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## Kansas Pesticide Law

### Article 13 - PESTICIDES

### Kansas Administrative Regulations

**4-13-1. Definitions.** For the purposes of this article, the following terms shall have the meanings specified in this regulation: (a) "Alternative treatment" means any method of pest control service performed for the purpose of controlling termites, other than those specified in subsections (b), (c), (d), (e), (g), and (i). This term shall include nonchemical methods of control and above-ground pesticide application.

(b) "Bait treatments" and "baiting system" mean the installation, servicing, and monitoring of termite bait stations and termite monitoring stations for the purpose of controlling termites within a structure. The placement of monitoring stations without a written agreement to periodically inspect the monitoring stations and replace monitoring stakes or other materials with a pesticide shall not constitute a bait treatment or baiting system.

(c)(1) "Complete soil treatment" and "complete treatment" mean a pesticide application to soil for the control of termites and shall include both of the following:

(A) Applying pesticide at the concentration, rate, and dosage required by the product labeling in such a manner that a chemical barrier is formed at all sites of potential termite entry into the structure from the soil, including the interior and exterior foundation walls and cross walls; the area around any support piers, expansion joints, and cracks in concrete slabs; any void areas in masonry elements; and any other structural components that extend below soil grade; and

(B) removing wood scrap, paper scrap, and all other cellulose-containing debris from any accessible areas of crawl spaces under buildings being treated.

(2) Applications to wooden construction elements, the use of baits, and the use of alternative methods of control shall not be represented as complete treatments.

(d) "Limited soil treatment" and "limited treatment" mean a pesticide application that is intended to provide protection from termite infestation to the entire structure, but is not designed to provide a continuous barrier of pesticide to the soil, including treating only the exterior perimeter of a slab structure.

(e) "Partial soil treatment" and "partial treatment" mean applications of pesticide for soil treatment that are not intended to provide protection from termite infestation for the entire structure treated.

(f) "Restricted-use pesticide" means any pesticide product registered by the secretary under the provisions of the agricultural chemical act of 1947, K.S.A. 2-2204 and amendments thereto, that is either labeled as a restricted-use pesticide by the federal agency responsible for the classification or

designated as a restricted-use pesticide by the secretary.

(g) "Spot treatment" means remedial applications of pesticide to control termites at a specific location within a structure that are not intended to control termites at any location beyond the treatment area.

(h) "Stump treatment" means the application of pesticide to the cut stump of any tree or other woody plant to prevent regrowth.

(i) "Wood treatment" means the application of pesticide to wooden structural components, including joints, voids, galleries, and chambers, that are present within wooden construction elements. (Authorized by and implementing K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003; amended Feb 29, 2008.)

**4-13-2. Pesticide business license application.** Each application for issuance or renewal of a business license shall provide the following information in addition to that required by K.S.A. 2-2440 (b) (1) through (3), and amendments thereto: (a) The home address and birth date of each owner, officer, representative, and any resident agent;

(b) the name of any other state in which the applicant holds or has held a pesticide business license within the last five years and a list of any such license that has been denied, modified, revoked, suspended, or surrendered;

(c) for each business location serving Kansas, the business name and street address of the business and the name of the certified applicator or other person responsible for pesticide business activity at that location. "Business location" shall include all locations where records of application are maintained, where application equipment and pesticide materials are stored, and from which customers are served;

(d) the name of each certified commercial applicator serving the applicant, for each business location;

(e) the name, home address, birth date, and driver's license number of each non-certified employee who applies pesticides for the applicant. If the applicant's uncertified commercial applicator does not have a driver's license, then the number assigned to any federal or state government-issued identification card shall be provided for that employee;

(f) the categories and subcategories in which the applicant business will operate;

(g) the signature and title of the applicant or authorized representative; and

(h) the date of submission of the application. (Authorized by and implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003; amended Feb. 5, 2010.)

**4-13-3. Categories and subcategories of qualification for the licensing of pesticide businesses and certification of commercial applicators.** (a) The categories and subcategories of qualification for licensing of pesticide businesses and certification of commercial applicators shall include the following:

(1) Category 1: agricultural pest control. This category shall include any commercial application of pesticide in the production of agricultural plants or animals.

(A) Subcategory 1A: agricultural plant pest control. This subcategory shall include any commercial application of pesticide on grasslands and noncrop agricultural lands, and in the production of agricultural crops, including tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits, and nuts.

(B) Subcategory 1B: agricultural animal pest control. This subcategory shall include any commercial application of pesticide to places on, or in which, animals are confined and on animals, including beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock. This subcategory shall include any doctor of veterinary medicine who applies pesticides for hire, engages in the large-scale use of pesticides, or is publicly held out as a pesticide applicator.

(C) Subcategory 1C: wildlife damage control. This subcategory shall include any commercial application of pesticide for the management and control of wildlife in rangeland and agricultural areas.

Wildlife shall mean nondomesticated vertebrate species that hinder agricultural and rangeland production.

(D) Subcategory 1D: stump treatment. This subcategory shall be limited to the commercial application of pesticide for the treatment of cut stumps to control resprouting in pastures, rangeland, or lands held in conservation reserve. Nothing in this subcategory shall prohibit stump treatment by pesticide businesses and commercial applicators in other categories and subcategories that include pesticide application to cut stumps.

(2) Category 2: forest pest control. This category shall include any commercial application of pesticide in forests, forest nurseries, and forest seed-producing areas.

(3) Category 3: ornamental and turf pest control. This category shall include any commercial application of pesticide in the maintenance of ornamental trees, shrubs, flowers, and turf.

(A) Subcategory 3A: ornamental pest control. This subcategory shall include any commercial application of pesticide to control pests in the maintenance and production of ornamental trees, shrubs, and flowers. This subcategory shall not include those pests included in subcategory 3C.

(B) Subcategory 3B: turf pest control. This subcategory shall include any commercial application of pesticide to control pests in the maintenance and production of turf.

(C) Subcategory 3C: interior landscape pest control. This subcategory shall include any commercial application of pesticide to control pests in the production and maintenance of houseplants and other indoor ornamental plants kept or located within structures occupied by humans, including houses, apartments, offices, shopping malls, and other places of business and dwelling places.

(4) Category 4: seed treatment. This category shall include any commercial application of pesticide on seeds.

(5) Category 5: aquatic pest control. This category shall include any commercial application of pesticide to standing or running water. Applicators engaged in public health pest control and health-related pest control activities shall be excluded.

Subcategory 5S: sewer root control. This subcategory shall be limited to any commercial application of pesticide for the control of roots in sewer lines and septic systems.

(6) Category 6: right-of-way pest control. This category shall include any commercial application of pesticide to control vegetation in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, industrial sites, parking lots, or other similar areas.

(A) This category shall include the types of commercial pesticide application specified in subcategory 7C.

(B) This category shall not include those types of commercial pesticide application specified in paragraph (a)(9).

(7) Category 7: industrial, institutional, structural, and health-related pest control.

(A) This category shall include any commercial application of pesticide for the protection of stored, processed, or manufactured products. This category shall also include any commercial application of pesticide in, on, or around the following:

(i) Food handling establishments, human dwellings, institutions including schools and hospitals, and any other similar structures and the areas immediately adjacent to those structures; and

(ii) industrial establishments including warehouses, grain elevators, food processing plants, and any other related structures and adjacent areas.

(B) Subcategory 7A: wood-destroying pest control. This subcategory shall include any commercial application of pesticide in the control of termites, powder post beetles, wood borers, wood rot fungus, and any other wood-destroying pest.

(C) Subcategory 7B: stored products pest control. This subcategory shall include any commercial application of pesticide for the control of pests in stored grain and food products.

(D) Subcategory 7C: industrial weed control. This subcategory shall include any commercial application of pesticide for the control of pest weeds.

(E) Subcategory 7D: health-related pest control. This subcategory shall include any commercial application of pesticide in health programs for the management and control of terrestrial and aquatic

pests having medical or public health significance.

(F) Subcategory 7E: structural pest control. This subcategory shall include any commercial application of pesticide in a structure for the control of any pest not covered in subcategories 7A and 7B.

(G) Subcategory 7F: wood preservation and wood products treatment. This subcategory shall include any commercial application of pesticide made to extend the life of wooden poles, posts, crossties, and other wood products to preserve or protect them from damage by insects, fungi, marine organisms, weather deterioration, or other wood-destroying agents.

(8) Category 8: public health pest control. This category shall apply to qualification for commercial certification of employees of government agencies, including state, federal, and other governmental agencies, who apply or supervise the application of a restricted-use pesticide for the management and control of terrestrial and aquatic pests having medical or public health significance.

(9) Category 9: regulatory pest control. This category shall apply to qualification for commercial certification of employees of government agencies, including state, federal, and other governmental agencies, who apply or supervise the application of a restricted-use pesticide in the control of federally regulated and state-regulated pests.

(A) Subcategory 9A: noxious weed control. This subcategory shall include qualification for commercial certification of employees of state, federal, and other governmental agencies who use or supervise the use of a restricted-use pesticide in the control of weed pests regulated under the Kansas noxious weed law.

(B) Subcategory 9B: regulated pest control. This subcategory shall include qualification for commercial certification of employees of state, federal, and other governmental agencies who use or supervise the use of a restricted-use pesticide in the control of federally regulated or state-regulated pests not covered in subcategory 9A.

(10)(A) Category 10: demonstration and research pest control. This category shall include the following:

(i) Those persons who demonstrate to the public the proper techniques for application and use of restricted-use pesticides or who supervise such a demonstration. These persons shall include extension specialists, county agents, commercial representatives who demonstrate pesticide products, and persons who demonstrate, in public programs, methods of pesticide use;

(ii) those persons who use or supervise the use of restricted-use pesticides in conducting field research that involves the use of pesticides. These persons shall include state, federal, and commercial employees and other persons who conduct field research regarding or utilizing restricted-use pesticides; and

(iii) qualified laboratory personnel using restricted-use pesticides while engaged in pesticide research in areas where environmental factors beyond the control of laboratory personnel, including wind, rain, and similar factors, can affect the safe use of the pesticide or can cause the pesticide to have an adverse impact on the environment.

