



30 September 2010

CUSTOMS ADMINISTRATIVE ORDER

No. 6-2010

SUBJECT : RULES AND REGULATIONS GOVERNING THE RENDITION OF OVERTIME SERVICES AND THE PAYMENT OF CORRESPONDING OVERTIME SERVICE PAY APPLICABLE TO SERVICE CONTRACT NO. 59 LOCATED OFF THE SOUTHWEST TIP OF PALAWAN ISLAND IN THE SOUTH CHINA SEA.

By authority of Section 608 and in relation to Sec. 3506 of the Tariff and Customs Code of the Philippines (TCCP), as amended, the following rules and regulations covering overtime services and payment thereof for customs officials, employees and/or deputies assigned to perform customs formalities and/or procedures payable for the oil and gas exploration of BHP BILLITON PETROLEUM (Philippines) CORPORATION, the operator of Service Contract No. 59 (hereunder referred to as the OPERATOR) in offshore areas of the South China Sea, payable by the OPERATOR or its authorized representatives, are hereby prescribed:

I. Definition of Terms

For purposes of this Administrative Order, the following terms shall have the following meanings as herein defined:

- a. *"Boarding Formalities"* refers to the boarding formalities conducted onboard the foreign vessel by government officials composed of Customs, Immigration and Quarantine Officials (CIQ) upon her arrival from foreign port at any port of entry in the Philippines for purposes of inspection by the Quarantine and Customs Officers and the presentation by the vessel' master/captain of the vessel documents mentioned in Section 1004 of the TCCP, as amended. However, pay for boarding formalities as mentioned herein is exclusive of the fees to be collected by Immigration and Quarantine Officials, which shall be billed separately by their respective agencies.
- b. *"Cargo Examination"* refers to the conduct of examination by Customs Officers to determine that the exact contents, invoices and other pertinent documents declared by the declarant in the entry filed with the Bureau are correct.
- c. *"Exploration Period"* means the seven (7)-year period, or any extension thereof, referred to in Section 4.01 of Service Contract 59,

during which the OPERATOR is allowed to perform Exploration Operations in the Contract Area.

- d. "Inspection/Supervision" refers to the supervision and control by the customs inspector/s and/or guards assigned on board the foreign vessel while within the jurisdiction of the collection district of the port, for purposes of monitoring the activities conducted on board and thus ensure that Customs laws and regulations are complied with, which shall be required only when Customs officials have probable cause to believe based on personal knowledge of facts or circumstances that customs laws or regulations are being violated.
- e. "Offshore duty" refers to the time spent by a customs employee required to stay on board a vessel located at sea a considerable distance from shore for the purpose of performing official functions such as, but not limited to, monitoring the entry of foreign articles, and such other functions by a customs employee as may be necessary for enforcing customs laws and regulations.

Any capitalized term used herein and not specifically defined shall have the same meaning as defined in Service Contract 59.

II. AUTHORITY TO ALLOW RENDITION OF OVERTIME SERVICES

- A. The District Collector of the Port of Batangas shall assign and deploy customs officials, employees and/or deputies to render overtime services in connection with the Offshore Operations of the OPERATOR in offshore areas of the South China Sea under Service Contract No. 59 (hereinafter referred to as "SC 59"). Such assignment shall be covered by the appropriate Customs Personnel Order setting forth the duration of the assignment and other relevant terms and conditions as well as any limitation on the power and functions of the employees assigned.
- B. In the deployment of customs officials, employees and/or deputies to the site of the Offshore Operations, the District Collector shall deploy only customs officials, employees and/or deputies of the Port of Puerto Princesa, unless exceptional circumstances do not permit the deployment of such customs officials, employees and/or deputies, in which case personnel to be assigned shall be from the Collection District.

III. OVERTIME SERVICES PAY AND OFFSHORE DUTY PAY

A. OVERTIME SERVICES PAY

- i. Boarding Formalities - Php11,800.00 per Clearance
- ii. Cargo Examination - Php11,800.00 per vessel/aircraft
- iii. Underguarding (if required) - Php11,800.00 per vessel/aircraft
- iv. Inspection/Supervision - Php11,800.00 per vessel/aircraft
(if required)

1. The OPERATOR shall inform the Port of Batangas at least five (5) days from the expected arrival of each vessel arriving from a foreign port to perform Exploration Operations in the Contract Area or perform support or supply operations as may be necessary under Service Contract 59.
2. The Collector of the Port of Batangas shall assign boarding officers, inspectors and examiners in accordance with Part II hereof, who shall perform Exploration Operations in the Contract Area in accordance with their rates provided herein.
3. Prior to or upon arrival of the vessel/s, the CONTRACTOR shall file the corresponding Consumption Entry to effect the release of the shipment from Customs Custody, attaching thereto the Tax Exemption Certificate from the Department of Finance favorably indorsing the Exemption Certificate issued by the Department of Energy in accordance with Presidential Decree No. 87, also known as the Oil Exploration and Development Act of 1972.

B. OFFSHORE DUTY PAY

1. Taking into consideration the unique circumstances attendant in the subject Offshore Operations, including the concomittant hardship and inconvenience of affected customs officials, employees and/or deputies who may be required to stay on a Vessel under on-call status, an Offshore Duty Pay of EIGHT THOUSAND FIVE HUNDRED PESOS (Php8,500.00) per day, computed as 24 continuous hours or a fraction thereof, separate from the overtime service pay, shall be payable for the services of each of the customs officials, employees and/or deputies required to remain on board a Vessel after the first twenty-four (24) hours upon arrival. No Offshore Duty Pay shall be payable for services rendered by any customs official, employee and/or deputy required to remain onboard a vessel for a period of less than twenty-four (24) hours.
2. The foregoing lump sum rates shall be applicable only for the duration of the Exploration Period of SC 59.

