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Mike Beam, Secretary

Laura Kelly, Governor

April 8, 2020

Sent via email to Farmbill.Hemp@usda.gov

William Richmond
Chief, U.S. Domestic Hemp Production Program, Specialty Crops Program
Agriculture Marketing Service, United States Department of Agriculture
1400 Independence Avenue SW
Washington, D.C. 20250

Re: Review of Kansas' State Plan for Industrial Hemp Production

Mr. Richmond:

We wish to thank you and your team at the United States Department of Agriculture ("USDA") for providing a prompt review of our state's plan for regulating industrial hemp and for additionally providing prompt follow up communication based on that initial review.

In addition to the suggested changes, information was also requested about how our state plan might deal with those individuals who attempt to cultivate industrial hemp without first being granted a license. K.S.A. 2-3906 and the administrative regulations adopted thereunder require that a license be issued prior to cultivation of industrial hemp. This is necessary for several reasons, including that as a qualification for initial or continuing licensure, all individuals seeking a license or renewal must submit to a state and national criminal history record check. Further, several criminal statutes in Kansas law make any form of *Cannabis sativa* L. that is grown without complying with the Commercial Industrial Hemp Act (K.S.A. 2-3901 *et seq.*) a criminal violation. See for example, K.S.A. 21-5701.

Further, a determination in advance by the state that cultivating industrial hemp without a license is only a negligent violation would likely serve to encourage those with bad intentions to evade the required licensing fees, inspections, and other requirements put in place to protect the public welfare if they know in advance they will not be charged with a criminal violation.

Any reports of unlicensed cultivation shall be investigated to determine if such activity should be dealt with pursuant to the Commercial Industrial Hemp Act, for example if there was a mistake in an already issued license, or if such activity should be referred to law enforcement. Therefore, pursuant to 7 C.F.R. § 990.3(b), Kansas has chosen not to assume in all cases that the cultivation of industrial hemp without a license is a negligent violation of the state plan.

Thank you again for your efforts in this process and please let us know if we can provide you with any further information.

Sincerely,

Kenneth B. Titus
Chief Counsel

K.A.R. 4-34-1. Definitions. Each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

(a) "Act" means the commercial industrial hemp act, K.S.A. 2019 Supp. 2-3901 et seq. and amendments thereto.

(b) "Administrative license" means a license issued to any of the following:

(1) An individual appointed as a member of the state advisory board;

(2) an individual employed by the designated certifying agency who requires licensure as a result of the individual's assigned employment duties and is involved in the administration of the designated certifying agency's responsibilities pursuant to the pilot program;

(3) an individual employed by the department who is involved in the administration, regulation, or oversight of the pilot program or an individual employed by the department who requires licensure as a result of the individual's assigned employment duties; or

(4) an individual who is an employee or agent of a bank, financial institution, or other creditor that has a legal right to take possession of industrial hemp for the purposes of settling a debt.

(c) "Approved variety of industrial hemp" means a variety or strain of industrial hemp authorized for use in the pilot program.

(d) "Certifying agency" has the meaning specified in K.S.A. 2-1415, and amendments thereto.

(e) "Condition," as used in this article of the department's regulations, means to clean or to clean and blend seed within a licensed research section, in order to meet the requirements of

agricultural seed for the purpose of being planted or seeded. Seed that has undergone this process is known as “conditioned.”

(f) “Department” means Kansas department of agriculture.

(g) “Destroy” means to make incapable of being harvested or processed by means of being incinerated, tilled under the soil, or made into compost or by using another manner approved by the secretary. This process is known as “destruction,” which is a type of “effective disposal” as defined in K.S.A. 2019 Supp. 2-3901 and amendments thereto.

(h) “Devitalize” means to render incapable of germinating.

(i) “Grain,” as used in this article of the department’s regulations, means an industrial hemp plant’s unit of sexual reproduction intended to be consumed or processed into hemp products.

(j) “Ground cover” means any species of grass, legume, or forb that is planted to provide seasonal soil cover and is not intended to be harvested.

(k) “Handle” means to cause any movement of industrial hemp on or within a licensed research section.

(l) “Harvest” means to remove industrial hemp plants, plant parts, grain, or seeds from the research area where the industrial hemp plants, plant parts, grain, or seeds were cultivated, planted, or grown.

(m) “Harvest certificate” means a document issued by the department to the primary licensee, after the industrial hemp plants, plant parts, grain, or seeds are harvested, that includes information to assist in identifying the industrial hemp plants, plant parts, grain, or seeds that were harvested.

(n) “Individual” means a natural person.

(o) “Licensed growing area” means an area that is identified on an application or license for cultivating or producing industrial hemp for commercial purposes, can consist of a single primary section legally designated by the public land survey system, and may include an additional half mile in any direction beyond the primary section.

(p) “Licensed research distributor” means an individual licensed by the department to handle, condition, store, distribute, or transport raw, harvested industrial hemp plants, plant parts, grain, or seeds in Kansas.

(q) “Licensed research grower” means an individual licensed by the department to cultivate, plant, grow, handle, harvest, condition, store, distribute, or transport industrial hemp plants, plant parts, grain, or seeds in Kansas.

(r) “Licensed research processor” means an individual licensed by the department to handle, store, or process industrial hemp plants, plant parts, or grain and take part in any aspect of turning raw, harvested industrial hemp into a hemp product in Kansas.

(s) “Licensed research section” means a section legally designated by the public land survey system that is identified in the license issued by the department establishing where a licensee may cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds. A licensed research section may include land, structures, and buildings that are not used to cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds.

(t) “Licensee” means any individual who possesses a valid license issued by the department pursuant to the act.

(u) “Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.

(v) “Pilot program” means the industrial hemp research program administered by the department pursuant to the act.

(w) “Plant part” means any portion of an industrial hemp plant, including any of the following:

(1) Whole or partial unprocessed plants, including stalk, leaf, seed, floral, and root materials;

(2) raw roots;

(3) fresh, unprocessed, dried, or ground leaves or floral material; or

(4) rooted plants, cuttings, propagules, or clones.

(x) “Primary licensee” means an individual at least 18 years of age who was issued a research license by the department and who shall be responsible for ensuring that all licensees listed on the research license application submitted by that individual comply with the requirements of the act and any implementing regulations.

(y) “Research area” means a location within a licensed research section used for the cultivation, planting, growth, handling, harvesting, conditioning, storage, distribution, transporting, or processing of industrial hemp plants, plant parts, grain, or seeds.

(z) “Secretary” means secretary of the Kansas department of agriculture or the secretary’s designated representative.

(aa) “Seed,” as used in this article of the department’s regulations, means an industrial hemp plant’s unit of sexual reproduction intended to be planted for germination.

(bb) “Variety” means a subdivision of a species that meets the following conditions:

(1) Is uniform, in the sense that the variations in essential and distinctive characteristics are describable;

(2) is stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(3) is distinct, in that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other publicly known varieties.

(cc) “Volunteer plant” means any plant of the genus cannabis that grows of its own accord from seeds or roots and is not intentionally planted. (Authorized by and implementing K.S.A. 2019 Supp. 2-3902; effective Feb. 8, 2019; amended P-_____.)

K.A.R. 4-34-22. License required to cultivate or produce industrial hemp for commercial purposes. (a) K.A.R. 4-34-22 through 4-34-31 shall apply only to the commercial production of industrial hemp pursuant to K.S.A. 2-3901 et seq., and amendments thereto, and, unless otherwise stated, shall not apply to research conducted as part of the pilot program pursuant to K.S.A. 2-3902, and amendments thereto, and regulated by K.A.R. 4-34-2 through 4-34-21.

(b) No individual may cultivate or produce industrial hemp for commercial purposes without a license issued by the secretary. A license shall not be required for employees, agents, contractors, or volunteers of a licensee.

