

## **DEPARTMENT ADMINISTRATIVE ORDER No. 2**

Series of 2002

**SUBJECT:    DEFINING THE RESPONSIBILITIES AND LIABILITIES OF MANUFACTURERS, IMPORTERS, TRADERS, WHOLESALERS, DISTRIBUTORS, RETAILERS AND OR THEIR AGENTS, WITH REGARD TO PRODUCTS COVERED BY MANDATORY PRODUCT CERTIFICATION AND PRESCRIBING PENALTIES FOR VIOLATION THEREOF**

Pursuant to Section 4, R.A. 4109, Section 2 of Executive Order No. 913, Section 3(x) of Executive Order No. 133, and Article 6 of R.A. 7394, empowering the Secretary of the Department of Trade and Industry (DTI) to promulgate rules and regulations to implement the provisions and intent of any trade and industry law, the following revised rules and regulations implementing Republic Act No. 4109 and the provisions of Republic Act 7394 relative to product standards are hereby prescribed and promulgated.

### **SECTION 1.   Scope and Coverage**

This Department Administrative Order prescribes the rules and regulations that cover the responsibilities and liabilities of manufacturers, importers, traders, wholesalers, distributors, retailers and or their agents of all products covered by mandatory standards, the procedures for compliance and to ensure compliance, as well as corrective measures and penalties in the event of non-compliance and violations. It shall likewise apply to the mediation and/or adjudication of administrative actions initiated by the DTI or a private complainant under R.A. 7394 based on a violation of Product Standards laws, rules and regulations.<sup>1</sup>

### **SECTION 2.   Definition of Terms**

As used in this Department Administrative Order (DAO), the following terms are defined to mean:

- 2.1**    BPS refers to the Bureau of Product Standards of the Department of Trade and Industry (DTI).

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<sup>1</sup> Complaints arising from violations of R.A. 7394 are at present covered and implemented by Joint DTI-DOH-DA Administrative Order No. 1 Series of 1993 and DTI Administrative Order No. 2 Series of 1993. Complaints (under R.A. 7394 or R.A. 4109) whether initiated by DTI or by a Private Complainant anchored on a violation of product standard covered by mandatory product certification will now be covered by this DAO. Under Articles 10, 11, and 159 of R.A. 7394, the DTI can *motu proprio* initiate proceedings for violation of a mandatory product standard.

- 2.2** DTI Regional Director refers to the designated head of a regional office of the DTI.
- 2.3** DTI Provincial/Area Director refers to the designated head of a provincial/area office of the DTI.
- 2.4** OLA refers to the Office of Legal Affairs of the DTI.
- 2.5** DAO 1:1997 provides for the “Revised Rules and Regulations Concerning the Philippine Standard (PS) Quality and/or Safety Certification Mark Scheme” and its future revisions or amendments thereto.
- 2.6** DAO 8:1995 provides for the “Revised Rules and Regulations Concerning the Issuance of Import Commodity Clearance” and its future revisions or amendments thereto.
- 2.7** PNS 01:1997 refers to the Philippine National Standard entitled “A Standard for Standards”.
- 2.8** E.O. 913 provides for “Strengthening the Rule-Making and Adjudicatory Powers of the Minister of Trade and Industry in Order to Further Protect Consumers”.
- 2.9** E.O. 133 provides for “Reorganizing the Department of Trade and Industry, its Attached Agencies, and for Other Purposes”.
- 2.10** R.A 7394 provides for the “Consumer Act of the Philippines”.
- 2.11** R.A. 4109 provides “An Act to Convert the Division of Standards Under the Bureau of Commerce Into a Bureau of Standards To Provide for the Standardization and/or Inspection of Products and Imports of the Philippines and for Other Purposes”.
- 2.12** Ministry Order 69, Series of 1983 provides for the “Rules and Regulations Governing Administrative Actions for Violations of Trade and Industry Laws”.
- 2.13** Philippine National Standard (PNS) refers to a standard promulgated by the BPS relating to a set of conditions to be fulfilled to ensure the quality and safety of a product.<sup>2</sup> It shall contain product specifications, test method, terminology, standardization procedures, and guidelines or practices.
- 2.14** Mandatory Philippine National Standards are standards for which PS marking on products covered is compulsory. Product standards, which will affect life, safety and health of the people and its environment, are declared for mandatory product certification for which approval by the Secretary of Trade and Industry is necessary.
- 2.15** PS (Philippine Standard) Quality Certification Mark refers to a mark of conformity to

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<sup>2</sup> Definition of product “Standard” is taken from Par. (br), Art 4, R.A. 7394 and DAO 1, Series of 1997.

product quality standards, which appears on a product or product packaging as specified under DAO 1, Series of 1997.

