

A BILL

FOR

AN ACT TO REGULATE THE MANUFACTURE, IMPORTATION, DISTRIBUTION AND QUALITY CONTROL OF FERTILIZER IN NIGERIA AND FOR OTHER RELATED MATTERS, 2015

Sponsored by Hon. Gyang Istifanus Dung

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 PART I - PERMIT OR CERTIFICATE OF REGISTRATION

2 1. -(1) A person shall not carry on business as a manufacturer or
3 importer of fertilizer in Nigeria without obtaining a permit from the
4 Prescribed Authority.

Application for
permit or
certificate of
registration

5 (2) A person shall not carry on business as a distributor of fertilizer
6 in Nigeria without obtaining from the Prescribed Authority a certificate of
7 registration.

8 (3) An application for a permit or a certificate of registration under
9 subsection (1) or (2) of this section shall be made on such form and in such
10 manner as may be specified by the Prescribed Authority.

11 (4) An application for permit or certificate of registration shall be
12 accompanied by a non-refundable fee as may be prescribed in regulations
13 made pursuant to this Act.

14 2. -(1) Upon being satisfied that:

Issuance of
permit or
certificate of
registration

15 (a) an application for a permit or a certificate of registration has
16 been made in the prescribed manner;

17 (b) the applicant is incorporated under the Companies and Allied
18 Matters Act, Cap C4 Laws of the Federation of Nigeria, 2004;

19 (c) all other requirements as may be specified by regulations made
20 pursuant to this Act have been complied with;

21 the Prescribed Authority shall issue a permit or a certificate of registration to

1 the applicant within thirty days of the receipt of an application,

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

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

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

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

Keeping of
records by
Prescribed
Authority

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

Validity of permit
or certificate of
registration

13 4. -(1) The Prescribed Authority may suspend or cancel a permit or a
14 certificate of registration where:

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

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

17 (c) any of the conditions or undertaking under which it was issued has
18 been contravened; or:

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

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

Fees

23 5. The holder of a permit, or a certificate registration shall pay:

24 (a) a renewal of permit, or a certificate of registration fee every three
25 years;

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

28 (c) an appeal fee pursuant to section 6 of this Act, if the need arises and
29 other fees as may be specified by regulations.

1	6. -(1) Where a permit or a certificate of registration is cancelled,	Cancellation of permit or certificate of registration
2	an appeal may be lodged with the Minister within thirty days of the	
3	cancellation.	
4	(2) An appeal made under sub section (1) of this section shall be in	
5	writing and be accompanied by such information as may be necessary to	
6	support the appeal.	
7	(3) The 'Minister shall determine the appeal within thirty days of	
8	the receipt of the appeal and where the:	
9	(a) appeal is not determined within the stipulated time; or	
10	(b) person is dissatisfied with the decision of the Minister, an	
11	appeal may be made to the Federal High Court.	
12	PART II - PROHIBITED ACTIVITIES	
13	7. A person shall not operate or carry on business as a	Operating with and expired permit or certificate of registration
14	manufacturer, importer or distributor of fertilizer in Nigeria with an expired	
15	permit or certificate of registration.	
16	8. A person shall not sell any fertilizer or fertilizer supplement that	Destructive ingredients or harmful properties
17	contains destructive ingredients or properties harmful to plant growth when	
18	used according to the accompanying instructions or in accordance with the	
19	instructions contained on the label of the package in which the fertilizer or	
20	the fertilizer supplement is contained.	
21	9. A person engaged in the sale, distribution, transportation of	Conversion or diversion of fertilizer
22	fertilizer or who keeps custody of fertilizer shall not, without lawful	
23	authority, divert or convert the fertilizer -to his own use or the use of another	
24	person.	
25	10. It is unlawful for a person to obstruct, hinder or prevent a duly	Obstruction of authorized officers
26	authorized officer of the Prescribed Authority from carrying out the duties	
27	and responsibilities assigned to such officer under this Act or regulations	
28	made pursuant to this Act.	
29	11. A person shall not engage in the sale of unbranded or	Sale of unbranded or misbranded fertilizer
30	misbranded fertilizer.	

