MEMORANDUM CIRCULAR NO. 2016-005

FOR : Economic Zone Locator Enterprises
      Economic Zone Administrators and Managers

FROM : Director General LILIA B. DE LIMA

DATE : 5 February 2016

SUBJECT : Extension of the Relief from PNP Requirements for “commonly used controlled chemicals”

Per item # 7 of the Memorandum of Police Director Elmer R. Soria of the Philippine National Police (PNP) - Civil Security Group addressed to the PNP Chief dated 26 January 2016 (please see attached), the PNP’s regulation on commonly used chemicals remains suspended up to 30 April 2016 or until such time that the DILG shall have issued the implementing rules and regulations (IRR) governing explosives, explosive accessories, explosive ingredients and controlled chemicals.

The temporary suspension was approved by Police Director General Ricardo C. Marquez, PNP Chief on 04 February 2016. Similar to PEZA Memorandum Circular 2015-31 entitled “Temporary suspension of PNP’s regulation on commonly used controlled chemicals” the suspension includes relief from license, permit, escorting and reportorial requirements, as well as, reprieve from confiscation of stocks and collection of “any amount arising from, in association with or in relation to, escorting services”. However, the PNP shall continue to regulate chlorates/ nitrates / nitric acid (CNNA), explosives (E) and explosive accessories (EA).

For your information.
CIVIL SECURITY GROUP
Camp Crame, Quezon City

CSG MEMORANDUM

FOR: C, PNP
THRU: TDCA
      TDCO
      TCDS
      TDO

FROM: D, CSG

SUBJECT: Update on the actions taken pertaining to the PNP’s regulation of explosives, explosives accessories, explosive ingredients and controlled chemicals

DATE: Jan 26, 2016

1. References:
   a. P.D. No. 1886 as amended by R.A. No. 8294 and R.A. No. 9516; and
   b. Various consultative meetings with industry stakeholders and other government agencies.

2. Please be informed that this Group attended various consultative meetings on January 5, 8, 11, 14, 2015 with representatives of stakeholder organizations as well as representatives of various government agencies on various dates and these meetings included officers from various stakeholder organizations, namely: Samahan sa Pilipinas ng Industriyang Kimika (SPIK), Fertilizer Industry Association of the Philippines (FIAP), Philippine Association of Chemical Suppliers Inc. (PACSI), Semiconductor & Electronic Industries in the Philippines Foundation, Inc. (SEIPFI), Association of Petrochemical Manufacturers of the Phils. (APMP) and from government agencies, namely: Department of Trade and Industry (DTI), Board of Investments (BOI), Department of the Interior and Local Government (DILG), Export Development Council (EDC)-DTI, Bureau of Customs (BOC) and the Philippine Economic Zone Authority (PEZA).

3. PCSUPT ELMO FRANCIS O SARONA, Chief, FEO was appointed as Chair of the Sub-TWG on the Streamlining of PNP Licenses and Permits on explosives, explosives accessories, explosive ingredients and controlled chemicals while PSSUPT BAROJO MANZANILLA, OIC, CDS, CSG, was requested to be the Co-chair of the Sub-Committee TWG on Accreditation of Transport Service Providers. These Sub-TWGs are created under the auspices of the Mother TWG with DILG USEC Edwin Enrile and DTI ASEC Rafaelita Aldaba as Chairs and Co-Chairs, respectively.

4. The Sub-TWG on the Categorization of PNP Controlled Chemicals headed by Dr. Fabian M. Dayrit, President, Integrated Chemists of the Philippines with Dr. Coo of the UP Diliman Institute of Chemistry, Ms. Briones and Ms. Bion of ITDI-DOST, PSSUPT VIC DRAPETE, Chief, Chemistry Division, PNP Crime Laboratory, as members, already finished their task and submitted their final output to the Mother TWG. The circulation of their output was withheld pending their final presentation to the mother TWG and with the PNP expressing its reservations on the categorization which
went beyond the "catch-all" phrase under Section 4 D of R.A. No. 9516 that is, "such other chemicals and accessories that can be used for the manufacture of explosives and explosive ingredients" but also "disturbed" controlled chemicals belonging to the families of nitrates, chlorates and nitric acid. A familiar doctrine in statutory construction which states that "where the law does not distinguish, neither should we", means that Section 4 D is clear and unequivocal subjecting nitrates, chlorates and nitric acid to PNP regulation while it can be acknowledged that the "catch-all" phrase may properly be the subject of "categorization" of controlled chemicals, a process, though not provided by law, may be allowed by the PNP to remove ambiguity over its regulation of the same.