- 2.16** PS (Philippine Standard) Safety Certification Mark refers to a mark of conformity to product safety standards, which appears on a product or product packaging as specified under DAO 1, Series of 1997.
- 2.17** Import Commodity Clearance (ICC) refers to a document issued by the DTI /BPS attesting that the imported product, which is covered by a mandatory PNS, conforms to the specific Philippine National Standard.
- 2.18** Manufacturer refers to any natural person or juridical entity, whether domestic or foreign, producing, assembling, and/or processing a material or product except if the goods are manufactured, assembled, or processed for another person who attaches his own brand name to the final products, the latter shall be deemed the manufacturer. In case of imported products, the manufacturer's representatives or, in his absence, the importer shall be deemed the manufacturer.
- 2.19** Importer refers to any natural person or juridical entity that brings in products from a foreign country to the Philippines.
- 2.20** Trader refers to any natural person or juridical entity, whose business is buy and sell or barter. A trader may therefore be an importer-trader, manufacturer, wholesaler or retailer.
- 2.21** Distributor refers to any natural person or juridical entity, whether domestic or foreign, to whom a product is delivered or sold for purposes of distribution in commerce, who markets a product whether for an importer-trader or for a manufacturer, wholesaler, or retailer.
- 2.22** Wholesaler refers to any natural person or juridical entity that sells products in bulk or in large scale but not to the end-user.
- 2.23** Retailer refers to any natural person or juridical entity engaged in the business of selling products directly to end-users.
- 2.24** Agent refers to a person who is deemed authorized to act or transact for and in behalf of the manufacturer, importer, wholesaler, trader, retailer or distributor.
- 2.25** Suspension of License refers to a penalty in which a PS license, or an ICC, is temporarily revoked by the BPS, during which period the licensee shall not manufacture, sell, offer for sale, or otherwise dispose of their product(s) covered by the suspension order.
- 2.26** Cancellation of License refers to a permanent revocation of a PS license or an ICC, which mandates that the licensee or ICC Certificate holder immediately and permanently

cease to manufacture, sell, offer for sale, or otherwise dispose of products covered by the cancellation order.

- 2.27 Closure refers to a penalty imposed by the Secretary of Trade and Industry or his assigns, whether of a temporary or permanent nature, consisting of a shutdown and cessation of a plant or business operation.
- 2.28 Complainant refers to any natural or juridical person, which shall include the DTI or any of its authorized officials, having a cause of action against any person, natural or juridical, for violating any of the provisions of this DAO.
- 2.29 Respondent refers to the party called upon to answer an administrative formal charge or complaint.
- 2.30 Adjudicating Officer refers to the DTI Regional Director or his authorized DTI hearing officer designated to hear and decide a case as well as impose penalties as per EO 913.
- 2.31 Consumer Arbitration Officer refers to the DTI officer duly appointed pursuant to Articles 160 and 161 of R.A. 7394
- 2.32 Stockpiling means manufacturing or importing a product between the date of promulgation of its consumer product safety rule and its effective date, at a rate which is significantly greater than the rate at which such product was produced or imported during a base period as prescribed under Art 9., R.A. 7394, ending before the promulgation of consumer product safety rule.
- 2.33 Complaint is a written statement charging a natural or juridical person for committing any of the acts prohibited under this DAO, subscribed and sworn before a person authorized to administer oath.
- 2.34 Statement of Violation is a statement charging a natural or juridical person, for violation of this DAO, subscribed and sworn by the Head of the Office concerned.
- 2.35 Enforcement Activity refers to surveillance audit, market monitoring, and inspection/inventory of products covered by mandatory standards.

### **SECTION 3. Responsibilities of a Manufacturer, Importer, Trader, Wholesaler, Distributor, Retailer or their Agents**

- 3.1 Manufacturers of any product covered by mandatory product certification are required to first secure a PS license prior to selling, offering for sale, or otherwise disposing of their product(s), the original copy of which shall be displayed in a conspicuous place at their plant or manufacturing facility.

- 3.2 Manufacturers shall ensure that their product(s) comply with the applicable mandatory product certification, and have the mandatory PS Mark clearly reflected, imprinted and/or embossed on the product or product packaging, whichever applies, for the purpose of conveying the required information about the products.
- 3.3 Importers of any product covered by mandatory product certification are required to first secure an Import Commodity Clearance (ICC) pursuant to DAO 5, Series of 2001 and its future amendments or revisions prior to selling, offering for sale, or otherwise disposing of their product(s).
- 3.4 An importer of a product covered by mandatory product certification shall ensure that all its imported products comply with the requisite product specifications, product markings, and other requirements prescribed under the applicable Philippine National Standard.
- 3.5 Distributors, wholesalers, retailers and those who offer for sale a product covered by mandatory product certification shall sell, or offer for sale only such products which complied with the requisite Philippine National Standard and with the required PS Mark, or with a valid ICC in the case of imported products.
- 3.6 Manufacturers who desire to produce/ manufacture any product covered by mandatory product certification for a special application shall notify and request BPS for the issuance of a Special Permit, which states the justification for such request, description of the product, specifications, size/weight/quantity/volume and the like, as well as the specific period to cover such activity.

#### **SECTION 4. Requisite Licenses and/or Certificates**

- 4.1 For any manufactured product covered by mandatory product certification, the applicable PS License shall be required of the said manufactured product before any sale is permitted, in accordance with the provisions of DAO 1, Series of 1997 and its future amendments or revisions.
- 4.2 For any imported product covered by mandatory product certification, an ICC shall be required of the said imported product before any sale is permitted, where the particular ICC certificate covers only the specific shipment and no other, in accordance with DAO 5, Series of 2001 and its future amendments or revisions.
- 4.3 BPS Permit allowing manufacturers to manufacture products covered by mandatory product certification for their special application.

