
December 2, 2009

CUSTOMS MEMORANDUM CIRCULAR NO. 312-09

TO : *All District/Port Collectors
And All Others Concerned*

SUBJECT : *Rules to Implement the Bulk and Break Bulk Cargo Clearance
Enhancement Program*

Attached herewith is a copy of the rules and regulations implementing the Bulk and Break Bulk Cargo Clearance Enhancement Program pursuant to Section 5 (d) of Administrative Order No. 243-A dated 16 September 2009.

For information and strict compliance.

Please confirm the dissemination of this circular throughout your offices within fifteen (15) days from receipt hereof.

(SGD.) NAPOLEON L. MORALES
Commissioner

ATTACHMENT

**RULES TO IMPLEMENT THE BULK AND BREAK BULK CARGO CLEARANCE
ENHANCEMENT PROGRAM**

Pursuant to Section 5 (d) of Administrative Order No. 243-A dated 16 September 2009, the following rules and regulations are hereby promulgated to implement the BULK AND BREAK BULK CARGO CLEARANCE ENHANCEMENT PROGRAM.

RULE I

Objectives

SECTION 1. *Objectives.* —

a. To establish an advance clearance system for bulk and break bulk cargoes in accordance with the objectives of the World Customs Organization International Convention on the Simplification and Harmonization of Customs Procedures, otherwise known as the Revised Kyoto Convention;

b. To facilitate the assessment of bulk and break bulk cargoes, the capability of the Bureau of Customs in cargo surveying should be enhanced by harnessing available technical support, if possible at no cost to the government;

c. To obtain and secure information for the proper examination, classification and valuation of bulk and break bulk cargoes using measures compliant with customs international best practices and global trade standards;

d. To protect and maximize revenue collection by ensuring the determination of the correct weight, quantity, quality and description of bulk and break bulk cargoes and the correct assessment of duties and taxes thereon;

e. To define the responsibility, accountability, and liability of surveying companies/surveyors accredited under the Bulk and Break Bulk Cargo Clearance Enhancement Program.

RULE II

Definition of Terms

SECTION 2. *Definition of Terms.* —

a. *Committee for Accreditation of Cargo Surveying Companies (CACSC)* — A committee tasked and authorized to grant and approve the accreditation of cargo surveying companies/surveyors and periodically review the performance thereof.

b. *Cargo Surveying Company* — A reputable company with an international office network in the countries exporting to the Philippines and the ports of origin and engaged in the business of cargo surveying of shipments.

c. *Accredited Cargo Surveying Company* — A surveying company possessing a duly approved accreditation issued by the CACSC.

d. *Bulk Cargo* — Cargoes in a mass of one commodity not packaged, bundled, bottled or otherwise packed; cargo (dry or liquid) which are loaded (shoveled, scooped, forked, mechanically conveyed or pumped) in volume directly into a vessel's hold or cargo that is unbound as loaded, without count in a loose unpackaged form.

e. *Break-Bulk Cargo* — Non-containerized general cargo stored in boxes, bales, pallets or other individual units to be loaded onto or discharged from vessels; cargo loaded individually and described in terms of quantity and weight, (*e.g.*, steel coils, logs, sacks of rice) and not in shipping containers nor in bulk as with oil or grain.

f. *Bulk/Break-Bulk Cargo Surveying* — The inspection, analysis, and/or computation of bulk or break-bulk cargo for the purpose of determining the correct dutiable weight, quantity, description of goods in tariff terms, and/or cargo make or quality.

g. *Load Port Survey Report* — A report issued by an Accredited Surveying Company for break/break-bulk cargo to be imported into the Philippines. The report shall be submitted to the Bureau of Customs directly in secure electronic format.

