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Kansas Agricultural Chemical Act

2-2201. Title. This act may be cited as the "agricultural chemical act of 1947."

2-2202. Definitions. For the purpose of this act: (a) The terms "**agricultural chemical**" and "**pesticide**" shall be construed as synonymous terms, shall apply to substances used for both agricultural and non-agricultural uses and shall mean and include any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling, or mitigating any insects, rodents, predatory animals, fungi, weeds, nematodes and other forms of plant or animal life or viruses, which the secretary shall declare to be a pest, and any substance labeled, designed or intended for use as a defoliant, and any substance or mixture of substances, labeled, designed or intended for use as a plant regulator, or desiccant. Viruses on or in living man or other animals are specifically excepted and excluded from this definition. Drugs recognized by the United States pharmacopoeia or the national formulary, the label of which bears the descriptive abbreviations for these compendia, U.S.P. or N.F. as the case may be, are specifically excepted and excluded from this definition.

(b) The term "**insecticide**" means and includes any substance or mixture of substances, labeled, designed or intended for use in preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(c) The term "**fungicide**" means and includes a substance or mixture of substances, labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any fungi.

(d) The term "**rodenticide**" means and includes any substance or mixture of substances, labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals which the secretary shall declare to be a pest.

(e) The term "**herbicide**" means and includes any substance or mixture of substances, labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any weed.

(f) The term "**nematocide**" means any substance or mixture of substances, labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any nematodes.

(g) The term "**defoliant**" means and includes any substance or mixture of substances, labeled, designed, or intended for use for defoliating plants, preparatory to harvest for purpose of obtaining early or controlled maturity.

(h) The term "**plant regulator**" means any substance or mixture of substances, labeled, designed, or intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(i) The term "**desiccant**" means any substance or mixture of substances labeled, designed, or intended for artificially accelerating the drying of plant tissues.

(j) The term "**insect**" means a small invertebrate animal generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(k) The term "**fungi**" means and includes any nonchlorophyll-bearing thallophytes (any nonchlorophyll-bearing plants of a lower order than mosses and liverworts) and includes rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(l) The term "**weed**" means and includes any plant which grows where not wanted.

(m) The term "**nematode**" means invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or

plant parts; may also be called nemas or eelworms.

(n) The term "**fumigant**" means any substance or mixture of substances which emits or liberates a gas or gases, which are used in controlling, destroying, or mitigating insects or rodents and which are usually dangerous to man and other animals.

(o) The term "**ingredient statement**" means a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the agricultural chemical; if the agricultural chemical contains arsenic in any form, the statement shall include the percentages of total and water soluble arsenic, each calculated as elemental arsenic. If the agricultural chemical is not highly toxic to man, and if the agricultural chemical does not contain arsenic in any form, and if the agricultural chemical is not a fumigant, and if a statement of the total percentage of each active ingredient is filed with the secretary, then the term "**ingredient statement**" shall be construed to mean a statement of the name of each active ingredient listed in the order of greatest percentage of each present in the product, together with the name and total percentage of the inert ingredients, if any there be in the agricultural chemical.

(p) The term "**active ingredient**" means

(1) in the case of any agricultural chemical other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds or other pests;

(2) in the case of a plant regulator an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(q) The term "**inert ingredient**" means an ingredient which is not an active ingredient.

(r) The term "**antidote**" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(s) The term "**person**" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(t) The term "**secretary**" means the secretary of agriculture.

(u) The term "**registrant**" means the person registering any agricultural chemical pursuant to the provisions of this act.

(v) The term "**label**" means the written, printed, or graphic matter on, or attached to, the agricultural chemical or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be.

(w) The term "**labeling**" means all labels and other written, printed or graphic matter:

(1) Upon the agricultural chemical or any of its containers or wrappers;

(2) accompanying the agricultural chemical at any time;

(3) to which reference is made on the label or in literature accompanying the agricultural chemical, except when accurate, nonmisleading reference is made to current official publications of the United States departments of agriculture, interior, health and human services, environmental protection agency and state and federal experimental stations and extension services.

(x) The term "**adulterated**" shall apply to any agricultural chemical:

(1) The strength or purity of which falls below the professed standard or quality as expressed on labeling or under which it is sold;

(2) if any substance has been substituted wholly or in part for the article;

(3) if any valuable constituent of the article has been wholly or in part abstracted.

