

Namibia

Standards Act, 2005

## Standards Regulations, 2013

Government Notice 249 of 2013

Legislation as at 15 November 2017

FRBR URI: /akn/na/act/gn/2013/249/eng@2017-11-15

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PDF created on 13 May 2024 at 09:18.

*Collection last checked for updates: 15 November 2017.*

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# Standards Regulations, 2013

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Republic of Namibia  
**Annotated Statutes**

**Standards Act, 2005**

## **Standards Regulations, 2013**

**Government Notice 249 of 2013**

[Published in Government Gazette 5290 on 20 September 2013](#)

**Commenced on 20 September 2013**

**[This is the version of this document at 15 November 2017.]**

**[Note: The version of this legislation as at 15 November 2017 was revised and consolidated by the Legal Assistance Centre and the Government of the Republic of Namibia. All subsequent amendments have been researched and applied by Laws.Africa for NamibLII.]**

**The Government Notice which publishes these regulations notes that they were made after consultation with the Namibian Standards Institution.**

### **Part 1**

**[The Part heading appears in the ARRANGEMENT OF SECTIONS, but is omitted in the body of the regulations.]**

#### **1. Definitions**

In these regulations a word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates-

“**appeal**” means an appeal referred to in section 25 of the Act;

“**appellant**” means a person who makes an appeal;

“**approved form**” means a form approved by the NSI;

“**Code of Good Practice**” means the Code of Good Practice for the Preparation, Adoption and Application of Standards contained in Annex 3 to the World Trade Organisation Agreement on Technical Barriers to Trade;

“**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act [No. 51 of 1977](#));

“**development of Namibian standard**” means the preparation, adoption, setting, establishing, issuing, amending or withdrawing, or the setting and establishing by reference of a Namibian standard under section 20(2) of the Act;

“**document**” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book and information recorded or stored by means of any device;

“**inspector**” means a person appointed under section 30(1)(a) of the Act and includes an inspectorate;

“**IEC**” means the International Electrotechnical Commission;

“**internal auditor**” means a person appointed under section 30(1)(b) of the Act and includes an internal auditing body;

“**international standard**”, where appropriate, includes a regional or foreign standard;

“**ISO**” means the International Organisation for Standardisation;

“**Ministry**” means the Ministry responsible for the administration of trade and industry matters;

“**normative document**” means a document that provides rules, guidelines or characteristics on what ought to be done within the application of a standard;

“**police officer**” means a member of the Namibian police force appointed in terms of section 4 of the Police Act, 1990 (Act [No. 19 of 1990](#));

“**premises**” means-

- (a) a building or other structure, or part thereof, and the land or water on or in which it is situated;
- (b) any adjoining land or water occupied or used in connection with any activities carried on in such building or structure or on or in such land or water;
- (c) any land, including any river, dam, sea or other body of water on land,

whether above or below the surface of the land or water and includes any vehicle, locomotive, vessel, aircraft or other conveyance;

“**technical committee**” means a technical committee referred to in section 13 of the Act;

“**technical regulations**” means the technical regulations that set out specific characteristics of a product such the product size, shape, design, functions and performance, or the way which a product is labeled or packaged before it is put on sale;

“**the Act**” means the Standards Act, 2005 (Act [No. 18 of 2005](#));

“**WTO**” means the World Trade Organisation;

“**WTO TBT**” means the World Trade Organisation Agreement on Technical Barriers to Trade.

## 2. Principles guiding the development of Namibian standards

- (1) The NSI must, among others, in the development of Namibian standards aim at-
  - (a) basing the development of Namibian standards on need;
  - (b) contributing to the upliftment of the quality of life in all sectors of society through promoting matters such as safety, health and protection of the environment;
  - (c) promoting the removal of technical barriers to trade;
  - (d) promoting service excellence and fair trade; and
  - (e) the efficient utilisation of resources.
- (2) The NSI must take due cognisance of international best practices for standards development as well as the following normative documents:
  - (a) ISO/IEC Guide 2 - Standardisation and Related Activities: General Vocabulary;

- (b) ISO/IEC Guide 21-1 - Regional or National Adoption of International Standards and Other International Deliverables - Part 1: Adoption of International Standards; and
- (c) the Code of Good Practice.