(B) The persons listed in paragraphs (a) (10) (A) (ii) and (iii) shall not be considered exempt from certification under the provisions of K.S.A. 2-2441a(d) and amendments thereto.

(b) Each pesticide business shall be licensed in all categories in which the pesticide business makes commercial pesticide applications and shall employ one or more persons who maintain commercial certification in each subcategory in which the pesticide business makes commercial pesticide applications.

(c) Each state, federal, and other governmental agency shall be registered in all categories and subcategories in which the agency makes commercial pesticide applications. (Authorized by K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2444a and K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Feb 29, 2008; amended Feb. 5, 2010.)

**4-13-4. Written statement of service by business.** (a) Any written statement of services or contract

shall comply with the provisions of K.A.R. 4-13-4a and shall be presented to the customer before or upon completion of the work covered by said written statement or contract. Provided, that where the work covered involves two or more periodic applications over a specified period of time, such as monthly service calls for one year, the written statement shall be presented to the customer upon completion of the initial treatment. Supplemental statements setting forth the application date, each pesticide used, including the quantity applied, the wind direction and velocity, if any, and the applicator's signature shall be presented to the customer following each periodic application.

(b) This regulation shall be in force and effect from and after January 1, 1991. (Authorized by K.S.A. 1988 Supp. 2-2467a as amended by L. 1989, Ch. 6, § 16, implementing K.S.A. 2-2455 as amended by L. 1989, Ch. 6, § 15; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Jan. 1, 1991.)

**4-13-4a. Requirements for written contract or statement of services by business.** (a) Each written contract or statement of services issued by a pesticide business licensee shall meet the following requirements, in addition to the requirements of K.S.A. 2-2455 and amendments thereto:

(1) The address of the pesticide business licensee shall include the street address of the pesticide business licensee's office that provides the pest control service for the named customer.

(2) The address of the customer shall include either the street address or the rural route and box number, whichever is applicable.

(3) The name of each pest to be controlled shall be stated in terms of the common name for each pest or, in the alternative, shall be stated in terms of the scientific name for each pest.

(4) Notwithstanding the requirements of paragraph (3) of this subsection, if the pest to be controlled is a weed, the name of the pest may be stated as grassy or broadleaf weeds.

(b)(1) For each pesticide applied, the statement of services shall include the complete product name of the pesticide, as the name appears on the label, and the pesticide's EPA registration number. If the pesticide applied does not have an EPA registration number, the Kansas registration number shall be provided.

(2) The concentration of the pesticide shall include the percent of the active ingredient in the pesticide mixture or solution actually applied. The quantity of pesticide mixture actually applied shall be stated in gallons or other appropriate volumetric unit if the pesticide applied has been diluted. For granular pesticides or other pesticides that are applied undiluted, the quantity applied shall be expressed in terms of pounds or other appropriate units using dry weight. Rates of application shall be expressed in terms of a unit volume or weight of pesticide per unit of length, surface area, or volume corresponding to the mixing directions shown on the pesticide's label.

(3) Each statement of services shall include wind direction and velocity, except that this requirement shall not apply when the pesticide application is made in any of the following manners or locations or for any of the following reasons:

(A) Inside an enclosed structure;

(B) to control structural pests by use of a barrier treatment within 10 feet of the exterior of a building;

(C) for seed treatment;

(D) by direct injection of the pesticide into the soil or other substrate;

(E) by direct application to the soil in a trench around a structure; or

(F) by use of baiting stations, including the installation, servicing, and monitoring of the stations.

(c) Whenever any pesticide mixture or solution is applied at a dosage, concentration, or frequency of application that is less than that specified on the pesticide's label or labeling, at least one of the following requirements shall be met:

(1) The written statement of services shall state the following, or its equivalent, in a conspicuous manner: "PESTICIDE APPLIED AT LESS THAN LABEL RATE."

(2) In addition to or in lieu of the requirements of paragraph (c) (1), the licensee shall provide the customer with information about the conditions under which applications may be made at less than label dosage, concentration, or frequency, before the time of the initial application. The licensee shall obtain the customer's written acceptance of the use of these methods in writing before the initial

application, which may be incorporated into any statement of service or contract, or both.

(d) Whenever any pesticide is applied in office buildings, apartment houses, or other multiple-tenant structures, the pesticide business licensee shall make available to the owner or manager of the structure information concerning any pesticide applied in the structure. In addition, information regarding any specific residence or business that has been treated with any pesticide shall be made available, upon the tenant's request, to the tenant of the residence or business treated.

(e) Whenever any pesticide is applied for the purpose of controlling termites, powder-post beetles, wood borers, wood-rot fungus, or any other wood-destroying pest, the licensee shall meet the following requirements:

(1) The diagram required by K.S.A. 2-2455(b)(3), and amendments thereto, shall clearly represent the structure being treated and indicate the location of basement areas, crawl spaces, concrete slab floors, and any concrete slabs adjacent to the outside of the foundation walls of the structure.

(2) If the pesticide application is not for a complete treatment of the entire structure, as defined by K.A.R. 4-13-1 and K.A.R. 4-13-7, the written statement of services shall state the following in a conspicuous manner: "LIMITED TREATMENT," "PARTIAL TREATMENT," "SPOT TREATMENT," "BAITING SYSTEM," "ALTERNATIVE TREATMENT," or other equivalent statement. Each pesticide application that is not for a complete treatment of the entire structure shall show the areas of treatment on the representative diagram. If the pesticide application is not for a complete treatment of the entire structure due to exigent circumstances, in addition to requirements listed above, the exigent circumstances shall be described on the statement of services.

(3) Each statement of services for termite control involving the use of baiting systems shall clearly state whether the pest control service performed consists of placement or inspection, or both, of baiting material that contains pesticide or consists of placement or inspection, or both, of monitoring stations that do not contain pesticide. Each statement of services shall include records of the dates of placement and inspection and the locations of all bait stations and monitoring stations. Diagrams of the structure being treated shall clearly show the locations of all monitors and baits.

(4) The dates of inspection or inspection intervals and the conditions under which monitoring materials will be replaced by baiting materials shall be stated in any contract for service or statement of services. Each licensee shall maintain records of the dates of placement and inspection and the locations of bait stations and monitoring stations. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2455; effective March 26, 1990; amended July 18, 2003.)

#### **4-13-5. Written statement of service by certified commercial applicator not acting for business.**

(a) Any certified commercial applicator who is not employed by or otherwise acting for a pesticide business licensee shall prepare a written statement of work performed for each application of restricted use pesticides either made by or made under the direct supervision of the certified commercial applicator. Each such written statement of work performed shall set forth the following information:

(1) The name and address of the certified commercial applicator;

(2) All information required by K.S.A. 2-2455 as amended and supplemented and K.A.R. 4-13-4a except the name and address of the pesticide business licensee.

(b) This regulation shall be in force from and after January 1, 1991. (Authorized by and implementing K.S.A. 1988 Supp. 2-2467a as amended by L. 1989, Ch. 6, §16; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Jan. 1, 1991.)

**4-13-6. Marking of vehicles.** Each business licensee with a license in category 3 or 7, as specified in K.A.R. 4-13-3, shall mark any vehicle used in the application of pesticides, including any vehicle used in transporting pesticide application equipment to an application site. Each licensee shall place the business name or registered trade name and the pesticide business license number on each side of the vehicle, with letters and numbers not less than 1 1/2 inches in height and in a color contrasting from that of the vehicle. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2456; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003.)

**4-13-7. Termite control application procedures.** (a) Except as provided in subsection (c), each structure shall be treated by applying pesticide at the rate, concentration, and dosage specified on the product label in a manner that provides wooden construction elements with protection from termites in the entire structure.

(b) Wood, paper scrap, cardboard scrap, and other cellulose-containing debris shall be removed from any accessible crawl space under the building to be treated.

(c) An application procedure different from that required by subsection (a) may be employed by a certified applicator. When a different application procedure is used, the pest control operator shall furnish adequate control and shall state on the required written statement the application procedure used. These methods of control shall be requested or agreed to by the customer in writing before completion of application. The applicator shall state, on the required statement of services and diagram, the application procedures used and how the procedures differ from the requirements of subsection (a). (Authorized by and implementing K.S.A. 2-2467a and K.S.A. 2-2471; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003.)

**4-13-8. Surety bond requirement.** Any surety bond submitted by a pesticide business licensee to comply with the provisions of K.S.A. 2-2448 as amended shall provide bond coverage of not less than \$6,000. The bond shall be effective for a period not to exceed one year and shall extend to December 31 of the licensing year. (Authorized by K.S.A. 1988 Supp. 2-2467a as amended by L. 1989, Ch. 6, §16; implementing K.S.A. 2-2448 as amended by L. 1989, Ch. 6, §17; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended May 1, 1983; amended March 26, 1990.)

**4-13-9. Report of address, name, or personnel change by business.** (a) Each pesticide business licensee shall provide the secretary with written notification of any modification or change to the initial application regarding the business address or business name and of any change in service personnel involved in the application of pesticides. Each notification shall be provided within 30 days of the modification or change made by the pesticide business licensee. Notification shall be required for the following:

(1) Hiring or terminating, or both, any employees involved in the application of pesticides;

(2) making any change in certification or technician status, or both; and

(3) making any change in the manager, operator, authorized representative, or resident agent.

