

# FERTILIZER BILL

**To provide for the regulation of fertilizers, for the regulation of raw material used in the manufacturing of fertilizers, for the licencing of facilities used for the manufacturing of fertilizers, for the appointment of a Registrar to administer the Act, for the appointment of advisory committees, and for advisers, assignees, auditors, and inspectors to assist the Registrar in the exercise of his or her powers in the regulation, compliance monitoring and enforcement of this Act, and for matters connected therewith.**

## **PREAMBLE**

### **RECOGNISING—**

- the need to ensure the manufacturing of safe and good quality fertilizers suitable for plant production;
- the critical role that fertilizer plays in food safety, human and environmental health, nutrition and food security;
- the need for a traceability system within the fertilizer industry;

### **AND IN ORDER TO—**

- protect the consumers and users of fertilizers;
- disseminate an efficient and effective traceability system;
- ensure compliance with food safety, human and environmental health requirements,

**BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: —**

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## **CHAPTER ONE DEFINITIONS**

### **Definitions**

1. In this Act, unless the context indicates otherwise –

“advertisement” means any written, illustrated, visual or other descriptive material or oral statement, communication, representation or reference distributed to members of the public or brought to their attention in any other manner and which is intended to promote the sale of fertilizer, or encourage the use thereof or draw attention to the nature, properties, advantages or uses thereof, and “advertise” has a corresponding meaning;

“adviser” means an adviser appointed in terms of section 4(1);

“agricultural remedy” means an agricultural remedy as defined in the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947). Pesticide shall have the same meaning;

“Assignee” means a legal person(s) designated by the Minister to exercise such of the power or perform those duties or functions that are conferred on the Registrar or an inspector by or under this Act.

“buy” includes agreeing to purchase, or to purchase or to exchange for any consideration whatsoever, or accept delivery in pursuance of a sale;

“by-product” means products created in industrial, incineration or production plants, biogas or composting plants or other plants as well as in wastewater purification plants or in connection with other similar activities

“custom mix” means a mixture compiled on the written advice of a qualified person for a specific client and such mixture must be of registered raw material mixed at the written request of a specific client. Prescription mixture shall have the same meaning;

“department” means the Department of Agriculture, Forestry and Fisheries in the National Government;

“fertilizer” means any substance which is intended or offered to be used for improving or maintaining the growth of plants or the physical, chemical or biological condition of the soil;

“Fertilizer additives” means any substances added to the fertilizer that alter its physical properties or controls its availability or functionality;

“fertilizer intermediate” means any existing fertilizer product that is added during production of another product;

“fertiliser product” means fertilisers, liming materials, soil conditioners substrates, microbe products, fertiliser additives, *fertilizer supplement*, microbe product, fertilizer intermediate products and by-products used as fertiliser products as such;

“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

“liming material” means inorganic or organic substances or products containing mainly calcium or magnesium or both elements which usually occur as oxides, hydroxides, carbonates or silicates and which are mainly intended for reducing soil acidity;

“importer” means any person importing raw material, fertilisers, liming materials, soil conditioner substrates, microbe products, fertiliser additives, fertilizer intermediate products and by-products into the Republic of South Africa;

“inspector” means an inspector appointed in terms of section 24;

“manufacture” means any process whereby fertilizer is produced, including grinding, mixing or blending, and the addition of supplements, organic-products , raw material or bio-products;

“manufacturing facility” means any premise in South Africa where fertilizer, raw material, liming materials, fertilizer supplement, fertilizer intermediate, custom mix, microbe product and by-products are manufactured, held, packed, marked or labelled as fertilizers, including warehouses where products are stored or kept for distribution or sale;

“microbial product” means a product which contains one or several known microbial strains with a proven beneficial impact on plant growth or nutrient intake in specific plant species or plant groups;

“minister” means the Cabinet member responsible for agriculture;

“prescribe” means prescribe by regulation;

“raw material” means organic or inorganic products in a solid or liquid form, including various products of vegetable or animal origin, in their natural state, fresh or preserved, and products derived from the processing thereof, which are intended for soil fertilization or foliar application;

“Registrar” means the person designated by the Minister as Registrar under section 2;

“regulation” means a regulation made in terms of this Act;

“sell” includes agreeing to sell, or to offer, advertise, transmit, convey, deliver or manufacture for sale or to exchange or to dispose of to any person in any manner for any consideration

whatsoever, or to transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid, and “sale” and “sold” has corresponding meanings;

“soil conditioner” means substances added to soil to maintain or improve their physical, chemical or biological properties.

## **CHAPTER TWO REGISTRAR, COMMITTEES, ADVISERS AND ASSIGNEES**

### **Designation of Registrar**

2.(1) The Minister shall designate an officer in the service of the department as Registrar, who shall exercise the powers and perform the duties and functions conferred upon the Registrar by or under this Act.