5. Likewise, former Bureau of Customs Commissioner Guillermo Parayo and Ms. Joy Dave of E-Konek, with the assistance of SEIPI through its president, Mr. Dan Lachica, already provided their presentation on how to go about with the industry-proposed automation of the PNP Licenses and Permits System, however, other matters still need to be threshed out such as Information System Documentation, Terms of Reference, and Ownership and Administration/Maintenance of the Information System which can be properly covered via a Memorandum of Agreement.

6. The timelines set by the mother TWG are as follows:
   a. January 25  - Submission of the draft PNP Memorandum Circular or Implementing Rules and Regulations
   b. January 26  - Mother TWG meeting
   c. Jan 27-28 - Stakeholder consultations on the draft PNP Memorandum Circular or Implementing Rules and Regulations
   d. Jan 29 - Feb 2 - Submission and incorporation of stakeholder inputs
   e. Feb 3-5  - Signing of the PNP Memorandum Circular or Implementing Rules and Regulations
   f. Feb 5     - Transmittal of the PNP Memorandum Circular or Implementing Rules and Regulations to the UP Law Center
   g. Feb 19    - Effectivity of the PNP Memorandum Circular or Implementing Rules and Regulations to the UP Law Center

7. To expedite correspondence among participants since the BOI-DTI accepted the responsibility of hosting the venue for all the meetings as well as serving as the secretariat, email groups have been created and updates are sent via email. However, given the enormous volume of documents and the sheer number of issues that must be resolved, the timelines set may not possibly meet the set deadlines (although the self-imposed deadline of the PNP was supposedly last December 1, 2015). Hence, the undersigned recommends, in the higher interest of quality policy formulation, that the self-imposed moratorium of December 9, 2015 to February 9, 2016 be extended to April 30, 2016 or until such time that the DILG shall have issued an Implementing Rules and Regulations governing explosives, explosive accessories, explosive ingredients and controlled chemicals. It is further recommended that the Implementing Rules and Regulations governing the same be issued and signed by the Secretary, Department of the Interior and Local Government.

8. In view of the above, the undersigned requests for the C, PNP's approval of para 7.

[Signature]
ELMER R. SORIA
Director, CSG
Police Director
MEMORANDUM

FOR: Director, CSG

FROM: Chief, FEO

SUBJECT: Update on the actions taken pertaining to the PNP’s regulation of explosives, explosives accessories, explosive ingredients and controlled chemicals

DATE: January 15, 2016

1. References:
   a. P.D. No. 1866 as amended by R.A. No. 8294 and R.A. No. 9516;
   b. Various consultative meetings with industry stakeholders and other government agencies.

2. Please be informed that this Office represented the PNP in various consultative meetings on January 5, 8, 11, 14, 2015 with representatives of stakeholder organizations as well as representatives of various government agencies on various dates and these meetings included officers from various stakeholder organizations, namely: Samahan sa Pilipinas ng Industriyang Kimika (SPIK), Fertilizer Industry Association of the Philippines (FIAP), Philippine Association of Chemical Suppliers Inc. (PACSI), Semiconductor & Electronic Industries in the Philippines Foundation, Inc. (SEIPI), Association of Petrochemical Manufacturers of the Phils. (APMP) and from government agencies, namely: Department of Trade and Industry (DTI), Board of Investments (BOI); Department of the Interior and Local Government (DILG), Export Development Council (EDC)-DTI, Bureau of Customs (BOC) and the Philippine Economic Zone Authority (PEZA).

