

MEMORANDUM CIRCULAR NO. 21-42

Series of 2021

Subject: GUIDELINES ON ADMINISTRATIVE PROCEEDINGS AND IMPOSITION OF ADMINISTRATIVE FINES & PENALTIES

WHEREAS, Section 8 of Republic Act No. 10697, otherwise known as the Strategic Trade Management Act (STMA) created the Strategic Trade Management Office (STMO) 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, Section 9 of the STMA vested the STMO with the powers and functions, among others, to ensure and operate end-use/end-user controls, establish compliance checks and exercise authority to enter premises for such purposes, and investigate violations committed under the said Act;

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

WHEREAS, STMO issued Guidelines on Warning Letters and Orders for Corrective Action (Memorandum Circular No. 20-40) as an alternative to the filing of administrative or criminal complaints;

WHEREAS, there is a need to issue guidelines to observe due process in the conduct of investigation and imposition of administrative fines and penalties under the STMA.

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

1. Purpose

This Memorandum Circular (MC) is intended to serve as a guide to the STMO for the conduct of an investigation, administrative proceedings, and imposition of administrative fines and penalties. It is also intended as a reference for industry stakeholders and all persons engaged in or intending to engage in strategic trade activities.

STRATEGIC TRADE MANAGEMENT OFFICE

2. Scope and Coverage

The herein guidelines shall apply to administrative proceedings under the STMA, its IRR, guidelines, and other issuances of the NSC-STMCom and/or the STMO. It shall cover:

- 2.1. 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 Philippine territory; the provision of related services; and all Filipino persons providing these services wherever located;
- 2.2. 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,
- 2.3. Any person engaged in the activities that fall under any of the four (4) conditions set forth in Section 11 of the STMA.

3. Administrative Violation

Administrative violation refers to an act committed or omitted by any person in violation of the STMA, its IRR, and guidelines and issuances of the NSC-STMCom and/or the STMO.

4. Administrative Investigation

- 4.1. Administrative investigation refers to the procedure conducted by the Investigation and Compliance Division (ICD) of the STMO to determine if an administrative violation has been committed as defined in paragraph 3 above. It may arise from:
 - 4.1.1. The conduct of an audit, compliance visit, or on-site inspection by the STMO;
 - 4.1.2. Information acquired from the Registration and Authorization Division and/or Policy and Enterprise Relations Division of the STMO;
 - 4.1.3. A Voluntary Self-Disclosure by the respondent;

- 4.1.4. Information, intelligence report received from, and/or request for an investigation by other government agencies;
 - 4.1.5. Information, intelligence report received from, and/or request for an investigation by other local and/or international counterparts;
 - 4.1.6. A complaint, information, and/or request for investigation from any person other than those mentioned in the preceding numbers; and,
 - 4.1.7. Any other analogous circumstance.
- 4.2. The ICD conducts a preliminary fact-finding investigation to evaluate and determine if there is reasonable ground to warrant the filing of a Formal Charge.
- 4.3. During the Preliminary Fact-Finding Investigation, the assigned ICD personnel/ investigator shall serve a Charging Letter to the respondent.
- 4.4. A Charging Letter shall:
 - 4.4.1. Contain the alleged specific violation referred to in paragraph 3 above;
 - 4.4.2. Contain the date or period when the alleged violation is committed;
 - 4.4.3. Contain a Statement of Facts;
 - 4.4.4. Require the respondent to produce documents, i.e. company records and affidavit/s, etc., whenever necessary; and,
 - 4.4.5. Be duly signed by the Chief of the ICD or his duly authorized representative.
- 4.5. The respondent is given thirty (30) calendar days from receipt of the Charging Letter within which to file an Answer. A request for extension to file an Answer may be allowed on meritorious grounds.
- 4.6. An Answer shall be in writing, verified, and shall contain the following:
 - 4.6.1. Date of receipt of the Charging Letter;
 - 4.6.2. Antecedent/ relevant facts;
 - 4.6.3. Defenses/undertaking;

- 4.6.4. Certified true copies/Faithful reproduction of documents supporting the defenses; and,
- 4.6.5. Date and signature of the respondent.

