

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.

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Agriculture and Natural Resources

A-2 State Water Plan Fund, Kansas Water Authority, and State Water Plan

State Water Plan Fund

The State Water Plan Fund is a statutory fund (KSA 82a-951) that was created by the 1989 Legislature for the purpose of implementing the State Water Plan (KSA 82a-903). The State Water Plan Fund is subject to appropriation acts by the Legislature and may be used for the establishment and implementation of water-related projects or programs and related technical assistance. Funding from the State Water Plan Fund may not be used to replace full-time equivalent positions or for recreational projects that do not meet the goals or objectives of the State Water Plan.

Revenue

Revenue for the State Water Plan Fund is generated from the following sources:

Water protection fees. A water protection fee of \$0.03 per 1,000 gallons of water is assessed on the following:

- Water sold at retail by public water supply systems;
- Water appropriated for industrial use; and
- Water appropriated for watering livestock.

Fees imposed on fertilizer and pesticides. A tonnage fee on fertilizer and a fee for the registration of pesticides is assessed and transferred to the State Water Plan Fund in the following amounts:

- Inspection fees are imposed on each ton of fertilizer sold, offered or exposed for sale, or distributed in Kansas. Of that fee, \$1.40 per ton is credited to the State Water Plan Fund; and
- Every agricultural chemical that is distributed, sold, or offered for sale within the state must be registered, with an annual fee assessed for each registration. The law requires that \$100 from each registration fee be credited to the State Water Plan Fund.

Sand royalty receipts. A fee of \$0.15 per ton of sand sold is deposited in the State Water Plan Fund.

Pollution fines. Certain fines and penalties are levied by the Kansas Department of Health and Environment (KDHE) for water-related pollution, including:

- Violation of terms or conditions relating to public water supply systems;
- Commission of prohibited acts in relation to the operation of a public water supply system; and
- Violations of law governing the disposal of solid and hazardous waste.

Clean water drinking fee. A clean water drinking fee of \$0.03 per 1,000 gallons of water is assessed on retail water sold by a public water supply system and delivered through mains, lines, or pipes. Since July 1, 2007, revenue from the clean water drinking fee has been distributed as follows:

- 5/106 to the State Highway Fund;
- Of the remaining, not less than 15.0 percent for on-site technical assistance for public water supply systems; and
- The remainder to renovate and protect lakes used for public water supply.

State General Fund transfer. By statute, \$6.0 million annually is to be transferred from the State General Fund to the State Water Plan Fund. In recent fiscal years, this amount has been reduced in appropriations bills. The 2018 Legislature approved a transfer of \$2.75 million from the State General Fund to the State Water Plan Fund for FY 2019.

Economic Development Initiatives Fund transfer. By statute, \$2.0 million is to be transferred from the Economic Development Initiatives Fund to the State Water Plan Fund. The 2018 Legislature approved a transfer of \$500,000 from the Economic Development Initiatives Fund to the State Water Plan Fund for FY 2019.

STATE WATER PLAN FUND REVENUE AND TRANSFERS*			
Receipts and Transfers In	FY 2017 Actual	FY 2018 Actual	FY 2019 Estimated
State General Fund	\$ 0	\$1,400,000	\$ 2,750,000
Economic Development Initiatives Fund	0	0	500,000
Municipal Water Fees	3,028,509	2,993,852	3,267,271
Industrial Water Fees	973,133	904,987	1,120,701
Stock Water Fees	387,655	368,617	464,256
Pesticide Registration Fees	1,359,410	1,431,093	1,334,523
Fertilizer Registration Fees	3,491,049	3,354,186	3,568,921
Pollution Fines and Penalties	152,205	158,620	165,000
Sand Royalty Receipts	21,975	6,580	45,000
Clean Drinking Water Fees	2,724,051	2,701,067	2,820,674
Total Receipts/ Transfers In	\$ 12,137,987	\$ 3,319,002	\$ 16,036,346
* Does not include cash forward, released encumbrances, or other service charges.			

Expenditures

Expenditures from the State Water Plan Fund are based on priorities of the State Water Plan. The State Water Plan is developed and approved by the Kansas Water Authority. The following table summarizes recent actual and approved expenditures from the State Water Plan Fund.

