MEMORANDUM CIRCULAR NO. 20-45
Series of 2020

SUBJECT : GUIDELINES ON ICP PRE-AUTHORIZATION AUDIT

WHEREAS, under Section 9 (g) of Republic Act No. 10697, otherwise known as the Strategic Trade Management Act (STMA), the Strategic Trade Management Office (STMO) has the power and function to ensure and operate end-use/end-user controls and establish compliance checks and exercise authority to enter premises for such purposes.

WHEREAS, under Rule IV, Section 1 of the STMA Implementing Rules and Regulations (STMA-IRR), the STMO may require, among others, the establishment of an Internal Compliance Program (ICP) as a precondition for the issuance of a global authorization.

WHEREAS, Rule IV, Section 2 of the STMA IRR provides that the STMO may require a Technology Control Plan (TCP) for applicants of individual authorizations and governmental end-use assurances relevant to Intangible Technology Transfer (ITT).

WHEREAS, Rule 1, Section 4.m of the STMA-IRR defines Internal Compliance Program (ICP) *as "an effective, appropriate, and proportionate means and procedures, including the development, implementation, and adherence to standardized operational compliance policies, procedures, standards of conduct, and safeguards, developed by exporters to ensure compliance with the provisions and with the terms and conditions of authorizations set out in the STMA."*

WHEREAS, the trade of strategic goods is a privilege granted through authorizations issued by the STMO. The STMO shall conduct ICP Pre-Authorization Audits on all covered persons to assess the presence and implementation of the covered persons' ICP, identify gaps and issue recommendations, proactively detect and prevent the potential violation, and help covered persons acquire a concrete understanding of compliance with the STMA and fulfill its obligation under the authorization they will receive.

NOW, THEREFORE, this Circular is hereby issued for the information, guidance, and compliance of all covered persons.

1. **Covered Persons**. The STMO shall conduct ICP Pre-Authorization Audits on the following covered persons:

   1.1. Registered Entities determined by the STMO to be eligible for a Global Authorization;
   1.2. Applicants of Global Authorization;
   1.3. Applicants of Individual Authorization relevant to ITT;
   1.4. Applicants of Governmental End-Use Assurance relevant to ITT; and
   1.5. Other persons as determined by the STMO

2. **Scope.** The STMO shall conduct an ICP Pre-Authorization Audit on all covered persons to assess whether their ICP or TCP adheres to the standard elements referred to in the

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STMO's Guidelines for ICP Set-up[1] and whether said standard elements are effectively implemented within the company.

3. **Audit Criteria**. To determine whether the covered person has an effective and operational ICP/ TCP, the STMO shall inspect if the ICP or TCP complies with the following criteria:

   3.1. **Internal Compliance Program** – ICP established by covered persons who are engaged in the trade of tangible strategic goods shall contain the following ICP elements:

      3.1.1. Management Commitment
      3.1.2. ICP Structure and Responsibility
      3.1.3. Screening Procedures
         3.1.3.1. Commodity Classification
         3.1.3.2. End-Use Screening
         3.1.3.3. End-User Screening
         3.1.3.4. Risk Assessment
      3.1.4. Shipment Control
      3.1.5. ICP Training
      3.1.6. Standard Operating Procedures Manual
      3.1.7. Internal Audit
      3.1.8. Record Keeping
      3.1.9. Reporting and Corrective Action

   3.2. **Technology Control Plan.** Covered persons who are engaged in ITT shall establish a TCP, which is an ICP for entities engaged in ITT or engaged in the transmission of software and technology either by electronic media or through non-electronic means. The TCP document shall contain all the applicable ICP elements listed above and the following TCP elements:

      3.2.1. Project Personnel Requirement
      3.2.2. Physical Security Plan
      3.2.3. Information Security Plan
      3.2.4. Network Security Plan
      3.2.5. Foreign Person Participation

4. **Audit Approach.** The STMO may employ any of the following Audit approaches:

   4.1. **Paper Audit** is a form of audit that involves a desk review of the submitted information.
   4.2. **Remote Audit** involves the use of information and communication technology to conduct the audit, gather information, interview, and inspection when "face-to-face" methods are not possible.
   4.3. **Field Audit** involves physical visits by the STMO Audit Team to a facility or site to determine compliance.

