



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA 1099

03 MAR 2006

CUSTOMS MEMORANDUM ORDER

NO. 6-2006

SUBJECT: RULES AND REGULATIONS GOVERNING THE ACCREDITATION OF CUSTOMS BROKERS TRANSACTING WITH THE BUREAU OF CUSTOMS AND FOR OTHER PURPOSES.

By authority of Sections 602 and 608 of the Tariff and Customs Code of 1978 that defines the general duties, powers and jurisdiction of the Bureau of Customs and R.A. 9280 regulating the practice of the Customs Brokers Profession in the Philippines, and pursuant to Customs Administrative Order No. 3-2006 dated March 2, 2006, the following rules and regulations governing the accreditation of customs brokers transacting with the Bureau of Customs are hereby promulgated for the information and guidance of all concerned:

PART I - GENERAL PROVISIONS

1. Objectives

- 1.1 To ensure the effective and proper enforcement of the Tariff and Customs Laws and all other laws, rules and regulations relating to the Tariff and Customs Administration.
- 1.2 To prevent and suppress all forms of smuggling and other frauds against customs revenue.
- 1.3 To regulate the conduct of customs brokers transacting with the Bureau of Customs.

2. Definition of Terms.

When used in these rules and regulations, unless the context provide otherwise, the following terms or phrases shall have the meaning indicated:

- 2.1 "Customs Broker" refers to any bona fide holder of a valid Certificate of Registration/Professional Identification Card issued by the Professional Regulatory Board and the Professional Regulation Commission, who is accredited to practice in the Bureau of Customs.
- 2.2 "Customs Broker Practice" refers to the professional services rendered by a customs broker in the Bureau of Customs pursuant to the pertinent provisions of Section 6, Customs Brokers Act of 2004

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- 2.3 "BOC" refers to the Bureau of Customs or any of its officer/official, other than the Commissioner, duly authorized to represent the said office.
- 2.4 "Commissioner" refers the Commissioner of Customs.
- 2.5 "PRC" refers to the Professional Regulation Commission.
- 2.6 "PRBCB" refers to the Professional Regulatory Board for Customs Brokers created pursuant to Section 5 of R.A. 9280.
- 2.7 "LS" refers to the Legal Service of the Bureau of Customs.
- 2.8 "CAS" refers to the Customs Accreditation Secretariat of the Legal Service.
- 2.9 "APO" refers to Accredited Professional Organization. For purposes of these regulations, it refers to the Chamber of Customs Brokers, Inc. (CCBI) or any professional organization of customs brokers which is or may hereafter be accredited by the PRC.

3. Accreditation of Customs Brokers Required in Transacting with the Bureau of Customs.

Accreditation is the process for registration and/or listing of customs brokers desiring to engage in customs brokers practice. Customs Brokers desiring to practice their profession at the BOC shall apply for accreditation and obtain a Certificate of Accreditation before they may engage in customs brokers practice.

4. Transaction for which Accreditation is not Required

An accreditation from the BOC is not required in the following transactions.

- 4.1 For one's own account. – A person dealing in customs and tariff transactions at the Bureau of Customs solely for his own account and not in behalf of another except in the customs clearance of articles of a commercial nature or quantity, and those required to be declared in a formal entry.
- 4.2 As *bona fide* customs representative (personero) of a customs broker and acting solely for his employer, subject to the following conditions:
 - 4.2.1 His name appears on the certified list of customs representative or any addition thereto submitted by a customs broker; and
 - 4.2.2 He is a holder of a valid Customs Pass duly issued by the ESS.
- 4.3 Mail importations. – No registration is required of persons claiming parcel in posts offices subject to customs clearance prior to delivery; Provided, That the person claiming the mail is the addressee shown on the parcel being cleared and positively identified thru a valid ID card, and that the parcel does not contain



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articles in commercial quantity required to be declared in a formal entry/informal entry.

- 4.4 Diplomatic pouches and shipment claimed by authorized representative of the foreign embassy, consulate, legation or specialized agency of the United Nations concerned except non-diplomatic shipments consigned to Non diplomatic officials or employees of said offices.

PART II - ADMINISTRATIVE PROVISIONS

1. Accreditation Office:

- 1.1 The Legal Service (LS) through the Customs Accreditation Secretariat (CAS) shall be responsible for processing the applications for accreditation of customs brokers desiring to conduct their business with the Bureau of Customs or any representative thereof.
- 1.2 The CAS shall perform the following:
 - 1.2.1. Receive/Process applications for accreditation of customs brokers with complete supporting documents duly endorsed by the APO and/or PRBCB.
 - 1.2.2. Recommend approval to the LS Director; Provided that, in case of disapproval of the application; a Notice of Disapproval clearly stating the grounds therefor shall be signed and served to the applicant, copy furnished the Commissioner, APO and the PRBCB.
 - 1.2.3. Keep and maintain a 201 File of all customs brokers applying for accreditation, with the complete record of the applications and final disposition and all other relevant matters such as records of investigations involving violations of law and/or customs rules and regulations.
 - 1.2.4. Such other tasks as may be directed by the Commissioner from time to time.

