

**K.A.R. 4-34-24. Sampling, testing, and harvest requirements.** (a) No more than 30 days before any industrial hemp cultivated or produced pursuant to the act is harvested, each licensee shall allow a sample to be collected by the secretary for testing, using post-decarboxylation or any other similarly reliable method, to determine the delta-9 tetrahydrocannabinol concentration of industrial hemp cultivated or produced. A licensee shall not harvest any industrial hemp before receiving notice that testing of the samples has shown a delta-9 tetrahydrocannabinol concentration of less than 0.3 percent on a dry-weight basis and that the licensee may harvest the industrial hemp.

(b) Each licensee shall complete each harvest of industrial hemp plants, plant parts, grain, or seeds within 30 days of sampling.

(c) If a licensee fails to harvest all of the industrial hemp plants, plant parts, grain, or seeds within the time frame specified in subsection (b), the licensee shall perform one of the following:

(1) Notify the department that harvest has not occurred within seven days after the expiration of the time frame specified in subsection (b), request that the department collect a subsequent pre-harvest sample, and pay the required sampling and testing fees; or

(2) notify the department that harvest has not occurred within seven days after the expiration of the time frame specified in subsection (b) and inform the department of the date by which the licensee intends to effectively dispose of the industrial hemp plants, plant parts, grain, or seeds. The licensee shall conduct effective disposal no more than seven days after the licensee informs the department that harvest has not occurred and shall notify the department of any change in the effective disposal date. Effective disposal of industrial hemp plants, plant parts,

grain, or seeds shall occur by the licensee and at the licensee's expense. All volunteer plants within and adjacent to the licensed growing area shall be effectively disposed of during the current license year and for at least three years after the last reported date of planting. If effective disposal of industrial hemp plants, plant parts, grain, or seeds occurs, no refund shall be issued for any fees paid by a licensee, the cost of effective disposal, or the value of the crop.

(d) Each licensee shall submit a harvest report to the department no more than 15 days after each harvest of industrial hemp plants, plant parts, grain, or seeds is completed for each lot. Each harvest report shall identify the following:

(1) The global positioning system coordinates of the entrance to the licensed growing area and each lot where industrial hemp plants were harvested;

(2) the total number of acres planted in the licensed growing area;

(3) the number of acres planted in each lot;

(4) the planting date for each lot;

(5) the total number of acres harvested from the licensed growing area;

(6) the number of acres harvested from each lot;

(7) the harvest date for each lot;

(8) the official name of the industrial hemp variety harvested from each lot; and

(9) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds harvested from each lot.

(e) Industrial hemp shall be subject to post-harvest sampling and testing by the secretary. Each licensee shall agree to provide the secretary access to any harvested industrial hemp or to provide the secretary with a copy of the bill of lading and, if available, a certificate of analysis or

similar document provided for any industrial hemp already sold or transferred to another person. All samples collected by the secretary shall be subject to testing, using post-decarboxylation or any other similarly reliable method, of delta-9 tetrahydrocannabinol concentration of industrial hemp produced. A licensee whose industrial hemp is sampled after it is harvested shall not sell, transfer, or transport any industrial hemp harvested from the licensed growing area where samples were collected until that licensee has received notice from the department that testing of the samples has shown a delta-9 tetrahydrocannabinol content of less than 0.3 percent on a dry-weight basis.

(f) Each licensee shall be assessed a \$225 fee for the required pre-harvest sample collected and tested by the secretary.

(g) At any time other than at the time of the required pre-harvest sample collected and tested by the secretary, a licensee may request that the secretary collect a sample and test the delta-9 tetrahydrocannabinol concentration, subject to a testing fee of \$225 for each test and additional costs assessed for the secretary's travel time and mileage.

(h) All samples collected by the secretary shall become the property of the secretary, and no compensation shall be owed to any licensee.

(i) Any licensee may request a test from a private laboratory at any time. However, test results from private laboratories shall not be considered official and shall not be substituted for a sample collected and tested by the secretary, and each licensee shall be responsible for the costs of testing by a private laboratory.

(j) Each sample collected and tested by the secretary and found to contain a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis shall result in

the hemp being classified as cultivated or produced in violation of the act and shall result in the issuance of a failing report of analysis. Hemp that receives a failing report of analysis may be eligible to be remediated pursuant to K.A.R. 4-34-25.