RULE III

Coverage

SECTION 3. *Coverage.* — All Philippine-bound bulk and break-bulk cargoes/shipments loaded unto carrying vessels shall be covered by this Order. The commodities covered under these Rules and the following:

- a. Liquids;
- b. Chemicals;
- c. Petroleum products;
- d. Dry cargo;
- e. All other cargo shipped in bulk or break-bulk (*e.g.*, wood, steel)

RULE IV

Committee for Accreditation of Cargo Surveying Companies

SECTION 4. *Committee for Accreditation of Cargo Surveying Companies or the CACSC.* — The CACSC created under AO 243-A shall be composed of the following:

- a. Presidential Adviser on Revenue Enhancement, as the authorized representative from the Office of the President;
- b. Authorized representative from the Secretary of Finance;
- c. Deputy Commissioner of Customs authorized by the Commissioner of Customs;
- d. Two (2) authorized representatives from the Department of Trade and Industry; and
- e. Two (2) authorized representatives of duly recognized industry associations as non-voting members.

The Presidential Adviser on Revenue Enhancement shall be the Chairman of the Committee.

SECTION 5. *Powers and Functions.* — The CACSC shall have the following powers and functions:

- a. To grant, approve, defer, or deny the application for accreditation of cargo surveying companies/surveyors and/or allow the renewal of the same upon expiration.
- b. To enlist the assistance of any department, bureau, office or agency of the government in carrying out its functions.
- c. To regularly review the performance of the duties and obligations of accredited surveying companies/surveyors in compliance with laws, rules, and regulations.
- d. To perform such other functions relative to its creation and in accordance with the provisions of AO 243-A.

SECTION 6. *Required Voting.* — No application for accreditation shall be approved or disapproved without the consent of a majority of the members

representing the government sector present in a valid meeting duly called for such purpose by the Chairman of the Committee. Representatives from the private sector, by the nature of their position, are considered non-voting members. A meeting is deemed valid when at least three (3) members of the committee are present.

SECTION 7. *Period to Approve Application.* — The CACSC shall approve or disapprove all applications for accreditation within thirty (30) days from receipt of said application with complete supporting documents in accordance with the requirements for accreditation.

SECTION 8. *Performance Review.* — There shall be an annual performance review conducted on the accredited surveying companies to determine if they continue to satisfy the criteria as provided for in AO 243-A and these Rules. Should there be findings of poor performance or negligence, the CACSC shall suspend and/or revoke the accreditation granted, if deemed necessary.

SECTION 9. *Investigation.* — CACSC may, at any time during the subsistence of the accreditation, investigate violations of the provisions of AO 243-A and these Rules, and, for this purpose, shall employ all means necessary to ascertain and establish pertinent facts that will aid it in imposing appropriate sanctions of suspension and/or revocation of accreditation, as the case may be.

SECTION 10. *Appeal of Suspension or Revocation.* — Any suspension or revocation of accreditation imposed by the CACSC on an Accredited Surveying Company may be appealed to the Office of the President within fifteen (15) days from official receipt of the suspension or revocation order.

SECTION 11. *Administrative Support.* — The CACSC shall be assisted and supported by a Secretariat which shall receive and process all applications for accreditation and renewal of accreditation of surveying companies for consideration and approval by the Committee.

The Secretariat shall likewise be responsible for the following matters for and in behalf of the CACSC:

- a. To keep an updated record of all documents pertaining to the CACSC and accredited surveying companies;
- b. To have custody, storage, and maintenance of all data/survey reports;
- c. To perform such other functions as provided by the CACSC and in

accordance with the provisions of AO 243-A.

RULE V

Application for Accreditation

SECTION 12. *Qualifications for Accreditation.* — Applicants for accreditation must have the following basic qualifications:

