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NATIONAL FERTILIZER QUALITY (CONTROL) ACT, 2019

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SCHEDULES

NATIONAL FERTILIZER QUALITY (CONTROL) ACT, 2019

ACT No. 23

AN ACT TO REPEAL THE NATIONAL FERTILIZER BOARD ACT, CAP. N39, LAWS OF THE FEDERAL NIGERIA, 2004, THE FERTILIZER (CONTROL) ACT CAP. F25, LAWS OF THE FEDERAL NIGERIA, 2004, AND ENACTS THE NATIONAL FERTILIZER QUALITY CONTROL, 2019 TO PROVIDE AN IMPROVED REGULATORY FRAMEWORK FOR THE MANUFACTURE, IMPORTATION, SALE AND DISTRIBUTION OF FERTILIZER IN NIGERIA; AND FOR RELATED MATTERS.

[15th day of October, 2019] Commence-
ment.

ENACTED by the National Assembly of the Federal Republic of Nigeria.

PART I—OBJECTIVES AND PERMIT OR CERTIFICATE OF REGISTRATION

1. The object of the Act is to safeguard the interest of—

Objectives
of the Act.

(a) the farmers against nutrient deficiencies, adulteration, misleading claims and short weight ; and

(b) fertilizer enterprises and contribute to the creation of an enabling environment for private sector investment in the fertilizer industry.

2.—(1) A person shall not carry any business—

Application
for permit ;
certificate of
registration.

(a) a manufacturer, blender or importer of fertilizer,

(b) a distributor of fertilizer,

in Nigeria without obtaining from the Prescribed Authority a permit or certificate of registration.

(2) An application for a permit or certificate of registration under subsection (1) shall be—

(a) made on such form and in such manner, and

(b) accompanied by a non-refundable fee,

as may be prescribed in regulations made under this Act.

3.—(1) Upon being satisfied that—

Issuance of
permit
certificate of
registration.

(a) on application for a permit or a certificate of registration has been made in the prescribed manner,

(b) the applicant is incorporated under the Companies and Allied Matters Act,

Cap. (20.
LFN. 2004

(c) all other requirements as may be specified by regulations made under this Act have been complied with,

the Prescribed Authority shall issue permits and certificates of registration to the applicant within 30 days of the receipt of an application.

(2) A permit or certificate of registration shall not be issued where within three years immediately preceding the date of the making of the application—

(a) a previous permit or certificate of registration is under suspension ;
or

(b) the applicant has been convicted of an offence under this Act or regulations made under this Act.

(3) Where a permit or certificate of registration is not issued within the period specified in subsection (1) the applicant shall be informed of the refusal and the reason.

Keeping of records prescribed authority.

4. The Prescribed Authority shall keep accurate records containing all the issued permits or certificates of registration.

Validity of permit certificate of registration.

5.—(1) The Prescribed Authority may suspend or cancel a permit or certificate of registration where—

(a) the grounds on which it was issued were false or incomplete ;

(b) the circumstances under which it was issued no longer exists ;

(c) any of the conditions or undertakings under which it was issued has been contravened ; or

(d) the standard or quality, safety or efficacy as specified on the application form has not been complied with.

(2) A permit or a certificate of registration shall, unless suspended or cancelled, be valid for a period of three years.

Fees.

6. The holder of a permit or certificate of registration shall pay—

(a) a renewal fee every three years ;

(b) inspection fee for fertilizer manufactured, blended, imported or distributed every year as may be specified by regulations ; and

(c) an appeal fee under section 7, if the need arises and other fees as may be specified by regulations made under this Act.

Cancellation or permit certificate of registration.

7.—(1) Where a permit or certificate of registration is cancelled, an appeal may be lodged with the Minister within 30 days of the cancellation.

(2) An appeal made under subsection (1) shall be in writing and be accompanied by such information as may be necessary to support the appeal.

(3) The Minister shall determine the appeal within 30 days of the receipt of the appeal and where—

(a) an appeal is not determined, within the stipulated time, or

(b) a person is dissatisfied with the decision of the Minister.

an appeal may be made to the Federal High Court.

PART II—PROHIBITED ACTIVITIES

8. A person shall not operate or carry on business as a manufacturer, blender, importer or distributor of fertilizer in Nigeria with an expired permit or certificate of registration.

