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REGULATION C/REG.13/12/12 RELATING TO FERTILIZER QUALITY CONTROL IN THE ECOWAS REGION

THE COUNCIL OF MINISTERS

MINDFUL of Articles 10, 11 and 12 of ECOWAS Treaty establishing the Council of Ministers and defining its composition and functions;

MINDFUL of Regulation C/REG.21/11/10 relating to the harmonization of the structural framework and the operational rules for health safety of food, plants and animals in the ECOWAS region;

MINDFUL of Decision A/DEC.11/01/05 adopting an Agricultural Policy for the Economic Community of West African States;

MINDFUL of Decision C/DEC.1/5/81 relating to the eradication of hunger, popularization of seed varieties and more productive animal species, financing of research programs and agricultural production projects, as well as the storage and processing of agricultural products;

MINDFUL of Decision C/DEC.1/05/83 on short and medium-term programs for implementation of the Regional Agricultural Development Strategy;

CONSIDERING the strategic role of the agricultural sector in the economy of Member States in terms of meeting the food needs of the population and eradicating poverty in rural areas;

CONVINCED of the need to promote in Member States, sustainable agriculture that is more productive and competitive, and capable of ensuring food security and higher living standards for farmers;

CONSCIOUS that fertilizers are very important in the achievement of the objectives of the Agricultural Policy of the Economic Community of West African States;

RECOGNIZING that regular supply of quality and affordable fertilizers to markets of Member States is a prerequisite for achieving food security and improved living standards for farmers.

DESIROUS of harmonizing the rules governing fertilizer production, trade and quality control in the Member States in order to promote the supply of quality fertilizers in Member States' markets;

EXPRESSING SATISFACTION at the involvement of UEMOA in the development of the present Regulation;

ON THE RECOMMENDATION of the meeting of the ECOWAS Member States' sectoral Ministers in charge of Agriculture, Environment and Water Resources held in Abidjan on September 27, 2012;

ENACTS:

CHAPTER I: GENERAL PROVISIONS

Article 1: Definitions

For the purpose of the present Regulation:

Analysis means the percentage composition of a fertilizer product expressed in terms required and permitted in the ECOWAS region.

Analysis Manual or **Fertilizer Analysis Manual** means the compendium of provisions describing the modalities and procedures for carrying out the analysis of fertilizers under the present Regulation.

Appellate Authority means the highest administrative enforcement authority in the fertilizer regulatory system in each of the Member States.

Brand means any term, design, or trademark used in connection with one or several grades of fertilizer.

Bulk refers to any fertilizer delivered to the purchaser either in solid or liquid state in a non-package form to which a label cannot be pasted.

Commission means the ECOWAS Commission.

Competent Authority means an authority identified and appointed under the present Regulation to exercise powers delegated by some of its provisions.

Dealer or Agro-dealer or Distributor means any person who is authorized to carry on the business of selling fertilizers to the farmers in wholesale or retail, including a manufacturer and an importer.

ECOWAS means the Economic Community of West African States.

Fertilizer means any substance which is intended to be used as a nutrient(s) source to the crops for increasing agricultural production.

Fertilizer Inspector or Inspector means any person appointed or designated and notified under the present Regulation to draw official samples of fertilizers, to get their quality tested in a laboratory identified for this purpose, to inspect the fertilizer records being maintained by manufacturers, importers and distributors, and to launch prosecution against the violators of any of the provisions of the present Regulation.

Grade of Fertilizers means any combination of nutrients specified in a fertilizer in whole numbers and in the same terms, order, and percentages as in the guaranteed analysis such as NPK 15-15-15 or NP 20-20-0.

Guaranteed Analysis means the minimum percentage of all plant nutrients claimed on the label.

Importer means any person or a body who is duly authorized to import fertilizers into a Member State in accordance with the legal provisions which are in force in that State.

Inspection Manual or Fertilizer Inspection Manual means the compendium of provisions describing the modalities and procedures for carrying out the inspection and quality control of fertilizers under the present Regulation.

Label means (1) any legend, word, mark, symbol, or design applied or attached to, included in, belonging to, or accompanying any fertilizer, supplement, or container; or (2) any advertisements, brochures, posters; or (3) any television, radio, internet announcements used in promoting the sale of fertilizer.

Laboratory means any fertilizer analysis facility identified or established in a Member State and notified under the present Regulation for carrying out fertilizer analysis as per the methods specified in the ECOWAS Fertilizer Analysis Manual.

License means the official document authorizing a person to sell fertilizer.


Licensee means any person who has obtained a license authorizing him to sell fertilizers, as prescribed in the present Regulation.

Licensing Authority means the appropriate authority in a Member State designated for granting a license for selling fertilizer.

Liquid Fertilizer means any fluid in which the plant nutrients are in true solution.

