

603-052-0860

Rapeseed Control Areas

As provided in ORS 570.405 and 570.450, the Oregon Department of Agriculture may establish control areas for *Brassica* spp. including rapeseed, for the general protection of the horticultural, agricultural or forest industries of Oregon by excluding from established control areas *Brassica* spp. or rapeseed plants that if, not managed in accordance with these rules, may be a menace to such areas and generally to horticultural, agricultural or forest industries. The Department may also establish the conditions for the production of *Brassica* spp. and rapeseed in control areas so as to protect against plant diseases, plant pests or other conditions as may constitute a menace to the horticultural, agricultural or forest industries of Oregon.

603-052-0861

General Production Area/Protected Districts

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

603-052-0862

Definitions

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

- (1) "*Brassica* spp." means any plants in the genus *Brassica*.
- (2) "Cover crop brassica" means any species of brassica that is grown as a cover crop and is not allowed to flower.
- (3) "Department" means the department of agriculture of the state of Oregon.
- (4) "Director" means the director of the department or the Director's duly authorized representative.
- (5) "Forage brassica" means any species of brassica that is grown for animal/livestock feed and is not allowed to flower.
- (6) "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.
- (7) "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.
- (8) "Production Year" means the year in which the rapeseed crop is harvested.

- (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 marketing term for some rapeseed crops and is included in this definition.
- (10) "Vegetable *Brassica* spp." includes crops where the primary use is as a vegetable crop or as seed stock for planting. Species and common names for crops included in this category are *Brassica napus* (rutabaga, Siberian kale), *B. rapa* (turnip, turnip rapa, forage turnip, Napa or Chinese cabbage, Chinese flat cabbage, pak choi, pe-tsai, mizuna or mibuna, tendergreen mustard, and broccoli raab), *B. juncea* (Chinese mustard), *B. oleracea* (kale, collards, Chinese kale or Chinese broccoli or gai lan or kalia, cauliflower and heading broccoli, cabbage, brussel sprouts, kohlrabi and sprouting broccoli or calabrese) and *B. carinata* (Ethiopian mustard).
- (11) "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.

603-052-0870

General Production Area

All lands in Oregon outside of protected districts constitute the General Production Area. Rapeseed production in the General Production Area is subject to the following best management practices:

- (1) All rapeseed, cover crop brassica, and forage brassica seed stock that trades in commerce in the General Production Area must be accompanied by an official test stating that the untreated seed is free from blackleg (*Leptosphaeria maculans*); and
- (2) All rapeseed, cover crop brassica, and forage brassica seed stock must also be treated prior to planting with a fungicide or treatment method approved for blackleg control.
- (3) To prevent buildup of blackleg, blackrot, and other diseases and pests, oilseed or vegetable *brassic*as may not be grown on the same plot of land more than two years in every five.
- (4) *Brassica* spp. crops grown in the General Production Area but transported into or through protected districts are subject to the transport requirements of the protected district through which the oilseed *Brassica* is transported.

603-052-0880

Protected Districts; Prohibitions

(1) Production of *Brassica* spp. seed crops requires special care and isolation. *Brassica* spp. may be grown within the following protected districts only in accordance with those rules governing each protected district. 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.

603-052-0882

Willamette Valley Protected District

(1) The following area is designated as the Willamette Valley Protected Area: the area encompassed by a rectangle beginning at the northwest corner of Township 1N, Range 6W and proceeding east to the northeast corner of Township 1N, Range 2E, then south to the southeast corner of Township 19S, Range 2E, then west to the southwest corner of Township 19S, Range 6W, then north to the point of beginning. The Willamette Valley protected district boundaries were formed by giving consideration to the area historically pinned for *Brassica* spp. production (1995-2009) including a 3-mile wide buffer. This forms the rectangular shaped outer boundaries. See Figure 1.

