

**MEMORANDUM**

TO : ALL DEPUTY COMMISSIONERS
ALL DISTRICT AND SUB-PORT COLLECTORS
ALL SERVICE DIRECTORS
ALL CHIEFS, LAW DIVISIONS
ALL OTHERS CONCERNED

FROM : REY LEONARDO B. GUERRERO
Commissioner

SUBJECT : CONDUCT OF HEARINGS IN ALL FORFEITURE PROCEEDINGS
UNDER CUSTOMS MEMORANDUM ORDER (CMO) NO. 4-2018 (A)
IN LIGHT OF COVID-19 TRAVEL RESTRICTIONS

DATE : 18 March 2020

(Handwritten signature of Rey Leonardo B. Guerrero)

(QR Code) BOC-02-02027
MAR 19 2020

Pursuant to the Memorandum dated March 16, 2020 from Executive Secretary Salvador Medialdia, Office of the President, restricting land, air and sea travel of all employees of the Executive Branch, the following measures shall be undertaken:

1. The conduct of actual and face-to-face hearings are temporarily suspended in all ports until April 12, 2020. The BOC lawyer who is designated by the District Collector as the Hearing Officer shall not require the presence of the PLD Government Lawyer to appear before him/her at the port.
2. Instead, the Hearing Officer shall require the claimant to file its Position Paper with a longer period of seven (7) working days from receipt of the notice to file the same. The Hearing Officer shall ensure that the parties are properly guided by Customs Memorandum Order (CMO) No. 4-2018 (A), particularly Section 6.3. to 6.6. thereof, quoting *en toto* the said provisions in the notice.
3. All the issues which are supposed to be adduced during the preliminary conference pursuant to Section 6 of Customs Memorandum Order (CMO) No. 4-2018 (A) shall be discussed in the Position Paper to be submitted by the Claimant/s, and the Comment to be filed by the assigned PLD Government prosecutor.
4. Unless a Reply or Rejoinder is filed by the parties, the case shall be submitted for resolution by the hearing officer within the prescribed period upon receipt of these pleadings.
5. All pleadings to be filed by the PLD government prosecutor shall be forwarded to the Acting Chief, PLD for review.

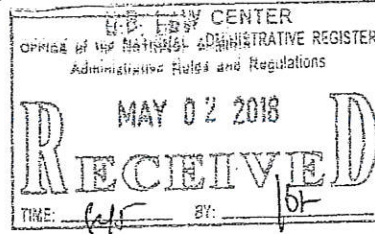
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**CUSTOMS MEMORANDUM ORDER (CMO)
NO. 4-2018 (A)**



SUBJECT: AMENDMENT OF CMO 4-2018 re: MANUAL OF PROCEDURE FOR FORFEITURE CASES

Section 1. Scope and Coverage. This CMO prescribes the guidelines and detailed procedures governing forfeiture proceedings in the Bureau of Customs pursuant to Section 204 of the Customs Modernization and Tariff Act (CMTA).

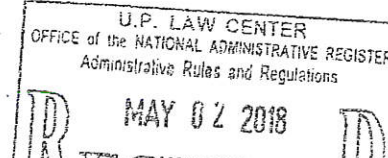
Section 2. Objectives.

- 2.1. To provide just, fair and expeditious resolution of forfeiture cases in the Bureau.
- 2.2. To ensure uniformity and consistency in the application of customs policies, rules and regulations in forfeiture proceedings.
- 2.3. To introduce innovations and best practices consistent with the law.

Section 3. General Provisions.

- 3.1. The Bureau shall exercise exclusive original jurisdiction over all forfeiture cases under the CMTA.
- 3.2. The venue shall be at the Law Division of the Collection District which issued the Warrant of Seizure and Detention (WSD). For Collection Districts without Law Divisions, the venue shall be at the Office of the District Collector. Upon motion, the venue may be held at the Legal Service, Revenue Collection Monitoring Group (RCMG).
- 3.3. These Rules shall be liberally construed to carry out the objectives of the CMTA and other relevant legislations.
- 3.4. Any interlocutory order or referral to other offices shall toll the running of the reglementary period.
- 3.5. If the subject shipment involves prohibited or restricted goods, the same shall be *ipso facto* be forfeited in favor of the government.
- 3.6. Days as used in this CMO shall refer to working days.
- 3.7. The Bureau shall, in accordance with international standards, utilize information and communications technology in managing the recordation of cases and the dissemination and utilization of resolutions or decisions in forfeiture cases.

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GLADYS C. CABUGAWAN
CHIEF ADMINISTRATIVE OFFICER



Section 4. Pleadings, Notices and Appearances.