Operating with an expired permit or certificate of registration.

9. A person shall not sell any fertilizer or fertilizer supplement that contains destructive ingredients or properties harmful to plant growth when used according to the accompanying instructions or in accordance with the instructions contained on the label of the package in which the fertilizer or the fertilizer supplement is contained.

Destructive ingredients harmful properties.

10. A person engaged in the sale, distribution, transportation of fertilizer or who keeps custody of fertilizer shall not, without lawful authority, divert or convert the fertilizer to his own use or the use of another person.

Conversion or diversion fertilizer.

11. A person shall not obstruct, hinder or prevent a duly authorized officer of the Prescribed Authority from carrying out the duties and responsibilities assigned to such officer under this Act or regulations made pursuant to this Act.

Obstruction of authorized officers.

12. A person shall not engage in the sale of unbranded or misbranded fertilizer.

Sale of unbranded or misbranded fertilizer.

PART III—INSPECTION AND ENFORCEMENT POWERS

13.—(1) An authorised officer of the Prescribed Authority or a person duly authorised by the Prescribed Authority shall—

Power of entry.

(a) enter and inspect any premises, building, vehicle, plant or equipment that is used in the manufacture, blending, importation, distribution, sale, storage or transportation of fertilizer ; and

(b) take official samples from the fertilizer found during an inspection for laboratory analysis for the purpose of ascertaining the quality of the fertilizer as specified in the First Schedule.

First Schedule.

(2) The quantity of samples to be taken under subsection (1) shall not exceed the quantity stipulated in regulations made under this Act.

(3) An Authorised Officer 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 a vehicle or receptacle used to move fertilizers from one location to another ; and

(c) draw official samples of fertilizers for analysis ;

seize and detain any fertilizer in violation of this Act and any equipment, package, document, or means of transportation associated with such fertilizer.

Display of permits certificates of registration.

14. A manufacturer, blender, importer or distributor of fertilizer shall conspicuously display his original permit or certificate of registration at his company or point of sale.

Enforcement.

15. Where the Minister has reasonable cause to believe that fertilizer is being sold in violation of any provision of this Act, the Minister shall issue a written order to stop the sale or disposal of the fertilizer until the Minister or court revokes the order or upon the expiration of the time stated in the order prohibiting the sale or distribution of the fertilizer

Allowable variation fertilizer weight.

16.—(1) The acceptable deviation of measured fertilizer bag weight from the value claimed on the label shall not be more than 500mg per 50kg bag or 1% across all bag weights.

(2) The Minister may by regulations make such modifications to the acceptable deviation of measured fertilizer by weight as considered necessary and prescribe appropriate sanctions for any deviation.

Labels. Second Schedule.

17. The minimum requirement for all fertilizer labels is as specified in the Second Schedule to this Act.

PART IV—OFFENCES AND PENALTIES

Offences relating to manufacture, importation and distribution of fertilizer. First Schedule.

18. A person who—

(a) manufactures, blends, imports or distributes fertilizer that is deficient in plant nutrient as specified in the First Schedule to this Act,

(b) manufactures, blends, imports or distributes unbranded or misbranded fertilizer,

(c) imports, exports or distributes adulterated fertilizer,

(d) offers for sale, fertilizer that is underweight,

(e) sells condemned fertilizer,

(f) diverts or converts fertilizer, or

(g) flouts a stop sale order,

commits an offence under this Act.

Penalty for offences under section 18.

19. A person who commits any of the offences listed in section 18 or regulations made under this Act is liable on conviction, to a term of imprisonment of at least five years without option of fine.

20.—(1) A person who contravenes the provisions of section 2 or 8 of this Act commits an offence and is liable on conviction—

(a) in the case of a manufacturer, blender or importer, to a fine of at least ₦5,000,000.00 but not exceeding ₦10,000,000.00; and

(b) in the case of a distributor of fertilizer to a fine of ₦500,000.00 for each day the offence persists.

Penalty for offence relating to manufacture, importation and distribution of fertilizer.

(2) Any director, employee or agent of the manufacturer, blender, importer or distributor who contravenes the provisions of sections 2 or 8 commits an offence unless the director, employee or agent proves that the offence was committed without his knowledge or connivance.

