

Department of Agriculture, Grain Warehouse Program
Notice of Hearing on Proposed
Administrative Regulations, Statewide

A public hearing will be conducted at 1:00 p.m. on July 22, 2022, in the 1st floor meeting room 124 of the Kansas Department of Agriculture (“Department”), 1320 Research Park Dr., Manhattan, Kansas, to consider the adoption of proposed regulations. The public hearing will be conducted in person and via video conferencing system. Members of the public who wish to attend the public hearing virtually must pre-register at: https://kansasag.zoom.us/meeting/register/tZ0lf-CpqjgqEtKU0ltB_Y16_RssiXGqdi03.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments regarding the proposed regulations. All interested parties may submit written comments prior to the hearing by mail or email to Kansas Department of Agriculture, Attn: Ronda Hutton, 1320 Research Park Dr., Manhattan, Kansas 66502, or ronda.hutton@ks.gov. Comments may also be made via the Department’s website at: <https://www.agriculture.ks.gov/document-services/public-comment>.

All interested parties will also be given a reasonable opportunity to orally present their views regarding 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:

The Department is proposing new regulations, amendments to existing regulations, and the revocation of some existing regulations for the administration of the Kansas Grain Warehouse Law, K.S.A. 34-101, *et seq.* and amendments thereto. These changes are proposed in order to implement the recent changes to the schedule of public warehouse license fees set out in K.S.A. 34-228, as well as to implement current industry policies and practices and to provide more detailed guidance as to requirements already set out in the Kansas Grain Warehouse Law. The proposed regulations are set out in detail below.

The proposed changes to the schedule of grain warehouse license fees will present increased costs to public warehousemen in Kansas. Those costs are set out in more detail below. Other than the costs presented by the proposed license fee regulation, the proposed regulations will not pose significant implementation and compliance costs because they either implement requirements that reflect existing industry practice or provide more detailed parameters for existing statutory requirements.

K.A.R. 4-25-1a – This regulation provides definitions relevant to and used throughout the regulations.

K.A.R. 4-25-2 – This regulation sets forth the records that public warehousemen are required to maintain. The proposed amendment to this regulation clarifies that such records may be maintained electronically.

K.A.R. 4-25-4 – This regulation states that a public warehouse is required to include all of its bulk grain capacity in its total licensed capacity, but that any portion of a warehouse’s licensed capacity may be dedicated “not for public use” with the approval of the Department. This regulation is proposed to be revoked because all of the language in the regulation is

proposed to be moved to new proposed regulation K.A.R. 4-25-19, which sets forth additional requirements for the licensed, conditional, and emergency storage spaces of a public warehouse.

K.A.R. 4-25-5 – This regulation requires public warehousemen to submit all executed warehouse receipts to the Department on a monthly basis and sets forth the requirements for the daily summarized position report that each public warehouse is required to maintain. The proposed amendment to this regulation states that all records required to be maintained pursuant to the regulation may be maintained electronically.

K.A.R. 4-25-7 – This regulation governs requirements for public warehouse receipt forms. The proposed amendment to this regulation states that warehouse receipts issued to a licensed public warehouse for subsequent issuance to a producer shall be issued to the licensed public warehouse by a vendor authorized by the secretary and shall be issued only in electronic form.

K.A.R. 4-25-8 – This regulation governs requirements for inbound scale tickets. The proposed amendment to this regulation requires public warehousemen to maintain copies of all inbound scale tickets and furnish copies of any inbound scale ticket to the Department upon request. The regulation states that copies of inbound scale tickets may be maintained in electronic form.

K.A.R. 4-25-9 – This regulation governs requirements for outbound scale tickets. The proposed amendment to this regulation requires public warehousemen to maintain copies of all outbound scale tickets and furnish copies of any outbound scale ticket to the Department upon request. The regulation states that copies of outbound scale tickets may be maintained in electronic form.

K.A.R. 4-25-10 – This regulation governs requirements for grain bank grain. The proposed amendment to this regulation would remove the phrase “and shall not be shown as a part of the total grain bank grain obligation” from subsection (b) of the regulation.

K.A.R. 4-25-11 – This regulation sets forth a definition for the word “grain.” This regulation is proposed to be revoked because the definition it contains is proposed to be moved to new regulation K.A.R. 4-25-1a pertaining to definitions.

K.A.R. 4-25-15 – This regulation provides that the inspection required by K.S.A. 34-228, and amendments thereto, shall be conducted at least once in the 12-month period commencing July 1 of each year. This regulation is proposed to be revoked because the most recent amendments to the Kansas Grain Warehouse Law require inspection every 18 months.

