

PRESCRIBING PROCEDURE ON THE IMPOSITION OF ADMINISTRATIVE FINES AND PENALTIES

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Pursuant to Sections 7, 8, 9, and 21 of R.A. 7621 the following rules and guidelines on procedure on the imposition of administrative fines and penalties are hereby prescribed:

SECTION 1. Title — These rules shall be known as the Rules and Procedure on the Imposition of administrative Fines and Penalties.

SECTION 2. Scope — These rules shall govern the procedure on the imposition of administrative fines and penalties for violations of port rules and regulations, traffic and safety regulations and other existing regulations/policies issued/adopted by Authority or which the latter may hereafter provide. However, these rules shall not affect the rules and procedure on the Grant of Extension of Free Storage Period provided under CPA MC No. 35-96 which shall continue to be in force and effect.

These rules shall be without prejudice to the right of the Authority to resort to other legal remedies/actions available.

SECTION 3. Notice of Violation — In case of violation of any port rules and regulations for which a corresponding penalty/fine is imposed, the division manager concerned or his representative shall immediately issue a notice of violation to the offender, stating therein the nature of the violation, the corresponding penalty/fine applicable, and other information necessary to apprise the person served with the notice of the nature of the violation. Notice of Violation shall be served personally or by any reasonable means.

If the person served with such notice refuses to receive the same or to acknowledge receipt thereof, the officer/personnel serving must state such fact on the notice itself and the same shall be deemed sufficient notice.

SECTION 4. Payment of Penalty/Fine — Within seven (7) days from receipt of the above-mentioned notice, the offender must pay the penalty/fine to the cashier of the Cebu Port Authority.

SECTION 5. Payment Under Protest — In case of protest to the imposition of the penalty/fine, the party concerned shall file a written protest within seven (7) days from receipt of the notice of violation with the manager of the division which served the notice. Otherwise, the said penalty/fine shall become final.

No protest shall be entertained if the same is not under oath and without proof of prior payment of the administrative penalty/fine.

SECTION 6. Contents of Protest — The protest must specifically state the violation, penalty/fine being contested, the date and time of its commission, a statement that payment of the penalty/fine has been made under protest with proof of such payment, and the grounds relied upon in support thereof.

SECTION 7. Action on Protest — Not later than five (5) days from receipt of the sworn written protest, the same shall be set for hearing by the manager of the division which issued the notice of violation.

SECTION 8. Notice of Hearing — The division manager concerned shall cause issuance of notices to all parties concerned. Such notice shall be served personally, by registered mail, or by any other reasonable means. In case of a foreign vessel, notice served on the resident agent or to its counsel of record shall be sufficient notice.

No hearing shall proceed unless there is proof that due notice had been served.

SECTION 9. Failure to Appear by Protestant — Should the Protestant fail to appear before the hearing officer without justifiable cause, despite due notice, his protest shall be dismissed and the penalty/fine shall become final and unappealable.

SECTION 10. Nature of Proceedings — The proceedings shall be non-litigious and summary in nature. The Rules of Court shall apply only in suppletory character.

SECTION 11. Incidental Powers of Hearing Officer — The division manager concerned shall have the power to administer oaths, subpoena witnesses, conduct ocular inspection, take depositions, and require the production of documents or records which may be deemed relevant or material to the inquiry.

SECTION 12. Decision — The division manager concerned shall decide the protest within fifteen (15) days from the date the same is submitted for decision. The decision of the division manager shall become final after ten (10) days from receipt thereof by the parties concerned.

SECTION 13. Appeal — Any person aggrieved by the decision of the division manager concerned may, within ten (10) days from receipt of a copy of said decision, file a Notice of Appeal with the General Manager. Within five (5) days from receipt of the Notice of Appeal, the division manager concerned shall forthwith transmit all records of the case to the General Manager. An appeal fee of P200.00 and a legal research fee of P100.00 shall be collected from the appellant. An appeal without prior payment of the said fees shall be dismissed.

SECTION 14. Action on Appeal — The General Manager shall within thirty (30) days from receipt of the records of the case render his decision on the appeal. The General Manager may, however, refer the case on appeal for review to the Manager of the Legal Services Division. The latter shall within ten (10) days from referral, submit his findings and recommendations to the General Manager. Thereafter, the General Manager shall render his decision either adopting in part or in toto the findings of the LSD Manager or modifying or substituting the same.

SECTION 15. Appeal to the Board of Commissioners — Within ten (10) days from receipt of a copy of the decision, a person aggrieved by the decision of the General Manager may further appeal the same to the CPA Board of Commissioners, which shall render its decision within thirty (30) days from receipt of the appeal and the records of the case. The decision of the Board of Commissioners shall become final after fifteen (15) days from receipt of a copy thereof by the parties unless further appealed to the Office of the President within said period.

SECTION 16. Automatic Review — All decisions of the division manager concerned in a protest case involving an amount of penalty/fine of Ten Thousand (P10,000.00) or over which is favorable to the Protestant shall be submitted to, within five (5) days from the date of the decision, and automatically reviewed by the General Manager; the same procedure provided in Section 14 hereof shall be followed.

Likewise, all decisions of the General Manager which is adverse to the government shall be submitted to, within five (5) days from date of the decision, and automatically reviewed by the CPA Board of Commissioners. The Commission shall render its decision within thirty (30) days from receipt of the records of the case. If no decision is made within said period, the decision shall be deemed to have been affirmed and the same shall become final.

SECTION 17. Repealing Clause — All rules and regulations, memoranda, orders, circulars, and other issuance s adopted/issued by CPA are deemed repealed, amended, or modified accordingly.

SECTION 18. Separability Clause — Any part of this circular found to be null and void by competent authority shall not affect the other provisions.

SECTION 19. Effectivity — This Memorandum Circular shall take effect fifteen (15) days from publication hereof in a newspaper of general circulation.

Adopted: 15 Jan. 1997

(SGD.) RAUL T. SANTOS

General Manager

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