



PHD House, 4th Floor, Ramakrishna Dalmia Wing
4/2, Siri Institutional Area, August Kranti Marg, New Delhi – 110016,
Tel# 9599665859 E-mail: ceo@mait.com □ Website: <http://www.mait.com>

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Shri Pramod Kumar Tiwari, IAS
Director General
Bureau of Indian Standards

Subject: URGENT: Market Surveillance Mechanism for products under CRS

Respected Sir,

Greetings from MAIT!

I am writing to you on behalf of MAIT, India's apex industry body empowering IT, Telecom & Electronics Hardware.

The industry truly appreciates and stands aligned with the Government of India's efforts to ensure safe-to-use electronic products in India. Sir, we are seeking your urgent intervention on the roll out of Market Surveillance mechanism for products under CRS.

Industry understands and acknowledges that Market Surveillance (MS) is a critical aspect of CRS. It is an important tool to ascertain that only products complying with the applicable Standard(s) are available/sold in the market. Industry is fully committed to support BIS in rolling out an effective surveillance mechanism. However, we strongly believe that to have an effective MS mechanism in place, a consultative approach should be adopted wherein all the important stakeholders' perspective (**including the industry's views**) are taken into consideration. We are disappointed to see that BIS has already rolled out a new MS mechanism and started issuing orders to the licensees without any prior intimation / consultation with the industry. **We humbly request BIS to immediately cease the new MS orders issued to the licensees and call a stakeholder meeting to seek inputs from the industry for formulation of an effective and efficient MS mechanism.**

MAIT has reviewed the new MS guidelines issued by BIS on April 18, 2022, and April 28, 2022, and have the following observations, concerns, and feedback:

1. **Surveillance of only registered products:** Industry strongly believes that a market surveillance system should not only focus on ensuring conformance of certified products available in the market to the applicable standard(s) but should also focus on unregistered/non-compliant products available in the market which have never been tested to ensure safety of the Indian consumers.

Despite compliance by all major brands available in India, the retail market is still flooded with unregistered and non-compliant products. This is because there is **no random surveillance mechanism** in place for them. CRS MS is being seen to be imposed on brands which are already committed to follow the rules. There is no disincentive or deterrent for non-compliant and unregistered products. This is largely due to non-identification of goods and the associated brands which are not complying with the CRS. This only serves to increase the cost of goods for compliant brands against the non-compliant ones thereby putting further pressure on their margins in a highly cost-conscious market like India.

Industry strongly recommends BIS to develop and enforce a market surveillance mechanism which promotes CRS compliant products & brands and act as a deterrent to the non-registered ones. Strict measures/actions need to be taken against those importers/companies/traders/stockists for placing non-compliant products in the market.

2. **Duplication of information:** As per Point# 5 of the BIS MS guidelines dated April 28, 2022 *“A system is being developed for feeding the consignee details and depositing the fees online. Till the time it is ready, the information may please be provided by email and the fees may be deposited through Demand Draft.”*

The information asked by BIS, like the details of the consignees; distributors; dealers or retailers; Consignment Unit dispatched; Number of units dispatched; Port of Arrival; Expected Date of Arrival in India; Name of Contact Person, etc. is a laborious and time-consuming activity. If BIS has plans of developing an online system for feeding the consignee details and depositing the fees online (as mentioned in the MS Guidelines), then asking the industry to provide the same information twice (first, through email and then uploading the same information on the online portal) is a duplication of the effort and a counter-productive exercise for the industry. The collection of high fees for costly products will have a very negative impact on the industry. **A quick check with just 15 members of MAIT revealed that email had been sent for deposition of fees amounting to \$1 million in the last three-four days alone.** Such exorbitant fees are unjustified and against consumer interests too as the cost will get loaded on the customer ultimately.

BEE model- A case in point here is the methodology being followed by Bureau of Energy Efficiency for MS in India. **BEE picks up sample at its cost** and tests it without the knowledge of the licensee. In case the product is passed, the licensee is not even informed. In case it fails then BEE informs the licensee and asks him to provide two samples which are tested again. Charges for these two samples are borne by licensee.

We recommend BIS to immediately cease the data collation and collection of market surveillance fee. We request that BIS may start the MS processes once the online portal is ready, and stakeholder consultation activities are carried out and industry inputs are incorporated into the new MS mechanism. We further request that BIS may also align the MS process similar to BEE model wherein the cost of first sample is borne by BEE itself and if the sample fails a test then two samples are asked for from the licensee at his cost.

3. **Aggressive timelines:** As per Point#6 of the MS guidelines dated April 28, 2022, *“the licensee has to submit details of the consignees, distributors, dealers or retailers through email in the format as attached and deposit the surveillance cost within 10 days’ and 15 days’ respectively of receipt of e-mail/letter by Demand Draft drawn in favour of Bureau of Indian Standards payable at Delhi...”*

As BIS would be aware each brand would have 100s of shipments dispatched from their manufacturing location / imported at different ports of entry every day. Under such a circumstance, industry would like to understand BIS’ expectation. What is the frequency of the reporting of the data that BIS is looking at?

