

DEPARTMENT CIRCULAR NO. DC2018-_____ - _____

GUIDELINES ON THE DUTY-FREE IMPORTATION AND MONITORING OF THE UTILIZATION OF RE MACHINERY, EQUIPMENT, MATERIALS AND SPARE PARTS

WHEREAS, Section 4 of Republic Act (RA) No. 7638 or the "*Department of Energy Act of 1992*" mandates the DOE to prepare, integrate, coordinate, supervise, and control all plans, programs, projects, and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation;

WHEREAS, Section 2 (b) of RA No. 9513 or the "*Renewable Energy Act of 2008*" (hereinafter referred to as the "RE Law") mandates the increase of utilization of renewable energy (RE) by institutionalizing the development of national and local capabilities in the use of renewable energy systems and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives;

WHEREAS, the RE Law calls for the Government to establish the necessary infrastructure and mechanisms for all existing and new RE Developers/Operators to fully avail of the fiscal and non-fiscal incentives provided upon the effectivity of the RE Law;

WHEREAS, Section 2 of RA No. 9485, as amended by RA No. 11032, or the "*Ease of Doing Business and Efficient Government Service Delivery Act of 2018*" mandated the government to promote transparency in each agency with regard to the manner of transacting with the public, which shall encompass a program for the adoption of simplified requirements and procedures that will reduce red tape and expedite business and nonbusiness related transactions in government;

NOW THEREFORE, for and in consideration of the foregoing premises, the DOE does hereby promulgate the following guidelines:

SECTION 1. SCOPE AND APPLICATION. This Circular shall govern the application, processing, approval and issuance of duty-free importation certificates ("DFIC") for the importation, exportation and issuance of machinery, equipment, materials and spare parts used for RE operations.

SECTION 2. DEFINITION OF TERMS. As used in this Circular, the following shall be construed to mean, unless the context clearly provides otherwise:

- a. **Actually, Directly and Exclusively Used** – means the use and utilization of machinery, equipment, materials and spare parts in the implementation of the approved work program of the RE Service (Operating) Contract.
- b. **Applicant** – means the RE Developer/Operator with an application with the DOE for the issuance of a DFIC for the importation or exportation of machinery, equipment, materials and spare parts, and the sale or donation of unserviceable or used machinery, equipment, materials, and spare parts duly filed pursuant to this Circular.

- c. **Duty Free Importation Certificate** – means the document issued by the DOE in accordance with Section 15 (b) of RA No. 9513 granting exemption from payment of tariff duties on the importation of RE machinery, equipment, materials and spare parts to the RE Developer/Operator. A DFIC may also be issued pursuant to Section 21 (a) of RA No. 9513, if applicable.
- d. **Emergency Importation** – means the importation of machinery, equipment, materials and spare parts not included in the work program but urgently needed to prevent accidents, losses, and unnecessary delays and expenses.
- e. **Exportation** – means the act of sending or transmitting machinery, equipment, materials, and spare parts from the Philippines to a foreign territory and covered by a DFIC under a temporary importation, or permanent importation which is subject to repairs and/or regular maintenance.
- f. **Importation** – means the act of bringing in machinery, equipment, materials, spare parts which are Actually, Directly, Exclusively Used for RE operations from a foreign territory into the Philippine jurisdiction, with intent to land.
- g. **Machinery, Equipment, Materials and Spare Parts** – means capital equipment, major components thereof, non-perishable tools, machines and other mechanical, chemical and or electrical apparatus, including control and communication equipment, whether fixed or movable; usual components of machinery and/or equipment which are subject to wear and tear arising from normal use, utilization and operation; and matters which are intended to be used in the creation of a mechanical structure, needed in RE operations.
- h. **RE Developer/Operator** – means an individual or judicial entity created, registered and/or authorized to operate in the Philippines in accordance with existing Philippine Laws and engage in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities. It shall include existing entities engaged in the exploration, development, and/or utilization of RE resources, or the generation of electricity from RE resources, or both.
- i. **RE Operation** – means engaging in the exploration, development, utilization, distribution and conservation of RE resources and actual operation of RE systems/facilities, and all other operations incidental thereto conducted within the Philippines.
- j. **RE Service (Operating) Contract** – means the service agreement between the Government, through the DOE, and RE Developer/Operator over a period in which the RE Developer/Operator has the exclusive right to a particular RE area for exploration and development. The RE Contract shall be divided into two (2) stages: the pre-development stage and the development/commercial stage. The primary assessment and feasibility study up to financial closing shall refer to the pre-development stage. The construction and installation of facilities up to operation phase shall refer to the development stage.