- a. Minimum track record of five (5) continuous years in international bulk and break-bulk cargo surveying.
- b. Member of good and reputable standing in the International Federation of Inspection Agencies (IFIA) or any other similar organization generally recognized and accepted in international commerce.
- c. International office network in countries which export to the Philippines as shown in the updated company profile and organizational structure.
- d. Must possess and maintain the basic tools and implements needed in bulk and break-bulk cargo surveying, and must have the competence and capability to conduct qualitative analysis of cargo using government-accredited laboratories generally used for such purpose in country of origin.
- e. Must be capable of receiving and transmitting electronic instructions from authorized ship agents, importers, or responsible customs officials.
- f. Must be able to issue reports and certificates in such forms acceptable to the CACSC.
- g. Must not have been blacklisted or its services terminated by any Government or international entity in the immediately preceding three (3) years, on the grounds of poor performance and/or irregularity in dealings, unless proven otherwise by competent and verifiable evidence as considered by the CACSC.
- h. Must be able to submit a comprehensive Capacity Building Program for the Bureau of Customs' officials and other government officials who will be directly involved in the implementation of this program. The Capacity Building Program shall include, but not be limited to, courses in bulk cargo surveying, break-bulk cargo surveying, and discharge

surveying. The Program shall include not only training but also methodology and transfer of technology.

SECTION 13. *Documentary Requirements.* — The following documentary requirements shall be submitted before any application for accreditation shall be processed.

- a. Certified copy of Articles of Incorporation or Certificate of Registration;
- b. Local Business Permit;
- c. Certified list of not less than twenty (20) regular clients-importers and exporters for the last three (3) years immediately preceding the application;
- d. Certified copy of its audited financial statements submitted to the Securities and Exchange Commission, Bureau of Internal Revenue, or equivalent office for the immediately preceding year, including the audited financial statements submitted to authorities abroad by a foreign applicant;
- e. Certified copy of the updated list of its corporate officers and surveyors both for foreign and local applicants;
- f. Certified copy of the BIR Certificate of Registration;
- g. Authenticated Copies of the Membership Certificate issued by the International Federation of Inspection Agencies (IFIA) or any other similar organization generally recognized and accepted in international commerce;
- h. Certification under oath by a responsible official of the company that it has not been blacklisted or its services terminated by any Government or international entity on the grounds of poor performance and/or irregularity in dealings in any country three (3) years immediately preceding the application. If there is a pending case, applicant shall state the nature and current status of the case;
- i. Certification under oath by a responsible official of the company that it has no pending administrative, civil, or criminal cases in any court or

venue in the Philippines. If there is a pending case, applicant shall state the nature and current status of the case; and

- j. An Undertaking to perform the following:
 - (i) To assist the Philippine Government in protecting and maximizing revenue collection by providing the BOC and the CACSC the true and real values, and the correct weight, quantity, quality, price, grade, description, and classifications of bulk and break-bulk cargoes;
 - (ii) To timely and ably perform its duties and responsibilities under AO 243-A and its Implementing Rules and Regulations; and
 - (iii) To pay all taxes in full and on time.
- k. Such other documents as may be required by the CACSC.

Where the cargo surveying company applying for accreditation is a subsidiary of another corporation, the above documentary requirements shall pertain to both the parent corporation and the subsidiary corporation.

All documents obtained abroad shall be duly notarized by the Philippine Consular Office concerned before they shall be acceptable to the CACSC.

SECTION 14. *Application Fee.* — A non-refundable application processing fee of Fifty Thousand Pesos (PhP50,000.00) shall be paid upon the filing of the request for accreditation.

SECTION 15. *Accreditation Fee.* — A one-time accreditation fee of Two Hundred Thousand Pesos (PhP200,000.00) for the first year, and an annual fee of Fifty Thousand Pesos (PhP50,000.00), for the second year onwards, covering a period of three (3) consecutive years, shall be paid upon approval of the accreditation, for which a BOC Official Receipt shall be duly issued evidencing payment thereof. Non-payment of the accreditation fee within fifteen (15) calendar days from date of approval of the application for accreditation shall cause the cancellation of the accreditation. Subsequent applications shall be treated as new submissions subject to payment of applicable fees anew.

