

Agriculture and Natural Resources

A-1 Industrial Hemp

Background

Industrial hemp is a variety of the *Cannabis sativa* plant. Industrial hemp is of the same plant species as marijuana, but is genetically different. As defined by Kansas 2018 SB 263 and the federal Agricultural Act of 2014 (Section 7606, known as the Federal Farm Bill), industrial hemp contains less than 0.3 percent delta-9 tetrahydrocannabinol (THC) on a dry weight basis.

There are three general categories of industrial hemp products: seeds and grains, fiber, and floral plant extracts. These products are produced from the fiber, roots, stalks, leaves, seeds, or floral materials of the industrial hemp plant.

Federal Industrial Hemp Policy

Section 7606 of the Agricultural Act of 2014 legalized the growth and cultivation of industrial hemp in accordance with state law. The legislation authorized states to create agricultural pilot programs to research the growth, cultivation, or marketing of industrial hemp.

Section 7606 did not remove “industrial hemp” from the federal list of controlled substances, thus restricting industrial hemp activities to the extent authorized in Section 7606. In 2016, the U.S. Department of Agriculture, in consultation with the U.S. Food and Drug Administration and the U.S. Drug Enforcement Administration, released the *Statement of Principles on Industrial Hemp* to provide guidance on how federal law applies to state activities authorized in Section 7606. (The *Statement of Principles* can be accessed at <https://www.federalregister.gov/documents/2016/08/12/2016-19146/statement-of-principles-on-industrial-hemp>.) Specifically, Section 7606 limited industrial hemp growth or cultivation to state agricultural pilot programs established by a state department of agriculture or state agricultural agency. Only state departments of agriculture and institutions of higher education (or persons licensed with them to conduct research) may grow or cultivate industrial hemp as part of the agricultural pilot program. Additionally, for purposes of marketing research, industrial hemp products may be sold in or among states with an agricultural pilot program, but may not be sold in states where such a sale is prohibited by state law. Federal law prohibits the transportation of industrial hemp plants and seeds across state lines.

Industrial Hemp in Kansas

In 2018, the Legislature passed SB 263, which created the Alternative Crop Research Act (Act); the Act became effective May 3, 2018. The Act allows the Kansas Department of Agriculture (KDA) to develop a pilot research program to grow and cultivate industrial hemp and promote the research and development of industrial hemp, in accordance with federal law. KDA may act alone or coordinate with a state institution of higher learning. The Act allows KDA to license individuals to participate in the pilot program under its authority. Additionally, the Act removes industrial hemp, when cultivated, possessed, or used for activities authorized by the Act, from the definition of “marijuana” for criminal law and controlled substances purposes.

KDA Rules and Regulations

KDA is charged with developing rules and regulations by December 31, 2018, to implement the pilot program. KDA released draft rules and regulations in July 2018. (The draft rules can be accessed at <http://agriculture.ks.gov/docs/default-source/pp-industrial-hemp/hemp-regs-revised-7-5-18.pdf?sfvrsn=0>.) The draft rules and regulations for the industrial hemp pilot program include the following:

- An approval process for all individuals desiring to participate in the pilot program. Any individual who desires to cultivate, grow, handle, harvest, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds must submit a research license application and applicable fees. All persons to be involved in the pilot program must be included on the application, including farm hands and harvesters;
- The requirement that all pilot program applications include a research proposal. Such a research proposal must include the type of research to be conducted, the purpose of the research, the data to be collected, the location of research (including the number of acres or square

feet), the methods to be used to conduct the research, the intended duration of the research, the anticipated results of the research, and any other necessary information;

- The requirement that any individual applying to participate in the pilot program and any individual included on a research license application be fingerprinted and submit to state and national criminal history record checks. Individuals with felony violations involving controlled substances are disqualified from participating in the program;
- The establishment of a State Advisory Board to review pilot program applications and research proposals and recommend to the Secretary of Agriculture (Secretary) which applications to approve. Board members are to be appointed by the Secretary and each member must be recognized for knowledge and leadership in crop research, industrial hemp production or processing, law enforcement, seed certification, membership in the Kansas Legislature, or other qualifications identified by the Secretary;
- The requirement that pilot program licensees submit a pre-harvest report to KDA at least 30 days before the anticipated harvest of industrial hemp plants, plant parts, grain, or seeds. KDA will then conduct sampling and testing of the industrial hemp to determine THC levels before the licensee may harvest. Once KDA approves the licensee for harvest, the licensee has ten days to harvest;
- The process for which individuals employed by or affiliated with a state educational institution may conduct industrial hemp research; and
- The potential risks and expenses to the licensee for the movement of industrial hemp plants, plant parts, grain, or seed into, out of, or within the state of Kansas.

Fee Fund and Licenses

SB 263 also created the Alternative Crop Research Act Licensing Fee Fund (Fund) in the State Treasury. KDA is authorized to establish fees for licenses, license renewals, and other necessary expenses to offset the costs associated with implementing the pilot program. Moneys received from fees collected by KDA will be deposited in the Fund. In its draft rules and regulations, KDA created three separate licenses and the following fee structure, which are described below.

Research Grower License

Individuals who have been issued a research grower license are authorized by KDA to cultivate, grow, handle, harvest, store, and transport industrial hemp plants, plant parts, grains, or seeds in Kansas. Licensed growers are authorized to conduct these activities only in specific research sections (defined as land or buildings licensed by KDA under the pilot program where the licensee may conduct industrial hemp research). The research grower license fee is \$1,000 for the initial licensed research section, plus \$1,000 per additional licensed research section.

Research Processor License

Individuals who have been issued a research processor license are authorized by KDA to store and handle industrial hemp plants, plant parts, grains, or seeds and take part in any aspect of turning raw, harvested industrial hemp into a separate industrial hemp product in Kansas. The research processor license fee is \$3,000 per processing facility or mobile processing facility for fiber or grain, and \$6,000 per processing facility or mobile processing facility for floral material.

Research Distributor License

Individuals who have been issued a research distributor license are authorized by KDA to distribute, transport, handle, and store raw, harvested industrial hemp plants, plant parts, grain, seed, and certified seed in Kansas. The

research distributor license fee is \$2,000 per licensed research section.

Other States

As of 2018, at least 38 states have considered legislation related to industrial hemp. Most states that have created or authorized the creation of industrial hemp research pilot programs use the federal definition of “industrial hemp” and require a concentration of less than 0.3 percent THC on a dry weight basis. West Virginia deviates from the federal definition and defines “industrial hemp” as containing less than 1.0 percent THC on a dry weight basis.

States with industrial hemp research programs created in accordance with Section 7606 of the Agricultural Act of 2014 and that authorize individuals to participate in the program are required to license, register, or permit these individuals with the state agricultural agency overseeing the program. Such licensing or registration generally includes criminal background checks and registration of growing sites.

Protection from criminal prosecution or civil liability for the possession of industrial hemp varies by state. Some states (like Kansas) remove industrial hemp from the definition of “marijuana” or from the list of controlled substances for criminal law purposes. Other states specifically carve out an exception for individuals participating in an industrial hemp research program under the state department of agriculture.

For more information, please contact:

Jessa Farmer, Research Analyst
Jessa.Farmer@klrd.ks.gov

Karen Kapusta-Pofahl, Fiscal Analyst
Karen.Kapusta-Pofahl@klrd.ks.gov

Raney Gilliland, Director
Raney.Gilliland@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181