



OREGON DEPARTMENT OF AGRICULTURE

SB 789 Report to the Legislature

Recommendations for potential legislation to establish a program that identifies fields in the Willamette Valley Protected District that produce seed crops of the genus Brassica in order to mitigate conflicts related to the production of seed crops of the genus Brassica.

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As prepared by
Oregon Department of Agriculture
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The Honorable Ken Helm
Chair
House Interim Committee on
Agriculture, Land Use,
Natural Resources and Water
Oregon House of Representatives
Salem, OR 97301

The Honorable Annessa Hartman
Vice-Chair
Oregon House of Representatives
Salem, OR 97301

The Honorable Mark Owens
Vice-Chair
Oregon House of Representatives
Salem, OR 97301

Chair Helm, Vice-Chairs Hartman and Owens,

The State Department of Agriculture (ODA) and submits this report of potential recommendations for legislation to the 2023-24 Interim Oregon Legislature in compliance with Oregon Laws 2023 c.370, § 3(2), which states:

Reporting –

On or before September 30, 2023, the State Department of Agriculture shall report, in the manner prescribed in ORS 192.245, to a committee or interim committee of the House of Representatives related to agriculture on recommendations for legislation to establish a program that identifies fields in the Willamette Valley Protected District that produce seed crops of the genus Brassica in order to mitigate conflicts related to the production of seed crops of the genus Brassica.

This report provides two (2) parts for consideration by members of the Oregon Legislature:

1. Outlining recommended policies to govern the production of brassica seed crops, and
2. a program that would identify fields of brassica seed production.

ODA engaged representatives of agriculture producers and Oregon State University subject matter experts in developing this report. The report assumes additional public engagement according to the rules of the Oregon State Legislature.

This report intends to continue the conversation, collaboration, and goodwill needed to produce the brassica seed crops in the Willamette Valley Protected District.

EXECUTIVE SUMMARY

Oregon is a leader in producing various essential crops, especially in the diverse Willamette Valley region. However, challenges arise regarding canola production coexisting with Brassicaceae specialty seed production. Maintaining genetic purity in particular species necessitates isolation distances of up to three miles. This is a requirement for specialty seed production (through a private pinning organization) but not for canola. Advocates for canola see its potential as a rotational crop for grass seed and wheat growers.

To address those challenges, research was conducted in 2006-2010 by Oregon State University (OSU), legislative hearings were held, and advisory committees were formed to find a resolution allowing coexistence between canola and other Brassicaceae specialty seed production. Despite these efforts, compromises for coexistence were not found, and not all parties could agree.

Consequently, two House bills, HB 2427 (2013) and HB 3382 (2015), were passed. HB 2427 tasked OSU with conducting research in cooperation with growers and the Oregon Department of Agriculture (ODA). HB 3382 further directed OSU to include a review of global data on canola and Brassica specialty seed production.

These bills permitted 500 acres of canola to be grown annually in the Willamette Valley Protected District under ODA permits from 2015 to 2019. HB 3382 directed ODA to develop recommendations for coexistence based on OSU's findings.

In 2018, ODA held meetings with advisory committee members to review OSU's research, find common ground, address concerns, and devise solutions to support agriculture in the Willamette Valley, while safeguarding existing crops and the specialty seed industry's economic significance in the Willamette Valley. The 2019 Legislature retained the 500-acre cap on canola production through June 2023.

In 2023, SB 789 extended the 500-acre cap for one more growing season. It tasked ODA with creating recommendations for legislation to identify fields in the Willamette Valley Protected District producing Brassica seed crops, aiming to alleviate conflicts associated with that production. These recommendations follow the Board of Agriculture resolution on coexistence and advisory committee discussions involving OSU researchers, specialty seed growers, organic specialty seed growers, canola growers, and relevant associations.

At the first advisory meeting, the attendees identified common values for working with brassica seed production (including canola) in the Willamette Valley Protected District (WVPD). These values included:

- The integrity of the variety that is being produced. Customer trust in genetic purity.
- The need for rotation crops.
- Autonomy in determining what crops growers grow.
- Certainty and clarity with any system being used.
- Continuity.
- Ecosystem management.
- Trust in the research.
- Equal access to resources.
- Precision.
- Licensee/registrator access to any required pinning system.

At the highest level, the advisory committee came up with the following recommendations:

- Maintain current WVPD boundaries.
- Mandate isolation distances for brassica specialty seed crops.
- Only regulate brassica specialty seed crops in the WVPD and address other concerns separately.
- Require growers to obtain an annual ODA license/registration to facilitate transparency and compliance in brassica specialty seed cultivation in the WVPD.
- Require growers to continue to follow statewide Brassica General Production Area rules.
- Growers near each other must resolve issues about isolation distances and keep records of agreements.
- Clearly outline ODA's regulatory responsibilities.
- Use mediation, like the Six Rivers Dispute Resolution Center, to resolve isolation conflicts.

Part I: Governing Policy Recommendations

The recommendation is to establish uniform requirements for all brassica seed production in the Willamette Valley Protected District (WVPD). The governing policies recommended in Part I may be adopted independently of a mapping tool as described in Part II.

