M. Ocamb (eds.), 2014, Pacific Northwest Plant Disease Management Handbook, <http://pnwhandbooks.org/plantdisease/search/node/black%20leg>; 9) Zhou, Y., B.D.L. Fitt, S.J. Welham, P. Gladders, C.E. Sansford, and J.S. West (1999), European Journal of Plant Pathology 105, 715-728.

Fiscal and Economic Impact:

No fiscal impacts are anticipated for state and local governments. Fiscal impacts for the general public are anticipated as seed companies and producers pass the cost for mandatory seed testing through to the final consumer. Fiscal impact for producers and seed companies will be mixed as producers will have to plant tested seed; the cost for testing the seed may range from \$90 to \$140 per seed lot. Blackleg has been demonstrated to cause significant yield losses in infected seed crops and fresh market crops. In England and Australia, blackleg can cause yield losses of 20% and 30%, respectively, in canola crops. Based on the 2015 Oregon Agripedia, over the past 5-years, canola harvests in Oregon have decreased from an average of 2,516 pounds per acre to 1,550 pounds per acre; this 39% decrease coincides with the first report of the blackleg epidemic in 2013, although causality has not been formally demonstrated. In 2014, the average price for one pound of canola was \$0.187. Based on this information, canola growers are experiencing a loss of \$180.64 per acre. No information was available to calculate the fiscal impact of blackleg on vegetable seed and fresh market growers.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No impact on municipal and local government is expected as no counties or cities currently regulate for blackleg. The biennial cost for state government is anticipated to be \$61,049 to \$88,646 as enforcement of regulatory activities is expected to be part of a 0.5 FTE seed regulatory enforcement position. The general public may see an increase in costs for vegetable seeds and fresh market crucifers as a pass-through cost to consumers from producers.

2. Cost of compliance effect on small business (ORS 183.336):

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

In 2014, the number of small farm operations (\$1,000-\$1,999 economic sales class) was 21,000 producers on 1.5 million acres of land. Per the 2015 Oregon Agripedia, canola was planted on 11,000 acres in 2014; this would translate into potentially 154 small businesses being affected. However, this number may be an underestimate as it does not reflect vegetable seed and fresh market crucifer producers; information about the number of producers of these crops was unavailable.

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

Seed must be tested for blackleg prior to planting. The cost for testing may be borne by seed companies or by producers. This testing will increase production costs by \$90 to \$140 per seed lot, excluding costs for seed sample collection. A single seed lot, which can be up to several thousand pounds, may be used to plant multiple acres; about 4-lbs of seed is required to plant one acre. Also, if a producer or seed company has a field declared a Public Nuisance, the mitigation applied will be at the expense of the producer or the seed company. Depending upon the mitigation activity required, this could result in 100% yield loss for the affected field. According to the 2015 Oregon Agripedia, the value per harvested acre for canola was \$281 in 2014. Thus, the total loss of a 50-acre field would equal \$14,050, excluding the labor and equipment costs for destroying the field.

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

Impact is expected to be minimal for seed companies as these businesses are already required by law to maintain any necessary seed testing records for a minimum of 3-years. Initially, producers may see a slight increase in costs as they set up a record storage system; however, it is anticipated many growers already have such a system in place that could be modified to include seed testing records.

How were small businesses involved in the development of this rule?

Small businesses were included on the advisory committee.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

Yes, on 3/16/16, 4/15/16, 5/3/16 and 5/19/16

07-22-2016 5:00 p.m.	Sue Gooch	Susan.C.Gooch@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

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*.
- (3) "Cover crop brassica" means any species of Brassica that is grown as a cover crop and is not allowed to flower.
- (4) "Department" means the ~~State department~~ **Department of agriculture Agriculture**.
~~of the state of Oregon.~~
- (5) "Director" means the ~~director~~ **Director** of the ~~department~~ **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) ~~(6)~~ "Forage brassica" means any species of Brassica 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) ~~(7)~~ "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) ~~(8)~~ "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) ~~(9)~~ "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.

~~(10) "Field" For the purpose of this rule 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.~~

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405. 570.410 - 570.415 & 570.450

Stats. Implemented: ORS 570.405 - 570.415 & 570.450

Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

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. ~~With the exception of prepackaged seed lots of Brassicaceae of one half (0.5) ounce or less for home use and transplants for home use,~~ Brassicaceae production in the General Production Area is subject to the following best management practices:

(1) All Brassicaceae seed stock intended for ~~commercial planting~~ **for commercial or home use that trades in commerce** 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 (*Leptosphaeria maculans*). **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; and**

(2) All Brassicaceae seed stock must also be treated prior to planting. Treatment methods approved by the Department for blackleg control include:

(a) Hot water treatment for ~~25 to 30 minutes~~ at 50°C (122°F); and

(b) Treatment with a fungicide registered for the purpose of treating Brassicaceae seed for blackleg control.

~~(3) To prevent buildup of blackleg, blackrot, and other diseases and pests, Brassicaceae may not be grown on the same plot of land in two consecutive years or not more than two years in every five.~~

~~(4)~~ Brassicaceae crops grown in the General Production Area but transported into or through protected districts are subject to the transport and other requirements of the protected district through which the Brassicaceae is transported.

~~(5)~~ **(3) 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 (4) and, as such, must be rogued out or otherwise eliminated by the producer or the land manager.**

~~(6)~~ **(4) 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.** Fields in which blackleg (*Leptosphaeria maculans*) has been detected and officially confirmed by the Department must be treated in a manner approved by the Department. The Department shall issue a treatment plan to the producer in the form of an Administrative Directive. Such treatments shall be at the expense of the producer or producers, or their responsible agent or agents. The treatment plan may include some or all of the following activities:

~~(a) Foliar fungicide applications;~~

~~(b) Roguing out infected plant materials;~~

~~(c) Post harvest residue management;~~

~~(d) Crop destruction.~~

~~(7)~~ **(5) The Department and other interested parties shall review these General Production Area requirements biennially 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.

~~[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of table\(s\).](#)]~~

Stat. Auth.: ORS 561.190 & 570.405

Stats. Implemented: ORS 561.190, 561.510 - 561.600, **570.170 - 570.180**, 570.305, 570.405, ~~570.410 - 570.415~~, & 570.450

Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 14-2009, f. & cert. ef. 9-16-09; DOA 24-2012(Temp), f. & cert. ef. 8-10-12 thru 1-31-13; DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15