

ADMINISTRATIVE ORDER PROVIDING FOR FURTHER AMENDMENTS TO THE RULES AND REGULATIONS FOR THE IMPLEMENTATION OF THE AGRICULTURAL MINIMUM ACCESS VOLUMES (MAVs) CONTAINED IN ADMINIST...

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WHEREAS, Department of Agriculture (DA) Administrative Order No. 8 (AO8), series of 1997 provides for the Amended Rules and Regulations for the Implementation of the Agricultural Minimum Access Volumes (MAVs);

WHEREAS, a review of said AO8 identified certain provisions that may be amended to enhance and refine the implementation of the MAV mechanism;

WHEREAS, the DA conducted several consultations with affected sectors to take into account their concerns while respecting the Philippines' commitments under the GATT Uruguay Round Final Act;

NOW, THEREFORE, the following provisions contained in AO8 are hereby amended as follows:

1. Section I.B.10 providing for the definition of a MAV Entrant is hereby amended by deleting the phrase "in any given MAV allotment year" and expanding the definition to include licensees which failed to get regular licenses in the prior MAV year. Thus, the same shall read as follows:

"10. MAV Entrant — a person, firm, cooperative, or any legal entity which is granted an MAV license for the first time OR AN OLD LICENSEE WHICH FAILED TO GET A REGULAR MAV LICENSE IN THE PRIOR MAV YEAR."

2. Insert between Section I.B.11 and I.B.12 definition of the MAV Import Consolidator, which reads as follows:

"12. MAV IMPORT CONSOLIDATOR — A LICENSEE AUTHORIZED BY ANOTHER LICENSEE TO IMPORT ALL OR PART OF THE LATTER'S ALLOCATION."

3. Section I.B.15 providing for the definition of a MAV year is hereby amended by moving forward the opening and closing dates of the MAV year by one month. Thus, the same shall read as follows:

"15. MAV year — the annual MAV implementation cycle which starts on FEBRUARY 1 OF ANY GIVEN YEAR and ends on JANUARY 31 OF THE NEXT year."

4. Section I.B.16 providing for the definition of the Mid-Year Pool is hereby amended by deleting the word "temporarily" and moving forward the deadline for voluntary surrenders by one month. Thus, the same shall read as follows:

"16. Mid-Year Pool (MYP) — the total volume of allocations surrendered by MAV licensees to the MAV Secretariat on or before the last working day of MAY of an MAV allotment year."

5. Section I.C.1.a providing for the composition of the MAV Management Committee is hereby amended by deleting the phrase "that all MMC resolutions shall be signed by the principals themselves." Thus, the same shall read as follows:

“The Chairperson and members of the MMC may designate their respective alternates, who shall be officials of their respective AGENCIES with the rank of at least an Assistant Secretary or equivalent, and who shall have full authorization to vote and act on their behalf.”

6. The first paragraph of Section I.D.2.a providing for the subsequent year eligibility requirements for the first-come-first-served schemes of the BYP and MYP of a fully subscribed product is hereby amended by deleting the phrases “in the ordinary course of business” and “during the said period” and setting a minimum import volume. Thus, the same shall read as follows:

“a. For products whose MAVs are fully subscribed, only persons, firms, cooperatives, or any other legal entities which have operated a business involving the MAV product concerned as of the start of the prior MAV year and which have imported THE MINIMUM IMPORT VOLUME FOR the MAV product concerned AT ANY TIME DURING THE IMMEDIATELY PRECEDING TWELVE MONTHS BUT NOT LATER THAN THE CLOSE OF THE APPLICATION PERIODS PROVIDED FOR THE BEGINNING YEAR POOL (BYP) AND THE MID-YEAR POOL (MYP) shall be eligible for allocations from the BYP and the MYP for the MAV product concerned as provided for in Sections I.F(5) and I.G.(3) of this Order. THE MINIMUM IMPORT VOLUME SHALL BE EQUAL TO ONE-HALF OF THE PERTINENT ECONOMIC SIZE LOTS AS INDICATED IN ANNEX II HEREIN.”

7. The first paragraph of Section I.D.2.b providing for the subsequent year eligibility requirements for the first-come-first-served schemes of the BYP and MYP of an under subscribed product is hereby amended by setting a minimum import volume. Thus, the same shall read as follows:

“b. For products whose MAVs are under subscribed, persons, firms, cooperatives, or any other legal entities which have not been in business involving the MAV product concerned as of the start of the prior MAV year and/or have not imported THE MINIMUM IMPORT VOLUME FOR the same product shall be eligible for allocations from the BYP and the MYP for the MAV product concerned through the first-come-first-served allocation scheme, as provided for in Sections I.F(5), I.F(8) and I.G(3) of this Order, provided that the requirements of eligible licensees and MAV entrants for the MAV product concerned have been met.”

8. Section I.D.2.c providing for the documents required of MAV entrants is hereby amended by deleting the phrases “in the ordinary course of such business, changing the requirements on tax payments and clarifying the year for which the business permit is required.” Thus, the same shall read as follows:

“c. As proof of its track record, a person, firm, cooperative, or any legal entity which has operated a business involving a MAV product as of the start of the prior MAV year and has imported THE MINIMUM IMPORT VOLUME FOR the same product during the same period shall submit the following documents as attachments to its application as a MAV entrant:

“i. a Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC), or Cooperative Development Authority (CDA) certificate of registration, whichever is applicable;

“ii. a duly-notarized sworn statement to the effect that it had imported the MAV product concerned within the prior MAV year;

“iii. the original and a copy of the Import Entry and Revenue Declaration/s (IERD/s) pertinent to the importation/s made of the MAV product within the prior MAV year;

“iv. THE INCOME TAX RETURN, OR THE APPROPRIATE BUREAU OF INTERNAL REVENUE (BIR) FORM FOR EXEMPT ORGANIZATIONS, FOR THE LATEST FISCAL YEAR;

“v. the business permit issued by the Office of the Mayor FOR THE CURRENT YEAR; and

“vi. where appropriate, the most recent accreditation certificates from pertinent DA agencies.”

