



DEPARTMENT ADMINISTRATIVE ORDER NO. 05 Series of 2008

SUBJECT: THE NEW RULES AND REGULATIONS CONCERNING THE ISSUANCE OF THE IMPORT COMMODITY CLEARANCE UNDER THE PRODUCT CERTIFICATION MARK SCHEME OF THE BUREAU OF PRODUCT STANDARDS (BPS)

Pursuant to the provisions of R.A. 4109, R.A. 7394 and E.O. 913 Series of 1993, the following rules and regulations governing the issuance of the import commodity clearances are hereby prescribed and promulgated for the compliance, information and guidance of all concerned.

1. SCOPE

- 1.1 This Department Administrative Order prescribes the rules and regulations on the issuance of the Import Commodity Clearance (ICC) to import shipments covered by mandatory BPS product certification.

2. DEFINITION OF TERMS

For purposes of this Order, the following definitions shall apply:

- 2.1 Audit - A systematic and independent examination to determine whether quality activities and related results conform to planned arrangements effectively and are suitable for a company to achieve its quality objectives.
- 2.2 BPS – Bureau of Product Standards
- 2.3 BPS designated/recognized testing laboratory – A body authorized by BPS to conduct product tests under the scope of this Department Administrative Order which may include BPS Testing Center, testing laboratories accredited by PAO or by an accreditation body that is a signatory to regional/international agreements or its equivalent entered into by BPS/DTI (e.g. APLAC, ILAC, IECEE-CB Scheme), and any other testing laboratory allowed by BPS (e.g. under Mutual Recognition Agreements with ASEAN, APEC, etc.)
- 2.4 BOC – Bureau of Customs
- 2.5 Bond – An amount issued in favor of the Republic of the Philippines which shall guarantee the faithful and honest performance of the applicant/importer with regard to the conditions set forth in the conditional release order of the DTI.
- 2.6 Conditional Release – Document issued to an importer allowing the temporary release of goods from Custom's custody, upon compliance with the BOC and BPS requirements, while awaiting BPS decision on the issuance of an ICC.
- 2.7 DTI – Department of Trade and Industry

BUREAU OF PRODUCT STANDARDS

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Membership:

- International Organization for Standardization (ISO)
- Enquiry Point for WTO Technical Barriers to Trade (WTO-TBT)

- 2.8 Evaluation – Systematic examination of the extent to which a product, process, or service fulfils specified requirements.
- 2.9 International Standard – A standard developed under the WTO principles for international standards development such as those developed by international bodies like the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), International Telecommunication Union (ITU) and those developed by foreign standards bodies under these principles.
- 2.10 Import Commodity Clearance (ICC) – A document issued by DTI attesting that the quality and/or safety of an imported product conforms to a Philippine National Standard or BPS – recognized international/foreign standard.
- 2.11 Inspection – Examination of a product design, product, process or *installation and determination of its conformity with specific requirements* or, on the basis of professional judgment, with general requirements which shall include sampling, measuring, observing or testing the relevant characteristics of a product.
- 2.12 Inspector – A qualified and competent person who performs inspection services on its own or on behalf of BPS.
- 2.13 Inspection Body – An organization that performs inspection services on its own or on behalf of BPS.
- 2.14 Mandatory Product Certification - A system and process by the BPS, specifically directed for products included in the List of PNS under Mandatory Product Certification dated 01 October 2006 & its future amendments.
- 2.15 National Standards Body – A nationally recognized body whose principal function at the national level, by virtue of its charter or national statues is the development, promulgation, publication, promotion and implementation of national standards.
- 2.16 PAO-Philippine Accreditation Office
- 2.17 Philippine National Standards (PNS) – Standards issued or developed by the BPS through the BPS Technical Committees.
- 2.18 Processing Fee – a fee that includes review and evaluation of results of conformity assessment and other documents in relation to the application for ICC.
- 2.19 QMS – *Quality Management System*.
- 2.20 Review - Verification of the suitability, adequacy and effectiveness of selection and determination activities, and the results of these activities, with regard to fulfillment of specified requirements by an object of conformity assessment.
- 2.21 Sampling – A method of getting a representative sample of a product shipment according to a specified procedure.

- 2.22 Test Report – A document that presents test results and other information relevant to a test;
- 2.23 Testing Laboratory – A laboratory which measures, examines, or determines the characteristics of performance of material or products. It may also be a laboratory that calibrates inspection, measuring and test equipment.

