

Department of Agriculture, Plant Protection and Weed Control Program
Notice of Hearing on Proposed
Administrative Regulations

The Kansas Department of Agriculture will conduct a public hearing at 10:00 a.m. on November 8, 2021 to consider the adoption of proposed regulations. Due to the public health concerns posed by the COVID-19 pandemic, the hearing proceedings will be conducted virtually via video conferencing system only. Anyone desiring to participate in the public hearing via video conference must pre-register at:

<https://kansasag.zoom.us/meeting/register/tZUvceqtqD8qGNZIYJRDBbkWuWHYrpwMTS1O>.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Agriculture, 1320 Research Park Dr., Manhattan, Kansas 66502, or by e-mail to ronda.hutton@ks.gov. All interested parties will also be given a reasonable opportunity to orally present their views on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes. These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and their economic impact follows:

Due to the United States Department of Agriculture implementing its Final Rule on Commercial Hemp Production, which modified some requirements regarding commercial hemp production, the Kansas Department of Agriculture is proposing amendments to existing rules and regulations governing the Commercial Industrial Hemp Program.

K.A.R. 4-34-24 – This regulation governs sampling, testing, and harvest requirements. The Department is proposing to amend this regulation to extend the timeframe within which licensees must complete harvest after samples of hemp are collected. The amendment would require harvest to be completed within 30 days of sampling rather than the currently-required 15 days and is proposed in accordance with the corresponding provision of the USDA final rule that states, “Samples from cannabis plants must be collected within 30 days prior to the anticipated harvest, for total delta-9 tetrahydrocannabinol concentration level testing.”

K.A.R. 4-34-25 – This regulation governs effective disposal of hemp. The proposed amendment would allow hemp that contains a delta-9 tetrahydrocannabinol (“THC”) concentration greater than 0.3 percent on a dry-weight basis to be remediated into a lawful product, rather than requiring all such hemp to be effectively disposed of. The amendment would allow hemp biomass to enter commerce if it can be remediated so as to have a THC concentration of 0.3 percent or less on a dry-weight basis within 60 days of the issuance of a failing report of analysis. This amendment is proposed in accordance with the provision of USDA’s final rule that states, “A State or Tribal plan must include a procedure for the disposal or remediation of cannabis plants if the sample representing that plant tests above the acceptable hemp THC level.”

K.A.R. 4-34-29 – This regulation governs negligent violations of the Commercial Industrial Hemp Act. The proposed amendment changes the THC threshold at which hemp will be considered to have been produced negligently from 0.5 percent to 1.0 and is proposed in

accordance with the provision of USDA's final rule that states that "hemp producers do not commit a negligent violation...if they make reasonable efforts to grow hemp and the cannabis does not have a total THC concentration of more than 1.0 percent on a dry weight basis."

Economic Impact Statement:

These rules and regulations are authorized by the 2018 Farm Bill, the Commercial Industrial Hemp Act, and USDA's final rule on commercial hemp production. The proposed amendments are not mandated by federal law, but rather are permitted by federal law now that USDA rules regarding commercial hemp production have become less stringent in some respects. The amendments will ensure that Kansas law conforms with what is allowed under federal law, so these regulations, including the proposed amendments, do not differ from the approach taken by the federal government. Colorado may take a less restrictive approach to hemp production, due to the fact that Colorado has legalized both medicinal and recreational marijuana by state law and allowed the commercial sale of industrial hemp prior to the passage of the 2018 Farm Bill. Nebraska, Oklahoma, and Missouri all currently have USDA-approved commercial hemp plans comprised of regulations that do not differ substantially from the Department's current regulations. However, of those states, only Missouri, has submitted a plan to USDA that reflects the changes implemented by the final rule.

These amendments will enhance business activities and economic growth in Kansas, most significantly by allowing hemp that was previously required to be effectively disposed of to enter commerce if it can be remediated so as to contain an acceptable level of THC. The proposed remediation provisions will also significantly reduce the expenses that licensees have previously had to incur in effectively disposing of noncompliant hemp in accordance with DEA requirements. The lengthened harvest window and the revision of the negligent violation threshold will make production less burdensome in general, which may encourage new growers to become involved in the industry. The positive economic effect of the amendments is difficult to quantify due to the many variables and significant unknowns that remain in the hemp industry but has the potential to be significant long-term. The Department does not foresee the proposed amendments restricting business activities or growth in any way.

The proposed amendments will likely have a positive effect on the Kansas economy, specifically for individuals involved in hemp production. The Department estimates that all Kansas hemp growers combined will incur approximately \$5,000 worth of expenses during the 2021 growing season in post-harvest and post-remediation testing fees necessary for the remediation of noncompliant crops. Producers also may incur some expenses in the labor and equipment involved in conducting remediation. However, the benefits of having a viable economic use for a crop that would otherwise have to be destroyed absent these amendments should more than offset any such costs.

