

STATUTORY INSTRUMENTS SUPPLEMENT

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S T A T U T O R Y I N S T R U M E N T S

2021 No. 70

**THE UGANDA NATIONAL BUREAU OF STANDARDS (MARKET
SURVEILLANCE AND ENFORCEMENT OF COMPULSORY
STANDARD SPECIFICATIONS) REGULATIONS, 2021**

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STATUTORY INSTRUMENTS

2021 No. 70

The Uganda National Bureau of Standards (Market Surveillance and Enforcement of Compulsory Standard Specifications) Regulations, 2021

(Under section 43 of the Uganda National Bureau of Standards Act, Cap. 327)

IN EXERCISE of the powers conferred upon the Minister by section 43 of the Uganda National Bureau of Standards Act and in consultation with the National Standards Council, these Regulations are made this 16th day of December, 2021.

PART I—PRELIMINARY

1. Title

These Regulations may be cited as the Uganda National Bureau of Standards (Market Surveillance and Enforcement of Compulsory Standard Specifications) Regulations, 2021.

2. Application of Regulations

These Regulations apply to—

- (a) commodities for which the Minister has declared compulsory standard specifications under section 18 of the Act;
- (b) commodities that do not have standard specifications; and
- (c) establishments for which the Minister has declared compulsory standard specifications under section 18 of the Act.

3. Interpretation

In these Regulations, unless the context otherwise requires—

- “Act” means the Uganda National Bureau of Standards Act, Cap. 327;
- “agency” means an organisation providing a particular service on behalf of the Government;
- “bureau” means the Uganda National Bureau of Standards established under section 2 of the Act;
- “bureau storage facility” means a building or structure used for storing commodities and which is under the control of the bureau;
- “compulsory standard specification” means the standard specification declared as such under section 18 of the Act;
- “designated bureau parking facility” means the office premises of the bureau, police stations, police posts and any other facility approved by the bureau for parking purposes;
- “digital conformity mark” means a device-readable or app-readable mark or code affixed or imprinted on a unit of a commodity of the category specified in Part II of Schedule 3 to the Uganda National Bureau of Standards (Certification) Regulations, 2021, embedding conformity-related data pertaining to the unit of commodity on which it is affixed or imprinted;
- “director” means the director of the bureau appointed under section 11 of the Act;
- “distinctive mark” means a mark declared as such under section 18 of the Act;
- “economic operator” means a business or other organisation which supplies commodities, works or services within the context of market operations;

“establishment” means any building or area in which a commodity is handled as well as its surroundings and which is under the control of the same management and includes manufacturing premises, points of sale, points of storage of commodities and vehicles which transport the commodities;

“major non-conformity” means any identifiable deviation of a commodity from a standard specification, whether identified physically or by a test report, that poses a serious threat to the health and safety of the public and the environment;

“minor non-conformity” means any identifiable deviation of a commodity from a standard specification, whether identified physically or by a test report, that does not pose any threat to the health and safety of the public and the environment;

“point of sale” means the time and place where a retail transaction is completed; whether physical or electronic;

“recall” means to officially order the return of a non-conforming commodity that is outside the control of the economic operator;

“re-work” means to improve, alter or revise a commodity to achieve compliance to a standard specification;

“sale” means the exchange of a commodity for money;

“shelf life” means the length of time that a commodity may be stored without becoming unfit for use, consumption or sale;

“withdrawal” means to remove or take away a non-conforming commodity from a particular place or position and place it in the possession of the economic operator.

PART II—CONFORMANCE TO COMPULSORY
STANDARD SPECIFICATIONS

4. Commodity to conform and bear distinctive mark

(1) A commodity shall be deemed conforming if—

- (a) it meets all the requirements of the relevant compulsory standard specification;
- (b) it is authorised to bear the distinctive mark set out in the Schedule to these Regulations;
- (c) it has a valid shelf life, where a compulsory standard specification requires the commodity to have a defined and marked shelf life; and
- (d) in the case of a commodity of the category specified in Part II of Schedule 3 to the Uganda National Bureau of Standards (Certification) Regulations, 2021, it bears a digital conformity mark.