1 **PART III - INSPECTION AND ENFORCEMENT POWERS**

Power of entry

2 **12. -(1) An authorized officer of the Prescribed Authority or a person**
3 **duly authorized by the Prescribed Authority shall:**

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

7 **(b) take samples from the fertilizer found during an inspection for**
8 **laboratory analysis for the purpose of ascertaining the quality of the fertilizer as**
9 **specified in Schedule 1.**

10 **(Schedule 1)**

11 **(2) The quantity of samples to be taken pursuant to subsection (1) of**
12 **this section shall not exceed the quantity stipulated in regulations made**
13 **pursuant to this Act.**

Display of
permits or
certificates of
registration

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

Enforcement

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

Allowable
variation in
fertilizer weight

22 **15. -(1) The acceptable deviation of measured fertilizer bag weight**
23 **from the value claimed on the label shall not be more than 300mg per 50kg bag**
24 **or 0.6% across all bag weights.**

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

Labels

28 **16. The minimum requirement for all fertilizer labels is as specified in**
29 **Schedule 2 to this Act.**

1 *(Schedule 2)*

2 PART IV - OFFENCES AND PENALTIES

3 17. A person who:

4 (a) manufactures, imports or distributes fertilizer that is deficient in
5 plant nutrient as specified in Schedule 1 to this Act;

Offences relating
to manufacture,
importation and
distribution of
fertilizer, etc.

6 *(Schedule 1)*

7 (b) manufactures, imports or distributes un-branded or mis-
8 branded fertilizer;

9 (c) imports, exports or distributes adulterated fertilizer;

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

11 (e) sells condemned fertilizer,

12 (f) diverts or converts fertilizer;

13 (g) flouts a stop sale order; or

14 commits an offence under this Act and liable as specified under section 18 of
15 this Act.

16 18. -(1) A person who commits any of the offences listed in section
17 17 of this Act of regulations made pursuant to this Act shall on conviction be
18 liable to a term of imprisonment of not less than 7 years without option of
19 fine.

Penalty for
offences relating
to manufacture,
importation and
distribution of
fertilizer

20 (2) A person who commits an offence not provided for under
21 section 17 of this Act shall on conviction be liable to a term of imprisonment
22 of not less than 7 years without option of fine.

23 19.-(1) A person who contravenes the provisions of section 1 or 7 of
24 this Act commits an offence under this Act and shall on conviction, in the
25 case of a manufacture or importer, pay a fine of not less than ten million
26 Naira or five million Naira in the case of a distributor of fertilizer and further
27 liable to pay a sum of five hundred thousand Naira for each day the offence
28 persists.

Penalty for
offences relating
to operating
without a licence
or carrying on
business using an
expired permit or
licence

29 (2) Any director, employee or agent of the manufacturer, importer
30 or distributor who contravenes the provisions of section 1 or 7 of this Act

1 commits an offence under this Act unless the director, employee or agent,
2 proves that the offence was committed without his knowledge or connivance.

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

3 20. A person who contravenes the provisions of sections 8 or 9 of this
4 Act commits an offence and liable on conviction to a fine of not less than one
5 million Naira or to a term of imprisonment of not less than six months or to both
6 fine and imprisonment.

Penalty for
obstruction of
authorized
officers

7 21. A person who contravenes the provision of section 10 of this Act
8 shall on conviction be liable to a fine of not less than two hundred thousand
9 Naira or a term of imprisonment of not more than six months or both fine and
10 imprisonment.

Jurisdiction

11 22. The Federal High Court shall have jurisdiction to try offences
12 under this Act.

13 PART V - MISCELLANEOUS

Power to make
Regulations

14 23. -(1) The Minister may by regulations make provisions for
15 carrying into effect the provisions of this Act and for its due administration.

16 (2) Without prejudice to the generality of the foregoing power, the
17 regulations may provide for:

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

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

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

27 (d) plant nutrient guarantees;

28 (e) investigational allowances and penalties;

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

1 (g) any other matter that may be deemed necessary for the
2 implementation of this Act.

3 24. The following Acts are repealed:

4 (a) the National Fertilizer Board Act, 1972 Cap N39, LFN 2004;

5 (b) the Fertilizer (Control) Act, 1991, Cap F25, LFN 2004.

Repeal of Cap
N39 and Cap
F25 LFN 2004

6 25. -(1) Without prejudice to section 6 of the Interpretation Act, the
7 repeal of the enactments specified in section 24 of this Act, shall not affect
8 anything done under or pursuant to those enactments.

Savings and
Transition

9 (2) Every order, requirement, certificate, notice, direction,
10 decision, authorization, consent, application, request or thing made, issued,
11 given or done under the enactments repealed by this Act shall, if in force at
12 the commencement of this Act, continue to be in force and have effect as if
13 made, issued, given or done under the corresponding provisions of this Act.