Manufacturer means any person or a body who is duly authorized in a Member State to produce fertilizers in accordance with the legal provisions which are in force in that State.

Member State means any of the countries in West Africa which are members of ECOWAS.

Micronutrient means any of the following nutrients that is essential for the normal growth of plants and that may need to be added to the growth medium: boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium and zinc. 

Natural Organic Fertilizer means a fertilizer derived from non-synthetic organic material including sewage sludge, animal manures, plant residues, household refuse, and agro-industrial waste which is produced through the process of drying, cooking, composting, chopping, grinding, fermenting, or other methods and makes a declaration of nutrient value on the label. Such fertilizer shall not be mixed for sale with synthetic material or changed in any physical or chemical manner.

Official sample means any sample of fertilizer taken by an authorized fertilizer Inspector.

Person means any individual, partnership, association, firm, or corporation.

Primary Nutrient means any plant foods such as Nitrogen (N); available phosphoric acid (P_2O_5) or phosphorus (P); and soluble potash (K_2O) or potassium (K).

Secondary Nutrient means any of the following nutrients that is essential for the normal growth of plants and that may need to be added to the growth medium: calcium, magnesium, and sulfur.

Tolerance means the permitted deviation of the measured values of a nutrient content or the bag weight below the values claimed on the label, or the maximum allowable heavy metal limits in a fertilizer.

UEMOA (WAEMU) means Union Economique et Monétaire des Etats de l'Afrique de l'Ouest (West African Economic and Monetary Union).

WACoFeC means the West African Committee for Fertilizer Control.

Article 2 : Purpose

1. The present Regulation harmonizes the rules governing fertilizer quality control in ECOWAS Member States.
2. The purpose of this Regulation is to:
 - a) Safeguard the interests of the farmers against nutrient deficiencies, adulteration, misleading claims, and short weight;
 - b) Safeguard the interests of fertilizer enterprises and contribute to the creation of an enabling environment for private sector investment in the fertilizer industry;
 - c) Protect the West Africa natural environment and its population against the potential dangers associated with inappropriate fertilizer use;
 - d) Facilitate inter and intra-States trade in fertilizers, through implementation of principles and rules mutually agreed at regional level to dismantle trade barriers.

Article 3 : Scope

The present Regulation shall apply to all fertilizer-related activities, especially those pertaining to the licensing of agro-dealers, as well as the storage and sale of fertilizers locally manufactured and imported in the Member States.

CHAPTER II: GUIDING PRINCIPLES

Article 4 : Principle of Harmonization

In pursuance of the objective of ensuring effective fertilizer quality control as intended by Article 2 of the present Regulation, ECOWAS shall help bridge the gap between Member States' legislations in the field of fertilizers.

Article 5 : Principle of Truth-in-labeling

The principle of truth-in-labeling holds that whatever a manufacturer, an importer or an agro-dealer claims he/she is selling, he/she must guarantee it; it is therefore essential that label claims on fertilizer packaging be truthful. Consequently, some specific requirements shall define what one can claim so that it is not necessary to register fertilizer products.

Article 6 : Principle of Free Movement of Fertilizers

In view of contributing to the organization of a regional market as described in the common agricultural policy, there shall be free movement of fertilizers on the ECOWAS Member States territory so far as the fertilizers comply with the quality standards prescribed in the present Regulation.

Article 7 : Principle of International Standards Recognition

To ensure the supply of quality fertilizer in the markets, the ECOWAS Commission and Member States' shall anchor their fertilizer legal frameworks on international standards.

Article 8 : Principle of Participation and Information

1. Member States shall ensure full participation of stakeholders in the fertilizer sector in the process of public decision-making on fertilizer-related issues.
2. Member States shall ensure public access to fertilizer information held by public authorities.
3. Member States shall help train and build the awareness of stakeholders in the fertilizer sector.

CHAPTER III: ORGAN AND TOOLS FOR FERTILIZER QUALITY CONTROL

Article 9 : West African Committee for Fertilizer Control

1. A West African Committee for Fertilizer Control, hereinafter referred to as the WACoFeC, is hereby established. This Committee shall facilitate, on behalf of the ECOWAS Commission, the implementation of the present Regulation by Member States. To this end, it shall operate under the direct institutional authority of the Commission.

2. The WACoFeC shall work closely with national bodies in charge of fertilizer control for development of the fertilizer sector. To this end, each Member State shall set up a national body for fertilizer control.

3. At the request of WACoFeC, each Member State shall provide information for verification of compliance of the national fertilizer quality control systems with the present Regulation. WACoFeC may conduct investigations in Member States to verify the accuracy of information provided.

4. The attributions, organization and functioning of WACoFeC shall be determined by the ECOWAS Commission through an Implementing Regulation.