4.7. The Verification¹ shall attest the following:

- 4.7.1. The allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents;
- 4.7.2. The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and,
- 4.7.3. The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

A pleading required to be verified that contains a verification based on information and belief, or upon knowledge, information, and belief, or lacks a proper verification, shall be treated as an unsigned pleading.

- 4.8. Failure to file an Answer, files an Answer insufficient in form and substance, or files any document other than an Answer, within the reglementary period shall be considered as a waiver on the part of the respondent, and shall warrant the ICD to proceed with its investigation based on available records.
- 4.9. After the Preliminary Fact-Finding Investigation, an Investigation Report with Recommendation shall be submitted by the ICD to the Office of Bureau Director (OBD). The Investigation Report shall indicate whether or not reasonable grounds exist and to recommend any of the following:
 - 4.9.1. Filing of Formal Charge;
 - 4.9.2. Termination of investigation; or,
 - 4.9.3. Suspension/Archive.

5. Formal Charge

- 5.1. Upon determination of reasonable grounds, the ICD shall file a Formal Charge against the respondent before the OBD. The Formal Charge shall indicate the following:
 - 5.1.1. Name and address of respondent;
 - 5.1.2. Specific violation of the STMA, and its rules or regulations;
 - 5.1.3. Date or period when the violation is committed;
 - 5.1.4. Statement of Facts;

¹ Section 4, 2019 Amendments to the 1997 Rules of Civil Procedure (A.M. NO. 19-10-20-SC).

- 5.1.5. Statement of Attendant Circumstances;
- 5.1.6. Statement of Findings; and
- 5.1.7. Relevant documents.

- 5.2. The STMO shall immediately notify the respondent of the Formal Charge through a Charging Notice in a manner as herein prescribed.

6. Comment

- 6.1. A Comment, to be considered by the STMO, shall be in writing, verified, and contain the following:
 - 6.1.1. Date of receipt of the Charging Notice;
 - 6.1.2. Antecedent/ relevant facts;
 - 6.1.3. Defenses/ undertaking;
 - 6.1.4. Certified true copies/Faithful reproduction of documents supporting the defenses; and,
 - 6.1.5. Date and signature of the respondent /Person Responsible for STMA Compliance.
- 6.2. Non-adherence to the requirements set out in the preceding number shall render the Comment insufficient in form and substance.
- 6.3. All defenses not alleged in the comment will not be appreciated in favor of the respondent;
- 6.4. The respondent shall be given thirty (30) calendar days from receipt of the Charging Notice and Formal Charge within which to file his Comment.
- 6.5. Failure to file a Comment, files a Comment insufficient in form and substance, or files any document other than a Comment, within the reglementary period shall warrant the STMO to proceed with the Disposition of the case based on the available records.

7. Clarificatory Meeting

The Director may, at his/her discretion, call the parties to a clarificatory meeting, concerning the facts, evidence, issues, and other relevant matters.

8. Disposition of the Case

After allowing all the parties to be heard, the Director of the STMO shall, based on the records, proceed to resolve the case and impose administrative penalties and fine/s or the dismissal of the Formal Charge.

9. Issuance of the Decision

After finding substantial evidence that the respondent committed violations as charged, the Director of the STMO shall issue a Decision imposing administrative sanctions as may be proper, setting forth the factual and legal basis thereof. If the finding shows that there is no substantial evidence that the respondent committed the violations as charged, the Director shall dismiss the Formal Charge.