(y) The term "**misbranded**" shall apply:

(1) To any agricultural chemical if its labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular:

(2) to any agricultural chemical:

(a) Which is an imitation of or is offered for sale under the name of another agricultural chemical;

(b) the labeling of which bears any reference to registration under this act;

(c) the labeling accompanying which does not contain instructions for use which are necessary for effective results; and which, if complied with, are adequate for the protection of the public;

(d) if the label of which does not contain a warning or caution statement which, if complied with, is adequate to prevent injury to living man and other vertebrate animals or does not bear a hazard or cautionary statement sufficient to prevent harm to the environment, especially the waters of the state;

(e) the label of which does not bear an ingredient statement on the immediate container;

(f) the label of which does not bear an ingredient statement on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read;

(g) upon which there appears any word, statement, or other information required by or under the authority of this act to appear on the labeling, which is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; and

(h) the label of which does not bear an EPA registration number, unless exempted from the requirement under the provisions of FIFRA.

(3) To any insecticide, fungicide, nematocide, or herbicide which when used as directed, or when used in accordance with commonly recognized practices:

(a) Shall be injurious to living man or other vertebrate animals, to which it is applied, or to the person applying such agricultural chemical;

(b) shall be injurious to the environment or to vegetation, other than weeds, to which it is applied, or to the person applying such agricultural chemical. Physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this

is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(z) The term “**emergency exemption**” shall mean an authorization to use a pesticide product, under emergency conditions, in a manner other than as stated on the product label as registered under section 3 of FIFRA which must be obtained by the secretary.

(aa) The term “**restricted use**” shall mean and include any pesticide, the use of which is either registered as restricted-use by the secretary or labeled as restricted-use by a federal agency responsible for making the classification or designation.

(bb) The term “**special local need registration**” shall mean a registration under section 24 of FIFRA authorized by the administrator of the EPA when certain conditions are met that indicate that there is a specific and special need within the state.

(cc) The term “**suspended pesticide**” shall mean any product whose registration is suspended under the provisions of this act or of FIFRA which would immediately stop the distribution or use, or both, of the product.

(dd) The term “**distribute**” shall mean to sell, offer for sale, hold for sale, hold for shipment, ship, deliver for shipment or release for shipment. The term does not include the holding or application of pesticides or the dilution of pesticide products by commercial pesticide applicators for the control of pests without delivering any unapplied pesticide to any customer of such applicators.

(ee) “**EPA**” shall mean the United States environmental protection agency.

(ff) “**FIFRA**” shall mean the federal insecticide, fungicide and rodenticide act (7 U.S.C. 136 et seq.(1996)) and regulations adopted pursuant thereto.

History: L. 2009, Ch. 128 § 2, July 1.

2-2203. Prohibited acts. (a) It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(1) Any agricultural chemical which has not been registered pursuant to the provisions of K.S.A. 2-2204, and amendments thereto;

(2) any agricultural chemical, if any of the claims made for it, or if any of the directions for its use, differ in substance from the representations made in connection with its registration;

(3) any agricultural chemical if the composition thereof differs from its composition as represented in connection with its registration, unless within the discretion of the secretary, or an authorized representative of the secretary, a change in the labeling or formula of an agricultural chemical within a registration period, has been authorized, without requiring a reregistration of the product.

(4) Any agricultural chemical, unless it is in the registrant’s or the manufacturer’s unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing the following:

(a) The name and address of the manufacturer, registrant, or person for whom manufactured;

(b) the name, brand, or trademark of said article and

(c) the minimum net weight or measure of the contents except that herbicides shall be labeled to state the net weight of contents.

(5) Any agricultural chemical which contains any substance or substances in quantities highly toxic to man, determined as provided in K.S.A. 2-2205, and amendments thereto, unless the label shall bear, in addition to any other matter required by this act:

(a) The skull and crossbones;

(b) the word “poison” prominently, in red, on a background of distinctly contrasting color; and

(c) a statement of an antidote for the pesticide.

(6) Any agricultural chemical which is adulterated or misbranded.

(b) It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this act, or by regulations promulgated hereunder, or to add any substance to, or take any substance from, an agricultural chemical in any manner which may defeat the purposes of this act.