(b) The pesticide business licensee shall submit with each such notification the required \$15.00 fee for each previously unreported uncertified individual employed to apply pesticides for a total of more than 10 days or for a period of five or more consecutive days during any 30-day period.

(c) Each notification shall include the full name, home address, birth date, and social security number of each applicator of pesticides listed who is a certified applicator or a registered pest control technician.

(d) Each notification shall also include the full name, home address, birth date, and driver's license number of each applicator of pesticides listed who is not a certified commercial applicator of pesticides or a registered pest control technician.

(e) The \$15.00 fee shall revert to \$10.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb 29, 2008; amended Feb. 5, 2010.)

**4-13-10. Application for governmental agency registration.** An application for a governmental agency registration or for renewal of a governmental agency registration shall provide the following information in addition to that required by K.S.A. 2-2440 (e):

(1) If the applicant is a township, the county in which said township is located.

(2) Names of certified applicators and uncertified persons working under their supervision who will work under the governmental agency registration being applied for.

(3) Signature and title of the official submitting the application.

(4) Date the application is submitted. (Authorized by K.S.A. 1977 Supp. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978.)

**4-13-12. Age Restriction for Certification.** To be eligible for certification as a commercial applicator of restricted use pesticides, an individual shall be eighteen (18) years of age or older. (Authorized by K.S.A. 1977 Supp. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978.)

**4-13-13. Commercial applicator examinations.** (a) Each general core examination for commercial applicator certification shall test the applicant's knowledge in the following subjects, in addition to testing the applicant's knowledge in those subjects specified in K.S.A. 2-2443a (a) through (h), and amendments thereto:

(1) The general format and terminology of pesticide labels and labeling, the instructions, warnings, symbols and other information appearing on pesticide labels, the classification designation on pesticide labels, and the necessity of using each pesticide in a manner that is consistent with the information and instructions on its label;

(2) safety factors, including pesticide toxicity; types and causes of pesticide accidents; precautionary measures that are necessary to guard against injury to the applicator and other individuals; symptoms of pesticide poisoning; first aid and other procedures to follow in case of a pesticide accident; proper identification, storage, transportation of, mixing, and handling of pesticides; prevention of and cleanup of pesticide spills; and disposal of pesticide containers;

(3) the potential for damage to the environment from use and misuse of pesticides as influenced by factors including types of terrain, soil, and other substrata and drainage patterns;

(4) pest development and biology relevant to pest identification and control;

(5) the types of pesticides and pesticide formulations used, compatibility, synergism, persistence and animal and plant toxicity of pesticides, practices that cause pesticide resistance, and dilution procedures;

(6) the types of equipment used and the limitations of each and equipment use, maintenance, and calibration;

(7) proper application techniques for various pesticides and formulations of pesticide in given situations, relationship of placement of pesticides to proper use, unnecessary pesticide use and pesticide misuse, and prevention of pesticide loss into the environment through drift and other means; and

(8) requirements that must be met by a certified applicator in supervising noncertified applicators of restricted pesticides, including practical knowledge of federal and state supervisory requirements, requirements found on labeling, requirements regarding verifiable instruction of the noncertified applicator and availability of certified applicator during application, and any added restrictions that may be imposed for specific pesticides through labeling, including the required physical presence of the supervising applicator during the application.

(b) As specified in this subsection, each category or subcategory examination for commercial applicator certification shall test the applicant's practical knowledge of the category or subcategory of certification in which the applicant wishes to be certified, in addition to testing the applicant's practical knowledge in those subjects specified in K.S.A. 2-2443a and amendments thereto.

(1) Agricultural pest control.

(A) Each examination for agricultural plant pest control applicators shall test the applicant's practical knowledge of the crops grown in Kansas and the specific pests commonly associated with these crops, potential soil and water damage, preharvest intervals, reentry intervals, phytotoxicity, environmental contamination, nontarget injury, and potential adverse effects on the community that are related to the use of restricted pesticides in agricultural areas.



(B) Each examination for agricultural animal pest control applicators shall test the applicant's practical knowledge of Kansas agricultural animals and their pests, specific pesticide toxicity levels, residue potential and relative hazards associated with various pesticide formulations, application techniques, ages of animals, and the stress and extent of treatment.

(C) Each examination for wildlife damage control applicators shall test the applicant's practical knowledge of vertebrate pest species and damage associated with each species, methods useful in damage prevention, products used in damage control, the potential for direct poisoning of nontarget species, the potential for secondary poisonings, effects upon threatened and endangered species, specific pesticide toxicity and residue levels, and methods of application necessary to minimize hazards to humans, the environment, pets, and domestic animals.

(D) Each examination for stump treatment applicators shall test the applicant's practical knowledge of stump control methods, limited area applications, and the potential adverse effects of pesticides.

(2) Forest pest control. Each examination for forest pest control applicators shall test the applicant's practical knowledge of types of forests, forest nurseries and forest seed production in Kansas and of the pests associated with them, pest cycles and population dynamics as they influence control programming, biotic agents and their relative vulnerability to pesticides, and proper use of specialized equipment as it relates to adjacent land use.

(3) Ornamental and turf pest control.

(A) Each examination for ornamental pest control applicators shall test the applicant's practical knowledge of pest and pesticide problems associated with the production and maintenance of ornamental trees, shrubs and flowers in Kansas, potential phytotoxicity problems related to the wide variety of plants in treated areas, pesticide persistence beyond the intended period of control, and application methods that minimize hazards to humans, pets, and domestic animals.

(B) Each examination for turf pest control applicators shall test the applicant's practical knowledge of pest and pesticide problems associated with the production and maintenance of turf in Kansas, potential phytotoxicity problems related to the wide variety of plants in treated areas, pesticide persistence beyond the intended period of control, and application methods that minimize hazards to humans, pets, and domestic animals.

(C) Each examination for interior landscape pest control applicators shall test the applicant's practical knowledge of pest and pesticide problems associated with the production and maintenance of houseplants and other ornamental plants kept or located within structures occupied by humans, including houses, apartments, offices, shopping malls, other places of business, and other dwelling places. The examination shall also test the applicant's practical knowledge of potential phytotoxicity problems related to treatment of plants in enclosed areas, pesticide persistence beyond the intended period of control, and application methods that minimize hazards to humans, pets, and domestic animals.

(4) Seed treatment. Each examination for seed treatment applicators shall test the applicant's practical knowledge of the types of seeds that require protection against pests, factors that could affect germination, including seed coloration, carriers and surface active agents, hazards associated with handling, storing, mixing and misuse of treated seeds, and the proper disposal of unused treated seeds.

(5) Aquatic pest control.

(A) Each examination for aquatic pest control applicators shall test the applicant's practical knowledge of secondary effects caused by improper application rates, incorrect formulations, and faulty aquatic pesticide applications; knowledge of various water use situations and the potential of downstream effects; knowledge of potential effects on plants, fish, birds, beneficial insects, and other organisms in the aquatic environment; and knowledge of the principles of limited area application.

(B) Each examination for sewer root control shall test the applicant's practical knowledge of sewer control methods, limited area applications, and potential adverse effects of pesticides.

(6) Right-of-way pest control. Each examination for right-of-way pest control applicators shall test the applicant's practical knowledge of the wide variety of environments crossed by rights-of-way,

problems of runoff, drift and excessive foliage destruction, the nature of herbicides, the need for containment of herbicides within the right-of-way area, and the impact of the applicator's activities on adjacent areas and communities.

(7) Industrial, institutional, structural, and health related pest control.

(A) Each examination for wood-destroying pest control applicators shall test the applicant's practical knowledge of wood-destroying pests and their life cycles, pesticide formulations appropriate for the control of these pests, methods of application that avoid exposure of people and pets, and specific factors that can lead to hazardous conditions, including continuous exposure to the pesticide.

(B) Each examination for stored products pest control shall test the applicant's practical knowledge of pests found in stored grain and food processing areas, their life cycles, pesticide formulations appropriate for their control, methods of application that avoid contamination of food products and exposure of people, and specific factors that can lead to a hazardous condition, including continuous exposure.

(C) Each examination for industrial weed control applicators shall test the applicant's practical knowledge of weed pests found in industrial areas, pesticide formulations appropriate for the control of these pests, methods of application that avoid contamination of habitat and exposure of people and pets, and environmental conditions particularly related to this activity.

(D) Each examination for health-related pest control applicators shall test the applicant's practical knowledge of vector-disease transmission as it relates to and influences application programs, pests that adversely affect public health and their life cycles and habitats, and the variety of environments in which these pests are encountered.

(E) Each examination for structural pest control applicators shall test the applicant's practical knowledge of the wide variety of pests found in buildings, including their life cycles; types of pesticide formulations appropriate for their control and methods of application that avoid contamination of food, damage to and contamination of habitat, and exposure of people and pets; specific factors that can lead to a hazardous condition, including continuous exposure in the various situations encountered in this category; and environmental conditions particularly related to this activity.

(F) Each examination for wood preservation and wood-products treatment applicators shall test the applicant's practical knowledge of pest problems and pests associated with wood degradation, including their life cycles, types of pesticide formulations appropriate for their control, methods of application, application hazards and safety, and the proper means of container storage and container and waste disposal. The examination shall also test the applicant's practical knowledge of procedures to contain spills and to avoid contamination and exposure of the environment, including people, domestic animals, and wildlife.

(8) Public health pest control. Each examination for public health pest control applicators shall test the applicant's practical knowledge of vector-disease transmission as it relates to and influences application programs, pests that adversely affect public health and their life cycles and habitats, the variety of environments in which these pests are encountered, and the importance of nonchemical control methods including sanitation, waste disposal, and drainage.

(9) Regulatory pest control.

(A) Each examination for noxious weed control applicators shall test the applicant's practical knowledge of pest weeds as regulated by the Kansas noxious weed law, the potential impact on the environment of restricted use pesticides used in suppression and eradication programs, and factors influencing the introduction, spread, and population dynamics of those pest weeds.

