

State of Kansas

State Fire Marshal

Notice of Public Hearing on Proposed Administrative Regulations

A public hearing will be conducted by the State Fire Marshal at 10:00 a.m. on May 11, 2021, to consider the adoption on a permanent basis of proposed new rules and regulations concerning commercial processing of industrial hemp. Due to continuing concerns over COVID-19, the hearing will be held via Microsoft Teams conferencing. Remote access information will be provided upon request to any person wishing to observe, participate in, or listen to the hearing. Requests for access information must be submitted prior to May 11, 2021, via email to KSFM_Hemp@ks.gov.

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 State Fire Marshal, 800 SW Jackson, Suite 104, Topeka, Kansas 66603 or by email to KSFM_Hemp@ks.gov. All interested parties will be given a reasonable opportunity during the public hearing to present their views orally regarding the adoption of the proposed regulations. In order to provide all parties an opportunity to present their views, it may be necessary to require that each participant limit any oral presentation to a reasonable time as announced at the meeting.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Jill Bronaugh at (785) 296-3403 or jill.bronaugh@ks.gov. Individuals with a hearing and/or speech impairment may contact the Kansas Relay Center at 800-766-3777 for communication accommodations.

Summaries of the proposed new regulations and their estimated economic impact follow.

Each of these regulations is new because processing of industrial hemp for commercial (instead of research) purposes is new in Kansas. The authority to adopt rules and regulations concerning commercial hemp processing was originally given to the Kansas Department of Agriculture but was effectively transferred to the Office of the State Fire Marshal by Senate Bill 66 (L. 2020, ch. 5, sec. 106), after consideration of a bill to amend K.S.A. 2-3907 was terminated when the Legislature adjourned in March 2020. The 2021 House Bill 2244, which will codify the transfer of authority, is pending in the Legislature.

K.A.R. 22-26-1. Definitions. This regulation defines terms used in the regulations, including four materials resulting from the processing of industrial hemp: “intermediate substances,” which contain tetrahydrocannabinol (THC) and other cannabinoids; “by-products,” which is biomass remaining after processing that can be further processed into lawful products; “finished products,” an example of which is cannabidiol (CBD) oil; and “hemp waste,” a substance containing THC that cannot be further processed into a lawful product. This regulation defines the term “allowable THC content” as describing the upper limit of THC concentration allowed by state and federal law for industrial hemp plants and products, so there would be no need to amend these regulations if the allowable concentration is later changed by statute.

K.A.R. 22-26-2. Hemp processor registration; renewal. This regulation identifies the information required in an application and requires submission of a policies and procedures manual and a “code footprint” of the building(s) for review for compliance with national building safety codes. This regulation implements K.S.A. 2-3907 that requires fingerprint-based state criminal history record checks. The annual fee is \$1,000. The fee will be prorated for persons filing between the effective date of the regulations and April 1, 2021 because annual renewals are due on each April 1.

K.A.R. 22-26-3. Compliance with laws; denial, revocation, or conditioning of a registration; appeals. This regulation requires processors to comply with all local, state, and federal laws and regulations related to industrial hemp and makes the processor responsible for the actions of its employees, contractors, and agents related to any hemp processing activities. It lists the bases on which the State Fire Marshal may deny or revoke a registration based on certain types of convictions of the owner or an officer, proprietor, or partner in a processing business, or the owner of more than a 10% interest in the processing business. Person crimes are included, in addition to drug crimes, because the KBI has advised that there is a correlation between involvement in illegal drug activities and violent crime, and the criminal records of people who commit both drug crimes and violent crimes often do not show the drug charges, because during prosecution, the drug charges were dropped and the conviction was based on the higher-level person crime.

K.A.R. 22-26-5. Policies and procedures manual. This regulation requires hemp processors to develop and abide by a set of policies and procedures to ensure that all hemp, by-products, intermediate substances, and hemp waste are handled in a manner to prevent diversion, theft, or loss of materials containing high amounts of THC. The manual must be submitted to and approved by the State Fire Marshal.

