

THE FERTILIZERS ACT, 2009

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THE UNITED REPUBLIC OF TANZANIA



NO. 9 OF 2009

I ASSENT,

John Pombe Beke
.....
President

12 May 2009
.....

An Act to make provisions for regulation of manufacturing, importation, exportation, sale and utilization of agricultural fertilizers, to repeal the Fertilizers and Animal Food stuffs Act, Cap. 378 and to provide for other related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

1. This Act may be cited as the Fertilizers Act, 2009 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires-
“advertisement” includes any statement, picture, design or device-

Interpretation

- (i) published in any newspaper or other publication in general circulation to the public; or
- (ii) contained in any publication or any other matter in any form which is distributed to members of the public through the public or brought to the public in any other manner;

- “Analyst” means a person appointed or designated as an Analyst pursuant to section 33;
- “Appeals Board” means an Appeal Board referred to under section 36(3);
- “Authority” means Tanzania Fertilizer Regulatory Authority as established under section 3;
- “brand” means a representation of kind, any distinctive mark or trade name, other than a name or grade required by this Act, applied by the fertilizer dealer to a fertilizer or fertilizer supplement to distinguish it from any other fertilizer or fertilizer supplement;
- “Board” means the Board of the Authority as established under section 5;
- “bulk fertilizer” means a fertilizer or fertilizer supplement distributed in large quantity in non packaged form;
- “Director” means the Executive Director of the Tanzania Fertilizer Regulatory Authority appointed under section 7;
- “discharge” means emission or exposure of fertilizer or fertilizer supplement into environment;
- “distribute” means import, export, consign, manufacture, blend, sale, offer for sale, and any other form of exchange or supply of fertilizer or fertilizer supplements;
- “environment” includes the physical factors of the surroundings of human beings, including air, land, water, climate, sound, light, odour, taste, micro-organism, the biological factors of animals and plants, cultural resources and the social economic factor of aesthetics and includes both the natural and the built environment and the way they interact;
- “fertilizer” means any substance or mixture of substances, containing one or more of nitrogen, phosphorus, potassium or other elements represented for use as a source of plant nutrients;
- “fertilizer business” means a business dealing in import, export, manufacture, blending, distribute or sale of fertilizer , or fertilizer supplements;
- “fertilizer dealer” means any person operating a business that is engaged in the manufacturing, handling, storage, importation, exportation, distribution or sale of fertilizer or fertilizer supplements;
- “fertilizer supplement” means any substance or mixture of substances, other than a fertilizer, that is manufactured, sold or represented for use in the improvement of the physical condition of soils or to aid plant growth or crop yields;

- “grade” means available plant nutrient contents in the fertilizer expressed in terms of percentage;
- “guaranteed analysis” means the minimum percentage of plant nutrients in a fertilizer or fertilizer supplements;
- “Inspector” means a person appointed or designated as an Inspector pursuant to section 33;
- “label” includes any legend, description, mark, symbol or design applied or attached to, included in, belonging to or accompanying any fertilizer or fertilizer supplement or package;
- “labelling” means any written, printed, or graphic matter accompanying any fertilizer or fertilizer supplements, or advertisements, brochure or poster;
- “manufacture” means operations involved in the production, preparation, processing, compounding, formulating, filling, transformation, packaging, re-packing and labelling of fertilizer or fertilizer supplements;
- “manufacturer” means a person who produces, prepares, processes, compounds, formulates, fills, transforms, packages, re-packs and labels a fertilizer or fertilizer supplements;
- “Minister” means the Minister responsible for agriculture;
- “premises” include any land, building or any part structure, vehicle, basement and vessel, or receptacle whatsoever for the purpose of manufacturing, selling, transporting or in any way connected with the handling or storage of fertilizer or fertilizer supplements;
- “package” includes a sack, bag, or any other container in which fertilizer or fertilizer supplements is placed or packed;
- “sell” includes agree to sell, or to offer, advertise, keep, expose, transmit, convey, deliver or manufacture for sale or to exchange or to dispose of to any person in any manner for any consideration whatever, or to transmit, convey or deliver in pursuance sale, exchange or disposal as aforesaid; and 'sale' has a corresponding meaning;
- “sample” means a representative amount of fertilizer or fertilizer supplements drawn randomly for analysis;
- “sterilizing plant” means a plant used for sterilizing of bones or other substances derived from cattle, members of the horse family, sheep, goats, pigs, poultry or ostriches, of any age, or from any vertebrate or invertebrate specified by the Minister from time to time by notice in the Gazette;
- “standard” means conditions governing specification, safety, description, sampling, testing method, code of practice or any other quality aspect relating to or connected with fertilizer manufacturing or marketing or

any component, raw material, machinery, instrument, apparatus or other thing whatever used, directly or indirectly in the manufacturing or marketing of fertilizer supplements as may be recognized under the Standards Act;

“sub-standard fertilizer” means any fertilizer which does not conform to the standard provided for under in this Act;

“tampered package” means a package whose quality, quantity and content has been altered ;

“tampered sample” means a sample of fertilizer or fertilizer supplement which has been changed, altered, varied or destroyed with an intention to defraud, cheat or misrepresent the truth.

PART II

ADMINISTRATION

Establishment and functions of the Tanzania Fertilizer Regulatory Authority

3.–(1) There is established an authority to be known as the Tanzania Fertilizer Regulatory Authority or in its acronym "TFRA".

(2) The Authority established under subsection (1) shall be a body corporate and shall-

- (a) have capacity to sue and be sued on its own name;
- (b) have perpetual succession and a common seal which shall be authenticated by the signature of the Director or in his absence any person acting on his behalf authorized by him in writing;
- (c) be capable of entering into contracts in its own name; and
- (d) be capable of purchasing or acquiring any movable and immovable property.