The other implementation and compliance costs of the proposed amendments will continue to be borne mostly by law enforcement and regulatory entities as they continue to oversee the production of hemp and the intersection of this area with criminal law. However, such costs will likely not change significantly compared to the costs that the Department's existing hemp regulations already impose on the responsible regulatory entities. Moreover, these regulations do not impose any mandatory requirements on the public at large. Participation in the industrial hemp program in general is voluntary, and any remediation efforts that producers undertake will also be voluntary—producers are still permitted to dispose of hemp that produces

an unacceptable level of THC.

Individuals who obtain commercial industrial hemp grower licenses, particularly those who produce hemp with a THC concentration in excess of 0.3 percent, will be directly affected by these proposed amendments. As discussed above, the benefits of these proposed amendments outweigh the costs, as they will allow producers a viable economic avenue for hemp that was previously required to be destroyed and promote research and development regarding hemp production.

The most significant aspects of the proposed amendments are specifically intended to reduce the cost and impact of participation in the industrial hemp program on producers and make hemp production more profitable and accessible. As discussed above, the amendments accomplish this by creating a viable commercial option for hemp that would have to be destroyed under the present regulations and expanding opportunities for industry-enhancing research. Additionally, in an effort to minimize cost and impact to law enforcement, the existing commercial hemp regulations require licensees to maintain documentation intended to assist law enforcement in determining whether a plant is marijuana or industrial hemp, as well as law enforcement reporting requirements in the event tested plants are shown to have a THC concentration over a certain threshold. Those requirements will remain in place with these amendments.

The Department estimates that all hemp producers combined will incur a total of \$5,000 in costs in remediating hemp during the 2021 growing season. This cost could remain substantially the same in future years or could vary significantly, as the legal landscape surrounding hemp production as well as producer knowledge is evolving quickly. The implementation and compliance costs of the proposed amendments will not exceed \$3.0 million over any two-year period. The Department arrived at its estimated \$5,000 annual cost figure by estimating based on previous growing season results that approximately 20 licensees will incur post-harvest or post-remediation testing fees during the 2021 growing season. The cost of a post-harvest testing fee is \$250 per K.A.R 4-34-12. As to the broader conclusion that the proposed amendments will enhance economic activity long-term, the Department relied in part on the findings of the Kansas Legislative Division of Post Audit on the topic of hemp production, which were published in September 2020.

The proposed regulations will not significantly increase or decrease revenues of cities, counties, or school districts. Most of the costs of the regulations in this regard will be borne by the department and law enforcement at the state level, though counties and municipalities could see some expenditures as a result of costs to local law enforcement. The Department sent letters to the League of Kansas Municipalities, the Kansas Association of School Boards and the Kansas Association of Counties inquiring about the costs the proposed amendments would impose on those entities. The Kansas Association of Counties and the Kansas Association of School Boards responded stating that neither of those entities anticipates the amendments will result in additional expense to them. No response was received from the League of Kansas Municipalities.

The proposed amendments were developed with the assistance of the Industrial Hemp Advisory Board, which is comprised of hemp industry advocates, legislators, and representatives of law enforcement agencies and research institutions. The Department also sent letters to the Kansas League of Municipalities, Kansas Association of School Boards, Kansas Association of Counties, Kansas Association of Chiefs of Police, Kansas County and District Attorneys'

Association, Johnson County Sheriff's Office Criminalistics Laboratory, Kansas Bureau of Investigation, Kansas Highway Patrol, Kansas Peace Officers' Association, Sedgwick County Regional Forensic Science Center, and the Kansas Sheriff's Association inquiring about the costs the proposed amendments would impose on those entities. The Department has received responses from the Kansas Association of Chiefs of Police, Kansas Association of Counties, Kansas Association of School Boards, and Kansas Peace Officers Association, with each entity stating that the proposed amendments would not result in additional expenses being incurred if they are implemented. No responses have been received from the other entities.

Though these regulations are not environmental regulations per se, it is worth noting that if these amendments are not adopted, Kansas hemp producers will not have a viable commercial option for hemp that produces a THC content of 0.3 percent or greater and would have to destroy all such hemp. The total cost of that scenario is difficult to estimate for many reasons but is potentially significant.

Any individual with a disability may request accommodations to participate in the public hearing and may request the proposed regulations and impact statement in an accessible format. Requests for accommodations should be made at least five working days in advance of the hearing by contacting Ronda Hutton at (785) 564-6715 or fax (785) 564-6777.

Copies of the regulations and their economic impact statement may be obtained by contacting the Department of Agriculture, Ronda M. Hutton, 1320 Research Park Drive, Manhattan, KS 66502 or (785) 564-6715 or by accessing the department's web site at agriculture.ks.gov. Comments may also be made through our web site at the following link <https://www.agriculture.ks.gov/document-services/public-comment>.

Mike Beam
Secretary
Kansas Department of Agriculture