MEMORANDUM CIRCULAR NO. 22-16
Series of 2022

SUBJECT : GUIDELINES ON COMPLIANCE CHECKS

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 (g) of the STMA provides that the STMO has the power and function to ensure and operate end-use/end-user controls and establish compliance checks and exercise authority to enter premises for such purposes.

WHEREAS, Rule IV, Section 1 of the STMA Implementing Rules and Regulations (IRR) provides that the STMO may require, among others, the establishment of an Internal Compliance Program (ICP) as a precondition for the issuance of global authorization.

WHEREAS, Section 9 of Memorandum Circular No. 20-45 or the STMO Guidelines on ICP Pre-Authorization provides for the ICP Post-Authorization Audit, which states that a covered person shall expect a post-authorization audit to determine compliance with the terms and conditions of the authorization issued by the STMO.

WHEREAS, Rule V, Section 3 of the STMA – IRR provides that all persons engaged in the business involving strategic goods are required to keep at their principal place of business in a secure manner, the details of which will be provided in a guideline to be formulated by the STMO, for a period of ten (10) years from the date of completion of the transaction, all records, in both hard copy and electronic copy, of the transaction and/or books of accounts, business and computer systems and all commercial and technical data related to the transaction.

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

1. **Covered Persons**. These rules shall apply to the following:

    1.1. Holders of Individual, Global, and General Authorization.
    1.2. Holders of Governmental End-Use Assurance.
    1.3. Applicants of Individual, Global, and General Authorization.
    1.4. Applicants of Governmental End-Use Assurance.
    1.5. Any entity listed under Section 3 and 11 of the STMA; and,
    1.6. Any entity as determined by the STMO.

2. **Objectives.** These rules provide for the guidelines on the conduct of compliance checks by the STMO, whichever audit approach it may be, to achieve the following objectives:

    2.1. To establish whether all strategic trade transactions are accurately declared against the appropriate authorization.
    2.2. To verify whether the terms and conditions under the strategic trade authorization are observed and satisfied.
    2.3. For covered persons required to maintain an ICP including a Technology Control Plan (TCP), if applicable, to confirm whether their ICP is being effectively implemented and

identify potential gaps for which corrective actions may be required.

2.4. To confirm whether the recordkeeping requirements under the STMA and STMO Recordkeeping Guidelines are being followed.

2.5. To verify whether the obligations listed under the STMA, IRR and related issuances are complied with.

3. **Scope and Criteria.** The STMO may conduct a compliance check after a covered person has started using an authorization issued by the STMO. This may fall into the following categories:

3.1. **ICP Post-Authorization Audit**. An in-depth check of the effectiveness of the company's implementation of their ICP vis-à-vis the provisions stipulated in the company's ICP document and the STMO standard ICP elements referred to in its ICP setup guide.

3.2. **Compliance Audit.** An STMO Auditor will assess the compliance of entities with the STMA. This shall include assessing entities' compliance with the terms and conditions of authorizations issued by the STMO, reportorial requirements, recordkeeping, and responsibilities of covered persons under Section 10 of the STMA.

4. **Audit Approach.** The STMO may employ any of the following Audit approaches:

4.1. **STMO Office Audit** is a form of Audit involving a desk review of documents, requirements, and other information submitted.

4.2. **Remote Audit** involves using information and communication technology to conduct the Audit, gather information, interview, and inspection when face-to-face methods are not possible.

4.3. **Onsite Audit** involves physical visits by the STMO Audit Team to a facility or site to determine compliance.

5. **Audit Targeting and Considerations.** The STMO may consider the following factors to target covered persons for the conduct of the compliance checks:

5.1. Sensitivity of goods and countries of destinations in accordance with the provision of Memorandum Circular No. 20-13 or the STMO Lists of Prohibited End-Users.

5.2. Nature of Business.

5.3. Authorization Usage/Volume of authorized activity.

5.4. Experience in conducting strategic trade activities.

5.5. Follow-up to a disclosure of an STMA violation.

5.6. Non-registration and application for authorization of a covered person subject to the mandatory registration and authorization requirement under the STMA.

5.7. Effectiveness of ICP based on the ICP Pre-Authorization Audit Result and Pre-Authorization Checks rating and details submitted through the annual checklist.

5.8. Any special conditions which may be in place in the authorization.

5.9. Other considerations that indicate non-compliance with the STMA, terms and conditions of the strategic trade authorizations issued by the STMO, and other issuances of the Bureau.

6. **Audit Notification Letter**. The STMO shall send an audit notification letter to the covered person informing the latter of the conduct of the Compliance checks. The following document/s shall accompany the notification letter.

6.1. List of documents that will be inspected; (see STMO Guidelines on Recordkeeping)

6.2. Scope of Audit.
6.3. Schedule and place of Audit.
6.4. Audit Agenda, which shall include all the particulars and details of the Audit.
6.5. Pre-Visit Questionnaire.
6.6. Other information necessary for the conduct of an audit.

7. **Audit Arrangement**. An audit schedule will be agreed upon forty-five (45) calendar days beforehand. The STMO shall contact the company's person responsible for STMA compliance listed during Registration via email or registered mail.

8. **Location of Audit**. The Onsite Audit shall be held at the principal place of business of the covered person or where strategic trade-related activities are carried out including but not limited to the main office, warehouse, logistics operations, manufacturing, and where the complete record of transactions relating to the strategic trade is available. When applicable, a Remote Audit may be made through a prescribed secure platform.