Functions of the Authority

4.–(1) The Authority shall be the regulatory body in the fertilizers industry and shall in particular -

- (a) regulate all matters relating to quality of fertilizers, fertilizer supplements and sterilizing plants;
- (b) register all fertilizer and fertilizer supplements dealers and their premises;
- (c) license fertilizer dealers;
- (d) issue permits for importation and exportation of fertilizer and fertilizers supplements;
- (e) maintain a register of fertilizers, fertilizer supplements and sterilizing plants;
- (f) maintain and publish periodically a register of fertilizer dealers;

- (g) implement ratified international conventions relating to fertilizers;
- (h) regulate and control the import, production, transportation, dealing, storage, and disposal of fertilizer or fertilizer supplements;
- (i) collect, maintain and publish information related to fertilizers and fertilizer supplement;
- (j) make guidelines on the sound management and effective control of fertilizers and fertilizer supplements;
- (k) in collaboration with Local Authorities, conduct public educational campaigns on the sound application and management of fertilizers and fertilizer supplements;
- (l) conduct regular training of stakeholders on fertilizer matters;
- (m) register inspectors and analysts;
- (n) inspect or cause to be inspected fertilizer or fertilizer supplements for quality assurance;
- (o) implement policies, strategies and programmes relating to fertilizer industry development;
- (p) provide technical advice to the government and other institutions on all matters relating to the fertilizer and fertilizer supplements management and control;
- (q) conduct or cause to be conducted research relating to fertilizers and fertilizer supplements;
- (r) foster co-operation between the institute and other institutions or organizations and stakeholders;
- (s) collaborate with the national and international organizations on all matters relating to the fertilizer and fertilizer supplement;
- (t) implement specific and general directives of the Authority;
- (u) regulate fertilizer price based on the appropriate methods as shall be set out in the regulations;
- (v) carry out any other functions as may be conferred upon it in the performance of its functions under this Act; and
- (w) ensure that it adheres with the Environmental Management Act.

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(2) The Authority shall not engage directly or indirectly in any trade or business connected with the production, processing, importation, sale or distribution of any fertilizer or fertilizer supplement.

Establishment, powers and duties of the Board

5.—(1) There is established a Board of the Authority in which powers to carry out functions and management of the business and affairs of the Authority shall be vested.

(2) In particular and without prejudice to the generality of subsection (1), the Board shall have power to-

- (a) administer the properties of the Authority, both movable and immovable;
- (b) administer the funds and other assets of the Authority;
- (c) signify the acts of the Authority by use of the official seal;
- (d) on behalf of the Authority to receive, fees, donations, grant or other moneys;
- (e) advise the Minister-
 - (i) on all matters relating to fertilizers;
 - (ii) on implementation and amendment of the fertilizer legislation;
 - (iii) on approved types of fertilizers or fertilizer supplements;
- (f) give general advice on co-ordination, registration and regulation the fertilizer industry;
- (g) make recommendation to the Minister on the types of fertilizers to be used in accordance with appropriate soil properties;
- (h) formulate policy guidelines relating to the fertilizer industry and advise the government on appropriate policies and legal environment which promote local industries engaged in fertilizer manufacturing;
- (i) advise the Authority on licences to be issued under this Act;
- (j) authenticate the acts of the Authority by use of the official seal;
- (k) subject to the provisions of relevant public service legislation, to appoint any officers of the Agency whom the Board may consider necessary; and
- (l) do all acts and things as may be provided for in this Act or as may, in the opinion of the Board, be necessary or expedient for the proper discharge of the functions of the Authority.

Composition, functions and procedures of the Board

6.—(1) The composition, functions and procedures of the Board shall be as set out in the Schedule.

(2) For the proper discharge of its functions under this Act, the Board shall establish a Technical Committee consisting of such number

of competent persons in fertilizer matters as it may deem necessary.

(3) The Minister may, by Notice in the *Gazette* amend, vary or replace all or any provision of the Schedule.

7.—(1) There shall be the Executive Director of the Authority appointed by the President on the advice of the Minister from among persons who possess relevant qualifications and competence to manage efficiently and effectively the affairs of the Authority.

Appoint-
ment of
the
Executive
Director

(2) The Director shall be the head of the Authority and shall be responsible for-

- (a) the day to day operations of the Authority;
- (b) the proper management of its funds, property and business; and
- (c) personnel management, development, organization, control and discipline of the employees of the Authority .

(3) The Director may delegate to any person some of the powers, duties and functions conferred or imposed upon him by this Act.

PART III

REGISTRATION AND ISSUANCE OF LICENCES

(a) *Registration of fertilizer and sterilizing plant*

8.—(1) Every fertilizer or fertilizer supplements or sterilizing plant shall be registered by the Director in accordance with the provisions of this Act.

Registra-
tion of
fertilizers
and
sterilizing
plants

(2) The Director shall, prior to registration of any fertilizer, fertilizer supplement or sterilizing plant, ensure that all required conditions for registration as set out in this Act are complied with.

9.—(1) Any application for registration under this Act shall be submitted to the Director in the form and manner prescribed in the regulations.

Applica-
tion for
registra-
tion

(2) The Director may, after receiving an application for registration grant registration and issue registration certificate if he is satisfied that the required conditions are complied with.

(3) The Director shall-

- (a) establish and maintain a list of all registered fertilizers, fertilizer supplements and sterilizing plants; and
- (b) subject to the recommendation of the Board, publish the list of registered fertilizers, fertilizer supplements and sterilizing plants in the *Gazette* and any other journals or newspapers widely circulated in Tanzania.

(4) Any change of particulars of a registered fertilizer, fertilizer supplement or sterilizing plant shall be notified to the Director for re-registration.