(2) A person shall only import, distribute, manufacture, sell or have in his or her possession or control for sale or distribution physically or electronically, commodities that conform to the requirements of subregulation (1).

(3) Where difficulties arise in having a commodity marked with the distinctive mark prior to importation, distribution or sale, the director may authorise, in writing, any intending importer or distributor of the commodity to have the commodity marked immediately on arrival in Uganda or before the commodity is used or placed on the market.

(4) Where difficulties arise in having a commodity marked with the distinctive mark at the time of manufacture, the director may authorise, in writing, any intending manufacturer of the commodity to have the commodity marked with the distinctive mark after manufacturing, before the commodity is used or placed on the market.

5. Establishment to conform to compulsory standard specifications

A person operating an establishment shall ensure that the establishment conforms, in its operations, to the relevant compulsory standard specifications.

PART III—NON-CONFORMANCE TO COMPULSORY
STANDARD SPECIFICATIONS

6. Commodity that does not conform to compulsory standard specifications

- (1) A commodity shall be deemed non-conforming if—
- (a) it does not meet any of the requirements of the compulsory standard specification;
 - (b) it does not bear the distinctive mark;
 - (c) it bears the distinctive mark illegally;
 - (d) it has exceeded its shelf life; or
 - (e) in the case of a commodity of the category specified in Part II of Schedule 3 to the Uganda National Bureau of Standards (Certification) Regulations, 2021, it does not bear a digital conformity mark.

(2) Where a commodity does not meet any of the requirements of the compulsory standard specification—

- (a) in the case of a minor non-conformity, the inspector shall not seize the commodity but shall cause a corrective action plan to be made and, in every such instance, the inspector shall—
 - (i) make an inspection report detailing the minor non-conformity and the corrective action taken by the importer, manufacturer, distributor or seller or representative of the economic operator found on site, and shall give a copy of the report to the economic operator or his representative found on site; and

- (ii) ensure that only the conforming commodities are permitted for distribution or sale on the market;
- (b) in the case of a major non-conformity—
- (i) the inspector shall seize the commodity and issue a notice of seizure to the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale of the commodity;
 - (ii) the inspector shall remove the seized commodity to a bureau storage facility or confine it at the premises of the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale by sealing; except that where the seized commodity is perishable, the director may, on the recommendation of the inspector and after giving notice to the offender, destroy the commodity and the inspector shall take pictorial evidence of the destruction of the commodity;
 - (iii) the inspector may obtain a representative sample of the commodity for analysis;
 - (iv) the inspector may recommend suspension of production of the commodity to the director, based on a test report or inspection report;
 - (v) the inspector may recommend to the director a recall or withdrawal of the commodity by the importer, manufacturer, distributor or seller based on a test report or inspection report;
 - (vi) the inspector may require the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale of the seized commodity to report to the bureau;
 - (vii) the inspector may instruct the economic operator to submit to the bureau a corrective action plan within a specified period;

- (viii) the inspector may make a follow up to verify the submitted corrective action;
- (ix) where a seized commodity can be re-worked, the director may permit the re-work to be done under the supervision of an inspector;
- (x) where the seized commodities warrant the prosecution of the importer, manufacturer, distributor, seller or transporter from whom the commodities were seized, the inspector shall record a statement with the police and the seized commodities shall be handed over to the police as exhibits;
- (xi) where a seized commodity is not to be used as a police exhibit and cannot be re-worked, the commodity shall be destroyed or otherwise disposed of under a court order at the cost of the person from whom the commodities were seized;
- (xii) where a ban of the commodity is deemed necessary, the director shall recommend the ban of the commodity to the Minister.