(2) For any person to use for his or her own advantage or to reveal, other than to the secretary or an authorized representative of the secretary, or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of K.S.A. 2-2204, and amendments thereto.

History: L. 2009, Ch. 128 § 3, July 1.

2-2204. Registration; renewal; chemicals subject to federal registration may be exempted; fees and charges; reduction; cancellation of registration upon notice(a) Every agricultural chemical which is distributed, sold or offered for

sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered by the secretary. The secretary shall have the authority to classify or designate as restricted-use any pesticide registered for sale, use or distribution in the state of Kansas, according to rules and regulations promulgated by the secretary. The secretary may adopt rules and regulations to allow products to be registered for a period not to exceed three years. All registration of products shall expire on December 31 of the year the registration is

set to expire, unless such registration shall be renewed, in which event expiration date shall be extended for each year of renewal registration, or until otherwise terminated. Products which have the same formula, and are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same agricultural chemical may be registered as a single product and additional names and labels shall be added by supplement statements during the current period of registration. Within the discretion of the secretary, or an authorized representative of the secretary, a change in the labeling or formulas of an agricultural chemical may be made within the current period of registration without requiring a re-registration of the product. Any agricultural chemical imported into this state which is subject to the provisions of any federal act providing for the registration and which has been duly registered under the provisions of such federal act, in the discretion of the secretary, may be exempted from registration under this act when such agricultural chemical is sold or distributed in the unbroken immediate container in which such agricultural chemical was originally shipped.

(b) The registrant shall file with the secretary, a statement including:

(1) The name and address of the registrant and the name and address of the person whose name will appear on the label if other than the registrant;

(2) the name of the agricultural chemical;

(3) a complete copy of the labeling accompanying the agricultural chemical and a statement of all claims made and to be made for it and a statement of directions for use; and

(4) if requested by the secretary, or an authorized representative of the secretary, a full description of the tests made and the results thereof upon which the claims are based.

(c) The secretary may require the registrant to submit a copy of the product label registered by the EPA under the provisions of FIFRA.

(d) Any time the registrant modifies the label, the modified label shall be submitted to the secretary for review and approval prior to implementing new label in Kansas.

(e) On the date of registration, the registrant shall pay a fee fixed by rules and regulations adopted by the secretary of agriculture. Such fee shall equal an amount per registered agricultural chemical, not to exceed \$150 per year. Such fee shall be deposited in the state treasury and credited as follows:

(1) An amount equal to \$100 for each year of registration shall be credited to the state water plan fund created by K.S.A. 82a-951, and amendments thereto; and

(2) the remainder shall be credited to the agricultural chemical fee fund to be used for carrying out the provisions of this act. The annual fee for each agricultural chemical registered which is in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this subsection. The secretary of agriculture is hereby authorized and empowered, whenever it determines that the fee imposed by this subsection and paid into the state treasury as provided by law is yielding more revenue than is required for the purposes to which such fee is devoted by law, to reduce the fee imposed by this subsection for such period as the secretary shall deem justified by adopting rules and regulations under this subsection but not for less than one year. In the event that the secretary, after reducing such fee, finds that sufficient revenues are not being produced by such reduced fee, the secretary is authorized and empowered by adopting rules and regulations under this subsection, to restore in full or in part such fee to an amount which, in the judgment of the secretary, will produce sufficient revenues for the purposes as provided in this section, but not exceeding the maximum amount of the fee imposed by this subsection.

(f) The secretary, or an authorized representative of the secretary, whenever it is deemed essential in the administration of this act, may require the submission of the complete formula or any other data in support of the registration for any pesticide. The complete formula and any other trade secrets submitted to support the registration application shall be considered as confidential. If it appears to the secretary, or an authorized representative of the secretary, that the composition of the product is such as to warrant the proposed claims for the product and if the product and its labeling and other material required to be submitted comply with the requirements of this act, the secretary shall register the product.

(g) If it does not appear to the secretary, or an authorized representative of the secretary, that the product is such as to warrant the proposed claims for it or if the product and its labeling and other material required to be submitted do not comply with the provisions of this act, the secretary shall notify the registrant of the manner in which the product, labeling, or other material required to be submitted fail to comply with the act and rules and regulations adopted pursuant thereto so as to afford the registrant an opportunity to make the necessary corrections. If, upon receipt of such notice, the registrant does not make the required changes within 30 days, the secretary may deny registration of the product. In addition, the secretary may deny registration of a product if the application for registration fails to comply with this act or any rule or regulation adopted pursuant thereto. If the secretary denies a registration, the registrant may request a hearing in accordance with the provisions of the Kansas administrative procedure act.