K.A.R. 4-25-16 – This regulation sets forth the schedule of fees for public warehouse licenses, as authorized by the increase in maximum license fee amounts implemented by the 2021 amendments to K.S.A. 34-228.

K.A.R. 4-25-19 – This regulation establishes requirements for licensed, conditional, and emergency storage spaces of a public warehouse. It provides that a public warehouse shall not be used for grain storage until the Department has measured the empty storage volume of the licensed public warehouse and determined it is adequate for storing grain in acceptable condition. The regulation also provides that a warehouseman who takes possession of a previously-licensed warehouse may begin using the facility for grain storage upon assuming

ownership and obtaining required licensure, provided that the secretary has previously measured the storage volume of the facility and determined that the facility is adequate for maintaining stored grain in acceptable condition. The regulation also sets out criteria that the Department will use for determining whether a facility is adequate to maintain grain in acceptable condition and establishes requirements for warehousemen who wish to utilize conditional or emergency storage. This regulation also incorporates the language that is currently contained in K.A.R. 4-25-4 discussed above.

K.A.R. 4-25-20 – This regulation establishes requirements for unpaid grain contracts. It requires all unpaid grain contracts to be signed by both the public warehouse and the seller of the grain, or evidenced by a written confirmation signed by both parties, within 30 days of the contract being entered into. The regulation provides that the required signatures may be in electronic or other similar form sufficient to verify that both parties have approved the contract. This regulation also requires public warehousemen to maintain unpaid grain contracts in a manner that allows the Department to easily access and verify such contracts during an examination and requires fulfilled unpaid grain contracts to either be stored separately from unfulfilled contracts or to be clearly marked to indicate that they are fulfilled.

K.A.R. 4-25-21 – This regulation governs safety requirements for licensed public warehouses. It requires that public warehouses be maintained in a manner that ensures they can be safely examined and inspected and requires each warehouse to be equipped with adequate and properly functioning ladders, catwalks, lifts, elevators, and any other equipment the secretary deems necessary for safe examination or inspection. This regulation also provides that the Department may refuse to perform any examination or inspection if a warehouse is in such a condition that it cannot be adequately examined or inspected or that it presents a danger to the health and safety of examination or inspection personnel. The regulation further provides that a functional unit that is not examined due to a determination that the facility cannot be adequately examined or is unsafe for examination personnel shall not be included on a daily position report, shall not be included in an exam, and shall not be used to cover a warehouse receipt or any other liability.

K.A.R. 4-25-22 – This regulation governs disciplinary actions for public warehousemen who violate the Kansas Grain Warehouse Law. It provides that public warehousemen who are in violation of the law shall be issued a report of conditions detailing the items or conditions that are out of compliance and shall have 15 days to provide a report to the Department detailing how the public warehouseman has remedied or plans to remedy each violation that was cited in the report of conditions. The regulation further provides that a public warehouseman who fails to respond to a report of conditions within 15 days of its issuance shall be subject to further disciplinary action, which may include suspension or revocation of the public warehouseman's license.

K.A.R. 4-25-23 – This regulation governs corrective action required to be taken by a public warehouseman who has undermeasured the volume of grain stored in a public warehouse. The regulation provides that a public warehouseman who undermeasures the volume of grain stored in a public warehouse by an amount equal to or greater than either 500 bushels or 1.5 percent of the licensed public warehouse's total grain inventory, separated by commodity, shall adjust the public warehouse's daily position report so that it reflects the volume of grain actually stored in the warehouse by commodity. The regulation provides that a public warehouseman who over measures the volume of grain stored in a public warehouse is not required to adjust the public warehouse's daily position report. The regulation further states that the volume of grain to

be considered stored in each licensed public warehouse for purposes of the regulation shall be the volume of grain stored in the licensed public warehouse as of the date and time that the licensed public warehouse's daily position report is provided to the secretary at the beginning of an examination.

The proposed regulations are not mandated by federal law. Contiguous states have regulatory schemes for public warehouses similar to the approach taken by these regulations. The Department does not anticipate that the proposed regulations will enhance or restrict business activity or growth in Kansas. Other than K.A.R. 4-25-16, which pertains to license fees, the proposed regulations will simply implement current industry practice or provide clearer guidance as to existing statutory requirements. The costs posed by the proposed increased licensed fees will be borne by licensed Kansas public warehousemen. The Department conducted extensive outreach to that stakeholder group, including organizations and individual stakeholders, both when the statutory increase in maximum license fees that authorizes K.A.R. 4-25-16 was being considered and throughout the development of these regulations. Stakeholders did not express concern that the proposed fee increases will restrict their business activities or growth.