(2) The Registrar may, unless expressly provided for otherwise, in writing delegate any suitably qualified officer under his or her control a power, duty or function conferred upon or assigned to him or her under this Act, or in writing authorize or direct any such officer to exercise such power or perform such duty or function.

### **Appointment of advisory committees**

3.(1) The Registrar may, when required, appoint one or more advisory committees to advise the Registrar --

- (a) on fertilizer regulatory policy matters; or
- (b) on fertilizer operational matters,

including, but not limited to, licensing of manufacturing facilities, registration of fertilizer products, auditing, inspection, monitoring and compliance programs, proposed regulations and compulsory regulatory standards, or guidelines.

(2) The advisory committee shall consist of members appointed on the basis of their knowledge and experience, including the fields of soil science, agronomy, microbiology, law, regulation, governance, financial matters and accounting, as the situation may merit.

(3) The Registrar shall determine the mandate, scope and envisaged duration of activities of an advisory committee, and shall provide administrative and secretarial services to facilitate its operations.

(4) The advisory committee shall elect its own chairperson and determine its own meeting, operational, reporting and other procedures, including dealing with conflicts of interest of members and related matters.

(5) The members of an advisory committee shall not be entitled to any remuneration or compensation from the State for the performance of their activities.

### **Appointment of advisers and assignees**

4.(1) The Registrar may appoint technical, scientific and other advisers to assist the Registrar with advice regarding any power to be exercised or any duty or function to be performed by the Registrar under this Act, including but not limited to the review of applications for –

- (a) import permits applied for under this Act;
- (b) licensing of facilities requiring licencing under this Act; or
- (c) the registration of products requiring registration under this Act; or

(2) The Minister shall designate at least two legal entities as assignees to exercise such of the powers or perform those duties or functions that are conferred upon the Registrar or an inspector by or under this Act, including but not limited to –

- (a) the auditing or monitoring of compliance to the conditions subject to which licencing is issued;
- (b) the monitoring of or compliance by manufacturing facilities to the requirements of this Act and the regulations;
- (c) the monitoring of or compliance by the holders of raw material or fertilizer product to the requirements of this Act and the regulations;
- (d) to perform general auditing, monitoring or compliance related duties and functions; or
- (e) to assist the Registrar with administrative or such other duties and functions as the Registrar may determine.

(3) The services of an assignee appointed under section 4(2) that is not an officer shall be procured in accordance with the procurement legislation applicable to the department for the provision of goods and services.

(4) An assignee designated under section 4(2) -

- (a) must be selected –
  - (i) after publicly advertising for appropriately qualified legal entities interested in becoming assignees;
  - (ii) based on the proven qualifications and ability of the legal entity to perform the required powers, duties and functions; and

- (iii) on recommendation of an advisory committee appointed for this purpose under section 3;
  - (b) shall have no recourse against the State in respect of any expenses incurred in connection with the exercising of the powers or the performance of the duties or functions thus assigned;
  - (c) shall be funded in connection with the exercise of powers or the performance of duties or functions by a levy imposed by the Minister by notice in the *Gazette*; and
  - (d) must be appointed for the period, which may not be less than five years at a time, and on such conditions as the Registrar may determine and set out in a service delivery agreement concluded between the Registrar and the assignee for this purpose.
- (5) The chief executive officer or other person in charge of an assignee designated under section 4(2) –
- (a) shall act on behalf of that assignee in the exercise of its powers and the performance of its duties and functions; and
  - (b) may in writing delegate or transfer to an employee of that assignee any such power or duty which the assignee shall or may exercise or perform by or under this Act, or in writing authorize or direct any such employee to exercise such power or perform such duty.

### **Funding of assignees**

- 5(1) An assignee designated under section 4(2) shall every two years and by not later than 31 January, submit a business plan and budget for the following five years to the Registrar, setting out the powers to be exercised and the duties and functions to be performed, the costs and expenses associated therewith that the assignee is expected to incur for the following five years in connection therewith.
- (2) The assignee concerned shall –
- (a) provide a summary of the business plan and budget contemplated in subsection (1) to any person that it believes has a direct interest therein and invite such person to comment thereon in writing within 30 days; or
  - (b) if the Registrar so determines, publish the summary of the business plan and budget contemplated in subsection (1) for general comment in the *Gazette* and invite written comment thereon within 30 days from the date of publication
- (3) Comments in terms of subsection (2) shall be provided directly to the Registrar, who shall on receipt thereof provide a copy to the assignee, who shall provide the Registrar with its response to such comments within 14 days.



(4) The Registrar shall within a period not exceeding 30 calendar days from the due date for comments determined in subsection (2), provide the Minister with copies of all comments received under that paragraph, as well as any response by the assignee under subsection (3), and the Minister must take such comments and response into consideration in determining a levy imposed under section 4(c).

