



CUSTOMS MEMORANDUM ORDER (CMO)

NO. 12-2021

SUBJECT: GUIDELINES ON THE IMPOSITION OF PENALTIES RELATIVE TO THE CUSTOMS ACCREDITATION OF IMPORTERS AND BROKERS

Introduction. This CMO shall consolidate the various guidelines and establish the procedure in the imposition of penalties such as warning, suspension, revocation relative to the customs accreditation of importers and brokers, as well the remedial process in relation thereto.

Section 1. Scope. This CMO covers the imposition of penalties such as warning, suspension, revocation relative to the customs accreditation of importers and brokers, under the CMTA and other customs rules and regulations.

Section 2. General Provision.

- 2.1. The Bureau shall impose the sanctions of warning, suspension, or revocation of customs accreditation for breach of Importer's responsibilities, violation of customs laws, rules and regulations, as well as blacklisting of the importer or broker concerned from further transacting with the Bureau, after due notice and hearing.
- 2.2. The accreditation of importer or broker may be preliminary suspended pending proper administrative proceedings to ensure border protection, suppress all forms of smuggling and other frauds committed against collection of lawful revenues.
- 2.3. All goods imported into the Philippines shall be deemed to be the property of the consignee or holder of the bill of lading, airway bill or other transport documents if duly endorsed by the consignee therein, or if consigned to order, duly endorsed by the consignor.¹
- 2.4. A customs broker acting as declarant shall be presumed to be the agent of the consignee or importer and as such may be made accountable and liable for any violation of the CMTA and other related laws.²
- 2.5. The imposition of penalties herein shall be without prejudice to the criminal, civil and other liabilities that may be incurred under the CMTA and other customs laws, rules or regulations.

¹ cf. Section 404, CMTA

² cf. Section 4.1, CAO No. 5-2019

Section 3. Operational Provisions.

- 3.1.** The District Collector shall furnish the Accounts Management Office (AMO), a copy of the Warrant of Seizure and Detention (WSD), or any other notice from the ports or other offices of the Bureau involving violation of the CMTA and other customs laws, rules or regulations, within 24 hours from issuance thereof, to evaluate and determine possible suspension, cancellation or revocation of the customs accreditation of the importer or broker.
- 3.2.** Upon receipt of the copy of the WSD or derogatory information or discovery of breach of importer's or broker's responsibilities, the Chief, AMO shall prepare a Disposition Form, approved by the Deputy Commissioner, IG, with recommendation for issuance of a Charge Sheet for suspension, revocation or cancellation of customs accreditation of the importer or broker, stating the grounds and attaching supporting documentary evidence therefor (WSD, Certificate of Registration, entire importer's or broker's records in AMO, and other pertinent documents), together with a recommendation for Preliminary Suspension of Accreditation for a maximum period of ninety (90) days, when the circumstances so warrant under Section 4 hereof, for approval of the Commissioner of Customs.
- 3.3.** Upon approval of the Commissioner, the Charge Sheet including the entire docket, shall be forwarded to the Legal Service for the conduct of appropriate administrative proceedings, as well as to the AMO for implementation of the Order of Preliminary Suspension, if any. The AMO shall notify the Legal Service the details of the implementation of such Preliminary Suspension, including notice thereof to the importer or broker.
- 3.4.** Upon receipt of the Charge Sheet, the Legal Service, shall immediately issue a notice to the importer or broker, attaching a copy of the approved Charge Sheet and directing the appearance and submission of a verified Position Paper on the scheduled hearing date. The required notice shall be sent to the registered electronic mail address submitted by the importer or broker to the AMO. No other electronic mail address shall be recognized other than those registered with the AMO, unless duly changed, modified and updated by the importer or broker concerned. The notice sent to the registered electronic mail address shall be deemed received upon successful transmittal thereof.

The Director, Legal Service shall assign a Hearing Officer who shall conduct the hearing proper. Additional clarificatory hearings may be scheduled, as may be necessary, to properly thresh out the issues involved but in no case shall the same exceed ninety (90) days from the implementation of the Preliminary Suspension.

Within five (5) days from the termination of the hearing proper, the assigned Hearing Officer shall prepare a Disposition Form with the corresponding recommendations and submit the same for approval of the Director, Legal Service and the Deputy Commissioner, RCMG.

The duly approved Disposition Form with draft Decision shall be forwarded to the Commissioner for final approval. Once approved, the Decision shall be forwarded to AMO for implementation.

Section 4. Grounds for Preliminary Suspension. The Bureau shall impose the preliminary suspension against the importer or broker on the following grounds:

- 4.1. When the importation contains any prohibited or restricted goods without permit or clearance from the regulatory agency³, even for the first offense;
- 4.2. Those whose shipments have been forfeited within the preceding period of one (1) year for violation of the provisions of the CMTA and other customs laws, rules or regulations; and
- 4.3. Other analogous circumstances, at the discretion of the Commissioner.

Section 5. Request for Continuous Processing Relative to the Preliminary Suspension.