(c) Only individuals shall be eligible to apply for licenses to cultivate or produce industrial hemp.

(d) Each individual who applies for a license to cultivate or produce industrial hemp shall be required to submit to a fingerprint-based state and national criminal history record check to verify that the individual has not been convicted of a felony violation of K.S.A. 21-5701 et seq., and amendments thereto, or a substantially similar offense in another jurisdiction, within the 10 years immediately preceding submission of that individual's application.

(e)(1) Each individual submitting a license application shall submit the application on a form provided by the secretary, which shall include the following:

(A) The individual's full legal name and date of birth;

(B) the individual's current mailing address, telephone number, and electronic-mail address;

(C) the legal description and global positioning system coordinates of the entrance to the proposed licensed growing area and the entrance to each lot that will be used to cultivate or produce industrial hemp and a map of the proposed licensed growing area and each lot;

(D) the total number of acres or square feet that will be used to cultivate or produce industrial hemp;

(E) the number of acres or square feet that will be used to cultivate or produce industrial hemp in each lot;

(F) the variety of industrial hemp to be cultivated or produced in each lot;

(G) a completed fingerprint card for submission to the Kansas bureau of investigation;
and

(H) any other relevant information requested by the secretary.

(2) All license applications for the 2020 growing season shall be submitted no later than June 1, 2020. All license applications for each subsequent growing season shall be submitted no later than March 15 of each year in which an applicant intends to grow industrial hemp. If good cause is shown, the license application deadline for the 2020 growing season may be waived by the secretary.

(f) In addition to providing the department with the information required by this regulation, each individual who is issued a license shall report the following directly to the United States department of agriculture farm service agency for each license sought:

(1) Street address and, to the extent practicable, global positioning system coordinates for each growing area and for each lot or greenhouse where industrial hemp will be produced;

(2) the number of acres that will be used to cultivate or produce industrial hemp;

(3) the assigned license number; and

(4) any other information required by the United States department of agriculture.

(g) Each individual submitting a license application shall include with the application a \$100 application fee and the fee established by the Kansas bureau of investigation for performing a state and national criminal history record check. A single criminal history record check conducted in accordance with the act may be used to satisfy the act's criminal history record check requirement for multiple licenses in a single license year.

(h) Each license shall allow the cultivation and production of industrial hemp within one licensed growing area.

(i) Upon approval of a license application by the secretary, the applicant shall submit a license fee of \$1,200 to the secretary within 15 days of notice of the approval.

(j) All licenses shall expire annually on December 31.

(k) Acceptance of a license shall constitute a grant of authority by each licensee allowing the secretary to supply information to the United States department of agriculture and post information on the department's web site, including the industrial hemp producer license number, the full legal name of the licensee, the licensee's contact information, descriptions of all locations identified for cultivating or producing industrial hemp, and any information related to modifications necessary to ensure that the information remains accurate.

(l) Each licensee shall be held responsible for any plant cultivated or produced in violation of the act and for the actions of all employees, agents, contractors, and volunteers engaged in the cultivation or production of industrial hemp under the supervision or direction of, or otherwise in conjunction with, the licensee. Each licensee shall be subject to the same

disciplinary actions for a violation committed by any employee, agent, contractor, or volunteer of that licensee as if the licensee had committed the violation.

(m) Each licensee requesting a license modification after issuance of a license shall submit the modification request to the secretary on a form provided by the secretary. Each modification request form shall be accompanied by a \$50 fee. Upon the secretary's review and approval of the modification request, a modified license shall be issued and may include any additional terms and conditions that the secretary deems necessary to implement the requested modification and to protect the public health, safety, and welfare. If the secretary denies the modification request, the licensee shall remain subject to the terms of the original license.

(n) Each license shall be nontransferable, except upon the death of a licensee. In the case of the death of a licensee, that licensee's license may be transferred to another individual upon that individual's submission of a modification request, a \$50 modification fee, the fee established by the Kansas bureau of investigation for performing a state and national criminal history record check, and satisfactory completion of a fingerprint-based state and national criminal history record check. Upon the death of a licensee, a modification request shall be submitted within 60 days of the licensee's death, or all industrial hemp being cultivated or produced pursuant to the license shall be subject to an order to be destroyed. The individual applying for the transfer shall assume the full liability for all of the previous licensee's actions.

(o) Any individual who materially falsifies any information contained in a license application or modification request shall be ineligible to receive a license to cultivate or produce industrial hemp pursuant to the act.

(Authorized by K.S.A. 2019 Supp. K.S.A. 2-3906; implementing K.S.A. 2019 Supp. 2-3903 and 2-3906; effective P-_____.)

K.A.R. 4-34-23. Planting and pre-harvest requirements. (a) All industrial hemp cultivated or produced shall have originated from authorized seed or clone plants.

(b) Each licensee shall maintain written certification for all authorized seed or clone plants cultivated or produced, which shall consist of either of the following:

(1) A certificate of analysis, or a similar document, stating that the source of the authorized seed or clone plants was cultivated or produced with a delta-9 tetrahydrocannabinol concentration less than 0.3 percent on a dry-weight basis during the most recent growing season;
or

(2) documentation that the authorized seed or clone plants are certified pursuant to K.S.A. 2-1415 et seq., and amendments thereto.

(c) All industrial hemp seed shall be considered agricultural seed. Before selling agricultural seed in Kansas, each individual shall obtain a license pursuant to K.S.A. 2-1415 et seq., and amendments thereto.

(d) Each licensee shall submit a planting report to the department within 15 days after each planting, including replanting seeds or propagules or establishing plants. Each planting report shall identify the following:

(1) The official name of the industrial hemp variety that was cultivated or produced in each lot;

(2) the global positioning system coordinates for the licensed growing area and each lot where industrial hemp plants, plant parts, grain, or seeds are being cultivated or produced;

(3) the total number of acres planted in the licensed growing area;

(4) the number of acres planted in each lot; and

(5) a statement of the intended end-use for all industrial hemp plants, plant parts, grain, or seeds being cultivated or produced.

(e) Before harvesting industrial hemp, each licensee shall provide the secretary at least 30 days' notice of the intended harvest date on a form provided by the secretary and, if the harvest does not begin on that date, shall provide an updated notice of the anticipated harvest date before harvesting any industrial hemp. Failure to provide notice of the harvest may result in the revocation of an existing hemp producer license or hemp processor registration and the denial of future hemp producer licenses or hemp processor registrations. Each pre-harvest report shall identify the following:

- (1) The global positioning system coordinates of the entrance to the licensed growing area and each lot where industrial hemp plants are intended for harvest;
- (2) the total number of acres planted in the growing area subject to harvest;
- (3) the number of acres planted in each lot subject to harvest;
- (4) the planting date for each lot;
- (5) the total number of acres intended for harvest in the licensed growing area, if different than the number of acres intended for harvest in the lot;
- (6) the number of acres intended for harvest in each lot;
- (7) the intended harvest date for each lot;
- (8) the official name of the industrial hemp variety that is intended for harvest from each lot; and
- (9) a statement of the intended end-use for all industrial hemp plants, plant parts, grain, or seeds that will be harvested from each lot.

(f) If two or more harvests will be conducted within a licensed growing area or lot within a license year, the licensee shall notify the department of each intended harvest date at least 30 days before each intended harvest date. The primary licensee shall pay the subsequent sampling fees and testing fees for each harvest conducted after the initial harvest of a lot.

(g) Each licensee shall maintain records regarding the source of all industrial hemp cultivated or produced and records regarding the disposition of all industrial hemp cultivated or produced for three years and shall present those records to the secretary upon request.

(Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

K.A.R. 4-34-24. Sampling, testing, and harvest requirements. (a) No more than 15 days before any industrial hemp cultivated or produced pursuant to the act is harvested, each licensee shall allow a sample to be collected by the secretary for testing, using post-decarboxylation or any other similarly reliable method, to determine the delta-9 tetrahydrocannabinol concentration of industrial hemp cultivated or produced. A licensee shall not harvest any industrial hemp before receiving notice that testing of the samples has shown a delta-9 tetrahydrocannabinol concentration of less than 0.3 percent on a dry-weight basis and that the licensee may harvest the industrial hemp.

(b) Each licensee shall complete each harvest of industrial hemp plants, plant parts, grain, or seeds within the time frame established by the passing report of analysis.

(c) If a licensee fails to harvest all of the industrial hemp plants, plant parts, grain, or seeds within the allotted time frame as indicated in subsection (b), the licensee shall perform one of the following:

(1) Notify the department within seven days after the expiration of the time frame, request that the department collect a subsequent pre-harvest sample, and pay the required sampling and testing fees; or

(2) notify the department within seven days after the expiration of the time frame by which the licensee shall voluntarily effectively dispose of the industrial hemp plants, plant parts, grain, or seeds. The licensee shall notify the department of any change in the effective disposal date. Effective disposal of industrial hemp plants, plant parts, grain, or seeds shall occur by the licensee and at the licensee's expense. All volunteer plants shall be effectively disposed of during the current license year and for at least three years after the last reported date of planting.

If effective disposal of industrial hemp plants, plant parts, grain, or seeds occurs, no refund shall be issued for any fees paid by a licensee, the cost of effective disposal, or the value of the crop.

(d) Each licensee shall submit a harvest report to the department no more than 15 days after each harvest of industrial hemp plants, plant parts, grain, or seeds is completed for each lot.

Each harvest report shall identify the following:

(1) The global positioning system coordinates of the entrance to the licensed growing area and each lot where industrial hemp plants were harvested;

(2) the total number of acres planted in the licensed growing area;

(3) the number of acres planted in each lot;

(4) the planting date for each lot;

(5) the total number of acres harvested from the licensed growing area;

(6) the number of acres harvested from each lot;

(7) the harvest date for each lot;

(8) the official name of the industrial hemp variety harvested from each lot; and

(9) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds harvested from each lot.

(e) Industrial hemp shall be subject to post-harvest sampling and testing by the secretary.

Each licensee shall agree to provide the secretary access to any harvested industrial hemp or to provide the secretary with a copy of the bill of lading and, if available, a certificate of analysis or similar document provided for any industrial hemp already sold or transferred to another person.

All samples collected by the secretary shall be subject to testing, using post-decarboxylation or any other similarly reliable method, of delta-9 tetrahydrocannabinol concentration of industrial

hemp produced. A licensee whose industrial hemp is sampled after it is harvested shall not sell, transfer, or transport any industrial hemp harvested from the licensed growing area where samples were collected until that licensee has received notice from the department that testing of the samples has shown a delta-9 tetrahydrocannabinol content of less than 0.3 percent on a dry-weight basis and that the licensee may harvest the industrial hemp.

(f) Each licensee shall be assessed a \$225 fee for the required pre-harvest sample collected and tested by the secretary.

(g) At any time other than at the time of the required pre-harvest sample collected and tested by the secretary, a licensee may request that the secretary collect a sample and test the delta-9 tetrahydrocannabinol concentration, subject to a testing fee of \$225 for each test and additional costs assessed for the secretary's travel time and mileage.

(h) All samples collected by the secretary shall become the property of the secretary, and no compensation shall be owed to any licensee.

(i) Any licensee may request a test from a private laboratory at any time. However, test results from private laboratories shall not be considered official and shall not be substituted for a sample collected and tested by the secretary, and each licensee shall be responsible for the costs of testing by a private laboratory.

(j) Each sample collected and tested by the secretary and found to contain a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis shall be deemed to have been cultivated or produced in violation of the act and shall result in a failing report of analysis.

(k) Within seven days of notice of the failing report of analysis, any licensee may request, on a form provided by the secretary, an additional test by the secretary. The request shall include payment of a retesting fee of \$225 and any additional costs assessed for the secretary's travel time and mileage. If a licensee requests an additional test and the sample collected and tested pursuant to this subsection is found to contain a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis, then all plants in the licensed growing area shall be effectively disposed of as required by K.A.R. 4-34-25.

(l) Each licensee who is issued an order to effectively dispose of plants shall incur one of the following:

(1) Be subject to a corrective action plan as specified in K.A.R. 4-34-29 and reported to the appropriate state or local law enforcement agency if the violation is deemed negligent; or

(2) be reported to the United States department of agriculture, the office of the Kansas attorney general, the office of the United States attorney for the district of Kansas, and the appropriate state or local law enforcement agency if the violation is the result of a culpable mental state greater than negligence. If any plants are tested by the secretary and found to contain a delta-9 tetrahydrocannabinol concentration of greater than 2.0 percent, the licensee responsible for those plants shall be presumed to have acted with a culpable mental state greater than negligence.

(m) Each licensee or an authorized representative of each licensee shall be present whenever the secretary collects a sample of industrial hemp cultivated or produced pursuant to the act and whenever a compliance inspection is conducted pursuant to this regulation.

(Authorized by K.S.A. 2019 Supp. 2-3906; implementing K.S.A. 2019 Supp. 2-3903 and 2-3906;
effective P-_____.)

K.A.R. 4-34-25. Effective disposal. (a) Any plants or plant parts deemed to be in violation of the act for any reason, including containing a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis shall, by order of the secretary, be subject to effective disposal.

(b) If required pursuant to federal law, all plants or plant parts that require effective disposal shall be destroyed or disposed of as required by the controlled substances act, 21 U.S.C. 801 et seq., and in compliance with requirements of the United States drug enforcement agency.

(c) If allowed pursuant to federal law, each licensee shall conduct effective disposal at the licensee's expense within 10 days of notice. Each licensee shall effectively dispose of all volunteer plants within and adjacent to the licensed growing area during the current license year and for at least three years after the last date of planting. Each licensee shall allow representatives of the secretary to be present during the effective disposal of plants or plant parts, or proof of the effective disposal may be required by the secretary. Each licensee who conducts effective disposal shall, within 14 days of conducting the effective disposal, report the number of acres effectively disposed of to the department. A licensee who conducts effective disposal shall not be eligible for a refund of any fees paid, the cost of effective disposal, or the value of the crop.

(d) Each licensee whose plants are effectively disposed of shall be responsible for reimbursing any law enforcement agency whose officers or agents are required to participate in or be present during the effective disposal for all of the law enforcement agency's costs associated with the effective disposal.

(e) Failure of a licensee to conduct effective disposal as required by the secretary within 10 days shall result in the secretary's conducting effective disposal at the expense of the licensee, unless an extension is granted by the secretary.

(f) A licensee's failure to conduct effective disposal as required by the secretary, failure to reimburse the secretary for any costs incurred as a result of the secretary conducting effective disposal, or failure to reimburse any law enforcement agency for any costs associated with effective disposal shall be grounds for denial of any future hemp producer license application or hemp processor registration application.

(g) Each licensee who violates the act with a culpable mental state of negligence shall be subject to a corrective action plan as specified in K.A.R. 4-34-29 and reported to the appropriate state or local law enforcement agency. Each licensee who violates the act with a culpable mental state greater than negligence shall be reported to the Kansas attorney general's office and the appropriate state or local law enforcement agency. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

K.A.R. 4-34-26. Transportation of industrial hemp. (a) Each licensee who sells, trades, barter, gives away, or otherwise transfers any unprocessed industrial hemp to any other person shall ensure that any unprocessed industrial hemp is accompanied by a signed bill of lading that includes the licensee's license number, the total quantity of industrial hemp transferred, the date the transfer occurred, and the name of the person acquiring the industrial hemp. A certificate of analysis or other similar document shall be attached to the bill of lading.