5. The funds necessary for the functioning of the WACoFeC shall be provided by the ECOWAS Commission.

Article 10 : Fertilizer Quality Control Manuals

1. For a more effective quality control in Member States, the ECOWAS Commission shall adopt, through Implementing Regulations, an Inspection Manual and an Analysis Manual.

2. The Inspection Manual shall describe the modalities and procedures for fertilizer inspection in the Member States, including the following:

- a) The fertilizer sampling methods;
- b) The fertilizer inspection procedures;
- c) The required types of Performa to be used in fertilizer business and inspection.

3. The Analysis Manual shall describe the modalities and procedures for fertilizer analysis in the Member States, including the following:

- a) The methods for collection and preparation of the official fertilizer samples;
- b) The methods of analysis of the official fertilizer samples;
- c) The types of laboratory analysis required in fertilizer samples;
- d) The requirements and procedures for setting up of a fertilizer testing laboratory; and
- e) The required types of Performa to be used in fertilizer analysis.

CHAPTER IV: MANUFACTURING, IMPORTING AND SALE OF FERTILIZERS

Article 11 : Licensing for Agro-dealers

1. Any person who intends to carry on the business of fertilizer agro-dealer in any ECOWAS Member States shall hold a license granted by the competent licensing authority in the Member State concerned.

2. The agro-dealer license shall be issued for three years, renewable at the holder's request for similar duration. It may be suspended or withdrawn.

3. The conditions and modalities for obtaining this license, or for its renewal, suspension, and withdrawal shall be specified by each Member State, in accordance with the relevant provisions of the present Regulation.

Article 12 : Display of License

Every agro-dealer shall display his/her license at a conspicuous place in the business premises.

Article 13 : Operating as a Manufacturer or an Importer

The conditions and modalities for operating as a manufacturer or an importer of fertilizer in each Member State shall be governed by the regulations in force in the Member State concerned.

Article 14 : Setting-up of Plants

The setting-up of fertilizer manufacturing and/or packing facilities in each of the Member States shall be governed by the regulations in force in the States.

Article 15 : Import and Export Regimes

1. Without prejudice to community regulations on foreign trade, the import and export of fertilizers shall be subject to prior notification to the competent authority in the concerned country.
2. The importer or exporter shall provide all the information required on the forms designed for that purpose by the Member State concerned.

Article 16 : Warehouse Storage Conditions

Any warehouse used to store fertilizers intended for sale shall have adequate temperature and moisture levels as well as be tidy and well ventilated, in order to ensure their effective conservation.

Article 17 : Packaging Size

Fertilizer shall be generally marketed in sealed and labeled bags of 50 kg weight. However, smaller or larger sealed and labeled bags shall also be permitted.

Article 18 : Labeling

1. Specifications of fertilizers sold in the ECOWAS Member States shall be printed on the fertilizer container in clearly legible and conspicuous form.
2. In case of bulk production and shipments, these specifications in written or printed form shall accompany each delivery and be supplied to the purchaser at time of delivery.
3. The ECOWAS Commission shall determine through an Implementing Regulation the minimum information required on the label and the model of label

4. The ECOWAS Commission shall determine through an Implementing Regulation the minimum percentage of a primary nutrient, secondary nutrient, micronutrient that can be guaranteed and the forms under which these nutrients shall be guaranteed.

Article 19 : Submission of Bi-annual Report

1. Any manufacturer, importer or distributor of fertilizers shall submit bi-annual reports to the fertilizer regulatory authority in the Member States about the quantities produced or imported during the semester under consideration.
2. The Performa of the fertilizer bi-annual report shall be provided in the Inspection Manual.

CHAPTER V: QUALITY CONTROL OF FERTILIZERS

Article 20 : Purpose of Control

The quality control of fertilizer shall enable the official authority to ascertain that the fertilizers submitted to it:

- a) Have labels that are truthful;
- b) Meet the packaging and storage conditions; and
- c) Meet any other requirements defined in the present Regulation.

Article 21 : General Responsibility for Fertilizer Quality Control

1. Member States shall have the overall responsibility for quality control. To this end, they shall appoint Inspectors and other competent authority, and grant them the necessary powers as well as adequate resources to carry out their mission.
2. The Inspector shall have the power to ascertain any violation of the present Regulation, gather related evidence and to refer the matter to the authority vested with the power to sanction the observed violation in accordance with the procedures in force in Member States. Therefore, the Inspector is vested with the power to:
 - a) Inspect, during regular business hours, any premises where fertilizers are manufactured, stored or sold.
 - b) Inspect any person or any vehicle or any receptacle used to move fertilizers from one location to another.
 - c) Draw official samples of fertilizers for analysis.
 - d) Seize and detain any fertilizer in violation of the present Regulation as well as any equipment, package, document, means of transportation associated with such fertilizer.