21. A person who contravenes the provisions of section 9 or 10 commits an offence and is liable on conviction to a fine of at least ₦1,000,000.00 or to a term of imprisonment of at least six months or both.

Penalty for use of destructive ingredient in conversion or diversion etc. of fertilizer.

22. A person who contravenes the provision of section 11 commits an offence and is liable on conviction to a fine of at least ₦200,000.00 or a term of imprisonment of at least six months or both.

Penalties for obstruction of authorised officers.

23. The court shall have jurisdiction to try offences under this Act.

Jurisdiction.

24.—(1) Where an offender is convicted of an offence under this Act, the court may order that the offender pays compensation in addition to any other punishment imposed by the court.

Compensation.

(2) In awarding compensation, the court shall consider awards aimed at remedying any injury caused to—

(a) the farmer or end user;

(b) the manufacturer or blender; and

(c) the affected community.

PART V—MISCELLANEOUS

25.—(1) The Minister may by regulations make provisions for carrying into effect the provisions of this Act and for its due administration, such as the appointment of a National Fertilizer Technical committee (in the Act referred to as "the NFTC"), as an advisory body to the prescribed authority.

Power to make regulations.

(2) Without prejudice to the generality of the powers conferred on the Minister, the regulations may provide for—

(a) the fertilizer regulatory system including inspection, sampling and analysis, registration requirements, labeling requirements, and inspection fee collection procedures ;

(b) offences and punishments including plant nutrient deficiencies, misbranding, adulteration under-weight, obstruction of inspectors, stop sale orders, seizure, condemnation and sale, authenticity of analytical results, and destructive ingredients ;

(c) environmental and public health issues relating to the use of fertilizer ;

(d) plant nutrient guarantees ;

(e) investigational allowances and penalties ;

(f) publication of deficiency reports and annual fertilizer tonnage reports ; and

(g) any other matter that is deemed necessary for the implementation of this Act.

Repeal of
Cap. N39,
LFN. 2004
and Cap F25
LFN.2004

26. The National Fertilizer Board Act Cap. N39, Laws of the Federation of Nigeria, 2004 and the Fertilizer (Control) Act, 1991, Cap. F25, Laws of the Federation of Nigeria, 2004, are repealed

Savings and
Transition.

27.—(1) Without prejudice to section 6 of the Interpretation Act, the repeal of the Acts specified in section 26, shall not affect anything done under those Acts.

(2) Every order, requirement, certificate, notice, direction, decision, authorisation, consent, application, request or thing made, issued, given or done under the Acts repealed shall, if in effect at the commencement of this Act, continue to be in effect as if made, issued, given or done under the corresponding provisions of this Act.

Interpretation.

28. In this Act—

“*adulterated fertilizer*” means fertilizer-

(a) containing any deleterious substance in sufficient amount as to affect or alter the true and original quality of the fertilizer when applied in accordance with direction, for use on the label or if adequate warning statements or directions for use which may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown upon the label ; or

(b) the composition of which falls below or differs from that which it is purported to possess by its label ;

“*applicant*” includes a body corporate or legal person ;

“*application*” means the request for an approval by an applicant to produce, import, blend or sell fertilizer in Nigeria ;

“*authorised officer*” means an officer of the Farm Inputs Supply Services Department of the Federal Ministry of Agriculture duly appointed or designated and notified under this Act 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 this Act.

“*brand*” means design, trade mark, or other specific designation of the manufacturer, blender or importer under which fertilizer is distributed ;

“*court*” includes Federal High Court, State High Court and Magistrate Court where applicable ;

“*director*” means the Director in charge of the Farm Inputs Supply Services Department in the Federal Ministry of Agriculture ;

“*director of a manufacturer, blender, importer or distributor*” means a principal officer of a company engaged in manufacturing, importing, blending or distribution of fertilizer ;

“*distribute*” means to consign, offer for sale, sell, barter, or supply fertilizer ;

“*employee*” means any person being paid to work for a fertilizer manufacturer, importer, blender, distributor or dealer ;

“*fertilizer*” means any organic or inorganic substance or mixture of substances containing one or more recognized plant nutrient that is used to improve plant nutrient content and is designed for use in promoting plant growth ;

