



## **Policy and Position Statements**

*Legislative and regulatory policy positions of the Kansas agribusiness industry.*

816 SW Tyler • Topeka, KS 66612 • 785-234-0461  
[www.ksagretailers.org](http://www.ksagretailers.org)

# Purpose

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This guide sets forth the policy and position statements of the Kansas Agribusiness Retailers Association (KARA) concerning state and federal legislative and regulatory issues. This booklet is intended as a quick reference for legislators, state policy officials, and Association members.

The Kansas Agribusiness Retailers Association's approximately 700 members are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products, inputs, and agronomic expertise to Kansas farmers.

KARA's membership includes ag-chemical and equipment manufacturing firms, distribution firms and other various businesses associated with the retail crop production industry.

For further information on the Association and its policies, please contact the following:

**Kevin Dieckmann, Chairman of the Board of Directors**

Brandt

816-804-4399 | [kevin.dieckmann@brandt.co](mailto:kevin.dieckmann@brandt.co)

**Scott Morris, Vice Chairman of the Board of Directors**

ProValue Insurance

620-802-0706 | [smorris@provalueins.com](mailto:smorris@provalueins.com)

**Ron Seeber, President & CEO**

Kansas Agribusiness Retailers Association

785-234-0461 | [ron@kansasag.org](mailto:ron@kansasag.org)

**Randy Stookey, Senior Vice President of Government Affairs**

Kansas Agribusiness Retailers Association

785-234-0461 | [randy@kansasag.org](mailto:randy@kansasag.org)

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### **Agency Funding**

KARA supports the adequate funding of state regulatory agencies which manage and enforce state law and programs. KARA also supports state-level oversight and administration of federal rules and regulations when such authority has been provided to state agencies.

### **Agriculture in the Classroom**

KARA supports programs that advocate for the education of agriculture to Kansas students to help them better understand the production of food and fiber in Kansas. Such programs provide valuable education for students learning about agriculture, its importance to the Kansas economy, and the importance of our free market economy.

### **Biotechnology**

Biotechnology includes taking a particular gene from a particular place in one organism and inserting it into the genome of a target organism to achieve a predicted result. Biotechnology has proven to safely increase yields, provide a more bountiful and affordable food supply, and create new medicinal benefits for American consumers. Biotechnology also enables agricultural producers to enhance environmental stewardship. Decisions relative to agricultural biotechnology should be based on sound science and uniformly implemented throughout the state. KARA opposes unreasonable or non-science based regulations.

### **Conservation Reserve Enhancement Program**

KARA opposes spending public money to pay landowners to permanently forfeit their water rights and retire whole field acreage for enrollment into the federal Conservation Reserve Program (CRP) and Conservation Reserve Enhancement Program (CREP). Such efforts idle environmentally sound cropland, negatively impact rural communities from job loss, and decrease the state and local tax base. However, KARA supports conservation programs that target specific, narrow, environmentally sensitive acres, such as streambanks.

### **Containment of Fertilizer and Agricultural Chemicals**

KARA supports secondary containment regulations for fertilizer and pesticide which protect against product being lost to soil or water from storage facilities. These regulations require bulk pesticide and fertilizer storage facilities to construct secondary containment structures around storage tanks and pour concrete, sloped pads for loading and unloading fertilizer. KARA supports the requirement of secondary containment regulations on nutrient and crop protection products whether the storage facility is private or commercial.

### **Contamination Remediation Reimbursement**

KARA supports the Agricultural and Specialty Chemical Remediation Act (the Act), which created the Kansas Agriculture Remediation Board and Remediation Reimbursement Program. Since adoption of the Voluntary Cleanup and Property Redevelopment Program by the Kansas Legislature in 1997, agricultural-chemical sites have been identified by the Kansas Department of Health and Environment for environmental remediation to soil and ground water. The Act provides financial assistance to Kansas agribusinesses faced with large costs associated with soil or groundwater remediation. KARA supports this industry-wide approach to addressing

contamination caused by agricultural and specialty chemicals and supports amending the Act to ensure the fund is properly sized to cover the needs of the industry.