(5) A levy imposed by notice in the *Gazette* under section 4(c) shall –

- (a) be applicable to the persons stated in the notice;
- (b) be payable for the exercise of such powers and the performance of those duties and functions by the assignee, as may be described in the notice;
- (c) be payable to an independent 3<sup>rd</sup> party administrator identified in the notice and not directly to the assignee, at the time and in the manner stated in the notice;
- (d) be payable to the 3<sup>rd</sup> party administrator by the persons indicated in the notice, and may provide for the recovery of the levy by the parties obliged to pay such levy from other parties indicated in the notice;
- (e) provide for the collection and administration of the levy by the 3<sup>rd</sup> party administrator, including interest on late payments, collection of arrears, transfers to the assignee, and the auditing of the levy; and
- (f) provide for such ancillary matters to facilitate the implementation and administration of the levy as may be set out in the notice.

#### **Decisions of Registrar, assignee**

6.(1) Notwithstanding any other provision in this Act, a decision of the Registrar or an assignee affecting the rights of a person to be issued with an import permit, licencing or, the registration of a raw material, fertilizer product, the withdrawal, cancellation, termination or renewal of any such licence, permit, approval or raw material, fertilizer product or the imposition of administrative penalties --

- (a) shall be in writing;
- (b) must be taken within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence;
- (c) should be based on reasons, facts and evidence that must be summarized, recorded and provided to the affected person;
- (d) must be explained clearly as to its factual and legal basis and the reasons therefore;
- (e) provide for the opportunity to take such decision on review or appeal.

(2) Any person affected by a decision of the Registrar or an assignee under subsection (1), or by any other administrative action under this Act, may –

(a) institute judicial proceedings in the High Court for the judicial review of administrative actions; or

(b) appeal to the High Court against such decision: Provided that the procedure applicable to an appeal from a decision of a magistrate's court in a civil matter applies, with the changes required by the context, to such an appeal.

(3) The procedurally fair, review and appeal processes required under subsection (1) shall be as prescribed and must comply to the requirements of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

## **CHAPTER THREE PROHIBITIONS AND PRODUCT REQUIREMENTS**

### **Prohibitions**

7. No person shall—
- (a) import any raw material or fertilizer product without being authorised to do so under the provisions of section 10 or keep, use, buy or sell any imported raw material or fertilizer product not registered, excluding raw material, fertilizer product or custom mix that are exempted from registration under section 9;
  - (b) manufacture any raw material or fertilizer product in a manufacturing facility that is not licenced under section 14, or keep, use, buy or sell any such raw material or fertilizer product that originates from a manufacturing facility that is not registered, excluding raw material, fertilizer product or custom mix that are exempted from registration under section 9.

### **Product requirements**

8. No importer, fertilizer product manufacturer, or other manufacturing facility shall -
- (a) incorporate pesticides, or any product containing a pesticide, into a raw material or fertilizer product, unless and in accordance with the levels and in the manner determined by regulation;
  - (b) import, manufacture, keep, use, buy or sell any raw material or fertilizer product, that does not comply to the standards, limits, content requirements or other specifications determined by regulation;
  - (c) store, sell, buy, distribute, keep any raw material or fertilizer product that is not graded, classed, packaged or labelled in accordance with any requirements imposed under regulation;
  - (d) package, label or advertise any raw material or fertilizer product this Act applies in a way that is false, misleading or likely to create an erroneous impression regarding its character, quantity, composition, or safety.

### **Exemptions**

- 9.(1) The Minister may by notice in the *Gazette* –
- (a) exempt any raw material, fertilizer product or custom mix from the provisions of sections 7 or 8, or part thereof, for the period set out in such regulation, or suspend the operation of any of those sections, or part thereof, for such period as may be set out in the notice concerned;

- (b) determine that the provisions of sections 7 or 8, or part thereof, are only applicable under certain circumstances or events, or in the absence of certain circumstances or events;
  - (c) determine that the provisions of sections 7 or 8, or part thereof, are only applicable to certain categories of manufacturing facilities, or manufacturing facilities above a certain size or throughput;
  - (d) determine that the provisions of sections 7 or 8, or part thereof, only apply to certain raw material, or fertilizer product containing pesticides, or other substances, that pose a risk to human or animal health.
- (2) An exemption notice under subsection (1) shall set out the criteria for such exemption, which may include –
- (a) the risk that such exemption poses to human and animal health;
  - (b) the complexity of the activities performed by a person or class of persons;
  - (c) the nature or size of the manufacturing facility and the type of raw material or fertilizer product manufactured at such facility.

## **CHAPTER FOUR IMPORTS AND EXPORTS**

### **Import permit**

10. (1) Any person importing raw material or fertilizer product must do so on the authority of a permit issued under subsection (2), unless such raw material or fertilizer product is obtained from a foreign supplier accredited in terms of section 11.

