

NATIONAL FERTILIZER BILL, 2016

ARRANGEMENT OF SECTIONS

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# 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 Senator T.A. Orji*

[ ] Commencement

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

PART I - PERMIT OR CERTIFICATE OF REGISTRATION

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

Application for permit or certificate of registration

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

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

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

2. -(1) Upon being satisfied that:

Issuance of permit or certificate of registration

(a) an 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 C4 Laws of the Federation of Nigeria, 2004;

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

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  
 2 an appeal may be lodged with the Minister within thirty days of the permit or certificate  
 3 cancellation. of registration

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  
 14 manufacturer, importer or distributor of fertilizer in Nigeria with an expired permit or certificate of registration  
 15 permit or certificate of registration.

16           8. A person shall not sell any fertilizer or fertilizer supplement that Destructive  
 17 contains destructive ingredients or properties harmful to plant growth when ingredients or  
 18 used according to the accompanying instructions or in accordance with the harmful properties  
 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  
 22 fertilizer or who keeps custody of fertilizer shall not, without lawful diversion of  
 23 authority, divert or convert the fertilizer to his own use or the use of another fertilizer  
 24 person.

25           10. It is unlawful for a person to obstruct, hinder or prevent a duly Obstruction of  
 26 authorized officer of the Prescribed Authority from carrying out the duties authorized officers  
 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  
 30 misbranded fertilizer. or misbranded  
 fertilizer



## PART III - INSPECTION AND ENFORCEMENT POWERS

Power of entry

1 PART III - INSPECTION AND ENFORCEMENT POWERS  
 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 sub-section (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.

(Schedule 2)

PART IV - OFFENCES AND PENALTIES

17. A person who:

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

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

(Schedule 1)

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

(g) flouts a stop sale order; or

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

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

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

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

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

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

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





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;

Repeal of Cap  
N39 and Cap  
F25 LFN 2004

5 (b) the Fertilizer (Control) Act, 1991, 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 lizer

- 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 inorganic 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, 2016.

SCHEDULE I

[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.

| Minimum Guarantee Percent (%) | Nitrogen (N) Percent (%) | Available Phosphate (P <sub>2</sub> O <sub>5</sub> ) Percent (%) | Potash (K <sub>2</sub> O) Percent (%) |
|-------------------------------|--------------------------|--|---------------------------------------|
| 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                            | 0.85                     | 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 (K<sub>2</sub>O) \_\_\_\_\_ %  
 (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.