### **Credit Card Surcharge Fees**

Kansas agribusinesses work with Kansas farmers by providing agricultural inputs and services that assist with the growing of agricultural commodities. The ability of agribusinesses to operate a competitive business is often determined by the amount of their overhead costs, such as taxes, administrative costs, and fees. Kansas law (KSA 16a-2-403) prohibits a seller from passing along surcharge fees to a non-business purchaser that uses a credit or debit card for the transaction. The law defines a surcharge as any additional amount imposed at the time of the sales or lease transaction by the merchant, seller or lessor that increases the charge to the buyer or lessee for the privilege of using a credit or debit card. When these credit card fees are charged to the retailer, but cannot be passed through to the customer, it makes it difficult to continue to operate a competitive business. KARA supports legislation to amend the law by removing this prohibition and allow retailers to pass along surcharge fees on payments made by credit and debit cards.

### **Environmental Protection through Precision Agriculture**

Production agriculture, using technology and products provided by agribusiness, are making environmental gains through the precise use of agricultural inputs. "Precision Agriculture" involves the precise use of fertilizers, chemicals and micronutrients according to the varying soil types and/or fertility levels that exist in the field. Technological advances have made this possible. Soil and tissue testing methods have advanced, as well as formulation technologies. As new technologies continue to develop, our industry is committed to the protection of the environment using those technologies.

### **Environmental Regulations and Remediation Standards**

KARA supports the use of risk analysis and cost-benefit analysis in environmental regulations and standards. Such analytical tools recognize that an environmental hazard is a circumstance with the potential to cause harm to people or the environment; and, risk is the probability of exposure to the hazard. The potential severity of harm caused by the hazard, combined with the probability of exposure to the hazard, constitutes the actual risk. A hazard with no probability of exposure poses no risk of harm. Use of such risk-based analysis enables regulators to make informed decisions and use limited funds to address real, rather than perceived, problems. Use of risk analysis and cost-benefit analysis allows regulators to set sound, cost-effective priorities.

### **Environmental Voluntary Audits**

KARA supports the use of voluntary environmental self-audits as an innovative method to help industry comply with environmental regulations without being subject to onerous monetary penalties for unwitting violations. The fertilizer and agricultural chemical industry in Kansas has been on the forefront of environmental protection for many years. KARA led efforts to pass the fertilizer containment law to protect our groundwater and worked with the Kansas Department of Agriculture to establish bulk pesticide containment regulations. We worked to pass the state pesticide management area law to address local situations regarding crop protection product use. KARA administers the Kansas Certified Crop Adviser program, a voluntary professional certification program that requires applicators to pass a national and state exam and then maintain certification by acquiring 40 Continuing Education Units every two years. KARA

recognizes the need to comply with environmental laws. Environmental protection is best achieved through cooperation rather than confrontation with regulatory authorities. Voluntary environmental audits are a valid approach to the industry's efforts to protect the environment.

### **Fees and Fee Fund Integrity**

State law creates various regulatory programs, grants agencies the authority to carry out those programs, and authorizes agencies to assess fees on the regulated industry. KARA members pay multiple fees to various regulatory agencies. KARA supports the assessment of reasonable fees as necessary to cover the costs of administering regulatory programs.

KARA opposes industry fees being deposited into the state general fund for uses unrelated to their legislative purpose. KARA opposes any use of fees for a purpose other than the lawful purpose for which they were assessed.

KARA supports agencies lowering industry fees when the fees generate more revenue than is necessary to administer the program. Fee increases should only be made after the agency has attempted to cut costs to meet expenses and attempted to find efficiencies within the program. Agencies should not increase industry fees to offset the loss of state general funds.

### **Fertilizer Constituent Standards**

Any standard for maximum levels of minor non-nutrient constituents in fertilizer materials should be health risk-based and supported by sound scientific reasoning. Any standard for heavy metals/trace constituents should be uniformly implemented throughout the United States.

### **Food Disparagement**

Production agriculture is the constant target of activist group misinformation campaigns, leading to confused, and sometimes fearful consumers. Public confidence in the food supply will continue to erode if activist attacks are not placed in their appropriate context. Erosion of confidence in the food supply must be restricted from baseless allegations. KARA supports legislation that would hold some forms of non-commercial speech to standards of verification similar to those standards to which commercial advertisers must adhere.

