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SCOTT SCHWAB SECRETARY OF STATE **Proposed**

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

A public hearing will be conducted at 10:00 a.m. on October 19, 2023, 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. The public hearing will be conducted in person and via video conferencing system. Members of the public who wish to attend the public hearing virtually must pre-register at https://kansasag.zoom.us/meeting/register/tZIsfumorDwuHdLVuq2h9q7_UyzX7tDSjzm3. After registering, you will receive a confirmation email containing information about joining the meeting.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments regarding the proposed regulations. All interested parties may submit written comments prior to the hearing by mail or email to Kansas Department of Agriculture, Attn: Ronda Hutton, 1320 Research Park Dr., Manhattan, Kansas 66502, or ronda.hutton@ks.gov. Comments may also be made via the Kansas Department of Agriculture's website at https://www.agriculture.ks.gov/document-services/public-comment.

All interested parties will also be given a reasonable opportunity to orally present their views regarding 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:

The Kansas Department of Agriculture (Department) is proposing four new regulations and amendments to two existing regulations for the administration of the Kansas Seed Law, K.S.A. 2-1415 et seq., and amendments thereto. The proposed new regulations would implement revisions that were made to the Kansas Seed Law during the 2022 Legislative Session, while the proposed amendments simply implement minor clarifications. A summary of the proposed regulations is as follows:

The proposed amendment to K.A.R. 4-2-1 revises an outdated reference to the Kansas State Board of Agriculture to refer to the Kansas Department of Agriculture;

- K.A.R. 4-2-8a is a proposed new regulation that provides that the term "noxious weed seed" used in K.A.R. 4-2-8 refers to prohibited weed seed, noxious weed seed, and restricted weed seed as those terms are defined in K.S.A. 2-1415, and amendments thereto;
- K.A.R. 4-2-8b is a proposed new regulation that provides that an analysis conducted by a person other than an authorized representative of the Department may be considered as evidence that a violation of the Kansas Seed Law has been remedied following the issuance of a stop sale order pursuant to K.S.A. 2-1423(c), and amendments thereto, but that the analysis conducted by an authorized representative of the Department is to be the official analysis upon which a determination of whether a violation of the Kansas Seed Law has occurred;
- K.A.R. 4-2-9a is a proposed new regulation that establishes the species of weeds whose seeds are considered restricted weed seeds and establishes the permissible rate per pound at which such weed seeds may be present in agricultural seed. The list of restricted weed seeds contained in this regulation is largely the same as the list of restricted weed seeds that was

previously contained in K.S.A. 2-1415, and amendments thereto, with the addition of Caucasian bluestem and yellow bluestem to the restricted weed seed list;

K.A.R. 4-2-9b is a proposed new regulation that establishes the species of weeds whose seeds are considered prohibited weed seeds and provides that such weed seeds are not to be present in agricultural seed in any amount. Prohibited weed seeds include Texas blueweed, Columbus grass, and any weed species whose seeds cannot be distinguished from Johnsongrass seed. This regulation presents no practical changes to the Kansas Seed Law, as agricultural seed containing the seeds of these species in any amount was previously prohibited from being offered for sale by K.S.A. 2-1421, and amendments thereto; and

K.A.R. 4-2-14 is an existing regulation that provides that agricultural seed that is exposed in a salesroom, storeroom, warehouse, or other place where seed is sold for sowing purposes is to be offered or exposed for sale unless the seed is clearly labeled otherwise. The proposed amendment to this regulation clarifies that such labels must also be permanent.

The proposed rules and regulations do not exceed any requirements of federal law. Federal law does not impose any significant requirements substantially similar to those contained in these regulations, as federal law in the area of agricultural seed deals primarily with the importation of seed into the United States and with seed moved in interstate commerce. The overall approach taken by contiguous states in regulating agricultural seed is similar to the approach taken by these regulations, with the major difference being that contiguous states do not restrict the number of Caucasian or yellow bluestem seeds that are permitted in agricultural seed.

These regulations will not significantly restrict business activities or growth. The only change imposed by these regulations that has the potential to have a practical effect on the agricultural seed industry is the addition of Caucasian bluestem and yellow bluestem seeds to the list of restricted weed seeds in K.A.R. 4-2-9a. With that regulation in place, agricultural seed producers will have to ensure that Caucasian bluestem and yellow bluestem seeds are not present in quantities greater than the allowed tolerance in seed they intend to offer for sale. However, producers are already required to remove the seeds that were previously designated prohibited weed seeds from seed offered for sale and to ensure that restricted weed seeds present in seed offered for sale do not exceed existing tolerances. As such, agricultural seed producers should already have the necessary equipment and personnel to perform this task. Accordingly, any additional costs imposed on affected business by these regulations will be minimal. Making Caucasian bluestem and yellow bluestem restricted weed seeds has the potential to benefit certain sectors of the agricultural and tourism economies of the state long-term by helping to reduce the presence within the state of these highly invasive weed species, which harm native grass species and negatively impact the biodiversity of Kansas prairies.