(h) Any pesticide registration canceled or suspended under the provisions of FIFRA shall be considered to be canceled or suspended under provisions of the agricultural chemical act of 1947, unless such cancellation is due to the nonpayment of registration fees required under FIFRA.

(i) If the secretary determines that a registered product fails to meet the claims made on its label, the secretary may suspend or revoke the product registration after a hearing in accordance with the provisions of the Kansas administrative procedure act. In addition, if the secretary determines that a registered product or its labeling fails to comply with this act, or a rule or regulation adopted pursuant to this act, the secretary may suspend or revoke the product registration after a hearing in accordance with the provisions of the Kansas administrative procedure act.

(j) In order to protect the public, the secretary, or a duly authorized representative of the secretary, on the secretary's own motion, may at any time, after written notice to the registrant, suspend or revoke the registration of an agricultural chemical. Any person so notified shall be given an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act with regard to the secretary's contemplated action, before any registration is suspended or revoked.

(k) Notwithstanding any other provisions of this act, registration is not required in the case of an agricultural chemical shipped from one plant within this state to another plant within this state operated by the same person.

(l) any information required to be filed pursuant to this section may be filed electronically pursuant to rules and regulations promulgated by the secretary.

History: L. 2009, Ch. 128 § 4, July 1.

2-2205. Determinations after hearings; rules and regulations; uniformity between states and federal government. (a) The secretary is authorized, after opportunity for a hearing

(1) to declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances;

(2) to determine whether agricultural chemicals are highly toxic to man;

(3) to determine standards of coloring or discoloring for agricultural chemicals; and

(4) to subject agricultural chemicals to the requirements of K.S.A. 2-2203 (a)(6) and amendments thereto.

(b) The secretary is authorized, after due public hearing, to make appropriate rules and regulations for carrying out the provisions of this act, including rules and regulations providing for the collection and examination of samples of agricultural chemicals.

(c) In order to avoid confusion endangering the public health and safety resulting from diverse requirements, particularly as to the labeling and coloring of agricultural chemicals and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such products, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such products. To this end the secretary is authorized, after due public hearing, to adopt regulations, applicable to and in conformity with the primary standards established by this act; or as have or may be prescribed by the EPA with respect to agricultural chemicals or pesticides.

History: L. 2009, Ch. 128 § 5, July 1.

2-2206. Examinations; prosecutions; stop sale orders; judicial review. (a) The examination of agricultural chemicals shall be made under the direction of the secretary, or an authorized representative of the secretary, for the purpose of determining whether they comply with the requirements of this act. If it appears from such examination that an agricultural chemical fails to comply with the provisions of this act and the secretary, or an authorized representative of the secretary, contemplates instituting criminal proceedings against any person, the secretary or the authorized representative of the secretary shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present such person's views, either orally or in writing, with regard to such contemplated proceedings. If thereafter in the opinion of the secretary, or an authorized representative of the secretary, it appears that the provisions of the act have been violated by such person, then the secretary or an authorized representative of the secretary may refer the facts to the county attorney or district attorney for the county in which the violation occurred with a copy of the results of the analysis or the examination of such article. Nothing in this act shall be construed as requiring the secretary or the authorized representative of the secretary to report for prosecution or for the institution of libel proceedings any minor violations of the act whenever the secretary or the authorized representative of the secretary believes that the public interests will be best served by a suitable notice of warning in writing.

(b) It shall be the duty of each county attorney or district attorney to whom any such violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(c) The secretary, or an authorized representative of the secretary, is authorized to give notice of all judgments entered in actions instituted under the authority of this act by publication in such manner as the secretary may prescribe.

