

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.

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

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.

RECEIVED

OCT 12 2020

SCOTT SCHWAB
SECRETARY OF STATE

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

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

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.

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

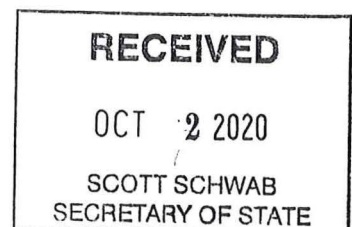
Letters of request were sent to the League of Kansas Municipalities, the Kansas Association of Counties, and the Kansas Association of School Boards, inquiring whether the proposed regulations will have an economic effect on those organizations. These letters requested a statement of quantified costs 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



K.A.R. 4-34-22. License required to cultivate or produce industrial hemp for commercial purposes. (a) K.A.R. 4-34-22 through 4-34-30 shall apply only to the commercial production of industrial hemp pursuant to K.S.A. 2-3901 et seq., and amendments thereto, and, unless otherwise stated, shall not apply to research conducted as part of the pilot program pursuant to K.S.A. 2-3902, and amendments thereto, and regulated by K.A.R. 4-34-2 through 4-34-21.

(b) No individual may cultivate or produce industrial hemp for commercial purposes without a license issued by the secretary. A license shall not be required for employees, agents, contractors, or volunteers of a licensee.

(c) Only individuals shall be eligible to apply for licenses to cultivate or produce industrial hemp.

(d) Each individual who applies for a license to cultivate or produce industrial hemp shall be required to submit to a fingerprint-based state and national criminal history record check to verify that the individual has not been convicted of a felony violation of K.S.A. 2019 Supp. 21-5701 et seq., and amendments thereto, or a substantially similar offense in another jurisdiction, within the 10 years immediately preceding submission of that individual's application.

(e)(1) Each individual submitting a license application shall submit the application on a form provided by the secretary, which shall include the following:

(A) The individual's full legal name and date of birth;

(B) the individual's current mailing address, telephone number, and electronic-mail address;

APPROVED

JUL 31 2020

DIVISION OF THE BUDGET

APPROVED

AUG 05 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

(C) the legal description and global positioning system coordinates of the entrance to the proposed licensed growing area and the entrance to each lot that will be used to cultivate or produce industrial hemp and a map of the proposed licensed growing area and each lot;

(D) the total number of acres or square feet that will be used to cultivate or produce industrial hemp;

(E) the number of acres or square feet that will be used to cultivate or produce industrial hemp in each lot;

(F) the variety of industrial hemp to be cultivated or produced in each lot;

(G) a completed fingerprint card for submission to the Kansas bureau of investigation;
and

(H) any other relevant information requested by the secretary.

(2) Each individual submitting a license application shall include with the application a \$100 application fee and the fee established by the Kansas bureau of investigation for performing a state and national criminal history record check. A single criminal history record check conducted in accordance with the act may be used to satisfy the act's criminal history record check requirement for multiple licenses in a single license year.

(f) All license applications shall be submitted no later than March 15 of each year in which an applicant intends to grow industrial hemp. Any individual who submits a license application after March 15, 2020 may be granted a license if good cause is shown and the secretary determines that granting the license is necessary to assist with the transition from the pilot program to the commercial industrial hemp program during 2020.

APPROVED

JUL 31 2020

DIVISION OF THE BUDGET DEPT. OF ADMINISTRATION

APPROVED

AUG 05 2020

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

(g) Each license shall allow the cultivation and production of industrial hemp within one licensed growing area.

(h) Upon approval of a license application by the secretary, the applicant shall submit a license fee of \$1,200 to the secretary within 15 days of notice of the approval.

(i) All licenses shall expire annually on December 31.

(j) In addition to providing the department with the information required by this regulation, each individual who is issued a license shall report the following directly to the United States department of agriculture farm service agency for each license:

(1) The street address and, to the extent practicable, the global positioning system coordinates for each growing area and for each lot or greenhouse where industrial hemp will be produced;

(2) the number of acres that will be used to cultivate or produce industrial hemp;

(3) the assigned license number; and

(4) any other information required by the United States department of agriculture.