(2) An application for an import permit shall be made to the Registrar on the form available for this purpose, and shall be accompanied by the prescribed particulars and application fee: Provided that an import permit is not required for any raw material or fertilizer product that –

(a) is registered in terms of section 17; or

(b) does not require registration in terms of section 17: Provided the Registrar is satisfied that the raw material or fertilizer product--

(i) complies to the standards, limits, content requirements or other specifications determined by regulation;

(ii) is graded, classed, packaged or labelled in accordance with the regulations; and

(iii) is packaged, labelled or advertised in a way that is not false, misleading or likely to create an erroneous impression regarding its character, quantity, composition or safety.

(3) The Registrar must consider an application for an import permit within 14 days of receipt thereof, unless the Registrar in writing requests additional information to properly consider such application, in which event the Registrar must consider an application for an import permit within 14 days from the receipt of the additional information.

(4) An import permit is only valid for the specified raw material or fertilizer product for the period stated therein, which may not be longer than 12 months, and may not be extended, amended or otherwise modified.

(5) The Registrar may make the import of any raw material or fertilizer product subject to such conditions as he may determine and set out in the import permit.

### **Foreign supplier accreditation**

11.(1) A person intending to import any raw material or fertilizer product may at his or her sole risk and expense, perform such risk-based foreign supplier verification activities as may be determined by the Registrar, for the purpose of verifying that foreign facilities comply with,

and the products are produced in accordance with, the requirements of the Act and the regulations.

(2) The Registrar may, upon receipt of the results of the verification activities in terms of subsection (1), and upon payment of the prescribed fees, accredit the foreign supplier and any raw material or fertilizer product manufactured or supplied by such foreign supplier, on such conditions and for such period of validity as he or she may determine.

(3) The Registrar shall keep an updated list of accredited foreign suppliers and any raw material or fertilizer product supplied by that foreign supplier, and such list shall, subject to the requirements set out in section 18 be made publicly available.

### **Exemption of small quantities**

12.(1) The Minister may by regulation exempt any raw material or fertilizer product imported in small quantities for research, sampling, trial or such other purposes as may be prescribed, from the import permit requirements set out in section 10.

### **Exports**

13.(1) The Registrar shall, at the request of a person desiring to export raw material or fertilizer product within 14 days from the receipt of such request –

(a) provide such reasonable assistance to the exporter as may be necessary to obtain assurances, official documents, reports or licencing regarding the raw material or fertilizer product as the exporter may need to satisfy the import requirements of the country concerned; or

(b) provide assurances, official documents, reports or licencing that are in the possession of or under the control of the Registrar to the importing country as may be required to facilitate the export of such raw material or fertilizer product.

(2) The Registrar may charge prescribed fees calculated on a cost-recovery basis for the provision of assistance to an exporter under subsection (1).

## **CHAPTER FIVE LICENSING AND REGISTRATION**

### **Licensing of Facility**

14.(1) Any person –

(a) operating a manufacturing facility for a raw material, fertilizer product or custom mix must hold valid licencing for such facility, issued by the Registrar.

(2) Combined licencing may be issued if more than one activity per facility is undertaken.

(3) A licencing of a facility set out in subsection (1) –

(a) shall be valid for the period set out in such licencing, which period shall not exceed ten years;

(b) shall have a unique identifying number;

(c) shall be subject to such conditions as the Registrar may determine and set out in the licencing for that facility, including conditions relating to –

(i) the operation of the facility;

(ii) the maintenance of the facility;

(iii) the products that are produced in the facility and the requirements that such products need to comply to, including requirements relating to the composition, contents, production, handling, storage, labelling, traceability, distribution and sale thereof, or any other requirements specified in any other law or the regulations, and incorporated in the licencing by referral;

(iv) compliance to the Act, the regulations, or any other requirements specified in any other law and incorporated in the licencing by referral, regarding raw material, fertilizer product or custom mix, and pesticides used in the manufacturing of commercial fertilizer product;

(v) hazard assessment and the creation and implementation of a written control plan to address risks posed to human and animal health and the environment;

(vi) the provision of assurances that products are not contaminated or misbranded;

(vii) the monitoring of the performance of controls implemented, the keeping of records, and the mandatory provision of reports and returns to the Registrar, and the contents thereof;

- (viii) the withdrawal of products originating from such facility that do not comply to the licencing condition, the Act or the regulations, or any other requirements specified in any other law and incorporated in the licencing by referral, at the holder's own cost and expense;
- (ix) the provisioning of information that the Registrar may reasonably demand, require or expect to further the implementation of the Act or the regulations;
- (x) the monitoring, auditing and inspections of facilities, and the powers, functions and duties of auditors and inspectors to perform audits and do inspections;
- (xi) termination of the licencing and the renewal thereof, including additional or substituting conditions that have to be met for renewal, or continuation of operations pending renewal;
- (xii) amendment of the licencing upon application by the holder;
- (xiii) the transferability of the licencing and limitations on transferability, including a prohibition on the transfer of the licencing unless the substituting holder qualifies to be issued with a licencing under this Act, and undertakes to comply to the conditions of the licencing and the provisions of the Act and the regulations;
- (xiv) administrative fines imposed by inspectors for the contravention of or non-compliance to an licencing condition by a holder, or any person acting for or on behalf of such the holder, the maximum amounts of such fines, and the procedure for paying such fines or appealing against it, as may be prescribed;
- (xv) the revoking of the licencing;
- (xvi) the payment of annual licencing maintenance fees, for different types of licencing, as may be prescribed;
- (xvii) such further conditions, or refinement of the above conditions, as may be prescribed.