3. APPLICATION FOR IMPORT COMMODITY CLEARANCE

3.1 Prior to actual importation of product(s) covered by the mandatory BPS product certification and prior to application for Import Commodity Clearance the importer shall submit to BPS the QMS certification and/or other related QMS documents of the product manufacturer. BPS will review submitted documents and decides as follows:

- 3.1.1 Accepts the QMS documents of the product manufacturer submitted by the importer and allows shipment of such product under 4.1.1 or 4.1.2.
- 3.1.2 Accepts the QMS documents of the product manufacturer submitted by the importer but subject to on-site audit/inspection of BPS qualified QMS auditors/inspector to verify compliance to any needed corrective actions noted during the review of the said documents. BPS allows importation after submission of results of above activities has been made. Import shipment can be made under 4.1.1 or 4.1.2.
- 3.1.3 Rejects the QMS documents of the manufacturer submitted by the importer giving reason thereto and disallows importation except under 4.1.3.

The validity of acceptance of the QMS qualification of the product manufacturer is one (1) year. An annual review will be conducted by BPS to check consistent compliance to the established QMS of the product manufacturer. An on-site audit/inspection will be made by BPS if found necessary.

- 3.2 Importer of product(s) without QMS documentation can be processed under option 4.1.3.
- 3.3 Importers of products covered by the mandatory BPS product certification shall apply for the Import Commodity Clearance with the BPS or to the nearest DTI Regional/Provincial Office, immediately upon arrival of their import shipments and approval of their import entry with the Bureau of Customs (BOC).
- 3.4 Application for an Import Commodity Clearance shall be made using forms obtainable from BPS or the nearest DTI Regional/Provincial Offices. It shall be filed in duplicate with the BPS or nearest DTI Regional/Provincial Office, together with the following documents:
 - 3.4.1 Packing List
 - 3.4.2 Certified True Copy of Import Entry

- 3.4.3 Commercial Invoice
- 3.4.4 Bill of Lading/Airway Bill
- 3.4.5 Certified True Copy of Custom Examiner's Findings
- 3.4.6 DTI Business Registration Certificate/SEC Registration Certificate
- 3.4.7 Summary of Batch Numbers/Serial Numbers of the product(s) covered by mandatory standard
- 3.4.8 Power of Attorney (In cases where the ICC application is filed by persons with managerial/supervisory capability connected with a sole proprietor or partnership organization authorizing them to process said ICC application)
- 3.4.9 Board Resolution (In cases where the application is filed by persons with managerial or supervisory capability connected with the corporations authorizing them to process said ICC applications)
- 3.4.10 Where applicable, original copy of the test reports from the BPS designated/recognized testing laboratory to be sent directly to BPS/DTI Regional or Provincial Offices where the application is filed.
- 3.4.11 Bond, if to be issued Conditional Release.

4. PROCESSING AND ISSUANCE OF IMPORT COMMODITY CLEARANCE

4.1 Applications for the Import Commodity Clearance (ICC) shall be processed through any of the following four (4) options available to an importer:

- 4.1.1 Import Shipment
 - without Product Test Report
 - with Quality Management System based on ISO 9001:2000 and its future amendments

4.1.1.1 An importation without test report may be issued conditional release from BOC's custody by the BPS or DTI Regional/Provincial Office, upon importer's compliance with BOC's requirements and any other requirements of the DTI.

4.1.1.2 Pending the issuance of the Import Commodity Clearance, no distribution, sale, use and/or transfer to any place other than the warehouse duly approved by BPS/DTI Regional or Provincial Office, in whole or in part, shall be made by the importer or any person. To ensure that no distribution, sale, use and/or transfer to any place other than the address specified in the Conditional Release, the importer shall allow the BPS or authorized DTI personnel or any BPS authorized inspection body/inspector conduct verification/inspection/inventory of the import shipment.

4.1.1.3 The import shipment shall be subjected to inspection and sampling by the BPS or authorized DTI Regional/Provincial personnel or any BPS authorized inspection body/inspector. Samples drawn for

testing shall be properly sealed and signed in such a way as to preserve the integrity of the samples. It shall be sent to the BPS designated/recognized testing laboratory for proper coding and testing. The test results of sampled product(s) which are found complying with the requirement of the relevant Philippine National Standard (PNS) will be valid for a period as specified by the guidelines implementing said PNS.

4.1.1.4 Based on the results of the inspection, sampling and testing, the importation shall be evaluated by duly authorized BPS personnel to determine its compliance with the requirements of a specific Philippine National Standard and other applicable DTI rules and regulations.