2. Appeal to the Commissioner.

- 2.1 The decision of the LS Director to disapprove an application for accreditation may be appealed to the Commissioner by filing a notice of appeal with the LS/CAS within fifteen (15) days from receipt of the notice of disapproval, without prejudice to the filing of a new application if the ground or basis for the disapproval of the original application no longer exists.
- 2.2 The Commissioner shall decide the appeal within thirty (30) days from receipt of the records from the CAS.



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3. Procedure for Accreditation

3.1 A duly accomplished application for accreditation (Annex "C") under oath and in three (3) typewritten copies shall be filed with the CAS upon payment of accreditation fee of Php1,000.00 and processing fee of Php300.00, the official receipts of which shall be attached to the application. For new applicants, the application shall be accompanied with verified photocopies of the following supporting documents:

- 3.1.1 Valid Certificate of Registration of Customs Broker
- 3.1.2 Valid Professional Identification Card (PIC)
- 3.1.3 Professional Tax Receipt (PTR) for accreditation year
- 3.1.4 Taxpayer Identification Number (TIN) Card or Certificate
- 3.1.5 VAT Registration Certificate
- 3.1.6 NBI Clearance (not more that 3 months old)
- 3.1.7 Mayors Business Permit if the customs broker is using a business name
- 3.1.8 Good standing certificate from the APO
- 3.1.9 A certified list of his representative(s) with specimen of their signatures to be accomplished in the prescribed form (Annex "C") together with their corresponding NBI clearance (not more than 3 months old) and a photocopy of their corresponding SSS ID card (the list maybe submitted within a period of ten (10) working days after issuance of the certificate of accreditation)
- 3.1.10. A fidelity bond which may be a personal bond guaranteed by an accredited surety company in the amount of Fifty Thousand (Php 50,000.00) pesos which will be increased if found later to be inadequate by the Commissioner upon findings and recommendations by the CAS.
- 3.1.11 A certified list of regular clients-importers and exporters (Annex "F")

3.2 For applicants residing outside of Metro Manila, the application together with the supporting documents may be filed with the District Collector of the customs district where the customs broker regularly transacts business.

4. Issuance, Form, Effect and Validity of Certificate of Accreditation.

4.1 Upon approval of the application a Certificate of Accreditation shall be issued to the Customs Broker/applicant under a BOC official seal and upon payment of the documentary stamp tax of Php15.00. The certificate of accreditation (Annex "A") shall have a serial number (aside from the printed serial number of the form) which shall be sequentially given and followed by the year of its validity



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(Example: No. 0000-2005). Said serial number shall be constant and treated as a permanent identification number of the accredited customs broker concerned and only the year of its validity shall be changed if and when a renewal certificate of accreditation will be issued during the succeeding years.

- 4.2 Issuance of a certificate of accreditation authorizes a customs broker to practice his profession in any port of entry in the Philippines and shall be valid only up to the end of the year of issuance unless suspended or revoked for cause.

PART III - ANNUAL RENEWAL OF ACCREDITATION

1. Period of Renewal and Requirements.

- 1.1 The certificate of accreditation must be renewed annually if the customs broker concerned desires to continue transacting with the BOC. The period for filing of renewal application is from January to March of the following renewal year. Such applicant shall file with the CAS a sworn letter of application for renewal of accreditation which shall state among others any material change/s on his original application form.
- 1.2 Renewal of application shall be accompanied with the official receipts evidencing payment of the non-refundable amounts of the fees prescribed in Sec. 3.1 of Part II hereof and verified photocopies of the following supporting documents:
- 1.2.1 Valid Professional Identification Card (PIC)
 - 1.2.2 Professional Tax Receipt (PTR) for accreditation year
 - 1.2.3 Mayors Business Permit if the customs broker is using a business name
 - 1.2.4 Good standing certificate from the APO
 - 1.2.5 NBI Clearance (not more than 3 months old)
 - 1.2.6 SSS Clearance Certificate
 - 1.2.7 Certified list of bona fide customs representatives (updated) supported by the latest copy of its SSS Form R-1A showing date of filing with SSS and corresponding NBI Clearance (not more than 3 months Old) of the representatives on the list
 - 1.2.8 Certified list of regular clients-importers and exporters (Annex "F")
 - 1.2.9 Financial statements for the year immediately preceding duly accomplished by a reputable certified accountant or accounting firm.
 - 1.2.10 Receipt for premium paid for his fidelity surety bond with the appropriate bond indorsement (in case the previous



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surety company is no longer accredited, a new surety bond is required as prescribed in these regulation.

1.2.11 Such other documents which the Legal Service may require from time to time upon consultation with the APO.

1.3 The aforementioned documents must be submitted not later than the 16th day of April otherwise the application for renewal shall be considered withdrawn.