9. Section I.D.2.d providing for the documents required of applicants to the first-come-first-served schemes of the BYP or the MYP is hereby amended by replacing the phrase “and Bills of Lading and/or Invoices,” with the phrase “and the appropriate proof of import shipment” and clarifying the year for which the business permit is required. Thus, the same shall read as follows:

“d. A person, firm, cooperative, or any other legal entity which has not operated a business involving the MAV product concerned as of the start of the prior MAV year and/or has not imported THE MINIMUM IMPORT VOLUME FOR the same product but which applies for access to the BYP or the MYP for the MAV product, through the first-come-first-served allocation scheme provided for in Sections I.F(5), I.F(8), and I.G(3) of this Order, shall submit the following documents together with its application/s AND THE APPROPRIATE PROOF OF IMPORT SHIPMENT as provided for in Section I.F(8)b of this Order:

“i. A DTI, SEC, or CDA certificate of registration, whichever is applicable;

“ii. the business permit issued by the Office of the Mayor FOR THE CURRENT YEAR; and

“iii. where appropriate, the most recent accreditation certificate from pertinent DA agencies.”

10. Insert a provision between Section I.D.2.d and Section I.D.2.e in order to reduce the number of documents required of licensees applying for allocations in subsequent years. This provision shall read as follows:

“e. A LICENSEE IN ANY GIVEN MAV ALLOTMENT YEAR APPLYING FOR ITS REGULAR ALLOCATION AND ALLOCATION FOR THE BYP IN THE SUBSEQUENT MAV ALLOTMENT YEAR SHALL SUBMIT THE FOLLOWING DOCUMENTS AS ATTACHMENTS TO ITS APPLICATION AS A REGULAR LICENSEE:

“i. THE INCOME TAX RETURN, OR THE APPROPRIATE BIR FORM FOR EXEMPT ORGANIZATIONS, FOR THE LATEST FISCAL YEAR; AND

“ii. THE BUSINESS PERMIT ISSUED BY THE OFFICE OF THE MAYOR FOR THE CURRENT YEAR.”

11. Section I.D.3.b providing for the application periods for the BYP and MYP is hereby amended by redefining the opening and closing dates for application to the BYP and MYP. Thus, the same shall read as follows:

“b. The application period for regular allocations and access to the BYP of an MAV allotment year shall start on the first working day of NOVEMBER and close at 5:00 p.m. on the last working day of NOVEMBER of the prior MAV year. The application period for access to the MYP shall OPEN ON THE THIRD WORKING DAY OF JUNE AND CLOSE AT 5:00 P.M. ON THE FIRST WORKING DAY AFTER JUNE 15 of the MAV allotment year. Applications submitted after the close of these application periods shall not be accepted. ONLY APPLICATIONS SUBMITTED TO AND RECEIVED BY THE MAV SECRETARIAT SHALL BE HONORED.”

12. Section I.D.5 prescribing periods for the processing, publication and approval of the allocations and the issuance of the BYP licenses is hereby amended by deleting the first and the third sentences “The MAV Secretariat shall process all applications for regular licenses and access to the BYP for an MAV allotment year during the period from the first working day of November to the first working day after December 7 of the prior MAV year,” and “At the end of this week, the MAV Secretariat shall make its recommendations to the MMC on the regular allocations and the allocations from the Systematic Distribution Scheme (SDP) of the BYP,” and adjusting the dates. Thus, the same shall read as follows:

“5. On the first working day after JANUARY 15 of the prior MAV year, the MAV Secretariat shall publish in two newspapers of national circulation a tentative list of licensees and the volumes allocated to each. Applicants shall have one week within which to seek redress with the MAV Secretariat regarding their

respective allocations.

“Regular licenses covering regular allocations and allocations from the SYSTEMATIC DISTRIBUTION PROCEDURE (SDP) of the BYP shall be issued not later than the first working day AFTER FEBRUARY 7 of the MAV allotment year concerned.”

13. Section I.D.6 prescribing the periods for the processing and issuance of MYP licenses is hereby amended by deleting the sentence “Applications for the MYP shall be processed from the first working day after June 1 to the first working day after June 15; and adjusting the dates. Thus, the same shall read as follows:

“6. ON THE FIRST WORKING DAY AFTER JUNE 21, THE MAV SECRETARIAT SHALL PUBLISH IN TWO NEWSPAPERS OF NATIONAL CIRCULATION A TENTATIVE LIST OF LICENSEES AND THE VOLUMES ALLOCATED TO EACH. APPLICANTS SHALL HAVE THREE DAYS FROM THE DATE OF SUCH PUBLICATION WITHIN WHICH TO SEEK RECTIFICATION REGARDING ANY PROBLEMS THEY MAY HAVE ON THE ALLOCATIONS. Special licenses covering allocations from the SDP of the MYP shall be issued not later than the first working day of July of the particular MAV allotment year.”