(b) Each person who sells, trades, barter, gives away, or otherwise transfers unprocessed industrial hemp subsequent to an initial transfer involving unprocessed industrial hemp as specified in subsection (a) shall record the transfer and shall amend the bill of lading or attach the information regarding the subsequent transfer to the original bill of lading and shall include the name of the person acquiring possession of the industrial hemp, the amount of industrial hemp transferred, and the date of the transfer. Any individual in possession of unprocessed industrial hemp plants, plant parts, grain, or seeds without a valid hemp producer's license or a bill of lading may be presumed to have unlawfully cultivated or produced hemp in violation of the act or gained possession of industrial hemp plants, plant parts, grain, or seeds that were cultivated or produced in violation of the act.

(c) Each licensee shall comply with all local, state, and federal laws and regulations related to industrial hemp and with the act and the implementing regulations. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

K.A.R. 4-34-27. Planting restrictions; signage requirements; volunteer plants. (a) A licensee shall not cultivate, plant, grow, or harvest industrial hemp plants, plant parts, grain, or seeds at any location not included on the license.

(b) A licensee shall not cultivate, plant, grow, or harvest industrial hemp plants, plant parts, grain, or seeds in a residential structure, within 50 feet of a residential structure, or within one-quarter mile of any public or private K-12 school or public recreational area, except with the secretary's written permission.

(c) A licensee shall not interplant any other crop with industrial hemp, except that any state educational institution licensee may do so upon authorization by the secretary. This subsection shall not prohibit the use of ground cover, but ground cover shall not be harvested.

(d) A licensee shall not interplant different varieties of industrial hemp within a lot.

(e) Harvested lots of industrial hemp plants shall not be commingled with other harvested lots or other material.

(f) Each licensee shall post and maintain at least one sign at each licensed growing area listed on the license. A sign shall be posted along each licensed growing area boundary adjacent to a public road, except that if the licensed growing area is adjacent to an intersection of two or more public roads, a sign shall be posted at the intersection. If a licensed growing area is not adjacent to any public road, a sign shall be posted at the point of access to the licensed growing area. Each sign shall measure at least 36 inches per side, shall be clearly visible and legible from the adjacent public road, intersection of public roads, or access point, and shall include the following information:

(1) The following text: "Kansas Department of Agriculture Industrial Hemp Program";

- (2) the licensee's name;
- (3) the licensee's license number; and
- (4) the department's telephone number.

(g) Each licensee shall allow the secretary to inspect ditches, fence lines, or other unmanaged land areas adjacent to any licensed growing area for volunteer plants. Each licensee shall destroy any volunteer plants for at least three years after the last date of planting.

(Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective

P-_____.)

K.A.R. 4-34-28. Access to records and property. (a) Acceptance of a license shall constitute a grant of authority by each licensee allowing the secretary to inspect all records related to the cultivation or production of industrial hemp.

(b) Each licensee shall grant the secretary access to all land identified for the cultivation or production of industrial hemp for purposes of inspection to determine compliance with the act and the implementing regulations. In addition to pre-harvest sampling and testing of all industrial hemp plants being cultivated or produced pursuant to the act as specified in K.A.R. 4-34-24, in accordance with federal law, each licensee's premises and records related to the cultivation or production of industrial hemp shall be subject to annual inspection to ensure compliance with the act and the implementing regulations.

(c) Each licensee shall consent to the secretary's providing information to the United States department of agriculture, law enforcement, fire and rescue agencies, and the public regarding each licensed growing area. Additionally, each licensee shall consent to the secretary's providing information about any licensed growing area, including global positioning system coordinates, to representatives of the United States department of agriculture, Kansas bureau of investigation, United States drug enforcement agency, and other law enforcement agencies.

(d) Each licensed growing area and all adjacent areas shall be subject to inspection by the secretary. The secretary shall have complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds, whether growing or not, including access to all land, buildings, facilities, motor vehicles, and other structures used for industrial hemp-related activities. Access shall be granted at reasonable times whether the licensee is present or not, without interference or obstruction, with or without cause, and with or without advance notice.

The secretary's right of access specified in this regulation shall include the unrestricted right to inspect or take samples of any industrial hemp plants, plant parts, grain, or seeds, whether growing or not, present at the location being accessed, as well as the right to inspect any reports or records pertaining to industrial hemp plants, plant parts, grain, or seeds. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

K.A.R. 4-34-29. Negligent violations; corrective action plans. (a) Negligent violations of the act may include, failure to provide a legal description of land on which a licensee produces industrial hemp, producing plants with a delta-9 tetrahydrocannabinol concentration greater than 0.5 percent on a dry-weight basis, or producing plants with a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis if the licensee did not make reasonable efforts to cultivate or produce industrial hemp. It shall not be a negligent violation of the act if a licensee produces plants with a delta-9 tetrahydrocannabinol concentration of 0.5 percent or less on a dry-weight basis and the licensee has made reasonable efforts to cultivate or produce industrial hemp. Each licensee who negligently violates the act or the implementing regulations shall be required to follow a corrective action plan developed by the secretary.

(b) Upon the first negligent violation, each licensee shall meet the following requirements:

(1) Correct the violation within 10 days of notification of the violation by the secretary, including conducting effective disposal of the industrial hemp crop if so ordered;

(2) for the duration of the time period specified in the corrective action plan, which shall be at least two years, provide a report to the secretary as often as is required by the secretary regarding the status of the violation; and

(3) complete any other actions required by the secretary.

(c) Upon a second negligent violation within five years of a previous negligent violation, each licensee shall meet the following requirements:

(1) Correct the violation within 10 days of notification of the violation by the secretary, including the effective disposal of the industrial hemp crop if so ordered;

(2) for the duration of the time period specified in the corrective action plan, which shall be at least two years, provide a report to the secretary at least every 30 days, or as often as is required by the secretary, regarding the status of the violation; and

(3) complete any other actions required by the secretary.

(d) Upon a third negligent violation within five years of the first negligent violation, each licensee shall be ineligible to cultivate or produce industrial hemp for a period of five years beginning on the date of the third violation. Each license or registration held by the licensee shall be subject to immediate revocation, and all of the licensee's industrial hemp shall be subject to destruction, if so ordered. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective P-_____.)

Procedures for Industrial Hemp Pre-Harvest Inspection and Sample Collection
Kansas Department of Agriculture
SOP# KDA-INDUSTRIALHEMP-0003

Federal [7 U.S.C. § 5940 (2018 Farm Bill) and CFR Part 990: Establishment of a Domestic Hemp Production Program (Hemp Interim Final Rule)] and state law [K.S.A. 2-3902, et seq. (Commercial Industrial Hemp Act)] charges the Kansas department of agriculture (KDA) with the responsibility for managing the Kansas Commercial Industrial Hemp Program. During the growing season, KDA conducts pre-harvest inspections of industrial hemp growing, during which sampling of industrial hemp occurs for the purposes of testing industrial hemp to ensure compliance the state and federal law.

KDA is committed to ensuring that industrial hemp grown under the auspices of the Kansas Commercial Industrial Hemp Program is compliant with state and federal law and is lawful industrial hemp. Accordingly, KDA will inspect and sample all industrial hemp fields prior to harvest. All industrial hemp plants intended for harvest are subject to a pre-harvest inspection and compliance testing to ensure compliance with statutory requirements that the delta-9 tetrahydrocannabinol concentration of those plants does not exceed .3 percent on a dry-weight basis.