5. **ICP Pre-Authorization Audit Process**. The process of ICP Pre-Authorization Audit shall commence following the successful registration of the covered person with the STMO and shall proceed as follows:

[1] Please refer to https://www.dti.gov.ph/trabaho/strategic-trade-management

5.1. **First Notification**. The STMO shall send a notification letter to the covered person informing the latter of the conduct of the ICP Pre-Authorization Audit. The notification letter shall be accompanied by the following document/s:

5.1.1. **ICP Pre-Evaluation Document**. All covered persons shall accomplish an ICP Pre-Evaluation Document, which is a tool for initial screening of the company's Internal Compliance Program.

5.1.2. **Pre-Authorization Checks**. Covered persons shall accomplish the following forms for Pre-Authorization checks.

5.1.2.1. **Pre-Authorization Check Form**. A tool to assess ongoing and incoming strategic trade activity/ies, i.e., information on end-user/s, country of destination/s, and end-use/s of the commodity being traded. This form will serve as a declaration of the company's strategic goods and strategic trade activities. The covered person shall attach to this form the technical specification of their commodity, which could be in the form of a document/ brochure to provide STMO information on the commodity parameters/ specification.

5.1.2.2. **Commodity Identification Form**. A tool to ensure that the covered person has accurately identified the commodity classification of their products. All the strategic commodities shall be assessed using this form.

5.2. **Submission of ICP Pre-Evaluation Document**. All covered persons shall submit the accomplished ICP Pre-Evaluation Document and the Pre-Authorization Checks Form within thirty (30) days from receipt of the First Notification Letter.

5.3. **Paper Audit of Submitted Information**. STMO shall make an initial paper audit of the information submitted by the covered person. If STMO determines that there is compliance with the above standards, an Audit Report shall be issued accordingly. Otherwise, a second notification will be sent to the covered person, informing the latter of the need for further audit.

5.4. **Second Notification**. Covered persons determined by the STMO to be subjected to further Audit whether Paper, Remote or Field Audit, shall be informed through a second notification letter within thirty (30) days from receipt of the accomplished ICP Pre-Evaluation Document which will contain the following information:

5.4.1. Initial Assessment;
5.4.2. Schedule and Place of Audit. The audit shall be held, preferably in the covered person's principal place of business or the place where the complete record of transactions is available. A remote audit may be made when applicable and through a prescribed secure platform;
5.4.3. Audit Agenda, which shall include all the particulars and details of the audit;
5.4.4. A request for further information including but not limited to hard and soft copies of all ICP/ TCP relevant records; and,
5.4.5. Other information necessary for the conduct of an audit.

5.5. **STMO Audit Team**. The composition of the STMO Field/ Remote Audit Team shall depend on the anticipated complexity of an audit. STMO Auditors may be accompanied by STMO licensing officers and/ or representative/s from other relevant government agencies.

5.6. **Personnel Required to be present during the Audit**. The following personnel of the covered person shall be present during the audit:

5.6.1. Compliance Officer and the ICP team;
5.6.2. Personnel who are directly involved with the strategic trade activity; and,
5.6.3. Personnel with functions related to internal compliance such as Human Resource, Internal Audit Team, among others.

5.7. **Proceedings for Actual Field or Remote Audit.** Below are details to expect during a field or remote audit:

5.7.1. **Audit Phase**

5.7.1.1. **Opening Meeting.** The audit shall begin with an opening meeting with the below proposed vital components:

5.7.1.1.1. Brief Introduction of the Audit Team and Auditees;
5.7.1.1.2. Purpose and objectives of the Audit;
5.7.1.1.3. Actual Audit Approach (e.g., Records to be reviewed, personnel to be interviewed);
5.7.1.1.4. Audit Process Flow and Timeframe; and,
5.7.1.1.5. Entity Protocols and other information that may be of relevance to the Audit Team.

5.7.1.2. **Audit Proper.** Some of the critical components of the Audit Proper shall include:

5.7.1.2.1. Facility Inspections;
5.7.1.2.2. Interviews to check if auditee meets the audit criteria;
5.7.1.2.3. Relevant documents shall be requested, reviewed, and examined. The Auditors may make, or cause to be made, one or more copies of the records for their review and examination; and,
5.7.1.2.4. Information stated on the pre-evaluation form shall be validated, and any false information given shall be resolved against the latter.