- k. **RE Resources** – means energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time. These include, among others, biomass, solar, wind, geothermal, ocean energy, and hydropower conforming to internationally accepted norms and standards on dams, and other emerging renewable energy technologies.
- l. **Technical Obsolescence** – means the design or specification of the asset no longer fulfills the function for which it was originally designed and/or the machinery, equipment, materials and spare parts covered by DFIC has diminished in value caused by changes in technical and new inventions rendering it less desirable in the industry, including a decline in value due to improved alternatives becoming available that are more cost effective, as may be verified and approved by the DOE.

SECTION 3. CONDITIONS FOR THE EVALUATION OF APPLICATION FOR DUTY-FREE IMPORTATION OF RE MACHINERY, EQUIPMENT, MATERIALS AND SPARE PARTS

- A. **Duty-Free Importation of RE Machinery, Equipment, Materials and Spare Parts.** Pursuant to Sections 15 (b) of RA No. 9513, within the first ten (10) years upon the issuance of a certification of Registration to an RE Developer/Operator, the importation of RE machinery, equipment, materials and spare parts, including control and communication equipment, shall be exempt from tariff duties provided the following conditions are met:
 - 1. The RE machinery, equipment, materials and spare parts are not manufactured domestically in reasonable quantity and quality at competitive prices;
 - 2. The RE machinery and equipment are directly and actually needed and will be used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use;
 - 3. The importation of materials and spare parts shall be restricted only to component materials and parts for the specific machinery and/or equipment authorized to be imported;
 - 4. The kind of capital machinery and equipment to be imported must be in accordance with the approved work and financial program of the RE facilities; and
 - 5. The RE machinery, equipment, materials, spare parts are covered by shipping documents in the name of the duly registered RE Developer/Operator to whom the shipment will be directly delivered by customs authorities.
- B. **Duty-Free Importation of Components, Parts, and Materials.** Pursuant to Section 21 (a) of RA No. 9513, all shipments necessary for the manufacture and/or fabrication of RE equipment and components shall be exempted from importation tariff and duties and value added tax: Provided, that the said components, parts and materials are:
 - 1. Not manufactured domestically in reasonable quantity and quality at competitive prices;

2. Directly and actually needed and shall be used exclusively in the manufacture/fabrication of RE equipment; and
3. Covered by shipping documents in the name of the duly registered manufacturer/fabricator to whom the shipment will be directly delivered by customs authorities:

Prior approval of the DOE should be obtained before the importation of such components, parts and materials.

SECTION 4. SALE OR DISPOSITION OF CAPITAL EQUIPMENT. Any sale, transfer, assignment, donation, or other modes of disposition of originally imported capital equipment/machinery including material and spare parts, brought into the RE facilities of the RE Developer/Operator which availed of duty-free importation within ten (10) years from date of importation shall require prior endorsement of the DOE. Such endorsement shall be granted only if any of the following conditions is present:

1. If made to another RE Developer/Operator enjoying tax and duty exemption on imported capital equipment;
2. If made to a non-RE Developer/Operator, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;
3. Exportation of the used capital machinery, equipment materials and spare parts or source of documents or those required for RE Developer/Operator; or
4. For reasons of proven technical obsolescence as may be determined by the DOE.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties.

SECTION 5. EMERGENCY IMPORTATION. In case of emergency importation, the Applicant shall submit a written request showing the necessity of the emergency importation, subject to the conditions for regular importation under Section 3 (A) hereof.

In addition, the Applicant shall post a good and sufficient bond in favor of the Bureau of Customs (BoC) in an amount not less than the stated amount of duty and tax from which the Emergency Importation is being expected. It shall be the principal condition of the bond that the Applicant shall submit to the BoC within thirty (30) days from the withdrawal of the emergency importation from customs custody, the appropriate BoC required documents qualifying the Applicant to undertake the importation on a tax-exempt basis.

Failure of the Applicant to comply with the BoC required documents within prescribed period shall cause the automatic cancellation of the bond in favor of the BoC without recourse to a suit in law.

SECTION 6. EXPORTATION. The DOE shall allow the exportation of machinery, equipment, materials and spare parts when the following conditions exist:

1. The importation is only temporary importation as indicated in the application and the duly issued DFIC by the DOE; and
2. The machinery, equipment, materials and spare parts are to be exported for repair and/or maintenance, as approved by the DOE.

In case of exportation without prior approval of the DOE, the applicant shall be liable to pay twice the amount of duties which are originally waived in its favor.

