



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Dept. of Agriculture

Permanent Rule
 Emergency Rule

Effective date of rule:

Effective date of rule:

Permanent Rules

Emergency Rules

31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: This rulemaking order creates a new chapter in WAC titled "Brassica Seed Production District" that:
(1) Establishes two *Brassica* seed production districts;
(2) Specifies general requirements for growing, transporting or processing *Brassica* seed crops within any *Brassica* seed production district;
(3) In response to local conditions, specifies requirements for producing different categories of *Brassica* seed crops in each of the *Brassica* seed production districts or subdistricts; and
(4) Establishes a continuing *Brassica* work group.

Citation of existing rules affected by this order:

Repealed: 0
Amended: 0
Suspended: 0

Statutory authority for adoption: Chapters 15.51 & 34.05 RCW

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 07-24-080 on December 5, 2007.

Describe any changes other than editing from proposed to adopted version: Only editing changes were made.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

DATE ADOPTED

January 24, 2008

NAME (TYPE OR PRINT)

Valoria H. Loveland

SIGNATURE

Valoria H. Loveland

TITLE

Director

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED
JAN 24 2008
TIME: 9:52
WOR: 08-04-005

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>6</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>6</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>6</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Chapter 16-326 WAC

BRASSICA SEED PRODUCTION DISTRICT

NEW SECTION

WAC 16-326-010 What are the boundaries of the regulated areas, also called the *Brassica* seed production districts? (1) For purposes of descriptions of boundaries, any highway designation is measured from the center line of the highway, as determined by Washington department of transportation maps.

(2) *Brassica* seed production district 1 includes areas of five counties as follows:

(a) In Whatcom County, the area bounded as follows: From two miles west of the Interstate 5 intersection with the Canadian border, a southward line extends parallel to, and two miles west of, Interstate 5 to its intersection with State Highway 542. The line then extends generally northeastward along State Highway 542 to the city limits of Kendall. At Kendall, the line continues due north to the Canadian border. The line then extends westward along the Canadian border to its point of origin.

(b) All of mainland Skagit County is included. On Fidalgo Island, the area on its eastern side bounded by a line three miles west of and parallel to the Swinomish Channel, extending from Padilla Bay to Smilk Bay, is included. All of Samish Island is included. The remaining portion of Fidalgo Island and all other islands in Skagit County are excluded from *Brassica* seed production district 1.

(c) In Snohomish County, the area bounded as follows: From Puget Sound east along State Highway 531 (also known as Lakewood Rd.), the line extends through Interstate 5 Exit #206 (the Smokey Point exit) to the intersection of State Highway 531 and State Highway 9 in Arlington. From there the line extends generally northward along State Highway 9 to the county line, and then west along the county line to Puget Sound.

(d) In Island County, all of Camano Island and the portion of Whidbey Island north of an east-west line extending through Greenbank.

(e) In Clallam County, the area bounded as follows: From the westernmost city limit of Port Angeles, a line extends due south to a location five miles south of State Highway 101. From there, the boundary continues east along a line parallel to, and five miles south of, State Highway 101 to the Clallam/Jefferson County line.

The boundary turns north along the Clallam/Jefferson County line until it reaches the Straits of Juan de Fuca and then continues along the Straits to its point of origin.

(3) *Brassica* seed production district 2 is divided into two subdistricts, designated district 2A and district 2B. For purposes of descriptions of boundaries relating to *Brassica* seed production district 2, all references to canals pertain to Columbia Basin Irrigation Project structures. *Brassica* seed production district 2 includes portions of Grant and Adams counties bounded as follows:

(a) Beginning at the Grant/Douglas County boundary, the line proceeds continuously due east along existing portions of Road 13NW to its intersection with the West Canal. The line follows the West Canal in a northeasterly direction through portions of the city of Ephrata, then around the northern end of Soap Lake and easterly to the intersection of the West Canal and the East Low Canal. The line follows the East Low Canal in a southerly, then easterly direction to its intersection with State Highway 26. Then it turns west and follows State Highway 26 to the Columbia River. The line continues due west until it intersects the county boundary in the Columbia River. The line then turns north and follows the county boundary to the point of origin.

(b) *Brassica* seed production district 2A is the northwestern portion of *Brassica* seed production district 2. It is bounded on the north and west by the boundaries of *Brassica* seed production district 2. Its eastern boundary line commences at the intersection of Rd. 13 NW and K NW. The line extends south along K NW to its intersection with the I-90 North Frontage Rd. The line extends west along North Frontage Rd. to State Highway 281N, and along State Highway 281N to Q SW. It extends north along Q SW to 5 NW and west along 5 NW to the western boundary of *Brassica* seed production district 2.

(c) *Brassica* seed production district 2B consists of the portion of *Brassica* seed production district 2 that is not encompassed in *Brassica* seed production district 2A.

NEW SECTION

WAC 16-326-020 What are the general requirements for growing, transporting or processing *Brassica* seed within any *Brassica* seed production district? (1) Growing, transportation or processing of *Brassica* seed is regulated under provisions of this section only within the borders of a *Brassica* seed production district, as described in WAC 16-326-010.

(2) No *Brassica* seed crop grown for any purpose is regulated as part of a *Brassica* seed production district, if it is harvested or mowed before flowering or otherwise handled so that pollen production is prevented. Note that other regulatory requirements, such as the provisions of the crucifer seed quarantine rule found

in WAC 16-301-490 through 16-301-580, are applicable.

(3) *Brassica* seed crops, including seed grown for planting and seed grown for crushing or extraction for fuel or oil, may only be grown in locations that have been identified in a timely manner through the pinning process.

