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PRESCRIBING GUIDELINES FOR THE DISPOSITION OF PRODUCTS SEIZED AND FORFEITED, AS WELL AS THOSE BOUGHT BY DTI AGENTS OR SUBMITTED TO DTI BY PRIVATE PARTIES AS EVIDENCE

BTRCR DEPARTMENT ORDER NO. 17, April 30, 1991

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Pursuant to Section 9 of Executive Order No. 913, Series of 1983, the following guidelines for the disposition of seized and forfeited products as well as those bought by DTI agents or submitted to DTI by private parties as evidence are hereby prescribed and promulgated for the compliance and guidance of all concerned:

SECTION 1. Whenever in the opinion of the Regional/Provincial Director any product covered by this Order will adversely affect health or safety he shall endorse the same to the concerned government agency for examination and technical evaluation. If the same is found to be unfit or a menace to the public health or safety, the Director shall forthwith order its destruction in accordance with Section 2 hereof.

SECTION 2. Seized products which adversely affect health or safety shall be destroyed/condemned in the presence of representatives of the apprehending unit and the Commission on Audit. A certification shall be issued by all present regarding such destruction/condemnation. The place, date, and time of disposition shall be determined by the concerned Regional/Provincial Director. Notice of the same shall be given to all interested parties.

SECTION 3. Seized products or goods which do not adversely affect health or safety shall be disposed of IN ONE OR MORE OF THE FOLLOWING MODES, by the Regional/Provincial Director:

a. Sale at Public Auction — The Regional/Provincial Director or his duly authorized representative shall cause a list and particular description of the products/goods covered by this order to be prepared and an appraisal of the same at its wholesale quantities by his representative and that of the Commission on Audit. In cases where technical knowledge is needed to determine the value thereof, both shall be assisted by persons with the required knowledge and training or any agency of the Department in ascertaining the actual value of the same. The price set shall be considered the floor price or the starting bid price.

Procedure – Notice of Sale

(a) Where the value of the goods does not exceed P50,000.00, notice shall be posted conspicuously in public place for at least seven (7) days in the Regional/Provincial Office and in Provincial Capital Municipality/City Hall of the place where the seizure was made.

(b) Where the value of the goods exceeds P50,000.00, notice shall be published in a newspaper of general or local circulation.

Notice of Sale shall indicate the date, time and place of sale as well as a description of the goods for sale. The same shall be accompanied with statement that the DTI reserves the right to reject any or all bids, as well as to waive any defect or informality in such bids, and accept such bids as may be considered most advantageous to the department.

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All bids must be placed in sealed envelope addressed and submitted to the regional or provincial office as the case may be.

The one who offers the highest bid shall be considered the winner. In case of a tie, a re-bidding, following the same procedure, shall be held.

The proceeds of the sale shall be deposited with the National Treasury through the Cashier's Office of the Regional/Provincial Office.

a. 1 Sale through negotiation — This mode may be resorted to and undertaken by a committee which shall be composed of the Provincial Director as Chairman, and a representative of the Commission on Audit and the Financial Management Service in any of the following cases:

a.1.1

There was failure of public auction. There is "failure of public auction" in any of the following instances:

a.1.1.1 If there is only one offeror. In this case, the offer or bid, if sealed, shall not be opened.

a.1.1.2 If all the offers/tenders are non-complying or unacceptable. A tender is non-complying or unacceptable when it does not comply with the prescribed legal, technical and financial requirements for prequalification.

a.1.2

The negotiation may be conducted singly, i.e., on a one-on-one basis, or in a group, provided that due communication between the offerors and the Regional/Provincial Office is established with a view to ensuring that the government gets the best price and that a member of the private sector preferably the People's Economic Council (PEC) witnesses this negotiation.

a.1.3

To avert possible collusion among unscrupulous parties, a record of the proceedings of the negotiation must be maintained.

a.1.4

It is understood that the price agreed upon at the negotiation shall not be lower than the floor price as fixed by the government or the highest offer submitted at the failed public auction whichever is higher.

b. Donation to Government Agencies/Local Government Units Including Barangays: Priority shall be given to those located in areas declared to be under a state of calamity occasioned by natural or man-made disasters.

c. Donation to Charitable or Relief Institutions: The charitable or relief institutions must be duly registered with

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the Department of Social Services and Development.

Donations made pursuant to letters c and d above shall be photographed in group and duly receipted by the donees.

d. Exportation: Where the products are imported, the same may be ordered returned to the country of origin. The costs of exportation shall be borne by the respondent in the pertinent administrative case.

e. Recycling: Where the products can be recycled at reasonable cost, the same may be ordered and disposed of in the manner provided in this Section.

f. Other modes may be determined or authorized by the Secretary or his duly authorized representatives.

In case of donations of counterfeit products, the infringing trademarks and tradenames found on labels, hang tags, or other portions of the counterfeit items shall first be removed to prevent association of the counterfeit items with the intellectual property owner. If removal is not practicable, said marks and names shall be defaced.

SECTION 4. The disposition of products bought by DTI agents as evidence, and products abandoned as provided hereunder, shall be done in accordance with the provisions of Section 1, 2, and 3 hereof.