(d) The secretary or a duly authorized representative of the secretary, acting as the enforcing officer, may issue and enforce a written or printed stop sale, use or removal order to the owner or custodian of any quantity of an agricultural chemical which the secretary or duly authorized representative determines is adulterated or misbranded, is not registered as required under K.S.A. 2-2204 and amendments thereto, fails to bear on its label the required information, has an altered or defaced label or the pesticide product has pesticide residue on the container or packaging. The stop sale order shall prohibit further sale and movement of such agricultural chemical, except on approval of the enforcing officer, until the enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the stop sale, use or removal order. Any stop sale, use or removal order issued pursuant to this subsection is subject to review in accordance with the Kansas judicial review act. The provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of the statutes contained in article 22 of chapter 2 of the Kansas Statutes Annotated and amendments thereto

(e) The representative of the secretary may issue a stop sale, use or removal order for any pesticide product held for distribution to any pesticide dealer who has failed to register as a pesticide dealer under the requirements of K.S.A. 2-2469, and amendments thereto.

(f) During reasonable business hours, the secretary or secretary's representative shall have the authority to enter any locations where pesticides, pest control devices or pest control systems are being held for sale and distribution in order to conduct inspections, obtain samples and other evidence, obtain copies of records and otherwise document compliance with the provisions of this act.

History: L. 2009, Ch. 128 § 6, July 1; L. 2010, SB 376 § 10, July 1, amended 2010.

2-2207. Exemptions. (a) The secretary may issue a permit for an experimental use pesticide in lieu of registration, as prescribed by rules and regulations adopted by the secretary.

(b) The penalties provided for violations of subsection (a) of K.S.A. 2-2203 and amendments thereto shall not apply to:

(1) Any carrier while engaged in transporting an agricultural chemical within this state, if such carrier, upon request, permits the secretary or the secretary's designated representative or agent to copy all records showing the transactions in and movement of the products;

(2) public officials of this state and the federal government engaged in the performance of their official duties;
(3) the manufacturer or shipper of an agricultural chemical for experimental use only
(A) by or under the supervision of any agency of this state or of the federal government authorized by law to conduct research in the field of agricultural chemicals, or
(B) by others if the agricultural chemical is not sold and if the container thereof is plainly and conspicuously marked "for experimental use only not to be sold," together with the manufacturer's name and address. If a written permit has been obtained from the secretary, or an authorized representative of the secretary, an agricultural chemical may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.
(c) No article shall be deemed in violation of this act when consigned for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported all of the provisions of this act shall apply.
(d) This act shall not limit or abridge in any manner the right of any pharmacist licensed in the state of Kansas to sell chemicals and drugs in broken packages in compliance with the Kansas pharmacy laws.
(e) Any pesticide product that is permitted for distribution and use under the provisions of an emergency exemption shall be exempt from the requirements for registration of the label allowing for use in an emergency.
(f) Any pesticide product label for which the secretary seeks registration under the provisions for special local need (SLN) registration shall be exempt from the registration fee for the remainder of the first year the SLN is in place. A registration fee in an amount fixed by the secretary shall be required for renewal of the SLN registration.
History: L. 2009, Ch. 128 § 7, July 1.

2-2208. Penalties. (a) Any person violating K.S.A. 2-2203 (a) (1) shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars and not more than five hundred dollars.

(b) Any person violating any provisions of this act other than K.S.A. 2-2203 (a) (1) or failing to comply with any of the provisions of this act other than K.S.A. 2-2203 (a) (1) or violating or failing to comply with any rule or regulation adopted under the provisions of this act, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars for the first offense and upon conviction for a subsequent offense shall be fined not less than one hundred dollars or more than five hundred dollars for each subsequent offense: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. The registration of the article with reference to which the violation occurred shall terminate automatically upon entry of judgment by the court against the violator. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the secretary, or an authorized representative of the secretary, to comply with all the requirements of this act.

(c) Notwithstanding any other provisions of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under authority of K.S.A. 2-2204, he or she shall be fined not more than five hundred dollars or imprisoned for not more than one year or both.

2-2209. Seizures. (a) Any agricultural chemical that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any court of competent jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation if it:

- (1) Is adulterated or misbranded;
- (2) has not been registered under the provisions of K.S.A. 2-2204 and amendments thereto;
- (3) fails to bear on its label the information required by the agricultural chemical act of 1947.

(b) If the article is condemned, after entry of decree, it shall be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the state treasurer. The article shall not be sold contrary to the provisions of the agricultural chemical act of 1947. Upon payment of costs and upon the execution and delivery to the clerk of such court, of a good and sufficient bond to be approved by the judge, conditioned that the article shall not be disposed of unlawfully, the court may direct that such article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(c) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

History: L. 2009, Ch. 128 § 8, July 1.