SECTION 16. *Procedure for Accreditation.* —

- a. A surveying company wishing to apply for accreditation shall accomplish

the required Application Form as part of the requirements for the approval of the application. The Application Form, together with the complete documents required and the non-refundable application fee of Fifty Thousand Pesos (Php50,000.00), shall be submitted to the CACSC Secretariat.

b. The Secretariat shall then make a preliminary determination as to the completeness of the application submitted and verification of the full payment of the application fee.

c. The Secretariat may conduct a physical inspection of the assets and an actual evaluation of the operations of the applicant if it deems it necessary before submitting its recommendation to the CACSC for deliberation.

d. Upon the direction of the Chairman of the CACSC, the Secretariat shall calendar the meeting and issue the necessary notices to all members and interested parties. The CACSC shall conduct deliberations on the application, and shall issue a decision in writing approving or denying the application, stating the reasons for the approval or denial.

e. The CACSC shall inform the applicant in writing of the approval of its application, and shall require the applicant to pay the necessary one-time accreditation fee of Two Hundred Thousand Pesos (Php200,000.00) within fifteen (15) days from the receipt of such approval together with a Cash Bond in the amount of Two Million Pesos (Php2,000,000.00) in accordance with the prescribed form.

f. Any applicant whose application has been denied may submit another application within fifteen (15) days after receipt of the notice of denial of the application. The application shall be treated as a new application and shall be subject to the payment of the non-refundable application fee of Fifty Thousand Pesos (Php50,000.00).

g. Upon presentation of proof of payment of the accreditation fee, the applicant shall be issued an Accreditation Certificate, indicating therein the Official Receipt Number and the period of validity of such accreditation.

RULE VI

Load Port Survey Report

SECTION 17. Requirement of Load Port Survey Report. — Only cargo surveying companies accredited by the CACSC shall conduct the cargo surveying

required and issue the Load Port Survey Report. The Load Port Survey Report shall be issued after a full survey of quantity and quality of the bulk/break-bulk cargo and should contain the following details:

- a. Quantity of the cargo;
- b. Quality of the cargo;
- c. Grade of the cargo;
- d. Price or value of the cargo;
- e. Classification of the cargo;
- f. Port of loading;
- g. Name of vessel;
- h. Estimated time of departure from port of loading;
- i. Bills of lading;
- j. Surveyor's seals details;
- k. Ports of call of carrying vessel, if there is any; and
- l. Such additional testing results as may be required by the BOC necessary in determining the value, tariff classification, and/or assessment of shipments covered by AO 243-A.

SECTION 18. *Submission of Load Port Survey Report.* — The accredited surveying company shall submit the Load Port Survey Report directly to the BOC, through its Management Information and System Technology Group (MISTG), and the CACSC, at least twelve (12) hours before the arrival of the cargo in the Philippines in a secure electronic format as may be approved by the CACSC.

SECTION 19. *Distribution of Load Port Survey Report.* — Electronic copies of the Port Load Survey Report shall be given to offices in the BOC as determined by the Commissioner of Customs.

SECTION 20. *Advance Clearance Procedure.* — Any importer obtaining the services of an accredited cargo surveying company pursuant to AO 243-A and these Rules shall be allowed to file entries for the imported articles and pay the proper

duties, taxes, and other fees therefor prior to arrival in the Philippine port of destination, provided that:

- a. The entry contains a full and true statement of all the articles which are the subject of the importation;
- b. The invoice and entry contain a just and faithful account of the actual cost of said articles, including and specifying the cost of insurance and freight and other necessary charges, and that nothing has been omitted therefrom or concealed to the detriment of the proper revenue collection by the Government;
- c. The invoice and all bills of lading relating to the articles are the only ones in existence relating to the importation in question;
- d. The entry, invoice, and bill of lading, and the declarations thereon, are in all respects genuine and true, and were made by the person by whom the same purportedly have been made.

As soon as the cargo arrives at the Philippine port of destination, the importer may immediately cause the discharge and withdrawal of the same from customs premises and/or custody, provided that the declarations in the import entries are confirmed by the Port Load Survey Report, and upon presentation of the proof of payment of duties, taxes, and other fees, as well as compliance with other prerequisites for a valid importation in accordance with pertinent and existing customs laws, rules, and regulations.

SECTION 21. *Probative Value.* — The report and findings of accredited surveying companies shall be used by Customs Examiners/Appraisers in the determination of dutiable weight, volume, description, valuation, and classification of imported articles, without prejudice to actual verification as the need arises.