C. TAXES on OVERTIME SERVICE PAY AND OFFSHORE DUTY PAY

A. Offshore Duty Pay

The OPERATOR shall be responsible for withholding the appropriate amount of tax on payments of the Offshore Duty Pay and remitting such withheld amounts to the Bureau of Internal Revenue (BIR) in accordance with applicable laws, rules and regulations. The Administrative Unit of the Port of Batangas shall provide the OPERATOR with the information necessary to remit the amount withheld and the OPERATOR shall submit to the Administrative Unit of the Port of Batangas appropriate documentary evidence of such payments.

- B. The Port of Batangas shall be responsible for withholding the appropriate amount of tax on payments made to customs officials and employees, including the payment of the Overtime Service Pay and remitting and reporting such withheld amounts to the BIR.

IV. INVOICING AND PAYMENT FOR SERVICES

- A. After completion of the assignment of each of the customs officials, employees, and/or deputies, he or she shall prepare and submit the necessary voucher supported by a detailed statement of all the services rendered within the duration of his or her assignment duly accomplished (hereinafter referred to as the "Billing Statement") in BC Form Nos. 35 and 35-A to the Administrative Unit of the Port of Batangas.
- B. In turn, the Administrative Unit of the Port shall check the vouchers, certify their correctness, approve the same for payment, and forward the corresponding Billing Statement to the OPERATOR or its authorized representative for payment.
- C. All Billing Statements must be paid in full within thirty (30) calendar days from receipt thereof. Any dispute in the Billing Statement must be made in writing and submitted to the Administrative Unit of the Port within five (5) days from receipt of said Billing Statement. Any amount payable not subject of the written dispute must be paid within the thirty (30) day period.
- D. Payments shall be made by the OPERATOR or its authorized representative, by check, to the cashier of the Bureau of Customs, Port of Batangas, for deposit into an official bank account established in a duly authorized depository bank for government funds and subject to disbursement and audit requirements as prescribed for such accounts under applicable laws and regulations. An official receipt covering said payment shall be issued by the Administrative Unit of the Port of Batangas, through its Cashier to the OPERATOR or its authorized representative to acknowledge receipt of payment.
- E. Upon payment of the full invoiced amounts, the OPERATOR shall be relieved from further payment obligations relative to the services which are the subject of the Billing Statement.
- F. All Customs officials, employees, and/or deputies assigned/deployed to render offshore overtime services are prohibited from receiving directly from the OPERATOR or any of its representatives payment for offshore duty pay and overtime pay for services rendered.
- G. Any customs officials, employees, and/or deputies who shall violate any provision of this Administrative Order shall be subject to disciplinary action. Violation by the Operator or its representatives of any provision of this Administrative Order shall be subject to the imposition of the penalties provided for by law.

V. TRAVEL AND RELATED EXPENSES

- A. In exceptional cases where the Bureau of Customs shall deploy customs officials, employees and/or deputies from offices other than the Bureau of Customs at the Port of Puerto Princesa, the OPERATOR shall be responsible for all reasonable travelling, board and lodging and other incidental expenses of customs officials, employees and/or deputies to the site of the Offshore Operations or other site as may be requested by the Operator, in connection with rendering services for Offshore Operations under SC 59.
- B. Prior to the deployment of customs officials, employees and/or deputies to their Offshore Operations work station or other site as requested by the OPERATOR, the District Collector of the Port of Batangas shall notify the OPERATOR or its authorized representative of the projected travel schedules of concerned customs officials, employees, and/or deputies.
- C. Following receipt of schedules per Paragraph V.B above, the OPERATOR shall make the necessary arrangements for reasonable transportation, accomodation and meals, as well as for other necessary incidental expenses, for the projected travel. Such arrangements may include issuance of tickets or vouchers, which shall be covered by an acknowledgement receipt duly signed by the Customs personnel concerned. Any ticket or voucher not utilized due to travel cancellation for whatever reason shall be returned to the OPERATOR or its authorized representative and duly acknowledged.

VI. PAYMENT FOR OTHER OVERTIME SERVICES

Payment for overtime for boarding formalities and customs services rendered not connected to offshore duty assignments shall be billed in accordance with the prescribed rates under existing Customs Administrative Orders.

VII. REPEALING/SEPARABILITY CLAUSE

All Orders, Rules, Regulations and other issuances which are inconsistent with the provisions of this Customs Administrative Order are hereby revoked and/or modified accordingly.

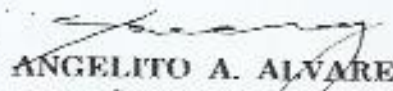
In case any provision of this Order is declared invalid or unconstitutional, the provisions not affected thereby shall continue to be in full force and effect.

VIII. AUTHORITY OF CUSTOMS OFFICIALS

Nothing herein shall diminish the authority or responsibility of customs officials, employees and/or other authorized government personnel under applicable laws and regulations. They shall retain full discretion to grant or deny clearances, certifications, permits and licenses and take such other actions within their regulatory mandate as permitted or required under applicable laws and regulations.

IX. EFFECTIVITY

This Order shall take effect upon approval of the Secretary of Finance and compliance with the publication requirement under existing provision of applicable laws, rules or regulations.


ANGELITO A. ALVAREZ
Commissioner



APPROVED:


CESAR V. PURISIMA
Secretary of Finance

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