

STATUTORY INSTRUMENTS

2020 No

**The Uganda National Bureau of Standards (Use of Distinctive Mark)
Regulations, 2020.**

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

IN EXERCISE of the powers conferred upon the Minister responsible for commerce by Section 43 of the Uganda National Bureau of Standards Act, and on the recommendation of the National Standards Council, these Regulation are made this.....day of 2020.

PART I - PRELIMINARY

1. Title.

These Regulations may be cited as the Uganda National Bureau of Standards (Use of Distinctive Mark) Regulations, 2020.

2. Interpretation.

In these Regulations, unless the context otherwise requires-

"Act" means the Uganda National Bureau of Standards Act, Cap 327;

“activation” means Declaration of usage of the distinctive marks in the Digital Tracking System.

“affix” means to stick / place the distinctive mark on the designated product.

"applicant” means an importer or domestic manufacturer applying for use of a distinctive mark;

"Bureau" means the Uganda National Bureau of Standards established under section 2 of the Act;

"commodity" means any article, product or thing which is or will ultimately be the subject of trade or use;

"compulsory standard specification" means the standard specification declared under section 18 of the Act;

"consignment" means a batch of goods destined for or delivered an aggregation of commodities made under a common system of causes and presented for inspection;

"currency point" has the value assigned to it in Schedule 1;

Certificate of Conformity (CoC) means a certificate that is given to products that meet a minimum set of safety, regulatory and technical requirements.

"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;

"domestic manufacturer" means a person manufacturing a commodity within Uganda;

"distributor" means a person in the supply chain other than the manufacturer or importer, who makes a commodity covered by a compulsory standard specification declared under Section 18 of the Act, available on the Ugandan market;

"importer" means a person who brings into Uganda a commodity covered by a compulsory standard specification declared under Section 18 of the Act;

"inspector" means a person appointed as an inspector under section 13 of the Act;

"inspection" means the examination of commodity design, commodity, process or its installation and determination of its conformity with specific requirements;

"inspection report" means a report compiled by an inspector detailing the findings of the inspection;

"manufacture" means to make, produce, process, treat, assemble, alter, modify, adapt, convert, or treat;

"manufacturer" means any legal, or natural person engaged in making, producing, processing, treatment, assembling, altering, modifying, adapting,

converting or any other operation in relation to commodities subject to standard specifications;

“package” means a packet, bottle, sachet, container or similar material used for packing prescribed goods

“Primary package” material that first envelops the commodity and holds it. This usually is the smallest unit of distribution or use and is the package that is in direct contact with the contents.

“Secondary package” outside the primary packaging, and may be used to prevent pilferage or to group primary packages together.

“System” means the distinctive mark management system comprising of the equipment, software or hardware that enables tracking, tracing, production of and accounting for prescribed goods

PART II - DISTINCTIVE MARK ON A COMMODITY

3. Distinctive Mark

In accordance with Section 18 (1) (b) of the Act, the Mark declared by the Council as the distinctive Mark shall be the Q Mark in Schedule 2 to these regulations to be applied on commodities that comply with the requirements of the relevant compulsory Standard Specifications.

4. Commodity to bear distinctive mark.

- 1) All commodities that are covered by compulsory standard specifications shall bear the Distinctive Mark declared under these regulations.
- 2) A person shall not import, distribute, manufacture, sell or have in his or her possession or control for sale or distribution any commodity for which a compulsory standard specification has been declared unless the commodity bears the distinctive mark specified in Schedule 2.

PART III -APPLICATION FOR A DISTINCTIVE MARK

5. Application for distinctive mark

- (1) A manufacturer, distributor, agent or importer of commodities in respect of which a compulsory standard specification is declared under Section 18 of the Act shall apply to the Council or person authorised by Council.

- (2) The Council or person authorised by Council shall before issuing distinctive marks;
- a) In the case of domestic manufacturer, require that the applicant have a valid permit to use distinctive Mark
- b) In the case of imported goods, require that the applicant possesses a Certificate of Conformity to Standards of commodities
- (3) Application for distinctive marks may be submitted before goods arrival in Uganda
- (4) An importer shall make an application in respect of each consignment.
- (5) The Council or person authorised by Council may in any other instance authorize in writing any intending importer of the commodity to have the commodity so marked immediately on arrival in Uganda

6. Distinctive mark fees.

A domestic manufacturer, importer or agent shall purchase Distinctive Marks from the council or person acting under the authority of Council from time to time at a fee that shall be as specified in Schedule 3 to these regulations.