1.4 No application for renewal of accreditation shall be accepted if the certificate of accreditation has been suspended or revoked for cause during the time it was subsisting, unless subsequently lifted by the CAS.

2. Effect of Failure to Timely Renew Accreditation.

2.1 The accreditation as customs broker shall continue to be valid within the period of renewal unless directed otherwise by the CAS. The Commissioner shall after the 16th day of April of each year, issue and publish a circular containing a list of customs brokers whose accreditation has not been renewed and therefore could no longer be authorized to practice in the BOC.

2.2 However, customs brokers who have filed their application for renewal of accreditation and have paid the required fees shall continue to practice their profession in the BOC pending issuance of their renewal certificate of accreditation. Upon request, they shall show a copy of their application letter for renewal showing date of its filing with the CAS or the District Collector of the customs district concerned.

3. Late Filing of Renewal Applications.

Customs brokers shall be allowed to file their renewal applications after the 16th day of April of the current year upon payment of an additional non-refundable amount of Php3,000.00 as delinquency fee. In the interregnum, the customs broker shall desist from practicing his profession with the BOC after expiration of the validity of his accreditation.

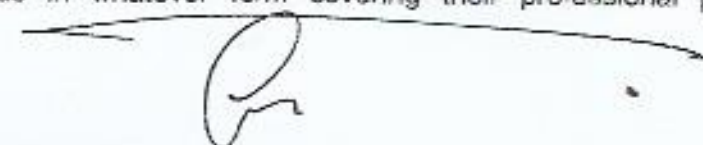
PART IV - DUTIES AND RESPONSIBILITIES OF CUSTOMS BROKERS

1. Record-keeping

Each customs broker shall keep and maintain, in a correct, orderly, and itemized manner, complete records and file copies of all his correspondence and other records relative to the conduct of his profession as provided for in CAO 5-2001

2. Retention of Records.

2.1 As provided for in Section IV-A.3 of CAO 5-2001, as amended by CAO 4-2004, and Section III-B of CMO 2-2002, all customs brokers shall keep at their stated office address copies of importation records in whatever form covering their professional practice



including records enumerated therein for a period of three (3) years from the date of transactions, for audit compliance.

- 2.2 The records referred to above shall be considered confidential and shall not be disclosed to any person other than his clients by the broker nor the Commissioner or his authorized representatives, except on *subpoena duces tecum* issued by a duly authorized customs official or a court of competent jurisdiction.
- 2.3 During the period of retention, customs brokers shall maintain his records in such manner that they may readily be examined and made available upon demand for inspection, copying, reproduction, or other official use by the Commissioner or his authorized representative.

3. Interference with Examination of Records.

A customs broker shall not refuse access to, conceal, remove, or destroy the whole or any part of his records related to the practice of his professions as a customs broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Commissioner or his authorized representative; nor shall a broker otherwise interfere, or attempt to interfere, with any proper and lawful order to procure or reproduce relevant information contained in such records required to be retained.

4. Responsible supervision and control over their representatives.

Customs brokers shall exercise strict supervision and control over their representatives when following up transactions related to their customs practice. They shall be held strictly responsible and solidarily liable for acts or omissions of their representative which, in the exercise of due and reasonable care and diligence, they could have foreseen or prevented.

5. Diligence in correspondence and paying monies.

- 5.1 Customs brokers shall exercise due diligence in handling financial settlements, in answering correspondence, and in the preparation and filing of documents relating to the practice of his profession and other customs matters handled by him.
- 5.2 Funds received by a broker from a client for payment of duties, taxes and other charges or other debts or obligations owing to the Bureau of Customs shall be paid within five (5) days from date of receipt of such funds or date due. Likewise customs brokers shall within ten (10) days account to their clients the funds or other charges received by them from the Government or properly payable on account of their client's business.

6. Conflict of interest.

A customs broker who is an importer himself shall not act as such for another importer who imports goods and merchandise of the same general character as that imported by the broker unless the client has full knowledge of the matter.



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7. False information.

A customs broker or his representative shall not file or procure or assist in the filing of any claim, or of any document, affidavit, or other paper known by him to be false and fraudulent; nor shall he knowingly give, or solicit or procure the giving of, any false or misleading information or testimony in any matter pending before the Bureau of Customs or official representative thereof.

8. Undue influence upon government officials and employees.

A customs broker or his representative shall not influence or attempt to influence the conduct of any BOC official or employee of the BOC in any matter pending before it or any official representative thereof, by the use of a threat, false accusation, duress, or the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other things of value.

9. Misuse of Accreditation Privilege.

A customs broker shall not permit his accreditation or his name to be used, directly or indirectly, by or for any non-registered custom broker or other persons, other than his own representative(s).

