

उपमहानिदेशक(प्रमाणन) सचिवालय

संदर्भ : डी डी जी (प्रमाणन) / जनरल

23 09 2020

विषय: भारतीय मानकों के प्रावधानों को प्रमाणीकरण के लिए ठंडे बस्ते में रखने हेतु

उपरोक्त विषय पर परिपत्र अवलोकन हेतु संलग्न है।

(अविक दत्ता)

वैज्ञानिक-सी

उपमहानिदेशक(प्रमाणन)

क्षेत्रीय/शाखा कार्यालयों/CMD-1/CMD-2/CMD-3 को intranet माध्यम से परिचालित

DDG (Certification) Secretariat

Our Ref: DDG (Certification)/General

23 09 2020

Subject: Regarding keeping requirements of Indian Standards in abeyance for the purpose of certification.

Please consider the attached circular with reference to the subject matter.

(Avik Datta)

Scientist-C

DDG (Certification)

Circulated to: All ROs/BOs/CMD-1/CMD-2/ CMD-3 through BIS intranet

DDG(Certification) Secretariat

Our Ref: DDG (Certification)/General

23 09 2020

Subject: Regarding keeping requirements of Indian Standards in abeyance for the purpose of certification.

1. This has reference to the above.
2. The practice of keeping requirements of Indian Standards in abeyance was prevalent in product certification where certain requirements were kept in abeyance for the purpose of certification due to certain reasons such as unavailability of testing facilities or lack of clarity in the requirements of the standard itself.
3. DDG (Certification), as the Activity Head had been granting approvals for such cases for keeping requirements in abeyance. However, since there was no formal delegation of power, a legal opinion was sought from BIS Legal Department regarding whether such approvals are required to be granted by DDG (Certification) or by DG.
4. In their response, Legal Department has opined that there is no provision in the BIS Act, or Rules to keep a requirement of Indian Standard in abeyance, except through an amendment. It is also mentioned that an administrative order issued by DDG (Certification) to keep the provisions of an Indian Standard in abeyance without any amendment, is *ultra vires*. (Copy enclosed)
5. In view of the opinion provided by the Legal Department, instances where administrative orders have been issued by DDG (Certification) for keeping requirements of Indian Standards in abeyance may be treated as withdrawn.
6. This is issued with the approval of competent authority.

Avik Datta

Sc. C

DDG (Certification)

ROs/BOs/CMD-1/CMD-2/CMD-3

BUREAU OF INDIAN STANDARDS
(Legal Department)

Our Ref: LAW/8/1356/2019

Date: 28 July 2020

Subject: Opinion on keeping in abeyance the requirement of Indian Standards, for the purpose of certification

Sc-E (Head-CMD-2) may refer to the e-mail dated November 6, 2019 of CMD-2, forwarding therewith a note no: DDG (Cert.)/38 dated 06th November 2019 of the then Sc-G (DDG-Cert.) in connection with the captioned matter, sent to Legal Department for examining and providing the information in the matter.

2. The captioned matter vis-à-vis the provisions under the Bureau of Indian Standards Act, 2016 and the Bureau of Indian Standards Rules, 2018 has been examined in Legal Department and its observations are as under:

- (i) Sub-section (2) of section 9 of the BIS Act, 2016, concerning powers and functions of the Bureau, at clause (d) provides that the Bureau shall take all necessary steps for promotion, monitoring and management of the quality of goods, articles, processes, systems and services, as may be necessary, to protect the interests of consumers and various other stake holders which may, inter-alia, include identification of any goods, articles, process, system or service for which there is a need to establish a new Indian Standard, or to revise an existing Indian Standard;
- (ii) Sub-section (4) of section 10 of the BIS Act, 2016, concerning Indian Standards provides that the Indian Standard shall be notified and remain valid till withdrawn by the Bureau;
- (iii) Sub-rule (2) of Rule 15 of the BIS Rules, 2018 provides that all Indian Standards, their revisions, amendments and withdrawal shall be established by notification in the Official Gazette;
- (iv) Rule 23 of the BIS Rules, 2018 concerning Review of Indian standards provides that the Bureau shall review, periodically, at least once in five years, all established Indian standards to determine the need for revision, amendment, reaffirmation or withdrawal of such standards, in accordance with the provisions of these rules:

Provided that the need for withdrawal of the established Indian standard shall be decided upon by the respective Division Council on the recommendations of the sectional committee concerned;

Provided further that proposals relating to minor amendments or amendments in the nature of correction of errors or omissions in established Indian Standards may be notified by the Bureau without reference to the concerned Sectional Committee;

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Provided also that the Bureau shall have the power to provisionally amend, by notification, such of the provisions of an Indian Standard as in its view are necessary for expeditious fulfilment of any of the objectives of the Act and the amendments so made shall be regularized without further notification if the sectional committee concerned has on examination, approved the standards as so amended, within a period of six months from the date of the notification.

- (v) Rule 27 of the BIS Rules, 2018 prescribes the procedure for establishment of provisional Indian Standards, which shall not be used for Standard Mark.
- (vi) As per Rule 28 of the BIS Rules, 2018, Director General of the Bureau may allow concurrent running of two versions of an Indian Standard and also concurrent running of an Indian Standard alongwith any of its amendments and also decide the period of such concurrent running.
- (vii) The power in connection with paras-2(i) & (iv) above has been delegated by the Governing Council to Director General of the Bureau in its first meeting held on 22 November 2017.
- (viii) The copies of other relevant documents, such as administrative order for keeping in abeyance the requirement of Indian Standards by Sc-G (DDG-Cert.), are also not furnished to Legal Department for perusal. It is presumed that such an order issued by Sc-G (DDG-Cert.) might have been issued without the approval of the Director General of the Bureau;
- (ix) The opinion rendered by Legal Department vide note no: LAW/8/1341/2019 dated 15 July 2019, pertains to giving effect to the amendments in advance of the notification and does not pertain to keep the provisions of an Indian Standard in abeyance without any amendment. Thus, the administrative order issued by Sc-G (DDG-Certification), without the approval of Director General of the Bureau, is ultra-vires. Moreover, there is no such provision under the BIS Act, 2016 and BIS Rules, 2018 for keeping the provisions of an Indian Standard in abeyance, except through an amendment.

3. Sc-E (Head-CMD-2) is requested to take further action accordingly.

28/07/2020
(Kulvinder Kumar Chawla)
Director (Legal)

Sc-G (DDG-Certification)
Sc-E (Head-CMD-2),
BIS Hqrs.,
New Delhi

31.7.2020
ADD (ADD) - urgent.