14. Section I.D.7 prescribing the process for rejecting applications for the regular, BYP and MYP allocations is hereby amended to redefine the dates accordingly. Thus, the same shall read as follows:

“7. Where the MAV Secretariat rejects an application for a regular allocation and for access to the BYP, it shall inform the concerned applicant of the reasons for rejecting the application not later than the first working day after DECEMBER 15 of the prior MAV year. Where the MAV Secretariat rejects an application for access to the MYP, it shall inform the concerned applicant of the reasons for rejecting the application not later than the first working day after June 18 of the MAV allotment year. The reasons for rejecting applications may include any of the grounds mentioned in Section I.H(6) of this Order.”

15. Section I.F.1 classifying MAV applicants into three categories is hereby amended by replacing the word “old” with “regular.” Thus, the same shall read as follows:

“For any particular MAV allotment year subsequent to the initial year of the implementation of the MAV mechanism, the MAV Secretariat shall no longer classify applicants into producers, processors, traders or commercial food service providers. Instead, it shall classify applicants as: (a) REGULAR licensees, (b) MAV entrants, or (c) applicants for the first-come-first-served distribution of the BYP and the MYP.”

16. Section I.F.2 providing for the renewal of the regular allocations awarded to licensees is hereby amended by stating explicitly that such allocations shall be recalled if the licensees fail to apply for the regular allocations in the following year. Thus, the same shall read as follows:

“2. All regular licensees shall retain their MAV allocations for a product in the prior MAV year, except the volumes which they got from the MYP and the MAV Plus mechanism, as well as those cancelled and/or recalled in accordance with Section I.H of this Order, PROVIDED THAT THEY COMPLY WITH ALL THE APPLICATION REQUIREMENTS. In the EVENT a license is subject to recall, a REGULAR licensee’s allocation shall be subject to diminution, based on the formula in Section I.H of this Order. THE REGULAR ALLOCATIONS OF LICENSEES WHICH FAIL TO APPLY FOR SUCH ALLOCATIONS IN THE FOLLOWING YEAR SHALL AUTOMATICALLY BE RECALLED AND ADDED TO THE BYP. A LICENSEE WHICH FAILS TO APPLY FOR AN MAV ALLOCATION IN ANY GIVEN YEAR SHALL BE DEEMED A MAV ENTRANT IN SUBSEQUENT YEARS, UNLESS IT IS ABLE TO GET A MAV LICENSE FROM THE FIRST-COME-FIRST-SERVED ALLOCATION OF THE BYP.”

17. Section I.F.6 prescribing the qualifications for gaining access to the SDP is hereby amended by increasing the utilization threshold, changing the date for reckoning utilization, and replacing IERDs with MAVICs as the basis

for computing utilization rates. Thus, Section I.F.6 is deleted and replaced with the following:

“6. THE FOLLOWING SHALL BE ELIGIBLE TO PARTICIPATE IN THE SDP:

“a. QUALIFIED MAV ENTRANTS; AND

“b. LICENSEES WHICH (i) HAVE NOT SURRENDERED ALL OR PART OF THEIR RESPECTIVE LICENSES IN THE PRIOR MAV YEAR UNDER THE SURRENDER PROCEDURE DESCRIBED IN SECTION I.H OF THIS ORDER, AND (ii) HAVE MET THE UTILIZATION THRESHOLD SET FORTH IN SECTION I.H.2 OF THIS ORDER AS OF DECEMBER 15 OF THE PRIOR MAV YEAR. UTILIZATION RATES SHALL BE COMPUTED USING THE PERTINENT FORMULA IN ANNEX V OF THIS ORDER. UTILIZATION OF LICENSES SHALL BE DETERMINED USING THE MAVICS ISSUED TO THE LICENSEES, PROVIDED, HOWEVER, THAT WHENEVER NECESSARY, THE MAV SECRETARIAT MAY REQUIRE THE SUBMISSION OF OTHER DOCUMENTS THAT WILL PROVE THAT A LICENSEE HAS IMPORTED.

“THE VOLUMES ALLOCATED TO A QUALIFIED LICENSEE OR TO A MAV ENTRANT SHALL EITHER BE THE TOTAL VOLUME INDICATED IN THE LOTS WHICH ARE DRAWN IN ITS FAVOR OR ITS VOLUME REQUEST, WHICHEVER IS LOWER. THE VOLUMES AWARDED TO SUCH ENTITIES SHALL FORM PART OF THEIR REGULAR ALLOCATIONS FOR THE FOLLOWING MAV ALLOTMENT YEAR.”

18. Section I.F.7 providing for a second-priority distribution of the BYP is hereby deleted since there will be only one distribution.

19. Section I.F.8 providing for the general guidelines for allocating the first-come-first-served scheme of the BYP is hereby amended by making access to the scheme contingent on the full utilization of existing net allocations and by deleting the phrase “both the first-priority and second-priority distributions of”. Thus, Section I.F.8 shall read as follows:

“8.Any balance in the BYP after the SDP HAS been conducted shall be allocated on a first-come-first-served basis to any interested applicant, PROVIDED THAT IN THE CASE OF AN APPLICANT WHICH IS A LICENSEE, ITS NET ALLOCATION SHALL HAVE FIRST BEEN FULLY UTILIZED. NET ALLOCATIONS SHALL BE COMPUTED USING THE FORMULA CONTAINED IN ANNEX V OF THIS ORDER. THE VOLUMES ALLOCATED FROM THE FIRST-COME-FIRST-SERVED SCHEME OF THE BYP shall be available from the first working day AFTER THE ISSUANCE OF THE LICENSES COVERING THE REGULAR ALLOCATION AND THE ALLOCATION FROM THE SDP OF THE BYP, UNTIL THE ENTIRE BALANCE IS ALLOCATED OR THE END OF THE MAV YEAR, WHICHEVER COMES FIRST.”