#### **SECTION 5. Requisite Markings**

- 5.1 As a rule, all products covered by mandatory product certification must carry and display on the product itself all necessary product identification marks required by and in the manner specified in the applicable Philippine National Standard.
- 5.2 In case a product does not allow marking to be carried by and displayed on the product itself, the product's packaging, labels, identifying tags, or container, must bear and clearly display the required product-related information and markings as specified in the applicable Philippine National Standard.
- 5.3 All marks and markings shall be clear and legible, and must not be misleading.
- 5.4 Whichever applies, product labels, identifying tags, or product packaging must clearly bear and show the standard PS Quality and/or PS Safety Mark and ICC Mark in the manner required under DAO 1, Series of 1997 and DAO 5, Series of 2001, respectively, and their subsequent amendments or revisions.
- 5.5 In case of deformed steel bars, logos that are used shall be as registered with and as approved by the Bureau of Product Standards.
- 5.6 As required, the importer shall indicate the ICC number on the product or container whichever is applicable as determined by DTI/BPS.
- 5.7 An imported product covered by mandatory product certification shall follow the same markings requirements set-forth above.

## **SECTION 6. Prohibited Acts.**

The following are the acts prohibited under this DAO:

- 6.1 Distribution, sale or offer for sale of any product covered by mandatory product certification which does not conform with the required and applicable PNS quality or safety standards.
  - 6.1.1 An article/product is presumed for sale or offered for sale if it is found in the premises of the wholesaler, retailer, distributor or their agents.
  - 6.1.2 An article/product is presumed manufactured for sale if it is found in the premises of the manufacturer claiming that the same is for special application only but who does not possess the necessary BPS permit for that purpose.
- 6.2 Distribution, sale offer for sale or manufacture of any product covered by mandatory product certification without the required BPS license or Permit.
- 6.3 Distribution, sale, offer for sale or manufacture of any product covered by mandatory

product certification which does not bear the BPS required identification and product markings.

- 6.4 Distribution, sale, offer for sale or manufacture of any product covered by mandatory product certification under a fake, withdrawn, suspended or cancelled BPS license.
- 6.5 Distribution, sale, offer for sale of imported products covered by mandatory product certification without Import Commodity Clearance as required under DAO 5, Series of 2001 and its subsequent amendments or revisions.
- 6.6 Refuse access to/ copying of pertinent records, to permit entry of or inspection conducted by authorities.
- 6.7 Failure to comply with any duly served notice, summons, or subpoenas issued by the Mediation Officer, Consumer Arbitration Officer or Hearing Officer.
- 6.8 Giving of false or misleading data/ information, misrepresenting a material and substantial fact; or willfully concealing a material data or fact.
- 6.9 Failure to comply with the applicable rules and regulations regarding stockpiling, as defined in Article 9(b) of R.A. 7394.
- 6.10 Failure to comply with the Orders issued pursuant to Article 11 of R.A. 7394, relating to the a) notification requirements on; and b) recall, repair, replacement or refund of substandard products

## **SECTION 7. General Implementing Guidelines**

### **7.1 Market Monitoring Activity**

The DTI Regional and Provincial/Area Director shall conduct periodic provincial or regional market survey and random sampling of products covered by mandatory product certification, through appropriate Market Monitoring Teams organized specifically for this purpose. This is without prejudice to the authority of the BPS to conduct special market monitoring activities, *motu proprio* or in coordination with DTI Regional and Provincial/Area Office concerned, as it may deem necessary from time to time.

- 7.1.1 In every market monitoring activity/ operation, all members of the monitoring team shall, before entering a particular business establishment, be properly authorized in writing by the BPS Director or the DTI Regional or Provincial/Area Director, and present their written authority and proper identification papers to any responsible person within the premises.

## **7.2 Product Specific Monitoring Scheme**

Given the wide variety of products covered by mandatory product certification to be monitored, different guidelines and procedures may be developed to enable DTI to perform market inspection and sampling operations.

## **SECTION 8. Adjudication of Cases**

The following rules, in addition to the provisions of E.O. 913, M.O. 69, series of 1983, and the Consumer Act and its Implementing Rules and Regulations, shall govern the adjudication of cases under this DAO.

In the adjudication of cases, the CAO or Hearing Officer shall use every and all reasonable means to ascertain the facts of the case speedily and objectively without regard to technicalities of law procedure and strict rule at of evidence prevailing in the court of law.

With respect to consumer complaints, the CAO shall have exclusive and original jurisdiction to mediate, conciliate, hear and adjudicate the same. Accordingly these rules shall apply in cases of consumer complaints involving the issue of product standards. In all other consumer complaints, the provisions of Joint DTI-DOH-DA Administrative Order No. 1, Series of 1993 shall apply.

### **8.1 Commencement of Action. - Actions under this DAO shall commence by filing of a Complaint or a Statement of Violation.**

**8.1.1** The Complainant shall file a verified complaint together with the sworn statement of the witnesses covering their testimonies and the documentary evidence against a retailer, importer, wholesaler or manufacturer and or their agents for violation/s of any prohibited acts enumerated under Section 6 with the DTI Provincial/Area Office where the complainant resides or where the respondent holds business at Complainant's option. The DTI Provincial/Area Office shall assist the Complainant in the filing of complaint, assuring as far as practicable simple and easy access on the part of the consumer to seek redress for his grievances.

On the other hand, the DTI Provincial/Area Director shall initiate administrative proceedings against a retailer, importer, wholesaler or manufacturer and or their agents for violations of any prohibited acts enumerated under Section 6 by filing a Statement of Violation before the DTI Provincial/Area Office having jurisdiction over the place where the offense was committed or where the article was introduced to commerce. The offense is deemed committed or the article is introduced into commerce in the place where the article was seized or found.

The verified complaint shall be prosecuted by the complainant himself or

counsel. The Statement of Violation shall be prosecuted by the DTI Provincial/Area Director of the office concerned or with the assistance of his authorized representative or counsel from DTI. The Verified Complaint/Statement of Violation shall be defended by the Respondent himself or counsel.

