

FOLLOW UP ACTIONS AGAINST OFFENDERS TO BE TAKEN UNDER FCO 1985 & ECA 1955

Follow up actions against offender are broadly of two types:

1. Administrative Action
2. Legal Action

Administrative Action under FCO provisions :

1. Stop Sale Notice – Clause 28 (2)
2. Detention / Seizure of stock – Clause 28 (1) (d)
3. Temporary suspension of Certificate of Registration /Certificate of Manufacture /Letter of Authorisation under Clause 31 (2)
4. Cancellation of Certificate of Registration /Certificate of Manufacture /Letter of Authorisation under Clause 31 (1)
5. Seizure of conveyance – Under Section 6A of ECA 1955.
6. Confiscation of stock under Section 6A of ECA.

1. Stop Sale Notice (Claus 28 (2))

The Fertiliser Inspector is empowered to issue stop sale / detention notice in writing under Clause 28(2). The Stop Sale /detention notice is valid for 21 days. If no action has been initiated by the Inspector within the said period of 21 days from the date of issue of the said notice, the notice of stop sale shall be deemed to have been revoked.

2. Suspension (Clause 31 (2) / Cancellation (Clause 31(1))

The concerned Notified / Registering Authority is empowered to issue suspension of Authorisation Letter or Certificate of Manufacture to any person contravened any of the provisions of this order or any terms and conditions of the Memorandum of Intimation or Certificate of Registration or the Certificate of Manufacture have been proved. The Notified Authority or Registering Authority as the case may be without any notice, suspend such Certificate of Manufacture or Authorisation Letter, as an interim measure.

Provided that the Registering Authority or the Notified Authority as the case may be, shall immediately furnish to the affected person , details and the nature of contravention alleged to have been committed and after giving him an opportunity of being heard, pass final orders either revoking the order of suspension or cancellation within 15 days.

Where no final order is passed within the period of 15 days, the order of interim suspension order shall be deemed to have been revoked.

Under Clause 31(1) the Notified Authority or Registering Authority as the case may be has been empowered to issue the cancellation of Authorisation Letter or Certificate of Manufacture.

While cancelling the Certificate or dealer authorization letter, the holder of the certificate or letter of authorization may be allowed for a period of thirty days to dispose of the balance stock of fertilizer, if any held by him.

3. Seizure of stock (Clause 28(1) (d))

The inspector is empowered to enter upon and search any premises where fertiliser is manufactured / stored / exhibited for sale and to seize or detain any fertilizer in respect of which is believe that there is a contravention of FCO 1985. He can also seize the relevant books of accounts / related documents after giving a due receipt to the owner.

In case of search and seizure the provisions of the Code of Criminal Procedure 1973 (2 of 1974) relating to search and seizure shall, so far as may be applied for search and seizure:

4. Steps involved in the seizure of stock

1. The specific, type, brand, batch and manufacturer's stock which is proposed to be seized is to be identified.
2. All the bags should be segregated from the whole stock and kept separate place.
3. Before seizure, the representative sample should be drawn.
4. Carry the seized stock to the safest place or obtained custody bond.
5. If any separate rooms are available in the same premises, keep the seized product in this room and cloth covering the lock should be sealed by the Inspector.
6. Seizure notice issued by the Inspector in front of the two independent witnesses signed by them and obtained receipt from the dealer.
7. Prepare Mahazar on the spot in the presence of two independent witnesses.
8. After seizure of stock, the information of the seizure is to be communicated to the District Collector or his authorized representative within the shortest possible time (usually within 24 hours) it means without unreasonable delay.

The Collector may if he thinks fit expedient so to do, direct the essential commodity to seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation.

The seized essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do he may-

- (a) order the same to be sold at the controlled price. If any fixed for essential commodity under this Act or under any other law for the time being in force or
- (b) Where no such price is fixed, order the same to be sold by public action.

5. Legal Action

1. Launching a prosecution directly in 1st Class Magistrate Court under Cr. P.C. 200.
(or)

2. Filing FIR in police station

6.. Procedure for launching prosecution:

In pursuance of Section 12 (AA) of ECA 1955, all the offences of FCO are preferably triable in First Class Magistrate Court.

Submission of complaint to Designated Court under 12AA (e) of ECA 1955 after obtaining consent order of approval of the Competent authority. (12AA (e) of ECA).

However the exact procedure to be adopted by the Fertiliser Inspector will depend upon the practices prevalent in the State or the enforcing order issued by the State Government in this behalf.

