

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

A public hearing will be conducted at 10:00 a.m. on December 7, 2020, in the 1st floor meeting room 124 of the Kansas Department of Agriculture, 1320 Research Park Dr., Manhattan, Kansas to consider the adoption of proposed regulations. Due to the public health concerns posed by the COVID-19 pandemic, the hearing proceedings will also be available via video conferencing system. Anyone desiring to participate in the public hearing via video conference must pre-register at:

https://kansasag.zoom.us/meeting/register/tJMpdu6qqTwqGtYU5_Y_Uk22Znv4hc-lnrOt.

Individuals planning to attend in person, please contact Ronda Hutton via email at ronda.hutton@ks.gov or telephone at (785) 564-6715. Due to social distancing restrictions, seating for those attending the hearing in person will be limited and will be provided on a first come, first serve basis.

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 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 passage of the 2018 Farm Bill, which removed hemp from the federal Controlled Substances Act, and the Commercial Industrial Hemp Act (“Act”), which allows the commercial production of Industrial Hemp in Kansas, the Kansas Department of Agriculture is proposing rules and regulations for a Commercial Industrial Hemp Program.

K.A.R. 4-34-22 – This regulation clarifies that K.A.R. 4-34-22 through 4-34-30 apply to the commercial production of industrial hemp and not to the production of industrial hemp for research purposes. It also sets out the general requirements for commercial industrial hemp applications and licenses and requirements for certain information that licensees must report directly to the United States Department of Agriculture’s Farm Service Agency. This regulation states that each licensee will be held responsible for any hemp plant cultivated or produced in violation of the Act, whether done by the licensee or by an employee, agent, contractor, or volunteer of the licensee. It also provides criminal history record check requirements and provides for the modification of a license, and provides that licenses are non-transferable, except in the event of the death of the licensee.

K.A.R. 4-34-23 – This regulation sets out planting and harvesting requirements. It requires that all industrial hemp cultivated or produced for commercial purposes originate from authorized seed or clone plants and states that all hemp seed shall be considered agricultural seed pursuant to K.S.A. 1415, *et seq.* and amendments thereto. It requires licensees to submit a field planting report within fifteen days of planting and requires licensees to maintain documentation regarding the source of all industrial hemp cultivated and produced, as well as documentation regarding the disposition of all industrial hemp cultivated or produced.

K.A.R. 4-34-24 – The regulation establishes the requirements for the testing and sampling of industrial hemp, including sampling and testing fees. It requires all industrial hemp be sampled no more than fifteen days before harvests and prohibits licensees from harvesting until they have received approval to do so. It also establishes permissible levels of delta-9 tetrahydrocannabinol (“THC”) of industrial hemp plants and sets out the requirements for effective disposal in the event THC content is found to be greater than 0.3 percent on a dry weight basis. This regulation provides that each licensee issued an order to effectively dispose of plants shall be placed on a corrective action plan if the violation is deemed negligent and reported to the Kansas Attorney General’s Office if the violation is the result of a culpable mental state greater than negligence.

K.A.R. 4-34-25 – This regulation establishes that all plants or plant parts deemed to have been cultivated or produced in violation of the Act for reasons other than containing a THC concentration greater than 0.3 percent on a dry-weight basis may be subject to effective disposal and sets out the requirements governing effective disposal. It provides that all licensees required to dispose of or destroy plants must do so in compliance with the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, and the requirements of the United States Drug Enforcement Agency, if doing so is required pursuant to federal law. If such compliance is not required pursuant to federal law, this regulation provides that a licensee required to destroy industrial hemp shall do so at their own expense, within ten days of receiving notice that destruction is required. It also requires reporting the number of acres effectively disposed of to the department. This regulation also provides that a licensee who violates the Act with a culpable mental state of negligence shall be placed on a corrective action plan, and a licensee who does so with a culpable mental state greater than negligence shall be reported to the Kansas Attorney General’s Office.

K.A.R. 4-34-26 – This regulation establishes requirements for the transportation of industrial hemp. It requires all industrial hemp that is transferred to be accompanied by a bill of lading and a certificate of analysis or other documentation, if available. It also provides that anyone in possession of unprocessed industrial hemp without a valid hemp producer’s license or a bill of lading may be presumed to have cultivated or produced that industrial hemp in violation of that Act and requires that all licensees comply with all provisions of the Act and the implementing rules and regulations as well as all applicable local, state, and federal laws and regulations related to industrial hemp.

K.A.R. 4-34-27 – This regulation establishes additional restrictions on hemp producers, including where industrial hemp can be cultivated or produced. It also prohibits interplanting, except by a state educational institution licensee and with the exception of ground cover. This regulation also includes requirements that signage be posted at each licensed growing area. It also establishes that licensees shall allow the Secretary to inspect unlicensed growing areas and adjacent areas and requires that each licensee destroy volunteer plants for at least three years after the last date of planting.

K.A.R. 4-34-28 – This regulation states that the Secretary shall be allowed to inspect all records of licensees related to industrial hemp and access all land of licensees that has been identified for the production or cultivation of industrial hemp to ensure compliance with the Act. It also provides that each licensee shall consent to the Secretary providing information to the United States Department of Agriculture (“USDA”), law enforcement, fire and rescue agencies, and the public regarding each licensed growing area and that each licensed growing area and adjacent areas shall be subject to access and inspection, including sampling, by the Secretary at all reasonable times.