### **3. Role of NSI in development of Namibian standards**

- (1) The NSI may, in addition to the development of Namibian standards, develop detailed procedures and manuals, not inconsistent with the Act and these regulations, on matters pertaining to the development of Namibian standards.
- (2) The NSI must, at least every six months, prepare a work programme containing the Namibian standards in preparation and Namibian standards adopted in the preceding six months, for submission to the WTO TBT Secretariat or the ISO/IEC Information Centre in Geneva.
- (3) The NSI must notify relevant international bodies of any new Namibian standard being developed.
- (4) The NSI is the WTO TBT national focal point to liaise with, supply and provide information, collect and disseminate information on Namibian standards and standardisation as required by international normative documents.
- (5) In as far as is possible and reasonable, the NSI must assist in the resolution of complaints relating to the development of Namibian standards.
- (6) The NSI must set up an enquiry and notification point to deal with enquiries or notification pertaining to Namibian standards and standardisation activities such as conformity assessment procedures and technical regulations in Namibia.
- (7) The style, format, language and layout of a Namibian standard is determined by the NSI.

### **4. Technical committees on development of Namibian standards**

- (1) The NSC may, under section 13 of the Act, establish technical committees to assist the NSI in the development of Namibian standards.
- (2) The technical committees referred to in subregulation (1) must have a large degree of autonomy but such technical committees are subject to directions from the NSI, if the NSI considers it to be in the national interest.
- (3) The technical committee referred to in subregulation (1) must, among other functions as the NSC may consider necessary, perform the following functions:
  - (a) assist the NSI with the development of Namibian standards;
  - (b) develop its own title and scope;
  - (c) develop the title and scope of a Namibian standard; and
  - (d) prepare its work programme.
- (4) In accordance with section 13(2)(a) of the Act, a technical committee that may be established under subregulation (1) must consist of representatives, as far as possible, of valid national interests in the standardisation of the relevant commodity, system or document.
- (5) A structure of the technical committee established in terms of subregulation (1), if applicable and practicable, must be aligned with the corresponding structure of a technical committee in the ISO.
- (6) Any decision by the technical committee, which may be established under subregulation (1), is taken by consensus.
- (7) The NSC must determine the-
  - (a) duties and functions of a technical committee;

- (b) types and nature of members of a technical committee;
- (c) manner for the preparation of reports, including annual reports and other documents by a technical committee;
- (d) liaison between a technical committee and an international committee;
- (e) manner in which a technical committee must vote and obtain consensus; and
- (f) procedures for the protection of confidential information and intellectual property rights.

## **5. Proposals for Namibian standards**

- (1) A person may request or propose to the NSI, in writing, to develop a Namibian standard in accordance with section 20 of the Act.
- (2) The NSI must evaluate the request or proposal to develop the Namibian standard referred to in subregulation (1) and determine whether there is a need for such requested or proposed Namibian standard and whether such Namibian standard is relevant and valid.
- (3) The request or proposal for the development of a Namibian standard must be dealt with in a consultative manner between the NSI and the person making such a request or proposal.
- (4) The request or proposal under subregulation (1) must be made in the approved form.

## **6. Development of Namibian standards**

- (1) The NSI must develop Namibian standards in accordance with the international accepted norms and ISO or IEC directives.
- (2) When developing a Namibian standard, the NSI must-
  - (a) ensure compliance with the Code of Good Practice;
  - (b) align Namibian standards with international standards, if possible; and
  - (c) apply the principle of consensus.
- (3) If a technical committee has been established under section 13 of the Act to assist the NSI with the development of any Namibian standard, such technical committee must be properly constituted and must apply the principle of consensus when taking any decision in developing such Namibian standard.
- (4) The NSI may, where possible, use existing international, regional and national standards or other normative documents, in so far as such standard or normative documents may be relevant, but the NSI may deviate therefrom for good reasons as defined by the Code of Good Practice.
- (5) The adoption of any international standard by the NSI may consist of identical or modified adoption.
- (6) When adopting an international standard, ISO/IEC Guide 21: Adoption of International Standard as Regional or National standard applies.
- (7) The development of a Namibian standard consist of the following stages:
  - (a) proposal stage;
  - (b) preparatory stage;
  - (c) committee stage;
  - (d) public enquiry stage;
  - (e) ratification stage; and

