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 "economic poison" shall be construed as synonymous terms, 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 and 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 Nemotoda, 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 department of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of agricultural chemicals.

(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;

(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.

(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 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.

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;

(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: *Provided*, 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, 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 economic poison.

(6) Any standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate and barium fluosilicate unless such agricultural chemicals have been distinctly colored or discolored as provided by regulations issued in accordance with this act, or any other white powder agricultural chemical which the secretary, or authorized representatives, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored: *Provided*, That the secretary, or an authorized representative of the secretary, may exempt any agricultural chemical to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he or she determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health or safety.

(7) 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 preparation of antidotes, any information relative to formulas of products acquired by authority of K.S.A. 2-2204.

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 in the office of the secretary. All registration of products shall expire on December 31 following the date of issuance, unless such registration shall be renewed annually, 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 reregistration 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. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the product was registered or last reregistered.

(c) The registrant shall pay an annual fee fixed by rules and regulations adopted by the secretary of agriculture, except that such fee shall not exceed $130, or commencing July 1, 2002, and ending on June 30, 2010, such fee shall not exceed $150 for each agricultural chemical registered. Such fee shall be deposited in the state treasury and credited as follows: (1) An amount equal to $100 for each fee so deposited 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.

(d) 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 of any agricultural chemical. 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.

(e) 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 so as to afford the registrant an opportunity to make the necessary corrections.

(f) 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, cancel 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 canceled or revoked.

(g) 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.

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).

(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 United States department of agriculture with respect to agricultural chemicals or economic poisons.

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 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 or is a white powder agricultural chemical which is not colored in violation of the provisions of the statutes contained in article 22 of chapter 2 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto, or any rules and regulations adopted thereunder. 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 order. Any stop sale order issued pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. 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.

2-2207. Exemptions. (A) 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.

(B) 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.

(C) 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.

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; or

(4) is a white powder agricultural chemical and is not colored as required under 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.

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. 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.

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 act for judicial review and civil enforcement of agency actions.

KANSAS ADMINISTRATIVE REGULATIONS

4-1-2. Definitions. (a) *Agricultural chemicals (poisons)*. "Agricultural chemicals" includes insecticides, fungicides, rodenticides, herbicides, nematocides, defoliants, plant regulators, and desiccants. A product shall be deemed to be an agricultural chemical

regardless of whether the product is intended for use as packed or after dilution or mixture with other substances, such as carriers or baits. Products intended only for use after further processing or manufacturing shall not be deemed to be agricultural chemicals (economic poisons). Substances which have recognized commercial uses other than uses as agricultural chemicals shall not be deemed to be agricultural chemicals unless these substances are:

(1) Specially prepared for use as agricultural chemicals;

(2) labeled, represented, or intended for use as agricultural chemicals; or

(3) marketed in channels of trade where they will presumably be purchased as agricultural chemicals.

(b) *Fungicide*. The term "fungicide" shall not include algaecides.

(c) *Plant regulator*. "Plant regulator" shall not include substances intended solely for use as plant nutrients or fertilizers.

(d) *Active ingredient*. An "active ingredient" is an ingredient which:

(1) Is capable in itself, and when used in the same manner and for the same purpose as directed for use of the product, of preventing, destroying, repelling, or mitigating insects, fungi, rodents, weeds, or other pests;

(2) Is present in the product in an amount sufficient to add materially to its effectiveness; and

(3) Is not antagonistic to the activity of the principal active ingredient. The secretary may require an ingredient to be designated as an active ingredient if, in his or her opinion, it sufficiently increases the effectiveness of the agricultural chemical to warrant that action.

(e) *Rodent*. "Rodent" means any animal of the order Rodentia, including, but not limited to, rats, mice, rabbits, gophers, prairie dogs, and squirrels.

(f) *Authorized representative*. "Authorized representative" means any employee or agent of the state authorized by the secretary to make investigations in connection with the enforcement of the act.

4-1-5. Label. (a) *Contents of label*. The label of every agricultural chemical shall show, clearly and prominently, the name of the product; the name and address of the manufacturer, the registrant, or person for whom manufactured; the net contents; the ingredient statement; and a warning or caution statement which may be necessary to prevent injury to humans and other vertebrate animals, useful vegetation and useful invertebrate animals. The label of any agricultural chemical which is highly toxic to humans shall also contain the skull and crossbones, and the word "poison" in red on a contrasting background and the antidote statement in immediate proximity to it. The antidote statement shall include directions to call a physician immediately. The label of every agricultural chemical if necessary to prevent injury to humans and other vertebrate animals, useful vegetation and useful invertebrate animals, shall contain an appropriate warning or caution statement as required in K.A.R. 4-1-8.

(b) *Name and address of manufacturer*. An unqualified name and address given 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 agricultural chemical was manufactured appears on the label, it shall be qualified by appropriate wording as "packed for . . ," "distributed by . . ," or "sold by . .," to show that the name is not that of the manufacturer. When a person manufactures an agricultural chemical in two (2) or more places or in a place different from the manufacturer's principal office, the actual place of manufacture of each particular package need not be stated on the label except when the failure to name it may be misleading to the public.

(c) *Name, brand, or trademark of agricultural chemicals*. The name, brand, or trademark of the agricultural chemical appearing on the label shall be that under which the agricultural chemical is registered.

4-1-6. Ingredient statement. (a) *Location of ingredient statement*. The ingredient statement shall appear on that part of the label displayed under customary conditions of purchase except in cases where the secretary 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. When so permitted, the ingredient statement shall be in larger type and more prominent than would otherwise be possible. The ingredient statement shall run parallel with other printed matter on the panel of the label on which it appears and shall be on a clear contrasting background and not obscured or crowded.

