

MEMORANDUM CIRCULAR NO. 21-39

Series of 2021

SUBJECT : GUIDELINES ON VOLUNTARY SELF-DISCLOSURE (VSD)

WHEREAS, pursuant to Section 8 of Republic Act No. 10697, otherwise known as the Strategic Trade Management Act (STMA), the Strategic Trade Management Office (STMO) is created as a bureau under the administrative supervision of the Department of Trade and Industry (DTI) to serve as the executive and technical agency of the national government for the establishment of the management systems for the trade in strategic goods.

WHEREAS, under Section 22 of the STMA and Rule VI of its Implementing Rules and Regulations (STMA IRR), the STMO has the authority to impose administrative penalties on any person found to have committed violations under the said Act, its IRR, and other Issuances.

WHEREAS, under Rule VI, Section 5 of the STM -IRR, the STMO shall assess a fine for each violation of the STMA and its IRR, considering the circumstances provided under Rule VI, Section 6 of the same.

WHEREAS, under Rule VI, Section 6(a) of the STMA IRR, voluntary disclosure of any violation of the STMA or its IRR is one of the attendant circumstances the STMO may consider in determining appropriate administrative penalties to apply.

NOW, THEREFORE, this Circular is hereby issued for the information, guidance, and compliance of all covered persons.

1. Scope and Coverage

- 1.1. Any person operating within the Philippines who engages or intends to engage in the export of strategic goods from the Philippines, including designated special economic and freeport zones, the import of strategic goods into the Philippines; or the transit or transshipment of strategic goods through the territory of the Philippines and the provision of related services; and all Filipino persons providing these services wherever located;
- 1.2. Any person engaged in the re-export of strategic goods that have been imported from the Philippines to a foreign country, and the reassignment of strategic goods imported from the Philippines to a new end-user in the country of import subject to authorization under the STMA; and
- 1.3. Any person dealing with unlisted items that meet any of the four (4) conditions set forth under Section 11 of the STMA.

2. Definition of Terms

- 2.1. **Voluntary Self-Disclosure (VSD)** is a disclosure of information made by a covered person in a violation or potential violation of the STMA, its IRR, or the terms and conditions of the registration and authorization issued by the STMO. A valid VSD may be considered as an attendant circumstance in determining the appropriate administrative penalties to apply pursuant to STMA IRR. The STMO's VSD process consists of Preliminary Disclosure and Full Disclosure.
- 2.2. **Preliminary Disclosure** is an initial notification submitted by a covered person as soon as possible, but not to exceed forty-five (45) calendar days

after a violation or a potential violation of the STMA, its IRR, or the terms and conditions of the registration and authorization issued by the STMO are discovered. The Preliminary Disclosure shall contain information provided under Section 4.1 of this circular.

- 2.3. **Full Disclosure** is the submission of a complete and detailed narrative report within one hundred and twenty (120) calendar days from the STMO's receipt of the Preliminary Disclosure. It shall contain all relevant findings gathered during the comprehensive investigation conducted by the covered person relating to a violation or a potential violation of the STMA, its IRR, or the terms and conditions of the registration and authorization issued by the STMO. The Full Disclosure shall contain information provided under Section 4.3. of this circular.

3. Voluntary Self-Disclosure Criteria

- 3.1. A covered person wanting to disclose information that constitutes a VSD shall notify the STMO according to the conditions outlined below, and particularized in the succeeding sections of this circular.
 - 3.1.1 VSD is submitted before an imminent threat of discovery by the STMO or another government agency;
 - 3.1.2 The STMO received the Disclosure before it commences an audit or investigation related or specific to the covered person's violation or acquires the same or substantially similar information from a third party alerting the Bureau of the covered person's violation;
 - 3.1.3 A Preliminary Disclosure was made within forty-five (45) calendar days from the discovery of the possible violation;
 - 3.1.4 Full Disclosure was made within one hundred and twenty (120) calendar days from the STMO's receipt of the Preliminary Disclosure;
 - 3.1.5 The Disclosure included all relevant facts known to the covered person; and,
 - 3.1.6 The Disclosure was made with full knowledge and authorization of the company's top management.