Purpose:

1. Standard sampling guidelines are specified for sampling of industrial hemp within growing areas.
2. Samples are taken to obtain specimens for the measurement of delta-9 tetrahydrocannabinol concentration, which determines whether the specimens are industrial hemp or marijuana. The measurements are intended to be representative of the delta-9 tetrahydrocannabinol concentration in a “lot” of hemp crop acreage as identified by the producer. Industrial hemp producers may not harvest hemp prior to the hemp being sampled and tested for delta-9 tetrahydrocannabinol concentration. For the purposes of these procedures, a “lot” is a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, “lot” refers to the batch of contiguous, homogeneous whole of a product being sold to a single buyer at a single time. “Lot” is to be defined by the producer in terms of farm location, field acreage, and to be reported as such to the United States Department of Agriculture’s Farm Service Agency (FSA), as required by federal law.

Scope:

1. Samples collected under this procedure are acceptable for submission to KDA’s Agriculture Laboratory for determination of the delta-9 tetrahydrocannabinol concentration of those samples.
2. Since the delta-9 tetrahydrocannabinol concentration of industrial hemp generally increases as the plant matures, the timing of sampling is important to accurately measure delta-9 tetrahydrocannabinol concentration and monitor compliance with state and federal law.

3. Samples must be collected by authorized representatives who are United States Department of Agriculture (USDA)-approved sampling agents. It is the responsibility of the licensed producer to pay sampling and testing fees as required by the Commercial Industrial Hemp Act and the implementing regulations.

Summary of Practice:

1. This practice provides procedures for entering a growing area and collecting the number of plant specimens necessary to represent a homogeneous composition of the lots to be sampled. An authorized representative should enter the growing area, strategically examine the growing area, establish an approach for navigating each lot, and collect individual specimens of plants in order to obtain a representative sample of industrial hemp in the designated lot.

Cuttings from each lot of industrial hemp crop acreage, as identified by the producer, and submitted to and uniquely identified by the FSA per the requirements of the USDA Commercial Industrial Hemp Program, shall be organized as composite samples.

Pre-requisites for Pre-Harvest Inspection Sample Collection:

1. General
 - 1.1. When a licensee submits a pre-harvest report (at least 30 days before each anticipated harvest date for each applicable lot), KDA should contact the primary licensee to confirm the location where industrial hemp will be harvested and to schedule a pre-harvest inspection and a sampling. At this time, if any information submitted as part of the pre-harvest report is different from the license information on file with KDA, KDA should notify the primary licensee and request they update the license information.
 - 1.2. If two or more harvests will be conducted within the growing area during a license year, the licensee shall notify the department of each intended harvest date at least 30 days before each intended harvest date. The licensee shall pay a sampling fee and testing fee for each sample collected per lot as required by regulation. If two or more harvests will be conducted in the same lot during a license year, the licensee shall notify the department of each intended harvest date at least 30 days before each intended harvest date. The licensee shall pay a sampling fee and testing fee for each harvest conducted in the lot after the initial harvest of that lot as required by regulation.
 - 1.3. A licensee, whether present or not, shall permit representatives of the department complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds and all locations, buildings, and motor vehicles listed on the license. Access shall be granted at reasonable times, without interference or obstruction, with or without cause, and with or without advance notice.
 - 1.4. All samples collected by the department shall become the property of the department, and no compensation shall be owed to the licensee.
2. Sampling agents should be equipped with the following at all inspections:
 - 2.1. Shears
 - 2.2. Alcohol wipes (for cleaning shears—shears should be cleaned between inspections and lots if multiple samples are collected within a growing area)
 - 2.3. Chain of custody (COC) paper sampling bags for necessary functions, including:
 - 2.3.1. Collection of plant materials
 - 2.3.2. Sample preservation

- 2.3.3. Correct labeling capability
- 2.4. COC tags and tape
- 2.5. Stapler and staples
- 2.6. Writing utensil
- 2.7. Measuring devices, including either:
 - 2.7.1. Ruler; or
 - 2.7.2. Portable measuring wheel
- 2.8. Plastic crate and bucket for sample transport
- 2.9. Electronic scale accurate to 0.1 grams (g)
- 2.10. Device with Global Positioning System (GPS) coordinate confirmation capabilities
- 2.11. Device with photographic documentation capabilities
- 2.12. Communications equipment (computer and phone)
- 2.13. Inspection outerwear and protection
 - 2.13.1. Nitrile gloves, long pants, and long sleeves are recommended
 - 2.13.2. Appropriate footwear for less than optimal conditions
- 2.14. Bug spray
- 2.15. Sunscreen
- 3. Sampling agents should have and complete the following documentation at all inspections:
 - 3.1. Pre-Harvest Inspection form
 - 3.1.1. Standardized inspection checklist relating to various aspects of the general requirements pertaining to licensing, records, and land use.
 - 3.2. Request for Analysis (RFA) and COC forms, which require documentation of:
 - 3.2.1. Inspection_Number
 - 3.2.1.1. Inspection number as assigned by the KDA
 - 3.2.2. Producer_ID
 - 3.2.2.1. License number as assigned by the KDA
 - 3.2.3. Producer_Name
 - 3.2.3.1. Producer name should match the name associated the Producer_ID
 - 3.2.4. Producer_Street
 - 3.2.4.1. This field is the street address of the producer.
 - 3.2.5. Producer_City
 - 3.2.5.1. This field is the city of the producer.
 - 3.2.6. Producer_State
 - 3.2.6.1. This field is the state of the producer.
 - 3.2.7. KDA_Representative
 - 3.2.7.1. Name, email, and phone number of sampling agent
 - 3.2.8. the date and time of inspection
 - 3.2.9. Lot_ID
 - 3.2.9.1. the location information relating to GPS coordinates and acreage of the growing area or lots subject to sample collection;
 - 3.2.10. The variety or varieties of industrial hemp being sampled; and
 - 3.2.11. any other relevant notes.
 - 3.2.12. Sample information, including:

- 3.2.12.1. the sample ID, written as follows: YYYYMMDDKDXXXXXXXXXXXXX-
X (year, month, day, license number from which the sample is generated, and
sample number);
- 3.2.12.2. the date and time the sample was collected;
- 3.2.12.3. matrix (Vegetative or Floral);
- 3.2.12.4. mass [(g) after sample has left the field (will dry during transportation)] or
number of cuttings per sample;
- 3.2.13. Transfer of sample information (who the sample was relinquished to or received
by)
- 3.3. The Planting Report submitted by the licensee
 - 3.3.1. To serve as a reference material
- 3.4. The Pre-Harvest Report submitted by the licensee
 - 3.4.1. To serve as a reference material
- 3.5. Maps
 - 3.5.1. All relevant maps for the growing areas and lots from which samples will be
collected

Sampling Guidelines

1. General
 - 1.1. Surveillance of the growing area.
 - 1.1.1. The sampling agent should verify the GPS coordinates of the growing area or lots
to be sampled as compared with the GPS coordinates submitted to KDA by the
licensee.
 - 1.1.2. The sampling agent should estimate the average height, appearance, approximate
density, condition of the plants, and degree of maturity of the inflorescences
(flowers/buds).
 - 1.1.3. The sampling agent should visually establish the homogeneity of the stand to
establish that all plants in the growing area are of like variety.
 - 1.2. Time of Sampling:
 - 1.2.1. No more than 15 days prior to the intended harvest date of any plants, a KDA
sampling agent should collect samples of such plants for testing of their
concentration of THC.
 - 1.3. Field Sampling:
 - 1.3.1. For purposes of determining the number of individual plants to select for
sampling, the size of the growing area should be considered. For sampling purposes,
samples from separate “lots” should be kept separate and not be comingled.
 - 1.3.2. If a lot contains multiple industrial hemp varieties, the sampling agent should
generate a sample from a subplot containing a single variety.
2. Pre-Harvest Inspection Sample Collection
 - 2.1. Criteria for plant samples
 - 2.1.1. For lots of less than one (1) acre, including greenhouses, sampling agents should
select a minimum of fifteen (15) plants, then take a cutting from the plants to form a
sample (Table 1). If plant density and stand is poor, sampling agents should select a
minimum five (5) plants and collect a sample that generates no less than forty (40)
grams of fresh plant material.