- 4.1. All pleadings shall be filed personally, by private courier service, or electronically¹ with the appropriate Law Division or Office of the District Collector. Soft copies of pleadings shall also be submitted simultaneously either by electronic mail or in an external drive.
- 4.2. In the event that the pleadings are sent through private courier service, the date of sending shall be considered as the date of filing.
- 4.3. Pleadings filed beyond the reglementary period shall not be considered.
- 4.4. Where WSDs are issued by the District Collector involving the same consignee, commodity and violation, these cases may be consolidated. In case where two (2) hearing officers are assigned, the same shall be consolidated with the lower/lowest docket number.
- 4.5. A lawyer appearing in any forfeiture case shall be duly authorized by the claimant. All pleadings and motions submitted by a lawyer appearing for the claimant shall indicate his/her office address, electronic mailing address, Attorney's Roll Number, updated Integrated Bar of the Philippines (IBP) and Professional Tax Receipt (PTR) Numbers and Mandatory Continuing Legal Education (MCLE) compliance.
- 4.6. In case the claimant is a juridical entity, it may also authorize a responsible officer of the company to appear on its behalf.
- 4.7. An attorney-in-fact appearing in any forfeiture case must be duly authorized by the claimant. Authorization issued by claimant currently abroad must be duly authenticated by the appropriate Consular Office.
- 4.8. Any appearance and pleading filed by a representative of the Claimant without proper written authority shall not be considered by the Hearing Officer.
- 4.9. Counsel or other authorized representatives shall have the authority to bind their clients or principals in all matters of procedure including but not limited to entering into offer of settlement by fine or redemption.
- 4.10. Any change or withdrawal of counsel or authorized representative shall be made in accordance with the Rules of Court.
- 4.11. Notice of Hearing shall be served by personal service or, if not practicable by reason of distance and lack of personnel to effect the same, by private courier service or electronic mail. Proof of such service shall be attached to the record of the case.

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GLADYS C. CABUGAWAN
CHIEF ADMINISTRATIVE OFFICER
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Section 5. Designation of Hearing Officer and Prosecutor.

- 5.1. Within twenty four (24) hours from issuance of the WSD, the District Collector shall endorse the same to the Law Division for the assignment of a Hearing Officer.
- 5.2. For Collection Districts without a Law Division, the District Collector, may *motu proprio* conduct a hearing or may designate any lawyer assigned to the Collection District as a Hearing Officer. If there is no lawyer assigned in the Collection District, the District Collector shall request for a Hearing Officer from the Prosecution and Litigation Division (PLD), Legal Service² within forty-eight (48) hours from the issuance of the WSD.
- 5.3. In all cases, the District Collector shall request a Government Prosecutor from the PLD, Legal Service within forty-eight (48) hours from issuance of the WSD.

Section 6. Hearing Proper.

- 6.1. The Hearing Officer shall immediately conduct the preliminary conference hearing of the forfeiture case which should be terminated within seven (7) days from the issuance of the Warrant of Seizure and Detention.
- 6.2. All parties including the claimant or its duly authorized representative, apprehending or alerting unit, customs examiners, or other customs officer concerned and the Government Prosecutor shall be duly notified of the scheduled date of preliminary conference.
- 6.3. During the Preliminary Conference the following shall be discussed:
 - 6.3.1 Defining and simplifying the issues of the case;
 - 6.3.2 Entering into admission or stipulation of facts;
 - 6.3.3 Marking of exhibits;
 - 6.3.4 The possibility of disposition of the goods pending forfeiture proceedings in case of perishable articles;
 - 6.3.5 The possibility of settlement; and
 - 6.3.6 Dates for submission of respective Position Papers of the parties

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 GLADYS C. CABUGAWAN
 CHIEF ADMINISTRATIVE OFFICER
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²Executive Order No. 724

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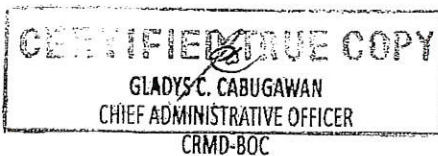
- 6.4. The Hearing Officer shall require the Claimant to submit its verified Position Paper within five (5) days from the termination of the Preliminary Conference, copy furnished the Government Prosecutor. Failure on the part of the Claimant to submit its verified Position Paper within the prescribed period shall be deemed as waiver on its part to submit the same. No Motion for Extension shall be allowed.
- 6.5. Within five (5) days from receipt of the Position Paper, the Government Prosecutor shall file its Comment, copy furnished the Claimant. Failure to submit the Comment within the prescribed period shall be deemed waiver on the part of the Government Prosecutor to submit his Comment.
- 6.6. Should the Claimant deem it necessary to submit Reply, the Claimant may file its verified Reply within three (3) days from receipt of the Comment, copy furnished the Government Prosecutor, thereafter the case is deemed submitted for resolution. Claimant's failure to submit Reply within the prescribed period would render the case submitted for resolution.

