LEGAL NOTICE NO. ........................

THE STANDARDS ACT

(Cap 496)

IN EXERCISE of the powers conferred by section 20 of the Standards Act, the Cabinet Secretary for Investments, Trade and Industry makes the following Regulations—

THE STANDARDS (HANDLING OF CONDITIONALLY RELEASED AND REJECTED IMPORTS) REGULATIONS, 2023

Citation 1. These Regulations may be cited as the Standards (Handling of Conditionally Released and Rejected Imports) Regulations, 2023.

Interpretation. 2. In these Regulations, unless the context otherwise requires—

“bond” means a guarantee required from an importer by the Bureau to secure the conditionally released goods;

“compliant goods” means goods which have been established to meet the requirements of the applicable Kenya Standard or approved specifications;

“Director” means the Director of the Bureau appointed under section 5 of the Act.

“disposal” means the action of dealing with goods, by way such as destruction, selling, conversion;

“inspector” means a person appointed under section 13 of the Act;
“rework” means improving, altering or revising a good to achieve compliance to standards specification;

“Tribunal” means the Tribunal as defined in section 2 of the Act.

Conformity. 3. (1) A product that does not conform to Kenya standards, approved specifications and other applicable regulations shall not be permitted to be imported into Kenya.

   (2) An inspector shall issue a notice of rejection to the importer with a copy to customs.

   (3) Where the goods in regulation 3(1) have not entered Kenya within the meaning of East African Community Customs Management Act, the goods may be re-exported or otherwise dealt with by the relevant authority under the provisions of East African Community Customs Management Act.

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Conditional release. 4.(1) Goods which are the subject of this Regulations may be conditionally released to an approved warehouse for the purposes of inspection and testing where such goods —

   (a) arrive at a port of entry without a certificate of conformity or certificate of roadworthiness;

   (b) are accompanied by certificate of conformity or certificate of roadworthiness but have been targeted for surveillance inspection;

   (c) are from countries within the East African Community and meet the following criteria-

      (i) finished goods arriving without valid permit issued by respective National Standard Bodies; or

      (ii) selected raw materials arriving without test report issued by National Standard Bodies;

   (d) originate from a country where the Bureau has not appointed an inspection body.
(2) Where goods are released conditionally pursuant to Regulation 4(1), the importer shall:
   (a) Execute a bond equivalent to ten per cent of the approved customs value which shall be valid for a period of six months.

   (b) The issuer of the bond shall be obliged to give the Bureau the amount of the bond upon claim by the Bureau.

   (c) The bond shall be returned by the Bureau to the importer within thirty days following the release of the test results and confirmation by the inspector that the goods have not been tampered with.

(3) Where the goods are released under paragraph (1) the inspector may take samples for testing and shall ensure that the samples are tested and the results released to the importer, or agent within fourteen days after the testing period of such samples.

(4) Where goods are conditionally released, the importer or his agent shall ensure that the goods remaining in the approved warehouse are not removed, sold, used, disposed of, re-exported, damaged, wasted, destroyed or in any manner dealt with before the release of test results by the inspector.

(5) A person who removes, sells, uses, disposes of, re-exports, damages, wastes, destroys or in any manner deals with the conditionally released goods before the release of the test results commits offence.

Compliance with standards.

5. The inspector shall lift the conditional release where the goods under regulation 4(1) are tested and are found to have complied with the requirements of the applicable standard relating to those goods.

Non-compliance.

6.(1) The inspector shall seize the goods that have been tested or otherwise established not to comply with the standard relating to those goods and shall complete form STA 45B.

   (2) The inspector may order the destruction of seized goods where—
   (a) testing indicates that the goods do not meet the requirements of the relevant Kenya Standard; and
(b) it is reasonably necessary to destroy the goods because the goods are in a dangerous state or injurious to the health of human beings, animals or plants.

7.  (1) The Bureau may allow rework or recycling of goods where the goods do not comply with the applicable standard but do not meet criteria for destruction as provided in regulation 6.

(2) Where the inspector has recommended rework or recycling in paragraph (1), the Director shall, within fourteen days, in writing, notify the importer or his agent of the recommendation and conditions for rework or recycling.

(3) Upon receiving the notification in paragraph (2) the importer or his agent shall, within fourteen days, respond to the Bureau, in writing, demonstrating the ability to meet the conditions.

(4) Where rework or recycling is allowed by the Bureau, the importer or his agent shall pay to the Bureau re-inspection fee of twenty thousand shillings or three percent of the approved customs value, whichever is higher, and undertake rework or recycling within 30 days from the date of payment.

(5) Where after recycling or reworking of the goods, the importer or his agent fail to meet the conditions specified in the notification in paragraph 1, the inspector shall handle the goods as provided for in regulation 6.

8.  (1) Where a decision to destroy the goods has been made pursuant to Regulation 6(2), the Inspector shall issue a written notification to the importer or his agent on the same.

(2) The importer or his agent shall bear the cost of the destruction of the goods.

(3) The destruction shall be undertaken in a designated facility under Environmental Management and Coordination Act under the supervision of the Bureau.
(4) The Bureau may, where the end product of the destruction process is of economic value, sell or otherwise dispose of the end product for cost recovery.

Review. 9. (1) Any person aggrieved by a decision of the inspector under these regulations may within seven days of notification of the decision apply to the Director for review.

(2) The Director shall, within fourteen days, after receiving the application for review, determine and communicate the decision to the applicant.

Appeal. 10. A party who is aggrieved by the decision in regulation 10 may appeal to the Standards Tribunal within fourteen days of communication by the Bureau.

Made on the .................................................., 2023.

*NAME OF CS*

Cabinet Secretary for Investments, Trade and Industry