

LEGAL NOTICE NO. 110

## THE CUSTOMS AND EXCISE ACT

(Cap. 472)

IN EXERCISE of the powers conferred by section 234 of the Customs and Excise Act, the Cabinet Secretary to the National Treasury makes the following Regulations:—

THE CUSTOMS AND EXCISE (EXCISABLE GOODS  
MANAGEMENT SYSTEM) REGULATIONS, 2013

1 These Regulations may be cited as the Customs and Excise (Excisable goods Management System) Regulations, 2013.

Citation

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

Interpretation

“authorised officer” means an officer authorised by the Commissioner to perform any act under these Regulations;

“compounded spirit” means spirit ready for consumption as a beverage and put up for retail;

“contractor” means a person appointed by the Commissioner to supply, install, and maintain the System;

“Excisable goods management system” in these Regulations referred to as “the System” includes excise stamps, track and trace system, production accounting system and related software and hardware;

“importer” means a person registered as an importer by the Commissioner to import excisable goods specified under these Regulations;

“Manufacturer” means a manufacturer licensed to manufacture goods specified in these Regulations;

“package” means packet, bottle or similar retail unit of excisable goods specified in these Regulations;

“printer” means a person appointed by the Commissioner to print and supply excise stamps; and

3. Every package of excisable goods, except motor vehicle, manufactured in or imported into Kenya shall be affixed with an excise stamp of a type and in a manner specified by the Commissioner.

Excisable goods to be affixed with excise stamps

4. Every excise stamp required to be affixed under regulation 3 shall be of such specifications as—

Features of the excise stamp

(a) to deter counterfeiting;

- (b) to facilitate tracking of the stamps and excisable goods along the supply chain;
- (c) to enable accounting for the production of excisable goods manufactured or imported; and
- (d) to facilitate any persons in the supply chain to authenticate the stamps and excisable goods.

**Excise stamps fee.**

5. (1) Manufacturers and Importers shall purchase excise stamps from the Commissioner at a prescribed fee.

(2) The fee prescribed by the Commissioner under paragraph (1), shall not exceed the cost of the stamps and the maintenance costs of the System.

(3) The revenue from the sale of excise stamps shall be retained by the Commissioner for financing the System.

**Registration.**

6. (1) The Commissioner shall register importers of any excisable goods specified under these Regulations subject to such conditions as he may deem necessary.

(2) A person shall not manufacture or import excisable goods for which an excise stamp is required to be affixed in accordance with these Regulations, unless that person is licenced or registered by the Commissioner.

**Application for excise stamps**

7. (1) A manufacturer or importer shall apply to the Commissioner for excise stamps in the prescribed format.

(2) An application made under subparagraph (1) shall be submitted to the Commissioner at least ninety days prior to the manufacture or importation of the goods.

(3) A manufacturer or importer shall pay for excise stamps upon approval by the Commissioner.

(4) In case of imports, the Commissioner may require evidence of importation before delivery of excise stamps.

(5) Despite subparagraph (4), the Commissioner may, subject to such conditions as he may specify, allow delivery of excise stamps to a person before importation.

**Forecast of Consumption.**

8. (1) The Commissioner may require a manufacturer or importer to provide, at least 120 days before the beginning of every financial year, a forecast of quantities of excise stamps which the manufacturers and importer intend to use in the subsequent year.

(2) A manufacturer or importer shall bear the cost of the excise stamps procured under the forecast and not used.

9. (1) Subject to the law regulating public procurement, the Commissioner shall appoint a suitable person to –

Appointments.

- (a) print and deliver excise stamps;
- (b) develop and install the System; and
- (c) install any other related systems.

(2) A person appointed under paragraph (1) shall not print any excise stamps required under these Regulations unless requested by Commissioner.

10. (1) The Commissioner may, where necessary and subject to such conditions as he may impose, require the printer to deliver excise stamps directly to a manufacturer, or importer.

Delivery of excise stamps.

(2) The printer shall notify the Commissioner of the quantity and type of the excise stamps supplied under paragraph (1) within such period as the Commissioner may require.

11. (1) Excise stamps shall be affixed on excisable goods –

Place and time of affixing excise stamps.

- (a) in case of locally manufactured goods, in the production facility immediately after packaging;
- (b) in the case of imported goods, in a place approved by the Commissioner within seven days upon clearance from Customs for home use;
- (c) in any other case, at a place appointed by the Commissioner.

12. Despite paragraph (1)(b), the Commissioner may allow excise stamps on imported excisable goods to be affixed in the production facility in the exporting country subject to such conditions as the Commissioner may specify.

