

#### Department of Agriculture Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 10:00 a.m. Wednesday, May 4, 2011, in the 4th floor training room of the Kansas Department of Agriculture, 109 S.W. 9th, Topeka, to consider the adoption of proposed agricultural chemical regulations.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Agriculture, 109 S.W. 9th, 4th Floor, Topeka, 66612, or by e-mail at <a href="lessie.garner@kda.ks.gov">lessie.garner@kda.ks.gov</a>. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes. These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and their economic impact follows:

K.A.R. 4-1-2 removes definitions of certain words that were not used in the regulations and adds definitions of other words as necessary.

K.A.R. 4-1-5 is modified for clarity.

K.A.R. 4-1-6 is revoked because substantively incorporated into K.A.R 4-1-5.

K.A.R. 4-1-8 is revoked because substantively incorporated into K.A.R. 4-1-5.

K.A.R. 4-1-9 is modified for clarity.

K.A.R. 4-1-9a is a new regulation which addresses procedures for registration of special local need products (FIFRA Section 24(c)), as authorized in K.S.A. 2-2214(b).

K.A.R. 4-1-9b is a new regulation which addresses exemption from product registration for emergency situations (FIFRA Section 18), as authorized in K.S.A. 2-2214(b).

K.A.R. 4-1-11 is revoked because substantively incorporated in the act and K.A.R. 4-1-2.

K.A.R. 4-1-13 is modified for clarity.

K.A.R. 4-1-14 is modified for clarity.

K.A.R. 4-1-17 is modified to reflect the \$150.00 product registration fee in K.S.A. 2009 Supp. 2-2204.

#### Economic Impact Statement:

The changes are expected to have a neutral economic impact on the Kansas department of agriculture, other governmental agencies, private businesses, and individuals.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and impact statements in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Leslie Garner at (785) 296-4623 or fax (785) 368-6668. Handicapped parking is located at the southwest corner of 9th and Kansas Ave., and the north entrance to the building is accessible to individuals with disabilities.

Copies of the regulations and their economic impact statements may be obtained by contacting the Department of Agriculture, Leslie Garner, 109 SW 9<sup>th</sup> St., 4<sup>th</sup> Floor, Topeka, KS 66612 or (785) 296-4623 or by accessing the department's Web site at <a href="http://www.ksda.gov">http://www.ksda.gov</a>. Comments may also be made through our website under the proposed regulation.

Dale A. Rodman Secretary of Agriculture



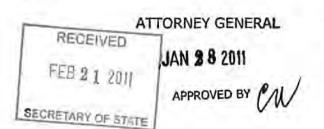


K.A.R. 4-1-2. Definitions. In addition to the terms defined in K.S.A. 2-2202 and amendments thereto, the following terms shall have the meanings specified in this regulation: (a)

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. "Abstracted," as used in K.S.A. 2-2202(x)(3) and amendments thereto, means omitted.
  - (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;

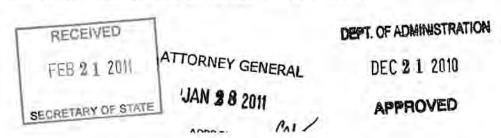


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- (2) Is present in the product in an amount sufficient to add materially to its effectiveness; and
- (3) Is not antagonistic to the activity of the principal active ingredient. The secretary may require an ingredient to be designated as an active ingredient if, in his or her opinion, it sufficiently increases the effectiveness of the agricultural chemical to warrant that action "The act," and "the agricultural chemical act" mean K.S.A. 2-2201 et seq., and amendments thereto.
- (e) Rodent. "Rodent" means any animal of the order Rodentia, including, but not limited to, rats, mice, rabbits, gophers, prairie dogs, and squirrels.
- (f) (c) Authorized representative. "Authorized representative" means and "designee" mean any employee or agent of the state person authorized by the secretary to make investigations in connection with the enforcement of 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



### Proposed

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K.A.R. 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

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ehemical is registered. 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,

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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. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; amended P-



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K.A.R. 4-1-6. (Au	thorized by K.S.A. 2-2205; imp	lementing K.S.A. 2-2203; effe	ctive Jan. 1,
1966; amended Ma	y 1, 1982; revoked P	.)	

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K.A.R. 4-1-8.	(Authorized by K.S.A. 2-2205; impl	ementing K.S.A. 2-2203; effective J	fan. 1,
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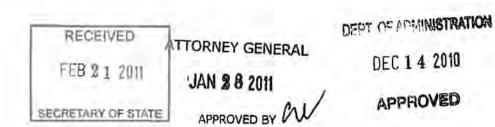
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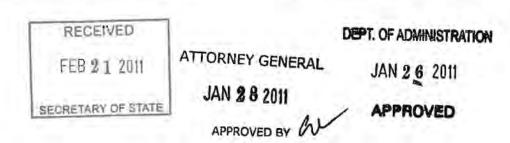
- K.A.R. 4-1-9. Registration. (a) Any manufacturer, packer, seller, distributor, or shipper of an agricultural chemical Pursuant to K.S.A. 2-2204 and amendments thereto, a product may register this agricultural chemical be registered by one of the following: any manufacturer, authorized agent of the manufacturer, packer, seller, distributor, or shipper of that product.
- (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 shall be responsible for the accuracy and completeness of all information submitted in connection with the application for registration of an agricultural chemical a product.
- (e) (c) 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. 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 or formula, the product shall be marketed only under the new elaims or formula, except labeling. Any registrant may request from the secretary or designee that a reasonable time may be permitted by the secretary to dispose of properly labeled stocks of old products 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.