All the cases will be tried in summary way.

All the offences are cognizable and non-bailable.

7. For initializing legal action in Court of Law, the following documents are needed:

1. Copy of Gazette Notification for appoint as Fertiliser Inspector.
2. Certificate of Registration / Authorization Letter / Certificate of Manufacture.
3. Invoice for fertilizer purchased by Dealer in respect of which contravention is alleged to have been committed.
4. Form- J duly signed by the Dealer in original
5. Copy of Form-K
6. Copy of seizure notice
7. Bond of custody.
8. Mahazar / Panchanama.
9. Copy of intimation sent to District Collector as per Section 6A of ECA 1955.
10. Copy of Form L
11. Copy of Show Cause Notice issued to dealer and his reply
12. Suspension / Cancellation order
13. Copy of Show Cause Notice issued to distributor / manufacture and their reply
14. Consent order of competent authority for launching prosecution.
15. Stock Register and Cash or Credit Memo (Form – N & Form – M).
16. Name of the responsible person declared under Clause 24.

8. Penal provisions for violation of FCO 1985:-

1. 3 months to 7 years imprisonment with or without fine under Section 7(a) (i)(ii) of ECA 1955
2. Making any false information is punishable upto 5 years imprisonment under Section 9.
3. The Fertiliser stock and its conveyance can be forfeited under Section 7(b)(c).
4. The FCO offences are treated as cognizable and non-bailable under Section 10 (A).
5. Minimum imprisonment for subsequent offences – 6 months (Habitual offender).
6. Attempt to contravene or abet a contravention is also punishable under Section -8 of ECA 1955.

For exercising the power of Fertiliser Inspector, some of the Section in the Code of Criminal Procedure 1973 may also support and will give protection to the Fertiliser Inspector are as follows:

The Code of Criminal Procedure 1973 (2 of 1974)

1. Section 47 :- Search of place entered by person sought to be arrested:

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under sub-section (1) it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

(2) If ingress to such place cannot be obtained under sub-section (1) it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

II Section 100 :- Persons in charge of closed place to allow search:-

(1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of Section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable in habitants of the locality in which the place to be searched is situate or any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this Section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this Section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under Sub-section (3), a list of all things taken possession of, shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this Section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 of the I.P.C. (45 of 1860).

II. Section 102 :- Power of police officer to seize certain property:-

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of police station, shall forthwith report the seizure to that officer.

(3) (Inserted by Act No. 45 of 1978) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court (Inserted by Cr.P.C. (Amndt) Act, 2005 w.e.f. 23.6.2006, [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation.], he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the court as to the disposal of the same.

Added by Cr.P.C. (Amndt) Act, 2005 (Act 25 of 2005) w.e.f. 23.6.2006, [Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forth with be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

III. Section 153:- Inspection of weights and measures:-

(1) Any officer in charge of a police station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdictions.

IV. Section 197 :- Prosecution of Judges and public servants:-

(1) When any person who is or was a judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction:-

(a) In the case of a person who is employed, or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a proclamation under clause (1) of Article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) No court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the central government.

The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a proclamation issued under Clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central government in such matter to accord sanction and for the Court to take cognizance thereon].

(4) The Central Government or the State Government, as the case may be may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

V. Section 200 - Examination of Complainant:-

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses:-

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint;
- (b) if the Magistrate makes over the case for inquiry or trial to another a Magistrate under Section 192. Provided further that if the Magistrate makes over the case to another a Magistrate under Section 192 and examining the complainant and the witnesses, the later Magistrate need not reexamine them.

VI. Section 457: – Procedure by police upon seizure of property :-

- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he things fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.
- (2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate things fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

V. Section 458:- Procedure where no claimant appears within six months:-

- (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired him , the Magistrate may, by order direct that such property shall be at the disposal of the state Government, and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed.
- (2) An appeal shall lie against any such order to the Court to which appeals ordinarily lie from convictions by the Magistrate.

Vi. Section 468 :- Bar to taking cognizance after lapse of the period of limitation:-

- (1) Except as otherwise provided elsewhere in this Code, o Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
- (2) The period of limitation shall be :-
 - (a) six months, if the offence is punishable with fine only;
 - (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
 - (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purpose of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most sever punishment.]

VII. Section 470:- Exclusion of time in certain cases:-

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in a good faith in a Court which from defect of jurisdiction or other cause of alike nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period for such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation:- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender:-

(a) Has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) Has avoided arrest by absconding or concealing himself, shall be excluded.