13. (1) Manufacturers or importers shall return unused excise stamps to the Commissioner when—

Return or transfer of excise stamps.

- (a) they stop manufacturing;
- (b) there are defects in the excise stamp sheets or reels;
- (c) they fail to import;
- (d) the excise stamps are declared out of use by the Commissioner;
- (e) the Cabinet Secretary for finance exclude the products from the requirements of these Regulations;

(2) Except for the stamps returned under paragraph 1(a) and (b), the Commissioner shall refund, within sixty days, the fees paid on the returned excise stamps.

Allowance for  
wastage and  
damages

14. (1) Damaged excise stamps shall be preserved for verification by an authorised officer.

(2) Where a manufacturer or importer cannot account for the excise stamps issued to him by the Commissioner, the Commissioner shall compute excise duty and other taxes on the unaccounted excise stamps based on the highest excise rate of excise duty, value and volume of excisable goods manufactured or imported by the person.

(3) In computing excise duty on account of the unaccounted excise stamps, the Commissioner shall allow a wastage and damages not exceeding one percent of the issued stamps.

Transfer of excise  
stamps

15. (1) A manufacturer or importer may, with prior approval of the Commissioner, transfer excise stamps in stock to another manufacturing unit owned by the same manufacturer or importer.

(2) The Commissioner shall prescribe the procedure and condition for transfer and accounting of excise stamps under this paragraph.

(3) A manufacturer or importer who transfers excise stamps without prior approval of the commissioner commits an offence.

Installation of the  
System

16. A manufacturer or importer of excisable goods specified in these Regulations shall facilitate the installation of the System in their production or import facilities in accordance with the provisions of these Regulations.

Composition the  
System.

17. The System installed under regulation 16 shall be composed of —

- (a) excise stamps authentication and validation equipment;
- (b) devices for identification and association of each package with individual excise stamp;
- (c) production accounting equipment; and
- (d) devices for the control, registration, recording and transmission of data on the quantities of excisable goods to the Commissioner.

Marking of product  
packages.

18. (1) The Commissioner may require that the excisable goods be marked by the System on each package and in a visible place, as appropriate for the type of package, by a process of printing with indelible security ink, with codes that enable authentication, production accounting and track and trace of excisable goods.

19. The installation, integration, preventive and corrective maintenance procedures of all the equipment comprising the System at the manufacturers or importers' premises shall be done by an authorised contractor under the supervision of an authorised officer.

Integration.

20. The Commissioner shall be responsible for –

Development and supervision.

- (a) defining the functional, security and fiscal control requirements to be observed by the contractor in developing the System;
- (b) supervising and monitoring the process of installing the System.

21. (1) The System shall be installed on all production lines at the manufacturers or importers premises corresponding to each packaging machine and labelling machine;

Installation of equipment and devices.

(2) The System for management of imports shall be installed in a manner prescribed by the Commissioner.

22. (1) The manufacturers and importers shall be notified in writing by Commissioner at least thirty days in advance regarding –

Notice of installation.

- (a) requirements for the equipment to facilitate use of 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;
- (d) the starting date of installation of the System.

(3) Manufacturers or importers shall be responsible for the cost of excise stamps applicators, adjustments and adaptations of their equipment and premises necessary to install the System on each production line.

(4) Where a manufacturer or importer is required to carry out adjustments or provide information required by the Commissioner for the installation of System, the manufacturer or importer shall carry out the adjustments or provide the information at least seven days before the starting date for installation of the System.

23. During the installation of the System, the manufacturer or importer shall make production lines available in operating conditions.

Manufacturer and importer to avail production lines.

24. (1) After conclusion of the installation on each production line, the contractor shall list in a specific format the pieces of equipment making up the System, one copy of which shall be delivered to the manufacturer and the other to the Commissioner.

Sealing of equipment and devices.

(2) The authorised officers shall secure System, in the presence of the contractor and manufacturer, by using security seals.

Manufacturer and importer to report inoperative production lines.

25. (1) The manufacturer or importer shall report inoperative production lines, within twenty-four hours of occurrence to the Commissioner who shall secure the lines using a security seal and register the action in the System,

(2) The production lines referred paragraph (1) shall not resume operation except with the authority of the Commissioner.

Security of equipment.

26. (1) A manufacturer or importer shall be responsible for conservation and security of the System installed in their premises.

(2) Manufacturer or importer shall report any operating failure or tamper of the security seals within twenty-four hours.

Effective date for use of System.

27. The Commissioner shall, through a public notice in at least two daily newspapers with national circulation, declare the date when the System shall come into effect.

Preventive and corrective maintenance of System

28. (1) The preventive and corrective maintenance of the System shall be performed by the contractor, under supervision of authorised officer.