(3) Where a commodity does not bear the distinctive mark or the digital conformity mark, the inspector—

- (a) shall seize the commodity and issue a notice of seizure to the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale of the commodity;
- (b) may remove the commodity to a bureau storage facility or confine it at the premises of the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale by sealing; except that where the seized commodity is perishable, the director may, on recommendation of the inspector and after giving notice to the offender, destroy the commodity and the inspector shall take pictorial evidence of the destruction of the commodity;

- (c) may obtain a representative sample of the commodity for analysis;
 - (d) may recommend the suspension of production of the commodity to the director, based on a test report or inspection report;
 - (e) may recommend to the director a recall or withdrawal of the commodity by the importer, manufacturer, distributor or seller based on a test report or inspection report;
 - (f) may require the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale of the seized commodity to report to the bureau; or
 - (g) may instruct the economic operator to apply for the distinctive mark or the digital conformity mark.
- (4) Where a commodity bears the distinctive mark or a digital conformity mark illegally—
- (a) the inspector shall seize the commodity and issue a notice of seizure to the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale of the commodity;
 - (b) the inspector may remove the seized commodity to a bureau storage facility or may confine it at the premises of the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale by sealing; except that where the seized commodity is perishable, the director may, on recommendation of the inspector, and after giving notice to the offender, destroy the commodity and take pictorial evidence of the destruction of the commodity;
 - (c) the inspector may obtain a representative sample of the commodity for analysis;

- (d) the inspector may recommend to the director, the suspension of production of the commodity based on a test report or inspection report;
 - (e) the inspector may recommend to the director, the recall or withdrawal of the commodity by the importer, manufacturer, distributor or seller, based on a test report or inspection report;
 - (f) the inspector shall require the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale of the seized commodity to report to the bureau;
 - (g) where the seized commodities warrant the prosecution of the importer, manufacturer, distributor, seller or transporter from whom the commodities were seized, the inspector shall record a statement with the police and the seized commodities shall be handed over to the police as exhibits; and
 - (h) the inspector shall instruct the economic operator to apply for the distinctive mark or the digital conformity mark.
- (5) Where a commodity has expired—
- (a) the inspector shall seize the commodity and issue a notice of seizure to the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale of the seized commodity;
 - (b) the inspector may remove the seized commodity to a bureau storage facility or may confine it at the premises of the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale by sealing; except that where the seized commodity is perishable, the director may, on recommendation of the inspector, and after giving notice to the offender, destroy the commodity and take pictorial evidence of the destruction of the commodity; and

- (c) the inspector may require the importer, manufacturer, distributor, seller, transporter or person found in possession or control for sale of the seized commodity to report to the bureau.
 - (d) Where the seized commodities warrant the prosecution of the importer, manufacturer, distributor, seller or transporter from whom the commodities were seized, the inspector shall record a statement with the police and the seized commodities shall be handed over to the police as an exhibit;
 - (e) Where the seized commodities are not to be used as police exhibits, the commodities shall be destroyed or otherwise disposed of as directed by a court order at the cost of the person from whom the commodities were seized.
 - (f) The inspector may recommend to the director, a recall or withdrawal of the commodity by the importer, manufacturer, distributor or seller, based on an inspection report.
- (6) Where commodities in a distribution vehicle are found to be non-conforming as provided for in subregulation (1)—
- (a) the vehicle shall be impounded at a designated bureau parking facility; and
 - (b) the commodities shall be handled in accordance with subregulations (2), (3), (4) and (5).
- (7) Where commodities in an impounded vehicle have been handled in accordance with subregulation (5)(b), the vehicle shall be released.
- (8) Where an inspector has recommended a recall or withdrawal—

- (a) the importer, manufacturer or distributor shall issue a notice of recall or withdrawal detailing the commodity, consignment or lot or batch of commodity being recalled or withdrawn and the major non-conformity that has been identified and the notice shall be issued in the print media or other media; and
- (b) the importer, manufacturer, distributor or seller shall furnish the bureau with evidence and a report of compliance with paragraph (a).