- 5.1. The importer or broker whose accreditation has been preliminarily suspended may request for the continuous processing of the shipments which are still in transit or which arrived at the ports prior to the preliminary suspension. The request for continuous processing shall be filed at the Legal Service for resolution, subject to the approval of the Commissioner.
- 5.2. The importer or broker shall likewise clearly indicate that should the requests be given due course, the 100% physical examination of the goods, regardless of the selectivity screen, shall be conducted on his own account.⁴
- 5.3. The request for continuous processing shall contain the following:
 - a. Consignee's name, address and contact number;
 - b. Bill of lading (BL) or airway bill (AWB);
 - c. List and description of the shipment; and

³ cf. CMTA, Title I, Chapter 3, Section 118 and 119.

⁴ cf. CMTA, Title IV, Chapter 2, Section 420 (e).

- d. Clearance or permit from the concerned agency for regulated or restricted goods, if applicable.
- 5.4.** Once approved by the Commissioner, the AMO shall inform the importer or broker concerned through electronic mail and the lodgement shall be allowed only for BLs or AWBs listed in the request.
- 5.5.** Notwithstanding the foregoing, lodgement of goods declaration by the importer or broker other than those approved by the Commissioner shall be deemed unauthorized and subject to penalties under these guidelines.
- 5.6.** The operational guidelines and all other procedures, as may be applicable, indicated in Sections 9 and 10 of this CMO shall likewise be implemented.

Section 6. Penalties.⁵ The Bureau shall impose the following penalties for importers, after due notice and hearing:

- 6.1. Light Infractions** – suspension of customs accreditation privileges for one (1) month to six (6) months:
- a. Inadvertent mistake or erroneous information in the submitted documents, not substantial in nature;
 - b. Failure to report changes in requirements after approval of accreditation as required under existing rules on accreditation;
 - c. Violation of law or regulation by the accredited importer or customs broker, such as but not limited to the following:
 - i. Belated submission of import permit/clearance issued by government agency concerned for its shipment;
 - ii. Excusable negligence in protecting e2m/CPRS password from abuse and misuse; and
 - iii. Other analogous circumstances.
- 6.2. Less Grave Infractions** – sanctioned with suspension of customs accreditation privileges for six (6) months and one (1) day to twelve (12) months:
- a. Violation of the sworn undertaking to strictly abide with existing rules and regulations on the Statement of Full Description of Imported Articles covered by entry declarations;⁶

⁵ cf. Item V, CMC No. 32-2017

⁶ cf. Section 3.5.a, CMO No. 04-2014

- b. Material misrepresentation, or submission of false information or document, such as but not limited to:
 - i. Failure to maintain office operations in the given address;
 - ii. Submission of false identification card;
 - iii. Other analogous circumstances.
- c. Violation of law or regulation by the accredited Importer or broker, such as, but not limited to:
 - i. General or inaccurate declaration, misclassification, misdeclaration, undervaluation or intentional over quantity of shipments;
 - ii. Lack of import permit/clearance issued by the government agency concerned for its shipment;
 - iii. Inexcusable negligence in protecting e2m/CPRS password from abuse and misuse; and
 - iv. Other analogous circumstances.

6.3. Grave Infractions – sanctioned with cancellation or revocation of customs accreditation privileges:

- a. Failure to report to the proper customs authorities any fraud upon customs revenue which has come to the importer's or broker's knowledge or cognizance, or knowingly assisting or abetting in the importation or exportation or entry of prohibited or any article in the importation of which is contrary to law;⁷
- b. Material misrepresentation, or submission of false information or document, such as, but not limited to:
 - i. Fictitious applicant or non-existent officer/s;
 - ii. Fictitious BIR Tax Identification Number;
 - iii. Inexistent office address; and
 - iv. Other analogous circumstances.
- c. Violation of law or regulation by the accredited Importer, such as but not limited to:
 - i. Importation or exportation of absolutely prohibited goods under Section 118 of the CMTA and other customs laws, rules or regulations;
 - ii. Deliberate failure or refusal without justifiable reasons to comply with the duties and responsibilities of an accredited importer or broker;

⁷ cf. Section 3.5.d, CMO No. 04-2014

- iii. Willful misdeclaration or undervaluation of imported or exported articles that resulted or would have resulted in the loss of government revenues;
- iv. Other analogous circumstances.

Justifiable reason as contemplated herein shall mean any and all acts the commission of which shall render him/her liable either administrative or criminally under existing laws, rules or regulations.

In addition to revocation of accreditation privileges, the importer or broker concerned, the declared responsible officers and declarant, if any, may be blacklisted and disqualified from applying for customs accreditation under another business name or entity, or from being declared as such under a new customs accreditation application, and may no longer be allowed to enter customs premises.

For customs brokers, the offenses and the corresponding penalties under CAO 05-2019 shall apply.