“*holder of a permit or a certificate or registration*” means a person who has obtained a permit or a certificate of registration under the provisions of this Act and as prescribed by regulations made under this Act ;

“*label*” includes—

(a) all written, printed, marked symbols or graphic matter displayed upon the immediate container used in promoting the sale of fertilizers ;

(b) statements accompanying a fertilizer, supplement or package used in promoting the sale of fertilizer ; or

(c) advertisements, brochures, posters television, radio, or internet announcements used in promoting the sale of fertilizer ;

“*lawful authority*” means by the authority or any law, rule or regulation or power exercisable by a person pursuant to any public power to command or act in the name of the public ;

“*manufacture*” means produce or blend fertilizer ;

“*Minister*” means the Minister responsible for Agriculture ;

“*Ministry*” means the Ministry responsible for Agriculture ;

“*misbranding*” includes—

(a) the use of the name or trademark of another manufacturer in a way that is likely to deceive the public ;

(b) false declaration of the nutrient content of a fertilizer.

“*nutrient deficient*” means the analysis of any nutrient in the fertilizer is below the guarantee indicated on the bag by an amount exceeding the investigational allowance listed in the First Schedule, or if the overall index value of the fertilizer is below 98% ;

“*official sample*” means a sample of fertilizer taken for analysis and designated official by the prescribed authority ;

“*person*” means a corporate body, individual, partnership, association, firm, or corporation ;

“*Prescribed Authority*” means the Department responsible for fertilizer in the Federal Ministry of Agriculture ;

“*sell*” includes to trade, offer for sale, expose for sale, or have in possession for sale any quantity of fertilizer ;

“*short weight*” means deviation in weight of fertilizer content below the claimed weight on the label ;

“*supplement*” means any substance or mixture of substances other than fertilizer, that is manufactured, imported or sold for use in the improvement of the physical condition of soil or to aid plant growth or crop yield ;

“*unbranded*” means the absence of the name, logo, trademark or other means of identification of a fertilizer and its importer, blender or manufacturer ;

“*underweight*” means fertilizer content with short weight which exceeds the 0.6% of the weight claimed on the label ; and

“*violation*” means a breach of any provision of this Act or regulations made under this Act.

First
Schedule.

Citation.

29. This Act may be cited as the National Fertilizer Quality (Control) Act 2019.

SCHEDULES**FIRST SCHEDULE**Sections 13 (1) (b),
18 (a) and 28*Quality of Fertilizer*

(1) A fertilizer shall be deemed deficient if the analysis of an official sample for any primary plant nutrient is below the minimum guarantee by an amount exceeding the values in the following—

<i>Guarantee</i>	<i>Minimum</i>		<i>Available</i>	
	<i>Percent</i> (%)	<i>Nitrogen</i> (N) <i>Percent</i> (%)	<i>Phosphate</i> (P ₂ O ₃) <i>Percent</i> (%)	<i>Potash</i> (K ₂ O) <i>Percent</i> (%)
04 or less		0.49	0.67	0.41
05		0.51	0.67	0.43
06		0.52	0.67	0.47
07		0.54	0.68	0.53
08		0.55	0.65	0.60
09		0.57	0.68	0.65
10		0.58	0.69	0.70
12		0.61	0.60	0.79
14		0.63	0.70	0.87
16		0.67	0.70	0.94
18		0.70	0.71	1.01
20		0.73	0.72	1.08
22		0.75	0.72	1.15
24		0.78	0.73	1.21
26		0.81	0.73	1.27
28		0.83	0.74	1.33
30		0.86	0.75	1.39
32 or more		0.88	0.76	1.44

2. For guarantees not listed, under paragraph 1, appropriate value shall be calculated by interpolation.

3. A fertilizer shall also be deemed deficient if the actual value is less than ninety-eight (98%) percent of the guaranteed value in the case of straight (single nutrient) fertilizers. The actual value is calculated by comparing the value guaranteed with the value found.

4. Plant nutrient values will be calculated on the basis of the price documented in the inspection report or the inspected lot.

