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Proposed

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

The Kansas Department of Agriculture will conduct a public hearing at 10:00 a.m. on November 8, 2021 to consider the adoption of proposed regulations. Due to the public health concerns posed by the COVID-19 pandemic, the hearing proceedings will be conducted virtually via video conferencing system only. Anyone desiring to participate in the public hearing via video conference must pre-register at:  
<https://kansasag.zoom.us/meeting/register/tZUvceqtqD8qGNZlYJRDBbkWuWHYrpwMTS1O>.

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](mailto:ronda.hutton@ks.gov). All interested parties will also 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 United States Department of Agriculture implementing its Final Rule on Commercial Hemp Production, which modified some requirements regarding commercial hemp production, the Kansas Department of Agriculture is proposing amendments to existing rules and regulations governing the Commercial Industrial Hemp Program.

K.A.R. 4-34-24 – This regulation governs sampling, testing, and harvest requirements. The Department is proposing to amend this regulation to extend the timeframe within which licensees must complete harvest after samples of hemp are collected. The amendment would require harvest to be completed within 30 days of sampling rather than the currently-required 15 days and is proposed in accordance with the corresponding provision of the USDA final rule that states, “Samples from cannabis plants must be collected within 30 days prior to the anticipated harvest, for total delta-9 tetrahydrocannabinol concentration level testing.”

K.A.R. 4-34-25 – This regulation governs effective disposal of hemp. The proposed amendment would allow hemp that contains a delta-9 tetrahydrocannabinol (“THC”) concentration greater than 0.3 percent on a dry-weight basis to be remediated into a lawful product, rather than requiring all such hemp to be effectively disposed of. The amendment would allow hemp biomass to enter commerce if it can be remediated so as to have a THC concentration of 0.3 percent or less on a dry-weight basis within 60 days of the issuance of a failing report of analysis. This amendment is proposed in accordance with the provision of USDA’s final rule that states, “A State or Tribal plan must include a procedure for the disposal or remediation of cannabis plants if the sample representing that plant tests above the acceptable hemp THC level.”

K.A.R. 4-34-29 – This regulation governs negligent violations of the Commercial Industrial Hemp Act. The proposed amendment changes the THC threshold at which hemp will be considered to have been produced negligently from 0.5 percent to 1.0 and is proposed in accordance with the provision of USDA’s final rule that states that “hemp producers do not

commit a negligent violation...if they make reasonable efforts to grow hemp and the cannabis does not have a total THC concentration of more than 1.0 percent on a dry weight basis.”

#### Economic Impact Statement:

These rules and regulations are authorized by the 2018 Farm Bill, the Commercial Industrial Hemp Act, and USDA’s final rule on commercial hemp production. The proposed amendments are not mandated by federal law, but rather are permitted by federal law now that USDA rules regarding commercial hemp production have become less stringent in some respects. The amendments will ensure that Kansas law conforms with what is allowed under federal law, so these regulations, including the proposed amendments, do not differ from the approach taken by the federal government. Colorado may take a less restrictive approach to hemp production, 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. Nebraska, Oklahoma, and Missouri all currently have USDA-approved commercial hemp plans comprised of regulations that do not differ substantially from the Department’s current regulations. However, of those states, only Missouri, has submitted a plan to USDA that reflects the changes implemented by the final rule.

These amendments will enhance business activities and economic growth in Kansas, most significantly by allowing hemp that was previously required to be effectively disposed of to enter commerce if it can be remediated so as to contain an acceptable level of THC. The proposed remediation provisions will also significantly reduce the expenses that licensees have previously had to incur in effectively disposing of noncompliant hemp in accordance with DEA requirements. The lengthened harvest window and the revision of the negligent violation threshold will make production less burdensome in general, which may encourage new growers to become involved in the industry. The positive economic effect of the amendments is difficult to quantify due to the many variables and significant unknowns that remain in the hemp industry but has the potential to be significant long-term. The Department does not foresee the proposed amendments restricting business activities or growth in any way.