- 2.1.2. For lots of 1 to 33 acres, including greenhouses, sampling agents should select a minimum of 30 plants, take cuttings of each plant, and combine the cuttings to form a composite sample (Table 1).
- 2.1.3. For lots larger than thirty-three (33) acres, including greenhouses, the number of plants from which cuttings are taken to form a composite sample should be chosen as indicated in Table 1.
- 2.2. Sampling Patterns:
 - 2.2.1. Sampling agents should walk at right angles to the rows of plants, beginning at one point of the lot and walking towards another point on the opposite side of the lot.
 - 2.2.2. Depending on the geometric shape of the growing area or lot, sampling agents should use the sampling patterns indicated in the figures beginning on page 7 of this document. The figures associated with each geometric shape represent a rough sampling pattern that should be followed for a lot of that shape.
 - 2.2.2.1. Figure 1: square lot
 - 2.2.2.2. Figure 2: rectangular lot
 - 2.2.2.3. Figure 3: circular or oval lot
 - 2.2.2.4. Figure 4: irregularly-shaped lot
- 2.3. Selection of plant material
 - 2.3.1. Fiber and Grain varieties: monoecious and dioecious
 - 2.3.1.1. Vegetative
 - 2.3.1.1.1. The terminal 20 cm of the main or axillary shoot should be collected. A single sample from a plant should include a meristem, shoot material, and developed and undeveloped foliar material.
 - 2.3.1.2. Reproductive
 - 2.3.1.2.1. The terminal 20 cm of the main or axillary female inflorescence (raceme) should be collected. The majority of the sample's composition should contain the pistillate flowers, but it may contain some peduncle, pedicel, and some foliar materials. If seeds are present, the seeds should be removed from the plant material while not allowing the seeds to fall to the ground. Removed seeds should be discarded appropriately.
 - 2.3.2. Floral (CBD) varieties (generally dioecious)
 - 2.3.2.1. Vegetative
 - 2.3.2.1.1. The terminal 20 cm of the main or axillary shoot should be collected. A single sample from a plant should include a meristem, shoot material, and developed and undeveloped foliar material.
 - 2.3.2.2. Reproductive (female plants and inflorescences only)
 - 2.3.2.2.1. The terminal 20 cm of the main or axillary female inflorescence (raceme) should be collected. The majority of the sample's composition should contain the pistillate flowers, but it may contain some peduncle, pedicel, bract, and some foliar materials. Seeds should be removed from the collected plant material if present and should not fall to the ground.
- 2.4. Bagging, labeling, transportation, and storage
 - 2.4.1. Collected plant tissues should be placed in the appropriate collection bag, sealed with COC tape, and properly labeled.

- 2.4.2. Collection bags should be labeled with the following information:
 - 2.4.2.1. The name, phone number, and email address of the sampling agent;
 - 2.4.2.2. the sample ID, written as follows: YYYYMMDDKDAXXXXXXXXXXX-X (year, month, day, license number from which the sample is generated, sample number);
 - 2.4.2.3. the lot ID as provided by FSA;
 - 2.4.2.4. the date and time the sample was collected;
 - 2.4.2.5. matrix (Vegetative or Floral) and varieties;
 - 2.4.2.6. mass [(g) after sample has left the field (will dry during transportation)] or number of cuttings per sample;
- 2.4.3. Samples and any container that contains samples should be kept out of direct sunlight during transport and should not be frozen or chilled.

Record Keeping and Transfer of Samples

1. Pre-Harvest Inspection form and data input
 - 1.1. Sampling agents should complete the pre-harvest inspection form during each inspection. The completed form or forms should be scanned into KDA-AIMS under the licensed research section from which the sample was collected, and the data collected should be entered into KDA-AIMS.
2. For each sample collected during an inspection, the proper RFA/COC documentation should be completed and should include the following information:
 - 2.1. The name, phone number, and email address of the sampling agent;
 - 2.2. the sample ID, written as follows: YYYYMMDDKDAXXXXXXXXXXX-X (year, month, day, license number from which the sample is generated, sample number);
 - 2.3. the date and time the sample was collected;
 - 2.4. matrix (Vegetative or Floral) and varieties;
 - 2.5. mass [(g) after sample has left the field (the sample will dry during transportation)] or number of cuttings per sample;
 - 2.6. sample transfer information (who the sample was relinquished to or received by); and
 - 2.7. any other comments.
3. Transfer of samples
 - 3.1. Samples should be transported to the KDA laboratory as promptly as possible.
 - 3.2. Upon the arrival of a sample at KDA's laboratory facility, proper RFA/COC documentation should be completed by laboratory personnel and the transporting inspector, and should include the following information:
 - 3.2.1. The name of the individual relinquishing the sample to the laboratory;
 - 3.2.2. the date and time the sample was relinquished to the laboratory;
 - 3.2.3. the name of the individual the sample was relinquished to; and
 - 3.2.4. the date and time the sample was relinquished.
4. The original RFA/COC form should be completed and kept on file according to laboratory's standard chain of custody procedures.

Table 1- Approximate number of cuttings to take per lot size

Number of Acres	Sample Size (n)	Number of Acres	Sample Size (n)	Number of Acres	Sample Size (n)
<1	15	71	58	187-188	116
1	30	72-73	59	189-191	117
2	30	74	60	192-194	118
3	30	75-76	61	195-197	119
4	30	77	62	198-199	120
5	30	78-79	63	200-202	121
6	30	80-81	64	203-205	122
7	30	82	65	206-208	123
8	30	83-84	66	209-211	124
9	30	85-86	67	212-214	125
10	30	87	68	215-217	126
11	30	88-89	69	218-220	127
12	30	90-91	70	221-223	128
13	30	92	71	224-226	129
14	30	93-94	72	227-229	130
15	30	95-96	73	230-232	131
16	30	97-98	74	233-235	132
17	30	99	75	236-238	133
18-19	30	100-101	76	239-242	134
20	30	102-103	77	243-245	135
21	30	104-105	78	246-248	136
22	30	106-107	79	249-252	137
23	30	108	80	253-255	138
24	30	109-110	81	256-258	139
25-26	30	111-112	82	259-262	140
27	30	113-114	83	253-255	141
28	30	115-116	84	256-258	142
29	30	117-118	85	259-262	143
30	30	119-120	86	263-265	144
31-32	30	121-122	87	266-269	145
33	30	123-124	88	270-273	146
34	31	125-126	89	274-276	147
35	32	127-128	90	277-280	148
36	22	129-130	91	281-284	149
37-38	34	131-132	92	285-288	150
39	35	133-134	93	289-292	151
40	36	135-136	94	293-296	152
41-42	37	137-138	95	297-300	153
43	38	139-140	96	301-304	151
44	39	141-143	97	305-308	152
45-46	40	144-145	98	309-312	153
47	41	146-147	99	313-316	154
48	42	148-149	100	317-320	155
49-50	43	150-152	101	321-325	156
51	44	153-154	102	326-329	157
52	45	155-156	103	330-333	158
53-54	46	157-158	104	334-338	159
55	47	159-161	105	339-343	160
56	48	162-163	106	344-347	161
57-58	49	164-166	107	348-352	162
59	50	167-168	108	353-357	163
60-61	51	169-170	109	358-362	164
62	52	171-173	110	363-366	165
63-64	53	174-175	111	367-371	166
65	54	176-178	112	372-377	167
66-67	55	179-181	113	378-380	168
68	56	182-183	114		
69-70	57	184-186	115		