K.A.R. 4-34-29 – This regulation deals with negligent violations and corrective action plans. It sets out a non-exhaustive list of events which may constitute a negligent violation and provides that a licensee who negligently violates the Act shall be required to follow a corrective action plan developed by the Secretary for a minimum of two years and sets out different requirements for corrective action plans and disciplinary actions based on whether the licensee has committed a first negligent violation, a second negligent violation within five years of a previous negligent violation, or a third negligent violation within five years of the first negligent violation.

K.A.R. 4-34-30 – This regulation establishes requirements for state educational institution licensees and state educational institution hemp processor registrants. It provides that state educational institutions are exempt from application and licensing or registration fees but shall be subject to all other rules and regulations applicable to licensees. It requires each state educational institution seeking licensure designate an individual who shall be responsible for all hemp-related activities and allows a state educational institution licensee to be granted a multi-year license upon written request.

Economic Impact Statement:

These rules and regulations are authorized by the 2018 Farm Bill and 2-3901, et seq., the Commercial Industrial Hemp Act. The 2018 Farm Bill authorized states to allow the commercial production of industrial hemp either by securing USDA approval of the state's plan for a state-regulated program or by allowing federal regulation of industrial hemp pursuant to uniform rules promulgated by USDA. Thus, these rules and regulations are not required by federal law—states that do not develop their own rules and regulations governing the commercial production of industrial hemp could still allow commercial industrial hemp production under federal rules. State plans may be more restrictive than federal requirements, as long as state requirements do not conflict with federal law. These proposed rules and regulations were written to comply with USDA's interim final rule on hemp, so they do not differ substantially from the rules and regulations that USDA will use to administer federal commercial industrial hemp programs in states that do not enact their own programs.

It is likely these regulations will provide significant long-term enhancement to the Kansas economy. Industrial hemp has a wide range of uses, and the potential for long-term growth to the agriculture industry as well as other sectors of the Kansas economy as a result of allowing the commercial production of the crop is therefore substantial. Difficulty does remain, however, in quantifying this potential benefit. Because industrial hemp production is new in Kansas, much remains unknown regarding both production methods and what the market will be for this crop if it is successfully produced. The rules and regulations will likely not restrict existing business activities in Kansas in any way.

All amounts shown below reflect amounts that will be assessed or incurred during fiscal year 2021, as all costs before that year will be assessed or incurred as part of the Industrial Hemp Research Program, rather than the Commercial Industrial Hemp Program. The estimated number of licensees for each license category is based on the number of licensees who participated in the Industrial Hemp Research Program in 2019. The annual fees expected to be levied under the Commercial Industrial Hemp Program are as follows:

Category	Proposed Fee	Estimated Number	Total Fees
Application Fee	\$ 100.00	220	\$ 22,000.00
Grower License	\$ 1,200.00	205	\$ 246,000.00
Processor Registration	\$ 200.00	25	\$ 5,000.00
Laboratory Testing Fee	\$ 225.00	205	\$ 46,125.00
Modification Fee	\$ 50.00	50	\$ 2,500.00
Criminal History Record Check Fee	\$ 47.00	220	\$ 10,340.00
			\$ 331,695.00

Individuals who obtain commercial industrial hemp licenses and hemp processor registrations as well as businesses that sell agricultural inputs, farm equipment, greenhouse materials, and hemp products will be directly affected by these proposed regulations.

These proposed regulations have the potential to provide significant long-term economic benefit to the state of Kansas. As industrial hemp has a wide variety of uses, positive impacts will likely be seen to the agriculture sector as well as other sectors of the Kansas economy. The economic impact of commercial industrial hemp production is difficult to quantify or predict with certainty, however, as the success of industrial hemp in Kansas is dependent upon the usual factors that affect agricultural production. Market volatility and weather events will play a significant role in determining the economic impact of industrial hemp in any given growing season. These difficulties are magnified in the case of industrial hemp because farmers, economists, and others in the industry still have much to learn about this crop.

The costs of administering these proposed rules and regulations will remain largely the same as the costs under the Industrial Hemp Research Program because USDA sampling and testing requirements remain quite strict, and law enforcement will continue to bear costs in determining the difference between lawful hemp and illegal marijuana. Overall, though, the potential economic benefit of these regulations far outweighs the costs that they present.

In the interest of minimizing the cost of the regulations to law enforcement agencies, the regulations contain documentation requirements 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.

The total annual and total implementation and compliance costs reasonably expected to be incurred by or passed along to business, local governments, or members of the public is \$331,695.00. In determining the total implementation and compliance costs expected to be incurred by other governmental agencies, letters of request were sent 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. No responses were received from those entities.

The proposed regulations will not significantly increase or decrease revenues of cities, counties, or school districts. Most of the costs of the regulations 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.

Letters of request were sent to the League of Kansas Municipalities, the Kansas Association of Counties, and the Kansas Association of School Boards, inquiring whether the proposed regulations will have an economic effect on those organizations. 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. Furthermore, draft regulations were shared with the public via the Kansas Department of Agriculture's website and the public was able to submit comments or concerns to the department.

The department does not anticipate any costs accruing if the proposed regulations are not adopted.

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. 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 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>.

Michael M. Beam
Secretary
Kansas Department of Agriculture