(5) Any person who contravenes the provision of sub section (4) commits an offence and upon conviction shall be liable to a fine not less than one million or to imprisonment for a term of not less than six months or to both.

Cancellation and suspension of registration

10.—(1) The Director may cancel or suspend the registration of fertilizer or fertilizer supplement granted under this Act if he is satisfied that—

- (a) the registrant of such fertilizer or fertilizer supplements has contravened or failed to comply with the terms or conditions for registration as provided for in this Act;
- (b) such fertilizer or fertilizer supplements is not of the composition and efficacy specified in the application for registration pursuant to the conditions set out in the regulations, thereof, does not possess the chemical, physical and other properties so specified and does not comply with any requirements that may be prescribed;
- (c) the practices followed and facilities available at or in respect of the manufacturing plant are not suitable for the manufacturing of the fertilizer or fertilizer supplement concerned;
- (d) the person assigned or engaged to manage the business does not have sufficient knowledge of the relevant provisions of this Act or of the practices to be followed in the operation of such undertaking as specified in the regulations;
- (e) it is contrary to the public interest that such fertilizer or fertilizer supplement remain registered;

- (f) incorrect or misleading advertisement is used in connection with such fertilizer or fertilizer supplement.

(2) The Director may cancel the registration of sterilizing plant if he is satisfied that-

- (a) the registrant of such sterilizing plant has contravened or failed to comply with the terms or conditions for registration as provided for in this Act;
- (b) a person has contravened or failed to comply with the terms and conditions to which the registration concerned is subject;
- (c) the sterilizing plant does not comply with the prescribed conditions or is otherwise not effectively equipped for the sterilization of the substances referred to in the definition of sterilizing plant; and
- (d) it is contrary to the public interest that the sterilizing plant shall remain registered.

11.-(1) Prior to cancellation or suspension of any registration of fertilizer, fertilizer supplement or sterilizing plant under this Act, the Director shall require in writing the registrant to show cause within thirty days as to why the registration should not be cancelled.

Procedure for cancellation or suspension of registration

(2) Where the registrant under subsection (1) fails to reply within the period stated in the notice without good cause, the Director shall proceed to cancel or as the case may be to suspend the registration in respect of the registrant.

12.-(1) The person to whom a certificate of registration was issued in terms of section 9 shall produce or cause that certificate of registration or a copy thereof to be available for inspection by the Director or any authorized officer at all times at the establishment where fertilizer or fertilizer supplement is manufactured or sold.

Availability, lapse and return of certificate of registration

(2) The registration of any fertilizer, fertilizer supplement or sterilizing plant and the certificate of registration issued in respect of such registration shall lapse if-

- (a) the person to whom that certificate of registration has been issued, ceases to manufacture or sell the fertilizer or fertilizer supplement in question; or
- (b) the establishment in question is no longer used for the manufacture of such fertilizer or fertilizer supplement.

(3) Where the registration of any fertilizer or fertilizer supplement has lapsed in terms of subsection (2), or has been cancelled in terms of section 11, the certificate of registration in question shall, within the prescribed period, be returned to the Director by the person to whom it was issued.

(b) Licensing of fertilizer dealers

Restriction for dealing with fertilizer and sterilizing plant

13.-(1) A person shall not deal with fertilizer business or operation of sterilizing plant unless that person is licenced to that effect pursuant to the provisions of this Act.

(2) Any application for licence in terms of subsection (1) shall be submitted to the Board in the form and manner as may be prescribed in the regulations.

(3) Subject to sub-section (1), an application for licence shall contain among others-

- (a) the name and physical address of the applicant;
- (b) details of the intended business; and
- (c) qualifications of personnel under whose direct supervision the activities intended to be carried out.

(4) Upon being satisfied with the compliance with the conditions for application, the Board shall issue a licence to the applicant and may attach such terms and conditions as may be prescribed.

(5) The Board may appoint any person to be a licensing authority for the purposes of this Act and shall when making any appointment, specify the area for which that person is to be the licensing authority.

Suspension and cancellation of licences

14.-(1) A licence issued under section 13 may be suspended for a definite or indefinite period if the Director is satisfied that the licensee has-

- (a) been convicted of any offence against the provisions of this Act or regulations;
- (b) become bankrupt or, if a company, has gone into liquidation;
- (c) failed to comply with any conditions of the licence.

(2) Any licensee whose licence has been suspended or cancelled under this section, shall be required to surrender the licence to the Director within such time as may be prescribed.

(3) Any person who contravenes the provision of sub-section (2), commits an offence and upon conviction is liable to a fine not less than one million shillings or to imprisonment for a term of not less than six months or to both.

15. The Director shall maintain in the form prescribed in the regulations, a register of all licences issued under this Act and of any restorations, suspensions and cancellations of such licences.

Maintenance of register

16. A licence issued under section 13 shall be valid only in respect of the business for which it was issued and shall not be transferable to any other person or business.

Licences not transferable

17. Any holder of a licence issued under this Act whose licence has been lost or destroyed may, on proof of loss and payment of prescribed fee, obtain a duplicate licence from the Director.

Replacement of lost licences

PART IV

MANUFACTURING, IMPORTATION AND TRADING IN FERTILIZER OR FERTILIZER SUPPLEMENTS

18.—(1) A person shall not manufacture for sale, sell, supply or store any fertilizer or fertilizer supplement except in a sterilizing plant or premises registered under this Act for that purpose.

Registration of premises

(2) Every application for registration or renewal of registration of premises shall be made to the Director in the form and manner as may be prescribed in the regulations.