PART IV—MARKET SURVEILLANCE INSPECTIONS

7. Conducting enforcement inspections

(1) The bureau may, at its own instance or following information by any person, carry out inspection on—

- (a) a commodity or consignment or lot or batch of a commodity;
- (b) an establishment; or
- (c) any other relevant area, including the source of raw materials or processed intermediates that may affect the quality of the commodity.

(2) An inspector may obtain a representative sample of a commodity for examination, testing or analysis in order to determine whether a commodity complies with the requirements of the compulsory standard.

(3) Where a sample is taken, the inspector shall issue a sample form to the economic operator.

(4) An inspector shall give a copy of the inspection report in respect of the inspection carried out to the importer, manufacturer, distributor or seller or representative of the economic operator found on site.

(5) Where an inspection is done on a commodity, consignment, lot or batch of a commodity—

- (a) the inspector shall release the commodity for the intended use if the commodity is found to be conforming in accordance with regulation 4(1); or
- (b) where the commodity is found to be non-conforming in accordance with regulation 6(1), the bureau shall handle the non-conforming commodity in accordance with regulations 6(2), 6(3) and 6(4).

(6) Where an inspection is done on an establishment—

- (a) in the case of a conforming establishment, the inspector shall give a copy of the inspection report to the manufacturer, distributor or representative of the economic operator found on site;
- (b) in the case of a non-conforming establishment, the inspector may—
 - (i) seal off the establishment and suspend production of commodities until satisfactory corrections are done; and
 - (ii) require the economic operator to submit to the bureau, proposed mechanisms of correction of the non-conformities identified and documented in the inspection report, and shall inspect the establishment to verify the corrections and their suitability; and
 - (iii) where satisfactory corrections are done as required under subregulation (6), the inspector may unseal the establishment and lift the suspension.

8. Inspector to verify shelf life of commodity

(1) Where a compulsory standard requires a commodity to have a shelf life, the person responsible shall ensure that the shelf life is clearly marked on the commodity.

(2) Where a commodity requires a definite shelf life, the inspector shall verify that the commodity has a defined and marked shelf life.

(3) Where a commodity has exceeded the marked shelf life, the inspector shall issue a notice of seizure and the commodity shall be sealed off at the inspected premises or removed to a bureau storage facility and handled in accordance with regulation 6(5) (6) (7) and (8).

(4) Where a commodity does not bear a marked shelf life, the inspector shall issue a notice of seizure and the premises at which the commodities are stored shall be sealed off or the commodity removed to a bureau storage facility and handled in accordance with regulation 6 (2).

(5) Where an inspection reveals that the shelf life of a commodity may have been tampered with, the inspector shall seize the commodity and issue a notice of seizure and the commodity shall be sealed at the inspected premises or removed to a bureau storage facility and handled in accordance with regulation 6.

9. Commodity not covered by standard specifications

(1) An inspector may inspect a commodity in respect of which there is no standard specification declared, for safety and health purposes.

(2) A person manufacturing or distributing a commodity; whether physically or electronically, that is not covered by a compulsory standard specification, shall obtain pre-market approval from the director before offering the commodity for sale if the commodity impacts on the health and safety of consumers.

(3) Where a ban on a commodity is notified by a regulatory or related agency, locally or internationally, the commodity shall be seized from the market in accordance with regulation 6(1).

(4) An economic operator, inspector or interested person may apply to the bureau for the development of a standard specification for a new commodity and shall apply to the bureau for approval to place the commodity on the market.

(5) The bureau shall test every new commodity or innovation for compliance to basic safety requirements or levels.

(6) Where a new commodity conforms to the basic safety requirements, the director shall approve the commodity to be placed on the market.

(7) Where a new commodity fails to meet the basic safety requirements or levels, the commodity shall be handled in accordance with regulation 6(2).

(8) A person importing a commodity in respect of which no standard specification is declared shall not place the commodity on the market unless the commodity is evaluated for fitness for purpose.

10. Powers of inspectors.

(1) A standards inspector shall exercise the powers conferred by section 14 of the Act.