Section 7. Decision of the District Collector.

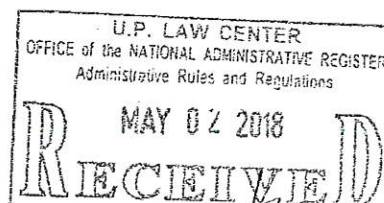
- 7.1 The Hearing Officer shall, within eight (8) days from the date of filing of the last pleading submit to the District Collector a draft Decision of the forfeiture case for the latter's approval.
- 7.2. The District Collector shall, within two (2) days from receipt of the draft Decision, affirm or deny the recommended decision of the Hearing Officer.

Section 8. Prohibited Pleadings and Motions. The following pleadings and motions shall not be allowed and acted upon by the Law Division or the Office of the District Collector:

- 8.1. Motion for Postponement – A motion for postponement is prohibited, except if it is based on acts of God and force majeure;
- 8.2. Motion for Reconsideration;
- 8.3. Motion for Extension of Time to File Pleadings;
- 8.4. Motion to Quash/Recall/Lift/Set-aside or any other similar motion, except when the WSD was issued pursuant to the following:
 - 8.4.1. In case of goods seized pursuant to the power of the Commissioner to inspect and visit³, and the claimant was able to prove payment of duties and taxes as evidenced by authentic documents and the release of the goods will not be contrary to law;



³ cf. CMTA, Title II, Chapter 3, Section 224



4.2. In case of goods seized pursuant to the power of the Commissioner to inspect and visit⁴, and the claimant was able to prove that the goods are not of foreign origin or the goods are manufactured locally and the release of the goods will not be contrary to law;

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4.3. The District Collector issuing the WSD has no territorial jurisdiction over the seized goods⁵, without prejudice to the issuance of the WSD by the District Collector having territorial jurisdiction thereof;

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4.4. When the concerned regulatory agency, in cases of regulated goods, has issued the necessary clearances or licenses in accordance with its governing laws and regulations; and

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4.5. Other analogous circumstances as determined by the Commissioner.

Motion to Suspend/Hold in Abeyance Forfeiture Proceedings; and

Motion to Reopen

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The aggrieved importer or exporter or any stakeholder directly affected by the adverse decision of the District Collector may appeal the decision by filing a Notice of Appeal with a corresponding Memorandum on Appeal within fifteen (15) days or five (5) days in case of perishable goods, from receipt thereof.

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Upon receipt of the Notice of Appeal and Memorandum on Appeal with proof of payment of the requisite appeal fee, the District Collector shall transmit all the records of the proceedings to the Appellate Division, Legal Service within twenty-four (24) hours from the receipt of the appeal. A soft copy of the decision shall also be sent to the Appellate Division, Legal Service via electronic mail at appellatedivision888@gmail.com.

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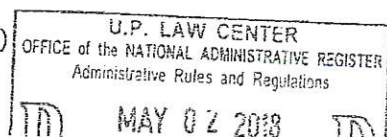
The Chief, Appellate Division shall immediately assign the case to a Reviewing Officer. The Appellate Division shall have five (5) days to review the case and submit a recommendation. Such recommendation shall immediately be transmitted for review of the Director, Legal Service who shall have two (2) days, to transmit his recommendation to the Deputy Commissioner, RCMG. The latter shall in turn transmit his recommendation to the Commissioner within one (1) day from receipt of the recommendation from the Director, Legal Service.

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The Commissioner shall affirm or deny the recommended Decision by the Legal Service, RCMG, within two (2) days from receipt of the

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Chapter 3, Section 224
Art of The Philippines, Rule 117, Section 3 (b)



Collector or the Commissioner, provided that when no decision is rendered within the prescribed period, the Decision of the District Collector or the Commissioner shall be deemed approved.

Section 11. Repealing Clause. This CMO repeals previously issued CMOs which are inconsistent with the provisions here stated.

Section 12. Separability Clause. If any part of this CMO is declared unconstitutional or contrary to existing laws, other parts not so declared shall remain in full force or effect.

Section 13. Effectivity. This CMO shall take effect immediately and shall last until revoked.

[Signature]
ISIDRO S LAPEÑA, PhD, CSEE
Commissioner
APR 26 2018



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[Signature]
GLADYS E. CABUGAWAN
CHIEF ADMINISTRATIVE OFFICER
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