(k) Within seven days of notice of the failing report of analysis, any licensee may request, on a form provided by the secretary, an additional test by the secretary. The request shall include payment of a retesting fee of \$225 and any additional costs assessed for the secretary's travel time and mileage. If a licensee requests an additional test and the sample collected and tested pursuant to this subsection is found to contain a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis, then all plants in the licensed growing area shall be effectively disposed of as required by K.A.R. 4-34-25 or, if eligible, remediated pursuant to K.A.R. 4-34-25.

(l) For each licensee who is issued an order to effectively dispose of plants, one of the following requirements shall apply:

(1) The licensee shall be subject to a corrective action plan as specified in K.A.R. 4-34-29 and reported to the appropriate state or local law enforcement agency if the violation is deemed negligent.

(2) The licensee shall be reported to the United States department of agriculture, the office of the Kansas attorney general, the office of the United States attorney for the district of Kansas, and the appropriate state or local law enforcement agency if the violation is the result of a culpable mental state greater than negligence. If any plants are tested by the secretary and found to contain a delta-9 tetrahydrocannabinol concentration of greater than 2.0 percent, the

licensee responsible for those plants shall be presumed to have acted with a culpable mental state greater than negligence.

(m) Except as provided in K.A.R. 4-34-28, each licensee or an authorized representative of each licensee shall be present whenever the secretary collects a sample of industrial hemp cultivated or produced pursuant to the act and whenever a compliance inspection is conducted pursuant to this regulation. (Authorized by K.S.A. 2020 Supp. 2-3906; implementing K.S.A. 2020 Supp. 2-3903, as amended by L. 2021, ch. 76, sec. 4, and 2-3906; effective Jan. 8, 2021; amended, T-\_\_\_\_\_, \_\_\_\_\_.)

**K.A.R. 4-34-25. Remediation; effective disposal; violations.** (a) All hemp that is deemed to be in violation of the act for any reason or that contains a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis shall, by order of the secretary, be subject to effective disposal or remediation.

(b) Remediation shall not be allowed for any hemp for which the secretary has not approved a remediation plan. Hemp for which remediation is not allowed shall be effectively disposed of as specified in this regulation.

(c) Remediation shall include any method approved by the United States department of agriculture and may include either of the following:

(1) Separating and removing all flowers and floral materials from the stalks, leaves, and seeds of all plants or plant parts, which may include removal by hand or mechanical removal; or

(2) shredding the entirety of all plants or plant parts into hemp biomass, which may be accomplished with shredders, composters, specialty mechanical equipment, or similar means.

(d) Seeds removed from hemp plants or contained in hemp biomass as a result of remediation shall not be used for propagation purposes.

(e) Each remediation plan or request to submit a remediation plan shall be submitted to the secretary before the expiration of the 10-day period following the licensee's receipt of notice that effective disposal is required as specified in subsection (q).

(f) Each remediation plan submitted to the secretary pursuant to this regulation shall include the following, at a minimum:

(1) The date that remediation will begin;

(2) the approximate date that remediation will be completed;

- (3) the total number of acres that will be remediated;
- (4) the intended end-use of all plants or plant parts to be remediated;
- (5) the location where each plant or plant part will be stored before and after remediation and the location where remediated material will be stored following remediation;
- (6) the method or methods of remediation intended to be used; and
- (7) any other information that is relevant to the circumstances surrounding the cultivation or production of the hemp proposed to be remediated or the intended remediation plan and that the secretary requests.

(g) Any remediation plan that does not contain all required information may be denied or returned to the licensee. Any remediation plan may be denied at the discretion of the secretary, based on the circumstances surrounding the cultivation or production of the hemp proposed to be remediated.

(h) Hemp for which a failing report of analysis is issued may be remediated by the licensee upon the secretary's approval of the remediation plan submitted by the licensee, if the most recent sampling and testing conducted showed the hemp to have a delta-9 tetrahydrocannabinol concentration of 1.0 percent or less on a dry-weight basis.

(i) Any licensee may request permission from the secretary to submit a remediation plan for any hemp for which a failing report of analysis is issued if the most recent sampling and testing conducted showed the hemp to have a delta-9 tetrahydrocannabinol concentration greater than 1.0 percent but not greater than 2.0 percent on a dry-weight basis. If the secretary agrees to review a remediation plan based upon the circumstances surrounding the production or

cultivation of the hemp, then the industrial hemp may be remediated upon approval of the plan submitted by the licensee.