7. Terms of use of distinctive marks

- 1) Domestic manufacturers and importers shall ensure that the commodities for which distinctive marks have been granted conform to the Compulsory Standard Specifications.
- 2) An importer shall ensure that any record maintained in relation to the importation is made available for inspection by an Inspector and shall, at the request of such officer, allow the removal of the record to the premises of the Bureau for further scrutiny.

8. Application of distinctive marks on commodities

- (1) Domestic manufacturers and importers or their agents shall affix and activate the distinctive Marks only on commodities as per the terms and conditions for use of the Distinctive Mark
- (2) In case marking or sticking of the distinctive Mark on commodity is not possible on the primary package, the Mark shall be affixed on a secondary package containing two or more primary packages.

- (3) Commodities shall be so marked in a visible place as appropriate for the type of product or package, by placement of the Distinctive mark before a commodity is placed on the market.
- (4) For purposes of this regulation, the application of distinctive mark shall be to enable authentication, accounting for production, tracking and tracing of the commodities and EAC recognition of notified Mark.
- (5) For purposes of this section, a commodity is deemed to bear the Distinctive mark if the Mark has been affixed and activated on the commodity.

9. Place for affixing distinctive Marks

- 1) The Distinctive Marks shall be affixed and activated-
 - a) in the case of domestic manufacture or repackaged goods on the commodities in the manufacturing or repackaging facility immediately after packaging;
 - b) in the case of imported goods that do not possess a CoC, on the commodities in a facility designated by the Council within seven days after clearance; and
 - c) in the case of imported goods, on the commodities in the manufacturing or designated facility within the exporting country
- 2) A person shall not, except with the approval of the Council or person acting under authority of the Council remove goods from the place designated for affixing the Distinctive Mark, unless the goods have been affixed and activated with the Distinctive Marks in accordance with this regulation.

10. Return of distinctive marks.

- (1) A manufacturer or importer shall return all unused Distinctive Marks to the Council or person acting under the authority of Council where they remain unused for the following reasons;
 - a) the manufacturer stops manufacturing the commodities;
 - b) the Distinctive Mark sticker sheets or reels are defective;
 - c) the Distinctive Marks have been declared out of use by the Council or person acting under the authority
 - d) the commodities are not imported or an importer imports a quantity of commodities less than the quantity of Distinctive Marks procured.

11. Accountability for distinctive marks

- (1) A manufacturer, importer shall account to the Council or person acting under the authority of Council for all the Distinctive Marks received.
- (2) The accountability referred to in sub regulation (1) shall-
 - a) specify the number of Distinctive Marks used;
 - b) specify the number of Distinctive Marks that are not used; and
 - c) specify the number of Distinctive Marks returned under regulation.
- (3) Where the Council or person acting under the authority of the council is not satisfied with the accountability of the Manufacturer or Importer, the Council or person acting under the authority of the council shall communicate to the Manufacturer or Importer, giving reasons for the dissatisfaction and requiring them to show cause within 30 days after receiving the communication, why administrative sanctions are not preferred against them.
- (4) The Council or person acting under the authority of the Council shall examine and verify a Distinctive Mark that is alleged to be damaged, and if satisfied that the Distinctive Mark is damaged, shall off set the damaged Distinctive Marks from the Distinctive Marks supplied.

PART IV - DISTINCTIVE MARKS MANAGEMENT SYSTEM

12. Installation of new or modified system

- (1) A manufacturer or importer shall be responsible for the cost of Distinctive Marks applicators, adjustments or adaptations of their equipment and premises necessary to install and integrate the new or modified system on each production and or packaging line.
- (2) Where a manufacturer or importer is required to carry out adjustments or provide information required by the Council for the installation of the new or modified system, the manufacturer or importer shall carry out the adjustments or provide the information at least seven days before the date of the installation of the new or modified system.
- (3) Where a new or modified system is required the Council shall notify the manufacturer or importers in writing at least 90 days before the installation and integration of the new or modified system and the notice shall state:-
 - a) the requirements for the equipment to facilitate use of the system
 - b) the adaptive features required on each production line

- c) the connectivity features and operating environment for the installation and operation of computers and other equipment comprising the system; and
- d) the starting date of installation of the system

13. Security and operation of the system.

- (1) A manufacturer or importer shall be responsible for the security of the system installed in their premises.
- (2) A manufacturer or importer shall report to the Council or person acting under the authority of Council any production line that is not operating immediately.
- (3) The Council or person acting under the authority of Council shall secure the production line that is not operating, using a security or other appropriate seal and shall register the action in the system.