SECTION 22. *Non-compliance.* — Survey reports and findings of non-accredited surveying companies/surveyors shall not have any bearing insofar as the determination of dutiable weight, volume, quality, and description of imported articles are concerned, even if the services of said surveyor have been retained by either or both the shipper and the consignee.

Shipments without a Load Port Survey Report or accompanied by a Survey Report from a non-accredited surveyor will be subject to a comprehensive cargo survey at the Port of Discharge by an accredited cargo surveying company approved

by the CACSC. No permit (general or special) to unlade shall be given unless the recognized representative/s of the BOC shall have boarded the vessel and participated in the pre-discharging conference between and among the parties *i.e.*, Ship's Officers (Master and/or the Chief Mate or Cargo Mate), Shore or Terminal Officers or representative/s of the Consignee/s, and their respective Cargo Surveyors.

The shipment shall remain under continuous underguarding from this time and until the:

- a. Completion of the examination or comprehensive cargo survey by the accredited cargo surveying company chosen by the BOC and approved by the CACSC, determining the nature, description, quantity or volume, quality, grade, price or value and other pertinent specifications of the cargoes/shipments;
- b. Submission of the examination report to the District Collector of the Port of Destination;
- c. Assessment and collection of the duties and taxes and other charges accruing on the shipment shall have been effected.

During this period, the District Collector concerned may direct such other actions as may be appropriate under the premises pursuant to the provisions of the Tariff and Customs Code of the Philippines (TCCP), AO 243-A, and these Rules.

All expenses incurred for the cargo survey under this section shall be borne and paid for by the importer, consignee, or his agent pursuant to Section 3506 of the TCCP.

RULE VII

Responsibilities of the Parties

SECTION 23. *Responsibilities of the Parties.* —

a. *Importer.* — The importer must inform the exporter of the requirements under these Rules and must ensure that the cargoes are surveyed by an accredited surveying company. It shall be the responsibility of the importer to obtain from the CACSC the names and overseas addresses of accredited cargo surveying companies and to communicate this information to the seller/exporter of the goods.

b. *Exporter.* — The exporter must contact the nearest office of the

accredited surveying company selected by the exporter to register the cargo falling under the coverage of AO 243-A and these Rules and provide a full description, technical specification, and quantity of the cargo.

The exporter must advise the selected accredited surveying company of the whereabouts and availability of the cargo at least three (3) working days prior to the required date of survey. The exporter must present the goods in a manner as to allow a full survey to be conducted. The exporter must arrange and allow full access to the representative (surveyor) of the accredited company to conduct a full survey and submit complete copies of the final invoices to the accredited surveying company providing the service.

c. *Accredited Surveying Company.* — The accredited surveying company must make available to all interested parties the addresses of offices/representatives and their contact persons in each country of supply. The company must arrange the survey of the cargo within three (3) working days upon receipt of the request to survey from the exporter. They must complete the survey and seal the holds where necessary prior to the vessel sailing and issue the Port Load Survey Report prior to the arrival of the shipment in the Philippines within the prescribed period.

The accredited surveying company must issue/transmit the Port Load Survey Report in a secure electronic format to the BOC and the CACSC.

Accredited surveying companies shall fully automate their processes and interface with e2m-Customs Systems within six (6) months from the date of accreditation. The MISTG shall monitor the compliance by accredited surveying companies with the automation of its process as required by AO 243-A and may recommend sanctions to the CACSC in case an accredited surveying company fails to implement the automation requirement within the prescribed period. Until full automation is attained, accredited surveying companies shall electronically send copies of the ship's loading survey report of the cargo bound for the Philippines within the period and manner as provided herein.

Capacity Building Programs for BOC personnel in the form of technical training and continuing education in cargo surveying techniques shall be provided by the accredited surveying company in as many sessions as needed to harness and improve the capability of BOC personnel in bulk and break bulk cargo examination.

d. *District/Port Collector.* — The District/Port Collector shall cause the

utilization of the Port Load Survey Report issued by an accredited surveying company as an integral part of the documentation required for the clearance of bulk and break-bulk cargo in the determination of dutiable weight, volume, description, value, and tariff classification of imported articles, without prejudice to an actual verification should circumstances warrant.