(3) The Director or any person on his behalf shall-

- (a) register the premises if he is satisfied that the prescribed requirements for which the premises is intended have been complied with;
- (b) keep registers in the prescribed form of all premises registered under this section; and
- (c) for good and sufficient reasons refuse to register, or cause to be deleted from the register, any premises which is or has

become unsuitable for the purposes for which it was registered.

(4) Any change of ownership of the business or any other change of a registered premises shall be notified to the Director.

(5) Any person who contravenes or fails to comply with this section, commits an offence and upon conviction shall be liable to a fine not less than one million or to imprisonment of the terms of not less than six months or to both.

Sale of
fertilizer
or
fertilizer
supple-
ments

19.-(1) A person shall not sell any fertilizer or fertilizer supplements unless-

- (a) it is registered under this Act under the name or mark under which it is so sold;
- (b) it is, subject to paragraph (c), packed in such manner and mass or volume as may be prescribed;
- (c) the container in which it is sold, complies with the prescribed requirements and is sealed and labeled or marked in such manner as may be prescribed or, if it is not sold in a container, it is accompanied by the invoice referred to in subsection (2); and
- (d) it is of the composition and efficacy specified in the application for registration thereof, possesses all chemical, physical and other properties so specified, and complies with the prescribed requirements.

(2) A person shall not for reward or in the course of any industry, trade or business use, or recommend the use of, any fertilizer or fertilizer supplement for a purpose or in a manner other than that specified on the label on a container thereof or described on such container.

(3) Any person who sells any fertilizer or fertilizer supplement not in a container shall give to the purchaser at the time of delivery or send to him at the time of dispatch an invoice setting forth such particulars in respect of such fertilizer or fertilizer supplement.

20.—(1) A person shall not manufacture or sell any fertilizer or fertilizer supplement containing bone or any other substance derived from an animal carcass, unless such bone or substance has-

Manufacture and sale of fertilizers containing certain substances
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- (a) been sterilized in such manner as may be prescribed; or
 - (b) subject to the provisions of this Act, been imported in terms of a permit issued under the Animal Diseases Act.
- (2) A person commits an offence against this Act, if that person-
- (a) manufactures for sale, sells, offers or exposes for sale, or has in his possession for sale, as a fertilizer or fertilizer supplement or any article containing or any other substance derived from an animal carcass which he knows or has reason to believe has neither been sterilised in a sterilising plant registered or licensed under the provisions of this Act nor imported into Mainland Tanzania in accordance with permit issued under this Act; or
 - (b) sells, offers, or exposes for sale, otherwise than to the holder of a licence issued under this Act or his agent, any bone or other substance derived from an animal carcass, which he knows or has reason to believe will be used in the manufacture of a fertilizer or fertilizer supplement and has neither been sterilised in a sterilising plant registered or licensed under the provisions of this Act nor imported into Mainland Tanzania in accordance with this Act.

21.—(1) A person shall not import any fertilizer or fertilizer supplement in Tanzania unless-

Importation of fertilizer and fertilizer supplements

- (a) such fertilizer or fertilizer supplements is registered in terms of this Act;
- (b) is of the composition and efficacy specified in the application for registration thereof;
- (c) possesses all chemical, physical and other properties so specified and complies with the requirements prescribed in respect thereof; and
- (d) is packed in a sealed container which is marked or labeled in the prescribed manner with the prescribed particulars;
- (e) in the case of a fertilizer or fertilizer supplements containing bone or any other substance derived from the carcass of an

animal, a permit referred to in section 20 has been issued in respect thereof.

(2) Without prejudice to the provisions of subsection (1) and (2), the Minister may, upon consultation with the Board and on such conditions as he may determine, in writing, permit the import of any consignment of any fertilizer or fertilizer supplements which does not comply with the requirements referred to in subsection (1)(a), (b) and (d).

(3) Fertilizers or fertilizer supplements imported shall-

- (a) only be imported through a prescribed port or place;
- (b) if the Director directs that a sample thereof be taken, not be removed from any such port or place without the written consent of the Director;
- (c) if the Director thus directs, be made available for examination and the taking of a sample at any such port or place in the prescribed manner; and
- (d) where a sample thereof has thus been taken, not be sold in Tanzania except on the written consent of the Director and subject to the conditions specified therein.

(4) The provisions of section 32 relating to samples shall, *mutatis mutandis*, apply with reference to a sample taken in terms of this section.

(5) Where any fertilizer or fertilizer supplement has been imported contrary to the provisions of this section, such fertilizer or fertilizer supplement shall-

- (a) at the expense of such importer, be removed from Tanzania within such period as the Director may determine; or
- (b) if such importer fails to remove such fertilizer or fertilizer supplement in terms of paragraph (c), be forfeited to the Government, and be either destroyed or otherwise disposed of in the manner prescribed in the regulations.

Director to keep records

22. The Director shall keep records of all licenced or permitted fertilizer dealers in a manner prescribed in the regulations.

23.-(1) Any person who manufactures fertilizer or fertilizer supplement shall use locally available raw materials.

Use of local raw materials for fertilizer manufacturing

(2) Without prejudice to subsection (1), the Board may permit importation of raw material for manufacture of fertilizer or fertilizer supplements if such material is not available in Tanzania or by the available evidence to the Board that the material cannot be cheaply procured locally.

24. Every fertilizer dealer shall keep within his premises detailed records of fertilizer or fertilizer supplements manufactured, imported, exported, stored or sold as the case may be and such records shall be provided to the Director, Analyst, Inspector or any other officer assigned by the Director whenever requested.

Fertilizer dealers to keep records

25.-(1) A person shall not import or export fertilizer or fertilizer supplement unless he possesses permit issued by the Director to that effect.