(k) Acceptance of a license shall constitute a grant of authority by each licensee allowing the secretary to supply information to the United States department of agriculture and post information on the department's web site, including the industrial hemp producer license number, the full legal name of the licensee, the licensee's contact information, descriptions of all locations identified for cultivating or producing industrial hemp, and any information related to modifications to ensure that the information remains accurate.

(l) Each licensee shall be held responsible for any plant cultivated or produced in violation of the act and for the actions of all employees, agents, contractors, and volunteers

APPROVED

JUL 31 2020

DIVISION OF THE BUDGET

APPROVED

AUG 05 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

engaged in the cultivation or production of industrial hemp under the supervision or direction of, or otherwise in conjunction with, the licensee. Each licensee shall be subject to the same disciplinary actions for a violation of the act committed by any employee, agent, contractor, or volunteer of that licensee as if the licensee had committed the violation.

(m) Each licensee requesting a license modification after issuance of a license shall submit the modification request to the secretary on a form provided by the secretary. Each modification request form shall be accompanied by a \$50 fee. Upon the secretary's review and approval of the modification request, a modified license shall be issued and may include any additional terms and conditions that the secretary deems necessary to implement the requested modification and to protect the public health, safety, and welfare. If the secretary denies the modification request, the licensee shall remain subject to the terms of the original license.

(n) Each license shall be nontransferable, unless the secretary determines that a transfer is necessary because the licensee dies or becomes disabled or because an individual who is an employee or agent of a bank, financial institution, or other creditor that has a legal right to take possession of industrial hemp for the purposes of settling a debt is required to obtain a license to do so. A license that is transferable may be transferred to the individual requesting the transfer upon that individual's submission of a modification request, a \$50 modification fee, the fee established by the Kansas bureau of investigation for performing a state and national criminal history record check, and satisfactory completion of a fingerprint-based state and national criminal history record check. A modification request shall be submitted within 60 days of the licensee's death or within 60 days of the date that the right of the bank, financial institution, or other creditor to take possession of the industrial hemp arises. If a modification request is not

APPROVED

AUG 17 2020

DIVISION OF THE BUDGET

APPROVED

AUG 17 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

submitted within the time frame required by this regulation, all industrial hemp being cultivated or produced pursuant to the license shall be subject to an order to be destroyed. The individual applying for the transfer shall assume the full liability for all of the previous licensee's actions related to the cultivation or production of hemp.

(o) Each individual who materially falsifies any information in a license application or modification request shall be ineligible to receive a license to cultivate or produce industrial hemp pursuant to the act. (Authorized by K.S.A. 2019 Supp. K.S.A. 2-3906; implementing K.S.A. 2019 Supp. 2-3903 and 2-3906; effective P-_____.)

APPROVED

AUG 17 2020

DIVISION OF THE BUDGET

APPROVED

AUG 17 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 4-34-23. Planting and pre-harvest requirements. (a) All industrial hemp cultivated or produced shall have originated from authorized seed or clone plants.

(b) Each licensee shall maintain written certification for all authorized seed or clone plants cultivated or produced, which shall consist of either of the following:

(1) A certificate of analysis, or a similar document, stating that the source of the authorized seed or clone plants was cultivated or produced with a delta-9 tetrahydrocannabinol concentration less than 0.3 percent on a dry-weight basis during the most recent growing season; or

(2) documentation that the authorized seed or clone plants are certified pursuant to K.S.A. 2-1415 et seq., and amendments thereto.

(c) All industrial hemp seed shall be considered agricultural seed. Before selling agricultural seed in Kansas, each individual shall obtain a license pursuant to K.S.A. 2-1415 et seq., and amendments thereto.