4. Voluntary Self-Disclosure Process

4.1. Preliminary Disclosure

- 4.1.1 The covered person shall submit a Preliminary Disclosure within forty-five (45) calendar days after a violation or a potential violation of the STMA, its IRR, or the terms and conditions of the registration and authorization issued by the STMO are discovered.
- 4.1.2 The Preliminary Disclosure shall be in writing, mailed, or emailed through the contact information indicated in Section 5.6. of this circular and shall include relevant facts known to the covered person at the time of the Preliminary Disclosure but, at the minimum, shall contain the following information:
 - a. Name of the company;

- b. Name and designation of the person making the Disclosure;
- c. Name, address, email, and landline/mobile number of the designated contact person;
- d. A concise narrative of the conduct disclosed which are available to the covered person at the time of making the preliminary Disclosure which shall include but not limited to:
 - i. Details of strategic trade transactions giving rise to the violation;
 - ii. The period during which the violation occurred; or,
 - iii. A brief description of the immediate/corrective action undertaken by the covered person upon discovery of the violation.
- e. Supporting documentation to explain and support the preliminary Disclosure.

4.2. **Preliminary Disclosure Response.** To determine the due date for the Full Disclosure submission, the Preliminary Disclosure will be considered filed upon receipt of the STMO. The covered person shall be notified by the Bureau, in writing, within five (5) calendar days of the date it received the Preliminary Disclosure. The STMO shall include a preliminary assessment of the Preliminary Disclosure in the notification, directing the company to make the Full Disclosure.

4.3. **Full Disclosure.** The covered person shall conduct a thorough review of all strategic trade transactions where a violation occurred or is suspected of having occurred and shall submit a Full Disclosure within one hundred and twenty (120) calendar days from the STMO's receipt of the Preliminary Disclosure.

4.3.1. The Full Disclosure shall include, but not limited to:

- a. A precise description of the nature and extent of the violation (e.g. violation relating to any of the unlawful acts provided in Chapter IV of the STMA and Rule VIII of the STMA-IRR including acts without authorization, breach of the conditions and terms of authorization or governmental end-use assurance issued by the STMO).
- b. A chronology of all events detailing when and how the violations occurred.
- c. Names of entities and individuals believed to be implicated, including an explanation of their roles in the matter.
- d. Root cause analysis of the underlying violation.
- e. STMO Authorization number involved in the violation.
- f. Description, quantity, value in Philippine peso, and National Strategic Goods List (NSGL) code or other classification of the

strategic goods involved, including the product's end-use and end-users.

- g. Comprehensive Action Plan undertaken by the covered person or plans to undertake to resolve the issue/address the misconduct including all procedures taken/will be taken by the company to ensure future compliance with the STMA, STMA-IRR, terms, and conditions of STMO authorization, and other STMO regulations (e.g., enhancement of Internal Compliance Program, disciplinary measures).
- h. A description of any attendant circumstances relating to Section 6, Rule VI of the STMA-IRR.

4.3.2. **Supporting Documentation**

- 4.3.2.1. The covered person shall submit copies of documents that will explain and support the Full Disclosure including but not limited to the records to be retained/preserved provided under 1.2 of Memorandum Circular No. 21-16 or the STMO Guidelines on Recordkeeping and the Recordkeeping Requirements for STMO Authorization Holder stipulated in Section 3, Rule V of the STMA-IRR.
- 4.3.2.2. The covered person must retain any relevant documents not attached to the Full Disclosure until the STMO requests them and should be maintained according to the recordkeeping requirements under the STMA-IRR.