(a) Rapeseed Exclusion Zone

The boundary of the Rapeseed Exclusion Zone is based upon consideration of the Willamette Valley Specialty Seed Association's pinning history for *Brassica* spp. seed production, recognizes the predominant historic footprint of *Brassica* spp. seed production between 1995 and 2012, and is identified by the solid purple area within the Willamette Valley Protected District. (See Figure 1.)

(2) Best Management Practices for All *Brassica* spp. The following best management practices apply to all *Brassica* spp. grown in the Willamette Valley Protected District except for Vegetable Brassicas grown as a vegetable crop:

- (a) To prevent buildup of blackleg, blackrot, and other diseases and pests, *Brassica* spp. seed crops may not be grown on the same plot of land in two consecutive years and not more than two years in every five years;
- (b) All *Brassica* spp. seed stock that trades in commerce in the protected district must be accompanied by an official test stating that the untreated seed was free from blackleg (*Leptosphaeria maculans*). In addition, after the official test, but prior to planting, the

seed must be treated with a fungicide or treatment method approved for blackleg control (e.g. hot water);

- (c) Cover crop and forage brassicas may be grown in the protected district provided these crops are not allowed to flower;
- (d) All planting, harvest, and transportation equipment shall be cleaned to prevent any inadvertant spread of *Brassica* spp. from the field;
- (e) Brassica producers shall be responsible for the removal of any inadvertent spread of seed or volunteer plants of *Brassica* spp. within a quarter mile of any plot of land utilized for *Brassica* spp. production during the year of production and the subsequent year. These plants must be controlled by the *Brassica* producer as soon as feasible prior to flowering or prior to April 15, whichever occurs first, and;
- (f) All transport and handling of *Brassica* spp. within, into, or through the Willamette Valley Protected District shall be accomplished in suitably packaged, covered or sealed containers or vehicles to prevent the inadvertent spread of seed or production of volunteer plants and shall be limited to the following highways and the most direct routes to these highways: Interstate 5 and Highways 20, 22, 26, 27, 34, 47, 84, or 99.

(3) Additional Requirements for Production of Rapeseed. In addition to the requirements for growing and transporting *Brassica* spp., as specified in OAR 603-052-0882(2), any person seeking to grow rapeseed in the Willamette Valley Protected District must identify field locations for the growth of rapeseed outside of the Rapeseed Exclusion Zone and must obtain a Rapeseed Protected District Contract, a Research Permit, or a Variance from the Department.

- (a) Rapeseed Exclusion Zone. No rapeseed may be grown within the Rapeseed Exclusion Zone described in OAR 603-02-0882 (1)(a.). Rapeseed is prohibited in this zone: See solid purple area on Figure 1.
- (b) Rapeseed Protected District Contract. Any person seeking to grow rapeseed within the Willamette Valley Protected District but outside the Rapeseed Exclusion Zone must first enter into a Rapeseed Protected District Contract with the Department.
- (c) Cap on Acreage. The total acreage of rapeseed in the Willamette Valley Protected District is limited to a maximum of 2,500 acres per production year. A minimum field size of 25 acres is required for the production of rapeseed.
- (d) Allocation of Acres. For each production year, the Department will allocate acreages based on the number of acres requested. In the event that the combined cumulative total

of requested acres exceeds the acreage cap of 2,500 acres, the Department will allocate acreage on a pro-rata basis consistent with the 25 acre field size minimum.

(4) Rapeseed Protected District Contract and Contract Terms. Any person seeking to grow rapeseed within the Willamette Valley Protected District must, before planting, enter into a Rapeseed Protected District Contract with the Department.

- (a) Applications for a Rapeseed Protected District Contract must be in writing and directed to the Department's Plant Program Area.
- (b) Any person applying for a Rapeseed Protected District Contract to grow rapeseed in the Willamette Valley Protected District must specify the location of those acres proposed for growing rapeseed.
- (c) The Department will award contracts for planting by September 1 of each year for requests received on or before July 15 close of business.
- (d) Each contract will describe the responsibilities and obligations of the producer.
- (e) Contract terms may include but are not be limited to the following elements: disease and pest prevention requirements; planting, production, and transportation requirements; post-harvest management; volunteer prevention; cross-pollination prevention; approved production acreage; fees; spring vs. fall planting; duration of the contract; and prohibitions.
- (f) Persons entering into a Rapeseed Protected District Contract with the Department are subject to a contract fee to cover the cost of enforcing or carrying out the *Brassica* spp. control area rules for the growth of rapeseed in the protected district pursuant to the Department's authority in ORS 570.412. The contract fee shall be established on a cost recovery basis and include the cost of processing applications for a Rapeseed Protected District Contract and monitoring rapeseed production within a protected district.