20. Section I.F.8.b providing for the application requirements for access to the first-come-first-served scheme of the BYP is hereby amended by replacing the pro-forma Invoice with an air waybill in the case of air shipments, requiring commercial invoices and reducing the number of documents from applicants who are licensees. Copies of the Bill of Lading/Air Waybill/Commercial Invoice shall suffice; therefore, the phrase “the original form and” shall be deleted in the second sentence. The last sentence which reads “The MAV Secretariat shall then return to the applicant the original Bill of Lading, and retain the copy” shall also be deleted. Thus, Section I.F.8.b shall read as follows:

“b. All applicants WHICH ARE NOT REGULAR LICENSEES shall submit to the MAV Secretariat Central Office Unit (COU) completely filled-up application forms AS described in Section I.D(3)c together with the documents described in Section I.D(2)d of this Order. These applicants shall also SUBMIT to the MAV Secretariat a copy of Bills of Lading for forthcoming sea shipments or AIR WAYBILLS for forthcoming air

shipments AND THE CORRESPONDING COMMERCIAL INVOICE IN BOTH CASES.

“ALL APPLICANTS WHICH ARE REGULAR LICENSEES NEED ONLY TO SUBMIT WITH THEIR APPLICATION FORMS A COPY OF THE BILLS OF LADING FOR FORTHCOMING SEA SHIPMENTS OR THE AIR WAYBILLS FOR FORTHCOMING AIR SHIPMENTS, AND THE CORRESPONDING COMMERCIAL INVOICES IN BOTH CASES.”

21. Section I.F.8.c providing for the process of receiving applications for the first-come-first-served scheme of the BYP is hereby amended by requiring an air waybill instead of a pro-forma Invoice. Thus, the same shall read as follows:

“c. The MAV Secretariat shall receive applications in the sequence in which these are submitted. Immediately upon receipt AND VERIFICATION of these documents, it shall indicate, through a stamp on the two copies of the application form and the Bill of Lading, or AIR WAYBILL, the action it has taken, as well as the time and date such documents were received. The Executive Director or his authorized representative from among the staff members of the Central Office Unit shall sign the stamp on both copies of the documents. The applicant shall retain one set of said documents.”

22. Section I.F.8.d providing for the maintenance of the Official Log of the first-come-first-served scheme of the BYP is hereby amended by replacing the pro-forma Invoice with an air waybill and requiring commercial invoices. Thus, the same shall read as follows:

“d. The MAV Secretariat shall maintain an Official Log of the first-come-first-served SCHEME of the BYP. This log shall contain THE NAMES OF all the applicants, which shall be listed in the sequence in which they applied, the action taken regarding their respective applications, the date and time such actions were taken, the total volumes awarded in cases where applications were approved, and the balance remaining in the BYP as a result of the action taken on each application. This log, together with the application forms and supporting Bills of Lading/AIR WAYBILLS AND THE CORRESPONDING COMMERCIAL INVOICES IN BOTH CASES, shall be presented to an applicant for its review if it so desires.”

23. Section I.F.8.f providing for the issuance of the provisional MAVICs covering allocations from the first-come-first-served scheme of the BYP is hereby amended to replace the pro-forma Invoice with an air waybill and requiring commercial invoices. Thus, the same shall read as follows:

“f. As long as there are available volumes in the balance, the MAV Secretariat shall automatically issue provisional MAVICs covering the volumes awarded to the applicant. The volumes that will be awarded to qualified applicants shall either be THE NET VOLUMES indicated in THEIR bills of Lading/AIR WAYBILLS SUPPORTED BY THE CORRESPONDING COMMERCIAL INVOICES, or the total available volumeS in the balance, whichever is lower.”

24. Section I.F.8.1 providing for the issuance of licenses covering allocations from the first-come-first-served schemes of the BYP and MYP is hereby amended by setting the date of issuance of such licenses to not later than the end of the MAV year. Thus, the same shall read as follows:

“i. The regular and special MAV licenses covering the provisional MAVICs for the volumes awarded under the first-come-first-served allocation scheme of the BYP and the MYP, respectively, shall be issued to applicants not later than the LAST working day of the MAV allotment year.”

25. Section I.G.1 providing for voluntary surrender of allocations is hereby amended to move forward the deadline by one month. Thus, the same shall read as follows:

“l. The MAV Secretariat shall put together the MYP which shall CONSIST OF the volumes VOLUNTARILY surrendered by MAV licensees to the MMC on or before the last working day of MAY of the particular MAV

allotment year.”

“The MAV Secretariat shall reduce the allocation for the REMAINDER OF THE MAV allotment year of the licensee which voluntarily surrendered a portion or all of its license on or before the last working day of MAY. This reduction shall be equivalent to the volume surrendered.”