(a) Pinning for *Brassica* seed production in *Brassica* seed production district 1 will be held at least once a year at the WSU Northwestern Washington Research and Extension Center, 16650 State Route 536, Mt. Vernon, Washington 98237. Contact the WSU Skagit County Extension office at 360-428-4270 for information about pinning events for district 1.

(b) Pinning for *Brassica* seed production district 2 will be held at least once a year at the WSU Grant County Extension office, 35 C St. N.W., Ephrata, Washington 98823. Contact the WSU Grant County Extension office at 509-754-2011, ext. 413 for information about pinning events for district 2.

(c) Dates, times, locations and other information about pinning events will vary.

(d) Pinning for *Brassica* seed crops produced for planting must be performed by an authorized representative of the contractor for the crop. If the seed produced for planting is not being produced for a contractor, or if the contractor waives the pinning privilege, then the grower is responsible for pinning the location of the crop.

(e) Pinning for *Brassica* seed crops produced for fuel or oil must be performed by an authorized representative of the grower.

(4) Transportation and handling of *Brassica* seed within any *Brassica* seed production district must be performed in a way to prevent inadvertent spread of seed or production of volunteer plants. All shipments of viable seed must be in covered containers from which the seed cannot leak.

(5) Volunteer *Brassica* plants must be controlled as soon as feasible, but always prior to pollen production or blossoming.

NEW SECTION

WAC 16-326-030 What are the requirements to grow *Brassica* seed in *Brassica* seed production district 1? (1) *Brassica* seed crops intended for oil or fuel production and/or associated by-products, forage, or cover crops may only be planted or grown in compliance with a *Brassica* production agreement, as described in RCW 15.51.040.

(2) *Brassica* seed crops of species generally known as rapeseed or canola, that are intended for producing seed for planting, may only be planted or grown under conditions of a *Brassica* production agreement, as described in RCW 15.51.040.

NEW SECTION

WAC 16-326-040 What are the requirements for growing *Brassica* seed in all of *Brassica* seed production district 2, which is composed of two subdistricts designated districts 2A and 2B? (1) A minimum isolation distance of two miles must be preserved from the nearest edge of any *Brassica* seed crop to any other *Brassica* seed crop. The location pinned first has priority and establishes a basis for the isolation distance for other *Brassica* seed crops. Any person subsequently pinning any other location for a *Brassica* seed crop is responsible for maintaining the two-mile minimum isolation distance. Exceptions to this two-mile minimum distance can occur only in the following three situations:

(a) An exception that allows an isolation distance of less than two miles will occur when a written agreement between two or more contractors and/or growers complies with the conditions specified in subsection (2) of this section. All locations to be planted under such a written agreement between the parties must be pinned.

(b) An exception to the minimum isolation distance may be allowed under conditions of a *Brassica* production agreement, as described in RCW 15.51.040. All locations to be planted under such a *Brassica* production agreement must be pinned.

(c) *Brassica* seed crops grown for forage or cover crops may be planted or grown within the two-mile minimum isolation distance, if the forage or cover crop is not allowed to bloom or to produce pollen from April 1 through August 15 of any year. Forage or cover crops that comply with requirements of this subsection are not required to be pinned.

(2) Written agreements between parties to voluntarily allow planting of locations, any portion of which are within the minimum isolation distance of two miles (as referenced in subsection (1)(a) of this section), must comply with all of the following conditions:

(a) The agreement must be signed by authorized representatives of the contractors for the *Brassica* seed crops grown for planting, and by the growers of *Brassica* seed crops grown for fuel or oil. If one or more of the affected *Brassica* seed crops for planting is not being produced under contract, or if the contractor waives signature authority for this agreement, the grower of the crop must enter into the agreement instead.

(b) The agreement must, at a minimum, specify:

- The date of the agreement;
- The approximate dates during which the affected crops will be in the field;
- The name, business name (if applicable), telephone number and address of each affected grower;
- The location and acreage of each planting affected by the agreement;
- The contractor (if applicable) for each location; and
- *Brassica* seed crop species and variety for each location.

(c) These written agreements cannot extend beyond one harvest per agreement.

(d) Copies of the written agreement must be retained by each person who signs it for a minimum of three years.

(3) Pinning for *Brassica* seed crops intended to produce seed for planting starts each year on the first business day **after** January 31 for summer annual species or varieties (such as mizuna and Chinese cabbage) and on the first business day **after** May 31 for overwintered species or varieties (such as cabbage, broccoli, and turnip). Pinning for *Brassica* seed crops to produce seed intended for oil or fuel starts the first business day **after** June 30.

NEW SECTION

WAC 16-326-050 What are the differences between restrictions on *Brassica* seed production in *Brassica* seed production districts 2A and 2B? WAC 16-326-040 establishes restrictions that apply throughout all of *Brassica* seed production district 2 (including the two subdistricts designated districts 2A and 2B in WAC 16-326-010(3)), regarding the production of *Brassica* seed crops. Additional specific restrictions apply to district 2A. The differences between the subdistricts are:

(1) *Brassica* seed production in *Brassica* seed production district 2A is limited primarily to production of any species of *Brassica* seed for planting. Within *Brassica* seed production district 2A, *Brassica* seed crops intended for oil or fuel production may only be planted or grown under conditions of a *Brassica* production agreement, as described in RCW 15.51.040.

(2) *Brassica* seed production in *Brassica* seed production district 2B includes production of any species of *Brassica* seed for planting, oil or fuel production.

NEW SECTION

WAC 16-326-060 What is the *Brassica* work group and how often does it meet? The *Brassica* work group is an advisory group composed of representatives of the vegetable seed, canola, and biofuels production industries, as well as other interested persons. The Washington state department of agriculture will continue to convene the work group as needed, but at least once a year, for the purpose of advising the department regarding the provisions of chapter 16-326 WAC, any necessary revisions, and the needs of affected growers and industries.