The proposed rules and regulations will not increase or decrease revenues of cities, counties or school districts, or impose functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability. The Department sent letters to the League of Kansas Municipalities, Kansas Association of Counties, and the Kansas Association of School Boards requesting input as to the effect of the proposed rules and regulations on those entities. To date, neither the Kansas Association of Counties or the Kansas League of Municipalities has responded to that inquiry. The Kansas Association of School Boards did respond and reported that it expects no impact to that organization as a result of the proposed regulations.

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In developing the proposed regulations, the Department also sought input from the Kansas Seed Improvement Association, the Kansas Corn Growers Association, the Kansas Soybean Association, Kansas Grain Sorghum, the Kansas Grain and Feed Association, the Kansas Wheat Alliance, and Kansas Farm Bureau.

Any individual with a disability may request accommodations to participate in the public hearing and may request the proposed regulations and their economic 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, via telephone at (785) 564-6715 or via fax at (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 via mail at Kansas Department of Agriculture, Attn: Ronda Hutton, 1320 Research Park Drive, Manhattan, KS 66502, via telephone at (785) 564-6715, or via the Department's website at <u>agriculture.ks.gov</u>.

Michael M. Beam Secretary Kansas Department of Agriculture

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K.A.R. 4-2-1. Labeling prohibitions. Any Agricultural seed shall be deemed mislabeled within the meaning of pursuant to the aet Kansas seed law if there appears on the label, container, invoice, other accompanying literature, or any advertising media, any statement any language stating, or directly or indirectly implying that any the agricultural seed is recommended or endorsed by the Kansas state board department of agriculture or its state seed laboratory, or any of its other divisions. This regulation shall become effective on January 1, 1989 appears on the agricultural seed's label, container, or invoice, or in any literature or advertising media accompanying the agricultural seed. (Authorized by K.S.A. 2-1427; implementing K.S.A. 1987 Supp. 2-1417 2-1421; effective Jan. 1, 1966; amended Jan. 1, 1989; amended P-

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K.A.R. 4-2-8b. Official analysis. For purposes of K.S.A. 2-1423, and amendments thereto, the analysis of agricultural seed conducted by the secretary or an authorized representative of the secretary shall serve as the official analysis of that seed. This official analysis shall be the basis upon which the secretary determines whether a violation of the act has occurred. An analysis conducted by any person other than the secretary or an authorized representative of the secretary may be considered as evidence pursuant to K.S.A. 2-1423(c) but shall not be considered an official analysis. (Authorized by K.S.A. 2-1427; implementing K.S.A. 2-1416, 2-1423, 2-1431, and 2-1437; effective P-________.)

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K.A.R. 4-2-9a. Restricted weed seeds. (a) The seeds of the following plant species shall not be present in agricultural seed at a rate per pound in excess of the number shown in the below chart:

Common Name	Scientific Name	Seeds per Pound
silverleaf nightshade	Solanum elaeagnifolium Cav.	45
Carolina horsenettle	Solanum carolinense L.	45
dock	Rumex spp.	45
oxeye daisy	Leucanthemum vulgare Lam.	45
perennial sowthistle	Sonchus arvensis L.	45
giant foxtail	Setaria faberi R.A.W. Herrm.	45
hairy chess	Bromus commutatus L.	45
cheat	Bromus secalinus L.	45
buckhorn plantain	Plantago lanceolata L.	45
wild onion or garlic	Allium spp.	18
charlock	Sinapsis arvensis L.	18
wild mustards	Brassica spp.	18
treacle	Erysimum spp.	18
wild carrot	Daucus carota L.	18
morning glory	Ipomoea spp.	18
hedge bindweed	Calystegia sepium (L.) R. Br.	18
dodder*	Cuscuta spp.	18
field pennycress	Thlaspi arvense L.	18
wild oats	Avena fatua L.	9
climbing milkweed	Cynanchum laeve (Michx.) Pers.	9
jointed goatgrass	Aegilops cylindrica Host	9.
	Solanum ptychanthum Dunal	9
	S. Americanum Mill.	9
black nightshade complex	S. sarrachoides Sendtn.	9
	S. nigrum L.	9
	S. interius Rydb.	9
wild buckwheat	Fallopia convolvulus L.	9
velvetleaf	Abutilon theophrasti Medik.	9
cocklebur	Xanthium spp.	9
Caucasian bluestem	Bothriochloa bladhii	2
yellow bluestem	Bothriochloa ischaemum	2
*except lespedeza seed other t	han sericea lespedeza (Lespedeza cuneata	a) which may contain
45 dodder seeds per pound	- · -	