(B) Each examination for regulated pest control applicators shall test the applicant's practical knowledge of federally regulated and state-regulated pests, applicable laws relating to quarantine and other regulations regarding pests, the potential impact on the environment of restricted use pesticides used in suppression and eradication programs, and factors influencing the introduction, spread, and population dynamics of relevant pests.

(10) Demonstration and research pest control. Each examination for demonstration and research pest control applicators shall test the applicant's practical knowledge of the many different pest problems encountered in the course of activities associated with demonstration, field research and method improvement work, pesticide-organism interactions, and the importance of integrating pesticide use with control methods. Each applicator shall meet the examination requirements for application in the other categories that are applicable to the applicator's particular activity.

(c) A grade of at least 75% correct answers shall be required to pass each commercial applicator examination. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2006 Supp. 2-2443a and K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended May 1, 1985; amended, T-87-39, Nov. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 1, 1989; amended Feb 29, 2008.)

**4-13-14. Private applicator examination.** Initial examinations for certified private applicators shall be taken in the presence of a representative of the Kansas department of agriculture or the Kansas state university extension service. Each applicant for this certification is shall be required to answer at least 75% of the questions correctly to pass the examination.

Examinations for private applicator certification shall test the applicant's knowledge in those subject areas specified in K.S.A. 2-2445, and amendments thereto, involving pest control practices associated with the applicant's agricultural operation and the applicant's legal responsibility as a certified applicator of restricted pesticides. Each applicant shall be tested to determine the applicant's ability to meet the following requirements:

(a) Recognize common pests to be controlled and damage caused by them;

(b) read and understand the label and labeling information, including the common name of the pesticide applied, pest or pests to be controlled;, timing and methods of application, safety precautions, any preharvest reentry restrictions;, and any specific disposal procedures;

(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination;

(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident; and

(f) understand federal and state supervisory requirements, including labeling, that must be met by a certified private applicator in supervising the non-certified application of restricted pesticides. These supervisory requirements shall include verifiable instruction of the applicator, availability during application, and any added restrictions that may be imposed for specific pesticides through labeling. These restrictions may include the required physical presence of the supervising applicator during the application. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2445a, as amended by L. 2009, Ch. 128, §18; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended May 1, 1988; amended Feb. 5, 2010.)

**4-13-15. Certificates and pocket cards.** A certificate and pocket card shall be issued to each certified person upon satisfactory completion of the requirements for certification. Such certificate and pocket card shall show the applicator's name, type of certificate issued, the category of issuance including subcategory, if any, the expiration date of the certification and other pertinent information. The certified applicator shall produce such certificate or pocket card when requested to do so by any customer, law enforcement official, the secretary or any authorized representative of the secretary. (Authorized by K.S.A. 1989 Supp. 2-2467a; implementing K.S.A. 2-2441a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended June 4, 1990.)

**4-13-16. Supervision of uncertified applicators.** (a) An uncertified commercial applicator of any

pesticide and an uncertified private applicator of restricted-use pesticides shall be considered to be under the supervision of a certified applicator if the certified applicator has provided the uncertified applicator with instructions in the handling and application of the pesticide being used.

(b) The certified applicator shall be available to the uncertified applicator by telephone, two-way radio, or other comparable means of communication when the pesticide is being applied.

(c) The certified applicator shall be physically present if that person's presence is required by the pesticide label.

(d) The certified applicator shall verify that the requirements of this regulation were met when requested to do so by the secretary or the secretary's authorized representative.

(e) An uncertified applicator of pesticides, including registered pest control technicians, shall be considered to be under the supervision of a certified commercial applicator only if both individuals are stationed at and work from the same business address. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2441a, as amended by L. 2009, Ch. 128, §16; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended Feb. 5, 2010.)

**4-13-17. Report of address change by certified applicators.** Each certified commercial applicator shall notify the secretary of any change in that applicator's mailing address within 30 days of the change. (Authorized by and implementing K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Feb. 5, 2010.)

**4-13-18. Disposal of pesticides and containers.** Any amount of unused pesticide and each empty pesticide container shall be stored in the same manner as the pesticide involved until the unused pesticide or empty container is disposed of in a manner consistent with technology current at the time of disposal. Questions regarding the latest technology shall be submitted to any of the following: (a) The Kansas department of agriculture;

(b) Kansas state university extension service;

(c) Kansas department of health and environment; or

(d) the United States environmental protection agency. (Authorized by and implementing K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Feb. 5, 2010.)

**4-13-19. Marking of aircraft.** Each pesticide business licensed in category one (1) which uses aircraft to apply pesticides shall identify each aircraft with a decal furnished by the secretary. Decals shall not be issued until all licensing requirements have been satisfied. Decals shall not be transferable. For fixed wing aircraft, the decal shall be affixed to and prominently displayed on the left rear portion of the cockpit or the canopy or on the left rear portion of the fuselage near the rear of the cockpit or canopy. For rotorcraft, the decal shall be affixed to and prominently displayed on the left side of the aircraft but not on the tail rotor. (Authorized by K.S.A. 1980 Supp. 2-2467a; implementing K.S.A. 1980 Supp. 2-2456; effective May 1, 1981.)

**4-13-20. Pesticide business license, renewal, and uncertified commercial applicator fees.** The application fee for a pesticide business license or for the renewal of a pesticide business license shall be \$140.00 for each category in which the applicant applies for a pesticide business license or renewal of that license. An additional fee of \$15.00 for each uncertified commercial applicator employed by the applicant to apply pesticides shall also be paid. This regulation shall apply to all pesticide business licenses, or renewals of these licenses, that will be effective through June 30, 2015, regardless of when the application is received by the agency.

The \$140.00 pesticide business license fee shall revert to \$112.00 on and after July 1, 2015, unless this date is modified by statute. The \$15.00 uncertified commercial applicator fee shall revert to \$10.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-

2440, as amended by L. 2009, Ch. 128, §11; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

**4-13-21. Government agency registration and renewal fees.** The application fee for a government agency registration shall be \$50.00. This regulation shall apply to all government agency registrations, or renewals of these registrations, effective through June 30, 2015, regardless of when the agency receives the application. The \$50.00 government agency registration fee shall revert to \$35.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

**4-13-23. Examination fees.** The examination fee for a commercial applicator's certificate shall be \$45.00 through June 30, 2015, for each category, subcategory, and general core examination taken. The fee shall also apply if the applicant seeks reexamination. The \$45.00 examination fee shall revert to \$35.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2443a, as amended by L. 2009, Ch. 128, §17, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2443a, as amended by L. 2009, Ch. 128, §17; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

**4-13-24. Certified private applicator's certificate fee.** The certified private applicator's certificate fee shall be \$25.00. This regulation shall apply to certified private applicator certificates that will be effective through June 30, 2015, regardless of when the department receives the application. The \$25.00 certified private applicator's certificate fee shall revert to \$10.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2445a, as amended by L. 2009, Ch. 128, §18, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2445a, as amended by L. 2009, Ch. 128, §18; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

**4-13-25. Bulk pesticide storage and handling of pesticides; definitions.** As used in K.A.R. 4-13-25 through 4-13-25m, the following terms shall be defined as follows:

(a) "Appurtenance" means any valve, pump, fitting, pipe, hose, auger, metering device, and dispensing device connected to a storage container. "Dispensing device" shall include any device that is used to transfer bulk pesticides into or out of a container.

(b) "Bulk pesticide" means any pesticide, whether liquid or solid, that is kept at ambient temperature and pressure and is stored, loaded, or unloaded in an individual container of undivided capacity in quantities identified in K.A.R. 4-13-25b.

(c) "Bulk pesticide container" means any receptacle or device in which a pesticide is stored, mixed, treated, disposed of, or handled in any manner in quantities greater than 55 gallons liquid measure or quantities greater than 100 pounds net dry weight.

(d) "Bulk pesticide storage facility" and "facility" mean any warehouse, loading pad, or other area where a bulk pesticide is stored, mixed, loaded, or unloaded, unless otherwise exempted. Each bulk pesticide storage facility located within 300 feet of another facility owned or operated by the same person shall be considered the same facility for the purpose of finding the number of consecutive days in storage and determining whether the facility is exempt from the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25m.

(e) "Chemically compatible" means that the material will not react chemically adversely or electrolytically adversely to the bulk pesticide being stored, loaded, unloaded, mixed, or handled.

(f) "Discharge" means any spilling, leaking, depositing, pumping, dumping, or emptying, whether

accidental or intentional, resulting in the release of a pesticide or material containing a pesticide at a bulk pesticide storage facility. "Discharge" shall not include the lawful transferring, loading, unloading, repackaging, refilling, distributing, using, disposing, or application of a pesticide. This term shall also exclude the normal washing and rinsing activities on a mixing and loading pad.

(g) "Dry bulk pesticide" means any bulk pesticide that is in solid form before any end-use application or before any mixing for end-use application. This term shall include making formulations including dusts, powders, and granules.

(h) "End-use application" means the application of a pesticide by the owner or lessee of the real property upon which the application is made to control a pest covered by the pesticide label.

(i) "Flood plain" means an area at one percent or greater risk of flood occurrence in any given year.

(j) "Gallon" means the United States standard measure of a gallon.

(k) "Liquid bulk pesticide" means any bulk pesticide in liquid form before dilution for end-use application. This term shall include solutions, emulsions, suspensions, slurries, and gels.

(l) "Mixing and loading pad" and "pad" mean a surface designed to provide containment of a pesticide during the loading, unloading, mixing, or handling of a pesticide, or during the cleaning, rinsing, or refilling of a pesticide container.

(m) "Mobile container" means a bulk pesticide container that is designed and used for transporting bulk pesticides.