K.A.R. 22-26-6. Processing records. This regulation requires processors to make and retain records of their acquisition of hemp, processing activities, transportation activities, and inventory and security system records, by weight per batch. The records will provide tracking of hemp throughout all stages of processing and will help prevent or detect diversion, theft, or loss of materials that could be attractive for illicit uses. The tracking will also ultimately benefit consumers because it would help track the source materials for a given finished product. (But note that finished products/consumer products are outside the scope of the State Fire Marshal's authority.)

K.A.R. 22-26-7. Access to records and property. This regulation addresses the need for oversight of the processors because of the high THC content in intermediate substances and waste and because of the inherent safety hazards relating to methods used for extraction. Subsection (a) states that by accepting a hemp processor registration, the processor grants consent for the State Fire Marshal or designee to have immediate access to inspect records, premises, and motor vehicles to determine compliance with the Act and these regulations. It requires processors and employees to consent to a search of their vehicles, personal effects, and persons while on the premises, but only if an inventory discrepancy is discovered or there is reason to believe that the processor or employee is in possession of hemp materials for purposes other than lawful processing under the Act.

K.A.R. 22-26-8. Facilities; exemptions. This regulation requires that facilities meet the adopted national codes and standards for life safety and property protection, such as fire alarm systems, multiple exits, handling of flammable materials, etc., and allows the State Fire Marshal to grant variances, upon request, from code sections that impose unnecessary hardship on a processor, so long as it would not constitute a distinct hazard to life or property.

K.A.R. 22-26-9. Security measures; reportable events; recordkeeping. This regulation requires a perimeter alarm with motion detector providing coverage of all entrances and exits, windows, and storage rooms. It states that video recordings must be maintained for at least the preceding 90 days. It also requires processors to notify the State Fire Marshal of any interaction between law enforcement and the processor or its employees, contractors, or agents that is related to participation in the hemp processing industry and of charges or investigations related to the crimes listed in K.A.R. 22-26-3(b).

K.A.R. 22-26-10. Acquisition of hemp, by-products, intermediate substances, or seeds for processing. This regulation establishes that processors shall obtain hemp materials only from lawful sources and only if the material is accompanied by documentation of its source. This regulation applies to both in-state and out-of-state sources of hemp. The processor is required to assign a batch number at the time of acquisition.

K.A.R. 22-26-11. Inventory control; reports. This regulation establishes that processors must make a daily inventory and location of hemp in all stages of processing – hemp plant material, by-products, intermediate substances, hemp waste, and finished products. The processor shall submit these inventories to the State Fire Marshal electronically and shall notify the State Fire Marshal immediately of any inventory discrepancies or unauthorized alteration of records related to inventory, security, employment, or transportation. Records shall be maintained for three years.

K.A.R. 22-26-12. Disposal of hemp waste. This regulation concerns hemp waste, which is any substance that contains THC and that cannot be further processed into a lawful product. Treatment of these substances is governed by K.S.A. 2-3909, which requires that hemp waste that “can be used in the same manner as, or has the appearance of, a controlled substance . . . shall be rendered unusable and unrecognizable before the waste is transported or disposed.” This regulation lists types of materials (such as cardboard waste or soil) that hemp waste can be ground into to render it unusable and unrecognizable. It also allows processors to use other methods of disposal approved by the State Fire Marshal.

K.A.R. 22-26-13. Transportation. Under this regulation, any form of industrial hemp materials that a processor transfers must be accompanied by a harvest certificate, a certificate of analysis, or a similar document, and a signed bill of lading to show to law enforcement, to distinguish hemp from marijuana. It also states that a person will be presumed to have obtained hemp materials unlawfully if they do not have appropriate documentation. It forbids persons from taking from the facility, or possessing, hemp, intermediate substances, or hemp waste unless the possession is for activities authorized under the Act.

K.A.R. 22-26-14. Chain of custody for transportation of intermediate substances. Some processors might process industrial hemp only through the extraction stage and then transfer the resulting “intermediate substance” to a finishing processor. To avoid having extracted THC from being transported around the state, this regulation states that no material having a greater than allowable THC content shall leave a processing facility. Thus, an intermediate substance would have to be diluted before it could be transported. Then the diluting agent would be removed by the finishing processor. However, this process could be done by an individual, without need of a processing facility, so even the diluted THC would be attractive for theft or diversion. The regulation sets out very specific steps that include sealing of containers and locking the cargo doors of the vehicle, and the taking of a series of digital photos. Signed certifications will be required when the intermediate substances are loaded and when they are delivered. This ensures that all individuals are identified and, in case of diversion of the substance, allows for tracking of where the diversion occurred. It requires the recipient to immediately notify the processor and the State Fire Marshal if any of the containers are missing or there are signs of tampering. The Investigation

Division of the State Fire Marshal will respond and will contact local law enforcement or the KBI for assistance if appropriate.