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K.A.R. 4-2-9a Page 2

(b) The total number of restricted weed seeds present per pound of agri	icultural seed shall	
not exceed 150 in the following agricultural seeds:		
(1) native grass;		
(2) smooth bromegrass;		
(3) tall fescue;		
(4) wheatgrasses; and		
(5) lespedeza other than sericea lespedeza (Lespedeza cuneata).		
(c) The total number of hairy chess and cheat seeds present per pound of agricultural seed		
shall not exceed 2,500 in the following agricultural seeds:		
(1) smooth bromegrass;		
(2) fescues;		
(3) orchard grass;		
(4) wheatgrasses; and		
(5) chaffy range grasses.		
(d) For all other agricultural seeds, the total number of restricted weed seeds present per		
pound of agricultural seed shall not exceed 90. (Authorized by K.S.A. 2-1427;	implementing	
K.S.A. 2-1421; effective P)		
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K.A.R. 4-2-9b. Prohibited weed seeds. (a) The seeds of the following plant species shall not be present in agricultural seed.

- (1) Texas blueweed (Helianthus ciliaris DC);
- (2) Columbus grass (Sorghum *almum Parodi); and
- (3) any seeds that cannot be distinguished from Johnsongrass (Sorghum halepense (L.)

Pers.) seed. (Authorized by K.S.A. 2-1427; implementing K.S.A. 2-1421; effective P-

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K.A.R. 4-2-14. Seed offered for sale. Agricultural seeds seed, whether in bags, cartons, bins, or other containers exposed in salesrooms, storerooms, warehouses, or other places where seeds are seed is sold for sowing purposes, shall be considered as seed to be offered or exposed for sale for planting purposes and shall be subject to the provisions of the act, unless clearly and permanently labeled otherwise to indicate that the agricultural seed is not for sale and stored separately from seed that is or may be offered for sale. (Authorized by K.S.A. 2-1427; implementing K.S.A. 2-1423; effective Jan. 1, 1966; amended P-

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Dep Agency	partment of	Agriculture	Ronda Hutton Agency Contact	C	785-564-6715 Ontact Phone Number
K.A.R. 4-2- K.A.R. Number		4-2-8b, 4-2-9a, 4-2-9b, and 4-2-	· <u>14.</u>	⊠ Permanent	☐ Temporary
	Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?				
ir a;	If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.				
re n	If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?				
C	1	If yes, continue to fill out the packet submitted in the review Attorney General, AND the Divwill require Budget approval.	process to the De	partment of Ad	ministration, the
Section I	⊠ No	If no, continue to fill out the packet submitted in the review packet submitted in the review Attorney General. Budget appropriate Budget will require submission	process to the Depar roval is not require	rtment of Admir d; however, the	nistration and the Division of the
	ption of the	e proposed rule(s) and regulation	n(s).		

The Kansas Department of Agriculture (Department) is proposing four new regulations and amendments to two existing regulations for the administration of the Kansas Seed Law, K.S.A. 2-1415 et seq., and amendments thereto. The proposed new regulations would implement revisions that were made to the Kansas Seed Law during the 2022 Legislative Session, while the proposed amendments simply implement minor clarifications. A summary of the proposed regulations is as follows:

The proposed amendment to K.A.R. 4-2-1 revises an outdated reference to the Kansas State Board of Agriculture to refer to the Kansas Department of Agriculture;

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K.A.R. 4-2-8a is a proposed new regulation that provides that the term "noxious weed seed" as that term is used in K.A.R. 4-2-8 refers to prohibited weed seed, noxious weed seed, and restricted weed seed as those terms are defined in K.S.A. 2-1415, and amendments thereto;

K.A.R. 4-2-8b is a proposed new regulation that provides that an analysis conducted by a person other than an authorized representative of the Department may be considered as evidence that a violation of the Kansas Seed Law has been remedied following the issuance of a stop sale order pursuant to K.S.A. 2-1423(c), and amendments thereto, but that the analysis conducted by an authorized representative of the Department is to be the official analysis upon which a determination of whether a violation of the Kansas Seed Law has occurred;

K.A.R. 4-2-9a is a proposed new regulation that establishes the species of weeds whose seeds are considered restricted weed seeds and establishes the permissible rate per pound at which such weed seeds may be present in agricultural seed. The list of restricted weed seeds contained in this regulation is largely the same as the list of restricted weed seeds that was previously contained in K.S.A. 2-1415, and amendments thereto, with the addition of Caucasian bluestem and yellow bluestem to the restricted weed seed list;

K.A.R. 4-2-9b is a proposed new regulation that establishes the species of weeds whose seeds are considered prohibited weed seeds and provides that such weed seeds are not to be present in agricultural seed in any amount. Prohibited weed seeds include Texas blueweed, Columbus grass, and any weed species whose seeds cannot be distinguished from Johnsongrass seed. This regulation presents no practical changes to the Kansas Seed Law, as agricultural seed containing the seeds of these species in any amount was previously prohibited from being offered for sale by K.S.A. 2-1421, and amendments thereto; and

K.A.R. 4-2-14 is an existing regulation that provides that agricultural seed that is exposed in a salesroom, storeroom, warehouse, or other place where seed is sold for sowing purposes is to be considered to be offered or exposed for sale unless the seed is clearly labeled otherwise. The proposed amendment to this regulation clarifies that such label must also be permanent.

