

**PROPOSED FERTILIZER ACT, 2003**

**ARRANGEMENT OF SECTIONS**

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*Spencer D. D. D.*

An Act to protect the fertilizer consumer and persons selling fertilizer in Malawi by assuring that all fertilizer sold, or offered for sale, in Malawi is in compliance with the provisions of this Act and any regulations enacted under this Act.

Short title

1. This Act may be cited as the Fertilizer Act of 2003.

Regulations

2. The Minister responsible for agriculture may make such regulations as may appear to him to be necessary or expedient for the purpose of giving full effect to the provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for --

- (a) the fertilizer regulatory system including the structure of a Malawi Fertilizer Regulatory Service; the structure and functions of a Malawi Fertilizer Advisory Committee; inspection, sampling, and analysis; registration requirements; labelling requirements; inspection fee requirements, collection procedures, and use; and the management of an inspection fund;
- (b) offences including plant nutrient deficiencies, misbranding, adulteration, short weight, obstruction of inspectors, and stop sale orders;
- (c) any environmental and public health issues of fertilizers;
- (d) plant nutrient guarantees;
- (e) investigational allowances and penalties; and
- (f) publication of deficiency reports and annual fertilizer tonnage reports.

Interpretation

3. In this Act, unless the context otherwise requires—

“fertilizer” means a substance containing one or more recognized plant nutrient(s) that is used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth;

“analyst” means a person appointed or designated as an analyst pursuant to regulations enacted under this Act;

“inspector” means a person appointed or designated as an inspector pursuant to regulations enacted under this Act;

“label” means (1) the display of all written, printed, or graphic matter upon the immediate container; (2) a statement accompanying a fertilizer; or (3) advertisements, brochures, posters, television, radio, or internet announcements used in promoting the sale of fertilizer;

“MOA” means the Ministry of Agriculture;

“Minister” means the Minister of Agriculture, or his appointed agent having charge and control of the execution of this Act and any regulations enacted under this Act;

“Malawi Fertilizer Regulatory Service (MFRS)” means the organization designated by the Minister and as prescribed by regulations under this Act to have charge and control of the execution of this Act and any regulations enacted under this Act;

“Commodity Team Leader” means the individual appointed by the Minister to direct the Malawi Fertilizer Regulatory Service;

“MFAC” means the Malawi Fertilizer Advisory Committee as prescribed by regulations under this Act;

“prescribed” means ordered, directed, set down rules by regulations;

“person” means individual, partnership, association, firm, or corporation;

“registration” means the process of approval for a person to sell fertilizer in Malawi;

“registrant” means a person who has obtained a certificate of registration pursuant to the provisions of this Act and as prescribed by regulations under this Act;

“sell” means to sell, offer for sale, expose for sale, or have in possession for sale and distribution;

“distribute” means to import, consign, produce, mix, or blend fertilizer or to offer for sale, sell, barter, or otherwise supply fertilizer; and

“Violation” means breaking of rules, laws of any provisions of this Act or any regulations enacted under this Act.

Administration  
and enforcement

4. The MOA is charged with the responsibility to sample, inspect, analyse fertilizers distributed within Malawi at any time and place, and to the extent deemed necessary, to determine whether the fertilizers are in compliance with this Act or any regulations enacted under this Act.

Registration

5. Any person who intends to sell or import for their own use fertilizer in Malawi shall do so under and in accordance with the terms and conditions of a certificate of registration as shall be prescribed by regulations under this Act.

Labels

6. (1) Any fertilizer in Malawi in containers shall have placed on, or affixed to, the container a label setting forth in clearly legible and conspicuous form all information as prescribed by regulations under this Act.

(2) In case of bulk shipments, the prescribed information in written or printed form shall accompany each delivery and be supplied to the purchaser at time of delivery.

Inspection  
fund

7. (1) It is hereby created within the MOA an Inspection Fund to finance the activities required to administer and enforce this Act and any regulations enacted under this Act.