(d) Each licensee shall submit a planting report to the department within 15 days after each planting, including replanting seeds or propagules or establishing plants. Each planting report shall identify the following:

(1) The official name of the industrial hemp variety that was cultivated or produced in each lot;

(2) the global positioning system coordinates for the licensed growing area and each lot where industrial hemp plants, plant parts, grain, or seeds are being cultivated or produced;

(3) the total number of acres planted in the licensed growing area;

(4) the number of acres planted in each lot; and

APPROVED

MAY 07 2020

DIVISION OF THE BUDGET

APPROVED

MAY 08 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

(5) a statement of the intended end-use for all industrial hemp plants, plant parts, grain, or seeds being cultivated or produced.

(e) Before harvesting industrial hemp, each licensee shall provide the secretary at least 30 days' notice of the intended harvest date on a form provided by the secretary and, if the harvest does not begin on that date, shall provide an updated notice of the anticipated harvest date before harvesting any industrial hemp. Failure to provide notice of the harvest may result in the revocation of an existing hemp producer license and the denial of future hemp producer licenses. Each pre-harvest report shall identify the following:

- (1) The global positioning system coordinates of the entrance to the licensed growing area and each lot where industrial hemp plants are intended for harvest;
- (2) the total number of acres planted in the licensed growing area subject to harvest;
- (3) the number of acres planted in each lot subject to harvest;
- (4) the planting date for each lot;
- (5) the total number of acres intended for harvest in the licensed growing area, if different from the number of acres intended for harvest in the lot;
- (6) the number of acres intended for harvest in each lot;
- (7) the intended harvest date for each lot;
- (8) the official name of the industrial hemp variety that is intended for harvest from each lot; and
- (9) a statement of the intended end-use for all industrial hemp plants, plant parts, grain, or seeds that will be harvested from each lot.

APPROVED

MAY 07 2020

DIVISION OF THE BUDGET

APPROVED

MAY 08 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

(f) If two or more harvests will be conducted within a licensed growing area or lot within a license year, the licensee shall notify the department of each intended harvest date at least 30 days before the intended harvest date. The primary licensee shall pay the subsequent sampling fees and testing fees for each harvest conducted after the initial harvest of a lot.

(g) Each licensee shall maintain records regarding the source of all industrial hemp cultivated or produced and records regarding the disposition of all industrial hemp cultivated or produced for three years and shall present those records to the secretary upon request.

(Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

APPROVED

MAY 07 2020

DIVISION OF THE BUDGET

APPROVED

MAY 08 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 4-34-24. Sampling, testing, and harvest requirements. (a) No more than 15 days before any industrial hemp cultivated or produced pursuant to the act is harvested, each licensee shall allow a sample to be collected by the secretary for testing, using post-decarboxylation or any other similarly reliable method, to determine the delta-9 tetrahydrocannabinol concentration of industrial hemp cultivated or produced. A licensee shall not harvest any industrial hemp before receiving notice that testing of the samples has shown a delta-9 tetrahydrocannabinol concentration of less than 0.3 percent on a dry-weight basis and that the licensee may harvest the industrial hemp.

(b) Each licensee shall complete each harvest of industrial hemp plants, plant parts, grain, or seeds within the time frame established by the passing report of analysis.

(c) If a licensee fails to harvest all of the industrial hemp plants, plant parts, grain, or seeds within the allotted time frame as indicated in subsection (b), the licensee shall perform one of the following:

(1) Notify the department within seven days after the expiration of the time frame, request that the department collect a subsequent pre-harvest sample, and pay the required sampling and testing fees; or

(2) notify the department within seven days after the expiration of the time frame by which the licensee shall voluntarily effectively dispose of the industrial hemp plants, plant parts, grain, or seeds. The licensee shall notify the department of any change in the effective disposal date. Effective disposal of industrial hemp plants, plant parts, grain, or seeds shall occur by the licensee and at the licensee's expense. All volunteer plants shall be effectively disposed of during the current license year and for at least three years after the last reported date of planting.

APPROVED

JUL 31 2020

DIVISION OF THE BUDGET

APPROVED

AUG 05 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 30 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

If effective disposal of industrial hemp plants, plant parts, grain, or seeds occurs, no refund shall be issued for any fees paid by a licensee, the cost of effective disposal, or the value of the crop.