(5) Variances

At the request of any person seeking to grow rapeseed in the Willamette Valley Protected District, the Department may, after consultation with the Willamette Valley Specialty Seed Association, Specialty Seed Growers Association, Willamette Valley Oil Seed Growers Association, Oregon Clover Commission, and the Oregon Fresh Market Growers Association (OFMGA), grant a temporary one-year variance to the acreage cap provided only that the following factors are present:

- (a) The acres proposed for a variance are located near the edges of the protected district and in such location as no other crops would be displaced or adversely affected by granting of a

variance.

- (b) If granted, a one-year variance is not subject to the acreage cap within the Willamette Valley Protected District.
- (c) Growers receiving a variance must also enter into a Rapeseed Production Contract with the Department and pay all applicable fees as specified in the contract.

603-052-0884

Central Oregon Protected District

(1) The following area is designated as the Central Oregon Protected Area: the entire counties of Crook, Deschutes and Jefferson.

(2) Forage and cover crop rapeseed may be grown but shall not be allowed to flower.

(3) Rapeseed seed crops are prohibited in the Central Oregon Protected District except under Research Permit (see 603-052-0901(1)). All rapeseed grown under research permit must meet the following conditions:

- (a) Within the Central Oregon Protected District the required isolation distance shall be not less than three miles;
- (b) The location of all rapeseed fields must be recorded at the appropriate Oregon State University County Extension Office at least ten days prior to planting;
- (c) To prevent buildup of blackleg, blackrot, and other diseases and pests rapeseed may not be grown on the same plot of land of land in two consecutive years and not more than two years in every five years;
- (d) Rapeseed seed stock that trades in commerce in the protected district must be accompanied by an official test stating that the untreated seed was free from blackleg (*Leptosphaeria maculans*); the seed must also be treated (after the official test) prior to planting with a fungicide or treatment method approved for blackleg control;
- (e) All planting, harvest, and transportation equipment shall be cleaned to prevent any inadvertent spread of rapeseed from the field;
- (f) All unbagged loads of rapeseed transported within the protected district must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss; and
- (g) Any volunteer or uncontrolled rapeseed in or around production fields must be prevented from flowering by the producer.

603-052-0886

Northeast Oregon Protected District

(1) The following area is designated as the Northeast Oregon Protected District: the entire counties of Baker, Union and Wallowa, except the following part of Wallowa County which is designated as a general production area: Township 4N, Range 43E; Township 4N, Range 44E; Township 4N, Range 45E; Township 5N, Range 43E; Township 5N, Range 44E; and Township 5N, Range 45E; and those portions of Township 6N, Range 43E; Township 6N, Range 44E; and Township 6N, Range 45E falling within the State of Oregon.

(2) Forage and cover crop rapeseed may be grown but shall not be allowed to flower.

(3) Rapeseed seed crops are allowed in the Northeast Oregon Protected District subject to the following requirements:

- (a) Within the Northeast Oregon Protected District the required isolation distance from any crops with which it could cross pollinate shall be not less than two miles;
- (b) The location of all rapeseed fields must be recorded at the appropriate Oregon State University County Extension Office at least ten days prior to planting;
- (c) To prevent buildup of blackleg, blackrot, and other diseases and pests rapeseed may not be grown on the same plot of land in two consecutive years and not more than two years in every five years;
- (d) Rapeseed seed stock that trades in commerce in the protected district must be accompanied by an official test stating that the untreated seed was free from blackleg (*Leptosphaeria maculans*). After the official test, the seed must also be treated prior to planting with a fungicide or treatment method approved for blackleg control;
- (e) All planting, harvest, and transportation equipment shall be cleaned to prevent any inadvertent spread of rapeseed from the field;
- (f) All unbagged loads of rapeseed transported through or within the protected district must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss; and
- (g) Any volunteer or uncontrolled rapeseed in or around production fields must be prevented from flowering by the producer.