4.1.1.5 Upon compliance with the requirements of the specific Philippine National Standard and other applicable DTI rules and regulations, the Import Commodity Clearance will be issued by the BPS Bureau Director or his duly designated representative for a specific product on a per shipment per Bill of Lading/Airway Bill basis.

4.1.1.6 In cases where tests (whether partial or complete) showed noncompliance with the requirements of a specific Philippine National Standard, the importer shall allow the BPS or authorized DTI personnel or any BPS authorized inspection body/inspector to conduct inspection/inventory of the import shipment within the official working hours to ensure that the shipment is intact. A resampling and retest may be conducted if there is a reason to believe that the initial test were not done as per established procedure or a corrective measures can be undertaken on the product. The results of the retest shall show conformance to the requirements of the specific Philippine National Standard, before an ICC can be issued.

4.1.2 Import Shipment

- with Product Test Report
- with Quality Management System based on ISO 9001:2000 and its future amendments

4.1.2.1 Import shipment with accompanying product test report, based on relevant Philippine National Standards, issued by BPS designated/recognized testing laboratory. The said test report may be accepted provided that the original copy is directly sent by the BPS designated/recognized testing laboratory to the office where the ICC application is filed. The test report after review and acceptance by BPS will have a validity for a period as specified by the guidelines implementing said PNS. BPS has the prerogative to draw another set of samples for testing if results of verification of the shipment or evaluation of test report found to be with nonconformity.

4.1.2.2 Upon compliance with the requirements of the specific Philippine National Standard and other applicable DTI rules and regulations, the ICC will be issued by the Bureau Director or his duly designated representative for a specific product on a per shipment per Bill of Lading/Airway Bill basis.

4.1.2.3 In the event that random checks of import shipment reveal inconsistencies of the quality/safety of the actual products with the test report issued as per 4.1.2.1 the following actions will be considered:

- a) Manufacturers through the importer shall submit a comprehensive report regarding their production of defective or PNS non-complying product together with corrective and improvement actions. An onsite audit/inspection of the manufacturers production process and QMS maybe conducted by BPS or its authorized representatives to verify corrective and preventive actions taken to prevent production or shipment of defective products.
- b) Subsequent import shipments of such products from that country shall be subjected to a per shipment sampling, verification and testing by the BPS or its designated body. This per shipment sampling and testing under option 4.1.3 shall continue until such time that the consistency of the quality of the import shipments with the test report issued in the country of origin as per 6.1 is reestablished to the satisfaction of BPS.

4.1.3 Import Shipment - without Product Test Report
without Quality Management System

4.1.3.1 Importation under this option is subject to the same requirements as per 4.1.1.1, 4.1.1.2, 4.1.1.3, 4.1.1.5, and 4.1.1.6.

4.1.3.2 The requirements under 4.1.1.4 also applies except that the test report if found complying with the relevant Philippine National Standards will be valid on a per shipment basis.

4.1.4 Import Shipment - with Philippine Standard (PS) Quality
and / or Safety Certification Mark

4.1.4.1 Certified products manufactured by foreign companies who are licensed to use the Philippine Standard (PS) Quality or Safety Certification Mark are exempted under this Order and may be issued a Certificate of Exemption by the Bureau Director or his duly designated representative, if circumstance warrants.

4.2 All product manufacturers whose products are under mandatory product certification and had been granted an ICC under 4.1.1 and 4.1.3 may apply for the PS Certification Mark License as per DAO 1: 1997 and its future amendments.

5. SECURITY OF SHIPMENT PENDING APPROVAL/DENIAL OF IMPORT COMMODITY CLEARANCE

5.1 Upon issuance of Conditional Release, the importer shall allow BPS or authorized DTI Regional/Provincial personnel or any BPS authorized inspection body/inspector to secure the warehouse where the subject shipment are stored in order to ensure that the same is intact prior to the approval/denial of the Import Commodity Clearance being applied for.

5.2 In case the warehouse contains only the subject shipment, the BPS or authorized DTI Regional/Provincial personnel or any BPS authorized inspection body/inspector shall padlock the warehouse in a manner that only the said authorized personnel shall have access thereon and with the knowledge of the importer.

5.3 In case the warehouse contains products/materials other than the subject shipment, the subject shipment shall be securely sealed in an appropriate manner by the BPS or authorized DTI Regional/Provincial personnel or any BPS authorized inspection body/inspector. The importer shall ensure that the sealed shipment shall not be altered/moved/transferred without the knowledge of BPS or DTI Regional/Provincial Office.

5.4 The BPS or DTI Regional/Provincial Office may institute any other measures to prevent any further action that undermine the purpose of these provisions.

