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January 4, 2019

Raney Gilliland, Director
Kansas Legislative Research Department
300 SW Tenth Street- Room 68-West
Topeka, Kansas 66612-1504
Sent via email to Raney.Gilliland@KLRD.ks.gov

Re: Department of Agriculture, Plant Protection and Weed Control Program Regulations K.A.R. 4-34-1 through 4-34-21.

Mr. Gilliland:

Please distribute this letter to the Joint Committee on Administrative Rules and Regulations ("Committee") in preparation for the Kansas Department of Agriculture's ("KDA") appearance before the Committee to discuss KDA's proposed regulations regarding the development of an industrial hemp research program.

On December 10, 2018, KDA appeared before the Committee to discuss these regulations and several questions were raised at that time. The Committee determined it best to delay review of the proposed regulations to allow KDA an opportunity provide a response to the various questions raised. The intent of this letter is to provide a formal written response to the questions raised by the Committee and to assist in the upcoming review.

1. Why did KDA not meet the December 31, 2018 deadline in SB 263 to implement regulations?

SB 263 (now K.S.A. 2-3901 *et seq.*) required the development of a comprehensive set of regulations from scratch. Both KDA legal staff and plant protection staff dedicated an immense amount of time to learning about industrial hemp, developing the regulations, and the other administrative documents and procedures necessary to implement a research program to meet the statutory requirements. SB 263 was enrolled on May 3, 2018 and KDA held its first public information meeting on May 11, 2018. Three advisory committee meetings were held in June and draft regulations were made available for public comment on July 5, 2018. The public comments were reviewed with the advisory committee on September 6, 2018 and the proposed regulations were submitted to the Division of Budget for formal review on September 12, 2018. The proposed regulations were stamped by the Attorney General on October 24, 2018. In just less than four months KDA produced a comprehensive set of regulations for review and in just over five months the current regulations were approved by the other reviewing

agencies. I am pleased with the extraordinary effort put forth by KDA staff in developing these regulations so that they will be in place for the 2019 growing season.

2. Why did KDA not propose temporary rules and regulations?

KDA legal staff did consider the adoption of temporary regulations; however, it was determined that the regulations for an industrial hemp research program would not meet the requirements for the adoption of temporary regulations. In order to adopt a temporary regulation, K.S.A. 77-422(a) requires that the regulation be necessary for the “preservation of the public peace, health, safety or welfare” of the state. Even if an industrial hemp research program was necessary to preserve the public peace, health, safety, and welfare, there is no public benefit to rushing through the development of regulations. Regulations that were not properly developed and vetted could have placed burdensome requirements on law enforcement agencies and KDA staff before each had the opportunity to properly prepare to protect the public as directed by the Legislature.

3. The Committee posed several questions about the authority and make-up of the current Industrial Hemp Advisory Committee¹ and the future advisory board as follows:

A. Explain the authority of the current advisory committee and how that relates to the proposed advisory board referenced in your regulations.

K.S.A. 2-3902 authorizes the creation of an advisory board to review and recommend applications. The Legislature did put in a place any restrictions or requirements regarding this board, except that the board shall approve any project or proposal before the Secretary can grant final approval. Pursuant to this authority, the Industrial Hemp Advisory Committee was established to assist in developing the proposed regulations. The current advisory committee has primarily served as a working group made up of various parties that are interested in the production of industrial hemp and has provided feedback during the development of the regulations. No industrial hemp licenses can be approved until the regulations are effective and hence, the current advisory committee has never been provided with the authority to approve any applications. Once the regulations become effective, an advisory board conforming to the more specific authority of the regulations will need to be appointed. No applications will be recommended to the Secretary for approval until the new advisory board is put in place.

B. Explain the makeup of the current advisory committee.

Although KDA requested the Legislature mandate the make-up of the advisory board, K.S.A. 2-3902 did not put any requirements in place for the make-up of the advisory board. Attached to this document is a list of the current committee members, their locations, and professional backgrounds. As to the inclusion of various legislators, volunteers were solicited from various legislative committees and every legislator that was willing to volunteer was appointed to the advisory

¹ “Advisory committee” refers the current advisory body appointed by the Secretary and “advisory board” refers to body that will be appointed once the proposed regulations become effective.

committee. There were no senators or members of the Democratic Party that volunteered. The same process was used to select representatives from universities. Kansas State University, Fort Hays State University, Pittsburg State University and others were contacted to request nominees for the advisory committee. If a university nominated someone, they were appointed to the advisory committee. If the Committee has recommendations for changes to the make-up of the advisory board contained in our proposed regulations, KDA is open to those concerns or suggestions. The proposed regulations will require that the advisory board appointed after the regulations are effective reflect the different geographic areas of the state equally and that each member be recognized for knowledge and leadership in crop research, industrial production or processing, law enforcement, seed certification, or any other relevant sector.

C. Why were the terms of the advisory committee extended to April 1, 2019?

Once it became clear that the proposed regulations would not be in place by December 31, 2018, KDA wanted to maintain some form of an advisory board or committee in place. Especially since there would be such a short turnaround time between the adoption of the regulations and the deadline to apply for a license for the 2019 growing season.