14. Re-installation or removal of system

- 1) A manufacturer shall apply to the Council or person acting under the authority of Council for re-installation or removal of the system, as the case may be on the occurrence of the following events-
 - a) reactivation of inoperative production lines;
 - b) deactivation of production lines;
 - c) maintenance and reallocation of production lines;
 - d) installation of new production lines;
 - e) acquisition or sale of industrial machinery and equipment; or
 - f) change of premises
- (2) A manufacturer shall, declare to the Council or person acting under the authority of Council at least 30 days in advance of the start of production of new brands of commodities or stock keeping units or of any change in the graphic art of existing ones, together with the corresponding packages and labels.

PART V - GENERAL

15. Exemptions from application of distinctive mark

The following shall be exempt from application of the distinctive mark

- 1) Commodities whose Free on Board (FOB) value does not exceed US \$ 1000 with the exception of food, baby products, cosmetics, tungsten filament bulbs, electric cables, compact fluorescent lamps, portable socket outlets or extension sockets, flat irons, electric kettles, solar lanterns, energy saving bulbs, solar battery chargers, solar panels, electric plugs, water heaters, electric sockets, electric switches, electric blenders, shovels, garden hoes and machetes. Government project specific commodities whose procurement has an inbuilt or demonstrated quality assurance system that guarantees conformity to national standards
- 2) Raw materials imported for use in a manufacturing process and not for sale
- 3) Diplomatic cargo brought for personal or office use and supported by a diplomatic note issued by the Ministry of Foreign Affairs
- 4) Personal effects of returning residents and expatriates
- 5) Commodities manufactured in a Partner State of the EAC with a valid certification permit and bearing a notified product certification mark (certified against EAS)
- 6) Industrial machinery and spare parts brought in for a manufacturing process and not for sale
- 7) Agricultural machinery, mining machinery and related spare parts which are not for sale
- 8) Classified military, police and prisons hardware and equipment.
- 9) Bibles, Qurans and religious materials

16. Seizure of distinctive marks, equipment or commodities

- 1) The Council or person acting under the authority of Council may seize Distinctive Mark stickers, equipment or commodities or as the case may be where the Distinctive Marks are: -
 - a) forged: or
 - b) found in the possession of a person not being the person to whom the Distinctive Marks were supplied
 - c) the equipment or plant is used in the manufacture of forged Distinctive Marks;
 - e) The commodities bear Distinctive Marks affixed in a manner that is inconsistent with these Regulations; or
 - f) The domestic manufacturer does not bear a valid permit to use the Distinctive Marks

17. Administrative Sanctions

1) The Bureau shall, in respect of non conforming distinctive marks, equipment or commodities have power to do inter alia the following—

- (a) stop further production;
- (b) seal or lock the premises;
- (e) order a withdrawal of the products from the market;
- (f) order reshipment;
- (g) order for corrective action;
- (i) order destruction;
- (j) stop any further sale;
- (k) stop importation; and
- (l) make any other order necessary to give to effect to the objectives of this section.

18. Offences.

- (1) Any person who -
- (a) applies the distinctive mark on a commodity covered by compulsory standard specifications without a valid permit to use the distinctive mark or not being authorized to do so;
 - (b) applies a distinctive mark except in accordance with the conditions of a valid permit to use the distinctive mark;
 - (e) refuses to produce before an inspector any document, commodity, material, ingredient, component or substance which is required under these Regulations;
 - (f) obstructs, assaults or insults an inspector or person assisting the inspector in the performance of his or her duty;
 - (g) fails 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 these Regulations;
 - (i) wilfully removes, destroys or renders illegible or undecipherable or incapable of identification any document, mark or writing with a view to preventing it from being used as evidence in any investigations under these Regulations,

commits an offence and shall on conviction be liable to a fine not less than five hundred currency points and not exceeding two thousand five hundred currency points or imprisonment not less than two years and not exceeding five years or both.

In the case of a second or subsequent offence to a fine of not less than two thousand five hundred currency points and not more than ten thousand currency points or imprisonment not less than three years and not exceeding six years or both.

19. Transitional provisions

These regulations shall not apply to domestic manufacturers in respect of permits subsisting immediately before the commencement of these regulations.

20. Commencement

These regulations shall come into force on a date appointed by the Minister by notice in the Gazette.

21. Repeal

These regulations repeal the **THE UGANDA NATIONAL BUREAU OF STANDARDS (USE OF DISTINCTIVE MARK) REGULATIONS, 2018.**

SCHEDULE I

CURRENCY POINT

One currency point is equivalent to twenty thousand shillings

Schedule 2

Qmark

Schedule 3 (Regulation 6)

Fees – 49.56/ per distinctive Mark