SECTION 7. DISPOSAL. The DOE shall allow and approve the disposal without duties if made to:

1. Another existing RE Developer/Operator under a valid RE Service (Operating) Contract;
2. For reasons of technical obsolescence as may be verified by the DOE; or
3. For purpose of replacement to improve and/or expand operation under the RE Service (Operating) Contract.

RE Developers/Operators are not allowed to dispose machinery, equipment, materials and spare parts which are imported under this Circular without prior approval of the DOE, and payments of duties thereon, if applicable.

In case the RE Developer/Operator disposes the machinery, equipment, materials and spare parts without prior approval from the DOE, it shall pay twice the amount of the duties thereon. Provided, that the RE Developer/Operator may be allowed to donate the machinery, equipment, materials and spare parts subject to the foregoing rules on disposal and only on the following additional conditions:

- a. It will involve used office equipment; or
- b. The recipient or beneficiary is a government entity.

For fully cost-recovered machinery, equipment, materials and spare parts imported under this Circular, as provided for under the respective RE Service (Operating) Contract, the DOE reserves the right to send its duty authorized representatives for the purpose of verifying conditions of the machinery, equipment, materials and spare parts prior to approval of the disposal and/or donation.

SECTION 8. PROCEDURES FOR THE ISSUANCE OF DUTY-FREE IMPORTATION CERTIFICATE (DFIC). The Applicant shall comply with the following rules and regulations on the application, evaluation, endorsement, approval, recording and reporting for importation, exportation and disposal of machinery, equipment, spare parts and materials under this Circular.

1. The Applicant shall file four (4) sets of a completely filed-out Application Form attached hereto as **Annex "A"** and sworn to by a duly authorized officer of the Applicant before a Notary Public.

The application shall cover only one (1) complete shipment and/or transaction.

In the Application Form, the Applicant shall submit proof or declare under oath, that the machinery, equipment, materials, and spare parts of comparable price

and quality are not manufactured in the Philippines, and directly and actually needed and will be used exclusively in the RE facilities for the transformation and delivery of energy to the point of use.

The Applicant shall attach shipping documents of the imported machinery, equipment, spare parts and materials, in the name RE Developer/Operator to whom the shipment will be directly delivered by the customs authorities.

The applicant shall submit the following documentary requirements;

1. Board of Investment (BOI) Certificate of Registration;
 2. Pro-forma Invoice;
 3. Computation of Estimated Duties to be waived; and
 4. Other relevant documents that the DOE may reasonably require.
2. The DFIC application shall be filed at least thirty (30) calendar days prior to the actual Importation.
 3. The Applicant shall file the application, together with the documentary requirements, with the Records Management Division (RMD) of the DOE.
 4. The RMD shall endorse, within one (1) day upon receipt, the application and documentary requirements to the Renewable Energy Management Bureau-Office of the Director (REMB-OD).

Within one (1) day upon receipt, the REMB-OD shall endorse the application to the concerned Division.

The concerned Division of REMB shall determine, within one (1) day upon receipt, the completeness of the documentary requirements, and issue Order of Payment to the Applicant for the payment of the processing fee with the Treasury Division, in accordance with the DOE Schedule of Fees and Charges.

For incomplete application, the concerned Division shall notify the Applicant to submit the lacking documentary requirements within three (3) working days upon receipt of notice.

5. After payment of the processing fee, the Applicant shall provide copy of the Official Receipt (OR) issued by the Treasury Division to the concerned Division in order to commence the three (3) working days technical evaluation and subsequent approval by REMB Director.
6. Within three (3) working days from receipt of the technical evaluation by REMB, the Legal Services (LS) shall review and evaluate the DFIC application.

Should the LS find the Application in order, it shall endorse to the Offices of the Undersecretary and Assistant Secretary the Application with a Memorandum, attached with a duly-prepared DFIC, seeking approval and clearance for the REMB Director to sign and issue the DFIC. Within five (5) working days upon receipt of the Memorandum, attached with a duly-prepared DFIC, the Offices of

the Undersecretary and Assistant Secretary may either approve or disapprove the same.

Should the Offices of the Undersecretary and Assistant Secretary give their approval and clearance thereof, the REMB Director, within two (2) working days therefrom, shall sign the duly-prepared DFIC.

For DFIC applications concerning capital equipment, e.g. heavy equipment, special use equipment, fuel, etc. shall be coursed through and approved by the DOE Secretary.