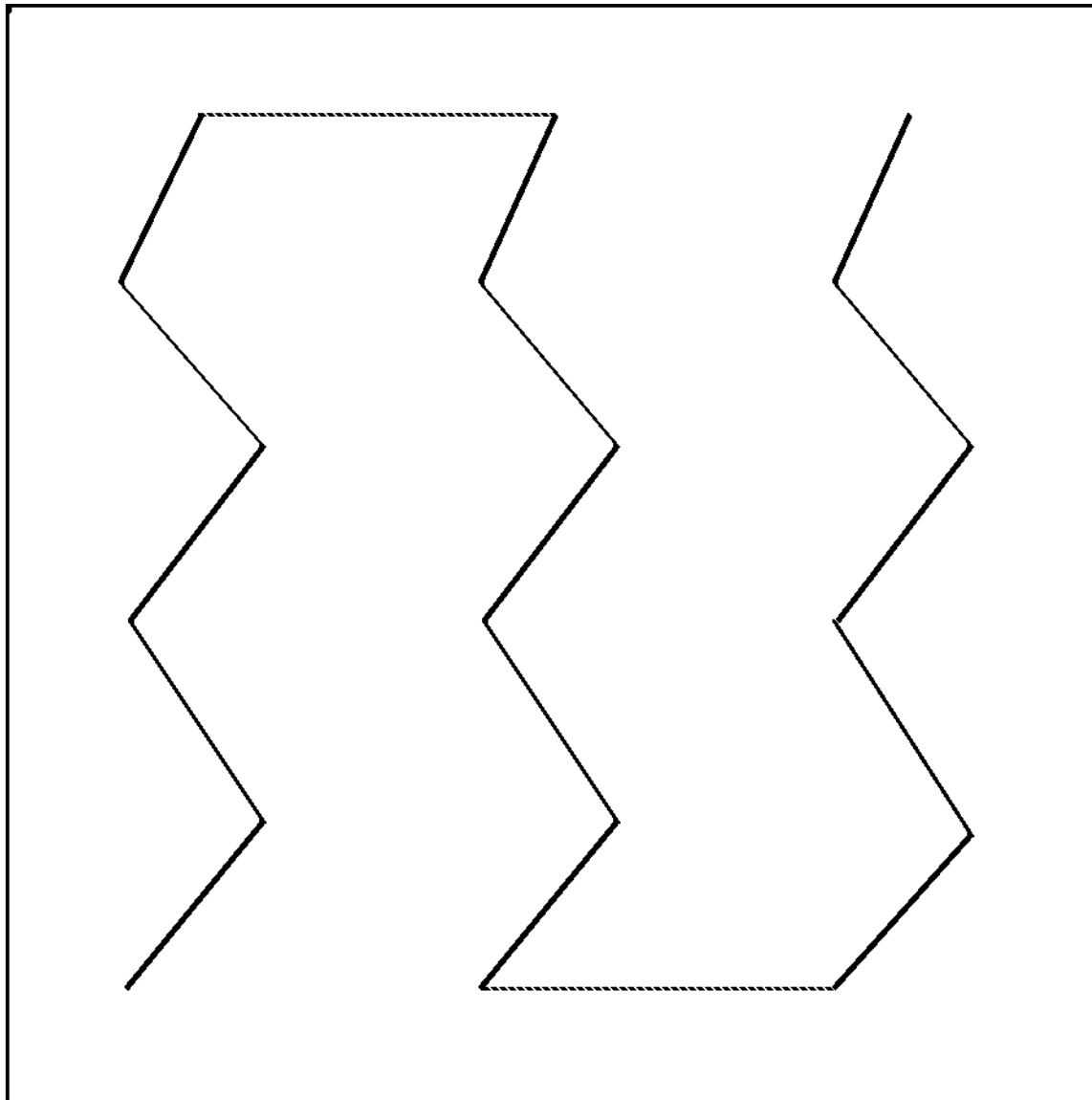


Figure 1- Sampling pathing for industrial hemp lots of shapes similar to a square.

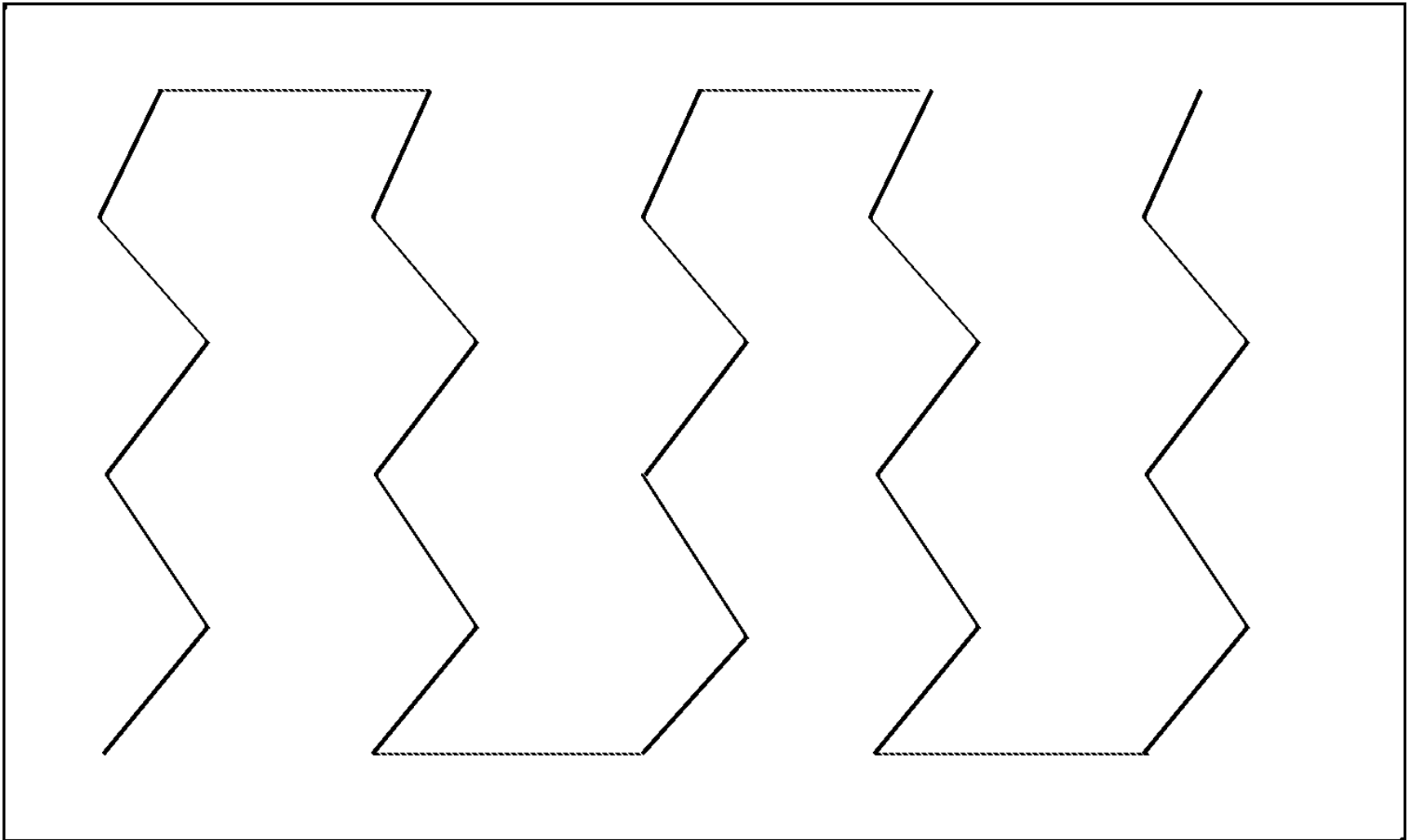


Figure 2- Sampling pathing for industrial hemp lots of shapes similar to a rectangle.