The proposed amendments will likely have a positive effect on the Kansas economy, specifically for individuals involved in hemp production. The Department estimates that all Kansas hemp growers combined will incur approximately \$5,000 worth of expenses during the 2021 growing season in post-harvest and post-remediation testing fees necessary for the remediation of noncompliant crops. Producers also may incur some expenses in the labor and equipment involved in conducting remediation. However, the benefits of having a viable economic use for a crop that would otherwise have to be destroyed absent these amendments should more than offset any such costs.

The other implementation and compliance costs of the proposed amendments will continue to be borne mostly by law enforcement and regulatory entities as they continue to oversee the production of hemp and the intersection of this area with criminal law. However, such costs will likely not change significantly compared to the costs that the Department’s existing hemp regulations already impose on the responsible regulatory entities. Moreover, these regulations do not impose any mandatory requirements on the public at large. Participation in the industrial hemp program in general is voluntary, and any remediation efforts that producers undertake will also be voluntary—producers are still permitted to dispose of hemp that produces an unacceptable level of THC.

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AUG 24 2021

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Individuals who obtain commercial industrial hemp grower licenses, particularly those who produce hemp with a THC concentration in excess of 0.3 percent, will be directly affected by these proposed amendments. As discussed above, the benefits of these proposed amendments outweigh the costs, as they will allow producers a viable economic avenue for hemp that was previously required to be destroyed and promote research and development regarding hemp production.

The most significant aspects of the proposed amendments are specifically intended to reduce the cost and impact of participation in the industrial hemp program on producers and make hemp production more profitable and accessible. As discussed above, the amendments accomplish this by creating a viable commercial option for hemp that would have to be destroyed under the present regulations and expanding opportunities for industry-enhancing research. Additionally, in an effort to minimize cost and impact to law enforcement, the existing commercial hemp regulations require licensees to maintain documentation 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. Those requirements will remain in place with these amendments.

The Department estimates that all hemp producers combined will incur a total of \$5,000 in costs in remediating hemp during the 2021 growing season. This cost could remain substantially the same in future years or could vary significantly, as the legal landscape surrounding hemp production as well as producer knowledge is evolving quickly. The implementation and compliance costs of the proposed amendments will not exceed \$3.0 million over any two-year period. The Department arrived at its estimated \$5,000 annual cost figure by estimating based on previous growing season results that approximately 20 licensees will incur post-harvest or post-remediation testing fees during the 2021 growing season. The cost of a post-harvest testing fee is \$250 per K.A.R 4-34-12. As to the broader conclusion that the proposed amendments will enhance economic activity long-term, the Department relied in part on the findings of the Kansas Legislative Division of Post Audit on the topic of hemp production, which were published in September 2020.

The proposed regulations will not significantly increase or decrease revenues of cities, counties, or school districts. Most of the costs of the regulations in this regard 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. The Department sent letters to the League of Kansas Municipalities, the Kansas Association of School Boards and the Kansas Association of Counties inquiring about the costs the proposed amendments would impose on those entities. The Kansas Association of Counties and the Kansas Association of School Boards responded stating that neither of those entities anticipates the amendments will result in additional expense to them. No response was received from the League of Kansas Municipalities.

The proposed amendments were developed with the assistance of the Industrial Hemp Advisory Board, which is comprised of hemp industry advocates, legislators, and representatives of law enforcement agencies and research institutions. The Department also sent letters 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

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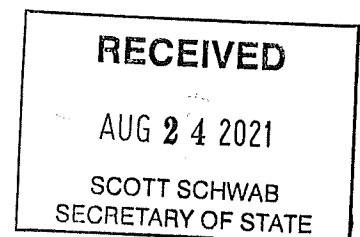
Regional Forensic Science Center, and the Kansas Sheriff's Association inquiring about the costs the proposed amendments would impose on those entities. The Department has received responses from the Kansas Association of Chiefs of Police, Kansas Association of Counties, Kansas Association of School Boards, and Kansas Peace Officers Association, with each entity stating that the proposed amendments would not result in additional expenses being incurred if they are implemented. No responses have been received from the other entities.