- (f) (d) Claims must conform to registration. Claims or representations made for an agricultural chemical 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.





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(Authorized by K.S.A. 2010 Supp. 2-2205; implementing K.S.A. 2010 S	Supp. 2-2204; effective
Jan. 1, 1966; amended May 1, 1982; amended P	)

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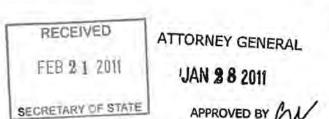
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K.A.R. 4-1-9a. Registration for special local need. (a) Each person registering a product for additional uses and methods of application not stated on the product's labeling under section three of FIFRA, but not inconsistent with federal law, for the 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;
- 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 all of the following conditions are 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.



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- (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.

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**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 P-\_\_\_\_\_\_\_.)

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K.A.R. 4-1-13. Enforcement; product sampling. (a) Collection of samples. samples of agricultural chemicals shall be collected products for analysis shall be performed 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 the

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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 P-\_\_\_\_\_\_\_.)

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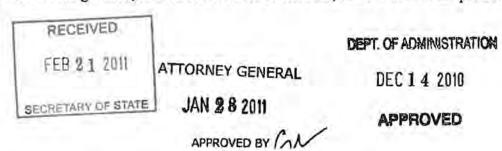
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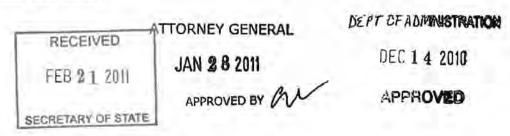
K.A.R. 4-1-14. Product for Experimental use. (a) An agricultural chemical sold A product, including a plant or seed modified genetically to include a plant-incorporated protectant, may be distributed for experimental use, is exempt from the provisions of section 3 (a) of the act when without registration under K.S.A. 2-2204, and amendments thereto, if either of the following conditions is met:

- (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 the product has been obtained from the secretary or designee.
- (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.
  - (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:
  - 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;

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implementing K.S.A. 200	9 Supp. 2-2207; effective Jan. 1, 1966	6; amended May 1, 1982;
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K.A.R. 4-1-17. Registration fee. The annual registration fee for each registered agricultural chemical product 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. (Authorized by K.S.A. 2009 Supp. 2-2204, as amended by 2002 SB 438, § 2 and K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2204, as amended by 2002 SB 438, § 2; 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 P-

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# KANSAS DEPARTMENT OF AGRICULTURE IMPACT STATEMENT

#### Proposed Amendments to Regulations K.A.R. 4-1-2, 4-1-5, 4-1-6, 4-1-8, 4-1-9, 4-1-9a, 4-1-9b, 4-1-11, 4-1-13, 4-1-14, and 4-1-17

### I. Summary of Proposed Regulation, Including Its Purpose.

K.A.R. 4-1-2 removes definitions of certain words that were not used in the regulations and adds definitions of other words as necessary.

K.A.R. 4-1-5 is modified for clarity.

K.A.R. 4-1-6 is revoked because substantively incorporated into K.A.R 4-1-5.

K.A.R. 4-1-8 is revoked because substantively incorporated into K.A.R. 4-1-5.

K.A.R. 4-1-9 is modified for clarity.

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K.A.R. 4-1-9b is a new regulation which addresses exemption from product registration for emergency situations (FIFRA Section 18), as authorized in K.S.A. 2-2214(b).

K.A.R. 4-1-11 is revoked because substantively incorporated in the act and K.A.R. 4-1-2.

K.A.R. 4-1-13 is modified for clarity.

K.A.R. 4-1-14 is modified for clarity.

K.A.R. 4-1-17 is modified to reflect the \$150.00 product registration fee in K.S.A. 2009 Supp. 2-2204.

#### Reason Or Reasons The Proposed Regulation Is Required, Including Whether Or Not The Regulation Is Mandated By Federal Law.

These changes are not mandated by federal law. They are needed to implement changes in associated statutes and for clarification.

### III. Anticipated Economic Impact Upon The Kansas Department Of Agriculture.

We expect these changes to have a neutral economic impact on KDA.

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# IV. Anticipated Financial Impact Upon Other Governmental Agencies And Upon Private Business Or Individuals.

We expect these changes to have a neutral financial impact on other governmental agencies, private businesses, and individuals.

#### V. Less Costly or Intrusive Methods That Were Considered, But Rejected, And The Reason For Rejection.

Less costly or less intrusive methods have not been identified.

#### VI. Environmental Impact

These changes are expected to have a neutral impact on the environment.

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