26. The first paragraph of Section I.G.3 prescribing the qualifications for gaining access to the SDP is hereby amended by moving forward by one month the date for reckoning utilization and replacing IERDs with MAVICs as the basis for computing utilization rates. Thus, the same shall read as follows:

“3. The SDP shall be conducted to allocate the MYP to all licensees, including MAV entrants TO THE BYP OF the MAV allotment year which (a) have not surrendered ALL or part of their respective licenses under the surrender procedure described in Section I.H. of this Order and (b) have utilized at least thirty percent (30%) of their respective net allocations for the pertinent MAV allotment year, reckoned on the last working day of MAY. Net allocations AND UTILIZATION RATES shall be computed using the formula in Annex V of this Order. Utilization of licenses shall be determined using the MAVICs issued to the licensees PROVIDED, HOWEVER, THAT WHENEVER NECESSARY, THE MAV SECRETARIAT MAY REQUIRE THE SUBMISSION OF OTHER DOCUMENTS THAT WILL PROVE THAT A LICENSEE HAS IMPORTED.”

27. Section I.G.4 providing for the allocation of MYP volumes under the first-come-first-served scheme is hereby amended by making access contingent on full utilization of existing net allocations and by deleting the last sentence “Such volumes shall be available from the first working day after the conduct of the first-priority distribution to the last working day of November of the MAV allotment year.” Thus, the same shall read as follows:

“4. Any balance remaining in the MYP after the SDP has been conducted shall be allocated on a first-come-first-served basis to any interested applicant in accordance with the provisions under Section I.F.(8) of this Order, EXCEPT LICENSEES WHICH HAVE NOT FULLY UTILIZED THEIR NET ALLOCATIONS. FIRST-COME-FIRST-SERVED ALLOCATIONS SHALL BE AVAILABLE TO QUALIFIED APPLICANTS FROM THE FIRST WORKING DAY AFTER THE ISSUANCE OF THE MYP LICENSES UNTIL THE ENTIRE BALANCE IS EXHAUSTED, OR THE END OF THE MAV YEAR, WHICHEVER COMES FIRST.”

28. Section I.H.1 prescribing the procedures for the surrender of allocations is hereby amended to move forward by one month the deadline for surrender and to identify the MAV Secretariat rather than the MMC as the entity which accepts surrenders. Delete the phrase “in part or in whole” as well as the last sentence which reads “All volumes surrendered on or before the last working day of MAY shall automatically be accepted by the MMC.” Thus, the same shall read as follows:

“1. A licensee which decides not to use ALL OR PART OF ITS license, may voluntarily surrender such volumes to the MAV Secretariat on or before the last working day of MAY of the MAV allotment year. The licensee or its duly authorized representative must present its MAV license to validate the surrender. ANY VOLUMES SURRENDERED AFTER THE LAST WORKING DAY OF MAY SHALL NOT BE ACCEPTED BY THE MAV SECRETARIAT.”

29. Section I.H.2 prescribing the penalties for under utilization is hereby amended to increase the utilization threshold below which penalties are applied and to reckon the progressive imposition of penalties on the basis of each instance of under utilization rather than consecutive occurrence. The entire section is hereby deleted and replaced by the following:

“2. ALL LICENSEES UTILIZING LESS THAN EIGHTY PERCENT (80%) OF THEIR RESPECTIVE NET ALLOCATIONS OVER A TWELVE-MONTH PERIOD SHALL BE PENALIZED BY HAVING PART OF

SUCH ALLOCATIONS RECALLED FOR PURPOSES OF DETERMINING ALLOCATIONS IN THE SUCCEEDING MAV YEAR. THE UTILIZATION RATE SHALL BE RECKONED AS OF DECEMBER 15, THEREBY EFFECTIVELY SETTING THE UTILIZATION THRESHOLD AT SEVENTY PERCENT (70%) OR 80% MULTIPLIED BY 10.5 MONTHS OVER 12 MONTHS, USING THE FORMULA IN ANNEX V OF THIS ORDER. THE MMC SHALL RECALL FROM THE REGULAR ALLOCATION OF A LICENSEE IN THE FOLLOWING MAV YEAR: (a) 50% OF THE UNUSED OUT OF THE UNSURRENDERED VOLUMES IN THE FIRST INSTANCE OF FAILURE TO MEET THE UTILIZATION THRESHOLD IN A MAV ALLOTMENT YEAR; (b) 75% OF THE UNUSED OUT OF THE UNSURRENDERED VOLUMES IN THE SECOND INSTANCE OF FAILURE TO MEET THE UTILIZATION THRESHOLD; and (c) 100% OF THE UNUSED OUT OF THE UNSURRENDERED VOLUMES IN THE THIRD AND SUCCEEDING INSTANCES OF FAILURE TO MEET THE UTILIZATION THRESHOLD.”

30. Section 1.H.4 prescribing the penalties for surrender is hereby amended to move forward by one month the deadline for surrender and to delete the last sentence which reads as follows “If such surrender is effected after the last working day of April, it shall be deemed that, for the purpose of applying the provisions on recall, no such surrender has been effected.” Thus, the same shall read as follows:

“4. All licensees which surrender ALL OR part of their respective allocations shall be penalized. The MMC shall recall FROM THE REGULAR ALLOCATION OF A LICENSEE IN THE FOLLOWING MAV YEAR 10% of the surrendered volumes of the licensee if such surrender is MADE on or before the last working day of MAY.”

31. Section I.I.1.b describing a particular step in the SDP is hereby amended to remove references to the first- and second-priority distribution. The phrase “first-priority distribution of the” mentioned twice in the first sentence and the last sentence which reads “If the same condition exists in the second-priority distribution of the SDP, the same procedure shall apply,” shall be deleted. Thus, Section I.I.1.b shall read as follows:

“b. If the total volumes requested by all qualified applicants which are present in the SDP are less than the volumes in the BYP/MYP, the MAV Secretariat shall grant the individual volume requests and the SDP shall no longer be conducted.”