### **Food Quality Protection Act**

The Food Quality Protection Act (FQPA) was passed into law in August 1996. The act established new safety standards that pesticides must meet to be registered or re-registered by the EPA. The FQPA introduced into the regulatory process significant new requirements for testing and risk assessment and allows the EPA considerable discretion in interpreting these requirements. The FQPA requires risk assessments for pesticides be based on all sources of non-occupational exposure, including food, drinking water and residential uses. Under FQPA, decisions must be based on "reliable" and "available" information. The EPA has the discretion to apply an additional safety factor to a risk assessment for children's health issues. The EPA should implement the FQPA in a fair and objective manner using the best scientific methodology and data and the most accurate information about actual pesticide use. Appropriate implementation of the FQPA is vitally important for the crop-protection industry, Kansas agriculture, public health, and to ensure continued availability of essential crop-protection tools.

## **Free Market**

KARA supports a marketplace free of government intervention and overregulation.

## **Government Competition with the Private Sector**

Government should not use tax dollars to establish programs that compete with the private sector. KARA strongly discourages the introduction or expansion of any tax-subsidized program that competes with the private sector.

## **Highway Funding**

The State Highway Fund is funded through a tax on motor vehicle fuel and used for the maintenance, improvement, and expansion of state managed roadways. The legislature has historically used money from the State Highway Fund to cover other general budgetary needs. In order to ensure that our industry is able to safely traverse our roads, KARA supports the adequate funding of our State Highway Fund and opposes the use of the State Highway Fund for other state expenditures.

## **Home Rule**

Legislation is often proposed that would authorize local government to adopt environmental regulations that would have a negative and costly impact on agribusiness. The adoption of such environmental rules and regulations would compound the ability of agriculture to operate and would require adherence to possibly dozens of different standards and regulatory bodies throughout the state. For this reason, KARA supports the state level preemption of industry regulations.

## **Homeland Security**

Ammonium Nitrate is a crop nutrient used throughout the State of Kansas. KARA supports the current level of regulation of Ammonium Nitrate by the Department of Homeland Security.

## **Immigration**

KARA is working with a coalition of organizations to make sure that any immigration reform legislation protects businesses and does not unfairly shift the burden of enforcement from the federal or state government onto industry. Immigration law should be established uniformly at the federal level, and KARA opposes any state-level immigration enforcement legislation.

## **Initiative and Referendum**

KARA opposes statewide initiative and referendum legislation that has been implemented in certain other states (Missouri, Colorado, California, etc.). Such authority employs the functions of direct democracy to allow the public to change state law by popular vote. These systems allow the majority to strip away the rights and protections of the minority groups. As rural, and agriculture-based, parts of our state continue to lose population, an initiative and referendum system could be used to over-regulate or prohibit common practices in production agriculture.

## **Kansas State University Extension Office**

KARA supports KSU extension and research. Extension is an important component of KSU's mission as the state's land-grant university. Without KSU's research and extension programs, Kansas would not be the "wheat state". KSU's work in this area benefits agriculture and has a positive impact on all Kansans.

## **Noxious Weed Law**

The Kansas Noxious Weed Law entrusts noxious weed eradication to Kansas counties. Monitoring noxious weeds and enforcing their control and eradication is an appropriate function for county government. However, the sale and application of tax-subsidized chemicals to control noxious weeds on private lands should not be exclusive to county weed departments. State law should enable farmers to purchase tax subsidized chemicals from agricultural retailers for the control of noxious weed.

## **Organic Food Labeling**

Congress adopted the first national definition and standards for certification of organic foods as part of the 1990 Farm Bill. Federal standards require that any food labeled organic truly be produced without the use of commercial fertilizers and pesticides. KARA supports the establishment of a state program, providing it includes a strong inspection program to insure consumer protection. Any organic labeling program must be strictly enforced, and food tested to ensure the consumer does not pay premium prices for a product that is not truly organic, i.e., it is produced without agricultural chemicals.

## **Pesticide Disposal and Container Recycling**

KARA has worked with the Kansas Department of Agriculture, Kansas Department of Health and Environment and other organizations to implement programs to encourage the voluntarily collection and disposal of waste pesticides. KARA has also worked with these agencies to coordinate pesticide container collection events to ensure containers are disposed of or recycled appropriately. KARA supports these voluntary efforts to provide an environmentally sound method of disposing of waste pesticides and recycling containers.