RULE VIII

Annual Bond Requirement

SECTION 24. *Annual Bond Requirement.* — All accredited cargo surveying companies shall be required to post an annual bond of Two Million Pesos (PhP2,000,000.00) as cash bond which shall stand as guarantee/security for any and all violations of the provisions of AO 243-A and the undertakings as provided in these Rules. The bond shall be constantly maintained at the above-stated amount at any given time during the accreditation period. In cases where amounts are deducted from the bond, it shall be the responsibility of the accredited cargo surveying company to replenish the same within ten (10) days from date of debit transaction.

RULE IX

Effectivity, Renewal, and Non-Renewal of Accreditation

SECTION 25. *Effectivity of Accreditation.* — The accreditation of surveying companies/surveyors shall be effective for a period of three (3) consecutive years, unless sooner revoked for cause.

SECTION 26. *Renewal of Accreditation.* — Applications for renewal of accreditation shall be filed not earlier than ninety (90) calendar days but not later than thirty (30) calendar days prior to the date of expiration of accreditation. A late filing fee of ten percent (10%) of the accreditation fee shall be imposed on applications received out of the prescribed period.

SECTION 27. *Non-renewal of Suspended or Revoked Accreditations.* — No application for renewal of accreditation shall be accepted if the Certificate of Accreditation has been suspended or revoked for cause during the time it was subsisting, unless subsequently lifted by the CACSC.

RULE X

Binding Effect

SECTION 28. *Binding Effect.* — All accredited surveying companies and its surveyors shall be bound by the provisions of AO 243-A and these Rules.

RULE XI

Monitoring and Review of the Performance of Accredited Surveying Companies

SECTION 29. *Violation/Penalties.* — Any violation of any of the provisions of AO 243-A or these Rules shall be grounds for the initiation of appropriate actions against the surveying company, without prejudice to the filing of appropriate administrative, civil, or criminal charges against erring cargo surveying companies/surveyors.

SECTION 30. *Access to Information.* — The CACSC shall have the authority to request and secure information, documents, correspondence, and materials necessary in the performance of its oversight functions. Information of proprietary nature obtained by an accredited surveying company in the performance of surveying or any other activity incidental thereto shall be provided the CACSC upon request.

SECTION 31. *Submission of Quarterly Report.* — All accredited cargo surveying companies shall submit to the CACSC a quarterly report covering all bulk and break bulk cargoes inspected/surveyed at various ports of loading prior to shipment to the Philippines. The report shall include, but not be limited to, the data and information contained in Section 17 of these Rules. The required quarterly report shall submitted to the CACSC not later than fifteen (15) calendar days after the end of each quarter. Failure to submit the quarterly report may render the surveying company liable under Section 8 and 29 hereof.

RULE XII

Transitory and Final Provisions

SECTION 32. *Separability Clause.* — If any provision or part hereof is held invalid or unconstitutional, the remainder of the order or the provision not otherwise affected shall remain valid and subsisting.

SECTION 33. *Repealing Clause.* — All other orders, issuances, rules and regulations or parts thereof which are inconsistent with AO 243-A are hereby repealed or modified accordingly.

SECTION 34. *Effectivity.* — This Order shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation.

(SGD.) SEC. NARCISO Y. SANTIAGO, JR. *Presidential Adviser on Revenue
Enhancement Chairman*

(SGD.) ESTELLA V. SALES
*Undersecretary
Department of Finance Representative*

(SGD.) ATTY. PEDRO VICENTE C. MENDOZA
Department of Trade & Industry Representative

(SGD.) MR. MARCELIANO P. BERNAL, JR.
Department of Trade & Industry Representative

(SGD.) REYNALDO S. NICOLAS
*Deputy Commissioner
Bureau of Customs Representative*

(SGD.) MR. EDISON CO SELENG
Industry Representative