10. Relations with a Broker whose Accreditation has been Suspended or Revoked.

A customs broker shall not directly or indirectly -

10.1 Accept employment or use his service to effect a customs transaction as an agent or surrogate of a broker whose accreditation has been revoked, suspended or cancelled, and could no longer practice his profession;

10.2 Assist in the furtherance of any customs transaction of such persons' and

10.3 Permit any such person directly or indirectly to participate in any manner in the promotion, control or direction of his customs practice. Nothing herein shall be deemed to prohibit any customs broker from acting as a broker for any bona fide importer or exporter, notwithstanding if such importer or exporter is also a customs broker whose accreditation has been suspended, revoked, or cancelled.

11. Advise to Clients.

11.1 Withholding of false information. - A customs broker shall not withhold information relative to any customs practice from a client who is entitled to the information. He shall exercise due diligence to ascertain the correctness of any information and shall not knowingly impart to a client any false information relative to his practice.

11.2 Error or omission by clients. - A customs broker who knows that a client has not complied with the law or regulations or has made an error, or omission on, any



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document, affidavit, or other paper which the law or regulations requires such client to execute, shall advise his client promptly of such fact.

11.3 Illegal schemes. - A customs broker shall not suggest to a client or a prospective client any scheme or plan known to be illegal or irregular designed to evade payment of any duty, tax or charge or other debt or obligation owing to the Government, or any scheme aimed at putting the BOC or any official representative thereof in disrepute.

12. Withdrawal of Services as Broker.

The right of a customs broker to withdraw his services, once assumed, must arise only from good cause. A broker should not abandon the unfinished tasks to the detriment of his client when the client insists upon an unlawful course in the conduct of customs practice or transactions, or if the client deliberately and with malicious intent disregards an agreement or obligation as to fees or expenses, in which case the broker may be justified in withdrawing after submission of a written notice of withdrawal which must be confirmed by the client and the Collector of Customs of the Port concerned thereby allowing the client sufficient time to employ the services of another customs broker provided, that the client may discharge the services of the broker for cause or loss of confidence with Notice to the CAS and Collector of Customs concerned. Upon withdrawal, if services after a retainer or advance fee has been paid, the customs broker shall refund to the client such unearned portion.

13. Limitation of Liability.

A customs broker shall not evade his liability with respect to a just claim by the client arising out of the wrongful act or negligence of the broker or his customs representatives in connection with a matter handled by him nor shall enter into a contract which purports to evade his liability.

14. Display of Certificate.


A broker must have an office for business where he shall display his Certificate of Accreditation as Customs Broker or photocopy thereof conspicuously in his office so that it may be seen by anyone transacting business in his office.

15. Change of Business Address.

A customs broker shall immediately notify his client of any change of office address and give written notice of his new address to the BOC (Attn: CAS, LS), copy furnished the Collector of the Port(s) where he is regularly practicing the profession, within ten (10) days after moving to the new address.

16. Seizure and Protest Cases.

A customs broker who is a member of the bar shall not appear in behalf of his client or as an intervenor in any seizure or protest case unless he is at the same time engaged in the practice of law and has obtained his PTC for such purpose. In addition, he must be duly authorized to act as counsel of



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record by virtue of a formal notice of appearance duly filed with the Hearing Officer assigned to the case. The broker, however, may appear and assist as counsel during the hearing of the case.

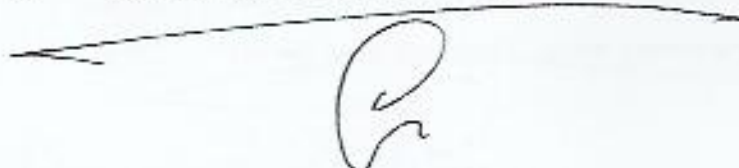
PART V - CANCELLATION, SUSPENSION OR REVOCATION OF ACCREDITATION

1. Grounds for Suspension or Revocation of Accreditation.

The grounds for suspension or revocation of accreditation as customs broker shall include, but not limited to, the following:

- 1.1. Deliberate failure or refusal without justifiable reasons to comply with the duties and responsibilities of customs brokers prescribed in these regulations.

"Justifiable reason" as contemplated herein shall mean any and all acts the commission of which shall not render him liable either administratively or criminally under existing laws, rules or regulations.
- 1.2. Willfull misdeclaration or undervaluation of imported or exported articles that resulted or would have resulted in the loss of government revenues, or in evasion of any control regulation of the government.
- 1.3. Failure to report to the proper customs authorities any fraud upon the customs revenue which has come to his knowledge or cognizance, or shall knowingly assist or abet the importation or exportation or entry of prohibited or any article which importation is contrary to law.
- 1.4. Misappropriation of the funds entrusted to a customs broker by a client for payment of duties, taxes and other charges and other accounts or obligations owing to the Bureau of Customs and other authorized agencies of the Government.
- 1.5. Conviction, at any time after filing of an application for accreditation, of a crime involving moral turpitude.
- 1.6. Continued neglect of duty or incompetency.
- 1.7. Lack of proper supervision and control over their customs representatives authorized to act on their behalf in connection with practice of the professions.
- 1.8. Discovery of false or misleading information in his application for accreditation with respect to any material fact.
- 1.9. Violation of these rules and regulations.