2-2210. Delegation of duties. All authority vested in the secretary by virtue of the provisions of this act may with like force and effect be executed by such employees of the Kansas department of agriculture as the secretary may from time to time designate for said purpose.

2-2211. Cooperation with other agencies. The secretary is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state, the United States department of agriculture, and any other state or

agency thereof for the purpose of carrying out the provisions of this act and securing uniformity of regulations.

2-2212. Disposition of moneys received; agricultural chemical fee fund. The secretary shall remit all moneys received by or for the secretary under article 22 of chapter 2 of the Kansas Statutes Annotated and amendments thereto to the state treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the agricultural chemical fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person or persons designated by the secretary.

2-2213. Invalidity of part. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby.

2-2214. Jurisdiction over distribution, sale and transportation. (a) Jurisdiction in all matters pertaining to the distribution, sale and transportation of agricultural chemicals is by this act vested exclusively in the secretary, and an authorized representative of the secretary, except as otherwise specifically provided in this act.

(b) The secretary shall have the authority to apply for a permit for pesticide use in emergency situations as provided for under the provisions of section 18 of FIFRA and to apply for special local need registrations under the provisions of subsection (c) of section 24 of FIFRA.

History: L. 2009, Ch. 128 § 9, July 1.

2-2215. Judicial review of secretary's actions. In addition to any other remedy which may be available, any action of the secretary pursuant to the agricultural chemical act of 1947 is subject to review in accordance with the Kansas judicial review act

History: L. 2010, SB 376 § 11, July 1, amended 2010.

KANSAS ADMINISTRATIVE REGULATIONS

K.A.R. 4-1-2. Definitions. In addition to the terms defined in K.S.A. 2-2202 and amendments thereto, the following terms shall have the meanings specified in this regulation: (a) "Abstracted," as used in K.S.A. 2-2202(x)(3) and amendments thereto, means omitted.

(b) "The act," and "the agricultural chemical act" mean K.S.A. 2-2201 et seq., and amendments thereto.-

(c) "Authorized representative" and "designee" mean any person authorized by the secretary to enforce the act.

(d) "Pesticide" shall include insecticides, fungicides, rodenticides, herbicides, nematocides, defoliants, desiccants, and antimicrobials.

(e) "Plant-incorporated protectant" means any pesticidal substance produced by any plant and the genetic material necessary for the plant to produce the substance.

(f) "Plant regulator" shall not include any substance labeled or otherwise represented solely for use as a plant nutrient, fertilizer, or soil amendment.

(g) "Product" means one or more pesticides formulated, packaged, and labeled for distribution or sale.

(h) "Valuable constituent" means any active ingredient or inert ingredient. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

K.A.R. 4-1-5. Label. The label of each product shall show clearly and prominently the following items: (a) The complete name of the product under which the product is registered under the act;

(b) the name and address of the manufacturer, registrant, or person for whom the product was manufactured. Unless otherwise stated, any name and address on the label shall be considered as the name and address of the manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer or if the name of the person for whom the product was manufactured appears on the label, the name that appears on the label shall be qualified by appropriate wording that may include "packed for," "distributed by," or "sold by," to indicate that the name is not that of the manufacturer. If the product is manufactured in more than one location or at a location separate from the manufacturer's principal office, then the product label shall state either one of the addresses where the product is manufactured or the address of the manufacturer's principal office;

(c) the EPA registration number, if required under the provisions of FIFRA;

(d) the net contents;

(e) an ingredient statement, which shall meet the following requirements:

(1) The ingredient statement shall appear on the front panel of the label unless the secretary or designee determines that, due to the size or form of the container, a statement on that portion of the label is impractical and

permits this statement to appear on another side or panel of the label. If so permitted, the ingredient statement shall be in larger type and more prominent than the surrounding text. The ingredient statement shall run parallel with other printed matter on the panel of the label on which the ingredient statement appears and shall be on a clear, contrasting background and not obscured or crowded;

(2) the acceptable common name of each active ingredient as specified in FIFRA shall appear on the ingredient statement or, if the active ingredient has no common name, the correct chemical name shall be stated. A trademark or trade name shall not be used as the name of an active ingredient unless the trademark or trade name has become a common name;

(3) active ingredients and inert ingredients shall be so designated. The term "inert ingredient" shall appear in the same size type and be as prominent as the term "active ingredient"; and