## **Pesticide Management Areas**

KARA is committed to groundwater protection. KARA was a principal supporter of legislation establishing authority for Pesticide Management Areas (PMA) in the state. This law authorizes the Kansas Department of Agriculture (KDA) to adopt pesticide regulations for specific problems or needs if the EPA identifies a specific chemical which may leach into groundwater in Kansas. An atrazine management plan for Northeast Kansas was the first pesticide management area developed under this law. The work involved numerous other state and federal agencies, as well as a broad cross-section of individuals from the affected area. As a result, KDA established stricter requirements on the use of atrazine in the Delaware River watershed above Perry Lake. These steps have resulted in the reduction of atrazine detection in the lake. The PMA concept has also come into play in the Big Blue Basin above Tuttle Creek reservoir. The experience in the Delaware provided a framework not only for Kansans in the area but also for cooperation with those on the Nebraska side of the basin. The Pesticide Management Area is an example of how public input should be obtained, how government agencies can work together, how agencies and private interests can work together for the best interests of the public.



### **Private Property Rights**

Private property rights are a foundation of our nation and our free enterprise system. Yet, laws and regulations are increasingly infringing upon those rights. KARA supports the Kansas private property rights law passed in 1995 that requires state agencies to explore the "takings" implications of their actions. This law protects individuals or businesses without the expertise, resources, or time to fight to protect their rights. This analysis places a check on state agencies and protects Kansas citizens.

### **Railroad Leasing Act**

KARA supports the Kansas Railroad Leasing Act. During the 1997 Legislative Session, KARA helped spearhead legislation that would provide a reasonable level of protection against exorbitant lease rates and unreasonable liability clauses for agribusiness facilities located on railroad leased property. Many agribusiness facilities in Kansas are located on property leased from railroad companies. These facilities receive fertilizer and bulk pesticides by rail. For that reason, there is a strong public interest in maintaining agribusiness on railroad-leased property. The Railroad Leasing Act provides protection against arbitrary contract termination and forfeiture of physical assets without compensation. KARA supports strengthening the Act by granting lessees the first right-of-refusal to buy the railroad's interest in the property on which their facility sits if the railroad's interest in the leased property is sold, abandoned, or lost as a result of bankruptcy.

### **Regulatory Burden and Process**

In 2018, the Legislature passed House Bill 2228 which revised the state Regulations Filing Act. The law provides stricter guidelines for the rulemaking process and requires the director of budget to review and approve the economic impact statements of proposed regulations. The bill imposes a new requirement on executive branch agencies when adopting or amending regulations. The law requires the agency to submit a more thorough economic impact statement which must now identify which business sectors would be affected and requires those business sectors to be consulted prior to passage of the regulation. KARA supported passage of this legislation and supports the reduction or removal of overly burdensome regulations on our industry. KARA believes that public input in state agency decision-making results in better decisions and programs. It is a duty of government to seek and utilize public input and a right of citizens to offer input on decisions that will affect them. All state agencies must maintain an open process for establishing rules and regulations that encourages public input.

### **Scrap Metal Theft**

Scrap metal theft has increased in the agricultural industry and in rural parts of the state. This activity has caused economic harm to members of our industry. For this reason, KARA supports legislation to increase the criminal penalties for scrap metal theft. KARA also supports increased regulations on scrap metal dealers, to include mandatory record keeping of scrap metal transactions and parties.

### **State OSHA**

Currently, 25 states have a state-level OSHA program. In 2015, the Kansas Department of Labor performed a feasibility study on whether the state should partner with the US DOL to establish a state-level OSHA program. The study showed the total cost of implantation would be

\$3.2 million dollars split equally between the federal government and the state. The state portion would come from the state general fund, or from civil fines or other funding mechanisms approved by the legislature. KARA opposes efforts to establish a Kansas OSHA program due to the overall cost of implementation, potential fees imposed on the industry, and a generally positive working relationship with the regional OSHA office.