(j) Each licensee who conducts remediation of any hemp shall allow representatives of the secretary to be present during the remediation. Proof of remediation may be required to be provided to the secretary.

(k) All plant material that is undergoing remediation shall be clearly labeled to indicate that the plant material is remediated hemp biomass and to verify the source of all of the hemp that comprises the remediated material. Remediated hemp biomass shall require a bill of lading pursuant to K.A.R. 4-34-26, which shall identify the material as remediated hemp biomass and identify the source of all material used in the remediation.

(l) All plant material resulting from remediation shall be subject to postremediation sampling and testing and shall be required to be effectively disposed of as specified in this regulation and prohibited from entering commerce if the final postremediation testing performed shows the plant material to have a delta-9 tetrahydrocannabinol concentration of greater than 0.3 percent on a dry-weight basis.

(m) Remediation may be conducted as many times as is necessary to achieve a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry-weight basis. However, all hemp biomass that is not successfully remediated so as to have a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry-weight basis within 60 days of the issuance of the final failing report of analysis for any hemp that comprises the remediated hemp biomass shall be effectively disposed of as specified in this regulation.

(n) Hemp for which a failing report of analysis is issued and for which the most recent testing conducted shows a delta-9 tetrahydrocannabinol concentration greater than 2.0 percent on a dry-weight basis shall not be eligible for remediation and shall be required to be effectively disposed of as provided in this regulation.

(o) Acceptable methods of effective disposal shall include plowing under, mulching or composting, disking, mowing or chopping, deep burial, burning, or any other method allowed under federal law and approved by the secretary.

(p) If required pursuant to federal law, all hemp that requires effective disposal shall be destroyed or disposed of as required by the controlled substances act, 21 U.S.C. 801 et seq., and in compliance with requirements of the United States drug enforcement agency.

(q) If allowed pursuant to federal law, each licensee shall conduct effective disposal at the licensee's expense within 10 days of receiving notice that effective disposal is required. Each licensee shall effectively dispose of all volunteer plants within and adjacent to the licensed growing area during the current license year and for at least three years after the last reported date of planting. Each licensee shall allow representatives of the secretary to be present during the effective disposal of plants or plant parts, or proof of the effective disposal may be required by the secretary. Each licensee who conducts effective disposal shall, within 14 days of conducting the effective disposal, report the number of acres effectively disposed of to the department. A licensee who conducts effective disposal shall not be eligible for a refund of any fees paid, the cost of effective disposal, or the value of the crop.

(r) Each licensee whose plants are effectively disposed of shall be responsible for reimbursing any law enforcement agency whose officers or agents are required to participate in

or be present during the effective disposal for all of the law enforcement agency's costs associated with the effective disposal.

(s) Failure of a licensee to conduct effective disposal as required by the secretary within 10 days of receiving notice that effective disposal is required shall result in the secretary's conducting effective disposal at the expense of the licensee, unless an extension is granted by the secretary.

(t) A licensee's failure to conduct effective disposal as required by the secretary, failure to reimburse the secretary for any costs incurred as a result of the secretary's conducting effective disposal, or failure to reimburse any law enforcement agency for any costs associated with effective disposal shall be grounds for denial of any future hemp producer license application.

(u) Each licensee who violates the act with a culpable mental state of negligence shall be subject to a corrective action plan as specified in K.A.R. 4-34-29 and reported to the appropriate state or local law enforcement agency. Each licensee who violates the act with a culpable mental state greater than negligence shall be reported to the United States attorney's office and the Kansas attorney general's office, in addition to the appropriate state or local law enforcement agency. (Authorized by and implementing K.S.A. 2020 Supp. 2-3906; effective Jan. 8, 2021; amended, T-\_\_\_\_\_, \_\_\_\_\_.)

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(d) Seeds removed from hemp plants or contained in hemp biomass as a result of remediation shall not be used for propagation purposes.

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(1) The date that remediation will begin;

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- (6) the method or methods of remediation intended to be used; and
- (7) any other information that is relevant to the circumstances surrounding the cultivation or production of the hemp proposed to be remediated or the intended remediation plan and that the secretary requests.

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(h) Hemp for which a failing report of analysis is issued may be remediated by the licensee upon the secretary's approval of the remediation plan submitted by the licensee, if the most recent sampling and testing conducted showed the hemp to have a delta-9 tetrahydrocannabinol concentration of 1.0 percent or less on a dry-weight basis.

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