(4) the percentages of all ingredients shall be determined by weight, and the sum of the percentages of all ingredients shall be 100. Sliding-scale forms of ingredient statements shall not be used;

(f) a first aid statement; and

(g) a warning or caution statement. The warning or caution statement shall appear on the label in a place sufficiently prominent to warn the user and shall state clearly and in nontechnical language the particular hazards involved in the use of the product and the precautions to be taken to avoid accident, injury, or damage to humans and other nontarget organisms. (Authorized by K.S.A. 2010 Supp. 2-2205; implementing K.S.A. 2010 Supp. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

K.A.R. 4-1-6. (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2203; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

K.A.R. 4-1-8. (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2203; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

K.A.R. 4-1-9. Registration. (a) Pursuant to K.S.A. 2-2204 and amendments thereto, a product may be registered by one of the following: any manufacturer, authorized agent of the manufacturer, packer, seller, distributor, or shipper of that product.

(b) The registrant shall be responsible for the accuracy and completeness of all information submitted in connection with the application for registration of a product.

(c) Each registrant shall submit the product labeling to the secretary or designee when initially registering the product and whenever changing or modifying the labeling. When a registrant submits a product's labeling due to a change or modification in the labeling, the labeling shall be accompanied with a written statement that clearly and specifically describes the changes from the previous labeling and the proposed date of implementation of the new labeling. After the effective date of a change in labeling, the product shall be marketed only under the new labeling. Any registrant may request from the secretary or designee that a reasonable time be permitted to relabel or dispose of any products with the old labeling. After the initial registration of a product, any registrant may register that product no more than four consecutive years without the submission of the product label if there is no change to the product label.

(d) Claims or representations made for a product by the registrant or registrant's agent shall not differ from claims or representations made in connection with registration. These claims or representations shall include the following:

(1) Publications or advertising literature that accompanies the product or is distributed separately from the product;

(2) advertising by radio, television, internet sites, or other electronic media; and

(3) verbal and written communication.

(e) If the secretary requires additional information in support of the registration and the registrant believes that the requirement for additional data is unreasonable, the registrant may request a conference with the secretary or designee to discuss the requirement and consider alternatives. Each request for a conference shall be made no later than 20 days after the date on which the request for additional data is sent to the registrant.

(f) Each registration shall be valid through the last day of the calendar year in which the product was registered, unless the registration has been canceled or suspended before that day. (Authorized by K.S.A. 2010 Supp. 2-2205; implementing K.S.A. 2010 Supp. 2-2204; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

K.A.R. 4-1-9a. Registration for special local need. (a) Each person registering a product for additional uses and methods of application not stated on the product's labeling under section three of FIFRA, but not inconsistent with federal law, for the purpose of meeting a special local need shall submit an application for the special local need to the secretary or designee. Each application shall include the following:

(1) A statement explaining why a special local need registration is necessary;

- (2) efficacy and residue data;
 - (3) a letter from a subject matter expert, as recognized by the secretary or designee, detailing support for the special local need registration;
 - (4) EPA form 8570-25, "application for/notification of state registration of a pesticide to meet a special local need"; and
 - (5) a proposed label for the product.
- (b) A product shall not be eligible for special local need registration if at least one of the following conditions is met:
- (1) There is insufficient evidence to support a special local need for the additional use or method of application within the state.
 - (2) The registrant and product do not meet all requirements under the act and the Kansas pesticide law.
 - (3) For a food or feed use, the additional use or method of application does not have an established residue tolerance, or an exemption from tolerance, under FIFRA.
 - (4) The same use or method of application has previously been denied, disapproved, suspended, or cancelled by EPA.
 - (5) The same use or method of application has been voluntarily cancelled by the registrant.
- (c) A special local need registration shall be issued to the applicant upon referral of the application to EPA by the secretary.
- (d) A special local need registration shall be immediately cancelled by the secretary or designee if the application is disapproved by EPA.
- (e) Each special local need registration of a product shall be renewed annually, but may be renewed no more than four times without resubmission of a special local need request pursuant to K.A.R. 4-1-9a. (Authorized by K.S.A. 2009 Supp. 2-2205 and K.S.A. 2009 Supp. 2-2214; implementing K.S.A. 2009 Supp. 2-2207; effective June 10, 2011.)