PART VI - ADMINISTRATIVE PROCEEDINGS**1. Investigation of Complaint or Charge.**

- 1.1 Every complaint or charge against a customs broker which may be the basis for disciplinary action shall initially be lodged with the District Collector of the Port concerned where the acts or omissions or violations were committed, who shall then refer the same to the head of the proper Unit in the port for preliminary investigation. The assigned CIIS officer or investigator shall coordinate with the APO Chapter and/or PRBCB in the Port concerned for proper collation and disposition of information, records and such other evidence which may be relevant and material in the determination of probable cause or *prima facie* case against the customs broker. Upon its completion, an Investigation Report shall be submitted to the District Collector, copy furnished the Commissioner of Customs.
- 1.2 The District Collector shall review the Report of Investigation to determine if there is sufficient basis to recommend filing of charges against the broker and thereafter within five (5) working days from receipt of the report submit his recommendation to the Commissioner for final determination. Whatever action is recommended, the District Collector shall state the basis for his recommendation in his endorsement. If the complaint or charge is found to be serious and *prima facie* evidence is shown to support the complaint or charge, the District Collector may *motu proprio* issue an order of preventive suspension of the broker in the practice of his profession if such action is warranted and necessary for the protection of importers/exporters, which suspension shall be for a period of not more than three (3) months, without prejudice to the continuation of the proceeding for disciplinary action.
- 1.3 If the Commissioner determines that there is no basis for the charge, he shall so notify the District Collector of his decision. If the Commissioner finds that filing of appropriate charges is necessary or proper, he shall so notify the District Collector with instructions that a proposed statement of charges be prepared for his review, if not previously submitted.

2. Contents of Statement of Charges and Notice of Charges.

- 2.1 The statement of charges shall give a plain and concise, description and summation of the facts claimed to constitute grounds for suspension or revocation of the accreditation. A statement of charges which fairly informs the broker of the charges against him so that he is able to prepare his response shall be deemed sufficient.
- 2.2 The notice of charges shall inform the broker that:
- 2.2.1 He may be represented by counsel of his choice.
- 2.2.2 He will have the right to cross-examine witnesses.



2.2.3 He shall file in duplicate a verified answer to the charges within a period of ten (10) working days after receipt thereof.

3. Commencement of Formal Proceedings.

3.1 Within fifteen (15) days from the date of receipt of the verified answer submitted by the broker, the Hearing Officer shall recommend any of the following:

3.1.1 Deletion from the statement of charges those which he deems to have been satisfactorily answered by the broker, or

3.1.2 Dismissal of the charges altogether if he deems it to have been satisfactorily answered by the broker

3.2 Upon receipt of the recommendation of the Hearing Officer, the Commissioner shall determine and direct whatever course of action shall be taken. If based on (a) above, shall order the Hearing Officer to set the date and time of the hearing; if based on (b) above, shall so notify the broker accordingly. However, any decision to dismiss the charges is without prejudice to the filing of another charge based on other grounds as may be warranted.

4. Service of Notice and Statement of Charges.

4.1 The notice and statement of charges shall be delivered to the broker personally or by registered mail. If attempts to serve the same are unsuccessful, the notice and statement of charges shall be left with the contact person or the person in charge of the broker's office, properly acknowledged.

5. Failure to Appear.

When a respondent broker or his counsel of record fails to appear on the date and time of a scheduled hearing, the Hearing Office shall proceed with the hearing *ex parte* as scheduled and shall hear and receive evidence submitted in behalf of the Government, unless a timely motion for postponement for justifiable cause is made.

6. Hearing.

6.1 Government representative and prosecutor. - The Director, Legal Service, shall designate the Hearing Officer while the Director, CIIS, shall designate an experienced lawyer in the CIIS to represent the Government as prosecutor.

6.2 Rights of respondent broker. - The broker shall be given full opportunity to defend himself or through his counsel of record, to testify as witness or to present witnesses in his behalf who shall be subjected to cross-examination by the prosecutor, and shall have the right to examine all exhibits offered at the hearing and to cross-examine witnesses against him.



6.3 Interrogatories. – Upon written request of either party, the Hearing Officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oath. The other party shall be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, shall be permitted to cross-examine the witness. The deposition shall become part of the record of the case.

7. Order of Hearing.

Unless the Hearing Officer directs otherwise for special reasons, the order of hearing shall be as follows:

- 7.1 The prosecutor shall produce evidence in support of the charges prepared against the broker.
- 7.2 The respondent broker or counsel shall then offer evidence in support of his defense. Counsels may be heard from each side in the order herein prescribed but, in any event, the prosecutor is entitled to the opening and closing examination.