Products owned by private parties and submitted to the DTI as evidence which are not claimed by the owner thereof within four (4) months from the time the administrative case becomes executory shall be considered abandoned in favor of the Regional/Provincial Office and the latter may therefore dispose of the same without need of notice to the owner.

SECTION 5. The disposition of counterfeit and substandard products shall be done in accordance with the provisions of Section 1, 2, and 3 hereof provided that the same shall not be sold in any manner that DTI will not acquire the reputation of being a seller of counterfeit/substandard products.

SECTION 6. The disposition of seized products shall be made by only when the decision in the administrative case expressly states that same are forfeited in favor of the Government, and that the Decision has become final and executory. Nevertheless, if the products are perishable and there is no easy and inexpensive way to preserve the same until the termination of the said proceedings, the Regional/Provincial Director may order the ordinary sale thereof within 60 days from date of seizure. Notice shall be given to all interested parties at least seven (7) days prior to the sale. However, in the event that the respondent files within two days from notice, a written objection to the disposition of the said perishable products and pays for the expenses of preservation thereof, no such disposition shall be made. Regardless of the outcome of the administrative proceedings, all expenses for the preservation of the perishable products shall be for the account of the respondent.

SECTION 7. Notwithstanding the provisions of the preceding Section, in the case of products seized in the enforcement of laws and rules on price control, profiteering, hoarding, and price manipulation, and allied laws and rules, the Regional/Provincial Director shall in highly exceptional cases where there is declaration of calamity or acute shortage in the supply of said products, have the discretion to order the ordinary sale thereof immediately upon seizure to the consuming public at legal prices, through retailer/s, under such terms and conditions as he may determine. The proceeds thereof less expenses of the sale, shall be held in trust by the Cashier of the Regional/Provincial Office until the termination of the administrative proceedings. In the event the respondent is found not to have violated the said laws, the proceeds shall be given to the respondent. Otherwise, the proceeds of the sale shall be forfeited in favor of the Government.

SECTION 8. In the disposition or products covered by these guidelines, the same shall be done in the presence of a representative from the Commission on Audit who shall witness the proceedings and sign the report together

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with the members of the Enforcement Team.

SECTION 9. For the purpose of improving the accounting for seized products, all Apprehending Officers shall issue a receipt for every seizure/confiscation that they make regardless of the articles or the amounts involved. The receipt shall be signed by the members of the Enforcement Team and the owner of the establishment or his representative. In the event that the latter refuses to sign, such refusal shall be duly noted and signed by the Team Members. The receipt shall be accomplished in five (5) copies to be distributed as follows:

Original

- to the owner of the articles seized. In his absence to the occupant of the premises or person in charge thereof, and if still none, then the original should be posted in the premises where the articles were seized.

Duplicate

- to the Regional/Provincial Director.

Triplicate

- to the Auditor or his representative.

Quadruplicate

- to the receiving officer (in charge of storage).

Quintuplicate

- to be kept by the Apprehending Officer.

The distribution of the copies shall be made within 24 hours after the seizure has been made.

SECTION 10. To facilitate recording and reporting of all monies realized from the sale or disposition of seized products, the following accounts are set up, namely:

8-72-500 Inventories — Goods/Merchandise confiscated

8-86-500 Miscellaneous Liabilities and Deferred Credit Goods

Sub-Account 1-58-200 - Miscellaneous Income — Sale of Goods/Merchandise Confiscated

SECTION 11. The Regional/Provincial Director shall designate one of his employees to act as Custodian for seized/confiscated products as well as those used/submitted to DTI as evidence. The Custodian shall have the following duties and responsibilities:

- Preserve and safekeep of the aforementioned products;

- Record the value of all products, seized/confiscated as well as those bought by DTI agents and used as evidence and those submitted to DTI as evidence by private parties;

- To record the return of the products to the rightful owners;

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- To record the sale, donation, exportation, recycling, etc. of products seized/confiscated or used as evidence.

SECTION 12. The Regional/Provincial Office concerned shall submit to the Commission on Audit a monthly report of all products acquired by them through seizure/confiscation. The report shall contain among others the following information: (a) description of the products; (b) quantity; (c) estimated value; (d) date, place, and mode of acquisition; and (e) location or where stored. Dispositions of products made during the month shall also be indicated. The inventory report should be submitted within ten (10) days of the following month.

SECTION 13. The disposition of products ordered seized and/or forfeited by the Office of Legal Affairs in an administrative case elevated by DTI-NCR to OLA, shall be disposed of by the DTI-NCR.

SECTION 14. In the disposition of products under this Department Order, all concerned shall follow applicable accounting and auditing rules and regulations.

SECTION 15. This Department Order does not cover seized and forfeited real properties. They shall be disposed of in accordance with existing laws and rules.

SECTION 16. All existing orders and directives or parts thereof inconsistent with the provisions hereof are hereby modified or revoked accordingly.

SECTION 17. These rules and regulations shall become effective fifteen (15) days after its publication in two (2) newspapers of general circulation.

Adopted: 30 Apr. 1991

(SGD.) PETER D. GARRUCHO
Acting Secretary

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