

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

A public hearing will be conducted at 10:00 a.m., February 16, 2021, by the Kansas Department of Agriculture to consider the adoption of proposed regulations. The public hearing will be conducted only via video conferencing system due to concerns posed by the COVID-19 pandemic. Members of the public will not be permitted to attend the public hearing in person. Anyone desiring to participate in the public hearing via video conference must pre-register at: https://kansasag.zoom.us/meeting/register/tJ0sfu-oqjsuGNQdMDAmKyym_oUwhjZryJZ9.

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. Prior to the hearing, all interested parties may submit written comments by mail 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 also be given a reasonable opportunity to orally present their views 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:

The Kansas Department of Agriculture (“KDA”) is proposing these rules and regulations to list the species of weeds designated as noxious weeds in Kansas and to set out the control methods that are to be applied to those weed species as required by the Noxious Weed Act, K.S.A. 2-1313a *et seq.* The provisions of the Kansas Noxious Weed Law that set out the species of weeds currently designated noxious weeds in the state will expire on December 31, 2020. Consequently, revisions to some existing regulations, as well as several new regulations and the revocation of some existing regulations, are necessary to ensure continued appropriate management of noxious weeds throughout Kansas. The proposed new regulations, proposed revisions to existing regulations, and proposed revocation of existing regulations are set out in detail below.

These proposed rules and regulations will not significantly change the landscape of the Kansas Noxious Weed Law or the economic implications of that law because the weed species designated noxious weeds by these proposed rules and regulations are the same species currently designated noxious in the Kansas Noxious Weed Law. Likewise, the control methods set out in these proposed rules and regulations do not differ substantively from the control methods currently prescribed.

K.A.R. 4-8-13 – This regulation provides for the ways that landowners may be served with the legal notices and statements required by the Kansas Noxious Weed Law. The amendment to this regulation provides that, if a landowner is unable to be served with such a statement or notice by personal service or certified mail, valid service may be made by posting the notice or statement at the property referenced in the notice or statement.

K.A.R. 4-8-14a – This regulation adopts by reference a document that provides that certain herbicides approved for the control of noxious weeds in Kansas are available to landowners for cost-share. The document to be adopted by reference does not significantly

change KDA's current policy regarding herbicides available for cost-share.

K.A.R. 4-8-27 – This regulation adopts by reference a document that establishes control methods for musk thistle in Kansas. It also provides that, in any given year, a local weed supervisor may give legal notice requiring that fall treatment be used in a given year to control musk thistle within that weed supervisor's jurisdiction if the local weed supervisor determines that the usual control methods will not be effective to control musk thistle within that jurisdiction. The document this regulation proposes to adopt by reference does not significantly change the control methods KDA has currently adopted for musk thistle.

K.A.R. 4-8-28 – This regulation adopts by reference a document that establishes control methods for Johnsongrass in Kansas. It does not significantly change KDA's currently adopted control methods for Johnsongrass.

K.A.R. 4-8-29 – This regulation adopts by reference a document that establishes control methods for field bindweed in Kansas. It does not significantly change KDA's currently adopted control methods for field bindweed.

K.A.R. 4-8-30 – This regulation adopts by reference a document that establishes control methods for hoary cress in Kansas. It does not significantly change KDA's currently adopted control methods for hoary cress.

K.A.R. 4-8-31 – This regulation adopts by reference a document that establishes control methods for Russian knapweed in Kansas. It does not significantly change KDA's currently adopted control methods for Russian knapweed.

K.A.R. 4-8-32 – This regulation adopts by reference a document that establishes control methods for bur ragweed in Kansas. It does not significantly change KDA's currently adopted control methods for bur ragweed.

K.A.R. 4-8-33 – This regulation adopts by reference a document that establishes control methods for Canada thistle in Kansas. It does not significantly change KDA's currently adopted control methods for Canada thistle.

K.A.R. 4-8-34 – This regulation adopts by reference a document that establishes control methods for leafy spurge in Kansas. It does not significantly change KDA's currently adopted control methods for leafy spurge.

K.A.R. 4-8-35 – This regulation adopts by reference a document that establishes control methods for quackgrass in Kansas. It does not significantly change KDA's currently adopted control methods for quackgrass.

K.A.R. 4-8-36 – This regulation adopts by reference a document that establishes control methods for pignut in Kansas. It does not significantly change KDA's currently adopted control methods for pignut.

K.A.R. 4-8-37 – This regulation adopts by reference a document that establishes control methods for kudzu in Kansas. It does not significantly change KDA's currently adopted control methods for kudzu.