Permit for importation and exportation of fertilizer and fertilizer supplements

(2) The Board shall, prior to issuing of any permit, satisfy itself that the provisions of the Environmental Management Act are adhered to, and that—

- (a) the fertilizer or fertilizer supplements to be imported or exported is registered under this Act;
- (b) the applicant has the certificates of registration for fertilizer business; and
- (c) in case of exportation, the applicant has complied with relevant legislation and policies dealing with fertilizer export.

26.-(1) The Director may suspend or cancel the permit issued under section 25 if he is satisfied that—

Cancellation of permit

- (a) the permit has been obtained by misrepresentation at the time of application;
 - (b) conditions subject to which a permit was issued have not been complied with;
 - (c) the permit has been transferred to any other person;
 - (d) the fertilizer dealer has contravened the provisions of this Act ;
 - (e) the business licence of the fertilizer dealer has been cancelled;
- or

(f) registration of such fertilizer or fertilizer supplement is cancelled.

(2) The Director shall, prior to cancellation of permit under this section, require in writing the holder of such permit to show cause as to why the permit should not be cancelled.

(3) Where the permit holder under subsection (2) fails to reply to the Director within the period as specified in the notice, the Director shall have power to proceed with cancellation of such permit without further notice.

Condi-
tions
for granting
licence or
permits

27. The Director shall, before granting permit in terms of section 25, ensure that the standards and conditions for dealing with fertilizer business as provided for in this Act and Regulations have been complied with.

Prohi-
bition for
dealing
with
unregistered
and substandard
fertilizer

28. A person shall not manufacture, import, export, sell, distribute any fertilizer or fertilizer supplements unless he is registered pursuant to this Act and conform to the standards prescribed in the regulations

Packag-
ing and
labeling

29. Any fertilizer dealer shall ensure that fertilizer or fertilizer supplements is packed and labeled in the manner prescribed in the regulations.

Adulter-
ated
fertilizer

30.— (1) A person shall not sell or distribute an adulterated or substandard fertilizer or fertilizer supplements.

(2) A fertilizer or fertilizer supplements shall be deemed to be adulterated if-

- (a) it contains any deleterious or harmful substance in an amount that renders injurious to plant life, animals, humans, aquatic life, soil, air, water or environment in general when applied in accordance with directions for use provided for in the Regulations;
- (b) adequate warning statements or directions for use which may be necessary to protect plant life, animals, humans, aquatic life, soil, air, water or environment in general are not shown on the label or shipping bills and certificate of analysis, as the case may be;

- (c) its composition falls below or differs from that which is purported to possess by its labeling or shipping bills and certificate of analysis as the case may be ; or
- (d) it contains foreign material other than fertilizer or fertilizer supplement.

(3) Any fertilizer whose standard does not conform to the requirement of this Act shall be seized and disposed of at the cost of the fertilizer dealer in accordance with procedures prescribed in the Regulations made under this Act or other written law.

31.-(1) A person shall not use, store, discharge, release, place or cause to be placed any fertilizer or fertilizer supplement in a manner likely to cause any adverse effect to human health or the environment.

Restriction on storage and application of fertilizer

(2) Any person who applies fertilizer or fertilizer supplements shall ensure compliance with the standards prescribed in the Regulations or guidelines.

PART V

FERTILIZER INSPECTION, SAMPLING AND ANALYSIS

32. The Director shall ensure fertilizer or fertilizer supplement is inspected, sampled and analyzed for quality control in accordance with the procedures prescribed in the regulations.

Fertilizer quality control

33.-(1) The Minister shall, by notice published in the *Gazette*, appoint or designate qualified persons to be of fertilizers Inspectors or Analysts who shall exercise powers in accordance with the provisions of this Act.

Appointment of Inspectors and Analysts

(2) Any person appointed or designated as Inspector or Analyst under sub-section (1) shall be given a certificate, identity card or a document as a proof of his appointment or designation which shall be produced in the exercise of his powers under this Act.

(3) Any Inspector or Analyst shall not engage in any business connected with the manufacturing, importation or sale of fertilizer or fertilizer supplements.

(4) The Minister may, in consultation with the Board and by order published in the Gazette, appoint any competent institution or individual to perform any fertilizer regulatory function specified under this Act and may in the same order define duties and powers of such institutions or individual.

(5) Any Inspector or Analyst appointed under subsection (1) shall be a designated officer accountable to the Director for the administration of this Act.

Powers of
Inspectors

34.—(1) An Inspector appointed under section 33 may, at any reasonable time—

- (a) enter upon and examine any place, premises, vessel or vehicle in respect of which he has reason to believe that on or in it there is manufactured, processed, prepared, graded, classified, packed, marked, labelled, held, bottled, removed, transported, exhibited, sold or used any fertilizer or fertilizer supplements;
- (b) examine or test any such fertilizer or fertilizer supplements or any ingredient thereof;
- (c) examine all books and documents on or in any place, premises or vehicle referred to in paragraph (a) in respect of which he has reasonable grounds for believing that they relate to any fertilizer or fertilizer supplements or any ingredient thereof, and make copies of or extracts from such books or documents;
- (d) examine any operations or processes carried out at any place or premises in connection with the manufacturing, processing, treatment, preparation, grading, classification, packing, marking, labeling, holding, bottling, removal, transport, exhibition, selling or use of any fertilizer or fertilizer supplements, and demand from the person in charge of such operations or processes, or the owner of or the person having the custody of any fertilizer or fertilizer supplements;
- (e) demand from the owner or any person having the custody of any book or document referred to in paragraph (c) an explanation relating to any record or entry therein;
- (f) seize any book, document, fertilizer or fertilizer supplements which may furnish proof of an offence in terms of this Act, or any quantity of any fertilizer or fertilizer supplements in respect of which there is reason to believe that any such offence has been committed, and remove from or leave on or in the place,

premises or vehicle in question, any book, document, fertilizer or fertilizer supplements, or any quantity thereof, which has so been seized, and may in his discretion place on such book, document, fertilizer or fertilizer supplements, or the container thereof, such identification mark or seal as he may deem necessary; and

- (g) take samples or cause samples to be taken of any fertilizer or fertilizer supplements or an ingredient thereof, and open any container which contains or is suspected to contain anything used or intended for use in the manufacture, processing, treatment, preparation, grading, classification, packing, marking, labeling, holding, bottling, removal, transport, exhibition or sale of any fertilizer or fertilizer supplements and examine, analyze, grade or classify such samples, or cause such samples to be examined, analyzed, graded or classified.