(b) *Names of ingredients*. The well-known common name of the ingredient shall be given or, if the ingredient has no common name, the correct chemical name. If there is no common name and the chemical composition is unknown or complex, the secretary may permit the use of a new or coined name which is appropriate for the information and protection of the user. If the use of a new or coined name is permitted, the secretary may prescribe the terms under which it shall be used. A trademark or trade name shall not be used as the name of an ingredient except when it has become a common name.

(c) *Percentages of ingredients*. Percentages of ingredients shall be determined by weight and the sum of the percentages of the ingredients shall be one hundred (100). Sliding scale forms of ingredient statements shall not be used.

(d) *Designation of ingredients*. Active ingredients and inert ingredients shall be so designated, and the term "inert ingredient" shall appear in the same size type and be equally as prominent as the term "active ingredients."

4-1-8. 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 hazard involved in the use of the agricultural chemical and the precautions to be taken to avoid accident, injury, or damage. The word "poison" in red on a contrasting background in immediate proximity to the skull and crossbones and an antidote, including directions to call a physician immediately, shall appear on all agricultural chemicals highly toxic to humans.

4-1-9. Registration. (a) Any manufacturer, packer, seller, distributor, or shipper of an agricultural chemical may register this agricultural chemical.

(b) If an agricultural chemical is registered under the act no further registration under the act is required when the product is in the manufacturer's or registrant's original unbroken immediate container or the claims made for it and the directions for its use do not differ in substance from the representations made in connection with registration.

(c) Applications shall be submitted at least thirty (30) days before the time when it is desired that registration take effect.

(d) *Responsibility of a registrant*. The registrant is responsible for the accuracy and completeness of all information submitted in connection with the application for registration of an agricultural chemical.

(e) *Changes in labeling or formulae*. Changes in substances in the labeling or changes in the formula of a registered agricultural chemical shall be submitted in advance to the control division, Kansas state board of agriculture, Topeka, Kansas. The registrant shall describe the exact changes desired and the proposed effective date and, upon request, shall submit a description of tests which justify these changes. After the effective date of a change in labeling or formula the product shall be marketed only under the new claims or formula, except that a reasonable time may be permitted by the secretary to dispose of properly labeled stocks of old products.

(f) *Claims must conform to registration*. Claims made for an agricultural chemical shall not differ from representations made in connection with registration.

4-1-11. Adulteration; valuable constituent. (a) A valuable constituent shall be considered as wholly abstracted whenever the labeling of the product represents the presence of the constituent within it and this constituent has been wholly omitted in the preparation of the product or has been wholly removed from the completed product.

(b) A valuable constituent shall be considered as partly abstracted whenever the labeling of the product it represents the presence of the constituent within it and this constituent is not present or in the amount indicated in the labeling.

4-1-13. Enforcement. (a) *Collection of samples*. Samples of agricultural chemicals shall be collected by authorized representatives or by any authorized employee of the state, who has been duly designated by the secretary. An official representative sample shall be one taken by the secretary of the state board of agriculture, or a duly authorized agent. An unbroken original package shall be taken as the official sample where the agricultural chemical is packed in small bottles, or small packages. Where the agricultural chemical is packed in large containers, portions for the official sample shall be taken from not less than five (5) separate original packages, unless there are fewer than five (5) separate original packages in the lot, in which case, portions for the official sample shall be taken from each original package. If the agricultural chemical is in bulk, portions shall be taken from not less than five (5) different places in the lot.

(b) *Examination of samples*. Methods of examination of samples shall be those adopted and published by the association of official agricultural chemists, where applicable, and any other methods as may be necessary to determine whether the product complies with the law.

(c) *Notice of apparent violation*. If, from an examination or analysis, an agricultural chemical appears to be in violation of the act, a notice in writing shall be sent to the person against whom criminal proceedings are contemplated. The notice shall state the manner in which the sample fails to meet the requirements of the act and the regulations. The person to whom the notice was sent shall have the opportunity to offer a written explanation if he or she wishes to respond to the notice. That person may also file within twenty (20) days of its receipt a written request for an opportunity to present his or her views orally in connection with the notice. A notice or hearing shall not be required before the seizure of any agricultural chemical.

4-1-14. Product for experimental use. (a) An agricultural chemical sold for experimental use, is exempt from the provisions of section 3 (a) of the act when:

(1) It is plainly and conspicuously marked "for experimental use only";

(2) Bears the manufacturer's or shippers name and address; and

(3) A permit for this product has been obtained from the secretary.

(b) Permits shall be of two types, specific and general. A specific permit shall be issued to cover a particular shipment on a specified date to a named person. A general permit shall be issued to cover more than one shipment over a period of time to different persons.

(c) All applications for permits covering products for experimental use shall be signed by the manufacturer or shipper or person making delivery and shall contain the following:

(1) Name and address of shipper and place or places from which shipment will be made;

(2) Proposed date of shipment or proposed shipping period not to exceed one year;

(3) Identification of material to be covered by permit which should apply to a single material or group of closely allied materials;

(4) Approximate quantity to be shipped and types of tests such as greenhouse, orchard, or field;

(5) A signed statement that the agricultural chemical is intended for experimental use only; and

(6) Proposed labeling which, in addition to other statements, shall state that the product is for experimental use only.

(d) A permit for shipment of agricultural chemicals for experimental use may be canceled at any time for any violation of the terms of the permit.

4-1-17. Registration fee. The annual registration fee for each registered agricultural chemical shall be $150.00 for registration periods beginning on and after July 1, 2002 and through June 30, 2005, regardless of the date when the registration is received. The $150.00 annual registration fee shall revert to $130.00 on and after July 1, 2005, unless the termination date is modified by statute. (Amended October 25, 2002.)