Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
Quezon City

DEC 27 2022
11:05 A.M

November 16, 2022

REVENUE MEMORANDUM ORDER NO. 59-2022

SUBJECT : Guidelines and Procedures in the Conduct of Fuel Testing Mandated under Section 148-A of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963, otherwise known as the Tax Reform Acceleration and Inclusion (TRAIN) Law, and the Department of Finance (DOF) Joint Circular No. 001.2021 dated 1 February 2021 Implementing the Guidelines on Field Testing for the Fuel Marking Program, Enforcement Operations, Forfeiture and Prosecution of Cases on Offenses Related to Fuel Marking

TO : All Internal Revenue Officials & Employees and Others Concerned

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I. OBJECTIVES

This Order is hereby issued to:

1. Prescribe guidelines and procedures to be observed in the conduct of: (a) random field and confirmatory testing on gasoline, diesel and kerosene found in warehouses, storage facilities, depots, storage tanks, tank trucks, gas stations and other retail outlets, and in such other properties or equipment, including mechanisms of transportation, of persons or establishments engaged in the sale, delivery, trading, transportation, distribution, or importation of fuel for domestic market; and (b) enforcement operations, forfeiture and prosecution of cases on all offenses relating to fuel marking.

2. Provide for immediate imposition of penalties and sanctions for offenses committed in order to deter further commission thereof.

3. Maximize the degree of voluntary tax compliance, thereby increasing revenue collection.

II. LEGAL BASIS

The conduct of said random field and confirmatory testing shall be based on the provisions of Sections 6(C), 15, 130, 131, 148, 148-A, 171, and 172 of the National Internal Revenue Code (NIRC) of 1997, as amended; Sections 224, 225, 263, 265-A, and 279 of the same Code; Section 6 of Revenue Regulations (RR) No. 13-21 dated 23 June 2021; and the DOF Joint Circular No. 001.2021 dated 1 February 2021.

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III. DEFINITION OF TERMS

For purposes of this Order, the entire definition of terms found in Section 2 of the DOF Joint Circular No. 001.2021 dated 1 February 2021 is hereby adopted.

IV. POLICIES

A. For purposes of this Order, a BIR FIELD INSPECTION UNIT shall be constituted and composed of the following officers who shall be responsible in the conduct of the undertaking:

Over-all Head:	Deputy Commissioner of Internal Revenue (DCIR) Operations Group
Team I:	Large Taxpayers
Head:	ACIR, Large Taxpayers Service (LTS)
Co-Head:	ACIR, Enforcement & Advocacy Services (EAS)
Asst. Head:	Head Revenue Executive Assistant (HREA), LTS-Excise
Co-Asst. Head:	HREA, EAS
Members:	Chief, National Investigation Division (NID) and Representatives Chief, Excise LT Field Operations Division (ELTFOD) and Representatives Excise LT Audit Division II Representatives [Optional] Excise Tax Areas (EXTA) Representatives [Optional]
Team II:	Non-Large Taxpayers
Head:	Concerned Regional Director
Asst. Head:	Concerned Assistant Regional Director
Members:	Chief, Regional Investigation Division (RID) and Representatives Representatives from Legal Division Representatives from Revenue District Office (RDO) [Optional] Excise Tax Areas (EXTA) Representatives [Optional]

Further, the BIR Field Inspection Unit may request other revenue personnel from other offices to provide assistance and relevant information relative to the enforcement operation.

B. All random field and confirmatory testing activities of the BIR Field Inspection Unit shall be covered by duly issued Mission Orders (MOs) and shall be conducted together with the authorized officers from the Bureau of Customs (BOC) in accordance with the provisions of the DOF Joint Circular No. 001.2021 dated 1 February 2021.

The MO of the BIR Field Inspection Unit shall be signed by the DCIR-Operations Group, ACIR, LTS, or the concerned Regional Director.

In case the subject of the random field and confirmatory testing activity is a registered excise large taxpayer under the LTS, the said activity shall be performed by Team I

(ELTFOD, NID, Excise LT Audit Division II or EXTA). On the other hand, if the identified owner/possessor of excisable articles or machinery, etc. falls under the jurisdiction of the Revenue Region (RR), Team II (RID, EXTA and/or concerned Revenue District Office having jurisdiction over the said taxpayer) shall conduct the activity.

The MOs shall be issued in triplicate/quadruplicate copies, and to be distributed as follows:

Original –	Revenue Officer/s (ROs) directed to conduct the surveillance, and to be attached to the report on surveillance after termination of the activity.
2nd Copy –	Investigating Office's / Division's file copy
3rd Copy –	Issuing Office's file copy
4th Copy –	Taxpayer's copy

C. All requests from the Bureau of Customs for the conduct of a random field and confirmatory testing activity pursuant to the provisions of the DOF Joint Circular No. 001.2021 dated 1 February 2021 shall be processed and acted upon by the BIR Field Inspection Unit within five (5) days from receipt of such request.