- (f) publication stage.
- (8) The NSI must determine the procedure, content and extent of activities taking place in each stage referred to in subregulation (7) and may distinguish between the development of a Namibian standard under section 20(1) of the Act and adopting an international standard under section 20(2) of the Act.
- (9) The NSI must, for the purposes of developing or adopting a Namibian standard, at the public enquiry stage publish for comments the proposed Namibian standard to be developed or adopted in two local newspapers and in the *Gazette*.
- (10) In addition to the publication of the proposed Namibian standard to be developed or adopted referred to in subregulation (9), the NSI must, at the public enquiry stage, notify and submit the proposed Namibian standard to be developed or adopted to the WTO TBT Secretariat or the ISO/IEC Information Centre in Geneva for comments.
- (11) The NSI must allow a period of at least 60 days for comments on the proposed Namibian standard to be developed or adopted which may be made in terms of subregulation (9) and (10), but the period of 60 days may be reduced to 30 days in cases of urgent problems pertaining to safety, health or environment.
- (12) When a Namibian standard has been developed under section 20(1) of the Act, or a Namibian standard has been adopted under section 20(2) of the Act, the NSI must make known by notice in the *Gazette* and the NSI website of such development or adoption of a Namibian standard as required by section 20(4) of the Act.
- (13) The NSI must determine the forms, documentation and procedures involved in the development or adoption of the Namibian standards.

## 7. Maintenance of Namibian standards

- (1) The NSI must regularly review the Namibian standards developed or adopted under section 20 of the Act to ensure that such Namibian standards remain relevant and valid.
- (2) In addition to the review of the Namibian standards referred to in subregulation (1), a Namibian standard may be subject to amendments or revision at any time-
  - (a) at the request of any person;
  - (b) at the request of members of a technical committee;
  - (c) due to technological advances; or
  - (d) due to changes in legislation.
- (3) The review period of a Namibian standard may be stated in the foreword of a Namibian standard.
- (4) When reviewing a Namibian standard, the NSI must ensure that-
  - (a) the Namibian standard remains relevant and valid;
  - (b) the Namibian standard, as amended, remains relevant and valid;
  - (c) the Namibian standard, subject to amendment, is considered relevant and valid;
  - (d) the Namibian standard, where such Namibian standard ceases to be relevant, valid or has become obsolete, is withdrawn; and
  - (e) a Namibian standard, which is in conflict with any regional or international standard, is withdrawn.
- (5) Any revision of the entire Namibian standards undertaken in accordance with these regulations is, for purposes of these regulations, considered to be an amendment to the Namibian standard.

## 8. Guidelines

The NSI may from time to time develop, and if the NSI considers it necessary, publish in the manner decided upon by the NSI guidelines on-

- (a) the practical implementation of; or
  - (b) further detailed procedures and measures to give effect to,
- the development of Namibian standards in accordance with the Act and these regulations.

## 9. Namibian catalogue of Standards and copies of Namibian standards

- (1) The NSI must keep and maintain a catalogue containing a regularly updated list of all Namibian standards.
- (2) The catalogue referred to in subregulation (1) must-
  - (a) be in an electronic format accessible by any person accessing the website of the NSI;
  - (b) indicate the name, number, date of issue and summary of contents of the Namibian standard; and
  - (c) indicate where copies of the relevant Namibian standard can be obtained and the prescribed fee of such Namibian standard as prescribed in subregulation (3); or
  - (d) contain such other information as the NSI may consider necessary.
- (3) The NSI must, if requested by any person during office hours, make available a hard copy of the requested Namibian standard to such person subject to the payment of applicable fees as set out in Annexure 1.

## Part 2 – APPOINTMENT OF INSPECTORS AND INTERNAL AUDITORS

### 10. Definition for this part

In this Part, unless the context otherwise indicates-

“**occupier**”, in relation to a premises, means-

- (a) a person who resides in premises;
- (b) if no person resides in premises, the owner of the premises;
- (c) a person entitled to occupy such premises;
- (d) a person having the control, care, use or management of a premises; or
- (e) an agent of the owner of a premise or a person acting on behalf of the owner of the premises.

