

Subject: Re: COPD Proposed Rule Questions

Date: Thursday, July 30, 2026 at 2:51:21 PM Pacific Daylight Time

From: RULEMAKING Oda * ODA

To: Amy Wong, RULEMAKING Oda * ODA

Good afternoon,

Thank you for your patience as I have been working on wildfire response activities. Please find the answers to your questions below.

1. You noted that ODA's authority to establish Protected Districts is distinct from the control-area authority used in rules like OAR 603-052-1030, 1040, 1050, and 1060 (the Union/Morrow/Umatilla bluegrass control areas), which are based solely on contamination risk under ORS 570.405. Could you point me to the specific statutory or case-law basis for that distinction? Both frameworks appear to cite ORS 570.405 and 570.450, so I want to understand where the legal separation comes from. – **Both rest on ORS 570.405.**

ORS 570.450 lets the department establish rapeseed control areas as provided in ORS 570.405. The rapeseed authority runs through the general control area power, not alongside it. OAR 603-052-0860 says the same. "Protected District" is a naming convention ODA adopted in Division 52. It carries no separate authority, and ODA is not aware of any Oregon case law that construes the relationship between the two sections.

What separates the bluegrass rules from the brassica rules is the record behind each, not the power behind each. OAR 603-052-1040 rests on a finding that rough bluegrass would threaten established grass seed production in Morrow and Umatilla Counties. Each control area needs its own careful investigation under ORS 570.405(1), and ORS 570.405(2) requires the power be exercised reasonably and justly. That subsection ties the reach of a rule to the evidence behind it. Based on OSU research, science does not support the classification of rapeseed as a distinct menace from any other brassica crop.

2. You referenced the 2017 HB 2427 report (Mallory-Smith et al.) as informing ODA's shift away from treating rapeseed as a disease/pest-based menace. Having reviewed the report, it appears to devote substantial analysis to cross-pollination and genetic compatibility between canola and other Brassicaceae seed crops (including the Quinn 2010 hybridization study), and its central recommendation is that isolation distances be based on "genetics of the crops and the potential for cross-pollination." Could you clarify how the report supports the conclusion that ODA lacks authority to regulate based on cross-pollination risk? – **ORS 570.405 allows ODA to create a control area to address cross pollination but only if cross pollination between certain plants may be a "menace to the**

areas and generally to horticultural, agricultural or forestry industries.” The rules promulgated before 2017 were based on the understanding that rapeseed/canola was a vector for blackleg, a plant pest. As such, ODA could establish control areas under ORS 570.405 to exclude rapeseed from certain areas in order to prevent the spread of that plant pest which was a menace to the agricultural industry. Once the OSU report clarified that rapeseed/canola is not in itself a “menace”, the ODA may establish control areas for rapeseed under its authority in ORS 570.450. The change in policy was driven by a change in the ODA’s scientific understanding of rapeseed.

3. Separately, could you clarify whether ODA's position is that it lacks authority to retain existing COPD protections for Jefferson County while removing Crook and Deschutes Counties, or whether this is more a matter of ODA's rulemaking approach/discretion? I want to understand whether this is a hard legal constraint or a policy choice. – Going back through the rulemaking history, the current COPD relied mainly on 570.405's menace-based authority, with some reliance on 570.450. As rapeseed is not a distinct menace from any other brassica, we can no longer rely on the 405 component — and the 450 authority that that exists for rapeseed does not extend to selectively retaining protections for one county while removing others based on community preference. So, this is a legal constraint flowing from what authority survives, not simply a discretionary policy choice.

4. Last summer, Director Charpillot Hanson called me to let me know that ODA wasn’t moving forward with repealing the COPD in part because the agency wanted to find a “statewide” solution. What has changed? - There were ongoing conversations happening in the Willamette Valley Protected District (WVPD) that everyone had hoped would result in a statewide solution. That is why the agency held off on continuing conversations for the COPD. The WVPD conversations did not result in any statewide solutions.