5. Secondary and micronutrients shall be deemed deficient if the analysis of an official sample is below the guarantee by an amount exceeding the values in the following table—

<i>Element</i>	<i>Percent</i>	<i>Investigational Allowance</i>	<i>Percent (%) Guarantee</i>
Calcium	0.2	+	5
Magnesium	0.2	+	5
Sulfur	0.2	+	5
Boron	0.003	+	15
Cobalt	0.0001	+	30
Molybdenum	0.0001	+	30
Chlorine	0.005	+	10
Copper	0.005	+	10
Iron	0.005	+	10
Manganese	0.005	·	10
Sodium	0.005	·	10
Zinc	0.005	+	10

The maximum allowance when calculated in accordance with the above shall be 1%.

SECOND SCHEDULE

Section 17

1. The following information in the form presented is the minimum required for all fertilizer labels—

(a) for packaged products this information shall either—

(i) appear on the front or back of the package and occupy at least one third of a side of the package ; or

(ii) be printed on a tag and attached to the package.

2.—(1) This information shall be in a readable and conspicuous form. For bulk products, this same information in written or printed form shall accompany delivery and be supplied to the purchaser at the time of delivery stating—

(a) brand (if applicable) ;

(b) grade, only when primary nutrients are claimed ;

(c) guaranteed analysis ;

total nitrogen (N)

_____ % ammoniacal nitrogen

_____ % nitrate nitrogen

_____ % urea nitrogen

_____ % water-insoluble nitrogen

_____ % other recognized and determinable forms of N

(d) net weight ;

(e) sources of nutrients, when shown on the label, shall be listed below the guaranteed analysis statement ; and

(f) name and address of the applicant.

(2) Where the chemical forms of Nitrogen are claimed or required, the form shall be guaranteed in the format shown in paragraph (c) of subsection (1) and the percentages of the individual forms shall add up to the total nitrogen percentage as follows—

available phosphate (P_2O_5) _____ %

soluble potassium (K_2O) _____ %

(other nutrients, elemental basis) _____ %

(3) If claims are made on the label other than nutrient guarantees, the Prescribed Authority may require that the applicant provide—

- (a) a testing program conducted by a reputable researcher acceptable to the Director that substantiates the claims made on the label ; and
- (b) a laboratory procedure acceptable to the Director for evaluating these claims.

EXPLANATORY MEMORANDUM

This Act repeals the National Fertilizer Board Act Cap. N39, Laws of the Federal Nigeria, 2004, the Fertilizer (Control) Act Cap. F25, Laws of the Federal Nigeria 2004, and enacts the National Fertilizer Quality Control, 2019 to provide an improved regulatory framework for the manufacture, importation, sale and distribution of fertilizer in Nigeria.

I certify, in accordance with Section 2 (1) of the Acts of Authentication Act, Cap. A2, Laws of the Federation of Nigeria 2004, that this is a true copy of the Bill passed by both Houses of the National Assembly.

MOHAMMED ATABA SANI-OMOLORI
Clerk to the National Assembly
19th Day of September, 2019.

SCHEDULE TO THE NATIONAL FERTILIZER QUALITY (CONTROL) BILL, 2019

(1) <i>Short Title of the Bill</i>	(2) <i>Long Title of the Bill</i>	(3) <i>Summary of the Contents of the Bill</i>	(4) <i>Date passed by the Senate</i>	(5) <i>Date passed by the House of Representatives</i>
National Fertilizer Quality (Control) Bill, 2019.	An Act to Repeal the National Fertilizer Board Act Cap. N39, Laws of the Federal Nigeria, 2004, the Fertilizer (Control) Act Cap. F25, Laws of the Federal Nigeria, 2004, and enacts the National Fertilizer Quality Control, 2019 to provide an improved regulatory framework for the manufacture, importation, sale and distribution of fertilizer in Nigeria; and for related matters.	This Bill repeals the National Fertilizer Board Act Cap. N39, Laws of the Federal Nigeria, 2004, the Fertilizer (Control) Act Cap. F25, Laws of the Federal Nigeria, 2004, and enacts the National Fertilizer Quality Control, 2019 to provide an improved regulatory framework for the manufacture, importation, sale and distribution of fertilizer in Nigeria.	20th March, 2019	21st May, 2019

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

I ASSENT.



MUHAMMAD ATABA SANI-OMOLORI
Clerk to the National Assembly
19th day of September, 2019

MUHAMMADU BUIYARI, GCFR
President of the Federal Republic of Nigeria
15th Day of October, 2019.