9. **STMO Audit Team**. The composition of the STMO Field/ Remote Audit Team shall depend on the anticipated complexity of an audit. STMO Auditors may be accompanied by STMO licensing officers, Enforcement officers, and/ or representative/s from Law Enforcement Agencies or other relevant government agencies.

10. **Company Personnel Required to be Present During the Audit**. The following personnel of the covered person shall be present during the Audit:

    10.1. Person Responsible for STMA Compliance (name submitted to STMO during Registration which could be the President, CEO, or any senior representative occupying an equivalent position.
    10.2. Chief Strategic Trade Management Compliance Officer (If different to the Person Responsible for STMA Compliance).
    10.3. Compliance team.
    10.4. Personnel who are directly involved with strategic trade activity and administration of the strategic trade authorization; and,
    10.5. Personnel with functions related to internal compliance such as Human Resources, Internal Audit Team, among others.

11. **Audit Phase.** The onsite or remote Audit shall be conducted with the essential elements below:

    11.1. **Opening Meeting**.

        11.1.1. Brief Introduction of the Audit Team and Auditees.
        11.1.2. Purpose and objectives of the Audit.
        11.1.3. Actual Audit Approach (e.g., Records to be reviewed, personnel to be interviewed).
        11.1.4. Audit Process Flow and Timeframe; and,
        11.1.5. Entity Protocols and other information that may be relevant to the Audit Team.

    11.2. **Audit Proper.**

        11.2.1. Facility Inspections.

11.2.2. Interviews to validate compliance with the STMA and terms and conditions of the authorization.

11.2.3. The STMO may request, review, and examine records listed under the STMO Memorandum Circular No. 21-16 or STMO Recordkeeping Guidelines. The Audit team may select a representative sample of the documents. The Auditors may make, or cause to be made, one or more copies of the records for their review and examination.

11.2.4. Information stated on the Pre-Visit Questionnaire shall be validated. Any false information given shall be resolved against the entity.

11.3. **Audit Team Meeting.** The audit team will discuss the initial findings, exchange information, and discuss areas that need to be further addressed.

11.4. **Closing Meeting.** The closing meeting may cover a preliminary discussion between the Audit Team and the covered person regarding the audit findings and the corresponding recommendations. The necessary details regarding the subsequent stages of the audit may also be discussed by the auditors.

12. Time Frame. An Audit normally takes one day but could take longer depending on the volume, the number of sites where the company operates, the nature of the company's strategic trade transactions, and the entity/auditee's preparedness. Hence, companies are expected to have an organized record-filing system and a well-prepared compliance team during the Audit.

13. Audit Result Notification. The formal Audit result shall be available within thirty (30) calendar days from the closing Meeting or from the submission of all information requested, whichever is later. The STMO shall communicate the audit result through a notification letter.

The type of audit results are as follows:

13.1. **Compliant**. A covered person is deemed fully compliant when strategic trade transactions are accurately declared, terms and conditions of the authorization are observed and satisfied, record keeping requirements are complied with, and when applicable, the ICP or TCP is effectively implemented.

13.2. **Compliant with Recommendations.** A timeframe will be given to the company to remedy the recommended areas. The covered person may be subjected to a follow-up audit to ensure that the relevant changes have been made to the company's compliance system.

13.3. **Non-compliant**. If the covered person is found to be Non-compliant, the STMO will notify the former. The Notification may include any of the following:

13.3.1. Recommendations which shall be complied by the covered person. In this case, the covered person may be subjected to a follow-up audit to determine compliance.

13.3.2. A corresponding warning letter, order for corrective action, charging letter, or other notification should the non-compliance fall under a potential violation of the STMA, IRR, or related issuances. (See Memorandum Circular No. 20-60 or STMO Guidelines on Warning Letters and Orders for Corrective Action and Memorandum Circular No. 21-42 or STMO Guidelines on Administrative Proceedings and Penalties.)

14. **Incomplete Evaluation.** Within thirty (30) calendar days from the Audit, the entity shall be informed if a follow-up audit is necessary. Further, the entity/ auditee will be informed when an audit cannot be concluded within the scheduled visit to the entity's office. In the said case, the Audit will be continued on a different date owing to justifiable cause/s that may warrant consideration for a follow-up evaluation. The subsequent visit will focus mainly on the remaining items or issues for evaluation.

15. **Follow-up Audit.** If any action is required by the STMO, such as the production of any record or some minor modifications in the ICP (for ICP requirement covered entities), the follow-up audit will depend on when such records can be made available by the entity or when the needed modifications with the ICP will be completed. This will also depend on the next available schedule of the STMO Auditors. The follow-up audit shall focus on the issues for evaluation and assessment of whether the recommendations were taken and if the desired results were obtained.

16. **Confidentiality of Business Proprietary Information.** Any information obtained by the STMO that is marked as confidential business information shall not be disclosed to any other party except in the furtherance of justice and law enforcement, national security, or foreign policy interests, as determined by the STMO unless the party providing such information has consented to its disclosure.

This Circular shall take effect immediately.

Recommending Approval:

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Approved by:

ATTY. JANICE S. DIMAYACYAC
Officer-in-Charge