K.A.R. 4-8-38 – This regulation governs the employment of weed department supervisors. The amendment to this regulation requires that individuals newly hired as weed supervisors be hired as employees and not as independent contractors and that a weed supervisor currently serving as an independent contractor can only continue as such until the expiration of the current term of their existing contract. This regulation further provides that the Secretary may conditionally approve the employment of a weed supervisor who has education, training, or experience sufficient to allow them to carry out their job duties. It also provides that final approval of the employment of a weed supervisor shall be issued when the individual has obtained the required pesticide applicator certification and successfully completed the noxious weed basic short course offered by KDA's plant protection and weed control program and provides that the individual's employment shall be renewed as long as they retain their employment and the required certification, and timely file all required reports. The regulation also provides that the approval of a weed supervisor's employment may be withdrawn if they fail to remain in compliance with the requirements of the regulation without just cause.

K.A.R. 4-8-39 – This regulation adopts by reference a document that establishes control methods for multiflora rose in Kansas. KDA is proposing the revocation of this regulation because the statutory provision that gives individual counties the option to declare multiflora rose a noxious weed will expire on December 31, 2020, and multiflora rose populations are not present in Kansas to an extent sufficient to deem multiflora rose a statewide noxious weed.

K.A.R. 4-8-40 – This regulation adopts by reference a document that establishes control methods for sericea lespedeza in Kansas. The document to be adopted by reference does not significantly change KDA's currently adopted control methods for sericea lespedeza.

K.A.R. 4-8-41 – This regulation sets out the requirements for a biological control plan for musk thistle. KDA is proposing the revocation of this regulation because the agency believes the control of musk thistle can be appropriately accomplished by K.A.R. 4-8-27 and the control document for musk thistle that regulation adopts by reference.

K.A.R. 4-8-42 – This regulation adopts by reference a document that establishes control methods for bull thistle in Kansas. KDA is proposing the revocation of this regulation because the statutory provision that gives individual counties the option to declare bull thistle a noxious weed will expire on December 31, 2020, and bull thistle populations are not present in Kansas to an extent sufficient to deem bull thistle a statewide noxious weed.

K.A.R. 4-8-43 – This regulation provides for the declaration of a sericea lespedeza disaster area. KDA is proposing the revocation of this regulation because the agency believes the control of sericea lespedeza can be appropriately accomplished by K.A.R. 4-8-40 and the control document for sericea lespedeza that regulation adopts by reference.

K.A.R. 4-8-44 – This new regulation establishes the species of plants designated noxious weeds in Kansas. This regulation divides the weeds designated noxious in Kansas into three categories: category A noxious weeds, which are weed species that are generally not found in the state or that have limited distribution throughout the state; category B noxious weeds, which are weed species with discrete distributions throughout the state; and category C noxious weeds, which are weed species that are well-established within the state and known to exist in larger or more extensive populations in the state. This regulation establishes that category A noxious weeds shall be subject to exclusion from the state or active eradication wherever detected

statewide, category B noxious weeds shall be subject to control wherever populations have become established within the state and subject to active eradication wherever populations are not established, and category C noxious weeds shall be subject to control efforts directed at reducing or eliminating those populations, and known and established populations of category c noxious weeds shall be managed by any approved control method. This regulation establishes that category A noxious weeds shall include hoary cress, leafy spurge, quackgrass, Russian knapweed, kudzu, and pignut; category B noxious weeds shall include Canada thistle; and category C noxious weeds shall include field bindweed, musk thistle, sericea lespedeza, Johnsongrass, and bur ragweed. This regulation also establishes that the control methods contained in the documents KDA has adopted by reference shall be used to control noxious weeds in Kansas and provides that a local weed supervisor may require the use of more stringent control measures if they determine it is necessary to do so.

K.A.R. 4-8-45 – This new regulation sets out the requirements for official control plans. It establishes that, with the exception of chemical control methods, each control method adopted as part of an official control plan for perennial species that includes more than one control method shall not be used alone and any local weed supervisor may, at their discretion, allow the use of any integrated weed management technique alone.

K.A.R. 4-8-46 – This new regulation sets out the requirements for annual reports. It provides that the annual weed eradication progress report required by the Kansas Noxious Weed Law be submitted to the Secretary not later than March 15 each year and include the approximate acreage and location of each noxious weed infestation in the county; the dollar amount of all expenditures made during the year to purchase materials, chemicals, and other equipment for control of noxious weeds; the dollar amount of all sales made during the year, of materials, chemicals, and other equipment for control of noxious weeds; the dollar amount of all charges and receipts made during the year for use of equipment owned by each county, city, township, or district on public or private land; the approximate acreage of land treated for each species of noxious weed during the year and the control methods used for treatment; and any other information the Secretary deems necessary.

K.A.R. 4-8-47 – This new regulation requires that each local weed supervisor submit a management plan to the Secretary no later than March 15 each year that details the presence of noxious weeds in each local jurisdiction and sets out goals and a plan for eradicating those noxious weeds, as well as the costs associated with such.