4.3.3. **Request for Extension of Time**

- 4.3.3.1. The covered person shall submit a Full Disclosure within the prescribed timeframe in 4.3.1 of this Circular. Otherwise, the Disclosure will not be deemed qualified as a VSD.
- 4.3.3.2. Should the covered person be unable to provide a Full Disclosure within the timeframe prescribed in 4.3.1, any empowered official stated in 4.3.5. Of this Circular may request for an extension of time from the STMO.
- 4.3.3.3. The request for extension shall be made in writing and shall specify the information that could not be immediately provided and an accompanying explanation.
- 4.3.3.4. Requests for extension of time shall only be made once and shall not exceed forty-five (45) calendar days. Approval by the STMO of such request will be on a case-by-case basis.

4.3.4. **Certification of the VSD.** The President, the CEO, or duly designated person responsible for STMA compliance, or his equivalent, of the company, must certify that:

- a. All the statements, representations, and supporting documents made in connection with the Voluntary Disclosure are complete, accurate, and correct and are based on authentic records; and,

- b. The person responsible for STM Compliance shall make the Voluntary Self-Disclosure or, in his absence, the designated contact person, or the person making the Voluntary Disclosure duly authorized to act as such and shall provide, if applicable, the necessary authorization or Secretary Certificate in the case of a corporation.

4.3.5. **Where to send voluntary self-disclosure.** A VSD may be submitted electronically to the email address of the STMO's Investigation and Compliance Division (ICD) at stmo_icd@dti.gov.ph or submitted by physical copy to the contact information below:

Director of the Strategic Trade Management Office
Attention: Investigation and Compliance Division
3F Tara Building, 389 Sen. Gil Puyat Avenue
Makati City, Metro Manila Philippines
Tel: (+632) 8639-0172

4.4. Full Disclosure Review

- 4.4.1. The STMO shall acknowledge the receipt of the covered person's FD and assign an officer as a point of contact.
- 4.4.2. The STMO assigned officer shall then review the information and supporting documentation provided by the covered person in the FD. After which, within forty-five (45) calendar days upon receipt of the FD, initial feedback shall be provided by the STMO assigned officer. This feedback may include a request for a meeting if it deems it necessary to clarify accounts made by the covered person in the submitted FD or request additional supporting documentation.
- 4.4.3. Should the information provided in the FD prove to be sufficient and valid in accordance with the criteria set under Section 2 of this Circular, the STMO assigned officer, within ninety (90) calendar days from the receipt of the FD or after the clarificatory meeting with the covered person or after the submission of additional supporting documents, may recommend any of the following, subject to the provisions under the STMA, IRR and relevant administrative issuances of the STMO:
 - 4.4.3.1. Inform the person disclosing that, based on the facts disclosed, it plans to take no action;
 - 4.4.3.2. Issue a warning letter pursuant to the relevant provision under the STMO Guidelines on Warning Letters and Orders for Corrective Action);
 - 4.4.3.3. Conduct an administrative investigation and/or audit/ inspection; and/or,
 - 4.4.3.4. Refer the matter to the following agencies, if in the course of conducting an administrative investigation, the STMO comes across evidence of possible criminal violations pursuant to Section 21 of the STMA:

- a. BOC on matters involving violations of import and export provisions of the STMA as well as the Tariff and Customs Code;
- b. PCG on matters involving violations that pertain to physical or outright smuggling on border security; or,
- c. PNP/ NBI on acts involving violations outside the jurisdiction of the BOC and PCG.

5. Reduced Administrative Penalty. A covered person who has submitted a valid VSD may be entitled to a reduction of penalties pursuant to the STMO Guidelines on Warning Letters and Orders for Corrective Action and Guidelines on Administrative Proceedings and Imposition of Administrative Fines & Penalties.

6. Effectivity. This Circular shall take effect immediately upon its publication.

Recommending Approval:


ATTY. JANICE S. DIMAYACYAC
Director III

Approved by:

ATTY. LUIS MANUEL M. CATIBAYAN
Director IV