**8.1.2 Conversion of the Complaint.** – At the discretion of the Head of Office and with the consent of the Complainant, a Complaint may be converted into a Statement of Violation and filed directly with the Chief Hearing Officer, provided, that the date of filing of the said Statement of Violation is within the 3 year limitation provided in Section 11 (a) of M.O, 69 series of 1983<sup>3</sup> provided that in cases of consumer complaints under R.A. 7394 the period of prescription shall be two years.

**8.2 Sufficiency of Complaint.** The Verified Complaint/ Statement of Violation shall be submitted in legal size paper. Its caption shall state name and address of the office with which it is filed, the title of the action, the statement “Adm. Case No. ----“ and the word “Complaint” or “Statement of Violation as the case may be. The said title shall include the names of the parties and the words “Complainant” and “Respondent”.

The Complaint/Statement of Violation shall also state the following:

- a) names and addresses of the Complainant and Respondent;
- b) the section, article or paragraph of the trade and industry law violated;
- c) the ultimate facts of the cause of action and/or the acts or omissions complained of as constituting the offense;
- d) the approximate time of the commission of the offense or the approximate time of the discovery of such commission; and
- e) the Complaint shall state further the relief prayed for, while the Statement of Violation shall state further the penalties and preliminary and preventive orders recommended by the DTI Provincial/Area or Regional Director.

The verified complaint/statement of violation shall be supported by documentary and physical evidence such as but not limited to the product itself, results of test, invoices, and affidavit of witnesses. However, any defect or insufficiency in the form of the complaint shall not invalidate the complaint.

Based on the verified complaint, the DTI Provincial/Area Director or Regional Director through his designated hearing officer shall decide whether the complaint pass through

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<sup>3</sup> (note: Section 11 of M.O, 69 series of 1983 When to file complaint/Statement of Violation. – (a) the Complaint/Statement of Violation shall be filed within three years from the day of the commission of the offense or if such date is unknown at the time, from the discovery thereof. After the said period of three years, the filing thereof shall be barred. (b) the administrative action under these rules and regulations is independent of the corresponding criminal or civil actions of the violations of the trade and industry laws.)

the mediation stage first or elevate the complaint to the Chief Hearing Officer.

**8.3 Mediation Conference.** The case shall be scheduled for mediation conference.

If a mediation conference is necessary, a Mediation Officer/ CAO shall be designated to conduct the mediation and shall within five (5) days from the date of her designation accordingly send both parties a Notice of Mediation attached with a copy of the Complaint/ Statement of Violation together with all the papers attached thereto. The Mediation Officer has not more than thirty (30) days from receipt of the Complaint within which to mediate the case.

**8.3.1 Schedule of mediation conference.** During the initial conference, the Mediation Officer, Complainant and Respondent or their authorized representatives shall set at most two (2) more dates provided such settings does not go beyond the thirty-day period with which to mediate the case.

**8.3.2 Elevation of the Case.** If at any stage of the mediation settlement appears to be impossible or either of the parties failed to appear for two (2) consecutive prescheduled conference despite due notice, mediation shall be terminated and the case elevated to the Regional Office or Consumer Arbitration Officer for formal hearing.

On the other hand, if settlement is reached, the terms and conditions agreed upon by the parties shall be reduced in writing to be approved by the Provincial/Area Director concerned. In the Decision, the DTI Provincial/Area Director may require the parties to submit to him from time to time reports on compliance with their undertakings under the said Agreement. The said Decision is not appealable and is immediately executory.

If a party fails or refuses to abide by the terms and conditions set forth in the Agreement, the other party shall notify the DTI Provincial/Area Office of the same and may either enforce the compromise or regard it as rescinded and insist upon his/her original demand. Under the first option, the aggrieved party shall request the DTI Official who approved the compromise agreement to enforce the same. Under the second option, the case shall be elevated to the DTI Regional/NCR Office concerned for formal hearing.

**8.4 Duties of the DTI Office Where the Case is Elevated.** The Director concerned shall have five (5) days from receipt of the Record of the Case within which to assign the same to a Consumer Arbitration Officer or Hearing Officer depending upon the violation.

The assigned CAO/ Hearing Officer has five (5) days from the date the case was assigned to him/ her within which to issue Summons, ordering the Respondent to file Answer and not a Motion to Dismiss within fifteen (15) days from receipt thereof. Within five (5) days from receipt of the Answer a preliminary conference shall be

scheduled and a notice to that effect be sent to the parties. If the Respondent wants the case dismissed, the same shall be alleged as an affirmative defense in the Answer, to be resolved together with the other issues after trial.

**8.5 Service of Summons/ Notices.** Summons together with the Complaint and all attachments shall be served by the Process Server/ Liaison Officer of the DTI Office concerned on the respective addresses of the parties on record, preferably through personal service, otherwise it shall be through registered mail or substituted service in accordance with the Rules of Court.

**8.5.1** The DTI Process Server/ Liaison Officer shall, within two (2) days from the date of service of the Summons/ Notice submit to the assigned CAO/ Hearing Officer and BPS his/ her report stating therein the actual date of service, the name and relation of the recipient or the reason why no service was effected.

**8.6 Effect of failure to file answer.** If the respondent fails to file Answer within the 15-day period, the Complainant may file a Motion to declare the former in default and for the case to be tried ex-parte. An order to that effect shall be issued unless a Motion to Admit Belated Answer based on reasonable ground(s) is filed.