VIII. Section 473 – Extension of period of limitation in certain cases:-

Notwithstanding anything contained in the foregoing provisions of this chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of Justice.

For exercising the power of Fertiliser Inspector, some of the Section in Indian Penal Code 1860 may also support and will give protection to the Fertiliser Inspector are as follows:

I. Section-21 Public Servant:

The words “public servant” denote a person falling under the description hereinafter following namely “Every Officer [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

II. Section – 26 Reason to believe :

A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.

III. Section – 27 Property in possession of wife, clerk or servant

When property is in the possession of a person’s wife, clerk or servant, on account of that person, it is in that person’s possession within the meaning of this Code.

IV. Section-186 Obstructing public servant in discharge of public functions:

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.

Classification of Offence - the offence under this Section is non-cognizable, bailable, non-compoundable and triable by any Magistrate.

V. Section – 187 – Omission to assist public servant when bound by law to give assistance:-

Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

And if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment or a term which may extend to six months, or with fine may extend to five hundred rupees, or with both.

Classification of Offence – The offence under this section is non-cognizable, bailable, non-compoundable and Triable by any Magistrate. If willfully neglecting to aid a Public Servant who demands aid in the execution of process, the prevention of offences, etc., it is non-cognizable, bailable and triable by any Magistrate.

VI. Section – 189 Threat of injury to public servant

Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Classification of Offence: The offence under this Section is non-cognizable, bailable, non-compoundable and triable by any Magistrate.

Some important Formats for Administrative and Legal Actions Taken by the Enforcement authorities:-

STOP SALE NOTICE

Order under clause 28 of the Fertiliser (control) Order 1985 requiring a person not to dispose of any stock in his possession.

Where as I have reason to believe that a contravention of the FCO 1985 has been or is being or is about to be committed by you in respect of the stock of fertilizer in your possession as detailed below.

Sl.No	Name of Fertiliser	Batch No. If applicable	Name of manufacturer/ importer	Quantity	Remarks
1	2	3	4	5	6

In exercise of the powers conferred to me under clause 28(1)(d).
I hereby order to stop the sale, distribution or use of the said stock until further order.

Date:

Fertiliser Inspector

Office seal

PROFORMA OF NOTICE TO BE ISSUED TO DEALER FOR SEIZURE OF
FERTILISER STOCK UNDER CLAUSE 28(1) (d)

No.

Date:

NOTICE

Whereas I have reason to believe that the stock of fertilizer in your possession, is being distributed, sold or used in contravention of the clause of the Fertiliser (Control) Order,1985.

Under Clause 28(1) (d) of the Fertiliser (Control) Order, I hereby seize the following stock of fertilizer lying at the premises.....

Sl.No	Name of Fertiliser	Batch No. If applicable	Name of manufacturer/ importer	Quantity	Remarks
1	2	3	4	5	6

You should not sell/dispose off or move the stock from the place where it is stored at present until further orders.

Signature of Fertiliser Inspector

To
M/s.....

Witness: The above seizure notice issued to the Dealer in our presence.

1. Signature.....

2. Signature.....

Signature of Dealer in token
Of receipt of this notice

PROFORMA FOR BOND FOR CUSTODY OF SEIZED FERTILISERS

I.....(Name),S/o.....
 (Name) resident of.....(address) hereby undertake that I shall keep the fertilizer(s) (whose details are given below), which has been seized by the fertilizer Inspector Sri.....From the sale depot/godown of M/s..... on(date) in safe custody and shall produce the fertilizer(s) before the competent authority, when required, I also undertake to give effect to the further orders of the competent authority as to the disposal of the same.

DETAILS OF THE FERTILISERS

Sl.No	Name of Fertiliser	Batch No. If applicable	Name of manufacturer/ importer	Quantity	Remarks
1	2	3	4	5	6

Signature of Undertaker

Date:
 Place:

Signature of Witness

- 1.
- 2.

MAHAZAR / PANCHNAMA

This day , the At This mahazar is drawn at the premises of M/s.....

Fertilizer dealer situated at in the presence of the following witnesses.

1. Sri.....
.....
2. Sri.....
.....

Sri ,Fertiliser Inspector has visited the above said fertilizer dealer premises and the above witnesses were summoned by him. The F.I., has taken the sample out of stock available with the dealer as per prescribed sampling procedure and prepared these test samples out of that, All the three samples were packed, labeled and sealed separately by the Fertiliser Inspector. The dealer has also affixed his seal on all the samples bags and received one test sample given by the Fertiliser Inspector.