K.A.R. 4-8-48 – This new regulation sets out the requirements for the contents of legal notices and statements given to the owner of noxious weed infested land. It provides that such notices or statements must contain, in addition to the requirements set out in K.S.A. 2-1331, the legal description of the land; the name of the owner, operator, or supervising agent; the approximate acreage of the infestation; a timeframe within which control must be implemented, which shall not be fewer than five days after the mailing of the notice; a statement that if the owner, operator, or supervising agent fails to implement the required control methods within the specified time provided in the notice pursuant to K.S.A. 2-1331, the weed supervisor may enter the land to eradicate or control the infestation; and a statement that the owner, operator, or supervising agent may be prosecuted pursuant to K.S.A. 2-1323 and amendments thereto and, if convicted, fined as established by law.

Economic Impact Statement:

The proposed rules and regulations are not mandated by federal law. Colorado and Nebraska approach the required control of noxious weeds similarly to Kansas. Oklahoma and Missouri have adopted less restrictive rules and regulations.

Because the proposed rules and regulations do not add any species of weeds to the existing list of noxious weeds and do not significantly change the existing framework for controlling noxious weeds, KDA does not anticipate the proposed rules and regulations will significantly enhance or restrict business activity or growth in Kansas.

Because the proposed rules and regulations do not add any species of weeds to the existing list of noxious weeds and do not significantly change the existing framework for controlling noxious weeds, KDA does not anticipate the proposed rules and regulations will present significant implementation and compliance costs to any of the state's businesses, sectors, public utility ratepayers, individuals, or local governments. These proposed rules and regulations will have no effect or a very minimal effect on the state economy as a whole.

Any direct impact on Kansas businesses as a result of these proposed rules and regulations would be minimal. The economic situation for producers or businesses directly linked to noxious weed control is not likely to change as a result of these proposed rules and regulations, for the same reasons set out in the preceding paragraph.

The benefits of these proposed rules and regulations significantly outweigh the costs. The control of noxious weeds will improve the quality, biodiversity and value of the state's agricultural lands, providing both environmental and economic benefits for agricultural producers.

The proposed rules and regulations provide that certain herbicides approved for the control of noxious weeds are available from county weed departments at cost-share rates. This will lessen the burden of implementation and compliance costs on individual landowners responsible for monitoring and controlling noxious weeds on their land.

The estimated total annual implementation, total implementation and compliance costs that are expected to be incurred by or passed along to businesses, local governments, or members of the public is expected to be zero.

Because the proposed rules and regulations do not substantially change the framework for the control of noxious weeds in Kansas, the implementation of these regulations will not impose any significant new costs.

KDA does not anticipate the proposed rules and regulations will significantly increase or decrease revenues of cities, counties or school districts, or impose functions or responsibilities on cities, counties or school districts that will increase their expenditures or fiscal liability. Letters of request were sent to the League of Kansas Municipalities, the Kansas Association of School Boards and the Kansas Association of Counties. No responses were received from those entities.

In developing these proposed rules and regulations, KDA sought input from a Noxious Weed Advisory Board, whose establishment was mandated by the Kansas Noxious Weed Law.

That advisory board was required to consist of: two weed specialists from Kansas State University's College of Agriculture or Kansas State University Research and Extension, appointed at the recommendation of the dean of the College of Agriculture or the director of Research and Extension, one of whom had knowledge of non-chemical control methods for noxious weeds; one Kansas county commissioner, appointed at the recommendation of the Association of Kansas Counties; four Kansas landowners engaged in agricultural production, one a producer of traditional crops, one a producer of non-traditional crops, and one a certified organic producer; two county weed supervisors, appointed at the recommendation of the County Weed Director's Association of Kansas; one member appointed at the recommendation of the Kansas Agribusiness Retailer's Association; one member appointed at the recommendation of the Kansas Biological Survey; and one member appointed at the recommendation of the Board of Directors of the Kansas Cooperative Council. KDA also sought input regarding the proposed rules and regulations from the Kansas Rural Center and the Kansas chapter of the Sierra Club. Additionally, letters of request were sent to the League of Kansas Municipalities, the Kansas Association of Counties, and the Kansas Association of School Boards, inquiring whether the proposed regulations will have an economic effect on those organizations. These letters requested a statement of quantified costs associated with implementation and compliance, an estimate of the total annual implementation and compliance costs, a statement of whether implementation and compliance costs will exceed \$3,000,000 over any two-year period, a statement of whether the draft regulations will increase or decrease the organizations' revenue, and a statement of whether the draft regulations will impose functions or responsibilities on the organizations that will increase their fiscal expenditures or fiscal liability.

If the regulations are not adopted, Kansas may see an increase in noxious weed infestations throughout the state, which would lead to poorer quality of agricultural land and reduced returns for agricultural producers.

Any individual with a disability may request accommodations 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.

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 web site at agriculture.ks.gov. Comments may also be made through our web site at the following link <https://www.agriculture.ks.gov/document-services/public-comment>.

Mike Beam
Secretary
Kansas Department of Agriculture