5.7.1.3. **Audit Team Meeting.** Audit Team will discuss the initial findings, exchange information, and discuss areas that need to be further addressed.

5.7.1.4. **Closing Meeting.** This may include a brief remark on the audit process or to make the auditee aware of any issues where the auditors require more information to determine compliance. During the closing meeting, the audit team shall communicate the necessary details of the subsequent stages of the audit process, such as the release of final audit results.

5.7.2. **Time Frame.** An ICP Field or Remote audit could take more than one day depending on the volume and nature of the transactions, the entity/ auditee's preparedness, and the efficiency of the ICP that is in place.

Finishing the audit within the schedule facilitates the application process. It must be highlighted that without acquiring a satisfactory rating in the STMO ICP Audit, a global authorization/ individual authorization (ITT), or Governmental End-Use Assurance (ITT) cannot be granted. Hence, companies are expected to have an organized record-filing system and a well-prepared ICP staff during the audit.

5.7.3. **Incomplete Evaluation/ Follow-up Audit.** Within thirty (30) working days from the audit, the entity shall be informed if a follow-up audit is necessary.

Further, the entity/ auditee will be informed in instances where an audit cannot be concluded within the scheduled visit to the entity's office. In the said case, the audit will be continued on a different date owing to justifiable cause/s that may warrant consideration for a follow-up evaluation.

The subsequent visit will focus mainly on the remaining items or issues for evaluation.

5.7.4. **Audit Scoring System and Forms.** A Scoring System is attached to the ICP Pre-Authorization Audit forms and this Guideline. The Scoring System is a tool used by the STMO to evaluate compliance to the recommended ICP or TCP elements and may be used by the covered person to initially evaluate its compliance.

6. Audit Result Notification. The result of the audit shall be available within thirty (30) working days from the Closing Meeting or from the submission of all information requested, whichever is later. The STMO shall communicate the audit result through a notification letter**.** The type of audit results are as follows:

6.1. **Satisfactory Rating**. A covered person that is found to have a satisfactory ICP shall be issued an Audit Result bearing such a satisfactory mark. The applicant may proceed with the authorization application process by submitting the rest of the requirements to the STMO.

6.2. **Unsatisfactory Rating**. A covered person that is found to have an unsatisfactory ICP shall be issued an Audit Result bearing such unsatisfactory mark with a request for corrective action. The STMO shall assist the entity by giving recommendations on how to improve the ICP and meet the required standards. Proper adjustments and/ or revisions in the entity's ICP should be stated in a Management Action Report Form, which should be submitted to the STMO thirty (30) working days upon entity's receipt of **audit result with a request for corrective action**.

6.3. **Re-audit**. If any action is being required by the STMO, such as the production of any record or some minor modifications in the ICP, the follow-up visit will depend on when such records can be made available by the entity or when the needed modifications with the ICP will be completed. This will also depend on the next available schedule of the STMO Auditors.

Re-audit will focus on the issues for evaluation and assessment of whether the corrective action was taken and if the desired results were obtained.

7. **Option to apply for an Individual Authorization**. Applicants that fail to obtain a satisfactory rating during the audit or re-audit shall have an option to apply for an Individual Authorization while improving their ICP to obtain a satisfactory rating in the ICP Pre-Authorization Audit.

8. **Confidentiality of Business Proprietary Information.** Any information obtained by the STMO that are marked as confidential business information shall not be disclosed to any other party except in the furtherance of justice and law enforcement, national security, or foreign policy interests, as determined by the STMO unless the party providing such information has consented to its disclosure.

9. **ICP Post Authorization Audit**. A covered person shall expect a post-authorization audit to determine compliance with the terms and conditions of the authorization issued.

10. **Assistance for Companies**. Companies that have not yet developed their ICPs are advised to pattern their compliance systems after the elements listed in Section 3.a (for more details, see STMO Guidelines on ICP Set-up). Companies that already have an existing ICP or strategic trade management program may need to modify their systems following the requirements of the STMO by incorporating applicable ICP elements.

    The STMO shall guide entities in establishing their own ICPs. For assistance and queries on ICP Set-up, companies are advised to contact the STMO Policy and Enterprise Relations Division (PERD) through stmoinfo@dti.gov.ph.

This Circular shall take effect immediately.
03 August 2020, Makati City.

Recommending Approval:

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Approved by:

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