D. What authority does the current advisory committee have?

The current advisory committee has not been delegated any authority. They have been asked to serve in an advisory role and provide advice regarding the development and adoption of the proposed regulations. The current committee has also assisted with a review of pre-applications. This was done to assist licensees who will have a small window of time to revise their research project or proposal and correct or clarify their applications between when the regulations become effective and the application deadline on March 1. The comments from the advisory committee regarding the pre-applications are not binding on the future advisory board that will be put in place when the regulations are effective, but it was important to assist licensees while there was still some time for them to make revisions.

E. Who approves the committee's evaluation matrix?

The evaluation matrix was created by KDA staff with input from the current advisory committee and was simply intended as a way to help the advisory committee consistently review projects and proposals. The matrix was not put into regulation because it was not intended to be the determinative factor in whether or not a project or proposal might be approved. The matrix will likely change in form over the course of the program as KDA learns more about regulating industrial hemp.

F. Who has final say on the approval projects or proposals?

Pursuant to K.S.A. 2-3902, the Secretary of Agriculture makes the final decision on whether or not to license all industrial hemp projects and proposals. The Secretary cannot approve a project or

proposal that has not been recommended by the advisory board, however, the Secretary is not required to approve a project or proposal because the advisory board has recommended approval. The current advisory committee has not been tasked with giving recommendations on proposals or projects to the Secretary. The future advisory board constituted under the proposed regulations will have the authority to make recommendations to the Secretary.

G. The Committee requested an update on the review of pre-applications by the advisory committee.

KDA received 75 pre-applications, of which 17 were returned by KDA staff for non-compliance with the proposed application requirements. The advisory committee was provided with 58 pre-applications and was able to review 39 pre-applications and provide them with feedback. There was not sufficient time for the committee to review all 58 applications. Feedback ranged from no comment to suggested changes to the project or proposal. All pre-applicants were informed that review of the pre-application would not guarantee ultimate approval of the project or proposal when it is officially submitted pursuant to the proposed regulations. Pre-applicants will also be sent the formal applications when they become available.

4. What other states' information was used to develop the proposed regulations?

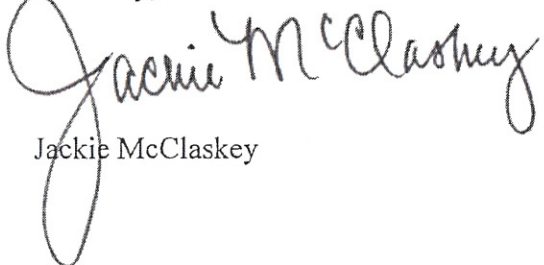
KDA staff looked at regulations in multiple states to determine the best framework for Kansas based on our specific enabling statute. Specifically, information from Arkansas, Colorado, Kentucky, Minnesota, Missouri, Nebraska, Oklahoma, Oregon, Washington, and Wisconsin was reviewed. Elements from some of these states' regulations may exist in the proposed regulations, but after extensive editing for circumstances unique to Kansas, it could not be said that the proposed regulations were intentionally modeled after any other state. Officials involved in the regulation of industrial hemp in Colorado and Kentucky were also brought to Kansas for public information meetings and consultation with KDA staff.

5. Why did KDA not provide a definition of "primary Kansas resident" in the proposed regulations?

There was not an intentional decision to leave out this definition. KDA is open to any definitions in Kansas law that the Committee would like to bring to our attention.

Attached for your reference is list of the advisory committee's membership, the evaluation matrix, and a complete timeline of industrial hemp related activities conducted by KDA.

Sincerely,



Jackie McClaskey

Industrial Hemp Advisory Committee Members

Willie Dove - Representative 38th Kansas House District, Bonner Springs

Kerri Ebert – Kansas State University Extension Assistant, Kansas Center for Sustainable Agriculture and Alternative Crops, Manhattan

Steven Johnson - Representative 108th Kansas House District, Assaria

Jeff Ochampaugh - Agrilead, Inc., Russell

Kelly Rippel - Vice President, Kansans for Hemp, Topeka

Steve Schuler - Executive Director, Kansas Crop Improvement Association, Manhattan

Dr. Andrew Tucker - Assistant Agronomy Professor, Fort Hays State University, Hays

Katie Whisman - Executive Officer, Kansas Bureau of Investigation, Topeka

Troy Waymaster - Representative 109th Kansas House District, Bunker Hill

Jeff Vogel - Program Manager, KDA Plant Protection and Weed Control (ex officio member), Topeka/Manhattan

Part 1: Application Evaluation
(Completed by KDA)