(d) Each licensee shall submit a harvest report to the department no more than 15 days after each harvest of industrial hemp plants, plant parts, grain, or seeds is completed for each lot.

Each harvest report shall identify the following:

(1) The global positioning system coordinates of the entrance to the licensed growing area and each lot where industrial hemp plants were harvested;

(2) the total number of acres planted in the licensed growing area;

(3) the number of acres planted in each lot;

(4) the planting date for each lot;

(5) the total number of acres harvested from the licensed growing area;

(6) the number of acres harvested from each lot;

(7) the harvest date for each lot;

(8) the official name of the industrial hemp variety harvested from each lot; and

(9) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds harvested from each lot.

(e) Industrial hemp shall be subject to post-harvest sampling and testing by the secretary.

Each licensee shall agree to provide the secretary access to any harvested industrial hemp or to provide the secretary with a copy of the bill of lading and, if available, a certificate of analysis or similar document provided for any industrial hemp already sold or transferred to another person.

All samples collected by the secretary shall be subject to testing, using post-decarboxylation or any other similarly reliable method, of delta-9 tetrahydrocannabinol concentration of industrial

APPROVED

AUG 19 2020

DIVISION OF THE BUDGET

APPROVED

AUG 21 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 30 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

hemp produced. A licensee whose industrial hemp is sampled after it is harvested shall not sell, transfer, or transport any industrial hemp harvested from the licensed growing area where samples were collected until that licensee has received notice from the department that testing of the samples has shown a delta-9 tetrahydrocannabinol content of less than 0.3 percent on a dry-weight basis.

(f) Each licensee shall be assessed a \$225 fee for the required pre-harvest sample collected and tested by the secretary.

(g) At any time other than at the time of the required pre-harvest sample collected and tested by the secretary, a licensee may request that the secretary collect a sample and test the delta-9 tetrahydrocannabinol concentration, subject to a testing fee of \$225 for each test and additional costs assessed for the secretary's travel time and mileage.

(h) All samples collected by the secretary shall become the property of the secretary, and no compensation shall be owed to any licensee.

(i) Any licensee may request a test from a private laboratory at any time. However, test results from private laboratories shall not be considered official and shall not be substituted for a sample collected and tested by the secretary, and each licensee shall be responsible for the costs of testing by a private laboratory.

(j) Each sample collected and tested by the secretary and found to contain a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis shall be deemed to have been cultivated or produced in violation of the act and shall result in a failing report of analysis.

APPROVED

AUG 19 2020

DIVISION OF THE BUDGET

APPROVED

AUG 21 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 30 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

(k) Within seven days of notice of the failing report of analysis, any licensee may request, on a form provided by the secretary, an additional test by the secretary. The request shall include payment of a retesting fee of \$225 and any additional costs assessed for the secretary's travel time and mileage. If a licensee requests an additional test and the sample collected and tested pursuant to this subsection is found to contain a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis, then all plants in the licensed growing area shall be effectively disposed of as required by K.A.R. 4-34-25.

(l) For each licensee who is issued an order to effectively dispose of plants, one of the following requirements shall apply:

(1) The licensee shall be subject to a corrective action plan as specified in K.A.R. 4-34-29 and reported to the appropriate state or local law enforcement agency if the violation is deemed negligent.

(2) The licensee shall be reported to the United States department of agriculture, the office of the Kansas attorney general, the office of the United States attorney for the district of Kansas, and the appropriate state or local law enforcement agency if the violation is the result of a culpable mental state greater than negligence. If any plants are tested by the secretary and found to contain a delta-9 tetrahydrocannabinol concentration of greater than 2.0 percent, the licensee responsible for those plants shall be presumed to have acted with a culpable mental state greater than negligence.