(2) The owner or person in charge of any premises described under this section and any person found therein shall give to an Inspector the reasonable assistance to enable the Inspector to carry out his duties and functions under this Act.

(3) Any Inspector may if he has reasonable grounds to believe that any of the provisions of this Act is violated, seize or issue a stop sale order by means of or in relation to which the violation was committed.

(4) Any fertilizer, fertilizer supplement or package seized pursuant to sub-section (3) shall be detained by an Inspector at any place by attaching a detention tag or mark in the manner prescribed in the regulations.

(5) Any person shall not move any fertilizer or package detained by the Inspector unless with a written consent of the Inspector indicating that the seized fertilizer, fertilizer supplements or package shall be placed in a safer or more convenient location.

(6) The fertilizer, fertilizer supplement or package under detention or stop sale order shall not be released unless the Inspector is satisfied that all conditions for release as provided for in this Act have been complied with.

(7) The Inspector shall, before inspection of the premises, take reasonable steps to ensure that the owner or his authorised representative is present while carrying out inspection under this Act.

Analysis and restriction for tempering with sample

35. An Analyst who receives a sample taken under the provisions of this Act shall as soon as is practicable analyze such sample, in accordance with the procedures for sampling and conducting analysis as may be specified in the regulations.

PART VI

APPEALS

Appeals against the decision of Inspector, Analyst or Director

36.-(1) Any person aggrieved by the decision of the Inspector, Analyst or Director regarding implementation of the provisions of this Act may, within thirty days upon receipt of such decision, appeal to the Minister.

(2) Every appeal made under this Act shall be in writing, stating the grounds under which it is made.

(3) The Minister shall refer the appeal filed in terms of sub-section (1) to the Appeals Board for consideration and determination.

Appointment of members of the Appeals Board

37.-(1) The Minister shall appoint members of the Appeals Board which shall be composed of the following-

- (a) one person designated as a Chairman on account of his knowledge of law; and
- (b) two persons who, in the opinion of the Minister, command sufficient knowledge regarding the matters which will probably be in issue when the appeal is considered.

(2) The Appeals Board may after hearing and considering the appeal-

- (a) confirm, set aside or vary the relevant decision of the Director;
- (b) order the Director to execute the decision of the Appeals Board in connection therewith.

(3) Procedures for appeals under this Act shall be as may be prescribed in the regulations.

(4) A member of the Appeals Board may be paid such allowances as the Minister may determine.

PART VII
FINANCIAL PROVISIONS

Funds and
resources
of the
Authority

38. The funds and resources of the Authority shall consist of-
- (a) such sums of moneys as may be appropriated by the Parliament;
 - (b) any moneys raised by way of loans, grants made within and outside the United Republic;
 - (c) any moneys raised by way of fee or charges imposed under the provisions of this Act;
 - (d) any loan or subsidy granted to the Authority by the Government or any other person;
 - (e) such sums of money or property, which may become payable to or vested in the Authority under this Act or any other written law.

Accounts
and audit

39.—(1) The Authority shall cause to be kept and maintained in accordance with the International Accounting Standards, proper books of accounts with respect to-

- (a) all sums of moneys received and expended;
- (b) all the assets and liabilities of the Authority; and
- (c) all the income and expenditure statement of the Authority.

(2) Within six months of the close of every financial year, the accounts including the balance sheet of the Authority shall be audited by the Controller and Auditor General in accordance with the provisions of the Public Audit Act.

Act
No. 11
of 2008

(3) Every audited balance sheet shall be placed before a meeting of the Board of and, if adopted, it shall be endorsed with a certificate to that effect.

(4) As soon as the accounts of the Authority have been audited, and in any case not later than six months after the close of the financial year, the Board shall submit to the Minister a copy of the audited statement of accounts together with a copy of the report on that statement made by the auditors.

(5) The Minister shall, as soon as practicable after receiving the report, lay before the National Assembly the audited accounts of the Authority together with the auditor's report, if any, on the accounts.

PART VIII
GENERAL OFFENCES AND PENALTIES

Offences
and
penalties

- 40.-(1) Any person who-
- (a) deals in with unregistered fertilizer or fertilizer supplement;
 - (b) deals with fertilizer or fertilizer supplement without being so registered;
 - (c) obstruct the Director, Inspector, Analysts or any officer responsible for the enforcement of this Act;
 - (d) operates a sterilizing plant which is not registered under this Act;
 - (e) willfully delays or obstruct, threatens, or assaults an Inspector or Analyst to perform his duties under this Act;
 - (f) willfully refuses to provide any information required by the Inspector, Analyst or any other official engaged in carrying out the duties and functions under this Act and the regulations made thereto;
 - (g) sells any fertilizer or fertilizer supplement upon the container of which a false or misleading statement in connection with such contents is printed or written;
 - (h) makes any false or misleading statement in connection with any fertilizer or fertilizer supplement;
 - (i) willfully destructs or tempers with any information required for proper administration of this Act or regulations made thereto;
 - (j) fails to comply with an order issued under this Act;
 - (k) tampers with any sample taken in terms of this Act, or with anything seized in terms of this Act;
 - (l) sells any fertilizer or fertilizer supplements which is not of the kind, nature, composition, strength, potency or quality described or represented when so sold;
 - (m) having been duly summoned to appear before the Board, fails without lawful excuse so to appear;

- (n) having appeared as a witness before the Board, refuses without lawful excuse to be sworn or to make affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;
- (o) not being qualified as Inspector or Analyst purports to act in that behalf; or
- (p) makes use, in connection with any fertilizer or fertilizer supplement, of any certificate, invoice or other document issued in respect of any other fertilizer or fertilizer supplement which is no longer valid,
commits an offence.