K.A.R. 4-1-9b. Emergency situation exemptions. (a) Any person may submit a request for a registration exemption under section 18 of FIFRA to the secretary or designee if an emergency situation exists.

(b) "Emergency situation" shall include the following: a specific emergency, a public health emergency, a quarantine emergency, and a crisis emergency that is urgent and nonroutine.

(c) Each request for registration exemption under section 18 of FIFRA shall include documentation of each of the following:

(1) No effective registered products are available.

(2) No feasible alternative control practices are available.

(3) The emergency situation involves the introduction of a new pest, will present significant risks to human health or the environment, or will cause significant economic loss.

(d) Each person seeking an emergency situation exemption shall compile and present to the secretary or designee any additional information required by EPA to support the request.

(e) Each person distributing a product under the emergency situation exemption shall provide the end user with the product labeling that was approved for the emergency situation exemption.

(f) Each person distributing or using products under an emergency situation exemption shall meet the following requirements:

(1) Comply with all reporting requirements contained within the emergency situation exemption; and

(2) notify the secretary or designee of any adverse effects resulting from the use of the product. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2207; effective June 10, 2011.)

K.A.R. 4-1-11. (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

K.A.R. 4-1-13. Enforcement; product sampling. Collection of samples of products for analysis shall be performed by the secretary or designee. A sample may be taken as either an unopened original package or a portion from the unopened original package. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2206, as amended by L. 2010, ch. 17, §10; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

K.A.R. 4-1-14. Experimental use. (a) A product, including a plant or seed modified genetically to include a plant-incorporated protectant, may be distributed for experimental use-without registration under K.S.A. 2-2204, and amendments thereto, if either of the following conditions is met:

(1) A permit for the product has been obtained from the secretary or designee.

(2) The experimental use of the product is limited to one of the following:

(A) Laboratory or greenhouse tests; or

(B) a small-scale test conducted on a cumulative total of no more than one acre of land per pest.

(b) An experimental use permit may be issued if the secretary or designee determines that the applicant needs the permit to accumulate information necessary to register a pesticide under K.S.A. 2-2204, and amendments thereto. Issuance of an experimental use permit may be denied by the secretary or designee if it is determined that the proposed use of the pesticide could cause unreasonable adverse effects on the environment. Terms, conditions, and a limited time period of the experimental use permit may be prescribed by the secretary or designee.

(c) Each application for experimental use shall include the following:

- (1) The name and address of the applicant;
 - (2) the purpose or objectives of the experimental use and the experimental protocols to be followed;
 - (3) the name, address, and telephone number of all participants in the experimental use in Kansas;
 - (4) the amount of the product, including a plant or seed modified genetically to include a plant-incorporated protectant, to be shipped into or used in Kansas;
 - (5) the applicant's signature;
 - (6) documentation of EPA approval;
 - (7) a copy of the experimental use product labeling approved by EPA; and
 - (8) any other relevant information requested by the secretary or designee. If the secretary requires additional information in support of the application and the applicant believes that the requirement for additional data is unreasonable, the applicant may request a conference with the secretary or designee to discuss the requirement and consider alternatives. Each request for a conference shall be made no later than 20 days after the date the request for additional data is sent to the applicant.
- (d) After the permit is issued, the permittee shall meet the following requirements:
 - (1) Coordinate the dates and locations of the proposed use of the product with the secretary or designee; and
 - (2) notify the secretary or designee of any adverse effects resulting from the experimental use within 24 hours of discovery.
 - (e) An experimental use permit may be modified, revoked, suspended, or modified by the secretary or designee at any time if either of the following conditions is met:
 - (1) The secretary or designee finds that the terms or conditions of the permit are being violated.
 - (2) The secretary or designee, after taking into account the economic, social, and environmental costs and benefits of the use of the product under the existing permit, determines the risk to the environment to be unacceptable.
 - (f) At the conclusion of the experimental use, the permittee shall submit a final report to the secretary or designee summarizing the results. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2207; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

K.A.R. 4-1-17. Registration fee. The annual registration fee for each registered product shall be \$150.00. (Authorized by K.S.A. 2009 Supp. 2-2204 and K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2204; effective, T-83-35, Nov. 10, 1982; effective May 1, 1983; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-22-89, June 22, 1989; amended Aug. 14, 1989; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended June 10, 2011.)