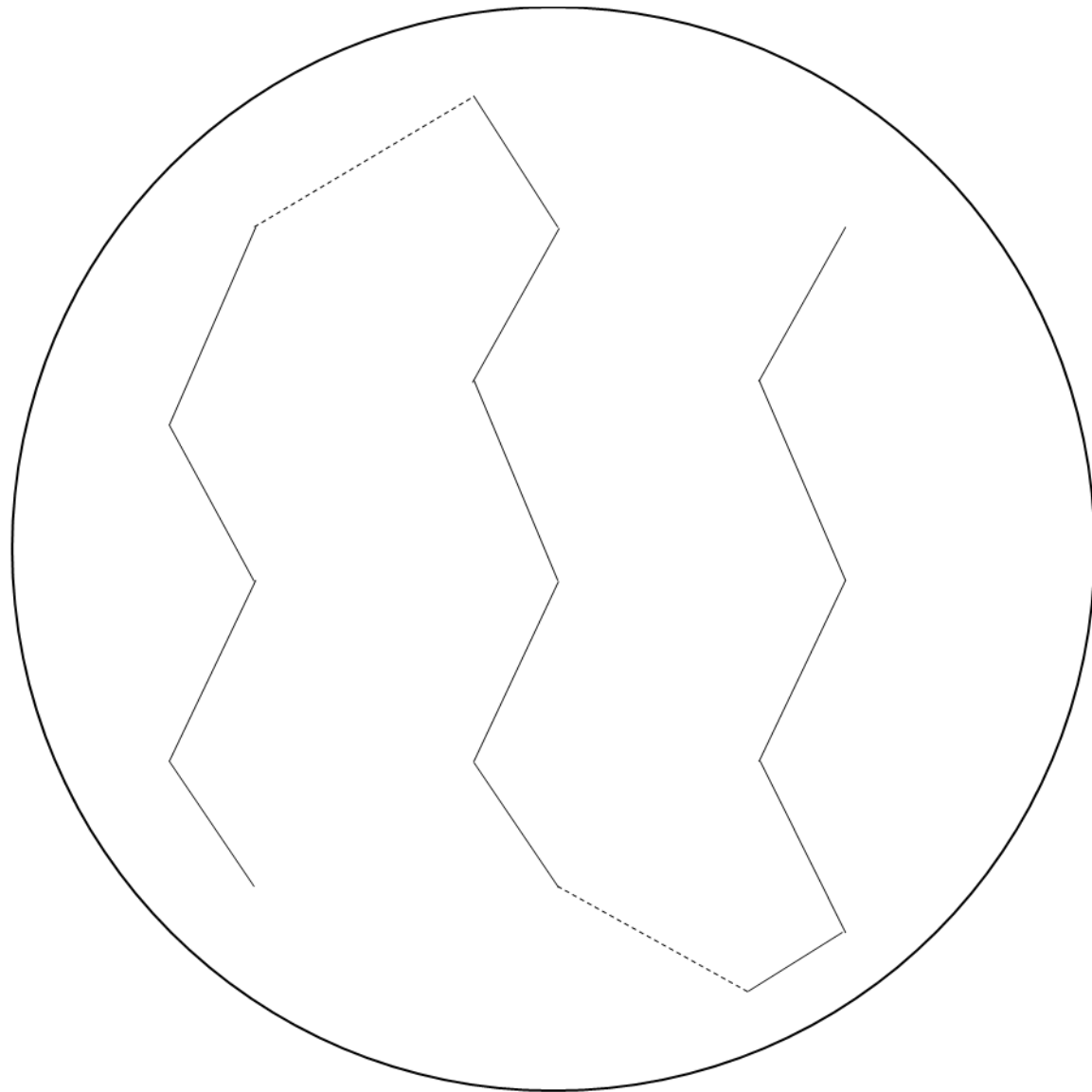


Figure 3- Sampling pathing for industrial hemp lots of shapes similar to a circle or oval.

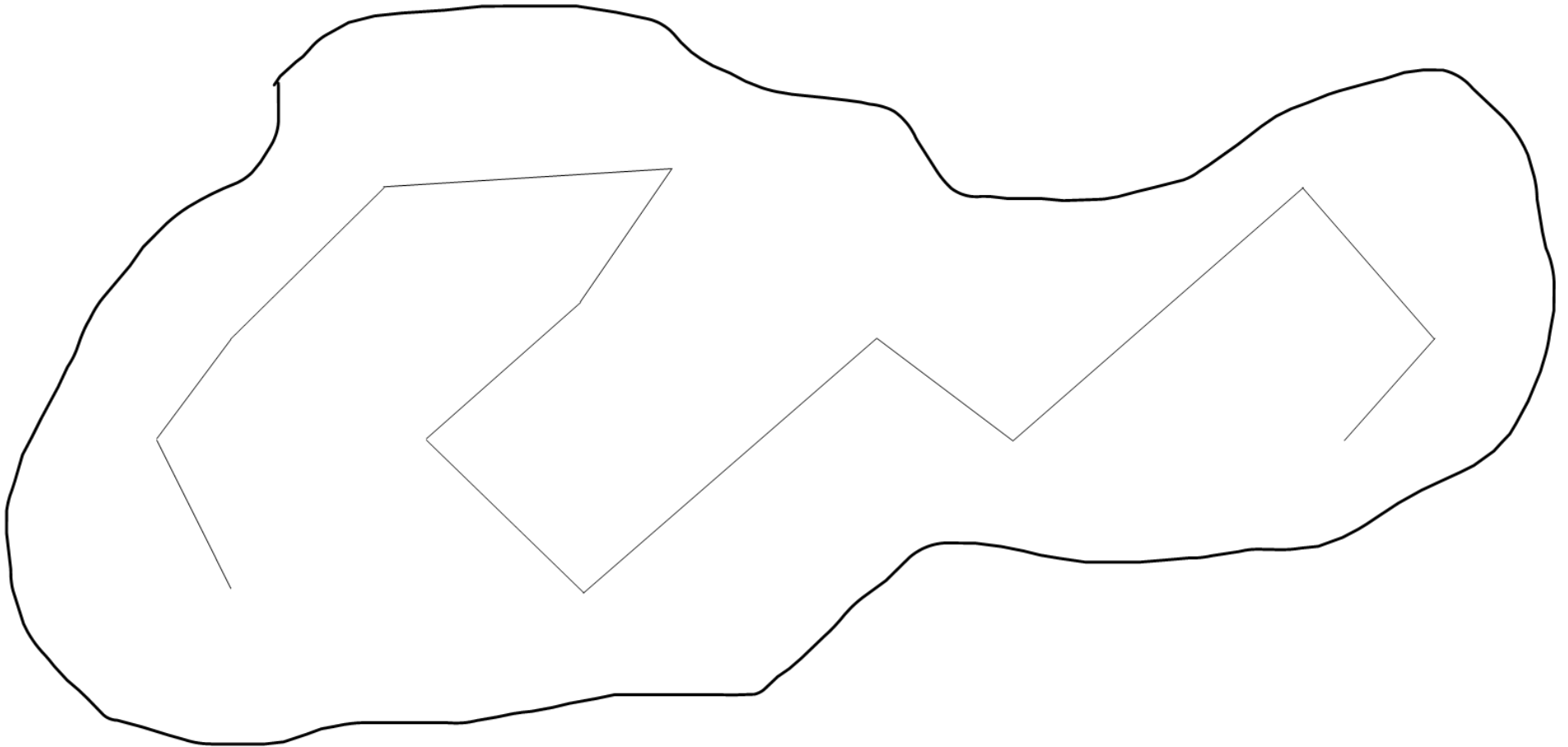


Figure 4- Sampling pathing for industrial hemp lots of irregular shapes.