8. Evidence.

The rules of evidence shall be substantially followed in the reception of evidence, but technical errors in the admission of evidence which do not prejudice the substantial rights of any of the parties shall not vitiate the proceedings.

9. Postponements.

Hearings shall be conducted expeditiously and shall not exceed three (3) months from date of the first scheduled hearing. Postponements of the hearing may be granted to either party not more than two (2) times and not exceeding two (2) weeks for each postponement except when there are special circumstances or justifiable reasons which, in the opinion of the Hearing Officer, warrant the grant of the request for further postponement. If the prosecutor requests for more than two (2) postponements or more than one month postponement after the case has been set for hearing, the charge may be dismissed. If the respondent broker requests more than two (2) postponements or more than one month postponement, he shall be considered in default and the Hearing Officer shall thereupon proceed to hear the testimony of the witnesses of the government and/or received documentary evidence, and shall draft the decision in the case for review and approval of the Commissioner, thru the Director, Legal Service.

10. Submission of Memorandum.

The Hearing Officer may, in his discretion require the prosecutor or respondent broker or both to submit a memorandum in support of their respective sides as may be warranted by the situation, with respect to their arguments relative to the facts in issue.



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11. Contents of Decision.

The decision determining the merits of the case shall state clearly and distinctly the facts and the law or regulations on which it is based and signed by the Commissioner or authorized Deputy Commissioner. If the charge is based on breach of these rules and regulations and/or the Code of Ethics of the customs broker profession, the same shall also be stated in the decision, copy of which shall be furnished the Professional Regulation Commission in case of breach of the latter.

12. Partial Proof of Charges.

If the Commissioner finds that one or more of the charges is not sufficiently proven, he may base his decision on any remaining charge(s) if the facts alleged are sufficiently established by preponderance of evidence.

13. Order of Suspension or Revocation of Accreditation.

If one or more of the charges are sufficiently established by the evidence presented at the hearing, the decision of the Commissioner shall contain an order of suspension or revocation of the broker's accreditation, copy of which shall be furnished the District Collector of the port from which the preliminary investigation of the case has commenced. At the same time the Commissioner may recommend revocation of the license to the PRC if warranted and shall issue a customs Memorandum Circular apprising all customs officials and employees as well as the general transacting public of such action.

14. Petition for Reconsideration or Re-hearing.

A customs broker whose accreditation has been suspended or revoked may within the period for perfecting an appeal as provided in Sec. 19 hereof, file a verified petition with the Commissioner to have the order of suspension or revocation set aside or modified, or to grant a re-hearing of the case. No more than one petition for reconsideration or re-hearing shall be allowed.

15. Grounds for Reconsideration or Re-hearing.

No petition for reconsideration or re-hearing shall be entertained unless it is for any of the following causes:

- 15.1 The decision is manifestly not in conformity with the evidence and/or facts presented; or
- 15.2 Newly discovered evidence which could not have been discovered and produced during the hearing by the exercise of due diligence and which is of such character as would probably warrant the modification and/or reversion of the decision.

16. Action and Procedure on Petition.

- 16.1 The Commissioner may, upon receipt of the petition, deny the same if he deems it devoid of merit or set aside his order of



suspension or revocation and grant a re-hearing, when necessary. If the petition is based upon the cause mentioned in sub-section 15.a hereof and the Commissioner finds his decision to be not in conformity with the evidence and/or facts presented, he may amend his decision accordingly without necessarily granting a re-hearing, unless he deems the introduction of additional or new evidence if advisable.

- 16.2 If the Commissioner finds the petition meritorious, he shall refer the petition to the Director, Legal Service, with instructions to re-hear the case and take additional or new testimony and evidence. The Hearing Officer shall, within five (5) days from receipt of such referral, set the date and time for the re-hearing with due notice given to the petitioner-broker and the prosecutor at least ten (10) working days prior to the scheduled hearing. The procedure governing the re-hearing and the contents of the new decision shall be the same as that governing the original proceedings.

17. Effects of Granting the Petition.

- 17.1 A petition for reconsideration and re-hearing given due course shall vacate the decision rendered and the case shall be heard *de novo*, but the recorded evidence taken during the course of the original proceedings so far as the same is material and competent to resolve the issues shall be reincorporated at the re-hearing without retaking the same.
- 17.2 A petition for reconsideration or re-hearing filed on time suspends the running of the period of appeal, and the time during which the petition has been pending shall be deducted from the period for perfecting an appeal.

18. Appeal to the Secretary of Finance; Effect of.

- 18.1 A decision of the Commissioner of Customs ordering the suspension or revocation of the accreditation of a customs broker may be appealed to the Secretary of Finance by filing with the Office of the Commissioner a notice of appeal and payment of the amount of Two Thousand (Php2, 000.00) Pesos as docket fee within fifteen (15) days after receipt of copy of the decision by the broker or counsel of record. If the notice of appeal has been timely filed and the required amount of docket fee is paid, the appeal is deemed perfected. If no appeal is perfected within the period herein fixed, the decision of the Commissioner shall become final and executory.
- 18.2 The order of suspension or revocation of the accreditation of customs broker shall not be stayed during the pendency of the appeal unless the Commissioner, on motion and after hearing as he may deem fair and just, should direct otherwise.
- 18.3 An appeal perfected while a petition for reconsideration or re-hearing is pending with the Commissioner constitutes an abandonment of the petition and renders the same moot and academic.



