

Department of Agriculture, Food Safety and Lodging Program
Notice of Hearing on Proposed
Administrative Regulations, Statewide

A public hearing will be conducted at 10:00 a.m., Wednesday, May 23, 2018, 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.

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 at 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. 4-6-3, K.A.R. 4-28-5 and K.A.R. 4-28-6. The proposed regulations seek to increase application and licensing fees for food establishments and food processing plants and fees for certificates of free sale. Additionally, K.A.R. 4-28-6 adds a new, lower fee category for very low risk food establishments that have few or no food-handling processes and systematic controls in place to further reduce the risk of a food-borne illness outbreak. Food establishment fees have not been raised since 2012. Food processing and food storage fees have not been raised since 2009. Certificate of free sale fees have not been raised since at least 2008.

The Kansas Department of Agriculture's Food Safety and Lodging Program (KDA-FSL) regulates over 15,000 businesses and facilities, including food establishments such as restaurants (13,240), food processors (619), food warehouses (364), school meal programs (1,292), and lodging establishments (857).

In 2017, KDA-FSL conducted 21,854 inspections across the various licensed facilities. Inspection times vary depending on the inspection reason, the risk category of the facility, and the size of the facility. Inspections may last as little as 15 minutes for a follow-up inspection at a small food establishment to more than 8 hours for a complex food processor. The base cost of an inspection visit, independent of the inspection type, is \$146.19.

In order to improve the stakeholder experience by increasing expertise in conducting food processing inspections, KDA-FSL reorganized inspection staff to create a group of four inspectors dedicated to conducting food processing inspections. This reorganization will result in increased travel costs associated with food processing and food warehouse inspections because of increased inspection territory size. The increase in costs will be partially offset by improved inspection efficiencies from these inspectors also conducting the inspections of food establishments operating at the food processors.

The proposed regulations are not required, but are necessary to fund the inspection and licensing duties in the Food Safety and Lodging Program. Specifically, the program is incurring increased costs in employee benefits as well as unfunded statutory obligations such as food

transportation crashes and food activities related to temporary events. Increased costs of employee benefits for employees processing Certificates of Free Sale are also being incurred.

The new license fee category was requested by the industry to better reflect a new type of food establishment that has emerged in Kansas in the past two years. The fee was set based on an analysis of risk and projected costs of administration and inspecting at the time of licensing and once every three years thereafter.

The regulation is not mandated by Federal Law.

If adopted, the new regulations will increase revenue at KDA by \$914,813.62.

A financial impact will be incurred upon licensed food establishments, food processing facilities, and food storage facilities because of this regulation. The license fee and application fee will increase for all license types. The specific increases for each fee range are:

Fee type	Proposed	Current	Cap	Total Increase	Amount under cap	Percent Increase
Food Establishment <5,000 SQFT RISK 1 (High)	\$250	\$225	\$250	\$25	\$0	11%
Food Establishment <5,000 SQFT RISK 1 (High) APP	\$300	\$225	\$350	\$75	\$50	33%
Food Establishment 5,000 to 10,000 SQFT RISK 1 (High)	\$300	\$295	\$300	\$5	\$0	2%
Food Establishment 5,000 to 10,000 SQFT RISK 1 (High) APP	\$325	\$300	\$350	\$25	\$25	8%
Food Establishment 10,001 to 50,000 SQFT RISK 1 (High)	\$500	\$450	\$500	\$50	\$0	11%
Food Establishment <10,001 to 50,000 SQFT RISK 1 (High) APP	\$350	\$325	\$350	\$25	\$0	8%
Food Establishment >50,000 SQFT RISK 1 (High)	\$750	\$625	\$750	\$125	\$0	20%
Food Establishment >50,000 SQFT RISK 1 (High) APP	\$350	\$350	\$350	\$0	\$0	0%
Food Establishment Any SQFT RISK 2 (Medium)	\$220	\$160	\$250	\$60	\$30	38%
Food Establishment Any SQFT RISK 2 (Medium) APP	\$325	\$200	\$350	\$125	\$25	63%
Food Establishment Any SQFT RISK 3 (Low)	\$190	\$110	\$250	\$80	\$60	73%
Food Establishment Any SQFT RISK 3 (Low) APP	\$275	\$175	\$350	\$100	\$75	57%
Food Establishment Any SQFT RISK 4 (Very Low)	\$75	\$110	\$250	-\$35	\$175	-32%
Food Establishment Any SQFT RISK 4 (Very Low) APP	\$100	\$175	\$350	-\$75	\$250	-43%
Food Processing <1,000 SQFT	\$150	\$80	\$200	\$70	\$50	88%
Food Processing <1,000 SQFT APP	\$175	\$100	\$350	\$75	\$175	75%