6. PRODUCT IDENTIFICATION AND TRACEABILITY

6.1 To establish product identification and traceability of the shipment, importers are required to declare and submit the list of batch/serial numbers of each individual product of the lot/batch being imported. It shall likewise be one of the bases for the issuance of the ICC.

6.2 Importers shall ensure that the imported products are properly labeled as to the product identification and traceability of the production lot/batch.

7. PRODUCT RECALL

7.1 In case a Product Recall Order is issued by the BPS/DTI against an importer, the importer shall establish a product recall system and procedures to be able to account for a specific quantity of products as identified through the ICC data provided by BPS together with the information from its system of product identification and traceability.

8. ISSUANCE OF IMPORT COMMODITY CLEARANCE

8.1 The BPS through its Bureau Director or his duly designated representative has the sole authority to issue an Import Commodity Clearance (ICC). The DTI Regional/Provincial Directors are authorized to accept and process application for ICC and may issue the same, if warranted.

8.2 The importer in coordination with the product manufacturer shall ensure that its imported product covered by Import Commodity Clearance (ICC) conforms at all time to the corresponding PNS and shall be jointly liable for any damages caused by said product to its consumers.

8.3 When necessary, as in a reaction to customer complaints, shipments tested /certified abroad as meeting Philippine National Standard may be randomly subjected to market or warehouse resampling by the BPS or authorized DTI Regional/Provincial personnel or any BPS inspection body/inspector and tested by any BPS designated/recognized testing laboratory for confirmation of its

compliance to PNS requirement. Depending on the findings, BPS/DTI may decide to instruct/order importer to initiate a recall of a particular product shipment/s under corresponding ICC number that have been sampled and tested and found non-complying to PNS requirements.

9 DENIAL OF IMPORT COMMODITY CLEARANCE

9.1 Import shipments not complying with the requirements of the specific Philippine National Standards and/or other rules and regulations of the DTI shall not be issued Import Commodity Clearance.

9.2 All import shipments denied the requisite Import Commodity Clearance shall not be disposed of in the domestic market in any manner. These shall be destroyed under the supervision of BPS or DTI Regional/Provincial Office or re-exported by the importer to the country of origin.

9.3 The destroyed products may be auctioned to recover the cost of destruction and other similar activities.

9.4 Proceeds from destruction/disposal of products as provided for in clause 9.3 shall be deposited to the BPS Trust Fund and shall be used for the implementation of this Department Administrative Order and other related activities.

10 APPEAL PROCESS

10.1 Appeal on the decision of the BPS Bureau Director or DTI Regional/Provincial Director with regard to an Application for ICC.

10.1.1 If the application for ICC is denied, a motion for reconsideration shall be filed by the applicant to the Official who rendered the decision within ten (10) working days from the date of denial of the issuance of ICC.

10.1.2 If the BPS Bureau Director or his authorized representative or the DTI Regional/Provincial Director sustains his decision, an appeal shall be filed to the BPS Product Certification Advisory Committee within (15) days from the receipt of the letter of denial. An appeal shall only be filed when there is a reason to believe that the Official who rendered the decision acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

10.1.3 The filing of a Motion for Reconsideration shall suspend the period within which to appeal.

10.1.4 The decision of the BPS Product Certification Advisory Committee may be appealed to the Secretary of Trade and Industry within fifteen (15) days from the receipt of the said decision.

11 IMPORT COMMODITY CLEARANCE MARK

11.1 The design of the Import Commodity Clearance Mark shall be in accordance with the illustration in Annex 1 showing a gear with the "ICC" letters in the middle and the number code provided by BPS.

- 11.2 The Import Commodity Clearance Mark shall be affixed on each product covered by the specific or corresponding Import Commodity Clearance to be issued on a per shipment basis by the Bureau Director or his duly designated representative.

12 PROHIBITED ACTS

- 12.1 Noncompliance of the conditions stipulated in the Conditional Release.
- 12.2 Violation concerning Clause 5 of this Department Administrative Order.
- 12.3 The Import Commodity Clearance Mark shall not be used or attached to any other product or quantity of products or shipment of products to which such ICC mark and its corresponding number were not issued thereto.
- 12.4 The Import Commodity Clearance Mark shall not be used or attached to a product in any misleading manner.
- 12.5 The maximum administrative fine as per E.O. 913 shall be imposed to any person found guilty of forging the signature of the Bureau Director or its designated representative in order to secure and/or use the Import Commodity Clearance (ICC) Mark. In case of a juridical entity, the president or general manager of such entity shall be liable, without prejudice to the separate filing of civil and/or criminal case.
- 12.6 The administrative fine as per Section 6, E.O. 913, DAO 2:2002 or its future amendments and the ipso facto revocation or cancellation of the Import Commodity Clearance (ICC) Mark which may have been issued by the BPS shall be imposed as a penalty to any person or entity found guilty of using falsified document or record in obtaining said Import Commodity Clearance (ICC) Mark, without prejudice to the separate filing of civil and/or criminal case.