19. Action and Procedure on Appeal.

- 19.1 within five (5) working days after an appeal is perfected, the entire records of the case shall be transmitted by the Commissioner to the Secretary of Finance with each and every page duly numbered in consecutive manner.
- 19.2 Upon receipt of the records, the Secretary of Finance shall decide the case on the basis of the evidence and records transmitted, aided by any memorandum and/or brief which the broker and/or prosecutor may submit. On the other hand, the Secretary of Finance may dismiss the appeal on the ground that the appeal is without merit or is made manifestly to delay, in which case the decision shall be deemed revived and the case remanded to the Commissioner of Customs for execution.
- 19.3 The decision of the Secretary of Finance may be appealed to the President of the Philippines within fifteen (15) days from receipt of the decision thereof, otherwise, the same shall be considered final and executory.

20. Notice of Reinstatement.

If the Commissioner of Customs or the Secretary of Finance on appeal, after reviewing the records and evidence adduced in the hearing finds that the charges or remaining charges, does not warrant suspension or revocation of the accreditation, he may render a decision ordering the lifting of suspension or revocation and serve the broker with Notice of Reinstatement.

21. Reprimand and/or Fine.

- 21.1 If the Commissioner of Customs, or the Secretary of Finance on appeal, after reviewing the records and evidence adduced in the hearing finds that the charges or remaining charges, even if duly established, is not sufficiently serious to warrant suspension or revocation of the accreditation, he may serve the broker with a written reprimand. Such reprimand and the facts on which it is based may be considered in connection with any disciplinary proceeding that may be instituted against the broker.
- 21.2 If a reprimand is deemed not adequate enough to deter the customs broker from committing the same or any other offence which would warrant a suspension or revocation of his accreditation, the Commissioner, or the Secretary of Finance on appeal, may in addition to the reprimand may impose an administrative fine on the broker in the amount of One Thousand (Php1,000.00) Pesos or in an amount equal to the revenue lost to the government caused by the acts of the broker which gave rise to the charges filed against him, whichever is higher.

22. Report to the Professional Regulation Commission.

The Commissioner of Customs shall, in the event a decision adverse to a respondent broker has become final and executory, furnish a copy of the



decision to the PRBCB for whatever action it may deem proper and appropriate to take under the premises.

23. Reapplication for Accreditation.

One (1) year after the date of revocation or cancellation of registration "with prejudice", a customs broker may petition the Commissioner for reaccreditation and registration as customs broker. Such petition shall not be favorably considered unless the Commissioner after considering the gravity of the offense or misconduct which gave rise to the petitioner's disability is satisfied that the petitioner has refrained from all activities violative of the relevant provisions of Part 4 hereof and that petitioner's conduct has been exemplary during the period of his disability. In any case, the Commissioner shall also take into account whether the petitioner has made reimbursement for the loss incurred on part of the government.

PART VII - REPRESENTATIVES OF CUSTOMS BROKERS

1. Authority and Qualifications of Representatives.

1.1 Customs representatives of customs brokers must be full-time regular employees of the broker authorized to act for and in his behalf in following up the processing of entries, permits and other customs documents related to the practice of the customs broker of his profession.

1.2 No person shall be employed as a customs representative unless he possesses the following qualifications:

1.2.1 Must be a Filipino citizen of legal age;

1.2.2 Must be at least a high school graduate with no less than three (3) years experience to be certified by his previous employer who is licensed customs broker, and that he has sufficiently acquired knowledge of customs operations.

1.2.3 Must be of good moral character and not known to be notoriously disreputable; and

1.2.4 Has completed a training program or seminar for the current year conducted by the APO with a Certificate of Attendance.

1.2.5 NBI Clearance (not more than 3 months old)

2. Action on Unqualified Customs Representatives.

Any customs representative of a broker found not to possess the required qualifications shall be deleted from the certified list of representatives submitted by the broker. If a disqualification is found in the course of processing of his application for registration, his Customs Pass if already

issued shall be confiscated by the ESS upon discovery of his disqualification.