### 11. Certificate of appointment

- (1) The certificate of appointment, issued by the Minister to an inspector or internal auditor, in terms of section 30(2) of the Act must contain the following:
  - (a) the name of the relevant inspector or internal auditor;
  - (b) whether the relevant inspector or internal auditor is appointed in general or for a specific purpose;
  - (c) identity photo of the inspector or internal auditor;



- (d) date of appointment and period of appointment, if applicable;
- (e) contact details of the NSI and the Ministry; and
- (f) name and signature of the issuing authority; or
- (g) any other details as the Minister may consider necessary.

## 12. Duties and functions of inspectors

The duties and functions of an inspector are to-

- (a) investigate any contravention of or failure to comply with the provisions of the Act or these regulations;
- (b) monitor compliance with the provisions of the Act and these regulations;
- (c) carry out inspections to ensure compliance with the Act or as may be required by the Act or these regulations;
- (d) ensure effective implementation and compliance with the provisions of the Act, these regulations or technical regulations;
- (e) carry out market surveillance through inspection in order to monitor compliance with the provisions of the Act, these regulations or technical regulations;
- (f) inspect and certify product, process, service or system of bodies with relevant standards;
- (g) compile inspection reports on inspections conducted; and
- (h) conduct product process inspection including sampling of products.

## 13. Duties and functions of internal auditors

- (1) The duties and functions of an internal auditor are to-
  - (a) carry out audits, tests, market surveillance, plan and assess management system schemes;
  - (b) audit entities to the requirements of-
    - (i) South Africa National Standard: Hazard Analysis Critical Control Point System;
    - (ii) ISO: Quality Management System;
    - (iii) ISO: Environment Management System;
    - (iv) ISO: Food Safety Management System;
    - (v) British Standard: Occupational Health and Safety Management System;
  - (c) compile audit reports and issue audit schedules;
  - (d) sample and audit processes relating to the specific system;
  - (e) analyse audit data collected for specific system for improvement;
  - (f) provide information on audit records;
  - (g) receive complaints on Namibian standards, take corrective action and assist with complaint resolutions;
  - (h) provide technical information on Namibian standards;
  - (i) provide certification information and give direction on certification processes;
  - (j) conduct pre-audit visits;

- (k) submit audit recommendations for approval to the certification approval committee; and
- (l) perform internal quality assurance audits to ensure compliance with Namibian standards requirements.

#### **14. Powers of inspectors and internal auditors**

- (1) An inspector or internal auditor appointed in terms of section 30 of the Act has power to-
  - (a) enter and search any premises, other than a dwelling house, without a search warrant and conduct such audit, examination or enquiry for purposes of performing any functions in terms of the Act or these regulations;
  - (b) examine any product, process, service, system, object, book, document, article or any other thing in relation to which the inspector or internal auditor has reasonable cause to suspect that an offence under the Act or these regulations has been committed;
  - (c) question any person who, in the opinion of the inspector or internal auditor, may be capable of furnishing any information which such inspector or internal auditor may require;
  - (d) require any person on the premises to assist such inspector or internal auditor in the examination of any product, process, service, system, object, book, document or any other thing in order to ascertain whether the provisions of the Act or these regulations have been complied with;
  - (e) require any person who may have information concerning an offence to furnish such person's name and address;
  - (f) take extracts from or copies of any product, process, service, system, object, book, document, writing or any other thing on the premises that has a bearing on the investigation; or
  - (g) use any computer system on the premises or require the assistance of any such person to use that computer system to search any data contained on that computer system, in the presence of a person in charge of, or employed at the premises.
- (2) Where an inspector or internal auditor enters premises, such entry-
  - (a) may be with or without prior notification to the occupier or a person in charge of the premises;
  - (b) must, as far as appropriate under circumstances, be at a reasonable time; and
  - (c) must be based on a reasonable suspicion that an offence under the Act or these regulations or a non-compliance with provisions of the Act or these regulations has been or is being or is likely to be committed or take place.
- (3) An inspector or internal auditor who enters and searches any premises must exercise those powers with strict regard for decency and order and only to the extent provided for by section 30(5) of the Act.
- (4) A person entering and conducting search on the premises may be accompanied and assisted by a police officer.
- (5) For the purposes of any criminal proceedings against any person, the inspector or internal auditor may require a police officer or other person authorised in terms of the Criminal Procedure Act, 1977 to seize any product, process, service, system, object, book, document, writing or other things for purposes of criminal proceedings.
- (6) If an inspector or internal auditor after search, investigation or audit is of the opinion that an offence has been committed in terms of the Act or these regulations, such inspector or internal auditor must report the matter to a police officer and the seizure and the forfeiture of any commodity, system, document or other article or substance in respect of which the offence was