32. Section I.I.2 providing for the posting of the list of the volumes awarded from the SDP is hereby amended by deleting the phrase “of each distribution.” Thus, the same shall read as follows:

“2. mmediately upon completion of the SDP, the MAV Secretariat shall post the list of the total volumes awarded to each applicant in a prominent place in the venue. The Executive Director shall authenticate this list.”

33. Section I.J.1 providing for the announcement of the availability of the MAVs every year is hereby amended to move the dates forward by one month. Thus, the same shall read as follows:

“1. On the second and third Mondays of OCTOBER, the MAV Secretariat shall call for the submission of applications for MAV licenses for the FOLLOWING MAV year through a notice published in at least two (2) newspapers of national circulation. A SIMILAR NOTICE SHALL BE PUBLISHED ON THE SECOND WORKING DAY OF JUNE CALLING FOR THE SUBMISSION OF APPLICATIONS FOR MYP LICENSES. THESE notices shall include the following information FOR APPLICANTS:

34. Section I.J.2 providing for the publication of tentative allocations is hereby amended by resetting the dates of such publication. The phrase “within one (1) week after the close of the processing period, which shall be the first working day after December 15” in the first sentence shall be deleted. Thus, Section I.J.2 shall read as follows:

“2. The MAV Secretariat shall publish the list of tentative allocations of MAV applicants in two national

dailies ON THE FIRST WORKING DAY AFTER JANUARY 15 FOR THE REGULAR ALLOCATIONS AND THE ALLOCATIONS FROM THE BYP AND ON the first working day after June 21 for the MYP. In the same notification, the MAV Secretariat shall provide the list of the grounds for ineligibility of applicants as provided for in Section I.H(6) of this Order. It shall enjoin any interested party with information on the possible ineligibility of any of the tentative awardees to provide such information to the MAV Secretariat.”

35. The first paragraph of Section I.K.6 describing the MAV Secretariat’s submission of pertinent information to the Bureau of Customs is hereby amended by adjusting the dates by one month. Thus, the same shall read as follows:

“6. The MAV Secretariat shall submit the following to the Chief of the Central Records Management Division (CRMD) of the BOC by the second week of FEBRUARY of EVERY MAV year:”

36. Section I.K.7 providing for an updated MAV Master List is hereby amended by replacing the phrase “in the first week of July” with the phrase “not later than the first working day of July.” Thus, the same shall be read as follows:

“7. The MAV Secretariat shall amend the MAV Master List to reflect the surrenders and the creation of the MYP, and shall furnish the BOC this updated master list NOT LATER THAN THE FIRST WORKING DAY OF JULY of the MAV allotment year and before the conduct of the first-come-first-served distribution of the MYP.”

37. Section I.K.8 providing for MAV withdrawal forms is hereby amended to replace the pro-forma invoice with an air waybill. The phrase “for sea shipments or pro-forma invoices for air shipments” shall be deleted. Thus, Section I.K.8 shall read as follows:

“8. The MAV Secretariat shall provide MAV withdrawal forms to licensees which will be used to secure the MAVICs. These forms indicate the MAV licensee’s intent to withdraw from its MAV account a specified quantity of MAV products to be imported, which amount should be duly validated with copies of the corresponding Bill of Lading/AIR WAYBILL AND COMMERCIAL INVOICE.”

38. Section I.K.9 classifying MAVICs into three kinds is hereby amended by deleting the following phrases: “first priority and second priority” and “and” in item (a), “first priority allocation” and “first priority and second priority allocation” in item (b); and by inserting the phrase “MAV Plus” in item (c). Thus, the same shall read as follows:

“9. Upon receipt of a duly accomplished MAV withdrawal form, and upon its verification that the MAV licensee has a positive MAV balance in its MAV account, the MAV Secretariat shall issue a MAVIC in favor of the licensee. There are three kinds of MAVICs: (a) the regular MAVIC which is issued against the regular license and which is applied against the regular allocation and the allocations from the BYP; (b) the special MAVIC WHICH is issued against the special license COVERING allocations from the MYP and the MAV Plus; and (c) the provisional MAVIC which is issued in advance of the regular and special licenses COVERING allocations from the first-come-first-served schemes of the BYP, MYP AND MAV PLUS respectively.”

39. Section I.K.10 specifying the information indicated in the MAVIC is hereby amended to replace the pro-forma invoice with an air waybill and to delete the sentence “The back of the MAVIC shall contain a portion providing for the endorsement of the MAVIC by the holder to an MAV Import Consolidator which shall import in the former’s behalf the volume indicated thereat.” Thus, the same shall read as follows:

“10. The MAVIC shall bear the following information:

“a. quantity of the MAV product indicated in the MAV Withdrawal Form that is based on the net volume in

the Bill of Lading/AIR WAYBILL SUPPORTED BY THE COMMERCIAL INVOICE, or the balance in the MAV account of the licensee, whichever is lower;

“b. the specific description and HS code of the product;

“c. the name of the MAV licensee;

“d. the MAV account number;

“e. the port of entry in the Philippines;

“f. the validity period of the MAVIC; AND

“G. WHERE APPLICABLE, THE NAME OF THE MAV IMPORT CONSOLIDATOR TO WHICH THE MAVIC IS ENDORSED.”