Though these regulations are not environmental regulations per se, it is worth noting that if these amendments are not adopted, Kansas hemp producers will not have a viable commercial option for hemp that produces a THC content of 0.3 percent or greater and would have to destroy all such hemp. The total cost of that scenario is difficult to estimate for many reasons but is potentially significant.

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.

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](http://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>.

Mike Beam  
Secretary  
Kansas Department of Agriculture



**K.A.R. 4-34-24. Sampling, testing, and harvest requirements.** (a) No more than ~~15~~ 30 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~~ 30 days of sampling.

(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~~ specified in subsection (b), the licensee shall perform one of the following:

(1) Notify the department that harvest has not occurred within seven days after the expiration of the time frame specified in subsection (b), request that the department collect a subsequent pre-harvest sample, and pay the required sampling and testing fees; or

(2) notify the department that harvest has not occurred within seven days after the expiration of the time frame specified in subsection (b) and inform the department of the date by which the licensee intends to ~~shall voluntarily~~ effectively dispose of the industrial hemp plants, plant parts, grain, or seeds. The licensee shall conduct effective disposal no more than seven days after the licensee informs the department that harvest has not occurred and shall notify the department of any change in the effective disposal date. Effective disposal of industrial hemp

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plants, plant parts, grain, or seeds shall occur by the licensee and at the licensee's expense. All volunteer plants within and adjacent to the licensed growing area shall be effectively disposed of during the current license year and for at least three years after the last reported date of planting. 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

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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 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

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~~deemed to have been~~ result in the hemp being classified as cultivated or produced in violation of the act and shall result in the issuance of a failing report of analysis. Hemp that receives a failing report of analysis may be eligible to be remediated pursuant to K.A.R. 4-34-25.

(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 or, if eligible, remediated pursuant to 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

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JUN 25 2021

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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 pursuant to this regulation. (Authorized by K.S.A. ~~2019~~ 2020 Supp. 2-3906; implementing K.S.A. ~~2019~~ 2020 Supp. 2-3903, as amended by L. 2021, ch. 76, sec. 4, and 2-3906; effective Jan. 8, 2021; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended P-\_\_\_\_\_.)

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**K.A.R. 4-34-25. Remediation; effective disposal; violations.** (a) ~~Each plant or plant part~~ All hemp that is deemed to be in violation of the act for any reason, ~~including or that~~ containing contains 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 or remediation.

(b) Remediation shall not be allowed for any hemp for which the secretary has not approved a remediation plan. Hemp for which remediation is not allowed shall be effectively disposed of as specified in this regulation.

(c) Remediation shall include any method approved by the United States department of agriculture and may include either of the following:

(1) Separating and removing all flowers and floral materials from the stalks, leaves, and seeds of all plants or plant parts, which may include removal by hand or mechanical removal; or

(2) shredding the entirety of all plants or plant parts into hemp biomass, which may be accomplished with shredders, composters, specialty mechanical equipment, or similar means.

(d) Seeds removed from hemp plants or contained in hemp biomass as a result of remediation shall not be used for propagation purposes.

(e) Each remediation plan or request to submit a remediation plan shall be submitted to the secretary before the expiration of the 10-day period following the licensee's receipt of notice that effective disposal is required as specified in subsection (q).

(f) Each remediation plan submitted to the secretary pursuant to this regulation shall include the following, at a minimum:

(1) The date that remediation will begin;

(2) the approximate date that remediation will be completed;

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DEPT. OF ADMINISTRATION

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AUG 24 2021

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(3) the total number of acres that will be remediated;

(4) the intended end-use of all plants or plant parts to be remediated;

(5) the location where each plant or plant part will be stored before and after remediation and the location where remediated material will be stored following remediation;

(6) the method or methods of remediation intended to be used; and

(7) any other information that is relevant to the circumstances surrounding the cultivation or production of the hemp proposed to be remediated or the intended remediation plan and that the secretary requests.