(4)(a) The Registrar may, on such conditions as he or she may determine, upon written application allow a raw material or fertilizer product facility to

- (i) operate without a licencing; or
- (ii) operate subject to identified conditions of its licencing being temporarily suspended.



(b) The Registrar may only allow a raw material, fertilizer product or fertilizer mix facility to operate without a licencing, or to operate subject to identified conditions of its licencing being temporarily suspended –

(i) for such period, as may be determined by the Registrar, that does not exceed 5 years; and

(ii) if the operation without an licencing or on suspended conditions does not pose a risk to human or animal health and the environment.

### **Application for licencing or exemption**

15.(1) An application for a licencing, an amendment thereof or an application for an exemption under section 14 shall be made on the form available from the Registrar for this purpose, and be accompanied by the particulars specified therein, together with the application fees as prescribed.

(2) An application for a licensing, an amendment thereto or an exemption must be considered, decided upon and issued within 120 days of receipt thereof, unless the Registrar in writing requests additional information to properly consider such application, in which event the Registrar must consider, decide upon and issue a licensing or an exemption within 120 days from the receipt of the additional information.

(3) If an application for a licensing, and amendment or an exemption is declined, the Registrar must provide the applicant with written reasons for his or her decision within 14 days.

(4) The Registrar shall keep an updated list of all licences issued and exemptions provided, including the registered names and licence numbers of the facilities involved, and such lists shall, subject to the provisions of section 19, be publicly made available.

(5) Renewal of a licencing shall be dealt with as a new licencing application: Provided that the unique identifying number assigned in terms of section 14(3)(b) shall remain the same as the original identifying number.

### **Registration of products**

16.(1) All raw material or fertilizer products must be registered by the Registrar under this Act: Provided that the Registrar may, on such conditions as he or she may determine, list specified raw material or fertilizer products that are exempted from registration.

(2) An application for a new registration or an amendment to an existing registration shall be made on the form available from the Registrar for this purpose, and be accompanied by the particulars specified therein, together with the application fees as may be prescribed.

(3) If the Registrar, after consideration of an application referred to in subsection (1) or (2), is of the opinion that such raw material or fertilizer product complies with this Act, the

regulations and applicable law, the Registrar shall issue a certificate of registration of the raw material by -

- (a) assigning a unique registration number in the case of a new registration, and where the Registrar considers it appropriate, in the case of an amendment; and
- (b) specifying the period of validity, and the conditions which must be complied with.

(4) An application for the raw material, fertilizer product or an amendment must be considered and awarded within the prescribed period, and if declined, the Registrar must provide the applicant with written reasons for his or her decision within 14 days of the decision.

(5) The Registrar shall keep updated lists of –

- (a) any raw material or fertilizer product that is exempted from the registration requirement; and
- (b) all registered raw material or fertilizer products,

and such lists shall, subject to the requirements set out in section 18, be made publicly available.

(6) Renewal of a raw material or fertilizer product registration shall be dealt with as an application for a new product registration: Provided that the unique identifying number assigned under section 16(3)(a) shall remain the same as the original identifying number.

#### **Amendment, suspension or cancellation**

17 The Registrar may at any time amend or cancel a licence, or revoke or the registration of a raw material or fertilizer product, if –

- (a) the holder concerned has failed to comply with or contravened any material term or condition of his or her licencing;
- (b) additional information comes to light about the human and animal health or environmental risks of any imported or locally produced raw material or fertilizer product that, had he or she been aware thereof at the time of issue of a licencing to a facility or product registration, would have led to a licencing of facility or registration of raw material or fertilizer product registration not being awarded;
- (c) there has been a change of circumstances such that the holder of a licence, or raw material or fertilizer product registration no longer qualifies, or is not entitled, to be the holder of a licence, raw material or fertilizer product registration under the Act;

(d) the holder concerned habitually contravenes or fails to comply to his or her licencing conditions;

(e) the holder concerned fails or refuses to pay administrative fines imposed under section 30; or

(f) the holder of a licence or registration has been found guilty of contravening the Act or the regulations, and has been sentenced to a period of imprisonment, without the option of paying a fine.

## **CHAPTER SIX ACCESS TO INFORMATION**

### **Public access to information**

18. The Registrar shall allow any person to have access to, and on payment of such fees as may be prescribed, make copies of any lists contemplated in sections 11, 15 or 16: Provided that such information —

- (a) does not contain commercially sensitive information; or
- (b) has been made available pursuant to a request for information in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

### **Prohibition against disclosure**

19.(1) The Registrar, another officer, an adviser, an assignee or an official employed by an assignee may not disclose information obtained under this Act or the regulations unless —

- (a) the person who provided the information has given his or her prior written permission thereto; or
- (b) the information is accessible under section 18.