**8.7 Judgment based on the Pleadings.** Where the Answer filed fails to tender an issue or otherwise all the material allegations in the Complaint are admitted therein, the Consumer Arbitration Officer or the Hearing Officer may, on motion of the Complainant render judgment based on the pleadings.

**8.8 Preliminary Conference.** Before proceeding to a formal hearing, a preliminary conference among the parties and the CAO/ Hearing Officer shall be held, to take into consideration the following:

- a) the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
- b) the simplification of the issues;
- c) the necessity or desirability of amendments to the pleadings;
- d) the possibility of obtaining stipulations or admissions of facts and documents to avoid unnecessary proof;
- e) the limitation of the number of witnesses;
- f) the propriety of rendering judgments on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefore be found to exist;
- g) the advisability or necessity of suspending the proceedings; and
- h) such other matters as may aid in the prompt disposition of the action.

**8.8.1** The Hearing Officer/ Consumer Arbitration Officer shall within five (5) days from receipt of the Answer notify the parties of the schedule of preliminary conference, which shall not be more than fifteen days from the issuance of the Notice.

**8.8.2 Effect of failure to appear at the preliminary conference.** The failure of the Complainant to appear when so required shall be cause for dismissal of the action. The dismissal, however, shall be without prejudice, provided the Complainant can, to the satisfaction of the CAO/ Hearing Officer, show cause why the Complaint should not be dismissed. A similar failure on the part of the Respondent shall be cause to allow the Complainant to present evidence ex-parte and a judgment be rendered on the basis thereof, subject, however, to the foregoing proviso.

**8.9 Answer to Amended Complaint/ Statement of Violation.** The Respondent has ten (10) days from receipt of Amended Complaint/ Statement of Violation within which to file his Answer. An Answer earlier filed may serve as the Answer to the Amended Complaint/ Statement of Violation if no new answer is filed.

**8.10 Submission of Position Papers/ Memorandum.** Should the parties fail to agree upon an amicable settlement, either in whole or in part during the preliminary conference, the hearing officer shall issue an order stating therein the matters taken up and agreed upon during the conferences, and directing the parties to simultaneously file their respective verified position papers.

These verified position papers shall cover only those claims and causes of action raised in the complaint/statement of violation excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take place of the latter's testimony. The parties shall not thereafter be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents. Unless otherwise requested by both parties in writing, the hearing officer shall direct both parties to submit simultaneously their position papers/ memorandum with the supporting documents and affidavits within fifteen (15) calendar days from the date of the last conference, with proof of service upon the other party. The hearing officer may also direct the simultaneous filing of replies and rejoinders thereon.

**8.11 Prohibited Pleadings and Motions.** The following petitions, motions or pleadings shall not be allowed:

- a) Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matters
- b) Motion for a bill of particulars
- c) Demurrer to evidence
- d) Petition for relief from judgment;
- e) Motion for extension of time to file pleadings, affidavits or any other paper;
- f) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court
- g) Dilatory motions for postponement;

**8.12 Determination of Necessity of Hearing.** Immediately after the submission by the parties of their position papers/ memorandum, the hearing officer shall motu proprio determine whether there is a need for formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information from any party or witness.

**8.13 Order of presentation of evidence.** In case trial is ordered, the Complainant shall be the first to present his evidence to support his case. Any and all witness presented by the Complainant may be cross-examined, at the option of the Respondent or his counsel. Redirect and re-cross examinations may likewise, be conducted by the parties or their counsels. After which, the Complainant shall rest his case and formally offer all the pieces of evidence presented.

The CAO/ Hearing Officer shall give the respondent opportunity to file his comments/ objections to the Complainant's Formal Offer of Evidence. Upon receipt of the latter, the CAO/ Hearing Officer shall rule on the admissibility of the pieces of evidence formally offered and schedule the case for the initial presentation of Respondent's evidence, following the same aforestated procedure.

**8.14 Hearing Schedule and Postponement.** After the termination of the preliminary conference, the CAO/ Hearing Officer, Complainant, and Respondent shall set not more than seven (7) hearing dates in advance to avoid motions for postponement. Postponements/ re-settings are entertained only upon motion, based on meritorious grounds. Any Motion to Postpone or Cancel Hearings shall be filed at least five (5) days prior to the pre-scheduled hearing date. Motions of such nature via the telephone and other electronic means shall be allowed provided the other party has been duly informed of the same and that both parties have agreed on the next hearing date.

**8.15 Non-Appearance of a party in scheduled hearings.** Failure of a party to appear in a scheduled hearing, no motion to postpone or cancel hearing having been filed, shall be tantamount to a waiver of such party's right to present his evidence for that particular stage or cross-examine the witness presented on that particular date.

**8.16 Consolidation of cases.** Where there are two or more cases pending before the different hearing officers in the same DTI Provincial/ Area Office involving the same respondent(s) and issues, or the same parties though the issues may differ, the subsequent cases(s) shall, whenever practicable, be consolidated with the first to avoid unnecessary cost and delay. Such consolidated cases shall be disposed of by the hearing officer to whom the first case was assigned.

In case of objection to the consolidation, the same shall be resolved by the Chief Hearing Officer.

**8.17 Records of Proceedings.** All proceedings need not be recorded by a Stenographic Reporter. A written summary of the proceedings every hearing, signed by both parties shall suffice except for testimonies made by the witnesses, which need not be recorded

verbatim.