(n) "Owner or operator" shall include any agent or employee of an owner or operator and mean any of the following:

(1) A pesticide dealer as defined by K.S.A. 2-2438a(q) and amendments thereto;

(2) a pesticide business licensee as defined by K.S.A. 2-2438a(p) and amendments thereto;

(3) a government agency registrant as addressed in K.S.A. 2-2440(e) and amendments thereto;

(4) a certified private applicator, as defined by K.S.A. 2-2438a(c)(2) and amendments thereto, of a bulk pesticide storage facility; or

(5) any other person, as defined by K.S.A. 2-2438a(l) and amendments thereto, responsible for the storage of bulk pesticides as defined by subsection (b).

(o) "Permanent cessation of operations" means either of the following:

(1) No pesticides have been loaded, unloaded, or stored at the facility for 12 consecutive months.

(2) The facility has gone out of business and is no longer a going concern.

(p) "Reasonably foreseeable" means what the secretary determines would have been foreseeable at the time the decision affecting the facility or its condition was made. "Reasonable foreseeability" shall include consideration of the owner's or operator's knowledge of conditions at the time the condition was created or the decision was made.

(q) "Secondary containment" means any structure, tank, or container, including rigid diking, that is designed, constructed, and maintained to intercept, hold, contain, or confine a discharge from a bulk pesticide container and to contain spills, prevent runoff, and avoid leaching.

(r) "Static pressure" means the pressure exerted by a fluid that is not flowing or moving.

(s) "Sump" means a recessed reservoir or catch basin designed to be a receptacle for the collection of liquids in the floor of secondary containment or in the part of the secondary containment that constitutes the loading pad. (Authorized by and implementing K.S.A. 2-2467a; effective May 1, 1985; amended Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25a. Exemptions.** (a) The regulations found in K.A.R. 4-13-25 through K.A.R. 4-13-25k shall not apply to any of the following:

(1) A mobile container of 350-gallon capacity or less, if the use of the container is solely incidental to the end-use application of the bulk pesticide and if the container is not at a specific location for more than 60 days of storage in any consecutive 365-day period;

(2) a sealed or an unopened pesticide manufacturer's storage container being loaded or unloaded;

(3) a railcar in which the storage of bulk pesticides is solely incidental to the transportation of the pesticide and that remains on a train track; or

(4) a bulk pesticide stored, loaded, or unloaded in quantities less than all the quantities specified in K.A.R. 4-13-25b.

(b) The owner or operator of a facility shall have the burden of establishing the applicability of an exemption under paragraph (a)(4) of this regulation.

(c) Contemporaneously kept records maintained pursuant to K.A.R. 4-13-25k shall constitute prima facie evidence of an exemption. (Authorized by and implementing K.S.A. 2-2467a and 2-2471; effective Dec. 27, 2002.)

**4-13-25b. Quantities of bulk pesticide.** A facility shall be subject to the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25k if any of the following conditions is met:

(a) A cumulative total of 1,000 gallons or more of liquid bulk pesticide is transferred away from the facility during any consecutive 365-day period.

(b) A total of 1,000 gallons or more of liquid bulk pesticide is stored, held, or maintained at the facility at any time.

(c) A cumulative total of 3,000 pounds or more of dry bulk pesticide is transferred away from the facility during any consecutive 365-day period.

(d) A total of 3,000 pounds or more of dry bulk pesticide is stored, held, or maintained at the facility at any time. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25c. Location, design, and construction requirements of a bulk pesticide storage facility.**

Each owner or operator shall meet the following requirements: (a)(1) Each bulk pesticide storage facility shall be designed, constructed, and maintained according to the pesticide manufacturer's directions, instructions, or recommendations. The facility shall be constructed of materials that contain spills, prevent runoff, and avoid leaching of the pesticide being mixed, loaded, or unloaded. Construction materials shall be chemically compatible with the pesticides that come in contact with the material.

(2) Each bulk pesticide storage facility shall be designed, constructed, and maintained to accommodate all reasonably foreseeable loading and unloading conditions, including the anticipated wheel load of a vehicle, and to protect appurtenances and bulk pesticide containers against damage from operating personnel and moving equipment through the use of flexible connections, guard rails, barriers, and protective cages, where necessary.

(3) Asphalt shall not be used as a material in the construction of a bulk pesticide storage facility.

(b) No bulk pesticide storage facility shall be constructed or maintained in a flood plain unless the bulk pesticide is stored above the base flood elevation.

(c) The floor of each bulk pesticide storage facility shall be constructed of material that prevents the movement of pesticide materials and moisture through the floor and shall be designed, constructed, and maintained in a manner that allows discharges to be collected, contained, and recovered.

(d) All electrical equipment and wiring shall be elevated to prevent the equipment and wiring from becoming submerged and shall be grounded to dissipate static electricity.

(e) Both private and public water supplies shall be protected from contamination from the bulk pesticide storage facility.

(f) Each bulk pesticide storage facility shall contain a mixing and loading pad.

(g) Each bulk pesticide storage facility shall be secured to protect against reasonably foreseeable unauthorized access that could result in a discharge.

(h) Each bulk pesticide storage facility shall be designed, constructed, and maintained to prevent contact of any dry bulk pesticide with precipitation. Contact with precipitation shall be prevented by the following:

(1) Using a permanent cover; and

(2) placing dry bulk pesticide on pallets or a raised concrete platform enclosed by a curb that is at least six inches high and extends at least two feet beyond the perimeter of the dry bulk pesticide storage area.

(i) Each bulk pesticide storage facility shall be designed, constructed, and maintained to avoid the creation of pesticide waste and to prevent cross-contamination of pesticides.

(j) Bulk pesticides shall not be stored or mixed in underground containers. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25d. Secondary containment for bulk pesticide storage.** Each owner or operator shall meet the following requirements: (a) All bulk pesticide shall be stored within secondary containment. The secondary containment capacity shall be at least 110 percent of the capacity of the largest single bulk pesticide container in addition to the displacement of tanks, appurtenances, fixtures, equipment, and material located within the secondary containment.

(b) The secondary containment, including the floor or bottom of the secondary containment, shall meet the following requirements:

(1) Be constructed of steel, reinforced concrete, or any other material of sufficient thickness, density, and composition to contain any discharged pesticide material;

(2) be leakproof with cracks, seams, and joints sealed; and

(3) for liquids, be capable of withstanding the static pressure resulting from the secondary containment being completely filled with a liquid having a density greater than or equal to the density of the most dense liquid bulk pesticide to be stored within the containment.

(c) A soil liner shall not be considered adequate for the secondary containment of pesticides. Masonry block, asphalt, earthen materials, unfired or fired clay, clay, natural soil-clay mixtures, clay-bentonite mixtures, and prefabricated bentonite liners shall not be deemed to be of appropriate density and composition to contain discharged pesticide material and shall not be used as secondary containment. Sealant-coated concrete blocks may be used if the facility owner's or operator's use of the blocks is approved in writing by the manufacturer of the pesticide.

(d) The floor of the secondary containment shall drain to a sump or other specific point of recovery.

(e) The sump or other specific point of recovery shall be emptied daily in accordance with K.A.R. 4-13-25g(a) by an on-site operator, who shall continuously monitor this process. The on-site operator may use an automatically activated pump to empty the sump if an automatic overflow switch is installed for the receiving container.

(f) No outlet, drain, or other means of penetration shall be located through the floor, bottom, or walls of the secondary containment.

(g) Secondary containment shall be constructed to allow the interior and exterior of the walls to be viewed.

(h) A synthetic liner used to line the secondary containment shall be installed and maintained according to the liner manufacturer's specifications, directions, and recommendations. The specifications, directions, and recommendations about liners from the manufacturers of the pesticides stored in the facility shall also be followed. All seams shall be tested, maintained, and repaired according to the manufacturer's specifications, directions, and recommendations. The liner shall be replaced if it cannot be repaired to meet the liner manufacturer's requirements. In no event shall a liner that is incapable of containing bulk pesticides independent of the support of another container be used in lieu of secondary containment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25e. Requirements for mixing and loading pads for bulk pesticides.** Each owner or operator shall meet the following requirements: (a) Each mixing and loading pad not connected to a storage area shall be of adequate size and design to contain at least 110 percent of the capacity of the container or tank on the pad and the displacement of tanks, equipment, appurtenances, fixtures, and material located on the pad.

(b) Each mixing and loading pad shall be constructed to contain any discharge and shall be leakproof with all cracks, seams, and joints sealed. The pad shall be impervious to spills and capable of supporting the weight of the heaviest vehicle plus all loading, unloading, and mixing operations. The



floor of the mixing and loading pad shall slope to a single point or to a sump, for the recovery of liquid spills.

(c) The sump shall be emptied daily by an on-site operator, who shall continuously monitor this process. The on-site operator may use an automatically activated pump to empty the sump if an automatic overflow switch is installed for the receiving container. The owner or operator may use the recovered pesticide for its intended purpose if it can be used according to the recovered pesticide's label. The owner or operator shall dispose of, in accordance with the label, any recovered pesticide that cannot be used.

(d) The following activities conducted at the facility shall be performed on the mixing and loading pad or within secondary containment:

- (1) Filling pesticide containers;
- (2) washing application equipment;
- (3) rinsing pesticide containers or application equipment;
- (4) mixing operations; and

(5) loading application equipment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25f. Requirements for bulk pesticide containers and appurtenances.** Each owner or operator shall meet the following requirements: (a) Each bulk pesticide container shall be designed to handle all operating stresses, including static pressure, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage container could be subject during operations. Each bulk pesticide container shall be chemically compatible with the pesticide it holds and shall meet all specifications, directions, and recommendations of the manufacturers of the pesticide and bulk pesticide container.