Section 7. Mitigating or Aggravating Circumstances.⁸ In the determination of the penalty to be imposed, the following attendant mitigating and/or aggravating circumstances are to be appreciated:

- a. Business track record or standing;
- b. Educational attainment;
- c. First time offender;
- d. Good faith or lack of malice;
- e. Admission of the infraction;
- f. Habituality
- g. Actual or material loss to the government;
- h. Wanton disregard of customs laws, rules and regulations;
- i. Remorse or the lack thereof; and
- j. Other analogous circumstances.

Section 8. Motion for Reconsideration. The importer or broker may file a Motion for Reconsideration with the Commissioner within fifteen (15) calendar days from receipt of notice of suspension, revocation and/or blacklisting.

Section 9. Request for Continuous Processing.

9.1. When the penalty of suspension of accreditation has been imposed, a request for continuous processing may be submitted to the Account Management Office (AMO) and shall contain the following:

- a. Consignee's name, address and contact number;

⁸ cf. Item VI, CMC No. 32-2017

- b. Consignee's TIN;
 - c. Bill of Lading or Airway Bill;
 - d. List and description of the shipment; and
 - e. Clearance or permit from the concerned agency for regulated or restricted goods, if applicable.
- 9.2.** AMO shall forward the request to the Legal Service in cases where a request for reconsideration or re-application for accreditation is pending before the said office.
- 9.3.** The AMO or the Legal Service, as the case may be, shall make a recommendation on the request, and transmit the same along with all supporting documents, to the Office of the Commissioner for approval.
- 9.4.** The importer or broker shall likewise clearly indicate that should the requests be given due course, the 100% physical examination of the goods, regardless of the selectivity screen, shall be conducted on his own account.⁹
- 9.5.** The continuous processing, as approved by the Commissioner, shall be applicable only to the Bill/s of Lading indicated in the request. The one-time activation of the CPRS, as provided in previous rules and regulations, shall no longer be applicable.

Section 10. Operational Guidelines for Continuous Processing.

- 10.1.** After the request has been approved by the Commissioner, the approval shall be forwarded to the Office of the Deputy Commissioner, MISTG and the Risk Management Office for their appropriate action.
- 10.2.** The Office of the Deputy Commissioner, MISTG shall forward the docket to a dedicated MISTG personnel who shall encode the Port Code, Registry Nos., Bill of Lading, Importer's TIN, Approval Date, Inserted Date, and Updated Date in an E2M Database Table based on the details provided in the Resolution.
- 10.3.** Once encoded, the pending Import Single Administrative Document (SAD) relative to the request for lifting may now be continuously processed.
- 10.4.** The AMO is responsible for informing the importer of the continuous processing of the importations subject of the request.

⁹ cf. CMTA, Title IV, Chapter 2, Section 420 (e).

Section 11. Transitory Provision. All pending requests or motion for reactivation with the AMO prior to effectivity of this Order, shall be turned over to the Legal Service, for resolution under the provisions hereof.

Section 12. Repealing Clause. All orders, memoranda, circulars and issuances inconsistent herewith are hereby repealed and/or deemed modified accordingly.

Section 13. Separability Clause. If any part or provision of this Order is later declared invalid or illegal, the remaining portion shall remain valid and enforceable.

Section 14. Effectivity. This Order shall take effect on MAR 18 2021.



REY LEONARDO B. GUERRERO
Commissioner

MAR 18 2021

cmo No. 12-2021
p.9



BUREAU OF CUSTOMS

MAKABAGONG ADUANA, MATATAG NA EKONOMIYA

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PROFESSIONALISM INTEGRITY ACCOUNTABILITY

CHARGE SHEET

NAME: _____
ADDRESS: _____
E-MAIL: _____

CS NO.: _____
S.I. NO: _____
CCN: _____
VALIDITY: _____

VIOLATION:

RECOMMENDATION:

CERTIFIED TRUE AND CORRECT

Handling Officer

APPROVED/DISAPPROVED

Deputy Commissioner, IG

APPROVED/DISAPPROVED

Commissioner

CMD NO. 12-2021
p. 10



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Name
Address
Email Address

ORDER OF PRELIMINARY SUSPENSION

In view of the administrative charges filed against you for
_____ (violation) _____, under Section ____ of Customs Memorandum Order No.
_____, you are hereby notified that your customs accreditation as importer or
broker is preliminary suspended for _____ (___) days, effective upon receipt hereof.

REY LEONARDO B. GUERRERO
Commissioner

From: Office of the National Administrative Register Printing Section UP Diliman College of Law
<onar_law.upd@up.edu.ph>

Sent: Friday, March 19, 2021 8:59 PM

Subject: Re:

This is to acknowledge receipt of the Customs Memorandum Order No. 12-2021 Guidelines on the Importation of Penalties relative to the Customs Accreditation of Importers and Brokers on March 19, 2021.

Please submit three certified copies of this issuance, Our office is open from Mondays to Thursdays from 8:00 AM to 3:00 PM and please do attach this acknowledgement upon submission.

Thank you.