### **State Water Plan**

KARA supports the Kansas State Water Plan Fund (SWPF), and the use of the fund to enhance water quality in Kansas. KARA supports the use of the SWPF to support best management practice research projects focused on minimizing the impact of agricultural fertilizer and pesticide use on the Kansas environment. KARA also supports the use of the SWPF to assist individuals and agribusinesses faced with costs associated with addressing contamination caused by agricultural fertilizers and pesticides. KARA does not support the use of SWPF to purchase and retire water rights. A portion of the registration fees on pesticides products and fertilizer tonnage inspection fees are used to fund the SWPF. These industry fees are higher than similar fees in our surrounding states. The \$1.67 per ton fee assessed on the sale of commercial fertilizers is approximately twice that of most other states. KARA opposes any legislation seeking to increase fees or create new fees (including new or increased water usage fees for irrigators public water supply systems, industrial use, or stock watering permits), for the purpose of increasing the size of the SWPF. By statute, the SWPF is to receive \$8 million annually in state public funding (\$6 million from State General Fund and \$2 million from Economic Development Initiatives Fund). The Legislature and Governor's commitment to partial funding of the SWPF with State general funds is crucial to adequate funding for the SWPF and important in ensuring all Kansans who benefit from water resources, also share in the cost of that benefit. In most recent years, the SWPF has not received these funds. KARA supports the restoration of those transfers and adequately funding water initiatives in Kansas. KARA supports transferring a percentage (1.54%) of the existing state sales tax into the state water plan fund to generate funding annually for the state water plan fund.

### **Supplemental Environmental Programs**

KARA supports the use of Supplemental Environmental Programs (SEPs) by the Kansas Department of Agriculture (KDA) and the Kansas Department of Health and Environment (KDHE) as an alternative to traditional fines for first time violators. SEPs are an innovative approach that convey long-term environmental protection through cooperation rather than confrontation and punitive fines. SEPs are preferred to civil penalties as they provide environmental benefits as opposed to punitive fines. Through use of SEP's, long-term benefits to society are realized, industry awareness is increased, and the violator avoids the stigma of a "fine." A SEP should not convene any economic benefit on the violator but should state a reasonable time frame for completion.

### **Sustainable Agriculture**

KARA strongly supports sustainable agriculture systems and rejects misplaced bias against the use of pesticides and fertilizer products. The agronomic use of fertilizers and pesticides protects our environment. Fertilizer use helps maintain soil fertility and enhances water conservation, thereby reducing soil and water erosion and surface water contamination. Pesticide use reduces the need for tillage and allows farmers to practice conservation tillage methods, retaining more crop residue on the soil, reducing soil and water erosion, and enhancing soil fertility through the decomposition of the crop residue. The use of commercial fertilizers instead of manure can

decrease runoff and potential nitrate contamination of water sources. The use of fertilizers and pesticides has also saved millions of square miles for wildlife habitat. Our industry works with their producer customers to provide research-based, scientific information on best management practices, and use soil tests to accurately determine fertilizer needs to insure the wisest use of inputs and protection of natural resources. KARA opposes any policy which arbitrarily sets pesticide use reduction targets without scientific basis.

## **Taxes**

KARA opposes the establishment of any new taxes which would be a disincentive for economic development in the state, discouraging new businesses from locating here and existing businesses from expanding.

**Sales Tax:** KARA opposes placing sales taxes on services and the elimination of sales tax exemptions for agricultural inputs.

**Property Tax:** Containment structures built for environmental protection should not increase property valuation or ad valorem property tax purposes. These environmental protection structures are a cost of doing business, are required by regulation, and do not produce income or otherwise add value to the property. KARA urges the Property Valuation Division (PVD) to stand firmly behind its 1991 policy that these structures do not add value to the property.

**Income Tax:** KARA supports a state income tax credit for agricultural-related businesses who invest in machinery, equipment, or other structures required by state environmental regulations. Government regulations require expensive structures and equipment for compliance yet provide no financial aid to business owners to assist with compliance. These mandates are a hidden tax on business.

## **Unmanned Aerial Systems**

KARA supports the expansion of production and development of Unmanned Aerial Systems (UAS) for agricultural purposes. Farmers and ranchers are increasingly using UAS technology to optimize inputs and improve on irrigation efficiency and water management. Kansas is home to a thriving and robust aviation industry that can support new technologies that will only prove beneficial to production agriculture. It's estimated that the economic impact of UAS integration will reach \$2,941 million by 2025 and will create 3,716 additional jobs nationwide. KARA supports making UAS subject to current state privacy laws, while opposing both overreaching federal regulations and strict legislative requirements that would impede UAS or any agricultural technology growth in the state.