(2) The inspection fund shall be financed from inspection fees, registration fees, and from the general government budget.

(3) The management procedures for these inspection funds shall be prescribed by regulations under this Act.

Inspection fees

8. (1) An Inspection Fee, the amount of which will be prescribed by regulations under this Act, shall be collected for every ton of fertilizer intended for sale in Malawi.

(2) This Inspection Fee shall be used for the payment of the costs of inspection, sampling, analysis, and other expenses necessary for the administration and enforcement of this Act and any regulations enacted under this Act.

Seizure,  
condemnation,  
and sales

9. Fertilizer not in compliance with this Act or any regulations enacted under this Act shall be subject to seizure on complaint of the Malawi Fertilizer Regulatory Service to a court of competent jurisdiction in the area in which the said fertilizer is located. In the event the court finds the said fertilizer to be in violation, and orders the condemnation of the said fertilizer, it shall be disposed of in any manner consistent with the quality of fertilizer and the regulations of Malawi provided that in no instance shall the disposition of the said fertilizer be ordered by the court without first giving the claimant an

opportunity to apply to the court for release of the said fertilizer or for permission to reprocess or re-label the said fertilizer to bring it into compliance with this Act or any regulations enacted under this Act.

Certificate  
Analyst

of 10. In any action, civil or criminal, in any court in Malawi, a laboratory report from the Analyst that states the results of any analysis, reported to be made pursuant to this Section, shall be *prima facie* evidence of all of the following:

- (a) that the official sample was taken according to the methods prescribed;
- (b) that the official sample was analysed by the methods prescribed; and
- (c) that the official sample was taken from the lot that is described in the inspection report.

Venue

11. A complaint or information in respect of any offence, under this Act or any regulations under this Act, may be heard, tried, or determined by a magistrate or a judge if the accused is a resident or carrying on business within the territorial jurisdiction of the magistrate or the judge, although the matter of the complaint or information did not arise in that territorial jurisdiction.

Violations

12. (1) It shall be a violation of this Act or any regulations enacted under this Act to:

a) distribute fertilizers which are not in compliance with the provisions of this Act and any regulations enacted under this Act; and

b) refuse to consent to registration procedures.

(2) Violations may include, but are not limited to, plant nutrient deficiencies, misbranding, adulteration, short weight, failure to report and paying inspection fees, and/or operating without a certificate of registration or with an expired certificate of registration. These violations ~~and~~ others shall be prescribed in regulations enacted under this Act.

Contravention of  
this Act and  
regulations

13. (1) Every person who contravenes any provision of this Act or any regulations enacted under this Act is guilty of an offence and liable—

- (a) to administrative conviction and a fine prescribed by regulations under this Act for plant nutrient deficiencies;
- (b) to administrative conviction and a fine not exceeding prescribed by regulations under this act for all other violations; or

(c) punishable under penal code if it is a criminal act.

(2) Contraventions shall be settled by legal procedures established by the civil code of Malawi except that fines for plant nutrient deficiencies may be paid as prescribed by regulations under this Act.

Offence by  
Employee or  
Agent

14. (1) In a prosecution for an offence of this Act or any regulations enacted under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence.

(2) Where any offence under this Act is committed by an employee, the director, partner, secretary, or other officer shall be deemed to be guilty of that offence. Provided that no person(s) shall be deemed to be guilty of an offence by virtue of this Section if that person(s) proves that the offence was committed without their knowledge or connivance and that they exercised all due diligence to prevent the commission of the offence having regard to all the circumstances.

Destructive  
ingredients or  
harmful  
substances

15. The sale of any fertilizer that contains destructive ingredients or properties harmful to plant growth, human health, or the environment when used according to the directions should be avoided. Specific health and environmental issues of fertilizers may be prescribed by regulations under this Act.

Contraventions

16. Any disposition that contravenes this Act is repealed.

Transitional  
provisions

17. After 6 months from the coming into force of this Act, certificates of registration for distributing fertilizers shall be issued in compliance with this Act.