**8.18 Orders of Dismissal.** Orders of Dismissal are considered final except for those issued without prejudice.

**8.19 Decision or judgment when rendered.** The DTI Office concerned shall render/ issue the decision/ judgment within thirty (30) days from the termination of the formal hearing. The decision/ judgment shall be in writing and shall state clearly therein the facts of the case, the issues raised, the applicable laws/ rules on which it is based, the penalties/ sanctions imposed and the relief granted to the party in whose favor the same was issued.

## **SECTION 9. Preliminary and Preventive Orders**

A preliminary order or preventive order refers to an order issued by a DTI Provincial Director, BPS Director, or by the DTI Regional Director during the investigation of the case or after the commencement of an action and before judgment, requiring a person to (a) refrain from performing a particular action, or (b) to perform a particular act, under any of the following conditions:

**9.1** A preliminary order may be issued by the DTI Provincial/Area Director, BPS Director, DTI Regional Director to prevent the disposition or tampering of evidence. It may also be issued to prevent the alteration, destruction, suppression or concealment, transportation, and movement of any paper, record, document, or object/article with intent to impair its veracity, authenticity, legibility, availability, or admissibility as evidence in any investigation of or official proceedings under this DAO.<sup>4</sup>

**9.2** A preliminary order may be issued by the DTI Regional Director after a case has been filed with the Office of the DTI Regional Director immediately recalling, banning, or seizure from public sale or distribution a product declared to be imminently injurious, unsafe or dangerous. In which case, the seller, distributor, manufacturer or producer thereof shall be afforded a hearing within forty-eight (48) hours from such order. The ban on the sale and distribution of a consumer product adjudged injurious, unsafe or dangerous, or imminently injurious, unsafe or dangerous shall stay in force until such time that its safety has been established.<sup>5</sup> After due notice and hearing, the said preliminary order may be published in a newspaper of general circulation for the protection of the consumer at the expense of the manufacturer, distributor, or seller.<sup>6</sup>

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<sup>4</sup> Even prior to the commencement of the formal investigation, the DTI may issue an order to prevent the disposition or tampering of evidence (Section 11, EO 913 dated 7 October 1993).

<sup>5</sup> Although the preliminary order may be issued ex-parte, the requirement of a hearing to be conducted within 48 hours from the issuance of the order is provided for under Art. 10, R.A. 7394. A preliminary order may be granted with or without prior notice and hearing on the application at the sound discretion of the Adjudication Officer (Sec. 49c Ministry Order 69, Series of 1983).

<sup>6</sup> Art 11, R.A. 7394 allows the DTI to give notice to the public of the defect or failure to comply with the product safety standard. Art 11 requires a prior notice and hearing but never mentioned of a final and executory judgment before notification to the public can be done.

- 9.3** A preliminary order may be issued by the DTI Regional Director directing the manufacturer or importer to cease and desist from producing, importing and distributing the article covered by a mandatory product standard in case of flagrant, rampant, widespread, or recurring violation of the product standards law, rules, or regulations.

## **SECTION 10. Procedure for Filing an Appeal**

- 10.1 Period of Filing an Appeal.** Any final order/ decision/ judgment, which disposes of the action/ case, shall be appealed to the appropriate DTI Office within fifteen (15) days from receipt thereof.

The period of appeal shall be interrupted by only one Motion for Reconsideration filed within ten (10) days from receipt of the final order/ decision/ judgment.

- 10.2 Where to File an Appeal.** Final orders/ decisions/ judgments of CAOs/ Hearing Officers of the different DTI Regional Offices and Acting CAOs of OLA shall be filed with the Office of the Secretary. However, those rendered by the Hearing Officers of OLA shall be filed directly with the Office of the President or the Court of Appeals.

- 10.3 Requisites for the Perfection of Appeal.** A party's appeal is deemed perfected upon the filing of the Memorandum of Appeal within the 15-day filing period from notice of the Decision or Order denying the motion for reconsideration.

The Memorandum of Appeal shall be filed with the Office of the Secretary and shall likewise state therein the material dates showing the timeliness of the appeal.

If a Memorandum of Appeal is filed, copy furnished the other party and the Office of origin, the Appeals Officer shall determine the timeliness of the appeal and issue an order to that effect. If the appeal is perfected, an Order directing the Office of origin to transmit the records of the case and the other party to file his comment within ten (10) days from receipt thereof shall be issued.

No motion for extension to file the memorandum of appeal, or comment thereon shall be allowed.

- 10.4 Grounds for Appeal.** An appeal may be entertained only on any of the following grounds:

- a) grave abuse of discretion on the part of the CAO/ Hearing Officer amounting to lack or excess of jurisdiction;
- b) on pure questions of law;
- c) the final order/ decision/ judgment is not supported by evidence;
- d) serious error in the finding of facts and which if not corrected, would cause grave,

- irreparable damage, injury or injustice to the Appellant; and
- e) if the final order/ decision/ judgment was prepared and issued due to coercion, intimidation, or grave threat coming from the other party interested in the case.

Provided that in consumer complaints heard by the CAO, only the grounds specified in pars. (a), (c), and (d) shall be allowed.

Failure to comply with any of the foregoing and preceding provisions shall constitute a sufficient ground to deny the appeal of the appellant, or to declare appellee as having waived the right to file the comment to the appeal.

- 10.5 Duty of the Appeals Officer.** In behalf of the Honorable Secretary, the Appeals Officer shall issue the resolution within thirty (30) days from receipt of the last pleading filed relative to the Appeal. The Resolution shall state clearly and distinctly the findings of facts, issues, and conclusions of law on which it is based, the corresponding penalties and sanctions imposed and the reliefs granted.