Section II

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

The proposed rules and regulations do not exceed any requirements of federal law. Federal law does not impose any significant requirements substantially similar to those contained in these regulations, as federal law in the area of agricultural seed deals primarily with the importation of seed into the United States and with seed moved in interstate commerce. The overall approach taken by contiguous states in regulating agricultural seed is similar to the approach taken by these regulations, with the major difference being that contiguous states do not restrict the number of Caucasian or yellow bluestem seeds that are permitted in agricultural seed.

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Section III

Agency analysis specifically addressing the following:

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

These regulations will not significantly restrict business activities or growth. The only change imposed by these regulations that has the potential to have a practical effect on the agricultural seed industry is the addition of Caucasian bluestem and yellow bluestem seeds to the list of restricted weed seeds in K.A.R. 4-2-9a. With that regulation in place, agricultural seed producers will have to ensure that Caucasian bluestem and yellow bluestem seeds are not present in quantities greater than the allowed tolerance in seed they intend to offer for sale. However, producers are already required to remove the seeds that were previously designated prohibited weed seeds from seed offered for sale and to ensure that restricted weed seeds present in seed offered for sale do not exceed existing tolerances. As such, agricultural seed producers should already have the necessary equipment and personnel to perform this task. Accordingly, any additional costs imposed on affected business by these regulations will be minimal. Making Caucasian bluestem and yellow bluestem restricted weed seeds has the potential to benefit certain sectors of the agricultural and tourism economies of the state long-term by helping to reduce the presence within the state of these highly invasive weed species, which harm native grasses species and negatively impact the biodiversity of Kansas prairies.

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(s) and regulation(s) and on the state economy as a whole;

The economic effect of these regulations on specific businesses, sectors, public utility ratepayers, individuals, local governments, and the state economy as a whole will be minimal, for the reasons set forth in subsection A.

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

Agricultural seed producers and dealers who sell seeds within Kansas will be the only businesses directly affected by the proposed rules and regulations.

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

The potential for curbing populations of Caucasian and yellow bluestem within Kansas outweighs the minimal cost that seed producers will incur in complying with the restricted thresholds that the proposed regulations impose for those seeds.

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 Department did not add any weeds to the existing lists of prohibited and restricted weed seeds beyond what was necessary to address the problems posed by highly invasive Caucasian bluestem and yellow bluestem.

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

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses - \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public - \$0

Total Annual Costs - \$0

(sum of above amounts)

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

As the proposed regulations impose no substantive changes other than adding Caucasian bluestem and yellow bluestem to the list of restricted weed seeds and seed producers already have the necessary staff and equipment on hand to sort these seeds out of the seed that they intend to offer for sale, these regulations are not expected to impose any implementation and compliance costs upon businesses, local governments, or members of the public.

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

The implementation of the proposed regulations will not cause any changes in aggregate state revenues and expenditures for either the current fiscal year or the next fiscal year. The regulations do not impose any new fees, and they can be implemented without the need for creating any additional positions within the Department.

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

No immediate or long-range costs are expected as a result of the proposed regulations. The increased regulation of Caucasian and yellow bluestem may benefit the agricultural and tourism economies of the state long-term, but those benefits will be indirect, and an estimate of that potential impact is difficult to quantify.

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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 rules and regulations will not increase or decrease revenues of cities, counties or school districts, or impose functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability. The Department sent letters to the League of Kansas Municipalities, Kansas Association of Counties, and the Kansas Association of School Boards requesting input as to the effect of the proposed rules and regulations on those entities. To date, neither the Kansas Association of Counties or the Kansas League of Municipalities has responded to that inquiry. The Kansas Association of School Boards did respond and reported that it expects no impact to that organization as a result of the proposed regulations.

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).

In developing the proposed regulations, the Department sought input from the Kansas Seed Improvement Association, the Kansas Corn Growers Association, the Kansas Soybean Association, Kansas Grain Sorghum, the Kansas Grain and Feed Association, the Kansas Wheat Alliance, and Kansas Farm Bureau.

Section IV

Does the	Economic Impact Statement involve any environmental rule(s) and regulation(s)?
☐ Yes	If yes, complete the remainder of Section IV.
⊠ No	If no, skip the remainder of Section IV.

A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

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