STATE WATER PLAN FUND EXPENDITURES*			
Agency/Project	FY 2017 Actual	FY 2018 Actual	FY 2019 Approved
Department of Agriculture			
Interstate Water Issues	\$ 451,841	\$ 403,402	\$ 497,386
Water Use Study	107,488	75,000	72,600
Basin Management	781,007	539,802	619,692
Water Resources Cost Share	2,041,642	1,601,175	1,948,289
Nonpoint Source Pollution Assistance	1,866,556	1,331,554	1,860,023
Aid to Conservation Districts	2,092,637	2,000,000	2,092,637
Water Transition Assistance/CREP	178,572	222,280	201,963
Watershed Dam Construction	559,353	528,157	550,000
Water Quality Buffer Initiative	179,893	140,648	200,000
Riparian and Wetland Program	158,892	44,363	154,024
Streambank Stabilization	0	0	500,000
Irrigation Technology	0	0	100,000
Crop Research - Sorghum	0	0	150,000
Crop Research - Hemp	0	0	100,000
<i>Subtotal - Department of Agriculture</i>	<u>\$ 8,417,881</u>	<u>\$ 6,886,381</u>	<u>\$ 9,046,614</u>
Kansas Water Office			
Assessment and Evaluation	\$ 545,732	\$ 446,046	\$ 450,000
GIS Database Development	112,306	50,000	0
MOU-Storage Operation and Maintenance	302,071	363,699	350,000
Technical Assistance to Water Users	377,645	382,256	325,000
Streamgaging	431,282	350,000	431,282
Kansas River Alluvial	0	100,000	50,000
Bathymetric Surveys	0	0	100,000
Streambank Stabilization	400,000	1,000,000	0
Best Management Practices Implementation	0	0	900,000
Milford Lake RCPP	0	0	200,000
Water Vision Education	0	0	100,000
Streambank Stab. Effectiveness Research	0	0	100,000
Harmful Algae Bloom Research	0	0	100,000
Water Technology Farms	0	0	75,000
Equus Beds Chloride Plume	0	0	50,000
Water Resource Planner	0	0	101,848
<i>Subtotal - Kansas Water Office</i>	<u>\$ 2,169,036</u>	<u>\$ 2,692,001</u>	<u>\$ 3,333,130</u>
Kansas Department of Health and Environment - Division of the Environment			
Contamination Remediation	\$ 654,095	\$ 627,449	\$ 691,394
Total Maximum Daily Load	244,057	244,112	278,029
Nonpoint Source Program	297,768	235,045	303,208
Harmful Algae Bloom Pilot	0	0	450,000
Watershed Restor. and Protect. (WRAPS)	555,884	549,996	730,884
<i>Subtotal - KDHE-Environment</i>	<u>\$ 1,751,804</u>	<u>\$ 1,656,602</u>	<u>\$ 2,453,515</u>
University of Kansas			
Geological Survey	\$ 26,841	\$ 26,841	\$ 26,841
Total Agency/Project Expenditures	<u>\$ 12,365,562</u>	<u>\$ 11,261,825</u>	<u>\$ 14,860,140</u>

Kansas Water Authority

The Kansas Water Authority (Authority) is a 24-member board that provides water policy advice to the Governor, Legislature, and the Director of the Kansas Water Office. The Authority is responsible for approving water storage sales, the State Water Plan, federal water contracts, and regulations and legislation proposed by the Kansas Water Office. The Authority meets quarterly. The Authority consists of 13 voting members and 11 ex officio members.

Voting membership includes:

- One member appointed by the Governor (also serving as chairperson);
- One member appointed by the President of the Senate;
- One member appointed by the Speaker of the House;
- A representative of large municipal water users;
- A representative of small municipal water users;
- A board member of a western Kansas Groundwater Management District (including districts 1, 3, and 4);
- A board member of a central Kansas Groundwater Management District (including districts 2 and 5);
- A member of the Kansas Association of Conservation Districts;
- A representative of industrial water users;
- A member of the State Association of Watershed Districts;
- A member with a demonstrated background and interest in water use, conservation, and environmental issues; and
- Two representatives of the general public.

Ex officio membership includes:

- The State Geologist;
- The Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture;

- The Secretary of Health and Environment;
- The Director of the Kansas Water Office (also serving as secretary);
- The Director of the Agricultural Experiment Station of Kansas State University;
- The Chairperson of the Kansas Corporation Commission;
- The Secretary of Wildlife, Parks and Tourism;
- The Secretary of Commerce;
- The Executive Director of the Division of Conservation of the Kansas Department of Agriculture;
- The Secretary of Agriculture; and
- The Director of the Kansas Biological Survey.

One primary responsibility of the Authority is to consider and approve policy for inclusion in the State Water Plan. The State Water Plan includes policy recommendations that have specific statewide or local impact and priority issues and recommendations for each of the 12 river basins in Kansas.

Budgetary Process

Historically, the Division of the Budget has assigned allocations to each agency for the expenditure of State Water Plan Fund moneys. Beginning with the FY 2008 budget cycle, the Authority and the Division of the Budget agreed to allow the Authority to develop a budget recommendation in lieu of the Division's allocation process.

A budget subcommittee of the Authority meets in the summer to develop a State Water Plan Fund budget proposal. The budget is presented to the full Authority in August. The Authority-approved budget is used by the state agencies to develop their budgets.

The Governor's budget includes recommended expenditures for the State Water Plan Fund when it is presented to the Legislature each January.

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