committed or which was used in the commission of the offence, must be dealt with as provided for in the Criminal Procedure Act, 1977.

- (7) If an inspector or internal auditor has reasonable grounds to suspect that an offence has been or is being or is likely to be committed or that preparations or arrangements for the commission of any offence under the Act or these regulations are being or are likely to be made in or upon a dwelling house, such inspector or internal auditor must forthwith report the matter to a police officer.
- (8) The police officer referred to in subregulation (7) must exercise his or her powers in accordance with Chapter 2 of the Criminal Procedure Act, 1977 pertaining to search warrants, entering of premises, seizure, forfeiture and disposal of property connected with offences.

### **Part 3 – APPEALS**

#### **15. Appeals**

- (1) A person who wishes to appeal against a decision of the NSI pursuant to section 25 of the Act may, within 14 days of receipt of notice of the decision by NSI, appeal in writing to the Minister.
- (2) The appeal referred to in subregulation (1) must-
  - (a) be made in the form substantially corresponding with Form 1 of Annexure 2;
  - (b) contain the grounds for the appeal as well as any supporting documents on which the appellant wishes to rely on;
  - (c) be accompanied by the fees set out in Annexure 3.
- (3) The appellant must serve copies of the appeal on the NSI and on any other interested person and the NSI and any other interested person have the right to reply, within 10 days after being served with copies of such appeal, on each ground of appeal raised and such reply must be served on the appellant and the Minister.
- (4) The Minister must designate a staff member of the Ministry to perform the administrative functions relating to any appeal lodged in terms of section 25 of the Act.
- (5) The appeal referred to in subregulation (1) and other supporting documents on which an appeal is based must be in the official language.
- (6) If an appeal is-
  - (a) submitted by post, it must be addressed to the Permanent Secretary: Ministry of Trade and Industry, Private Bag 13340, Windhoek; or
  - (b) delivered by hand or courier service, it must be delivered to the person designated by the Minister in terms of subregulation (4), at the Ministry of Trade and Industry, C/nr Uhland and Goethe Street, Windhoek.

#### **16. Condonation**

- (1) An appellant may apply to the Minister for condonation for non-compliance with the time required to lodge an appeal or reply on any ground of appeal raised in terms of regulation 15 or to furnish the Minister with additional information, documentation or evidence relating to an appeal in terms of regulation 17.
- (2) The application for condonation referred to in subregulation (1) must-
  - (a) be in writing;
  - (b) state the reasons why condonation must be granted; and
  - (c) be filed with the person designated in terms of regulation 15(4).

## **17. Procedure for obtaining additional information, documentation or evidence**

- (1) On receipt of the notice of appeal in terms of regulation 15 the Minister may, as soon as is reasonably possible but in any case not later than seven days after receiving the appeal, require the appellant, NSI or any other interested person to furnish the Minister with additional information, documentation or evidence relating to the appeal.
- (2) On receipt of a request in terms of subregulation (1) the appellant, NSI or any other interested party must, as soon as is reasonably possible but in any case not later than 10 days after receiving the request from the Minister, furnish the Minister with such additional information, documentation or evidence relating to the appeal.
- (3) The person requested by the Minister to furnish additional information, documentation or evidence relating to an appeal under subregulation (2) must serve the appellant, the NSI or any other interested person with such additional information, documentation or evidence within 10 days after receiving the request from the Minister.
- (4) The Minister may, if the Minister considers it necessary, call an appellant, the NSI or any other interested person to appear before the Minister and give oral evidence or make representations that will assist the Minister in deciding an appeal.
- (5) The proceedings before the Minister, that may be conducted if an appellant, the NSI or any other interested person are called to appear before the Minister in terms of subregulation (6), are conducted in such a manner as the Minister considers most suitable to resolve the issues before the Minister, and the Minister is not bound by any law relating to procedure and admissibility of evidence.