(g) Any remediation plan that does not contain all required information may be denied or returned to the licensee. Any remediation plan may be denied at the discretion of the secretary, based on the circumstances surrounding the cultivation or production of the hemp proposed to be remediated.

(h) Hemp for which a failing report of analysis is issued may be remediated by the licensee upon the secretary's approval of the remediation plan submitted by the licensee, if the most recent sampling and testing conducted showed the hemp to have a delta-9 tetrahydrocannabinol concentration of 1.0 percent or less on a dry-weight basis.

(i) Any licensee may request permission from the secretary to submit a remediation plan for any hemp for which a failing report of analysis is issued if the most recent sampling and testing conducted showed the hemp to have a delta-9 tetrahydrocannabinol concentration greater than 1.0 percent but not greater than 2.0 percent on a dry-weight basis. If the secretary agrees to review a remediation plan based upon the circumstances surrounding the production or

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cultivation of the hemp, then the industrial hemp may be remediated upon approval of the plan submitted by the licensee.

(j) Each licensee who conducts remediation of any hemp shall allow representatives of the secretary to be present during the remediation. Proof of remediation may be required to be provided to the secretary.

(k) All plant material that is undergoing remediation shall be clearly labeled to indicate that the plant material is remediated hemp biomass and to verify the source of all of the hemp that comprises the remediated material. Remediated hemp biomass shall require a bill of lading pursuant to K.A.R. 4-34-26, which shall identify the material as remediated hemp biomass and identify the source of all material used in the remediation.

(l) All plant material resulting from remediation shall be subject to postremediation sampling and testing and shall be required to be effectively disposed of as specified in this regulation and prohibited from entering commerce if the final postremediation testing performed shows the plant material to have a delta-9 tetrahydrocannabinol concentration of greater than 0.3 percent on a dry-weight basis.

(m) Remediation may be conducted as many times as is necessary to achieve a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry-weight basis. However, all hemp biomass that is not successfully remediated so as to have a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry-weight basis within 60 days of the issuance of the final failing report of analysis for any hemp that comprises the remediated hemp biomass shall be effectively disposed of as specified in this regulation.

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(n) Hemp for which a failing report of analysis is issued and for which the most recent testing conducted shows a delta-9 tetrahydrocannabinol concentration greater than 2.0 percent on a dry-weight basis shall not be eligible for remediation and shall be required to be effectively disposed of as provided in this regulation.

(o) Acceptable methods of effective disposal shall include plowing under, mulching or composting, disking, mowing or chopping, deep burial, burning, or any other method allowed under federal law and approved by the secretary.

(b) (p) If required pursuant to federal law, all ~~plants or plant parts~~ hemp that ~~require~~ requires 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.

(e) (q) If allowed pursuant to federal law, each licensee shall conduct effective disposal at the licensee's expense within 10 days of receiving notice that effective disposal is required. 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 reported 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.

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(d) (r) 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.

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

(f) (t) 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) (u) 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 2020 Supp. 2-3906; effective Jan. 8, 2021; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended P-\_\_\_\_\_.)

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**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 1.0 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 1.0 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;

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(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 2020 Supp. 2-3906; effective Jan. 8, 2021; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended P-\_\_\_\_\_.)

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**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. 4-34-24, K.A.R. 4-34-25, K.A.R. 4-34-29, and 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).**

The Kansas Department of Agriculture is proposing amendments to four regulations governing commercial hemp production within the state. The Department's existing commercial industrial hemp regulations were adopted pursuant to the Commercial Industrial Hemp Act, K.S.A. 2-3901, et seq., and these amendments are proposed due to the United States Department of Agriculture's January 2021 publication of its final rule on commercial hemp production. The final rule relaxes some requirements that the interim final rule had imposed on commercial hemp producers, and these amendments are proposed to reflect those changes in federal regulation. These proposed amendments will align the Kansas commercial industrial hemp program with the desire of the Kansas Legislature to ensure that hemp production in Kansas is conducted in the least restrictive manner allowed under federal law.