Implementation and compliance costs of approximately \$58,228 will be passed along to licensed Kansas public warehousemen. Public warehouses may pass that cost increase on to their customers, but otherwise the Department does not anticipate that the proposed regulations will impose any additional costs on other businesses, sectors, public utility ratepayers, or individuals and does not anticipate the proposed regulations will impose any costs on local governments. The proposed regulations will not have a significant effect on the state economy as a whole. Licensed Kansas public warehouses and potentially agricultural producers who utilize public warehouses will be directly affected by the proposed rules and regulations.

The benefits of these proposed regulations outweigh the costs. If the Department does not raise its public warehousemen licensing fees, it will soon lack funding for a state-administered grain warehouse program, which is fee-funded. If the Department is no longer able to offer a state-administered grain warehouse program, Kansas public warehousemen will have to obtain licensure through the United States Department of Agriculture. The Department conducted extensive stakeholder outreach when contemplating the statutory amendment that authorizes the license fee increases proposed by these regulations, and stakeholders cited many reasons that they preferred to maintain state licensure. First, the requirements for federal licensure are stricter than those for state licensure, and not all qualified applicants are guaranteed licensure under the federal licensing scheme. Conversely, the Department issues a public warehouseman's license to all qualified applicants. Stakeholders also expressed a desire to maintain state licensure due to the professionalism and customer service they have experienced from the Department's grain warehouse program representatives. Finally, many of the proposed amendments that are not fee-related are aimed at ensuring safety in public warehouses, providing a mechanism for the Department to ensure the solvency of public warehouses, and promoting efficient use of resources, such as electronic storage of records.

The Department originally contemplated an additional license fee increase that would take effect in Fiscal Year 2024 and be in place in all subsequent license years, but it has elected to increase license fees only to the extent reflected in proposed K.A.R. 4-25-16. Additionally, the proposed license fee increase contained in K.A.R. 4-25-16 will ensure that Kansas public warehousemen are able to continue conducting business pursuant to state licensure and do not have to obtain federal licensure, which is more burdensome and offers less certainty and consistency than state licensure. The other proposed regulations will not impose significant costs

on licensed public warehousemen. The implementation and compliance costs of the proposed regulations will not exceed \$3.0 million in any two-year period. The estimate of the costs posed by the proposed license fee increase was calculated by multiplying the proposed license fees set forth in K.A.R. 4-25-16 by the number of currently-licensed public warehouses of each capacity set forth in the fee schedule contained in K.A.R. 4-25-16.

The Department does not anticipate the proposed regulations will significantly increase or decrease revenues of cities, counties or school districts, or impose functions or responsibilities on cities, counties or school districts that will increase their expenditures or fiscal liability. The Department sent letters to the League of Kansas Municipalities, the Kansas Association of School Boards, and the Kansas Association of Counties regarding the expected cost that these proposed regulations would impose on those entities. These letters requested a statement of quantified costs associated with implementation and compliance, an estimate of the total annual implementation and compliance costs, a statement of whether implementation and compliance costs will exceed \$3,000,000 over any two-year period, a statement of whether the draft regulations will increase or decrease the organizations' revenue, and a statement of whether the draft regulations will impose functions or responsibilities on the organizations that will increase their fiscal expenditures or fiscal liability. The Kansas Association of Counties and the League of Kansas Municipalities responded, with both organizations stating that they do not believe the proposed regulations present any increased costs to their members. No response was received from the Kansas Association of School Boards.

In developing these proposed rules and regulations, the Department sought input from the Kansas Grain and Feed Association and the Kansas Cooperative Council, as well as from individual stakeholder members of those organizations. These are not environmental regulations.

Any individual with a disability may request accommodations to participate in the public hearing and may request the proposed regulations and their economic 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, via telephone at (785) 564-6715 or via fax at (785) 564-6777. Handicapped parking is located on the west side of the building at 1320 Research Park Drive, Manhattan, and the west entrance to the building is accessible to individuals with disabilities.

Copies of the regulations and their economic impact statement may be obtained by contacting the Department via mail at Kansas Department of Agriculture, Attn: Ronda Hutton, 1320 Research Park Drive, Manhattan, KS 66502, via telephone at (785) 564-6715, or via the Department's website at: agriculture.ks.gov.

Michael M. Beam
Secretary
Kansas Department of Agriculture