(2) Notwithstanding the provisions of subsection (1), any person mentioned therein may disclose information obtained under this Act —

- (a) to any other officer, adviser, assignee or official who, out of necessity, requires it for the exercise of his or her powers or the performance of his or her duties or functions in terms of this Act: Provided that the person to whom the information has been provided may only use it for such purposes and may not disclose such information to any other person, unless the provisions of this paragraph or subsection (1) applies;
- (b) if such information is required as evidence in any court of law or any criminal prosecution.

### **Prohibition against use**

20. The Registrar, another officer, an adviser, an assignee or an official employed by an assignee may not use information obtained under this Act other than for the purpose for which it was obtained.

## **CHAPTER SEVEN**

### **MONITORING, AUDITING, RECORDS AND RETURNS**

#### **Hazard assessment and control plan**

21.(1) A raw material, fertilizer product or custom mix manufacturer shall, as may be required in terms of its licencing of facility or registration condition, or as may be prescribed-

- (a) perform hazards assessment;
- (b) create and implement a written control plan to address hazards and prevent and address the risks posed by its activities with regard to human and animal health and the environment;
- (c) provide assurances that any raw material or fertilizer product to which its registration applies is not contaminated or misbranded;
- (d) monitor the performance and compliance of the facility to its licencing of facility, registration condition and control plan; and
- (e) maintain records of monitoring as a matter of routine practice.

#### **Labelling, traceability and record keeping**

22. Any importer of raw material or fertilizer product, custom mix manufacturer, or the holder of a raw material or fertilizer product registration, shall ensure that any raw material, fertilizer product or custom mix imported, manufactured, kept, used, bought or sold by it complies with the labelling, traceability and record keeping requirements as may be prescribed.

#### **Records and returns**

23.(1) An importer or manufacturer of raw material, fertilizer product, custom mix or the holder of a raw material or fertilizer product registration, shall keep such records and provide such returns to the Registrar regarding any raw material or fertilizer product registration, manufactured, kept, used, bought or sold by such person as may be set out in the import permit, licencing of facility, or registration, or as may be prescribed.

(2) Notwithstanding subsection (1), the Registrar may, by notice in writing, require an importer, raw material manufacturer, fertilizer product, custom mix manufacture, or the holder of a registration –

- (a) to compile information, conduct tests and monitor experience with regard to any raw material, fertilizer product or custom mix for the purpose of obtaining additional information with respect to its effects on human or animal health or the environment, quality and safety; and

(b) to report the additional information to the Registrar within the time and in the manner specified in the notice.

## **CHAPTER EIGHT INSPECTIONS**

### **Designation of Inspectors**

24. The Minister may designate an inspector for purposes of the Act and the regulations, or specific sections thereof –

- (a) trained officers in the employ of the department; or
- (b) officials in the employ of an assignee designated in terms of section 4(2).

### **Proof of designation**

25.(1) The Minister shall under his or her signature issue an identity card, in the form and format and containing the particulars as may be prescribed, to each person designated as an inspector.

(2) When exercising any power or performing any function or duty in terms of this Act, an inspector must at all times wear the identity card referred to in subsection (1) in such a manner that it clearly shows his name and designation.

### **Functions of inspectors**

26.(1) An inspector within his or her mandate in terms of this Act --

- (a) must audit, monitor, and enforce compliance to the Act, and to licences, registrations, the regulations or other notices and documents made thereunder;
- (b) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute-
  - (i) an offence in terms of the Act or the regulations;
  - (ii) a breach of the law or the regulations;
  - (iii) a breach of a term or condition of licencing or exemption, breach of a registration certificate raw material registration, or other instrument issued in terms of this Act.

(2) An inspector -

- (a) must carry out his or her duties and exercise his or her powers subject to any limitations and in accordance with any procedures that may be prescribed or are applicable under law;
- (b) must exercise his or her powers in a manner –

(i) that is the least invasive but ensures proper investigation and prosecution of the matter under investigation and the safeguarding of human and animal health; and

(ii) that minimises any damage to, loss or deterioration of any premises or item accessed, confiscated or stored.

(3) The owner or the person in charge of a place entered by an inspector or any other person in a position of authority in such place shall give the inspector all reasonable assistance in their power to enable the inspector to exercise his or her powers, or perform his or her duties or functions under the provisions of this Act or the regulations.