K.A.R. 4-34-24 governs sampling, testing, and harvest requirements. The Department is proposing to amend this regulation to extend the timeframe within which licensees must complete harvest after samples of hemp are collected. The amendment would require harvest to be completed within 30 days of sampling rather than the currently-required 15 days and is proposed in accordance with the corresponding provision of the USDA final rule that states, "Samples from cannabis plants must be collected within 30 days prior to the anticipated harvest, for total delta-9 tetrahydrocannabinol concentration level testing."

K.A.R. 4-34-25 currently governs effective disposal of hemp. The proposed amendment would allow hemp that contains a delta-9 tetrahydrocannabinol ("THC") concentration greater than 0.3 percent on a dry-weight basis to be remediated into a lawful product, rather than requiring all such hemp to be effectively disposed of. The amendment would allow hemp biomass to enter commerce if it can be remediated so as to have a THC concentration of 0.3 percent or less on a dry-weight basis within 60 days of the issuance of a failing report of analysis. This amendment is proposed in accordance with the provision of USDA's final rule that states, "A State or Tribal plan must include a procedure for the disposal or remediation of cannabis plants if the sample representing that plant tests above the acceptable hemp THC level."

K.A.R. 4-34-29 governs negligent violations of the Commercial Industrial Hemp Act. The proposed amendment changes the THC threshold at which hemp will be considered to have been produced negligently from 0.5 percent to 1.0 and is proposed in accordance with the provision of USDA's final rule that states that "hemp producers do

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not commit a negligent violation...if they make reasonable efforts to grow hemp and the cannabis does not have a total THC concentration of more than 1.0 percent on a dry weight basis.”

K.A.R. 4-34-30 – This regulation establishes requirements for state educational institution licensees and as currently adopted applies only to state educational institutions as that term is defined in the Commercial Industrial Hemp Act. The amendment to this regulation would allow other post-secondary or research institutions to obtain a research license and is proposed to facilitate continued research on industrial hemp, which will ultimately improve commercial production.

**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, the Commercial Industrial Hemp Act, and USDA’s final rule on commercial hemp production. The proposed amendments are not mandated by federal law, but rather are permitted by federal law now that USDA rules regarding commercial hemp production have become less stringent in some respects.

The amendments will ensure that Kansas law conforms with what is allowed under federal law, so these regulations, including the proposed amendments, do not differ from the approach taken by the federal government. Colorado may take a less restrictive approach to hemp production, 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. Nebraska, Oklahoma, and Missouri all currently have USDA-approved commercial hemp plans comprised of regulations that do not differ substantially from the Department’s current regulations. However, none of these states have yet submitted a plan to USDA that reflects the changes implemented by final rule.

**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;**

These amendments will enhance business activities and economic growth in Kansas, most significantly by allowing hemp that was previously required to be effectively disposed of to enter commerce if it can be remediated so as to contain an acceptable level of THC. The proposed remediation provisions will also significantly reduce the expenses that licensees have previously had to incur in effectively disposing of noncompliant hemp in accordance with DEA requirements. The lengthened harvest window and the revision of the negligent violation threshold will make production less burdensome in general, which may encourage new growers to become involved in the industry. Additionally, the Department believes that making research licenses available to more institutions will expand the knowledge base available to the entire hemp industry, in turn making production more profitable for all producers. The positive economic effect of the amendments is difficult to quantify due to the many variables and significant unknowns that remain in the hemp industry but has the potential to be significant long-term. The Department does not foresee the proposed amendments restricting business activities or growth in any way.

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**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:**

The proposed amendments will likely have a positive effect on the Kansas economy, specifically for individuals involved in hemp production. The Department estimates that all Kansas hemp growers combined will incur approximately \$5,000 worth of expenses during the 2021 growing season in post-harvest and post-remediation testing fees necessary for the remediation noncompliant crops. Producers also may incur some expenses in the labor and equipment involved in conducting remediation. However, the benefits of having a viable economic use for a crop that would otherwise have to be destroyed absent these amendments should more than offset any such costs.