7. Within two (2) working days thereafter, the approved and signed DFIC shall be endorsed to the RMD for dry seal, and will be released to the Applicant by the concerned Division. Any DFIC not bearing the said seal shall not be considered as valid.
8. In case the application is disapproved in any stage hereof, the REMB shall immediately inform the Applicant in writing, stating the cause and/or reason for the disapproval.
9. In case of sale of machinery, equipment, materials and spare parts under Section 4 hereof, the Applicant shall submit to the DOE documents evidencing the consummation of such sale, including the proper reporting or remittance of gain, as may be applicable.

In addition, the application for the sale of machinery, equipment, materials and spare parts under this Circular shall be endorsed to the Renewable Energy Resources Compliance Division of the Financial Services for review on the validated costs and related depreciation/amount cost recovered. Thereafter, the application shall then be forwarded to the REMB-OD.

10. For Emergency Importations, the Applicant shall submit, in addition to the foregoing requirements, a written request showing the necessity of the Emergency Importation, the urgency and the expected or actual date of arrival of the machinery, equipment, spare parts and/or materials and proof of the posting of a good and sufficient bond in favor of the Bureau of Customs (BOC), in an amount not less than the stated amount of duty and tax from, which the Emergency Importation is being exempted.

SECTION 9. POST IMPORTATION REQUIREMENTS. All Applicants shall comply with the following post importation requirements.

1. Within thirty (30) calendar days following the release of the importation from BoC custody, the Applicant shall submit to the DOE copies of the official documents indicating the description, quantity and price of the machinery, equipment, materials and spare parts imported, including the names of the supplier and carrying vessels and other particulars relating to said importation.
2. Within the same period, the Applicant shall advise the DOE in writing of the precise place where the importation has been taken and the actual use thereof.

In case installation is necessary, the same shall be made within one hundred twenty (120) calendar days following the withdrawal of the importation from BoC custody, unless said period is extended by the DOE upon proper request for good cause shown.

SECTION 10. DOE INSPECTION, REPORTORIAL REQUIREMENTS, RECORDING AND DATA BASE. The following rules shall govern the inspection, reporting, recording and data base management of DFICs under this Circular.

1. All Applications under this Circular shall, at any reasonable time, be subject to inspection by the duly authorized staff of the DOE, subject to prior and reasonable notice to the Applicant. The DOE shall have the right of entry or access to any premises to inspect all machinery, equipment, materials and spare parts covered by this Circular.
2. The Applicant shall create a database of data and information on the machinery, equipment, materials and spare parts under this Circular and other related data and shall submit report to the DOE on the summary and status and/or updates of all Applications under this Circular on a semi-annual basis. The DOE may also require the submission of such other information as the DOE may reasonably require under this Circular.
3. The RMD shall prepare and submit a monthly list of approved applications for DFIC to the Mabuhay Lane of the Department of Finance for reconciliation reference. In addition, the RMD shall copy furnish the REMB a copy of such monthly list.
4. The REMB-OD shall keep all records of all the Applications and related documents and shall remain a data base for records and reference purposes.

SECTION 11. POST AUDIT. After the issuance of DFIC, the DOE, through the Financial Services Compliance Division, shall conduct post audit in accordance with the Accounting Procedures set forth in the Applicant's Service (Operating) Contract to determine the Applicant's compliance with all the provisions of this Circular, during reasonable hours and without causing disruption, subject to fifteen (15) calendar days prior written notice to the Applicant.

SECTION 12. PROHIBITED ACTS, ADMINISTRATIVE FINES AND PENALTIES. Subject to the requirements and procedures before the Department Order No. DO2012-07-004 or the "*Rules of Practice and Procedures before the Department of Energy*", and pursuant to Section 36 of RA No. 9513, any person who wilfully commits the following prohibited acts shall be imposed with the penalties provided therein:

1. Falsification or tampering of public documents or official records to avail of the incentives provided in this Circular; and/or
2. Non-compliance with any or all the provisions of this Circular.

Any person who wilfully aids or abets the commission of any of the foregoing prohibited acts or who causes the commission of any such act by another shall be liable in the same manner as the principal.

SECTION 13. SEPARABILITY CLAUSE. If for any reasons, any provision of this Circular is declared unconstitutional or invalid, such part not affected shall remain in full force and effect.

SECTION 14. REPEALING CLAUSE. Any circulars, orders, letters of instruction or issuances contrary to or inconsistent with this Circular are hereby repealed, modified, or amended accordingly.

SECTION 15. EFFECTIVITY. This Circular shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation and its filing with the National Administrative Registrar of the University of the Philippines Law Center.

Issued at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

ALFONSO G. CUSI
Secretary