40. Insert a provision between Section I.K.10 and I.K.11 to enable the accreditation of MAV Import Consolidators, to read as follows:

“11. A MAV IMPORT CONSOLIDATOR IS AUTHORIZED TO IMPORT ALL OR PART OF A PARTICULAR LICENSEE’S ALLOCATION. ANY LICENSEE CAN ACT AS MAV IMPORT CONSOLIDATOR PROVIDED THAT IT IS ACCREDITED BY THE MAV SECRETARIAT. THE MAV SECRETARIAT SHALL PUBLISH THE LIST OF MAV IMPORT CONSOLIDATORS AT THE SAME TIME AS THE PUBLICATION OF THE TENTATIVE ALLOCATIONS FROM THE BYP. IT SHALL LIKEWISE SUBMIT THE SAME LIST TO THE BOC TOGETHER WITH THE MAV MASTER LIST.”

41. Delete the entire Section I.K.14 which reads: “The licensee may endorse a regular MAVIC to an MAV Import consolidator and shall indicate such endorsement at the back of all copies of the MAVIC. The MAV Import Consolidator shall import in the former’s behalf the volume indicated in the MAVIC.”

42. Section I.K.15 defining the validity of a MAVIC is hereby amended by deleting the word “two” and the phrase “or until the end of the pertinent MAV allotment year, whichever period is shorter,” thereby extending such validity. Thus, the same shall read as follows:

“15. MAVICs shall be valid for THREE months from the date of their issue, PROVIDED THAT NO MAVIC ISSUED WITHIN A MAV YEAR SHALL BE VALID BEYOND FEBRUARY OF THE FOLLOWING MAV YEAR. MAVICs ISSUED AFTER THE UTILIZATION THRESHOLD RECKONING DATE SHALL BE COUNTED AGAINST THE LICENSES ISSUED FOR THE CURRENT MAV YEAR.”

43. Section I.L.4 providing for a review of the MAV system implementation is hereby amended by deleting the word “periodically” and the phrase “with a view of immediately solving”, and establishing the frequency of such a review. Thus, the same shall read as follows:

“4. The MMC shall review the implementation of the MAV mechanism AT LEAST ONCE A YEAR TO SOLVE any problems in a manner consistent with the general principles articulated in Section I.A of this Order.”

44. Section II.A.1 providing for the conditions for increasing the MAVs is hereby amended to more clearly define the antecedent conditions for increasing the MAVs. Thus, the section shall read as follows:

“1. THE MAV MAY BE INCREASED, EVEN IF THE REGULAR ALLOCATIONS AND ALLOCATIONS FROM THE BYP AND MYP OF LICENSEES HAVE NOT YET BEEN FULLY UTILIZED, IN ORDER to address the problems of possible commodity shortages or abnormal price increases in the MAV products.”

45. Section II.A.3., which assigns to the Department of Agriculture the responsibility of forecasting the amount of

shortages, is deleted.

46. Section II.B. and II.C, which define the application and the allocation procedures for the MAV Plus mechanism, is hereby deleted and replaced by the following, to provide for clearer implementation procedures for the same mechanism.

“B. PROCEDURE FOR INVOKING THE MAV PLUS MECHANISM

“1. THE MAC SHALL REQUEST THE DEPARTMENT OF AGRICULTURE TO VERIFY THE VALIDITY OF REPORTS OF A SHORTAGE IN A PARTICULAR MAV PRODUCT THROUGH THE USE OF OBJECTIVE, VERIFIABLE, AND TRANSPARENT METHODOLOGIES WHICH ARE APPROPRIATE FOR THE PURPOSE.

“2. THE DEPARTMENT OF AGRICULTURE SHALL ESTABLISH THE EXISTENCE OF A SHORTAGE, DETERMINE THE SIZE OF THE ADDITIONAL MAVS REQUIRED TO ADDRESS SUCH A SHORTAGE, ASCERTAIN THE PERIOD WHEN THE MAV PLUS VOLUMES MAY BE IMPORTED, AND APPRISE THE MMC OF SUCH MATTERS ACCORDINGLY.

“3. IF DEEMED APPROPRIATE, THE MMC SHALL RECOMMEND TO THE PRESIDENT AN INCREASE IN THE MAV. THE PRESIDENT MAY PROPOSE TO CONGRESS SUCH AN INCREASE IN THE MAV, PURSUANT TO SECTION 6 OF RA 8178. IN THE EVENT CONGRESS FAILS TO RENDER A DECISION ON THE RECOMMENDATION FIFTEEN (15) DAYS AFTER ITS RECEIPT OF THE PROPOSAL, THE SAME SHALL BE DEEMED APPROVED.

“C. APPLICATION FOR ACCESS TO THE MAV PLUS MECHANISM

“1. ALL LICENSEES APPLYING FOR ACCESS TO THE MAV PLUS MECHANISM SHALL FILL UP THE APPLICATION FORM DESCRIBED IN SECTION I.D(3)C. ALL APPLICANTS WHO ARE NOT EXISTING LICENSEES SHALL SUBMIT COMPLETELY FILLED-UP APPLICATION FORMS DESCRIBED IN SECTION I.D(3)C TOGETHER WITH THE DOCUMENTS DESCRIBED IN SECTION I.D(2)D OF THIS ORDER.

“2. IN THE EVENT IT REJECTS AN APPLICATION FOR ACCESS TO THE MAV PLUS MECHANISM, THE MAV SECRETARIAT SHALL INFORM THE APPLICANT WHOSE APPLICATION HAS BEEN REJECTED OF THE REASONS FOR ITS REJECTING THE APPLICATION NOT LATER THAN ONE WEEK AFTER THE SPECIAL LICENSES FOR THE MAV PLUS VOLUMES HAVE BEEN ISSUED. THE REASONS FOR REJECTING APPLICATIONS MAY INCLUDE THOSE MENTIONED IN SECTION I.H(6) OF THIS ORDER.