These inspections, official sample withdrawal and analysis, and seizures are carried out in accordance with the modalities and procedures described in the Fertilizer Quality Control manuals referred to in Article 10 of the present Regulation.

3. The manufacturer, importer and distributor or his/her representative shall be present at the time of inspection.

Article 22 : Area of Control

Fertilizer quality control shall apply to all stages and venues of manufacturing, unloading, storage, sale or use.

Article 23 : Inspection and Analysis

1. Fertilizer inspection and analysis shall be carried out in accordance with the procedures prescribed in the manuals referred to in Article 10 of the present Regulation.
2. The ECOWAS Commission shall determine through an Implementing Regulation the maximum tolerance limits for bag weights and nutrient content in fertilizer products.
3. The ECOWAS Commission shall determine through an Implementing Regulation the maximum allowable heavy metal limits in fertilizer products.

Article 24 : Sample Collection

A Fertilizer Inspector shall collect official samples of fertilizer and submit them for analysis to designated laboratories in accordance with the procedures described in the fertilizer manuals referred to in Article 10 of the present Regulation.

CHAPTER VI: FEES

Article 25 : Type of Fees

1. The competent authority in each Member State shall prescribe a fee for:
 - a) Licensing for sale of fertilizers;
 - b) Renewal of license for sale of fertilizers;
 - c) Inspection of fertilizers;
 - d) Analysis of fertilizer samples.
2. The inspection fee shall be levied only at the point of entry and at the local manufacturing level for fertilizer offered for sale in a Member State.
3. The fee amounts, their payment modalities and the allocation of proceeds shall be determined by each Member State.

CHAPTER VII: VIOLATIONS AND PENALTIES

Article 26 : Violations

Any act of a fertilizer manufacturer, importer or distributor, or their representative that contributes to infringing any provision of the present Regulation shall constitute a violation. This includes among others:

- a) Nutrient deficiency beyond maximum tolerance limits;
- b) Short weight of fertilizer bags beyond maximum tolerance limit;
- c) Adulteration of any kind;

- d) Misbranding of any kind;
- e) Selling fertilizers without a license;
- f) Late submission of a license renewal 15 days after the expiry of due date;
- g) Non-payment of inspection fee beyond due date;
- h) Non-submission of bi-annual report beyond due date;
- i) Non compliance of any specific direction or instructions of Regulatory authority in relation to any provisions of the present Regulation;
- j) Obstruction to official discharge of control activity.

Article 27 : Adulteration

A fertilizer shall be deemed to be adulterated:

- a) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to plant life, when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use, which may be necessary to protect plant life, are not shown on the label;
- b) If it contains any heavy metal in excess of the maximum allowable limits; or
- c) If it contains unwanted crop seed or weed seed or some spurious material.

Article 28 : Misbranding

A fertilizer shall be deemed to be misbranded:

- a) If its label is false or misleading in any manner;
- b) If it is distributed under the name of another fertilizer product;
- c) If it is not labeled as required in the present Regulation.

Article 29 : Penalties for Violation

Member States shall take all appropriate measures to levy penalties for any violation of the provisions of the present Regulation.

Article 30 : Appeal

In each Member State, the manufacturers, importers and distributors shall have a right to appeal before the Appellate Authority against any decision taken by licensing authority regarding issue of license, renewal of the same, issue of duplicate license and against analysis report of a laboratory or any other grievances, under provisions of the present Regulation.

CHAPTER VIII: MISCELLANEOUS PROVISIONS

Article 31 : Confidentiality

1. The regulatory authority in each Member State shall treat any information supplied by an applicant for a license, biannual reports or any other information considered exclusive to that applicant as proprietary and confidential except when ordered to release such information from an application, by a court order, the Head of the State or the national parliament.

2. The regulatory authority shall release such information only after notifying the licensee.

Article 32 : Cooperation

In furtherance of its activities, the WACoFeC shall cooperate with other sub-regional institutions operating in the fertilizer sector. Specific Conventions shall define the modalities of such cooperation.

Article 33 : Relation with other Community Acts

Fertilizer quality control activities in the Member States shall be exercised in accordance with the applicable ECOWAS legal Acts.

CHAPTER IX: FINAL PROVISIONS

Article 34 : Entry into Force

The present Regulation shall come into force upon signature and shall be published in the Official Journal of the Community within thirty (30) days following signature. It shall also be published in Member States' Official Gazette within the same timeframe.

Article 35 : Interim Provision

The competent authority in each Member State shall give the manufacturers, importers and distributors up to six (6) months from the entry into force of the present Regulation to adjust to its requirements.

DONE AT ABIDJAN, THIS 2ND DAY OF DECEMBER 2012

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H.E. CHARLES KOFFI DIBY

CHAIRMAN

FOR COUNCIL