K.A.R. 22-26-15. Stop sale, use, or removal order; cease and desist. This regulation requires the processor to maintain the status quo of inventory of all hemp, intermediate substances, by-products, finished products, or hemp waste when there is reason to believe that any of the materials are being produced, sold, or distributed in violation of the Act or any rules and regulations issued thereunder, to allow for the state fire marshal to inventory, sample, and review inventory and security records. No such order shall be valid for longer than 7 calendar days. Additionally, this regulation incorporates the State Fire Marshal's power under K.S.A. 31-139 to issue a cease and desist order or file a criminal complaint when there are violations of the Kansas fire prevention code.

K.A.R. 22-26-16. Testing. This regulation requires the processor to submit samples of hemp materials to a testing laboratory at the request of the State Fire Marshal and to allow the State Fire Marshal to take samples of hemp materials on the premises of the processing facility. It provides that samples will be analyzed at the processor's expense.

Economic Impact Statement:

These regulations enable the processing of hemp for commercial purposes. At this time, the primary product is legal cannabinoid extracts such as CBD, that can be incorporated into consumer products. Commercial processing businesses will produce jobs for workers and benefit the construction industry for building new facilities or retrofitting existing buildings. Commercial processing will benefit the Kansas agriculture industry by providing a ready market for crops. In-state commercial processing may enhance revenue for Kansas producers because transportation costs would be lower than to out-of-state processing facilities.

However, there is difficulty in quantifying the predicted enhancement to business activities and growth because the commercial hemp industry is new in Kansas. Much remains unknown regarding the methods of processing industrial hemp and what the market for products produced from hemp will be. There is no existing commercial hemp processing in Kansas, so the new rules and regulations should not restrict existing business activities in Kansas in any way.

Processors of industrial hemp and hemp producers (growers) will be directly impacted in a positive way by these regulations, as well as marketers and producers of finished hemp products and retail and wholesale operations selling CBD products and other industrial hemp products.

The amounts shown below reflect amounts that will be assessed or incurred by the State Fire Marshal during the second half of the 2021 fiscal year. The number of registrations in future years

will depend on the success of both the commercial industrial hemp growers and processors. The amount of hemp available to be processed will vary from year to year.

It is estimated that 12 processors may come into operation during the second half of FY 2021. The annual fee beginning April 30, 2021 is \$1,000, yielding \$12,000 in fees. Prior to that, the registration fee will be prorated at the rate of \$85/month, which would not exceed \$1,020.

The costs of implementing the proposed rules and regulations include the performance of initial inspections of each facility, repeat inspections if deficiencies are found, recordkeeping, and the review of requests for exemptions, which are likely to come from each processor. There could be compliance costs for law enforcement if processors do not comply with the regulations regarding intermediate substances or hemp waste. There are no other implementation and compliance costs reasonably expected to be incurred by other business sectors, public utilities, individuals, or local governments.

Determining an estimated cost of compliance for processors will be developed through the public hearing process. The costs for physical facility compliance will vary greatly depending on whether a processor is retrofitting an existing building or constructing a new facility. The regulations provide that the State Fire Marshal may grant exemptions from compliance with national code sections that create an unnecessary hardship on the processor. Any processor would have some costs associated with recordkeeping, and it is not known whether the records required by these regulations would impose any burden beyond that. The other significant cost to processors is the video surveillance and alarm system, but these measures are considered necessary because of the high-THC substances produced during processing.

Copies of the complete texts of the proposed regulations and the economic impact statement may be obtained electronically on the agency's website at <http://firemarshal.ks.gov> or by sending a written request via mail to the State Fire Marshal at the address above.

Doug Jorgensen
State Fire Marshal