(m) Except as provided in K.A.R. 4-34-28, each licensee or an authorized representative of each licensee shall be present whenever the secretary collects a sample of industrial hemp cultivated or produced pursuant to the act and whenever a compliance inspection is conducted

APPROVED

SEP 22 2020

DIVISION OF THE BUDGET

APPROVED

SEP 24 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 30 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

Proposed

pursuant to this regulation. (Authorized by K.S.A. 2019 Supp. 2-3906; implementing K.S.A.
2019 Supp. 2-3903 and 2-3906; effective P-_____.)

APPROVED
SEP 22 2020

DIVISION OF THE BUDGET

APPROVED
SEP 24 2020

DEPT. OF ADMINISTRATION

APPROVED
SEP 30 2020

ATTORNEY GENERAL

RECEIVED
OCT 2 2020
SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 4-34-25. Effective disposal; violations. (a) Each plant or plant part deemed to be in violation of the act for any reason, including containing a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis shall, by order of the secretary, be subject to effective disposal.

(b) If required pursuant to federal law, all plants or plant parts that require effective disposal shall be destroyed or disposed of as required by the controlled substances act, 21 U.S.C. 801 et seq., and in compliance with requirements of the United States drug enforcement agency.

(c) If allowed pursuant to federal law, each licensee shall conduct effective disposal at the licensee's expense within 10 days of notice. Each licensee shall effectively dispose of all volunteer plants within and adjacent to the licensed growing area during the current license year and for at least three years after the last date of planting. Each licensee shall allow representatives of the secretary to be present during the effective disposal of plants or plant parts, or proof of the effective disposal may be required by the secretary. Each licensee who conducts effective disposal shall, within 14 days of conducting the effective disposal, report the number of acres effectively disposed of to the department. A licensee who conducts effective disposal shall not be eligible for a refund of any fees paid, the cost of effective disposal, or the value of the crop.

(d) Each licensee whose plants are effectively disposed of shall be responsible for reimbursing any law enforcement agency whose officers or agents are required to participate in or be present during the effective disposal for all of the law enforcement agency's costs associated with the effective disposal.

APPROVED

AUG 17 2020

DIVISION OF THE BUDGET

APPROVED

AUG 17 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

(e) Failure of a licensee to conduct effective disposal as required by the secretary within 10 days shall result in the secretary's conducting effective disposal at the expense of the licensee, unless an extension is granted by the secretary.

(f) A licensee's failure to conduct effective disposal as required by the secretary, failure to reimburse the secretary for any costs incurred as a result of the secretary's conducting effective disposal, or failure to reimburse any law enforcement agency for any costs associated with effective disposal shall be grounds for denial of any future hemp producer license application.

(g) Each licensee who violates the act with a culpable mental state of negligence shall be subject to a corrective action plan as specified in K.A.R. 4-34-29 and reported to the appropriate state or local law enforcement agency. Each licensee who violates the act with a culpable mental state greater than negligence shall be reported to the United States attorney's office and the Kansas attorney general's office, in addition to the appropriate state or local law enforcement agency. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-

_____.)

APPROVED

AUG 17 2020

DIVISION OF THE BUDGET

APPROVED

AUG 17 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 4-34-26. Transportation of industrial hemp. (a) Each licensee who sells, trades, barter, gives away, or otherwise transfers any unprocessed industrial hemp to any other person shall ensure that the unprocessed industrial hemp is accompanied by a signed bill of lading that includes the licensee's license number, the total quantity of industrial hemp transferred, the date the transfer occurred, and the name of the person acquiring the industrial hemp. A certificate of analysis or other similar document shall be attached to the bill of lading.

(b) Each person who sells, trades, barter, gives away, or otherwise transfers unprocessed industrial hemp subsequent to an initial transfer involving unprocessed industrial hemp as specified in subsection (a) shall record the transfer and shall amend the bill of lading or attach the information regarding the subsequent transfer to the original bill of lading and shall include the name of the person acquiring possession of the industrial hemp, the amount of industrial hemp transferred, and the date of the transfer. Any individual in possession of unprocessed industrial hemp plants, plant parts, grain, or seeds without a valid hemp producer's license or a bill of lading may be presumed to have unlawfully cultivated or produced hemp in violation of the act or gained possession of industrial hemp plants, plant parts, grain, or seeds that were cultivated or produced in violation of the act.