The verification of the stock register in premises showed..... bags of fertilizer each weighing about 50 Kg. The name of the manufacturer and Batch No. mentioned on the bags was as.....

Sri.....proprietor of the firm, M/s..... Was present during the entire Mahazar proceedings.

The Mahazar proceedings were drawn between.....A.M to.... A.M. on the above said date.

Sd.....
Fertiliser Inspector
Name and Address

1.Sd.....
Name.....
Address.....

2. Sd.....
Name.....
Address.....

Date:

Place:

GOVERNMENT OF _____
OFFICE OF THE FERTILISER INSPECTOR

No. _____

Date: _____

PROFORMA FOR REPORTING THE MATTER OF SEIZURE TO COLLECTOR
UNDER CLAUSE (28) (3)

To

The District Collector

Sub: Seizure of fertiliser stock of M/s. _____

Under Clause (28)(1)(d) of FCO 1985, intimation under Clause (28) (3) of FCO 1985 –
reg

Sir,

I am the _____ (designation) and my office is situated at
_____. By virtue of my office, I am also appointed as
Fertiliser Inspector vide Govt. Notification No. _____

Dtd _____ under Clause 27 of FCO 1985. The objective of the order is to
regulate trade, quality and price of fertilisers and to ensure the supply of standard
quality of fertilisers to the farmers at controlled or reasonable rates.

As per the provisions of FCO 1985, and powers delegated under Clause 28 (1)
(d) of the said order, I, the undersigned inspected the premises of M/s.

_____ and found that the said party was selling /
manufacturing the fertilisers as detailed below in contravention of Clause _____.
(mention Clause of the FCO 1985) and have the stock of _____. (Quantity),
fertilisers whose details are mentioned in the seizure notice (a copy of which is
enclosed), has been seized by me on _____ date at _____ hrs. The custody of
the seized stock has been handed over to Sri. _____ for its safe
custody and security. This is being intimated in pursuance of Clause 28 (3) of FCO
1985 for further necessary action.

Signature and seal of fertiliser inspector

Office of the Fertiliser Inspector

Date_____

NOTICE TO THE DEALER TO FURNISH THE DETAILS OF FERTILISER STOCK AND TO PRODUCE DOCUMENTS ETC.,

You are hereby informed that the sample was taken by me on _____ from the stock of fertiliser in your premises, and the same sample had been sent to the fertiliser analyst for analysis. The fertiliser analyst report No. ____ stating that the fertiliser is non-standard has been received by me and as per sub-clause (3) of Clause 30 of the said order, a copy of the said analyst report is herewith sent to you.

Therefore the prosecution is proposed to be launched against you for having sold the non-standard fertiliser.

For the above reasons you are hereby called upon to produce

- (i) Stock register
- (ii) Bill book from the date of taking sample to till date
- (iii) Invoice for having received the non-standard fertiliser from the manufacturer
- (iv) The details of non-standard fertiliser stock held by you.
- (v) Certificate of stores in respect of non-standard fertiliser
- (vi) Name & address of person (s) responsible for conduct of business of dealer
- (vii) Name & address of person (s) responsible for conduct of business of manufacturing unit and officer notified as nodal officer (under Clause 24 of FCO 1985)).

Within ten days from the date of receipt of this notice.

Your attention is drawn to sub-clause (1) and (4) of Clause 28 of the said order, whereby you are required to comply with my requirements and failing compliance to which you are liable to be prosecuted, in addition to the offence for having sold the non-standard fertilisers as stated above.

Sd/-

Fertiliser Inspector

Seal of the Office

To,

M/s. _____

MODEL CHARGE SHEET
BEFORE THE COURT UNDER ECA AT _____

CRIMINAL CASE NO. _____ OF _____ 10

COMPLAINANT _____ State Government, Represented by the F.I.,

V/s,

Accused _____ 1. Sri. _____

Managing Partner / Proprietor

2. M/s. _____

Fertiliser Dealer

3. Sri . _____

Managing Director / Partner

4. M/s. _____

Manufacturer of Fertiliser

5. Sri. _____

Designated Officer of M/s.