5. Several times during the RAC meetings, participants raised the point that only having fall planted canola would “eliminate 98% of the problems [between canola and seed production]” yet you mentioned that ODA had to allow two plantings. However, during the April meeting at ~1:34 you also said “If that [a lesser isolation distance] is what makes sense over here, that is absolutely what we can do.” Can you point me to the section(s) in the law that gives the agency leeway to determine isolation distance based on the preferences of the community, but not the number of canola plantings per year the community would prefer? Why does ODA have to allow both fall and spring planted canola in the proposed rules? - The April meeting was before ODA had dug deeper into the rulemaking archive and determined that the statutory authority was limited to boundaries, type and species and enforcement of the control area.

6. Can you walk me through the statutory analysis of how the authority ODA used to write

the initial COPD either wasn't valid at that time, or later became invalid? And if the latter, what law(s) were changed to make the authority invalid? - **Once OSU's research and the HB 2427 report established that rapeseed isn't a distinct menace from other brassicas, the factual basis underpinning the rules based on 570.405 changed. Absent a finding that rapeseed constitutes a menace, the ODA may regulate rapeseed pursuant to 570.450. In turn, ORS 570.450 authorizes ODA to establish control areas for the production of rapeseed and to appoint an advisory board to counsel and advise the ODA regarding boundaries, species/variety limits, and enforcement. ORS 570.405 does not appear to authorize menace-driven restrictions like planting frequency or cross-pollination-based isolation distances. So, this is a reinterpretation based on a change in the factual underpinnings of the original rule.**

7. At the May meeting at ~56, a RAC participant asked "What if the notice of intent is for all brassicas, not just rapeseed?" You said the you didn't think the agency had authority to require that but would look into this. Can you share the outcome of this research? – **Looking at the statutory authority, ODA has specific authority to regulate rapeseed - *The State Department of Agriculture may establish control areas for the production of rapeseed as provided in ORS 570.450 (Department may establish control areas in accordance with the procedure for declaring of quarantines). The department may appoint advisory boards to advise and counsel the department on the boundaries of the control areas, the type of rapeseed species and varieties which may be produced in the various control areas and the enforcement of control area orders.* -this authority does not extend to other brassicas.**

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Thanks.

Sunny Summers, Senior Policy Advisor

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From: Amy Wong <amy@oregonorganiccoalition.org>

Date: Wednesday, July 22, 2026 at 6:53 AM

To: RULEMAKING Oda * ODA <rulemaking@oda.oregon.gov>

Subject: COPD Proposed Rule Questions

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Hi Sunny:

I hope this finds you well and enjoying summer! I had a chance to watch both COPD RAC meetings and want to make sure I understand the legal basis correctly before submitting comments, so I have a few questions and I'd appreciate any citations, memos, or DOJ guidance you can point me to on these points.

1. You noted that ODA's authority to establish Protected Districts is distinct from the control-area authority used in rules like OAR 603-052-1030, 1040, 1050, and 1060 (the Union/Morrow/Umatilla bluegrass control areas), which are based solely on contamination risk under ORS 570.405. Could you point me to the specific statutory or case-law basis for that distinction? Both frameworks appear to cite ORS 570.405 and 570.450, so I want to understand where the legal separation comes from.
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3. Separately, could you clarify whether ODA's position is that it lacks authority to retain existing COPD protections for Jefferson County while removing Crook and Deschutes Counties, or whether this is more a matter of ODA's rulemaking approach/discretion? I want to understand whether this is a hard legal constraint or a policy choice.
4. Last summer, Director Charpillot Hanson called me to let me know that ODA wasn't moving forward with repealing the COPD in part because the agency wanted to find a "statewide" solution. What has changed?
5. Several times during the RAC meetings, participants raised the point that only having fall planted canola would "eliminate 98% of the problems [between canola and seed production]" yet you mentioned that ODA had to allow two plantings. However, during the April meeting at ~1:34 you also said "If that [a lesser isolation distance] is what makes sense over here, that is absolutely what we can do." Can you point me to the section(s) in the law that gives the agency leeway to determine isolation distance based on the preferences of the community, but not the number of canola plantings per year the community would prefer? Why does ODA have to allow both fall and spring planted canola in the proposed rules?
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7. At the May meeting at ~56, a RAC participant asked "What if the notice of intent is for all brassicas, not just rapeseed?" You said the you didn't think the agency had authority to require that but would look into this. Can you share the outcome of this research?

Many thanks,

Amy Wong
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