(c) Each licensee shall comply with all local, state, and federal laws and regulations related to the transportation of industrial hemp and with the act. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

APPROVED

JUL 21 2020

DIVISION OF THE BUDGET

APPROVED

AUG 05 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 4-34-27. Planting restrictions; signage requirements; volunteer plants. (a) A

licensee shall not cultivate, plant, grow, or harvest industrial hemp plants, plant parts, grain, or seeds at any location not included on the license.

(b) A licensee shall not cultivate, plant, grow, or harvest industrial hemp plants, plant parts, grain, or seeds in a residential structure, within 50 feet of a residential structure, or within one-quarter mile of any public or private K-12 school or public recreational area, except with the secretary's written permission.

(c) A licensee shall not interplant any other crop with industrial hemp, except that any state educational institution licensee may do so upon authorization by the secretary. This subsection shall not prohibit the use of ground cover, but ground cover shall not be harvested.

(d) A licensee shall not interplant different varieties of industrial hemp within a lot.

(e) Harvested lots of industrial hemp plants shall not be commingled with other harvested lots or other material.

(f) Each licensee shall post and maintain at least one sign at each licensed growing area listed on the license. A sign shall be posted along each licensed growing area boundary adjacent to a public road, except that if the licensed growing area is adjacent to an intersection of two or more public roads, a sign shall be posted at the intersection. If a licensed growing area is not adjacent to any public road, a sign shall be posted at the point of access to the licensed growing area. Each sign shall measure at least 36 inches per side, shall be clearly visible and legible from the adjacent public road, intersection of public roads, or access point, and shall include the following information:

(1) The following text: "Kansas Department of Agriculture Industrial Hemp Program";

APPROVED
MAY 07 2020

DIVISION OF THE BUDGET

APPROVED

MAY 08 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

- (2) the licensee's name;
- (3) the licensee's license number; and
- (4) the department's telephone number.

(g) Each licensee shall allow the secretary to inspect, for volunteer plants, ditches, fence lines, or other unmanaged land areas adjacent to any licensed growing area. Each licensee shall destroy any volunteer plants for at least three years after the last date of planting. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

APPROVED

MAY 07 2020

DIVISION OF THE BUDGET

APPROVED

MAY 08 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 4-34-28. Access to records and property. (a) Acceptance of a license shall constitute a grant of authority by each licensee allowing the secretary to inspect all records related to the cultivation or production of industrial hemp.

(b) Each licensee shall grant the secretary access to all land identified for the cultivation or production of industrial hemp for purposes of inspection to determine compliance with the act and the implementing regulations. In addition to pre-harvest sampling and testing of all industrial hemp plants being cultivated or produced pursuant to the act as specified in K.A.R. 4-34-24, in accordance with federal law, each licensee's premises and records related to the cultivation or production of industrial hemp shall be subject to annual inspection to ensure compliance with the act and the implementing regulations.

(c) Each licensee shall consent to the secretary's providing information to the United States department of agriculture, law enforcement, fire and rescue agencies, and the public regarding each licensed growing area. Additionally, each licensee shall consent to the secretary's providing information about any licensed growing area, including global positioning system coordinates, to representatives of the United States department of agriculture, Kansas bureau of investigation, United States drug enforcement agency, and other law enforcement agencies.

(d) Each licensed growing area and all adjacent areas shall be subject to inspection by the secretary. The secretary shall have complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds, whether growing or not, including access to all land, buildings, facilities, motor vehicles, and other structures used for industrial hemp-related activities. Access shall be granted at reasonable times, without interference or obstruction, with or without cause, and with or without advance notice. The secretary's right of access specified in

APPROVED

JUL 21 2020

DIVISION OF THE BUDGET

APPROVED

AUG 05 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

this regulation shall include the unrestricted right to inspect or take samples of any industrial hemp plants, plant parts, grain, or seeds, whether growing or not, present at the location being accessed, as well as the right to inspect any reports or records pertaining to industrial hemp plants, plant parts, grain, or seeds. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