The time provided by BIS to submit the above information and make the payment (DD) to BIS i.e. 10 days and 15 days is too short. As we mentioned in the earlier points, collation of the data is quite a strenuous job and requires a lot of cross functional coordination within the organization (like sales team, order processing team, customs logistics team, etc). Submission of the information within 10 days is an impossible task and **we request BIS to provide minimum 30 working days to submit the details of the importers/ brands wholesalers/distributors/retailers once the online portal is ready.**

4. **Disproportionate Penalty System:** Point#7 of the MS guidelines dated April 28, 2022, mentions that *“In case the requisite information is not submitted, and the fees are not deposited within the stipulated time frame, the same will be construed as a violation of conditions of licence to use or apply the standard Mark and appropriate action including suspension/cancellation of license may be initiated as per the provisions of BIS (Conformity Assessment) Regulations, 2018.”*

For a long time, industry has been proposing MeitY/BIS to consider the principle of proportionality in the event of non-compliance. For a non-compliance event which does

not result in a safety hazard such as non-submission of data, non-payment of the MS fee, a minor administrative non-compliance or mislabeling, the below intervention options may be considered by BIS:

- Giving information (compliance assistance)
- Formal warnings with remediation plan

For a non-compliance event which directly poses a safety hazard, the intervention actions should be to remove quickly unsafe products from the market and to deter future unsafe products from being released in the marketplace. As an example, access to live parts in an electrical product is a very serious risk. In such a case, a product safety risk analysis should be conducted to determine the extent of the risk (e.g., are unsafe products from certain product lot numbers or range of date codes). The below intervention options may be appropriate, in such a situation:

- Product hold
- Product recalls
- Revocation of registration (until corrective measures have been undertaken)

For cases in which a manufacturer is repeatedly identified with non-compliant products or purposely circumventing requirements, high sanctions such as Forfeiture/seizure, Discontinuation of sales & Criminal fines and penalties may be considered by BIS.

BIS should communicate to the AIR formally (such as in a letter with documentation of objective evidence) on its decision on the intervention actions. BIS should provide a formal channel for the manufacturer/AIR to request a copy of the detailed report and be given reasonable time to review it. The manufacturer/AIR should be allowed to challenge the findings in the report and/or dispute the measures to be taken. For example, if the findings from the BIS-recognized lab that performed the originally testing for registration do not align with the findings from another BIS-recognized lab that performed the market surveillance testing, then the AIR/manufacturer should be allowed to provide additional supporting information or request further investigation.

BIS could also consider greater scrutiny on products from manufacturers who repeatedly have non-compliant products or are suspected of purposely circumventing requirements.

5. **Drawl of Surveillance Sample:** It is not clear how BIS will pick the samples for MS in case of "made to order /build to order" products like Servers (Automatic Data Processing machine), Storage (Data Centre Storage) and Tape Library. Samples of the made to order products like servers and storage cannot be collected for MS from the port of entry/ warehouse/ distributors, as they are normally against a pre-booked customer order/ Purchase Order.

We understand from the MS guidelines of BIS dated April 18th, 2022, that for Servers (ADPM category), BIS will seek Feedback from the buyers. **We request BIS to consider Storage (Data Centre Storage) and Tape Drive Library which are registered under the ADPM category, same as Servers and seek Feedback from the buyers as part of the MS mechanism.**

6. **Feedback from the buyers not related to the Safety standards:** As per Annexure-II (Template for the feedback from the buyers) of the MS Guidelines dated April 18, 2022, BIS requests the buyer to provide feedback with respect to "*quality of the product*". However, as per MeitY CRS, the products are required to be tested and registered by BIS as per the safety standard IS 13252 (Part 1): 2010. **We strongly recommend BIS to limit the feedback from the buyers to "safety related issues" like fire incidence, smoke, shock, overheating, etc. Product quality assurance is not part of the IS 13252 standard and therefore, should not be part of the feedback template.**

Other suggestions to improve the MS Mechanism: In addition to the points listed above, certain other recommendations that can be considered by BIS to have an improved MS mechanism are:

1. Introduction of Green channel for companies who shows a strong compliance in the past 4-5 years.

2. Define Turnaround time for completing the surveillance.
3. Develop a mechanism for Transparent tracking / monitoring by the industry to check the status of their surveillance cases.
4. Reduce the surveillance for the good companies as an incentive for them. This will help the authorities to streamline the complete surveillance process by way of: -
 - a. Saving time, money and efforts by reducing the repetitive testing of the same product.
 - b. Utilising the available limited resources to comb the market in order to identify non-compliant products.
 - c. Saving the environment by reducing the load of further generation of e-waste due to repeated testing of the same products which are already compliant.
 - d. More time available with the authorities for greater scrutiny of frequent defaulters / non-compliant products.
5. **Appeal against a decision by BIS:** Presently there is no process of appeal against a decision by BIS. This is against the principle of natural justice and needs to be incorporated in the MS mechanism.

MAIT would request you to kindly address the issues on priority. **We had also sought a meeting with you for highlighting this and other issues with the MS mechanism on priority and we would request you to kindly confirm the same urgently.**

With regards,



George Paul
CEO

CC: Shri Amitesh Kumar Sinha, IRAS, Joint Secretary, Ministry of Electronics & IT
CC: Smt. Asha Nangia, Sr. Director, Ministry of Electronics & IT
CC: Ms. Chitra Gupta, Scientist "G" & DDG, Bureau of Indian Standards
CC: Shri Sanjiv Maini, Director & Head – CMD-III, Bureau of Indian Standards
CC: Shri Koushik Dutta, Scientist "E" & Head-Registration, Bureau of Indian Standards