

## Agriculture and Natural Resources

### A-1 Industrial Hemp

#### Background

Industrial hemp is one variety of the *Cannabis sativa* L. plant. Industrial hemp is of the same plant species as marijuana, but it is genetically different. As defined by Kansas 2018 SB 263 and the federal Agricultural Act of 2014, 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

##### *Agricultural Act of 2014*

The Agricultural Act of 2014, or 2014 Farm Bill, was passed by the U.S. Congress and signed into law by President Obama on February 7, 2014. Section 7606 of the 2014 Farm Bill 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.

The 2014 Farm Bill 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 (USDA), 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. 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 by them to conduct research) may grow or cultivate industrial hemp as part of the agricultural pilot program. In addition, 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.

### ***Agriculture Improvement Act of 2018***

The Agriculture Improvement Act of 2018, or 2018 Farm Bill, was passed by the U.S. Congress and signed into law by President Trump on December 20, 2018. Section 10113 of the 2018 Farm Bill directs the USDA to issue regulations and guidance to implement a program for the commercial production of industrial hemp.

The USDA issued an interim final rule with requests for comments on October 31, 2019. Comments received by December 30, 2019, will be considered prior to issuance of a final rule.

The USDA will develop a system in which states and Indian tribes may submit plans to the USDA for approval to administer hemp production in their areas. The USDA will also provide a plan for those individual producers in states and tribes that do not submit their own plan. Any submitted plans will not be reviewed until the regulations go into effect.

The 2018 Farm Bill allows states, tribes, and institutions of higher education to continue operating under the authorities of the 2014 Farm Bill until 12 months after the USDA establishes the plan and regulations required under the 2018 Farm Bill.

The 2018 Farm Bill requires each plan to include the following:

- A practice to maintain relevant information regarding land on which hemp is produced in the state or territory of the Indian tribe, including a legal description of the land, for a period of not less than three calendar years;
- A procedure for testing, using postdecarboxylation or other similarly reliable methods, THC concentration

levels of hemp produced in the state or territory of the Indian tribe;

- A procedure for the effective disposal of plants, whether growing or not, that are produced in violation of this subtitle and products derived from those plants;
- A procedure to comply with the enforcement procedures under subsection (e) of the 2018 Farm Bill;
- A procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle;
- A procedure for submitting information regarding industrial hemp production to law enforcement as described in section 297C(d)(2) of the 2018 Farm Bill to the U.S. Secretary of Agriculture not more than 30 days after the date on which the information is received; and
- A certification that the state or Indian tribe has the resources and personnel to carry out the practices and procedures described in clauses (i) through (vi) of the 2018 Farm Bill.

## **Industrial Hemp in Kansas**

### ***Alternative Crop Research Act (2018)***

In 2018, the Legislature passed and Governor Colyer signed into law SB 263, which created the Alternative Crop Research Act (Act). The Act became effective May 3, 2018.

The Act allowed 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. The KDA may act alone or coordinate with a state institution of higher learning. The Act allowed the KDA to license individuals to participate in the pilot program under its authority. The Act also removed 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. In addition, the bill charged the KDA to develop rules and regulations, which became effective February 8, 2019.

### *Fee Fund and Licenses*

SB 263 also created the Alternative Crop Research Act Licensing Fee Fund (Fund) in the State Treasury. KDA was 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 the KDA are deposited in the Fund. In its rules and regulations, the KDA created four different research licenses, including the grower license, distributor license, processor license, and state educational institution license.

**Research grower license.** Individuals who have been issued a research grower license are authorized by the 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 the 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.

**Research processor license.** Individuals who have been issued a research processor license are authorized by the 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 the 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.

### **Research state educational institution license.**

A state educational institution research licensee may only cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp in Kansas. Research activities falling under more than one license category require a separate research license application and fee for each license category.

### ***Commercial Industrial Hemp Program Act (2019)***

In 2019, the Legislature passed and Governor Kelly signed into law Senate Sub. for HB 2167, which created the Commercial Industrial Hemp Program Act (Act). The Act became effective July 1, 2019.

The Act requires the KDA, in consultation with the Governor and Attorney General, to submit a plan to the USDA regarding how the KDA will monitor and regulate the commercial production of industrial hemp within the state, in accordance with federal law. In addition, the bill establishes the Commercial Industrial Hemp Program; makes changes to the Industrial Hemp Research Program; and establishes hemp processing registrations, prohibitions on specific products, sentencing guidelines, and waste disposal requirements.

Submitting a Kansas plan to the USDA is contingent on the USDA first issuing guidelines regarding what a commercial industrial hemp program should entail. The USDA issued an interim final rule with requests for comments on October 31, 2019. Comments received by December 30, 2019, will be considered prior to issuance of a final rule.

### ***Changes to the Industrial Hemp Research Program***

The Act requires the Secretary of Agriculture to continue accepting applications for the research program through June 1, 2019; makes changes to a modification fee and reasons for

disqualifications; and extends a deadline for rules and regulations regarding the research and development of industrial hemp in the state to December 31, 2019.

In addition, the Act allows the KDA to discontinue the Industrial Hemp Research Program if one or more of the following occurs:

- The federal law authorizing states to operate an industrial hemp research program is repealed;
- A federal plan by the USDA allowing for the cultivation and production of commercial industrial hemp is adopted; or
- Rules and regulations by the KDA establishing commercial industrial hemp production in the state are adopted.

### *Crimes and Controlled Substances Exceptions*

The Act includes industrial hemp as an exception to the definition of “marijuana” in the definition sections of crimes involving controlled substances. The Act also excludes from the Schedule I controlled substances list any THC in industrial hemp as defined in the Act, solid waste and hazardous waste as defined in continuing law if the waste contains a THC concentration of not more than 0.3 percent, or hemp products as defined in the Act.

### *Hemp Processors*

The Act requires the KDA to create and maintain a registry of all hemp processors operating with the state. Any person wishing to engage in the processing of industrial hemp must register and apply for registration annually with the Secretary of Agriculture. The fee for registration cannot exceed \$200 and will be established by the Secretary through rules and regulations.

The Act details the information required for the registration application, along with fees, fingerprinting, and criminal record history check requirements.

### *Prohibition on Products*

The Act prohibits the manufacture, marketing, selling, or distribution of the following hemp products:

- Cigarettes containing industrial hemp;
- Cigars containing industrial hemp;
- Chew, dip, or other smokeless material containing industrial hemp;
- Teas containing industrial hemp;
- Liquids, solids, or gases containing industrial hemp for use in vaporizing devices; and
- Any other hemp product intended for human or animal consumption containing any ingredient derived from industrial hemp that is prohibited pursuant to the Kansas Food, Drug and Cosmetic Act or the Kansas Commercial Feeding Stuffs Act. This does not otherwise prohibit the use of any such ingredient, including cannabidiol oil, in hemp products.

### *Waste*

The Act requires all solid and hazardous waste that results from cultivation, production, or processing of industrial hemp under the Act to be managed in accordance with all applicable solid and hazardous waste laws and regulations. In addition, if the waste can be used in the same manner as, or has the appearance of, a controlled substance, the Act requires the waste to be rendered unusable and unrecognizable before being transported or disposed. For more information, see [E-2 Legalization of Medical and Recreational Marijuana and Industrial Hemp](#).

### **Other States**

As of this October 2019, 47 states have enacted legislation to establish industrial hemp cultivation and production programs.

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