3. Forwarded is the update on the aforementioned meetings and the following recommendations:
   a. In the higher interest of quality policy formulation, the self-imposed moratorium of December 9, 2015 to February 9, 2016 be extended to April 30, 2016 or until such time that the DILG shall have issued an Implementing Rules and Regulations governing explosives, explosives accessories, explosive ingredients and controlled chemicals.
   b. The Implementing Rules and Regulations governing the same be issued and signed by the Secretary, Department of the Interior and Local Government.

4. In view of the foregoing, the undersigned requests for your approval of para 3 above and for your signature on the attached memorandum for the CPNP.

ELMO FRANCIS O SARONA
Police Chief Superintendent

Chief, FEO memo for Director, CSG re Consultative meeting on the Categorization of PNP Controlled Chemicals
FOR: C, PNP
FROM: AD, LS
SUBJECT: Update on the Actions Taken Pertaining to the PNP's Regulation of Explosives, Explosives Accessories, Explosive Ingredients and Controlled Chemicals

DATE: January 26, 2016


2. This pertains to the instruction for this Office to study D, CSG's recommendations as follows:
   a. For the C, PNP to approve extension of self-imposed moratorium within which to formulate the IRR of RA No. 9516 governing explosives, explosives accessories, explosive ingredients and controlled chemicals from December 9, 2015 to April 16, 2016; and
   b. For the C, PNP to recommend SILG's signature on or issuance of said IRR, once formulated.

3. This Office concurs with the recommendations of D, CSG.
   a. PD No. 1866 is the original codified law governing unlawful manufacture, sale, acquisition, disposition or possession of explosives (Sections 3, 4 and 6). The provision thereof providing for the rule making power of the Chief of the Philippine Constabulary (now Chief, PNP) has been amended by PD 1878-A, which states:

   "SECTION 1. Section 8 of Presidential Decree No. 1866 is hereby amended to read as follows:

   "Sec. 8. Rules and Regulations. Subject to the approval of the Minister of National Defense, the Chief of Philippine Constabulary shall promulgate the rules and regulations for the effective implementation of this decree."

   b. When RA No. 9516 amended PD No. 1866, insofar as explosives is concerned, it inserted new provisions amending Sections 3, 4, and 6 of PD No. 1866 and introduced new penal provisions now governing explosives, explosives accessories, explosive ingredients and controlled chemicals. However, RA No. 9516 does not contain any provision as to who will promulgate the IRR. Likewise, Section 8 of PD No. 1866 which earlier granted rule making power to the C, PNP has been amended by PD 1878-A subjecting the rule making power of the C, PNP to the approval of the Minister of National Defense. Under prevailing laws it is the Secretary of the Interior and Local Government, as alter ego of the President, who exercises supervision and control over all offices within the
Department of Interior and Local Government, the Philippine National Police being one of them. Section 10 of RA 6975 provides:

Section 10. Specific Powers and Functions of the Secretary. - In addition to his powers and functions as provided in Executive Order No. 262, the Secretary as Department head shall have the following powers and functions:

The foregoing provision must be taken in relation to Section 7 of EO 262 which states:

Sec 7. Secretary of Local Government. The authority and responsibility in the exercise of the mandate of the Department and in the discharge of its powers and functions shall be vested in the Secretary of Local Government, hereinafter referred to as the Secretary, who shall have supervision and control of the Department and who shall be appointed by the President. For such purposes, the Secretary shall have the following duties and powers:

Exercise supervision and control over all offices within the Department:

c. It is a statutory principle that "every grant of power, right or privilege is deemed to include all incidental power, right or privilege" (Agpalo, Statutory Construction, 3rd Ed., p 125). This is the doctrine of necessary implication. "Where a general power is conferred, every particular power necessary for its exercise is also conferred" (Agpalo, p. 130).

d. Thus, the general rule making power statutorily granted to the C, PNP by PD No. 1866, as amended by PD 1878-A, subjecting such power to the approval of the SILG, necessarily includes the implied power to extend the timeline within which to formulate the IRR, especially since such extension is in pursuit of the higher interest of quality policy formulation.

5. Respectfully submitted.

ROEL B OBUSAN
Police Senior Superintendent