### **General Powers of Inspectors**

27.(1) An inspector may at any reasonable time enter any premises known or suspected to be used for any purpose contemplated by this Act, and

(a) question any person about any act or omission in respect of which there is a reasonable suspicion that it might constitute-

(i) an offence in terms of this Act; or

(ii) a breach of a term or condition of a licence, registration certificate or other document issued in terms of this Act;

(b) issue a written notice to a person who refuses to answer questions in terms of paragraph (a), requiring that person to answer questions put to him or her in terms of that paragraph;

(c) inspect, or question a person about, any document, book or record or any written or electronic information-

(i) which may be relevant for the purpose of paragraph (a); or

(ii) to which this Act, the regulations or a notice issued under this Act relates;

(d) copy, or make extracts from, any document, book or record or any written or electronic information referred to in paragraph (c), or remove such document, book, record or written or electronic information in order to make copies or extracts;

(e) require a person to produce or deliver to a place specified by the inspector, any document, book or record or any written or electronic information referred to in paragraph (c) for inspection;



(f) inspect, question a person about, and if necessary seize and remove any specimen, article, substance or other item which, on reasonable suspicion, may have been used in-

(i) committing an offence in terms of this Act; or

(ii) committing a breach of a term or condition of an licence, registration certificate or other instrument issued in terms of this Act;

(g) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an inspection;

(i) take samples; or

(ii) carry out any other prescribed duty not inconsistent with this Act.

(2)(a) Any written notice issued in terms of subsection (1)(b) must be in the prescribed format and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.

(b) A person who receives a written notice in terms of subsection (1)(b) may, but is not obliged, to answer any question put to him or her if his or her answer may incriminate himself or herself.

(3) An inspector must-

(a) provide a receipt for-

(i) any document, book, record or written or electronic information removed in terms of subsection (1)(d); or

(ii) any specimen, article, substance or other item seized or removed in terms of subsection (1)(f); and

(b) return anything seized or removed as soon as the inspector becomes aware that criminal proceedings will not be instituted.

(4) Notwithstanding the provisions of subsection (1) to (5), an inspector may, where an inspection takes place at any premises other than a premises for which a licence or registration certificate has been issued under this Act, only enter the premises, perform an inspection or seize any specimen, article, substance or other item on the strength of a warrant issued in terms of subsection (7), unless –

(a) the person in control of the premises consents to the entry and inspection; or

(b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or inspection.

(5) A magistrate may issue a warrant contemplated in subsection (4b) only --

(a) on written application by an inspector setting out under oath or affirmation that it is necessary to enter and inspect the specified place for the purposes of ascertaining compliance with the Act or the regulations; and

(b) if he or she concurs with the necessity thereof.

## **CHAPTER NINE OFFENCES AND PENALTIES**

### **Unauthorised actions**

28. (1) A person commits an offence who -

(a) imports any raw material or fertilizer product without being authorised to do so under section 10, or keeps, uses, buys or sells any imported raw material or fertilizer product not authorised unless such raw material, fertilizer product or custom mix is exempted from the registration under section 9.

(b) manufactures any raw material, fertilizer product or custom mix in a manufacturing facility that is not authorized under section 15, or keeps, uses, buys or sells any such raw material, fertilizer product or custom mix that originates from a manufacturing facility that is not thus authorized;

(h) manufactures, keeps, uses, buys or sells any raw material or fertilizer product that is not registered under section 16, unless such raw material, fertilizer product or custom mix is exempted from the registration requirement set out in that section.

(i) fails to comply with a directive or order issued by the Registrar or an inspector under this Act; or

(j) hinders or obstructs an official in the execution of his or her duties under this Act.

(2) A person contemplated in subsection (1) is liable on conviction to a fine or to imprisonment for a term not exceeding five years, or to both such fine and such imprisonment.

### **Non-compliant products**

30. (1) A person commits an offence who –

(a) incorporates pesticides, or any product containing a pesticide, into any raw material or fertilizer product, unless and in accordance with the levels and in the manner prescribed by regulation;

(b) imports, manufactures, keeps, uses, buys or sells any raw material, fertilizer product or custom mix, that does not comply to the standards, limits, content requirements or other specifications determined by regulation;

(c) stores, sells, buys or distributes any raw material or fertilizer product that is not graded, classed, packaged or labelled in accordance with the regulations;

(d) packages, labels or advertises any raw material, fertilizer product or custom mix in a way that is false, misleading or likely to create an erroneous impression regarding its character, quantity, composition, safety, registration or licencing.

(2) A person contemplated in subsection (1) is liable on conviction to a fine or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

(3) The presiding officer of a court shall, upon a person being convicted in terms of subsection (2), make a finding on how any book, document, specimen, article, substance or other item seized or removed in terms of section 28 must be dealt with, including the forfeiting thereof to the State without compensation.

### **Non-compliant manufacturing facility**

31.(1) Any person who contravenes, or does not comply to a condition to which his or her licencing has been made subject to, for –

(a) the operation of a manufacturing facility for the manufacturing of raw material, fertilizer product or custom mix;

(b) shall be liable to the imposition of an administrative fine imposed under subsection (2).