3. Disciplinary Action against Errant Customs Representatives.

- 3.1 The following grounds shall be considered as sufficient basis for confiscation or denial of the Customs Pass issued:
- 3.1.1 Discovery of a criminal record or conviction of a crime involving moral turpitude;
 - 3.1.2 Submission of a fake, spurious or forged document in the course of acting or working on behalf of his employer or other persons doing business with the BOC;
 - 3.1.3 Disorderly conduct while in the customs zone or premises, such as selling of goods or merchandize and other forms of gross misbehavior towards customs personnel and other customs broker or their representatives.
 - 3.1.4 Complaint or charge under oath imputing to the customs representative any inimical, dishonest or unethical conduct in the performance of his assigned tasks;
 - 3.1.5 Habitual delinquency in the commission of offenses or violations of rules and regulations promulgated by the Bureau of Customs;
 - 3.1.6 "Moonlighting" or extending services on behalf of other brokers; and
 - 3.1.7 Any other acts prejudicial to the interest of the government and its revenues.
- 3.2 In addition to the confiscation or denial of his Customs Pass, the broker's representative shall be barred from entering the customs zone or premises pursuant to Opinion No. 195, series of 1958, of the Secretary of Justice published in BOC Circular Letter No. 2917 dated 16 September 1958, which shall likewise be ordered by the Commissioner against customs broker whose accreditation has been suspended or revoked.
- 3.3 At the instance of the broker or representative concerned or if the ground for the initial action taken as stated above is sufficiently serious or grave, the District Collector shall direct that an investigation be conducted on the matter. If *prima facie* evidence is found to support such initial action, the Commissioner shall issue a definitive ban against the representative concerned; otherwise, the matter shall be considered closed and the Customs Pass already confiscated shall be returned. If the evidence adduced during the investigation so warrants, the proper criminal action shall be instituted against the broker's representative.



4. Notice of Separation from or Termination of Service.

A customs broker shall, within five (5) working days from date of separation or termination of employment of its representative, give written notice thereof to the District Collector of the Port where said representative is assigned, copy furnished the Commissioner (Attn: CAS, LS) containing the name of the representative, the date the separation or termination became effective, and the number of the Customs Pass issued to him. If the said Customs Pass could not be returned, the reason for the failure to return the same shall be stated in the notice.

5. Effect of Failure to Give Timely Notice.

The customs broker concerned shall be held responsible and liable for any violation of the rules and regulations or any irregularity that may be committed by his representative, if no notice was sent as required in Sec. 4 hereof.

PART VIII - MISCELLANEOUS PROVISIONS

1. Termination of Employment of a Broker by Client.

A client importer/exporter may, at any time and for good cause, terminate the services of his customs broker. Such termination, however, shall not bind the BOC or any representative thereof until written notice of such termination is filed with the CAS and the District Collector of the Port(s) concerned and after it has been circularized for the information and guidance of all concerned. The written notice to be filed shall expressly contain the written conformity (conforme) of the replacement broker whose services shall be acknowledged by the BOC or any representative thereof on the date of circularization of the written notice of change.

2. Termination of Bonds

No accreditation shall remain in force and effect unless a valid surety bond is maintained on file with the CAS. In case of receipt of a notice of termination or expiration of a surety bond on active file, the CAS shall notify the concerned customhouse broker in writing, without hearing or other proceeding, that his accreditation is revoked as of the termination/expiration date of the bond unless the broker shall have submitted a valid replacement surety bond before such termination or expiry date. Replacement surety bond must bear an effective date not later than the termination/expiry date of the terminated/expired bond.

3. Stationery and Billing Form Statements.

- 3.1 Stationery. - The name and accreditation certificate number of customs brokers shall be printed on the brokers stationery and billing forms. Use of rubber-stamp imprint on said documents is prohibited. Brokers shall desist from using in their official correspondence with the BOC or any representative thereof different or various kinds of stationery.



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3.2 **Billing statements.** - All billing statements prepared by customs brokers shall indicate, among others, the amount charged as professional fee which shall be VAT inclusive. The amount of customs brokerage fees and professional fees charged to clients shall not be in excess of the amounts prescribed by the APO or Bureau of Customs, as the case may be.

4. **Signing of entries and other customs documents.**

Customs brokers shall, when signing entries and other customs documents, indicate/state his certificate of accreditation number below his printed name.

Example: **JUAN A. DELA CRUZ**
CA No. 000-2005

5. **Roster of customs brokers.**

5.1 The APO / PRBCBC, within three (3) months after the date of effectivity of this Order, shall submit a list of all customs brokers with their respective office address and telephone number(s), to BOC thru the CAS. The list shall be updated every end of April, August and December of each year.

PART IX - FINAL PROVISIONS

1. **Superseding clause.**

This Order supersedes Customs Memorandum Order No. 68-87, CAO 3-93 and all other Customs issuances which are in conflict with this Order or any of its provisions or in any manner in conflict therewith are hereby deemed revoked or superseded.

2. **Separability clause.**

If any provision of this Order or any part thereof be held invalid or unconstitutional, the remaining provisions shall remain in full force and effect.

3. **Effectivity.**

This Customs Memorandum Order shall take effect upon the effectivity of CAO 3-2006 dated 2 March 2006.

NAPOLEON L. MORALES
Commissioner of Customs

(06-01342)