(2) A standards inspector may, in addition to the powers conferred by section 14 of the Act—

- (a) seize any commodity or articles, substance, material, equipment or plant which he or she has reasonable cause to believe that an offence has been committed in respect of, in accordance with the Act and these Regulations;

- (b) impound a vehicle or vessel conveying a commodity which he or she has reasonable cause to believe that an offence has been committed in respect of in accordance with the Act and these Regulations;
- (c) place on any establishment, structure, facility, premises, vehicle or vessel, a seal for the safeguarding of that establishment, structure, facility, premises, vehicle or vessel or for the prevention of tampering with that establishment, structure, facility, premises, vehicle, or vessel or for the prevention of tampering with any commodities in it; or
- (d) cause the police to arrest any person, if he or she has reasonable grounds to believe that the person—
 - (i) is committing or has committed or been involved in the commission of any violation of the Act or these Regulations;
 - (ii) has tampered with or broken a bureau seal;
 - (iii) has tampered with or removed sealed off or confined commodities;
 - (iv) obstructs, assaults or insults an inspector or person assisting the inspector in the performance of his or her duties; or
 - (v) fails to sign a document or to comply with any reasonable requirement made of him or her by an inspector to enable the inspector to perform his or her duties under the Act or these Regulations.
- (e) require any person or media house to cease making any statement or representation, whether in writing or not, physically or electronically which conveys or is likely to convey the impression that a commodity complies with a standard specification or a compulsory standard or bears the distinctive mark when in fact it does not;

- (f) require any person not to avail for sale, physically or electronically, a commodity that does not comply with a standard specification or a compulsory standard, or which does not bear the distinctive mark; and
- (g) take evidence, including photos, videos and any other relevant evidence as may be required in the performance of his or her duties.

PART V—MISCELLANEOUS

11. Samples and information

(1) Notwithstanding anything to the contrary, any person who imports, manufacturers, distributes or sells any commodity for which a compulsory specification is declared, shall, at the request of an inspector and at that person's own cost—

- (a) submit or make available to the inspector a representative sample as may be specified in the request, for examination, testing or analysis; or
- (b) furnish to the inspector any information as may be specified with regard to the commodity concerned or its manufacture and comply with the sampling requirements of the compulsory standard specification.

(2) The inspector may examine a representative sample obtained under this regulation, or have it tested or analysed, in order to determine whether the commodity complies with or has been manufactured in accordance with the requirements of the compulsory standard specification referred to in regulation 4(1).

(3) Where the sample obtained is damaged or destroyed during examination, testing or analysis, the bureau is not liable for the damage to, or destruction, of that sample.

(4) The result of any examination, test or analysis of a representative sample, of a commodity is declared in respect of which a compulsory standard specification shall be valid for the whole consignment or lot or batch from which the sample was obtained or to the similar services by the supplier, until the contrary is proved, or unless otherwise specified in the compulsory standard specification.

12. Enforcement collaboration

The bureau may collaborate with any person or agency for purposes of the enforcement of standard specifications, with a view to promoting compliance with health and safety requirements.

13. Commodities manufactured within Partner States of the East African Community

(1) An imported commodity manufactured within a Partner State of the East African Community shall bear a certification mark notified by the respective Partner State and where it does not bear a notified certification mark, it shall bear the distinctive mark set out in the Schedule to these Regulations where there is a compulsory standard specification declared for that commodity.

(2) Where a commodity is placed on the market, whether electronically or physically and is manufactured from within a Partner State of the East African Community but does not bear a certification mark notified by the Partner State, the commodity shall be subject to the provisions of regulations 6(2), (b)(ix), (x) and (xi), where applicable.

14. Guidelines

The director may issue guidelines necessary to ensure compliance with compulsory standard specifications, compliance with the Act and these Regulations and compliance with health and safety requirements relating to any commodity and the protection of consumers.

SCHEDULE

DISTINCTIVE MARK

Regulations 4, 6 and 13



HON FRANCIS MWEBESA,
Minister of Trade, Industries and Cooperatives.