603-052-0888

Malheur/Idaho Protected District

(1) The following area is designated as the Malheur/Idaho Protected District: in Malheur County, a 3-mile wide strip of land along the Idaho border from the point where Payette County, Idaho's northern border intersects Malheur County's eastern border, south to the point where Highway 95 crosses the Oregon border. This strip of land borders Idaho's rapeseed production district IV (IDAPA 02.06.13) where rapeseed production is prohibited. The rest of Malheur Co. is a general production area.

(2) Forage and cover crop rapeseed may be grown but shall not be allowed to flower.

(3) Rapeseed seed crops are prohibited in the Malheur/Idaho Protected District.

603-052-0901

Research, Summary, Changes

(1) Research Permits

The Department may issue research permits in any protected district providing exemptions to the rapeseed control area rules for the purpose of research. Research plots under permit are not subject to the acreage cap within the Willamette Valley Protected District. Persons requesting a research permit shall petition the Department in writing and include the following:

- (a) Research must include the involvement of an accredited university;
- (b) All applicable conditions of rapeseed production must be met including pinning of fields;
- (c) The Director retains the final authority to approve or deny research permit requests. Any action under a research permit shall be subject to any conditions or restrictions set forth in the permit, and these conditions and restrictions may vary depending on the proposed action and its potential risk.

(2) Summary

The Department will maintain a summary of rapeseed fields produced under contract or research permit with the Department including locations of acres planted, number of acres planted, dates planted, and contact persons.

(3) Changes to Rapeseed Control Area Rules

Interested persons may petition the Department to amend or repeal these rules, including designation changes creating or removing protected district status, by following the procedures in the Administrative Procedures Act, ORS 183.390.

603-052-0921

Violations

(1) No person shall violate any control area rule or any Rapeseed Production Contract term governing the production of rapeseed in Oregon.

(2) Consistent with ORS 561.280 and ORS 570.405 and in addition to any other lawful remedy, the Director may bring an action to enjoin the violation or threatened violation of any provision of ORS 570.405 and ORS 570.450 or its rules, or violation of any Rapeseed Production Contract entered into by an applicant and the department. Such action may be filed in the circuit court of Marion County or in the county in which the violation or threatened violation occurs or is about to occur. Consistent with applicable law, the relief requested may include, but is not limited to, an order for summary destruction of any rapeseed crop.

(3) Notice of Noncompliance and Plan of Correction. In addition to, or in lieu of, any action to enjoin enforcement of the terms of a Rapeseed Production Contract, the Director may issue a Notice of Noncompliance and Plan of Correction to any person.

- (a) A Notice of Noncompliance informs the person to whom the notice is directed of the violation, including a reference to the particular statute, administrative rules or contract term involved, and the location of the violation;
- (b) A Plan of Correction directs the person to whom the plan of correction is directed to perform those actions necessary to comply with the particular statute, administrative rules or contract terms involved;
 - i. Specifies a reasonable period of time by which compliance is to be achieved not to exceed five (5) calendar days after the notice is received;
 - ii. May include requirements for the person to whom the plan of correction is directed to report the completion of specific actions;
- (c) A Notice of Noncompliance and Plan of Correction is issued by the Director, is an order other than contested case for purposes of judicial review, and must be served personally or by registered or certified mail.
- (d) Failure to perform any of the requirements of a Plan of Correction may be considered by the Director as a failure to correct the violation within the period of time set for correction by the Director in the Notice of Noncompliance and Plan of Correction and may result in any lawful enforcement including, but not limited to, those remedies described in subsection (2) of this section.