(2) The contractor shall provide to the Commissioner the list of technicians authorised to carry out installation and maintenance of the System.

Advance reports on new brands etc

29. Manufacturer or importer shall —

(a) declare to Commissioner packages and labels of brands manufactured or imported including those for export and duty free;

(b) declare to the Commissioner, at least thirty days in advance the start of production of new brands of goods or any change in the graphic art of existing ones, together with the corresponding packages and labels;

(c) apply at least thirty days to the Commissioner for installation or removal of the System, as the case may be, in the occurrence of the following events—

(i) reactivation of inoperative production lines;

(ii) deactivation of production lines;

(iii) maintenance and reallocation of production lines;

(iv) installation of new production lines; and

(v) acquisition or sale of industrial machinery and equipment.

Marking of duty free products and packages.

30. (1) All packages of duty free or export excisable goods specified in these Regulations shall bear distinct markings to enable track and trace.

(2) The material wrapping the package for wholesale purposes shall be printed—

- (a) in the case of exports, the country of final destination; or
- (b) in case of excisable goods for consumption in Kenya, "FOR USE IN KENYA";
- (c) in case of excisable goods for sale to Duty-free shops, or Diplomatic shops, "DUTY FREE"; and
- (d) in the case of excisable goods for consumption by Kenya Defence Forces, "KENYA DEFENCE FORCES".

31. (1) Excisable goods—

- (a) manufactured for export, Kenya Defence Forces or delivered to a duty free shop;
- (b) imported or purchased from a duty free shop by privileged persons and institution listed in the Third Schedule to the Act;
- (c) with approval of the Commissioner of Customs, imported into Kenya as samples or by international mail, with no commercial value.

Exemption from excise stamps.

shall be exempted from the requirement of excise stamps.

32. A manufacturer, importer, distributor, retailer or any other person involved in the supply chain of excisable goods, shall verify and authenticate the stamps and excisable goods before admitting them in their premises or in any way handle the goods.

Verification of stamps.

33. (1) A person shall not—

- (a) import any excisable goods on which an excise stamp should be affixed without being registered with the Commissioner in accordance with these Regulations;
- (b) fail to maintain excise stamp register or records as the Commissioner may prescribe;
- (c) fail to affix an excise stamp on the package of excisable goods in such secure manner as the Commissioner may prescribe;
- (d) print over or deface an excise stamp affixed on a package;
- (e) knowingly submits a return that is incorrect;
- (f) fail to furnish any information that the Commissioner may require;

Prohibition and offences.

- (g) be in possession of excisable goods on which the excise stamps have not been affixed and which are not exempted under these Regulations;
- (h) attempt to acquire or acquire an excise stamp without authority from the Commissioner;
- (i) counterfeit, or print, make or in any way create an excise stamp without the authority of the Commissioner;
- (j) be found in possession of an excise stamp printed, made or in any way acquired without the authority of the Commissioner;
- (k) be found in possession of, convey, distribute, sell, offer for sale or by way of trade expose excisable goods without affixing excise stamps in accordance with these Regulations.

(2) A person who contravenes the provisions of paragraph (1) commits an offence and is liable upon conviction to a fine not less than one hundred thousand shillings and not more than one million five hundred thousand shillings or to imprisonment for a term not exceeding three years or, to both.

**General penalty.**

34. A person who commits an offence under these Regulations for which no specific penalty is provided is liable, on conviction, to a fine not less than one hundred thousand shillings and not more than one million five hundred thousand shillings or to imprisonment for a term not exceeding three years or, to both.

**Seizure of stamps, equipment and goods.**

35. The Commissioner shall seize excise stamps, equipment and goods where—

- (a) excise stamps are—
  - (i) counterfeited;
  - (ii) subject to return and manufacture or importer fails to do so; or
  - (iii) found in the possession of persons other than to whom they have been supplied.
- (b) the equipment or plant is used in the manufacture of counterfeit excise stamps;
- (c) the goods—
  - (i) bear counterfeited excise stamps;
  - (ii) bear excise stamps affixed in a manner not consistent with guidelines prescribed by the Commissioner;
  - (iii) do not bear excise stamps as required in accordance with these Regulations.

36. Any excisable goods, stamps and equipment which are seized under these Regulations shall be disposed in a manner that the Commissioner considers fit.

Disposal of forl  
excise stamps a  
seized goods.

37. The Customs and Excise (Excise Duty Stamps) Regulations, 2008 are revoked.

Revocation of I  
84of 2008.

Made on the 18th June, 2013.

HENRY ROTICH,  
*Cabinet Secretary for the National Treasury.*

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