D. All legal issues shall be referred to the Law & Legislative Division under the Legal Service at the National Office or to the Legal Division of the concerned Revenue Region, whichever is applicable. The resolution of the legal issues shall be prepared and issued within fifteen (15) working days from the date of receipt of such referral.

E. The BIR Field Inspection Unit Team shall be assisted by a Secretariat which shall be composed of personnel from the Office of the Deputy Commissioner – Operations Group (ODCIR-OG) and shall have the following duties and responsibilities have the following functions and responsibilities:

1. Receive, process and act on all kinds of communications and requests from other government agencies, i.e., BOC, National Bureau of Investigation (NBI), Philippine National Police (PNP), Department of Energy (DOE), Local Government Units (LGUs), etc., relating to the Fuel Marking Program;
2. Ensure that meetings are coordinated and communicated to all members of the Unit and other concerned revenue officials/officers;
3. that activities and tasks are met within the schedule;
4. Document the issues/concerns as well as the resolution/s thereof;
5. Keep the BIR's Fuel Marking Program's documentation and provide the members with necessary materials;
6. Prepare notices and minutes of the meeting, consolidated work plan, and status report; and
7. Perform such other functions as are necessary, incidental or as may be directed by the Over-All Head of the BIR Field Inspection Unit to properly carry out the purposes of this RMO.

F. The Head of the applicable BIR Field Inspection Unit Team shall coordinate with other government agencies and/or private individuals/entities who will be giving information relative to the activities covered by this Order.

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G. In all random field and confirmatory testing activities to be conducted by the BIR Head Field Inspection Unit Team, the Excise Large Taxpayer Field Operations Division (ELTFOD), LTS shall assist in the computation of the: (1) deficiency Excise Tax and Value Added Tax (VAT) due on fuel found to be either unmarked, adulterated or diluted; and (2) the corresponding penalties due pursuant to Section 265-A of NIRC of 1997, as amended.

V. GUIDELINES AND PROCEDURES

In addition to the procedures prescribed under the provisions of the DOF Joint Circular No. 001.2021 dated 1 February 2021, the following procedures shall likewise be observed:

1. Preliminary Procedures

Acquiring preliminary information on the person or establishment which shall be the subject of random field and confirmatory testing activities is necessary for an effective implementation thereof. Thus, before the actual random field and confirmatory testing, the concerned BIR Field Inspection Unit Team must:

1.1. Acquaint themselves with the business organization and economic activity of the subject of the random field and confirmatory testing (SUBJECT), the location of the stores, outlets, production plants/factories/warehouses, storage facilities, depots, and such other relevant information as may be available and / or necessary. This must be done with utmost secrecy to prevent leakage of information to the SUBJECT.

1.2. Prepare the necessary recommendation for the issuance of a MO for approval and signature of the DCIR, Operations Group, ACIR, LTS, or concerned Regional Director.

1.3. Brief the implementing officers on the acts to be performed in compliance with the MOs. The briefing shall be done at least thirty (30) minutes before the actual random field and confirmatory testing. *To preserve the confidentiality of the random field and confirmatory testing operation,* the identity of the target SUBJECT should be revealed to the implementing officers only upon arrival at the site of operations.

1.4. Coordinate with the following:

a. Fuel Marking Service Provider (as defined and referred to in Section 2.2.10. of the DOF Joint Circular No. 001.2021 dated 1 February 2021);
b. Fuel Testing Facility (as defined and referred to in Section 2.2.12. of the DOF Joint Circular No. 001.2021 dated 1 February 2021);
c. The authorized officials/officers of the BOC who forms part of the Field Inspection Unit defined under Section 2.2.9 of the DOF Joint Circular No. 001.2021 dated 1 February 2021; and
d. Other Government Agencies, such as but not limited to NBI, PNP, the concerned LGU, DOE, etc.

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2. Conduct of Random Field and Confirmatory Testing Activity

2.1. The BIR Field Inspection Unit Team, pursuant to a validly issued MO signed by the concerned authorized revenue official, together with the authorized personnel of the BOC and the authorized representative of the Fuel Marking Service Provider, shall conduct the Field Testing and the Confirmatory Test on gasoline, diesel and kerosene found in the SUBJECT's warehouses, storage facilities, depots, storage tanks, tank trucks, vessels, barges, gas stations and other retail outlets, and in such other properties or equipment, including mechanisms of transportation strictly in accordance with the procedures prescribed under Sections 5 and 6 of the DOF Joint Circular No. 001.2021 dated 1 February 2021, respectively.

