

Department of Agriculture, Division of Weights and Measures
Notice of Hearing on Proposed
Administrative Regulations, Statewide

A public hearing will be conducted at 10:00 a.m., Wednesday, November 29, 2017, in room 124 of the Kansas Department of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, to consider the adoption of proposed regulations.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, 66502, or by e-mail to ronda.hutton@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally 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:

K.A.R. 99-25-5 - The amendment is intended to increase the fee to cover the expenses incurred by the Kansas Department of Agriculture for providing continuing education seminars to technical representatives. Currently the fee charged for continuing education seminars provided by the Department is \$20. Such fee does not cover the expenses incurred by the Department in providing the continuing education seminars. Beginning in fiscal year 2015, the Department entered a contract with a community college to provide continuing education seminars on behalf of the Department. The amendment sets the continuing education seminar fees at amounts necessary to cover the expenses incurred in providing the continuing education seminars as follows:

- (i) \$82 for each continuing education seminar required for licensure year, July 1, 2018 to June 30, 2019; and
- (ii) \$85 for each continuing education seminar required for licensure year, July 1, 2019 through June 30, 2020; and
- (iii) \$100 for each continuing education seminar required for licensure year beginning on or after July 1, 2020.

The amendment also eliminates the annual expiration of technical representative licenses and permits the Department to issue both annual and three-year licenses as specified in K.S.A. 83-302(c)(2). The licenses issued to technical representatives show the year of expiration and all licenses expire on June 30 regardless of what year they expire.

Economic Impact Statement:

K.S.A. 83-302 requires the Kansas Department of Agriculture to provide annual continuing education as part of the technical representative licensing requirements. The continuing education requirements ensure technical representatives have a minimum level of competency. Maintaining some level of minimum standards protects all Kansans involved in financial transactions involving weights and measures, both businesses and consumers, alike.

The removal of the annual expiration of licenses permits the Department to issue the three-year licenses specified in K.S.A. 83-302.

The regulation is not mandated by federal law.

Increasing the fees for continuing education seminars will cover the Department's expenses

incurred in providing the seminars and will eliminate the Department's net loss resulting from the community college contract which was \$15,260.00 for calendar year 2016.

The removal of the annual expiration of licenses will not impose any significant economic impact upon the Department. The revenue schedule for approximately 10% of the Department's licensing fees will change from an annual revenue inflow to a once in three-year revenue inflow. Over time, this will be abated as the Department anticipates a surge of three-year licenses the first year such licenses are issued and then a shift to approximately the same number of three-year licenses being issued annually.

The Kansas Department of Agriculture anticipates no adverse impact on other governmental agencies. Technical representatives or their employers, if they are paying the continuing education seminar fees, will experience an increase in the fees from the current \$20 to a maximum of \$100 over a period of several years. Other private businesses utilizing the services of technical representatives could potentially experience this increased cost being passed on to them. Using the maximum potential increase of \$80, a service company would have to charge about \$0.35 more, per work day per technician, to recoup the increased fees. The potential cost increase for customers utilizing the technical representative services would be less as it is not uncommon for one technical representative to visit more than one business in a day.

In some cases, the technical representatives pay the fees themselves and do not get reimbursed by their employers. In these instances, there would be no direct pass through cost to businesses utilizing the services of a technical representative.

The Department anticipates that removing the annual license expiration will indirectly decrease the cost imposed on technical representatives or their employers. The decreased cost is realized from the reduced travel time and labor expenses since the technical representative will only have to attend continuing education seminars once every three years.

The Kansas Department of Agriculture considered removing or reducing the continuing education requirements for technical representatives however such options were rejected due to concerns that the lack of training would increase inequity in the marketplace and potentially cause significant economic harm to Kansas businesses and consumers alike. The Department will continue to work with the community college to utilize education tools to keep cost down and to keep travel cost and time commitments to a minimum for technical representatives.

The three-year license option is being requested because it is a less costly option.

K.A.R. 99-26-1 - The amendment eliminates the hourly rate for services performed by the Kansas Department of Agriculture at the Kansas Metrology Laboratory due to the fee schedule specified in K.S.A. 83-214.

K.S.A. 83-214 identifies various devices the Department can test and prove. The amendment modifies the list of devices the Department can test and prove to reflect those devices specified in K.S.A. 83-214. The amendment clarifies that the Department may charge \$50 per hour for testing and proving of weights, measures, balances and other measuring devices when services are provided at the device's location.