APPROVED

JUL 31 2020

DIVISION OF THE BUDGET

APPROVED

AUG 05 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 4-34-29. Negligent violations; corrective action plans. (a) Negligent violations of the act may include failure to provide a legal description of land on which a licensee produces industrial hemp, producing plants with a delta-9 tetrahydrocannabinol concentration greater than 0.5 percent on a dry-weight basis, or producing plants with a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis if the licensee did not make reasonable efforts to cultivate or produce industrial hemp. It shall not be a negligent violation of the act if a licensee produces plants with a delta-9 tetrahydrocannabinol concentration of 0.5 percent or less on a dry-weight basis and the licensee has made reasonable efforts to cultivate or produce industrial hemp. Each licensee who negligently violates the act or the implementing regulations shall be required to follow a corrective action plan developed by the secretary.

(b) Upon the first negligent violation, each licensee shall meet the following requirements:

(1) Correct the violation within 10 days of notification of the violation by the secretary, including conducting effective disposal of the industrial hemp crop if so ordered;

(2) for the duration of the time period specified in the corrective action plan, which shall be at least two years, provide a report to the secretary as often as is required by the secretary regarding the status of the violation; and

(3) complete any other actions required by the secretary.

(c) Upon a second negligent violation within five years of a previous negligent violation, each licensee shall meet the following requirements:

(1) Correct the violation within 10 days of notification of the violation by the secretary, including the effective disposal of the industrial hemp crop if so ordered;

APPROVED

MAY 07 2020

DIVISION OF THE BUDGET

APPROVED

MAY 08 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

(2) for the duration of the time period specified in the corrective action plan, which shall be at least two years, provide a report to the secretary at least every 30 days, or as often as is required by the secretary, regarding the status of the violation; and

(3) complete any other actions required by the secretary.

(d) Upon a third negligent violation within five years of the first negligent violation, each licensee shall be ineligible to cultivate or produce industrial hemp for a period of five years beginning on the date of the third violation. Each license or registration held by the licensee shall be subject to immediate revocation, and all of the licensee's industrial hemp shall be subject to destruction, if so ordered. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

APPROVED

MAY 07 2020

DIVISION OF THE BUDGET

APPROVED

MAY 08 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 21 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 4-34-30. State educational institutions. (a) Each state educational institution shall obtain a license before cultivating or producing industrial hemp for research purposes.

(b) Each state educational institution shall be exempt from all application and licensing fees if the state educational institution's license application is accompanied by a written summary of the research to be performed, except as provided in subsection (f).

(c) Each state educational institution shall be subject to all other requirements applicable to a hemp producer, except that a state educational institution may request the waiver of any requirement in K.A.R. 4-34-1 through K.A.R. 4-34-30 by submitting a written request to the secretary that explains why the waiver of an existing regulation is necessary for the proposed research.

(d) In spite of subsection (c), a state educational institution shall not request a waiver of the fingerprint-based state and national criminal history record check or corrective action plan requirements.

(e) Each state educational institution seeking licensure shall designate an individual as the primary licensee for any license. The primary licensee shall be responsible for all employees, agents, students, and volunteers of the institution, and any activities that the institution undertakes, related to industrial hemp at the locations identified in each application. The costs associated with fingerprinting and the required state and national criminal history record check shall be the responsibility of the individual designated as the primary licensee.

The head of a department of the state educational institution, or a similar person with supervisory authority, shall submit a written letter designating the responsible individual as the primary licensee along with the application.

APPROVED

SEP 22 2020

DIVISION OF THE BUDGET

APPROVED

SEP 24 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 30 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

(f) Upon written request, a state educational institution may be granted a multiyear license that is valid for up to five years for completion of a multiyear research project.

(Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

APPROVED

SEP 22 2020

DIVISION OF THE BUDGET

APPROVED

SEP 24 2020

DEPT. OF ADMINISTRATION

APPROVED

SEP 30 2020

ATTORNEY GENERAL

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

Kansas Administrative Regulations Economic Impact Statement For the Kansas Division of the Budget

Kansas Department of Agriculture
Agency

Ronda Hutton
Agency Contact

785-564-6715
Contact Phone Number

K.A.R. 4-34-22 to K.A.R. 4-34-30
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

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 the administration of a Commercial Industrial Hemp Program in Kansas.

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.

DOB APPROVAL STAMP

APPROVED

MAY 07 2020

DIVISION OF THE BUDGET

RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

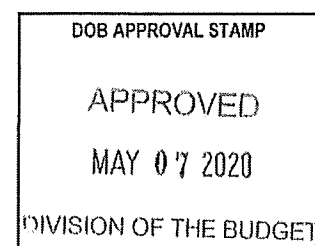
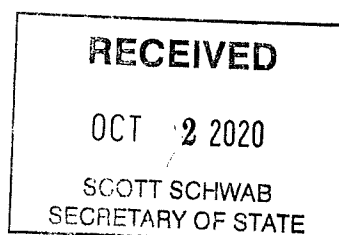
K.A.R. 4-34-25 – This regulation establishes that all plants or plant parts deemed to have been cultivated or produced in violation of the Act for reasons other than containing a THC concentration greater than 0.3 percent on a dry-weight basis may be subject to effective disposal and sets out the requirements governing effective disposal. This regulation provides that all licensees who are 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 who is 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 deals with access by the Secretary to records and property of licensees. It 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.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different).

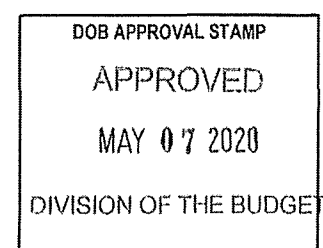
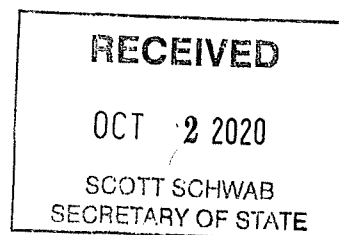
These rules and regulations are authorized by the 2018 Farm Bill and HB 2167, the Commercial Industrial Hemp Act. The 2018 Farm Bill authorized states to allow the commercial production of industrial hemp either by securing USDA approval of the state's plan for a state-regulated program or by allowing 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. USDA has not yet approved any proposed state plans, so it is not known how these rules and regulations might differ from the rules and regulations of contiguous states. It is likely reasonable to assume that, to the extent federal law allows, Colorado will take a less restrictive approach to this issue, due to the fact that Colorado has legalized both medicinal and recreational marijuana by state law and allowed the commercial sale of industrial hemp prior to the passage of the 2018 Farm Bill. It is difficult to otherwise predict the contents of other state's plans.

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

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.



B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole:

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

Additionally, 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.

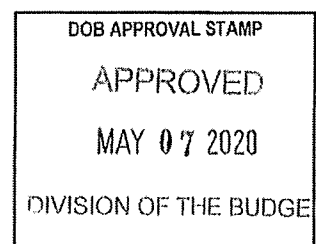
C. Businesses that would be directly affected by the proposed rule and regulation;

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.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

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



RECEIVED

OCT 2 2020

SCOTT SCHWAB
SECRETARY OF STATE

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 outweigh the costs that they present.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

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.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$ 331,695.00

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

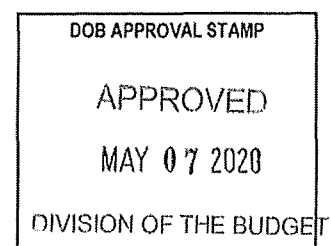
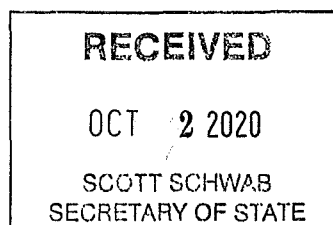
\$ 331,695.00

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

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.



Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

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 School Boards and the Kansas Association of Counties. No responses were received from those entities.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

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.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

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