Food Processing 1,000 to 5,000 SQFT	\$200	\$135	\$200	\$65	\$0	48%
Food Processing 1,000 to 5,000 SQFT APP	\$200	\$100	\$350	\$100	\$150	100%
Food Processing 5,001 to 10,000 SQFT	\$275	\$190	\$400	\$85	\$125	45%
Food Processing 5,001 to 10,000 SQFT APP	\$250	\$100	\$350	\$150	\$100	150%
Food Processing 10,001 to 50,000 SQFT	\$325	\$245	\$400	\$80	\$75	33%
Food Processing 10,001 to 50,000 SQFT APP	\$300	\$100	\$350	\$200	\$50	200%
Food Processing > 50,000 SQFT	\$400	\$300	\$400	\$100	\$0	33%
Food Processing > 50,000 SQFT APP	\$350	\$100	\$350	\$250	\$0	250%
Food Storage < 1,000 SQFT	\$160	\$50	\$200	\$110	\$40	220%
Food Storage < 1,000 SQFT APP	\$150	\$100	\$350	\$50	\$200	50%
Food Storage 1,000 to 5,000 SQFT	\$175	\$75	\$200	\$100	\$25	133%
Food Storage 1,000 to 5,000 SQFT APP	\$200	\$100	\$350	\$100	\$150	100%
Food Storage 5,001 to 10,000 SQFT	\$250	\$105	\$400	\$145	\$150	138%
Food Storage 5,001 to 10,000 SQFT APP	\$250	\$100	\$350	\$150	\$100	150%
Food Storage 10,001 to 50,000 SQFT	\$300	\$140	\$400	\$160	\$100	114%
Food Storage 10,001 to 50,000 SQFT APP	\$300	\$100	\$350	\$200	\$50	200%
Food Storage > 50,000 SQFT	\$350	\$180	\$400	\$170	\$50	94%
Food Storage > 50,000 SQFT APP	\$350	\$100	\$350	\$250	\$0	250%
CFS	\$25	\$20	\$25	\$5	\$0	25%

The new category 4 (very low risk) food establishment category will be 32% less each year than the current category 3 (low risk) fee. This new, lower fee license category will maintain the same level of public health protection at a lower fee level that better fits the economic situation of these operations.

Performing fewer inspections was considered but was outweighed by public health concerns and ultimately led to the final decision to increase fees to cover the costs of performing inspections at our current frequencies.

Not adding a new risk category 4 and continuing to license and inspect those establishments under category 3 was considered but without an overriding negative public health impact the industry request was chosen.

Not issuing Certificates of Free Sale was considered but was outweighed by negative impact of preventing access to international markets.

There will be no Environmental Impact based upon these regulations.

Any individual with a disability may request accommodations in order 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. Handicapped parking is located on the west side of the building at 1320 Research Park Drive, Manhattan. The entrance to the building is also on the west side and is accessible to individuals with disabilities.

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 website at agriculture.ks.gov. Comments may also be made through our website under the proposed regulation.

Jackie McClaskey
Secretary
Kansas Department of Agriculture