14 26. In this Act:

Interpretation

15 "the Act" means the National Fertilizer Quality (Control) Act, 2012;

16 "adulterated fertilizer" means fertilizer:

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

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

24 (c) containing unwanted crop material; "applicant" includes a body
25 corporate or legal person;

26 "application" means the request for an approval by an applicant to produce,
27 import, blend or sell fertilizer in Nigeria;

28 "authorized officer" means an officer of the Fertilizer Department of the
29 Federal Ministry of Agriculture duly authorized to carry out an inspection;

30 "brand" means design, trade mark, or other specific designation of the

- 1 Manufacturer or importer under which fertilizer is distributed;
- 2 "director" means the Director in charge of the fertilizer Department in the
3 Federal Ministry of Agriculture;
- 4 "director of .a .manufacturer, importer or distributor" means a principal officer
5 of a company engaged in manufacturing, importing or distribution of fertilizer;
- 6 "distribute" means to consign, offer for sale, sell, barter, or otherwise supply
7 fertilizer;
- 8 "employee" means any person being paid to work for a fertilizer manufacturer,
9 importer, blender, distributor or dealer;
- 10 "fertilizer" means any organic or in organic substance or mixture of substances
11 containing one or more recognized plant nutrient that is used to improve plant
12 nutrient content and is designed for use in promoting plant growth;
- 13 "holder of a permit or a certificate of registration" means a person who has
14 obtained a permit or a certificate of registration pursuant to the provisions of
15 this Act and as prescribed by regulations made under this Act;
- 16 "inspector" means a person appointed or designated as an inspector by the
17 prescribed authority pursuant to any regulations made under this Act;
- 18 "label" includes:
- 19 (a) all written, printed, marked symbols or graphic matter displayed
20 upon the immediate container used in promoting the sale of fertilizer;
- 21 (b) statements accompanying a fertilizer, supplement or package used
22 in promoting the sale of fertilizer; or
- 23 (c) advertisements, brochures, posters, television, radio, or internet
24 announcement used in promoting the sale of fertilizer;
- 25 "lawful authority" means by the authority of any law, rule or regulation or
26 power exercisable by a person pursuant to any public power to command or act
27 in the name of the public;.
- 28 "manufacture" means produce or blend fertilizer;
- 29 "Minister" means the Minister responsible for Agriculture; "misbranding"
30 includes:

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

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

4 "nutrient deficiency" means a situation or an instance where the amount of
5 plant nutrient obtained or found by analysis of an official sample of a
6 fertilizer is:

7 (a) below the guaranteed value by an amount exceeding the limit
8 listed in Schedule 1 to this Act; or

9 (b) less than 98% of the guaranteed value;

10 (Schedule 1)

11 "official sample" means a sample of fertilizer taken for analysis and
12 designated official by the prescribed authority;

13 "person" means a corporate body, individual, partnership, association, firm,
14 or corporation;

15 "Prescribed Authority" means the Department responsible for fertilizer in
16 the Federal Ministry of Agriculture;

17 "sell" includes to trade, offer for sale, expose for sale, or have in position for
18 sale any quantity of fertilizer;

19 "short weight" means deviation in weight of fertilizer content below the
20 claimed weight on the label;

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

24 "unbranded" means the absence of the name, logo, trademark or other means
25 of identification of a fertilizer and its importer or manufacturer;

26 "underweight" means fertilizer content with short weight which exceeds the
27 0.6% of the weight claimed on the label;

28 "violation" means a breach of any provision of this Act or regulations made
29 under this Act.

Short title 1 **27. This Act may be cited as the National Fertilizer Quality (Control)**
2 **Bill, 2015.**

SCHEDULE 1

[Sections 11 and 15]

Investigational Allowances and Actual Values

1. -(a) 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 schedule.

<u>Minimum Guarantee Percent (%)</u>	<u>Nitrogen (N) Percent (%)</u>	<u>Available (P₂O₅) Percent (%)</u>	<u>Phosphate</u>	<u>Potash (K₂O) Percent (%)</u>
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	0.68		0.60
09	0.57	0.68		0.65
10	0.58	0.69		0.70
12	0.61	0.69		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

(b) For guarantees not listed, calculate the appropriate value by interpolation.

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

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

4. 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:

Investigational Allowance

<u>Element</u>	<u>Percent (%)</u>	<u>Percent (%) of Guarantee</u>
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%

SCHEDULE 2

[Section 14]

1. The following information in the format 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 (K₂O) _____ %
 (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 NOTE

(This note does not form part of the above Bill but is intended to explain its purport)

This Act repeals the National Fertilizer Board Act Cap N39 LFN 2004, the Fertilizer (Control) Act Cap F25 LFN 2004, and enacts the National Fertilizer Quality Control and other Related Matters Act, 2014, to provide an improved regulatory framework for the manufacture, importation, sale and distribution of fertilizer in Nigeria.