13 FEES, CHARGES, BOND REQUIREMENT AND OTHER EXPENSES

- 13.1 Fees and charges to be paid by the importers shall be as follows:
 - 13.1.1 Application Form Fee : Three Hundred Pesos (P 300.00)
 - 13.1.2 Transportation, board and lodging costs of inspector/s during inspection/audit shall be borne by the applicant/importer, when on-site inspection/audit is necessary.
 - 13.1.3 Inspection/Audit Fee – One Thousand Pesos (Php 1,000) per man-hour shall be borne by the product manufacturer/importer and payable to BPS/DTI; or the amount as charged by BPS designated inspection body/inspector who actually conducted the inspection/audit.
 - 13.1.4 Testing Expense/Fee – All expenses and fees (including freight and handling of samples) charged by DTI or DTI-designated laboratories for testing samples shall be borne by the applicant/importer. It shall be payable upon submission of the samples.

13.1.5 Processing Fee (non-refundable, payable upon filing of the application of Import Commodity Clearance (ICC) on per product per Bill of Lading/Airway Bill basis, assessed by the BPS based on the amount declared in the Invoice).

Invoice Value	Processing Fee
Up to PHP 500,000.00	- Php 5,000.00
Over PHP 500,000 up to PHP 1 Million	- Php 7,500.00
Over PHP 1 Million	- Php 10,000.00

13.2 Fees and charges are subject to changes upon notice, as may be necessary.

13.3 The product manufacturer/importer, as the case maybe shall be liable for any accidents that may happen to the inspector or to the authorized BPS/DTI personnel during the entire duration of the inspection/audit, if it can be proven that the fault or negligence of the former contributed to the same.

13.4 A bond in the amount of PHP 150,000.00 shall be posted before the issuance of the Conditional Release and shall be valid for at least one (1) year.

14 SPECIAL CASES

14.1 In case there is a lack of needed supply, or with constraints on locally available testing equipment and the long testing period required for certain products, separate guidelines may be issued by BPS relative to the implementation of ICC procedures for products concerned.

15 DISPOSITION OF SAMPLES

15.1 All remaining samples drawn from a shipment for monitoring and testing purposes which conform to the requirements of the standard shall be returned to the importer as per DAO 5, series of 1996 or its future amendments and revisions.

15.2 If the importer failed to claim the samples after the stated due date in the notice of retrieval or opted not to retrieve the sample at all, BPS/DTI or BPS designated/recognized testing laboratory may disposed of these samples in any manner it may deem appropriate.

16 PENALTIES

16.1 Any violation of this Order shall be subject to the administrative actions as provided for by the applicable Rules and Regulations or Orders issued by the DTI, E.O. No. 913, Series of 1993 without prejudice to the criminal or civil actions under R.A. No. 4109 and/or R.A. 7394.

17 IMPLEMENTING RULES AND REGULATIONS

17.1 BPS shall promulgate the implementing rules and regulations for this Order.

18 SEPARABILITY CLAUSE

18.1 Should any provision of this Order or any part thereof be declared invalid, the other provisions, so far as they are separable from the invalid ones, shall remain in force and effect.

19 REPEALING CLAUSE

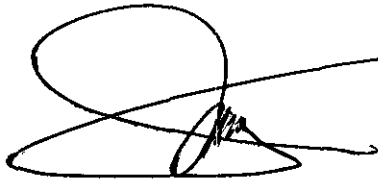
19.1 This repeals Department Administrative Order No. 5 series of 2001 and all other orders or parts thereof which are inconsistent with the provision of this Administrative Order.

20 EFFECTIVITY

20.1 This order shall take effect upon its publication in the Official Gazette or in a newspaper of general circulation.

Done in the city of Makati this 7th day of
February in the year 2008

RECOMMENDED BY :



JESUS L. MOTOOMULL
BPS Bureau Director



ZENAIDA GUISON MAGLAYA
Undersecretary

APPROVED BY :



PETER B. FAVILA
Secretary

ANNEX 1

Import Commodity Clearance Quality Mark



No.: ___ / ___