(b) Each bulk pesticide container connection, except for safety relief connections, shall be equipped with a shutoff valve accessible and located within the secondary containment.

(c) Except while the stored pesticide is being removed from the container, shutoff valves shall be left either closed and locked or otherwise secured from access. The transfer of pesticide from one bulk pesticide container to another and between a bulk pesticide container and a transport vehicle shall be attended at all times by an on-site operator.

(d) Bulk pesticide containers and appurtenances shall be supported to prevent sagging.

(e) Sight gauges shall not be used on bulk pesticide containers.

(f) Each bulk pesticide container that is not located within a structure with a roof and walls shall be designed, installed, and maintained to prevent flotation and to withstand winds of 90 miles per hour or less.

(g) Each bulk pesticide container shall be designed to protect against excessive internal pressure or vacuum.

(h) Each bulk pesticide container used for storage shall be marked clearly to identify the pesticide stored in the container. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25g. Discharge, recovery, and reporting requirements.** (a) Each owner or operator shall recover promptly any discharge. The owner or operator may use the recovered pesticide for its intended purpose if it can be used according to the recovered pesticide's label or labeling. The owner or operator shall dispose of, in accordance with the label, any recovered pesticide that cannot be used.

(b) The owner or operator shall notify the secretary within 48 hours of any discharge not contained by secondary containment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25h. Submission of diagrams, plans, and specifications.** (a) The owner or operator of each bulk pesticide storage facility shall maintain diagrams, plans, and specifications of the facility on site

and with the secretary. The copy maintained at the facility shall be made available to a representative of the secretary upon request.

(b)(1) Each owner or operator of a bulk pesticide storage facility that is to be remodeled, an existing structure that is to be converted to use as a bulk pesticide storage facility, or a proposed bulk pesticide storage facility shall submit diagrams, plans, and specifications to the secretary before commencement of remodeling, conversion, or construction. Remodeling, conversion, or construction shall not commence until the owner or operator receives written notice from the secretary that no further information is required.

(2) The owner or operator of each facility under this subsection shall complete remodeling, conversion, or construction within two years after the secretary's written notice that no additional information is required. Upon completion of the remodel, conversion, or construction, the owner or operator of a facility under this subsection shall certify on a form prescribed by the secretary that the facility meets or exceeds all the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25k and is constructed in accordance with the diagrams, plans, and specifications submitted to the secretary.

(c) The diagrams, plans, and specifications shall include the facility layout, mechanical and electrical diagrams, construction materials, and the type of equipment that is located in the facility or that is to be fixed or installed in the facility. The diagrams shall be drawn to scale and shall be legible without magnification. The diagrams, plans, and specifications shall contain all information required in subsection (d).

(d) The diagrams, plans, and specifications of the bulk pesticide storage facility shall be submitted with the form prescribed by the secretary. The required documentation shall include, at a minimum, the following information:

- (1) The location of the facility relative to the flood plain;
- (2) the location of the facility relative to any surface water within 1,320 feet of the facility and the distance between the facility and the surface water;
- (3) the distance from both the facility and the area within 100 feet of the facility to groundwater, and the location of the groundwater relative to the facility;
- (4) the location of any plumbing and access to private and public water supplies and the distance from the plumbing and access to the private and public water supplies;
- (5) the drainage pattern of the facility;
- (6) certification that the facility is not located on any abandoned or active oil, gas, or water well;
- (7) certification that the facility is not located on a utility easement;
- (8) the size and location of the proposed walls and flooring to be located within the facility;
- (9) the location and size of each bulk pesticide storage container;
- (10) the location and size of each loading and mixing pad;
- (11) the location of each appurtenance used in the storage or transfer of bulk pesticide within the facility;
- (12) the location of electrical equipment, wiring, and static grounding wires;
- (13) the location and size of dry bulk pesticide storage; and
- (14) any other relevant information required by the secretary.

(e) Each owner or operator of a bulk pesticide storage facility shall submit the diagrams, plans, and specifications required in this regulation to the secretary at least 30 days before the date the owner or operator proposes that the construction will commence.

(f) Additional time to comply with any deadline in this regulation may be granted by the secretary upon receipt of a written request and upon a showing of good cause for the additional time requested. Each request shall state the reason for the additional time requested and the amount of additional time needed.

(g) The construction, remodeling, conversion, and maintenance of a facility shall conform with the diagrams, plans, and specifications submitted and required by K.A.R. 4-13-25a through K.A.R. 4-13-25k. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25j. Bulk pesticide storage facility inspection and maintenance requirements.** (a) Each owner or operator shall inspect the bulk pesticide storage facility and secondary containment, including all appurtenances, at least monthly for any defects, including the following:

- (1) Corrosion;
- (2) leaks;
- (3) cracks;
- (4) spills;
- (5) gaps;
- (6) tears;
- (7) unsealed joints;
- (8) cross-contamination of pesticides;
- (9) structural defects;
- (10) equipment defects; and
- (11) any other defect in the facility or potential violation of K.A.R. 4-13-25 through K.A.R. 4-13-25k.

The owner or operator shall promptly correct any defect.

(b) Upon the discovery of each defect or potential violation specified in subsection (a) that compromises the facility's ability to contain the pesticide, the owner or operator shall, within 24 hours after the discovery, either initiate repairs to correct the defect or take the appurtenance or secondary containment out of service. If the appurtenance or secondary containment is left in service, the defect or potential violation shall be corrected within 14 days following the discovery. If the defect or potential violation is not corrected within 14 days following the discovery, the appurtenance or secondary containment shall be removed from service.

(c) The owner or operator shall make a record of the following:

- (1) Each inspection performed pursuant to subsection (a);
- (2) each discharge within the facility in excess of 55 gallons; and
- (3) more than one discharge within the facility in a 24-hour period totaling or exceeding 55 gallons.

(d) Each record made pursuant to subsection (c) shall include the following:

- (1) The name of the person making the record;
- (2) the date the record was made;
- (3) if any inspection is performed, the following:
  - (A) The date of the inspection;
  - (B) a description of any defect found; and
  - (C) a description of any repairs made to remedy the defect;
- (4) if a discharge occurred, the following:
  - (A) The date of the discharge;
  - (B) the amount of the discharge;
  - (C) the cause of the discharge;
  - (D) a description of any repairs made; and
  - (E) the date and time the secretary was notified pursuant to K.A.R. 5-13-25g;
- (5) the date any defective equipment at the facility is taken out of service; and
- (6) the date any defective equipment is placed back into service.

(e) All records maintained at the facility shall be retained for three years from the date of the record and shall be made available to the secretary or an authorized representative of the secretary upon request. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25k. Site closure and discontinuation of operation.** (a) The owner or operator shall notify the secretary within 30 calendar days following the permanent cessation of operations of a bulk pesticide storage facility.

(b) Whenever a bulk pesticide storage facility permanently ceases operations, the owner or

operator shall provide the secretary with written verification of both of the following, on a form prescribed by the secretary:

(1) All pesticides, solutions containing a pesticide, wash waters, and other materials that may contain pesticides have been removed from the facility and have been used or disposed of according to the pesticide's label or labeling, and according to all federal, state, and local requirements.

(2) All bulk pesticide containers, appurtenances, mixing and loading pads, and sumps have been thoroughly cleaned according to each pesticide manufacturer's requirements, instructions, directions, or recommendations or, if none exist, according to standard industry practice. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25l. Penalty for noncompliance with pesticide containment.** (a) The license, certification, or registration of any pesticide business licensee, governmental agency registrant, pesticide dealer, or certified private applicator who is found to have violated a pesticide containment requirement in K.A.R. 4-13-25a through 4-13-25k shall be subject to suspension, revocation, nonrenewal, or cancellation.

(b) Any pesticide business licensee or pesticide dealer who is found to have violated a pesticide containment requirement in K.A.R. 4-13-25 through 4-13-25k may incur a civil penalty in accordance with K.A.R. 4-13-62.

(c) Enforcement of K.A.R. 4-13-25 through K.A.R. 4-13-25k shall be conducted in accordance with the provisions of the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto. (Authorized by K.S.A. 2009 Supp. 2-2449 and K.S.A. 2-2467a; implementing K.S.A. 2-2440e, K.S.A. 2009 Supp. 2-2449, K.S.A. 2-2453, 2-2454, and 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

**4-13-25m. Change in owner or operator of bulk pesticide storage facility; reporting requirements.**

(a) If the owner or operator of a bulk pesticide storage facility changes, the new owner or operator shall notify the secretary of the change within 30 days after the effective date of the change, on a form prescribed by the secretary.

(b) The new owner or operator shall meet one of the following requirements:

(1) Submit to the secretary the diagram, plans, and specifications of the bulk pesticide storage facility required by K.A.R. 4-13-25h; or

(2) (A) State on the notification form that the owner or operator has reviewed the existing diagrams, plans, and specifications maintained by the secretary;

(B) certify that the bulk pesticide storage facility remains consistent with those existing diagrams, plans, and specifications; and

(C) certify that the bulk pesticide storage facility has been constructed, remodeled, or converted and is maintained and operated in accordance with K.A.R. 4-13-25 through K.A.R. 4-13-25k. (Authorized by and implementing K.S.A. 2-2467a; effective Sept. 3, 2010.)

**4-13-26. Preconstruction application of pesticide for termite control.** In addition to the requirements of the label, each preconstruction application of pesticide for the control of termites shall consist of establishing both horizontal and vertical chemical barriers, as specified in this regulation.

(a) Horizontal chemical barriers shall be established in areas intended to be covered, including the soil beneath slab floors and porches, footing trenches for monolithic slabs, and the soil beneath stairs.

(b) Vertical chemical barriers shall be established in the soil around the base of foundations, plumbing fixtures, foundation walls, support piers, and voids in masonry, and any other critical areas where structural components extend below grade. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2471; effective March 26, 1990; amended July 18, 2003.)