Definitions

The agency recommends establishing clear definitions of the following:

- **Willamette Valley Protected District (WVPD)** – It is recommended to maintain the current definition in Oregon Laws 2023 c.370, § 1(1)((b)).
- **Brassica specialty seed crop or brassica seed crop:** means any commercial production of brassica species *Brassica rapa*, *B. napus*, and *B. juncea*, hybrid, or variety that results in seed formation.
- **Brassica seed producer:** Means a person who grows a Brassica seed crop within the WVPD.
- **Brassica seed producer license/registration:** Would be given the meaning to describe a license/registration issued by the ODA to a brassica seed producer.
 - Possible consideration for an ODA hosted GIS map where producers can self-identify fields for basic communication and collaboration. This type of tool would not be a regulated pinning system.
- **Isolation distance or isolation:** Maintain the displacement distance of three (3) miles between brassica seed crop field edges and four (4) miles for GE brassica seed crops to mitigate production conflicts among brassica seed producers.
- **Isolation distance exception agreement:** means an agreement between any brassica seed producers to plant in fields that are closer than the isolation distance. Agreements must be in writing, legally binding on the parties, accepting the risk of not maintaining isolation distances and signed by the parties to the agreement.
- **Genetically Engineered (GE) brassica:** Would be given the meaning of a brassica GE plant that has been given the determination of nonregulated status by USDA Animal and Plant Health Inspection Service (APHIS) pursuant to 7 CFR part 340.

Brassica seed producer license/registration

The agency recommends that producers who intend to establish a brassica seed crop field obtain a license/registration from ODA.

- **Eligibility:** Any person that intends to produce brassica seed crops in a year must obtain a brassica seed producer license/registration. Producers would be required to notify the ODA by a date certain time of all fields and exception agreements.
- **Enforcement:** Any person found to be in violation of state law governing the brassica seed crop production may be subject to a civil penalty of up to \$25,000 and may be ineligible to receive a brassica seed producer license/registration for up the three (3) years. Any person to be found to have committed a negligent

violation may be subject to a civil penalty of up to \$50,000 and may be ineligible to receive a brassica seed producer license/registration for up the five (5) years.

- **Fees:** Consideration for cost recovery fee established in rule by ODA (does not include startup costs).

Brassica seed crop production

The following are key governing policies that are recommended for brassica seed crops in the WVPD.

- **Brassica seed producer license/registration:** Required.
- **Disease prevention:** Subject any relevant rules established under ORS 570 (Pest and Disease).
- **Isolation distance:** Producers shall maintain the minimum isolation distance defined above.
- **Isolation distance exception agreement:** Brassica seed producers may obtain isolation distance exception agreement by determined dates in rule.
 - Producers do not need exception agreements from fields under their ownership or control.
 - Following the determined dates, any producer seeking to establish a brassica seed crop bears the sole responsibility to obtain an exception agreement.
 - Any producer of a GE brassica bears the sole responsibility to obtain an exception agreement.
 - People who are unable to obtain an exception agreement by the specified deadlines have the option to request a decision from the Department through a cost recovery process. This decision-making process is determined by chance.
 - Producers should retain records for three (3) years.

Public Records

Consideration should be given to explicitly address the level of information that may be provided under Oregon's public record law.

- **Aggregation:** It is recommended to provide information upon request under Oregon's public record law in an aggregated method of brassica species to mitigate individual business and trade-sensitive information from being disclosed.

Part II: A licensee/registrant accessible pinning map

To foster the implementation of the governing policies, the legislature may consider establishing and funding a pinning map.

- **Pinning:** Persons with a valid ODA brassica seed producer license/registration would be required to identify their brassica seed crop fields by a determined date set in rule. A second determined date would be set for any exception agreements.
 - Field specific level data would be required for enforcement.
- **Funding:** State general fund is likely necessary for the startup costs with cost recovery fees determined by rule.

- **Public Records:** Additional consideration must be given to a mapping tool that protects proprietary, business, and trade information from being viewed and requested.
- **Hosting:** ODA may be the hosting entity with fees supporting appropriate staffing levels and IT requirements.

Conclusion

This report outlines:

- the recommended governing policies for brassica seed production in the Willamette Valley Protection District, and
- assumes that the legislative process will need to include additional public considerations.

Unresolved Concerns

The advisory group discussed the following topics which require additional policy considerations and do not have a recommendation by ODA. At the end of the final advisory meeting, significant topics were introduced into the conversation that are remain unresolved due to their timing.

- **Acreage limitation:** A concern regarding establishing acreage limitations for brassica seed crops was raised during the final meeting. Acreage limitation would require additional governing policy and resources, including an allocation process. No limit was suggested.
- **Genetically Engineered (GE) brassica:** The recommendation above specifies that GE brassica seed crops be isolated at a greater distance than other brassica seed crops. And, that the sole responsibility for any exception agreement lies with an interested GE brassica producer.

In the final meeting, the committee deliberated on two options: either prohibiting GE brassica in the WVPD (Willamette Valley Protected District) or implementing an acreage limit on canola if there were no restrictions on GE brassica. The committee was not able to come to a consensus.

- **Priority/Seniority:** A significant discussion point that contains no ODA recommendation is whether brassica seed producers would have priority/seniority in isolation distance considerations. Consideration must be given to this issue, as integrating existing practices with new standards of regulation will require additional conversations around equity.
- **Public rights-of-way:** A significant discussion point regarding the management of brassica plants along public rights-of-way was discussed. This concern exceeds the limits of the recommendation for policy related to the production of brassica seed crops.
- **Researching and measuring:** This report intends to make policy recommendations. Long-term research and economic reporting needs were raised in the advisory meetings. Any additional research or reporting should be considered independently of this report.