2.2. The BIR Field Inspection Unit Team shall serve to the SUBJECT a letter directing the latter to present the following documents within five (5) days from receipt of such letter:

a. Registration of Branch/Warehouse/Facility (Sec. 236 of NIRC of 1997, as amended);
b. Permit to Operate as manufacturer/importer/dealer of petroleum products or maintain a warehouse for excise tax purposes (Sec. 154 of NIRC of 1997, as amended; Revenue Regulations No. 13-77 dated 10 October 1997; and Revenue Memorandum Order No. 38-03 dated 24 October 2003);
c. Authenticated copy of Lease of Contract/Agreement;
d. Official Register Books (ORB) for each production plant, warehouse/storage facility/depot;
e. BIR Forms such as Official Delivery Notice (GUIA) / Excise Taxpayer Removal Declaration (ETRD) / Withdrawal Certificate (WC), Importation Documents (i.e., Bill of Lading, Packing List, Commercial Invoice, Import Entry and Internal Revenue Declaration (IEIRD), Proof of Payments, Authority to Release Imported Goods (ATRIG) or other proof of source of goods/ inventory kept in subject warehouses);
f. Inventory books per warehouse, storage facility, depots, storage tank, and/or tank truck; and
g. Other documents that may be determined necessary.

3. Evaluation of the Results of the Random Field and Confirmatory Testing Activity

3.1. The BIR Field Inspection Unit Team shall submit the results of the random field and confirmatory testing activities, together with the complete set of supporting documents, to the DCIR- Operations Group for evaluation and appropriate action.

A Memorandum Report shall be prepared containing the following:
a. Facts of the case;
b. Procedures undertaken;
c. Documentary requirements;
d. Results of the inventory taking, field testing and confirmatory test;
e. Violations of the provisions of the NIRC of 1997, as amended, and its implementing rules and regulations and computation of internal revenue tax liabilities on excise tax, vat on excise tax, and penalties; and

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f. Recommendation for the necessary enforcement action, if the result of random field and confirmatory testing activity conducted warrants the same.

3.2. The enforcement actions may consist of any or all of the following:

a. Inventory stock-taking (requires MO)

Inventory taking of all articles subject to excise tax including raw materials, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for the unlawful production, sale, distribution and storing of petroleum products found to be unmarked, adulterated or diluted found inside the SUBJECT's outlets, stores, production plant/factory, warehouses, storage tanks, gas stations, other retail outlets, facilities or branches and in such other properties or equipment, including mechanisms of transportation used for the sale, delivery, trading, transportation, distribution, or importation of such fuel products for domestic market and perform other acts necessary to ensure compliance with the provisions of the NIRC of 1997, as amended, and its implementing rules and regulations;

b. Apprehension/seizure of articles, machinery, apparatus, etc. (requires MO)

The concerned ROs are authorized to make apprehension/seizure of all articles subject to excise tax including raw materials, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort and other properties or equipment, including mechanisms of transportation considered as subject of an offense or used or intended to be used as the means of committing an offense in violation of any provision of NIRC of 1997, as amended, and its implementing rules or regulations, and the issuance of Apprehension Slip in accordance with Section 172 of the NIRC of 1997, as amended, and the provisions of Section 7 of the DOF Joint Circular No. 001.2021 dated 1 February 2021;

c. Forfeiture and destruction of seized articles, machinery, apparatus, etc. in accordance with the provisions of Section 225 of the NIRC of 1997, as amended;

d. Issuance and service of an Assessment to the SUBJECT (i.e., Preliminary Assessment Notice (PAN), and Formal Letter of Demand (FLD) & Final Assessment Notice (FAN)) in accordance with the provisions of Sections 203, 222, 223 and 228 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99, as amended by RR Nos. 18-13, 7-18 and 22-2020 pursuant to a validly issued Letter of Authority (LOA) as required under Section 13 of the NIRC of 1997, as amended, and its implementing rules or regulations;

e. Filing of civil case and/or criminal case under the Run After Tax Evaders (RATE) Program pursuant to Sections 254, 263 and 265-A of the NIRC of 1997, as amended; and

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f. Closure of business establishment pursuant to Section 115 (b) in relation to Section 236 of the NIRC of 1997, as amended.

VI.REPORTORIAL REQUIREMENTS

1. The concerned BIR Field Testing Unit Team shall prepare an Accomplishment/Status Report on the Surveillance and/or Enforcement Activity that was conducted within ten (10) days after the close of each month, and shall submit the same to the DCIR-Operations Group.

2. The DCIR-Operations Group shall then submit a consolidated Accomplishment /Status Report within twenty (20) days from the close of each quarter to the Commissioner of Internal Revenue.

VII.REPEALING CLAUSE

All revenue issuances inconsistent herewith are hereby repealed or modified accordingly.

VIII.EFFECTIVITY

This Order shall take effect immediately.

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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