(2) Any person who commits an offence against the provisions of this Act or of any subsidiary legislation made under this Act shall, except as otherwise provided, be liable on conviction to a fine not less than five million shillings and not more than ten million shillings or to imprisonment for a term of not less than six months and not exceeding three years or to both.

(3) The court may in addition to any penalty imposed under this Act, order any article in respect of which such offence is committed or used for the commission of such offence to be forfeited.

41. Where an offence is committed and due to that commission a person has suffered a direct damage or loss of his property, the court may, in addition to the penalty provided under this Act, order the offender to compensate the person who suffered loss or damage.

Compensation for damage.

42.—(1) Any act which if done by an individual would be an offence against this Act or any regulations or orders made under this Act shall, if done by a body corporate, be an offence by a Director and Secretary thereof unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have been exercised having regard to the nature of his functions in that capacity and to all circumstances.

Offences by body corporate or firm

(2) Where an offence against this Act or any regulations or orders made under this Act has been committed by a partner in a firm, any person who at the time of the commission of the offence was a partner

in that firm, or was purporting to act in that capacity, shall be deemed to have committed that offence, unless he proves that the offence was committed without his consent or connivance and he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Evidence
and
procedure

43.-(1) Any document purporting to be a report under the hand of an Analyst appointed under the provisions of this Act, may be admitted in evidence in any civil or criminal proceedings concerned with the article sampled and shall be sufficient evidence of the facts stated therein unless the defendant or person charged requires that the Analyst be called as a witness.

(2) Any sample which has been taken in the prescribed manner by an Inspector or Analyst shall, unless the contrary is proved, be deemed to be of the same composition, some qualities, and except in so far as the taking of the sample may cause it to be otherwise, possess in all other respects the same properties as the whole from which it was drawn.

(3) In any criminal proceedings under this Act-

- (a) any quantity of a fertilizer or fertilizer supplement in or upon any premises, place, vessel or vehicle at the time a sample thereof is taken pursuant to the provisions of this Act shall, unless the contrary be proved, be deemed to be of the same composition to same degree of efficacy and possess in all other respects the same properties as that sample;
- (b) any person who is proved to have tampered with any sample shall be deemed to have acted with fraudulent intent unless the contrary is proved;
- (c) a certificate stating the result of an analysis or test carried out in pursuance of the provisions of this Act and purported to be signed by the analyst who carried out such analysis or test shall be accepted as prima facie proof of the facts stated therein;
- (d) any statement or entry contained in any book or document kept by any manufacturer, importer or owner of a fertilizer or fertilizer supplements, or by the manager, agent or employee of such person, or found upon or in any premises occupied

by, or any vehicle used in the business of such person, shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by such person, or by any manager, agent or employee of such person in the course of his work as manager, or in the course of his agency or employment.

44. In any proceedings for an offence under this Act, the burden to prove that the order, direction or requirement, the contravention of which constitutes the offence with which the accused is charged, shall not lie on the accused, and in the case of an order, direction or requirement not published in the *Gazette*, that he had no notice of the contents of the order, direction, as the case may be required, shall lie on the accused person.

Burden of proof

PART IX
MISCELLANEOUS PROVISIONS

45. Without prejudice to the provisions of Section 28A of the Penal Code, no matter done by any person exercising or purporting to exercise any function under this Act or under any subsidiary legislation made under this Act shall, if done in good faith in the execution or purported execution of his functions under any of the provisions of this Act or such subsidiary legislation, subject any such person as aforesaid to any action, liability, claim or demand whatsoever.

Indemnity
Cap. 16

46. The provisions of this Act shall not apply to a sale, offer or exposure for sale, where a bailiff, court broker or other officer in the course of executing any order or process of a court makes such sale.

Exempted sales

47. If any person, by failing to comply with this Act or acting contrary to this Act or subsidiary legislation made under this Act, causes an Inspector or Analyst to incur an expense that would not otherwise have been incurred, that person shall pay to the Government of the United Republic the full amount of that expense reasonably incurred, and that amount shall be recoverable from him as a debt due to the Government.

Recoverable costs

48. Any removal, reshipment or destruction of any fertilizer, fertilizer supplement, package or article to which this Act applies, shall be carried out at the expenses of the owner, occupier or any person entrusted with

Expenses for destruction of fertilizers and fertilizer supplements

the charge of the premises where such fertilizer, fertilizer supplement, package or article is found.

Notifica-
tion of
order
and
directions

49. Where any order or direction made or given by the Minister, or the Director under this Act is not required to be published in the Gazette, the order or direction shall be brought to the notice of persons affected or likely to be affected thereby in a manner determined by the Minister.

Exemp-
tion

50. Notwithstanding of section 8 the Minister may, after consultation with the Board and by Order published in the Gazette prescribe types of fertilizer or fertilizer supplements which may be exempted from requirements of this Act or Regulations made under this Act.