COMPLAINT FILED UNDER SECTION 12AA (e) of ECA, 1955

1. It is submitted that the complainant is working as _____ (designation / address of FI), he has been appointed as FI vide Govt. Notification No. _____ dtd _____ under Clause 27 of FCO 1985. The official gazette notification of the said appointment order is produced herewith and marked as Annexure I.

2. It is submitted that the first accused is the Managing Partner of M/s. _____ and he is incharge and responsible for conduct of the business of the said firm. The said firm is doing business as a fertiliser dealer and holding the dealership Authorisation Letter for selling the fertiliser. The non-standard fertiliser in question is sold by the first accused. The said dealers authorisation letter is produced herewith and marked as Annexure II.

3. It is submitted that the second accused is the Managing Director of the Company M/s. _____ and he is incharge and responsible for the conduct of the business of the said company. The said company is manufacturing fertiliser / fertiliser mixtures.

4. It is submitted that the third accused has been appointed as responsible officer by M/s. _____ and is responsible for compliance of the provisions of FCO 1985.

5. It is submitted that during the inspection by the complainant, the first accused / his representative was present and the complainant drew the sample of the fertiliser – from the stock of the first accused and from there three test samples were prepared as per procedure laid down in Schedule II of FCO. Each test sample was sealed by the complainant in presence of the first accused. And one sample was given to the first accused alongwith a copy of Form J. Acknowledgement was obtained in Form J as per the provisions of Schedule II Part A 5 (iv). The said acknowledgement is herewith produced and marked as Annexure IV. The second sample was sent to the Incharge, Fertiliser Quality Control Laboratory through Form K marked as Annexure V and the 3rd sample has been retained / deposited with Senior Officer as reference sample.

6. As per the powers delegated under Clause 28 (2) of FCO 1985, the complainant had issued a notice to the dealer M/s. _____ to prevent the disposal or movement of fertiliser. The copy of the same is produced as Annexure VI

7. It is submitted that the stock of non-standard fertiliser has been seized from the business premises of the first accused by the complainant on _____. At th time of seizure a Mahazar / Panchnama has been prepared before the witnessess and which is marked as Annexure VII. The intimation of the said seizure has been given to the District Collector on _____ which is marked as Annexure VIII.

8. It is submitted as per the report of Incharge, Fertiliser Control Laboratory, the sample of fertiliser in question is non-standard. The said report copy has been delivered to the first accused and an acknowledgement has been delivered to the first accused and an acknowledgement has been obtained. The said acknowledgement is produced and marked as Annexure IX.

9. It is submitted that complainant on _____ has seized the stock register, bill book and cash book of the first accused firm under a Mahazar / Panchnama. The said Panchnama is produced and marked as Annexure X.

10. It is submitted that the first and second accused were issued the Show Cause notice by the complainant. In reply to the said notices the first accused has given a written reply stating that the non-standard fertiliser in question was manufactured by second accused. The second accused has replied that the non-standard fertiliser in question was manufactured by M/s. _____. The reply of accused Number one and second are produced herewith as Marked as Annexure XI and XII.

11. It is submitted that the first accused has committed an offence under Clause 19 (a) read with Section 7 (i)(a)(ii) for having sold the non-standard fertiliser in question. The second accused has committed an offence under Clause 19 (a) / (b)* read with the Section 7 (i)(a)(ii) for having manufactured the non-standard fertiliser in question.

- Strike out whichever is not applicable

12. The Fertiliser (Control) Order 1985 has been specified as Special Order under Section 12 (A) of ECA 1955 for the purpose of summary trial.

13. It is submitted that the Government has accorded consent for launching prosecution against the accused under provisions of Section 12 AA (e) of ECA 1955, the same has been produced and marked as Annexure XIII.

14. It is submitted that the offence is triable only by the Special Court as per the Provisions of 12 AA (e) of ECA 1955.

15. It is submitted that the offences are committed within the jurisdiction of the Court.

UNDER THE CIRCUMSTANCES AND FOR THE PURPOSES OF MEETING THE ENDS OF JUSTICE, IT IS HUMBLY PRAYED THAT THIS HONORABLE COURT BE PLEASED TO TAKE COGNIZANCE OF THE OFFENCE AGAINST BOTH THE ACCUSED AND PUNISH BOTH OF THEM AS PER THE LAWS OF LAND.

Date:

Place:

Sd. _____

Fertiliser Inspector

List of Witnesses:

1. Sri. _____

Address: _____

Fertiliser Inspector

2. Sri. _____

Address: _____

3. Sri. _____

Address: _____

List of Documents produced

Annexure 1 to 13