The amendment increases the hourly rate the Department may charge when conducting National Type Evaluation Program (NTEP) evaluations. The amendment increases the rate from \$95 to a rate not to exceed \$200 per hour or fraction thereof as necessary to cover the expenses incurred by the Department in providing these services. Currently, Kansas is one of seven states recognized as a NTEP laboratory and approved to perform NTEP evaluations. NTEP evaluations are only performed for new or modified models of weighing and measuring devices when a manufacturer requests such models be evaluated and approved for legal weights and measures use. A majority of the NTEP evaluations will be conducted outside of Kansas and the Department does not want the cost of such work to be subsidized by the state of Kansas with the use of State General Fund dollars.

Economic Impact Statement:

The regulation is not mandated by federal law.

The amendment should reduce confusion with respect to which fees the Department will charge for various services being performed. With the removal of the hourly rate for services performed at the Kansas Metrology Laboratory, it clarifies the fee schedule in K.S.A. 83-214 will be utilized by the Department for services conducted in the Kansas Metrology Laboratory.

The amendment further clarifies that the hourly rate will be charged for services provided at the place where a device is used and not for work conducted in the Kansas Metrology Laboratory.

The Department has been performing NTEP evaluations for many years and the rate has not been changed for many years. Currently, Kansas tax payers are subsidizing the Department's expenses when NTEP evaluations are performed. The Department does not compete with private business or industry when performing NTEP evaluations because the NTEP evaluations can only be completed by the National Conference on Weights and Measures (NCWM) or government laboratories recognized and approved by NCWM.

The Kansas Department of Agriculture does not anticipate any economic impact resulting from the amendment's clarification of the fees being charged by the Department or the identification of devices as specified in K.S.A. 83-214.

The Department anticipates some economic impact resulting from the increase in NTEP evaluation rates however the increase is uncertain. The number of NTEP evaluations completed and the average amount of time to complete an NTEP evaluation is unpredictable and can vary significantly from year to year. If recent trends continue, the Department anticipates that two to five NTEP evaluations will be performed annually with each evaluation taking anywhere from 16 to 50 hours. The Department intends to charge the rate that is necessary to cover the expenses incurred but if the Department were to charge the maximum rate of \$200 per hour, the revenue received for performing individual NTEP evaluations would increase by a maximum of 111%.

The Kansas Department of Agriculture anticipates no adverse impact on other governmental agencies resulting from the amendment.

The Department does not anticipate any economic impact on private business or individuals resulting from the amendment's clarification of the fees being charged by the Department or the identification of devices as specified in K.S.A. 83-214.

If a manufacturer requests the Department to complete a NTEP evaluation, the maximum cost increase would be from \$95 to \$200 per hour. However, NTEP evaluations are optional and utilizing the Department for the evaluation is not mandatory. Manufacturers can hire any NTEP laboratory they choose and the competition between laboratories gives manufacturers other options for NTEP services.

With respect to clarifying the fees being charged by the Department and the identification of devices as specified in K.S.A. 83-214, the Department did not consider other methods.

The Department considered no longer performing NTEP evaluations, however, doing so would potentially increase the cost to Kansas manufacturers desiring to have NTEP evaluations completed. Currently the next closest states that can perform NTEP evaluations are Ohio (to the east) and Oregon (to the west). Kansas manufacturers desiring a NTEP evaluation would be responsible for paying for travel hours and expenses to bring NTEP evaluators from other states which may cost them more than the amendment's rate increase.

Any individual with a disability may request accommodations in order to participate in the public hearing and may request the proposed regulations and impact statements in an accessible format. Requests for accommodations should be made at least five working days in

advance of the hearing by contacting Ronda Hutton at (785) 564-6715 or fax (785) 564-6777. Handicapped parking and entrance is available on the west side of the building and is accessible to individuals with disabilities. If you have questions, please contact Ronda Hutton at (785) 564-6715 or email to ronda.hutton@ks.gov.

Copies of the regulations and their economic impact statements may be obtained by contacting the Department of Agriculture, Ronda M. Hutton, 1320 Research Park Drive, Manhattan, KS 66502 or (785) 564-6715 or by accessing the department's web site at agriculture.ks.gov. Comments may also be made through our website under the proposed regulation.

Jackie McClaskey
Secretary
Kansas Department of Agriculture