Power to
make
Regula-
tions

51.— (1) The Minister shall, at the appropriate time, make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of sub-section (1) the Minister may make regulations-

- (a) prescribing the manner in which fertilizers, fertilizer supplements, or sterilizing plants may be registered, the manner in which any such registration may be renewed and the information to be furnished and the fees to be paid with any application for registration and renewal of registration;
- (b) prescribing the processes by which fertilizers, fertilizer supplement, or substances used in the manufacture of fertilizers or fertilizer supplements shall be sterilized, and the manner of inspection of sterilizing plants;
- (c) prescribing the requirements with which any establishment shall comply, the practices which shall be followed in the operation of any undertaking at any establishment, the facilities which shall be available at any establishment, and the records to be kept and the information to be furnished in respect of any establishment and the operation of any undertaking at any establishment;
- (d) prescribing the records to be kept and the returns to be rendered in respect of registered premises and sterilizing plants;
- (e) for preventing the adulteration of fertilizers or fertilizer supplements or the tampering with containers thereof;

- (f) prescribing the methods to be employed, the fees to be paid, and the certificates to be issued in respect of the examination, analysis or test of samples taken under this Act;
- (g) regulating the manner in which fertilizers or fertilizer supplements intended for sale may be handled and stored;
- (h) regulating the manner in which fertilizers or fertilizer supplements intended for sale shall be packed, labeled, branded, marked and sealed;
- (i) prescribing the limits within which any fertilizer or fertilizer supplement may be deficient in any of its ingredients and the proportion in which any preservative, antiseptic or other constituent may be present therein;
- (j) regulating the equipment and appliances to be used in the licensed sterilizing plant and their mode of operation;
- (k) prescribing the manner in which samples may be taken and dealt with;
- (l) prescribing the method by which analysis is to be carried out by Analysts under the provisions of this Act;
- (m) for preventing the use of false or misleading statements in advertisements of fertilizers or fertilizer supplements;
- (n) prescribing minimum qualification and any additional duties of Inspectors and Analysts;
- (o) respecting the detention of anything seized or placed under stop sale under the provisions of this Act and for the preservation or safeguarding anything so detained;
- (p) prescribing the particulars to be set forth in any invoice to be furnished under this Act;
- (q) requiring any person who has in his possession or under his control any fertilizer and fertilizer supplement to keep records relating thereto in the form and manner prescribed, and to render returns in the form and manner and at the times prescribed;
- (r) prescribing the composition, efficacy, chemical, physical or other property required in respect of any substance in order that it may be imported, sold or registered as a fertilizer or fertilizer supplement;
- (s) prescribing procedures for appeal under this Act;
- (t) respecting the disposition of anything forfeited to the government under this Act;

- (u) prescribing Forms to be used for any application under this Act ;
- (v) the procedures for testing fertilizers and fertilizer supplement;
- (w) prescribing anything which is by this Act required or authorized to be prescribed.

Transi-
tional
provision

52. Any fertilizer dealer shall, within twelve months after coming into force of this Act, apply to the Director for the registration of the fertilizer or fertilizer supplements manufactured, ordered, imported, sold or stored.

Repeal
Cap. 378

53. The Fertilizers and Animal Foodstuffs Act is repealed.

SCHEDULE

[Made under Section 6(1)]

COMPOSITION AND PROCEDURES OF THE BOARD

Composi-
tion of the
Board

1. -(1) The Board shall consist of the Chairperson to be appointed by the President and ten other members to be appointed by the Minister as follows -

- (a) a representative from the directorate responsible for fertilizer development in the Ministry;
- (b) a representative from the directorate responsible for land use management in the Ministry;
- (c) one representative from association of fertilizer dealers to be appointed by the Minister on recommendation from respective association;
- (d) two representatives from farmers association or co-operative societies be appointed by the Minister on recommendation from respective association;
- (e) a representative from the national institute responsible for standards;
- (f) a representative from the national institute responsible for environmental matters;
- (g) a representative from national institute responsible for radiation;
- (h) a representative from higher learning institution dealing with soil science and production;
- (i) a representative from the national institution responsible for research on soil fertility.

(2) The Director shall be the Secretary to the Board.

(3) All meeting of the Board shall be chaired by the Chairperson, on his absence, the members shall choose from its members a chairperson for meeting.

(4) The Board may co-opt any other person to attend its meeting as deemed appropriate for the purposes of rendering technical advice and such co-opted person shall have no right to vote.

2. A member of the Board other than an *ex-officio* member shall hold an office for a period not exceeding three years or for such shorter periods as may be specified in his instrument of appointment.

Tenure
of office
of members
of the
Board

3.-(1) At least half of the members of the Board shall constitute a quorum at any meeting and all decisions to be arrived at by the meeting of the Board shall be decided by a simple majority of the members present.

Members
Quorum

(2) Each member of the Board shall have one vote and in the event of equal votes, the Chairperson of the meeting shall have a second or casting vote in addition to his deliberative vote.

4. Minutes in proper form of each meeting of the Board shall be properly kept and confirmed by the Board at its next sitting and signed by the Chairperson of the meeting.

Minutes of
Board's
meetings

5. The Board shall have power to regulate its own procedures in respect of meetings and proper conduct of its business.

Procedures

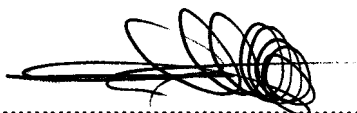
6. The Board shall cause to be recorded and kept minutes of all business conducted or transacted at its meetings, and the minutes of each meeting of the Board shall be read and confirmed, or amended, at the next meeting of the Board and signed by the Chairperson and Secretary.

Minutes
of the
meetings

7. Members of the Board shall be paid such allowances as may be approved by the Minister responsible for Finance from time to time.

Allowances
of the
members

Passed in the National Assembly on the 23rd April, 2009.



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Clerk of the National Assembly