**4-13-27. Certificate of liability insurance.** Each applicant for a pesticide business license shall provide the secretary with a certificate of liability insurance which shall contain the following information:

(a) the name of the insured pesticide business licensee;

- (b) the name of the insurance company which issued the policy;
- (c) the effective date of the policy;
- (d) the expiration date of the policy; and
- (e) the policy number.

If a surety bond is furnished in lieu of a certificate of liability insurance, the bond shall be executed on a form provided by the secretary and shall comply with the provisions of K.A.R. 4-13-8. (Authorized by K.S.A. 1988 Supp. 2-2467a as amended by L. 1989, Ch. 6, §16; implementing K.S.A. 2-2448 as amended by L. 1989, Ch. 6, §17; effective March 26, 1990.)

**4-13-28. Target pests which are not specified on the pesticide's label or labeling.** Any pesticide may be applied for the purpose of controlling a pest which is not specified on the pesticide's label or labeling provided that: (a)(1) the pesticide's label or labeling authorizes application of the pesticide to the same crop, animal or site requiring application;

(2) the pest to be controlled belongs to the same general group of pests intended to be controlled by the pesticide to be applied;

(3) the pesticide's label or labeling does not specifically prohibit its application to the target pest to be controlled, or to the crop, animal or site to which the pesticide is to be applied; and

(4) the application of the pesticide to the target pest, or to the crop, animal or site, has not been prohibited by rules and regulations promulgated by the secretary.

(b) Each pesticide which is applied in accordance with the provisions of subsection (a) of this regulation shall be deemed not to cause any unreasonable adverse effects on the environment, nor to endanger the health, safety or welfare of the citizens of this state. (Authorized by K.S.A. 1990 Supp. 2-2467a; implementing K.S.A. 1990 Supp. 2-2470 and 2-2471; effective Oct. 21, 1991.)

**4-13-29. General use pesticides for household application or use for the purpose of pesticide dealer registrations.** General use pesticide products sold for household application or use shall include only those ready-to-use general use pesticide products which:

(a) are to be applied undiluted, in accordance with use instructions shown on the pesticide's label; and

(b) are to be applied by homeowners or occupants to control pests in and around the family dwelling and associated structures. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 1985 Supp. 2-2469; effective May 1, 1987.)

**4-13-30. Dealer recordkeeping requirements.** (a) Each pesticide dealer shall maintain records of all restricted-use pesticide products sold or otherwise conveyed. These records shall be made available during reasonable business hours to the secretary or the secretary's authorized representative for purposes of inspection and copying. Each record required by this regulation shall be kept for at least two years after the date of the sale or conveyance.

(b) The records specified in subsection (a) shall contain the following information:

(1) The name of each person to whom the restricted-use pesticide product has been sold or conveyed, as verified by the person's presentation of a federal or state government-issued identification card;

(2) the address of either the residence or principal place of business of each person to whom the restricted-use pesticide product has been sold or conveyed;

(3) the name and address of either the residence or principal place of business of the individual to whom the restricted-use pesticide product has been delivered or conveyed, if different from the purchaser;

(4) the certification number of the applicator's certificate;

(5) the name of the state issuing the certificate;

(6) the expiration date of the certificate;

(7) if the applicator is a certified commercial applicator of pesticides, then, if applicable, the

categories and subcategories in which the applicator is certified;

(8) the registered name of the restricted-use pesticide product, the EPA registration number of the restricted-use pesticide product, and, if applicable, the “special local need” state registration number of the restricted-use pesticide product;

(9) the quantity of the restricted-use pesticide product sold or conveyed; and

(10) the date of the transaction.

(c) If the pesticide dealer makes a restricted-use pesticide product available to an uncertified person for use by a certified applicator, then the following records shall be kept in addition to those required in subsection (a):

(1) The name of the uncertified person to whom the restricted-use pesticide product has been made available, as verified by the uncertified person’s presentation of a federal or state government-issued identification card;

(2) the address of either the residence or principal place of business of the uncertified person to whom the restricted-use pesticide product has been made available;

(3) the name of the certified applicator who will use the restricted-use pesticide product; and

(4) the address of either the residence or principal place of business of the certified applicator who will use the restricted-use pesticide product.

(d) Each pesticide dealer shall submit an annual report for each restricted-use pesticide product that the dealer has sold or otherwise conveyed. The report shall include the following:

(1) The registered name of the restricted-use pesticide product, the EPA registration number of the restricted-use pesticide product, and, if applicable, the “special local need” state registration number of the restricted-use pesticide product; and

(2) the quantity of the restricted-use pesticide product sold or otherwise conveyed. (Authorized by and implementing K.S.A. 2-2467a; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986; amended May 1, 1987; amended Feb. 5, 2010.)

**4-13-31. Certificates of registration.** Each pesticide dealer shall display that dealer's current certificate of registration in a prominent location which can be seen by the general public. (Authorized by K.S.A. 2-2467a; implementing L. 1985, Ch. 12, section 2; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986.)

**4-13-32. Report of address change by pesticide dealer.** Each pesticide dealer shall notify the secretary of any change in its business address or business name by the tenth day of the month following the month in which the change occurred. (Authorized by K.S.A. 2-2467a; implementing L. 1985, Ch. 12, section 2; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986.)

**4-13-33. Pest control technician registration and renewal fees.** The application fee for a pest control technician registration or for the renewal of a pest control technician registration shall be \$40.00. Each fee paid by the applicant pursuant to K.A.R. 4-13-9 shall be applied toward payment of the fee required by this regulation. This regulation shall apply to all pest control technician registrations, or renewals of these registrations, that will be effective through June 30, 2015, regardless of when the department receives the application. The \$40.00 pest control technician registration fee shall revert to \$25.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2440b, as amended by L. 2009, Ch. 128, §13, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440b, as amended by L. 2009, Ch. 128, §13; effective, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

**4-13-34. Verification of training of registered pest control technicians.** (a) Each pesticide business licensee who applies pesticides or causes pesticides to be applied for the control of wood destroying pests, structural pests, ornamental pests, turf pests, interior landscape pests, or any combination of

these pests shall maintain records to verify that each registered pest control technician employed by such business licensee has received the required training in each appropriate category of pest control. These training records shall contain the following information for each training session:

- (a) The typed or printed name of the trainee;
- (b) the subject matter covered;
- (c) the type of training, classroom or on-the-job;
- (d) the date on which the training occurred;
- (e) the duration of the training in hours;
- (f) the signature of the trainee; and
- (g) the signature of the authorized officer or representative of the pesticide business licensee who administered the training.

(b) This regulation shall become in force and effect from and after January 1, 1989. (Authorized by K.S.A. 1987 Supp. 2-2467a; implementing K.S.A. 1987 Supp. 2-2440c as amended by L. 1988, ch. 7, § 4; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988; amended Jan. 1, 1989.)

**4-13-35. Registered pest control technician identification cards.** (a) The secretary shall issue an identification card to each registered pest control technician upon satisfactory completion of the requirements for registration. This identification card shall show the registered technician's typed name and signature, the category or subcategory for which the registration has been issued, the name of the business licensee employing the registered technician, the date on which the identification card was issued, and the expiration date of the registration. The registered pest control technician shall have this identification card in the technician's possession when applying any pesticide for the control of wood destroying pests, structural pests, ornamental pests, turf pests, interior landscape pests, or any combination of these pests or when supervising the application of any general use pesticide. The technician shall produce this identification card when requested to do so by any customer, law enforcement official, the secretary or any authorized representative of the secretary. This regulation does not authorize any registered pest control technician to supervise the use of, or to apply, any restricted use pesticide unless the application is supervised by a commercial applicator who is certified to apply restricted use pesticides for the control of pests in the category or subcategory for which the pesticide application is made.

(b) This regulation shall be in force and effect from and after January 1, 1989. (Authorized by K.S.A. 1987 Supp. 2-2467a; implementing K.S.A. 1987 Supp. 2-2440b as amended by L. 1988, Ch. 7, § 3; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988; amended Jan. 1, 1989.)

**4-13-36. Training of registered pest control technicians in wood destroying pest control and structural pest control.** (a) All applicants for pest control technician registration in wood destroying pest control or structural pest control shall have completed a minimum of 40 hours of verifiable training, 30 hours of which must consist of supervised application of pesticides in and around structures, and 10 hours of which must be classroom instruction.

(b) Classroom instruction shall include the following:

(1) The proper use and maintenance of equipment, including calibration, "crack and crevice" and "spot" application, and other application techniques;

(2) The potential dangers involved in applying the pesticides, including:

(A) hazards to the applicator resulting from mixing, loading and applying pesticides, poisoning prevention, symptoms and first aid for pesticide poisoning;

(B) hazards to the occupants of the structures where pesticides are applied with particular emphasis on children, the aged and infirm;

(C) procedures for preventing pesticide contamination of food, groundwater, wells and cisterns, and the air within the structure being treated;

(D) label review and basic information about each pesticide used for control of wood destroying pests or structural pests, including common names of the pesticides, where and how each pesticide

may be applied, and the kinds of pests controlled;

(E) basic information about prevention and cleanup of spills; and

(F) the use of non-chemical means to control wood destroying and structural pests.