## **SECTION 11. Penalties and Sanctions**

After investigation and hearing, any of the following administrative penalties may be imposed even if not prayed for in the Complaint:

- 11.1** The issuance of an Order addressed to the manufacturer, seller, distributor and/ or importer to extend any or all or the following remedies to the Complainant:
- 11.1.1** To make the product in question conform with the applicable consumer product standards or to repair the defect in order to conform with the same
  - 11.1.2** To replace the product with a like or equivalent product which complies with the applicable consumer product standards and free from any defect;
  - 11.1.3** To refund the purchase price of the product less reasonable depreciation value, if after exhausting two or more attempts to repair or remedy the defect, the product remains to be defective or short of the standards required;
  - 11.1.4** To pay the consumer reasonable damages as may be deemed by the Adjudicating Officer;<sup>7</sup>
- 11.2** condemnation or seizure of the products which are the subject of the offense;
- 11.3** the forfeiture of the paraphernalia and all properties, real or personal, which have been

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<sup>7</sup> Taken from Art. 11, Chapter 1, RA 7394

used in the commission of the offense.

- 11.4 the suspension or cancellation/ revocation or withholding of any permit, license, authority, or registration which may have been issued or still to be issued by the Department, depending upon the gravity of the offense. Suspension shall be for such period of time as the CAO/ hearing Officer may deem reasonable, which, however, shall not exceed one (1) year;
- 11.5 the assessment of damages;
- 11.6 censure;
- 11.7 imposition of administrative fine;

**11.7.1 Amount of fine.** Administrative fines shall in no case be less than five hundred (P500.00) pesos nor more than One Hundred Fifty Thousand (P150,000.00) pesos for statements of violations/ complaints under RA 4159/ EO 913/ MO 69 and not more than Three Hundred Thousand Pesos (P300,000.00) for consumer complaints. An additional fine of not more than One Thousand (P1,000.00) pesos of each day of continuing violation<sup>8</sup> from the time the complaint/ Statement of Violation was filed.

Fines are likewise meted out on a per violation of type/size/PS license/ICC certificate basis. Provided further, that this administrative fine shall be imposed and collected for each case of apprehension, applied to each and every retailer, distributor, wholesaler, and or agent found guilty of the violation. The manufacturer and or importer of such violative product shall likewise be imposed the corresponding administrative fine. The frequency of the violation shall be determined on a per region basis. The minimum to maximum range of fines shall be imposed considering among others the attendant aggravating or mitigating circumstance, size of the industry or of the business establishment. Annex 1 (Table of Fines) lists the basic fines to be imposed to manufacturers/ importers and to wholesalers, retailers, distributor, and/or agent under E.O. 913 and R.A. 7394. The fines to be imposed are based on the nature of offense and the frequency of violation.

- 11.8 the issuance of a cease and desist order which shall specify the act(s) which is the subject thereof and with a directive for Respondent to submit a report of compliance therewith within a reasonable time. In addition thereto, the Respondent shall execute an undertaking that he shall comply with the provisions of this administrative order; to refrain from engaging in unlawful acts and practices or unfair and unethical trade practices subject of the investigation or hearing; and to recall, replace or refund the money value of its defective product. The Respondent shall conduct recall of its defective product(s) based on guidelines and procedures to be developed by DTI.

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<sup>8</sup> Taken from Art 164, RA 7394.

- 11.9** directive requiring the party against whom the decision was rendered to publish a copy of the final and executory decision/ judgment at his own expense.
- 11.10** the issuance of the Order, through the BPS, directing the suspension of the PS license from 1 to 90 days, or cancellation of the same, or revocation of Import Commodity Clearance Certificate of the particular product in question. Application to renew a PS license may be entertained only after one year of cancellation. Importer shall not be allowed to import mandatory products within one year from revocation of the ICC certificate. For purposes of imposing this penalty, a manufacturer or importer who commits any of the acts enumerated in Section 6 shall be meted a suspension of 1 to 5 consecutive working days suspension for the first offense; 15 to 30 consecutive working days suspension for the second offense; 60 to 90 consecutive working days suspension for the third offense; and cancellation of the PS license or ICC for the fourth offense. In the implementation of this Section, all accumulated violations by a manufacturer or importer in a given period as defined in product specific market monitoring scheme shall be deemed as one offense.
- 11.11** such other analogous penalties or sanctions.

## **SECTION 12. Circumstances/ Factors to be Considered in the Imposition of Penalty(ies).**

In the imposition of penalty or penalties, the gravity of the offense shall be determined from the presence of any or one or more mitigating or aggravating circumstance(s)

- 12.1 Mitigating circumstances.** The following are considered mitigating circumstances:
- 12.1.1** Voluntary admission of guilt.
  - 12.1.2** Willingness to enter into compromise agreement.
  - 12.1.3** Willingness to furnish evidence and/or testify against supplier/manufacturer.
  - 12.1.4** Willingness to execute undertaking to cease and desist from violating any Trade and Industry Law in the future.
  - 12.1.5** Compliance with any preliminary order or any preventive measure as directed.
  - 12.1.6** Any analogous circumstances.
- 12.2. Aggravating Circumstances.** The following circumstances are considered aggravating:
- 12.2.1** Failure to divulge the identity of the source, manufacturer, or importer of any of the products manufactured or distributed in violation of Section 6.1 to 6.5.
  - 12.2.2** Violation of two or more Trade and Industry Laws at one instance.
  - 12.2.3** Violation of another Trade and Industry Law while undergoing proceedings