10. Motion for Reconsideration

- 10.1. The respondent may file a motion for reconsideration of the STMO Decision within fifteen (15) days from receipt of the Decision.
- 10.2. The filing of a motion for reconsideration shall stay the execution of the Resolution sought to be reconsidered.
- 10.3. The motion for reconsideration shall be based on any of the following grounds:
 - 10.3.1. Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the respondent has probably been impaired in his rights;
 - 10.3.2. Newly-discovered evidence which could not have been discovered and produced at the time the respondent filed its Comment, and which if presented, would materially affect the Decision rendered;
 - 10.3.3. Substantial mistake in the appreciation of evidence; or
 - 10.3.4. Erroneous computation of assessment.
- 10.4. Only one (1) MR shall be allowed and considered.

11. Finality of Decision

- 11.1. The Decision shall immediately become final and executory if no motion for reconsideration is filed or no administrative appeal has been perfected within the prescribed period.

- 11.2. If the Decision involves the payment of fines, the STMO Director shall issue a Notice of Execution directing the respondent to make payment within ten (10) working days from receipt thereof.
- 11.3. In case of non-compliance with the Notice of Execution, The STMO Director shall issue an Order of Execution with the corresponding Writ of Execution requesting the proper Sheriff's Office to execute the said decision. No deputation is necessary.
- 11.4. When there is a need to deputize and enlist the assistance of public officers and government agencies (other than Sheriff's Office), or private individuals and entities, the STMO Director may deputize any of them, and the deputation shall take effect as soon as said officers, agencies, individuals, and entities give their consent to their deputation.

12. Administrative Appeal

Any person upon whom administrative penalties have been imposed shall have the right to appeal in accordance with Rule VII of the STMA Implementing Rules and Regulations.

13. Service and Filing of Processes and other Correspondences

- 13.1. All processes and other correspondences shall be served by the STMO upon the respondent by way of personal delivery, courier service or registered mail accredited courier, electronic mail, facsimile transmission, other electronic means may be authorized, or as provided for in international conventions to which the Philippines is a party. In case the whereabouts of the respondent cannot be reasonably determined, the service shall be made to the last known address or by a publication in a newspaper of general circulation.
- 13.2. Service by electronic means and facsimile shall be made if the party concerned consents to such modes of service.
- 13.3. There shall be presumptive receipt of processes and other correspondences if the same appears on the records to have been mailed at least twenty (20) calendar days prior to the reglementary period within which to file Answers, Comments, and/or Motion for Reconsiderations.
- 13.4. Answers, Comments, and/or Motion for Reconsiderations shall be filed:
 - a) Personally;

- b) Through courier service;
- c) Through registered mail at 3rd Floor 389 Tara Bldg., Sen. Gil J. Puyat Avenue, Makati City; or,
- d) Through email at stmo@dti.gov.ph copy furnishing the STMO-Investigation and Compliance Division at stmo_icd@dti.gov.ph. The date of electronic transmission shall be considered as the date of filing.

14. Determination of Administrative Penalty

14.1. STMO shall impose on any person found to have committed violations under the STMA the following administrative penalties:

- 14.1.1. Issuance of Warning Letter and/or Order for Corrective Action;
- 14.1.2. Limitation, revocation, or annulment of any authorization and/or registration;
- 14.1.3. Imposition of fines of up to two hundred fifty-thousand pesos (P250,000.00) or twice the value of the strategic good or related service under the contract or as assessed by the STMO; and,
- 14.1.4. Upon request by the Securities and Exchange Commission and/or the Department of Trade and Industry or any other relevant agencies, order the cancellation or suspension of the registration and authorization/license to operate of the partnership, corporation, association, and other juridical entity.

14.2. The imposition of an administrative penalty shall be without prejudice to the filing of appropriate criminal charges against the persons responsible for the violation.

14.3. The penalty and fines to be imposed shall be based on the nature, gravity, frequency of the offense, and attending circumstances.

15. Suppletory Application

In the absence of applicable provisions in these guidelines, the pertinent provisions of the Rules of Court may be applied suppletorily.

16. 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