(3) calculating the concentration of pesticides to be used and the quantities of diluted pesticide necessary to complete a particular treatment;

(4) identification of common pests to be controlled and damages caused by such pests as subterranean termites, carpenter ants, wood decaying fungi, German, American and oriental cockroaches, silverfish, fleas, ticks, spiders, pantry pests, house mice, field mice, and Norway rats, the basic characteristics and habits of these pests and conditions that favor structural infestation by these pests;

(5) protective clothing and equipment, including the use and maintenance of rubber gloves and respirators;

(6) general precautions to be followed in the storage and disposal of pesticide containers and rinsate, as well as the cleaning and decontamination of equipment;

(7) applicable state and federal pesticide laws and regulations germane to the work of a technician, including but not limited to following label directions, direct supervision, information required on statements of services, and termite control application procedures; and

(8) basic information regarding elements of construction likely to be encountered including, heating and plumbing systems and such terms as footing, foundation wall, wall voids, sill plate, joists, subfloor, and slab-on-grade. (Authorized by K.S.A. 2-2467a, implementing K.S.A. 2-2440a; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988; amended Jan. 1, 1989; amended Jan. 25, 1993.)

**4-13-37. Renewal of pest control technician registration.** A pest control technician's registration may be renewed for a succeeding one-year period by paying the fees prescribed by law, completing the renewal application form provided by the secretary, and completing successfully six hours of classroom training in approved subjects during the effective period of the technician's registration. This training may be conducted by the pesticide business licensee, or in the alternative, the pest control technician may attend a training course approved by the secretary. The pesticide business licensee shall verify and maintain records to support the verification that each pest control technician it employs has satisfactorily completed the training required for renewal. (Authorized by K.S.A. 2-2467a, as amended by L. 1987, Ch. 12, § 5; implementing L. 1987, Ch. 12, § 4; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988.)

**4-13-38. Training of registered pest control technicians in ornamental pest control, turf pest control and interior landscape pest control.** (a) All applicants for pest control technician registration in ornamental pest control, turf pest control or interior landscape pest control shall have completed a minimum of 40 hours of verifiable training, 30 hours of which must consist of supervised application of pesticides for the control of ornamental pests, turf pests or interior landscape pests as appropriate, and 10 hours of which must be classroom instruction.

(b) Classroom instruction shall include the following:

(1) The proper use and maintenance of equipment, including calibration.

(2) the hazards that may be involved in applying the pesticides, including:

(A) The effect of drift of the pesticides on adjacent and nearby property and on nontarget organisms, and methods for preventing drift;

(B) the proper weather conditions for the application of pesticides and the precautions to be taken;

(C) procedures for preventing pesticide contamination of groundwater, wells and cisterns, surface water, soil, or the air within a structure;

(D) the effect of the pesticides on humans, plants or animals in the area, including the possibility of damage to plants or animals or the possibility of undesirable or illegal residues resulting on them;

(E) the effect of the application of pesticides on wildlife in the area, including aquatic life;

(F) the possibility of contamination of water or injury to persons, pets or desirable vegetation;



- (G) hazards to the applicator resulting from mixing, loading and applying pesticides;
  - (H) poisoning prevention, symptoms and first aid for pesticide poisoning;
  - (I) label review and basic information about each pesticide used, including common names of the pesticides, where and how each pesticide may be applied, and the kinds of pests controlled;
  - (J) basic information about prevention and cleanup of spills; and
  - (K) basic information about beneficial insects and the use of non-chemical means to control ornamental pests, turf pests and interior landscape pests;
- (3) calculating the concentration of pesticides to be used and the quantities of diluted pesticide necessary to complete a particular treatment.
  - (4) identification of common pests to be controlled and damages caused by such pests, as listed below, and the basic characteristics and habits of these pests.
- (A) For registered pest control technicians in the field of ornamental pest control, common pests shall include but not be limited to: bagworms, cankerworms, elm leaf beetles, aphids, spider mites, galls and gall-producing insects and diseases, flatheaded and roundheaded wood boring beetles, scale insects, cedar-apple rust, anthracnose and powdery mildew.
- (B) For registered pest control technicians in the field of turf pest control, common pests shall include but not be limited to: sod webworms, chinch bugs, white grubs, sowbugs, broadleaf weeds such as dandelion, chickweed, and henbit, grasses such as crabgrass, foxtail and annual bluegrass, Helminthosporium leaf spot, Pythium and Fusarium blights, moles and gophers.
- (C) For registered pest control technicians in the field of interior landscape control, common pests shall include but not be limited to: whiteflies, mealybugs, scale insects, spider mites, aphids, fungus gnats, snails and slugs, ants, sowbugs, thrips, damping-off, botrytis blight and powdery mildew;
- (5) protective clothing and equipment, including the use and maintenance of rubber gloves and boots, rainsuits and respirators.
  - (6) general precautions to be followed in the storage and disposal of pesticide containers and rinsate, as well as the cleaning and decontamination of equipment.
  - (7) applicable state and federal pesticide laws and regulations germane to the work of a technician, including following label directions, direct supervision and information required on statements of services. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440a; effective Jan. 1, 1989; amended Jan. 25, 1993.)

**4-13-40. Types of hearings.** (a) A conference adjudicative hearing may be used for the following types of action:

- (1) Suspension or revocation of a pesticide business license for the licensee's failure to maintain acceptable insurance or bond continuously during the licensing period as required by K.S.A. 2-2448, and amendments thereto;
- (2) suspension or revocation of the pesticide business license or governmental registration for the licensee's failure to employ a certified commercial applicator for each category of business operations in which a license has been issued;
- (3) suspension of a pesticide business license, governmental registration, or applicator's certificate, whether commercial or private, that has been issued when fees were paid by an insufficient fund check;
- (4) suspension or revocation of a pesticide business license, governmental agency registration, or any certificate for multiple or repeated violations of the Kansas pesticide law or of the implementing regulations, if no material issue of fact is involved; and
- (5) any other instances designated in K.S.A. 77-533, and amendments thereto.

Nothing in this subsection shall prohibit the conversion of another type of hearing to a conference adjudicative hearing. Conversion procedures shall conform with K.S.A. 77-506, and amendments thereto.

(b) The summary adjudicative hearing may be used for the following types of action:

- (1) A reprimand, warning, or disciplinary report pertaining to a violation of the Kansas pesticide law or any implementing regulation;

(2) any matter that can be resolved solely on the basis of inspections, examinations, or tests made by the agency or its personnel; and

(3) assessment of civil penalties pertaining to a violation of the Kansas pesticide law or any implementing regulation.

All other hearings, except emergency adjudicative hearings or hearings that have been initiated as or converted to conference adjudicative hearings or summary adjudicative hearings, shall be formal adjudicative hearings as defined in the Kansas administrative procedures act. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2449 and 2-2451; effective May 1, 1985; amended July 18, 2008.)

**4-13-60. Civil penalty; order.** Each order assessing a civil penalty shall include the following:

- (a) A statement reciting each subsection of the act authorizing the assessment of civil penalty;
- (b) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;
- (c) a concise statement of the factual basis for each violation alleged;
- (d) the amount of the civil penalty to be assessed; and
- (e) the notice of the respondent's right to request a hearing. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; amended July 18, 2008.)

**4-13-62. Amount of civil penalty.** (a) A separate civil penalty shall be assessed for each violation of the pesticide law that results from each independent act or failure to act by any pesticide business licensee or pesticide dealer, or any agent or employee of a pesticide business licensee or pesticide dealer. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. If several violations require the same elements of proof and are not distinguishable, the assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) The amount of each civil penalty shall be within the following ranges:

(1) For each violation of K.S.A. 2-2453(a) or (b) and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.

(2) For each violation of K.S.A. 2-2454(b), (m), (o), (r), (s), or (t) and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.

(3) For each violation of K.S.A. 2-2454, and amendments thereto, not covered in paragraph (b)(2), the civil penalty shall be not less than \$100 and not more than \$1,000.

(4) For each violation of K.S.A. 2-2453(c), and amendments thereto, not already covered in paragraph (b) (1), (2), or (3), the civil penalty shall be not less than \$100 and not more than \$1,000.

(c) For each subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed for the subsequent violation shall be the maximum amount for the category listed. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e, as amended by L. 2009, Ch. 128, §15; effective Jan. 1, 1989; amended Jan. 25, 1993; amended Feb. 5, 2010.)

**4-13-63. Criteria to determine dollar amount of proposed civil penalty.**

In determining the amount of any proposed civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered shall include:

- (a) The potential of the act to injure humans, pets, domestic animals, wildlife or the environment;
- (b) the severity of potential injuries;
- (c) the extent to which injury actually occurred;
- (d) the respondent's history of compliance with state and federal pesticide laws and regulations promulgated thereunder;
- (e) any action taken by respondent to remedy the specific violation or to mitigate any adverse health

effects or environmental effects which were the result of the violation; and

(f) whether or not the violation involved any misrepresentation or fraud. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Jan. 25, 1993.)

**4-13-64. Informal settlement.** (a) Any respondent may request a settlement conference if the respondent timely filed a written request for hearing. The request may be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

(1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement.

(2) The respondent neither admits nor denies the specific violations contained in the order.

(3) The respondent consents to the assessment of a stated civil penalty.

The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; amended July 18, 2008.)

**4-13-65. Adjusting the amount of the civil penalty.** (a) Each respondent shall present all evidence on the issue of adjustment of the civil penalty at the settlement conference. This evidence may include mitigating factors or new evidence not previously known to the agency when the order was issued.

(b) Upon presentation by the respondent of new evidence establishing facts and circumstances that were unknown to the secretary when the order was issued and that relate to the gravity of the violation, the civil penalty may be reduced.

If additional facts establish a respondent did not commit a violation, the order shall be amended or vacated.

(c) The burden shall be on the respondent to present evidence of any mitigating factors to support any requested reduction in the amount of the civil penalty. The amount of the civil penalty may be reduced if the reduction serves the public interest.

(d) The amount of a civil penalty shall not be reduced to less than \$100 per offense.

(1) Whether or not a civil penalty is reduced shall be within the sole discretion of the secretary or the secretary's designee.

(2) Reductions shall not occur unless evidence of mitigating factors has been presented by a respondent. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; amended July 18, 2008.)