- pending investigation/ mediation for violation of a standard law, another case is filed for violation of the same or a different Trade and Industry Law.
- 12.2.4 Violation by means of deceit and/or misrepresentation. Falsification of official and/or documents as a means to hide violation.
  - 12.2.5 Non-issuance and/or refusal to issue receipts when required by law.
  - 12.2.6 Unjustified absence during mediation, conference or hearing.
  - 12.2.7 Employment of force, violence, intimidation by respondent against complainant.
  - 12.2.8 Taking advantage of an emergency situation and the like.
  - 12.2.9 Concealment or attempt to conceal any piece of evidence
  - 12.2.10 Engagement in trade by person whose license/ permit or authority had been previously cancelled or revoked for violation of *any* of Trade and Industry Laws, before the lapse of period for voluntary closure.
  - 12.2.11 Offender is a public officer.
  - 12.2.12 Offender not being a public officer but connived with public officer without prejudice to the latter's prosecution.
  - 12.2.13 Failure/ Refusal without any valid reason to comply or execute any undertaking (e.g. to desist from violating Trade and Industry Law).
  - 12.2.14 Commencement or engagement in trade/business prior to the issuance of license/permit or authority to do business.
  - 12.2.15 Failure/ non-compliance with any preliminary order on a preventive measure.
  - 12.2.16 Respondent by means of false or fraudulent misrepresentation orally or in writing or by other fraudulent means, shall procure from the BPS the registration, accreditation, license, authority and/ or permit to conduct its business.
  - 12.2.17 Any analogous circumstances.

### **SECTION 13. Execution of Final Orders/ Decisions/ Judgments.**

- 13.1 Execution upon final orders/ decisions/ judgments.** Upon the expiration of the period to appeal and no appeal has been duly perfected, the prevailing/ winning party shall file a Motion for the Issuance of an Order of Execution and the corresponding Writ of Execution.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the DTI Office where the case was originally filed, on motion of the winning party.

The Appeals Officer may, on motion in the same case, when the interest of justice so requires, direct the Office of origin to issue the Writ of Execution.

- 13.2 Discretionary execution pending appeal.** On motion of the party in whose favor a

decision was rendered with notice to the other party filed with the Office which rendered the decision while it has still jurisdiction over the case and is in possession of the record of the case, at the time of the filing of such motion, said Office may, in its discretion, order execution of a final order/ decision/ judgment even before the expiration of the period to appeal. After that Office has lost jurisdiction, the motion for execution pending appeal may be filed with the appellate Court/ Office of the Secretary.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

**13.2.1 Stay of Discretionary Execution.** Discretionary execution may be stayed upon approval by the proper Court/Office of the Secretary/ Appeals Officer of a bond filed by the party against whom it is directed, conditioned upon the performance of the order/ decision/ judgment allowed to be executed in case it shall be partially sustained in whole or in part. The bond thus given may be proceeded against on motion with notice to the party paying the bond.

**13.3 Effect of reversal of executed judgment.** Where the executed judgment is reversed totally or partially annulled, on appeal or otherwise, the Office of origin may, on motion, issue such orders of restitution or reimbursement as equity and justice may warrant under the circumstances.

**13.4 How execution is effected.** On motion, copy furnished the other party, the CAO/ Hearing Officer (with the approval of the Director concerned) shall issue an Order of Execution followed by a Writ of Execution.

Any of the law enforcement agencies provided under Ministry Order No. 69, series of 1983 preferably the Office of the Ex-officio Sheriff of the Regional Trial Court of the locality where the party against whom the writ is directed, resides or holds business, may be deputized to execute the decision.

## **SECTION 14. Succession of Offenses.**

For purposes of determining the First, Second, Third, and Fourth Offenses, the lapse of three (3) years from the time of the commission of the previous offense, shall be indicative of good business conduct and thus operate to give a new and clean record to the former offender.

## **SECTION 15. Prescription**

The prescription period for instituting the formal investigation of any violation of product standards covered by mandatory product certification covered by the DAO shall be three (3) years from the time the consumer transaction was consummated or the violation was committed. In case of hidden

defects, the three (3) year period shall be counted from the date of discovery thereof.

In consumer complaints, the prescriptive period shall be two (2) years from the time the consumer transaction was consummated or the deceptive or unfair or unconscionable act or practice was committed and in case of hidden defects, from discovery thereof.<sup>9</sup>

#### **SECTION 16. Separability Clause**

In the event any provision of this DAO or the application of such provision to any person or circumstance is declared invalid, the remainder of this DAO shall not be affected by such declaration.

#### **SECTION 17. Repealing Clause**

All Department Administrative Orders, Rules, Regulations, and other similar issuances inconsistent herewith are hereby repealed or amended accordingly.

#### **SECTION 18. Effectivity**

This Department Administrative Order Number 2 (DAO 2 ) Series of 2002 shall take effect thirty (30) days after publication in two newspapers of general circulation/official gazette.

Makati City, Philippines, 01 July, 2002

Recommended by:

**(Sgd.) ADRIAN S. CRISTOBAL, JR.**  
Undersecretary  
Consumer Welfare and Trade  
Regulation Group

**(Sgd.) JESUS L. MOTOOMULL**  
Director  
Bureau of Product Standards

Approved by:

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<sup>9</sup> Conformably with Art. 169, R.A. 7394

**(Sgd.)MAR ROXAS**  
Secretary