## **Unmanned Ground Vehicles and Autonomous/Driverless Commercial Vehicles**

KARA supports the research, development, and use of automation in production agriculture. Unmanned ground vehicles can increase efficiency in crop scouting, soil sampling, irrigation management, and precision spraying. Digitally controlled farm implements can also help address workforce challenges in rural Kansas communities. KARA opposes regulatory obstacles to advanced technologies that support precision agriculture. There is a growing shortage of commercial truck drivers in Kansas and across the country which negatively affects agriculture. KARA supports legislation to authorize the use and regulation of autonomous (driverless) motor vehicles in our state to help alleviate the growing shortage of commercial drivers.

## **Water Quality**

Crop protection products and fertilizers are necessary for the U.S. to provide a safe and abundant food supply at a reasonable cost in the face of world population growth. Without the use of crop protection products and fertilizers, food production quality and yields would decrease, cost would increase, and many sensitive ecosystems would be plowed under. Use of crop protection products and fertilizers in agriculture are managed so that water quality is not impaired. At dealerships, hundreds of thousands of dollars are being spent to contain chemical and fertilizer storage structures. This containment will capture leaks and spills during loading and unloading of product into applicator equipment and nurse tanks, as well as prevent catastrophic spills from reaching water. Further, many dealerships are putting storage under roof to prevent wet-weather contamination, have written housekeeping plans for periodic cleanup, and have security in place to prevent vandalism and the accompanying spills. Additionally, farmers and commercial applicators use best management practices to apply products in ways that do not pose a threat to water. KARA encourages the use of voluntary water quality initiatives and cooperation with government entities rather than the mere enforcement of government regulations, especially with non-point source water issues.

## **Water Quantity**

Water legislation in Kansas has focused on water quantity and the balance of power in regulating groundwater between executive branch state agencies and local groundwater management districts. KARA understands that water is vital to all Kansans, particularly those engaged in the production of food, fuel, and fiber. Sound water policy, and its implementation, is necessary for the stability of agriculture and for the management of agriculture now and in the future. KARA recognizes that water is a finite resource and supports the efficient management of groundwater. Kansas has been well served by a multi-agency approach to water management. KARA believes no single agency should have authority over both water quantity and water quality and opposes broad reorganizations of the state executive branch to consolidate powers and functions of water conservation, water quality, and water research under the same agency. KARA policy on water quantity regulation is as follows:

- KARA supports implementing groundwater policy regarding use that is narrowly tailored to specific regions of Kansas that vary greatly on the amount of groundwater present, type of consumptive use, and rate of aquifer recharge.
- KARA supports local control of groundwater consumption through groundwater management districts (GMD) within the currently existing structure. KARA supports requiring GMDs to provide limited annual reporting, such as water conservation plans, to the legislature or chief engineer.
- KARA opposes modifying election procedures for GMD boards of directors. KARA supports modifying GMD procedures to set aside one seat on the GMD board to be filled by a representative of a municipality located in the district, but otherwise opposes modifying GMD director eligibility and opposes term limits for GMD directors.
- KARA opposes modifying the definition of an eligible voter within a GMD.
- KARA opposes policy that would prohibit GMDs from assisting on matters relating to water rights issues concerning drainage, storage, groundwater recharge, surface water management, and other such matters. KARA also opposes limiting recommendations from the state chief engineer, concerning groundwater use within a GMD, to only matters concerning irrigation.

### **Workers Compensation Reform**

KARA supports reform efforts in our state Workers' Compensation system to provide adequate protections and fair compensation to employees suffering job-related injuries, while keeping the costs to business fair, reasonable and as low as possible to maintain a healthy state program.

### **Workforce Training**

KARA supports legislative policies and funding priorities which promote coordination of resources and investment in a ready workforce that is prepared to participate and meet the needs of the agribusiness industry, including, funding of state land grant universities, and vocational and technical training. KARA supports state funding for commercial driver training programs to help alleviate the growing shortage of commercial drivers in Kansas.