(2) The Registrar, an inspector or an assignee authorised under this Act may impose an administrative fine, not exceeding the amount prescribed for different types of contraventions or events of non-compliance, upon an authorized person who in his or her opinion is contravening or not complying to licencing condition that his or her licencing is subject to.

## **CHAPTER TEN GENERAL**

### **Regulations**

32. (1) The Minister may from time to time, on recommendation of the Registrar, make regulations for all or any of the following purposes—

- (a) the application forms, requirements, information to be furnished, application procedures, and related requirements for applications for imports, licencing of manufacturing facilities or registration of products, or the amendment or renewal thereof;
- (b) setting licensing conditions;
- (c) determining standards for products including standards relating to their form, specifications, composition and other related matters;
- (d) the incorporation of pesticides, or any product containing a pesticide, unless in accordance with the levels and in the manner determined by regulation;
- (e) the inspection, auditing, monitoring and compliance and operation of manufacturing facilities;
- (f) the identification particulars that have to be included on the identification cards carried by inspectors;
- (g) the duties and functions to be performed by inspectors, and the manner in which such duties and functions must be performed, including the limitations applicable thereto and compliance with any procedures that are applicable or prescribed under law
- (h) the format and contents of written notices issued by inspectors;
- (i) the determining of standards of laboratory practice to be used in conducting tests to obtain information about products and certification of compliance with those standards;
- (j) determining foreign supplier verification requirements;
- (k) setting fees and levies payable under this Act, including application fees for imports, export assistance, accreditation, exemptions, registration or licencing, auditing and inspection, or the provision of information from official records by the Registrar;
- (l) setting out requirements relating to packaging, labelling and advertising of products;

- (m) determining sampling and analysis procedures for the purposes of this Act;
- (n) setting out any particulars that must be contained in the registers to be held by the Registrar and public access to such registers;
- (o) setting out the recording by the holder of a licence or registration certificate of information on the sales of products, or such other information as may be specified, the retention and reporting to the Registrar, an assignee or any inspector or auditor of such information, and the use of such information by the Registrar, inspector, auditor or assignee;
- (p) determining quality management systems, quality and safety control programmes, traceability systems, hazard assessment and preventative control plans that must be implemented by licenced manufacturing facilities;
- (q) determining requirements for the preservation and detention of products and other things seized by an inspector;
- (r) determining recall procedures to be followed for the raw material, fertilizer product or custom mix from the market on the revocation of raw material or fertilizer product registrations by the Registrar;
- (s) setting administrative penalties, including the collecting, payment, management and auditing thereof, and the appeal procedure for persons affected by administrative penalties;
- (t) setting requirements and determining standards for custom mixes including standards relating to their form, specifications, composition and other related matters
- (u) without being limited by the foregoing, determining anything else that is necessary for giving full effect to this Act and for its due administration.

(2) A regulation under subsection (1) may require persons who conduct any activity regulated under this Act and who become aware that a fertilizer presents a risk to human or animal health or the environment, or does not meet the requirements of the Act, a licence or the regulations, to provide written notice to that effect to the Registrar.

(3) Regulations made under this Act may authorise the Registrar to issue or impose any licence, requirement, prohibition, specification, restriction, condition, direction, instruction, or order.

(4) The Minister shall publish any proposed regulation by notice in the *Gazette*, inviting interested persons to submit any representations or objections regarding the proposed regulations within the period set out in such notice, which may not be less than 30 days.

## **State liability**

33. The State, the Minister, the Registrar, an officer, an assignee or official, auditor or inspector shall not be liable in respect of anything done in good faith in terms of this Act.

## **Compliance with International agreements**

34. Nothing in this Act shall be construed in a manner inconsistent with any international agreement to which the Republic of South Africa is a party and which has been ratified in accordance with the laws of South Africa.

## **Transitional provisions**

35.(1) Any product –

(a) registered under the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No.36 of 1947), and in force at the commencement of this Act, shall continue to remain in force as a registered raw material or fertilizer product of the kind that is was originally registered as, unless registration for such product is no longer required under this Act; or

(b) submitted for registration under the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No.36 of 1947), but not yet registered at the commencement of this Act, shall be deemed to be an application for registration of a raw material or fertilizer product under this Act, to the extent that this Act requires registration thereof.

(2) Notwithstanding any other provision of this Act—

(a) any person that is required to hold a licence for a manufacturing facility that is in operation on the commencement date, is obliged to apply for a licence within three years from the commencement date, but may continue operating the manufacturing facility until such time as the licencing is issued or declined, as the case may be; and

(b) any person that is required to hold a licencing for a manufacturing facility that is in operation on the commencement date, is obliged to apply for a within three years from the commencement date, but may continue operating the manufacturing facility until such time as the licence is issued.

## **Amendment of Act**

36. The Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947), is hereby amended to the extent set out in the Schedule.

## **Short title**

37. This Act shall be called the Fertilizer Act, 2018, and shall come into operation as determined by the President by proclamation.