## **18. Decision by Minister**

- (1) The Minister must, as soon as is reasonably possible but in any case not later than 21 days after receiving-
  - (a) the appeal under regulation 15;
  - (b) a reply under regulation 15(3); or
  - (c) additional information, documentation or evidence relating to the appeal under regulation 17,consider the appeal and make a decision in terms of section 25(4) of the Act.
- (2) The person designated in terms of regulation 15(4) must, as soon as possible, after the Minister has considered the appeal in terms of section 25(4) of the Act, notify the parties of the decision by the Minister.
- (3) The decision of the Minister must-
  - (a) be in writing;
  - (b) state the reasons for the decision; and
  - (c) be signed by the Minister.

## **19. Keeping of register**

- (1) The person designated by the Minister in terms of regulation 15(4) must keep a register of appeals in the form determined by the Minister.
- (2) The register of appeals contemplated in subregulation (1) must contain the following particulars:
  - (a) the number allocated to the appeal;

- (b) the names of the parties;
- (c) the decision appealed against;
- (d) the date and place of hearing of the appeal;
- (e) the decision of the Minister;
- (f) any subsequent proceedings in connection with the appeal; and
- (g) any other matter which the Minister may determine.

## 20. Service of documents

- (1) A notice, order or other document required to be served, delivered or submitted to the Minister in terms of these regulations must be served, delivered or submitted to the person designated by the Minister in terms of regulation 15(4).
- (2) A notice, order or other document required to be served on or delivered to any person in terms of these regulations may be served-
  - (a) by delivering it personally to such person or the person's duly authorised agent;
  - (b) where a postal address is given, by sending it by registered post to that address;
  - (c) where a facsimile number has been given, by transmitting it by facsimile to that address;
  - (d) by delivering it at the person's place of residence or place of employment or place of business to a person apparently 16 years of age or older and apparently residing or employed there; or
  - (e) in the case of a juristic person, at its local office or principal place of business to a director, secretary or any other person responsible for the management of the juristic person.
- (3) Service may be proved-
  - (a) in any case, by an acknowledgment of service signed by the person to be served;
  - (b) by a written statement of the person who made the service; or
  - (c) service by registered post may be proved by a signed post-office, return receipt showing that the letter was delivered.

## Part 5 – GENERAL

[This part should be labelled "PART 4".]

## 21. Offences and penalties

Any person who-

- (a) obstructs or hinders an inspector or an internal auditor in the performance of his or her duty including refusing an inspector or internal auditor to enter a premises as contemplated in regulation 14 or to conduct any examination or inquiry in terms of that regulation;
- (b) furnishes false or misleading information or makes any false or misleading statement knowing such information or statement to be false or misleading, in connection with any application, statement, record or other document submitted in terms of these regulations;
- (c) removes or tampers with or destroys any object, book, document, writing or other thing-
  - (i) with a view to avoid prosecution under the Act or these regulations; or

(ii) seized under the Act or these regulations,  
commits an offence and on conviction is liable to a fine not exceeding N\$ 5 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**Annexure 1 (Regulation 9(3))**  
**Fees charges in terms of section 20(5)(b) of the Act**

Number of pages	Amount payable in N\$
1-2	29.00
3-4	42.00
5-6	62.00
7-8	75.00
9-10	94.00
11-12	117.00
13-14	145.00
15-16	168.00
17-18	192.00
19-20	228.00
21-23	277.00
24-26	312.00
27-29	346.00
30-32	387.00
33-35	428.00
36-40	463.00
41-45	502.00

46-50	530.00
51-60	557.00
61-70	582.00
71-80	609.00
81-100	683.00
101-120	769.00
121-150	861.00
151 and above	959.00

## Annexure 2

### Forms

[Editorial note: The forms have not been reproduced.]

## Annexure 3 (Regulation 15(2)(c))

### Fees for lodging an appeal

Regulation	Nature of fee	Fee
13(2)(b)	Fee for lodging an appeal	N\$ 100.00