Applicant Name: _____				
Application submitted by deadline? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Application Fee Received? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Focus: <input type="checkbox"/> Grain <input type="checkbox"/> Fiber <input type="checkbox"/> Floral Material <input type="checkbox"/> Replication-Seed <input type="checkbox"/> Replication-Transplants <input type="checkbox"/> Other _____				
Does applicant or family member of applicant work at Kansas Department of Agriculture (KDA)? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," KDA employee to sign Conflict of Interest Statement: _____				
Yes	No	N/A	All Criteria must be met for conditional approval.	Comments
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1) If previous License Holder, has submitted required reports.	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2) Has demonstrated a willingness to comply with KDA's rules, instructions from KDA staff and instructions from KBI and other law enforcement agencies.	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3) Applicant is in good standing with other KDA programs.	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4) Applicant's primary residence is in Kansas.	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5) Completed accurate description of each individual licensed for transport with accurate vehicle identification.	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6) Proposed growing and storage locations comply with land use restrictions. <input type="checkbox"/> Not owned by or leased from any person who is ineligible or was terminated/denied from program <input type="checkbox"/> Not in or within 50 ft of residence <input type="checkbox"/> >1/4 mile from school(s)/public recreation area(s)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7) Background check has no drug-related felony convictions. (KBI background check)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	8) Maps and all other required attachments present and complete	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9) Completed application with all affirmations checked, acknowledgments checked and required attachments.	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10) Has not made any false statements or representations to KDA or law enforcement.	
Special attributes / Other notes: _____				

Agreed:	Recommended? <input type="checkbox"/> / Not Recommended? <input type="checkbox"/>	Date: _____	Follow-up / Notes:
	Approved For: <input type="checkbox"/> Grower <input type="checkbox"/> Distributor <input type="checkbox"/> Processor <input type="checkbox"/> University <input type="checkbox"/> Grain <input type="checkbox"/> Fiber <input type="checkbox"/> Floral Material <input type="checkbox"/> Rep. Seed <input type="checkbox"/> Rep. Trans. <input type="checkbox"/> Other _____		
	_____ # Growing Addresses	_____ Acres	_____ Sq. Ft.
	Exceptions, if any: _____		

Part 2: Research Plan Evaluation
(completed by State Advisory Board)

Scoring scheme:

- 3 points = Strong
- 2 points = Average
- 1 point = Weak
- 0 points = Unacceptable
- N/A = Not Applicable

Yes	No	N/A	All Criteria must be met for conditional approval.	Score	Comments
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1) Provides research plan that complies with state and federal law and KDA policy.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2) Clearly identifies research plan and objective.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3) Describes in detail the research hypotheses.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4) Provides a thorough description of intended data collection and how it will be measured.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5) Identifies a detailed timeline for the duration of research conducted.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6) Outlines a clear experimental design.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7) Identifies implementation plans and methods for observation and record keeping.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	8) Outlines methods for data analysis, interpretation and drawing conclusions.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9) Demonstrates knowledge of anticipated results from research.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10) Outlines management techniques and/or environmental factors impacting THC levels.		

Yes	No	N/A	All Criteria must be met for conditional approval.	Score	Comments
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11) Provides detailed evaluation of crop establishment techniques.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12) Develops a baseline of conditions before the project begins		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13) Explains post-harvest impacts and the impacts of soil type, pH and nutrient levels on crop.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14) Provides clear economic analysis of production techniques and methods researched.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	15) Describes clear use of pest and weed control systems and an overview of crop tolerance to residual herbicides.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16) Develops a collaborative plan with processors and distributors.		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17) Explains post-harvest management considerations including grazing stubble, residue maintenance, impacts of habitat and management of volunteer hemp.		
Total Score:					
Special attributes / Other notes:					

Alternative Crop Research Pilot Project
 Advisory Board Member

Date

Timeline regarding Industrial Hemp Regulations, Advisory Board Meetings and Outreach Activities for Industrial Hemp Research Program Development

- April 20, 2018 – KDA press release announcing May 11th meeting.
- May 3, 2018 – Senate Bill 263 enrolled as law.
- May 11, 2018 – 3 session public meeting information exchange on industrial hemp.
- June 6, 2018 – Advisory Board meeting to review proposed regs.
- June 19, 2018 – Advisory Board meeting to review proposed regs.
- June 25, 2018 – Advisory Board meeting to review proposed regs.
- July 5, 2018 – KDA press release announcing availability of draft regs and informal public comment period.
- July 5 – July 18, 2018 – Informal public review and comment period on draft regs.
- August 23, 2018 – Industrial hemp session at Ag Growth Summit.
- September 6, 2018 – Advisory Board meeting to review public comments and draft regs.
- September 12, 2018 – Regulations and Economic Impact Statement were submitted to Division of Budget.
- October 17, 2018 – Industrial Hemp session at Kansas State Research and Extension annual conference.
- October 22-23, 2018 – Kansas Farmers Union Industrial Hemp statewide meetings.
- October 24, 2018 – Regulations were stamped approved by the Attorney General's Office.
- October 30, 2018 – KDA press release announcing availability of pre-applications.
- November 8, 2018 – Notice of public hearing on proposed regulations published in Kansas Register.
- December 10, 2018 – Hearing before the Joint Committee on Administrative Rules and Regulations.
- December 11, 2018 – Advisory Board meeting to review Pre-Applications.
- January 7, 2019 – Hearing before the Joint Committee on Administrative Rules and Regulations.
- January 9, 2019 – Public Hearing.