The other implementation and compliance costs of the proposed amendments will continue to be borne mostly by law enforcement and regulatory entities as they continue to oversee the production of hemp and the intersection of this area with criminal law. However, such costs will likely not change significantly compared to the costs that the Department's existing hemp regulations already impose on the responsible regulatory entities.

Moreover, these regulations do not impose any mandatory requirements on the public at large. Participation in the industrial hemp program in general is voluntary, and any remediation efforts that producers undertake will also be voluntary—producers are still permitted to dispose of hemp that produces an unacceptable level of THC.

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

Individuals who obtain commercial industrial hemp grower licenses, particularly those who produce hemp with a THC concentration in excess of 0.3 percent, will be directly affected by these proposed amendments.

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

As discussed above, the benefits of these proposed amendments outweigh the costs, as they will allow producers a viable economic avenue for hemp that was previously required to be destroyed and promote research and development regarding hemp production.

**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;**

The most significant aspects of the proposed amendments are specifically intended to reduce the cost and impact of participation in the industrial hemp program on producers and make hemp production more profitable and accessible. As discussed above, the amendments accomplish this by creating a viable commercial option for hemp that would have to be destroyed under the present regulations and expanding opportunities for industry-enhancing research.

Additionally, in an effort to assist law enforcement, the existing commercial hemp regulations require licensees to maintain documentation 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

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to have a THC concentration over a certain threshold. Those requirements will remain in place with these amendments.

- 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.**

The Department estimates that all hemp producers combined will incur a total of \$5,000 in costs in remediating hemp during the 2021 growing season.

**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.**

The \$5,000 estimate provided for the 2021 growing season could remain substantially the same in future years or could vary significantly, as the legal landscape surrounding hemp production as well as producer knowledge is evolving quickly.

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

YES ☐ NO ☒

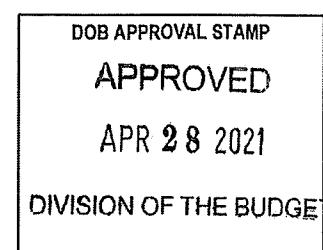
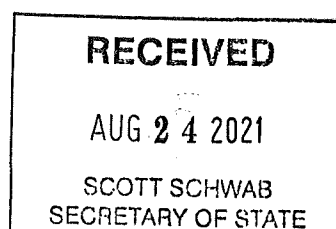
**Give a detailed statement of the data and methodology used in estimating the above cost estimate.**

The Department arrived at its estimated \$5,000 annual cost figure by estimating based on previous growing season results that approximately 20 licensees will incur post-harvest or post-remediation testing fees during the 2021 growing season. The cost of a post-harvest testing fee is \$250 per K.A.R. 4-34-12. As to the broader conclusion that the proposed amendments will enhance economic activity long-term, the Department relied in part on the findings of the Kansas Legislative Division of Post Audit on the topic of hemp production, which were published in September 2020.

**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 in this regard 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. The Department sent letters to the League of Kansas Municipalities, the Kansas Association of School Boards and the Kansas Association of Counties inquiring about the costs the proposed amendments would impose on those entities. The Kansas Association of Counties and the Kansas Association of School Boards responded stating that neither of those entities anticipates the amendments will result in additional expense to them. No response was received from the League of Kansas Municipalities.

**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).**

The proposed amendments were developed with the assistance of the Industrial Hemp Advisory Board, which is comprised of hemp industry advocates, legislators, and representatives of law enforcement agencies and research institutions. The Department also sent letters 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 inquiring about the costs the proposed amendments would impose on those entities. The Department has received responses from the Kansas Association of Chiefs of Police, Kansas Association of Counties, Kansas Association of School Boards, and Kansas Peace Officers Association, with each entity stating that the proposed amendments would not result in additional expenses being incurred if they are implemented. No responses have been received from the other entities.

**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).**

Though these regulations are not environmental regulations per se, it is worth noting that if these amendments are not adopted, Kansas hemp producers will not have a viable commercial option for hemp that produces a THC content of 0.3 percent or greater and would have to destroy all such hemp. The total cost of that scenario is difficult to estimate for many reasons but is potentially significant.