“D. ALLOCATION PROCEDURES

“1. UPON APPROVAL OF AN INCREASE IN THE MAV FOR A PARTICULAR PRODUCT, THE MAV SECRETARIAT SHALL PUBLISH A NOTICE IN TWO (2) NEWSPAPERS OF NATIONAL CIRCULATION INFORMING THE GENERAL PUBLIC OF THE AVAILABILITY OF THE MAV PLUS, THE APPLICATION PERIOD, THE PERIOD WHEN THE VOLUMES MAY COME IN, AND THE PROCEDURES FOR THE ALLOCATION OF SUCH VOLUMES.

“2. THE MAV PLUS SHALL BE ALLOCATED TO QUALIFIED APPLICANTS IN THE SAME MANNER AS THE BYP AND THE MYP ARE ALLOCATED.

“a. THE SDP DESCRIBED IN SECTION I.I OF THIS ORDER SHALL BE CONDUCTED TO ALLOCATE THE ADDITIONAL VOLUMES AVAILABLE UNDER THE MAV PLUS MECHANISM TO LICENSEES WHICH (i) HAVE NOT SURRENDERED ALL OR PART OF THEIR RESPECTIVE LICENSES, AND (ii) HAVE UTILIZED, AS OF THE LAST DAY OF THE APPLICATION PERIOD, AT LEAST EIGHTY

PERCENT (80%) OF THEIR RESPECTIVE NET ALLOCATIONS IN THE PERTINENT MAV ALLOTMENT YEAR. THE UTILIZATION RATE SHALL BE DETERMINED ON THE BASIS OF THE MAVICS ISSUED IN THE PERTINENT MAV YEAR.

“THE VOLUMES ALLOCATED TO SUCH LICENSEES OR MAV ENTRANTS SHALL EITHER BE THE TOTAL VOLUMES INDICATED IN THE LOTS WHICH ARE DRAWN IN THEIR RESPECTIVE FAVORS, OR THEIR RESPECTIVE VOLUME REQUESTS, WHICHEVER IS LOWER. THE VOLUMES AWARDED TO THESE ENTITIES SHALL NOT FORM PART OF THEIR REGULAR ALLOCATIONS IN THE SUCCEEDING MAV ALLOTMENT YEAR.

“b. ANY BALANCE REMAINING IN THE MAV PLUS VOLUMES AFTER THE SDP HAS BEEN CONDUCTED SHALL BE ALLOCATED ON A FIRST-COME-FIRST-SERVED BASIS TO ANY INTERESTED APPLICANT. THE FIRST-COME-FIRST SERVED SCHEME THAT WILL BE IMPLEMENTED FOR THIS PURPOSE IS PROVIDED FOR IN SECTION I.F(8) OF THIS ORDER.”

47. Annex II providing for the Economic Size Lots for the SDP is hereby amended by establishing new lots for live horses and fresh or chilled beef. Thus, the same shall read:

Four-Digit HS Code/s HS Heading Economic Size Lots

0101 Live Horses 2 head

0102 Live Bovine Animals 1,200 head

0103, 0104 Small Animals (i.e. swine, sheep and goats) 20 head

0105 Live Poultry 5,000 head

0201 Fresh/Chilled Beef 1.5 metric tons

0202, 0203, 0204, 0207 Other Meat and Edible

Meat Offals (i.e., frozen

beef, fresh/chilled/frozen

pork, goat meat and poultry meat) 18 metric tons

0701 Edible Vegetables, Roots

and Tubers (i.e., potatoes) 12 metric tons

0901 Coffee, Tea, Mate and

Spices (i.e., coffee beans) 12 metric tons

1005, 1006 Cereals (i.e., rice and corn) 25 metric tons

1701 Cane or beet sugar

and chemically pure

sucrose, in solid form 10 metric tons

2101 Miscellaneous Edible

Preparations (i.e., soluble

coffee) 5 metric tons

48. Effectivity and Transitory Provisions

A. This Order shall take effect fifteen (15) days from its publication in two (2) newspapers of national circulation.

B. Licenses and MAVICs issued in 1998 MAV allotment year shall be governed by the provisions of this AO.

C. Licenses and MAVICs issued from January 1, 1998 up to end-January 1999 shall be factored into the computation of the utilization rates for the 1998 MAV allotment year. Thereafter, or starting the 1999 MAV allotment year, utilization rates shall be based on the period covering February 1 of any given year to January 31 of the next year.

49. Repealing Clause. All provisions in AO 8 which are inconsistent with this Order are hereby repealed.

50. Separability Clause. The provisions of this Order are hereby declared to be separable, and in the event one or more of such provisions are held unconstitutional, the validity of the other provisions shall not be affected thereby.

Adopted: 18 Feb. 1998

APPROVED:

(SGD.) SALVADOR H. ESCUDERO III
Secretary, Department of Agriculture

(SGD.) ERNESTO D. GARILAO
Secretary, Department of Agrarian Reform

(SGD.) SALVADOR M. ENRIQUEZ, JR.
Secretary, Department of Finance

(SGD.) CESAR B. BAUTISTA
Secretary, Department of Trade and Industry

(SGD.) WILLIAM G. PADOLINA
Secretary, Department of Science and Technology

(SGD.) CIELITO F. HABITO
Director-General, National Economic and Development Authority

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