

Terminal Report

Simplified and Harmonized Forestry Regulatory Procedures

With funding support from The EcoGovernance Program-USAID

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ANNEX E FOREST LAW ENFORCEMENT and DUE DILIGENCE MECHANISM

FORESTRY DEVELOPMENT CENTER

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TABLE OF CONTENTS

1.0 FOREST LAW ENFORCEMENT

| | | |
|-------|---|--------|
| 1.1 | Introduction | E.1-1 |
| 1.2 | Definition of Terms | E.1-1 |
| 1.3 | Institutional Framework for Forest Law Enforcement | E.1-3 |
| 1.4 | Forestry Offenses | |
| 1.4.1 | Common Forestry Offenses Under PD 705 as Amended | E.1-4 |
| 1.4.2 | Offenses Under RA 7586 (NIPAS Law) | E.1-4 |
| 1.4.3 | Offenses Under RA 9175 (Chainsaw Act of 2002) | E.1-4 |
| 1.5 | Administrative Apprehension, Seizure, and Confiscation | |
| 1.5.1 | Apprehension | E.1-6 |
| 1.5.2 | Procedure for Administrative Apprehension and Seizure | E.1-8 |
| 1.5.3 | Procedure for Summary Administrative Confiscation | |
| | A. Forest products | E.1-9 |
| | B. Abandoned Illegal Forest Products | E.1-10 |
| 1.6 | Judicial Prosecution of Offenses for Violation of Forestry Laws | |
| 1.6.1 | Jurisdiction of Court to Try Offense | E.1-11 |
| 1.6.2 | Institution of Criminal Action | E.1-13 |
| | A. Complaint or Information | E.1-13 |
| | B. Preliminary Investigation | E.1-15 |
| | C. Arrest | E.1-16 |
| | D. Arraignment and Plea | E.1-18 |
| | E. Pre-Trial Conference | E.1-18 |
| | F. Trial | E.1-19 |
| | G. Judgment | E.1-19 |
| 1.7 | Systems of Penalties | |
| 1.7.1 | Imposable Penalties | E.1-21 |
| 1.8 | Disposition | |
| 1.8.1 | Disposition of Items Confiscated in Favor of the Government | E.1-22 |
| 1.8.2 | Modes of Disposition | E.1-22 |
| 1.8.3 | Expenses for Transfer, Safekeeping, Maintenance and Delivery | E.1-26 |
| 1.8.4 | Remittance of Proceeds of Sales | E.1-26 |

| | | |
|-------|--------------------------|--------|
| 1.8.5 | Reportorial Requirements | E.1-26 |
|-------|--------------------------|--------|

2.0 DUE DILIGENCE MECHANISM

| | | |
|-----|---|--------|
| 2.1 | Introduction | E.1-28 |
| 2.2 | Elements of Due Diligence Mechanism | E.1-28 |
| 2.3 | Operational Definitions | E.1-29 |
| 2.4 | Checklist of Items to Consider in the Exercise of Due Diligence | E.1-30 |
| 2.5 | Code of Conduct of Good Environmental Governance | E.1-31 |
| 2.6 | Institutionalization of Due Diligence Mechanism | E.1-32 |
| 2.7 | Implementation | E.1-32 |
| 2.8 | Monitoring and Evaluation | E.1-33 |
| 2.9 | Conclusion | E.1-33 |

| | |
|-------------------|---------------|
| REFERENCES | E.1-34 |
|-------------------|---------------|

MANUAL ON FOREST LAW ENFORCEMENT
AND DUE DILIGENCE MECHANISM

**With Draft Department Administrative Order on
New Rules and Regulations on Forest Law Enforcement**

Simplified and Harmonized Forestry Regulatory Procedures
With funding support from The EcoGovernance Program-USAID
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29 February 2004

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1.0 FOREST LAW ENFORCEMENT SYSTEM

1.1 Introduction

The crafting of forestry laws, decrees, acts, rules, regulations and other related issuances needs the expertise and wisdom of specialized professionals such as foresters, lawyers, environmentalists, and sociologists, among other personages. But it also requires a professional who can verbalize these in the simplest, easily understood language, sans the embellishments that only serve to muddle their more salient and substantial points, without losing their technical essence nor their exigency. By nature, these fiats/edicts are often replete with legalese that their format and verbal presentation requires counsel to interpret them in layman's terms. To the ordinary person, fiats are heavy reading that borders to confusion, not to mention exasperation, and eventually, to misinterpretation. When this happens, whatever noble contents and intents these fiats have, are lost in the legalistic statements negating the very purpose these are created in the first place.

Fiats are crafted to be implemented successfully on the ground. Therefore, the first step to make these achieve their purpose is to design them in such a way that they are user-friendly, meaning, whoever are their intended audience/users, these users can understand and interpret them accordingly, and to take appropriate action in the performance of their official duties and responsibilities, even without the assistance of lawyers/legal officers. What is ideal then, is simplified and harmonized version of these.

Thus, this manual.

1.2 Definition of Terms

- Apprehension - to lay hold of forest products , tools and equipment, implements and conveyance, whether in transit or stationary for the purpose of inspection.
- Arraignment - stage in prosecution whereby a complaint or information is read to the accused in a language or dialect known and understandable to him and asking whether he pleads guilty or not to the accusation filed against him.
- Arrest - is the taking of a person into custody in order that he may be bound to answer for the commission of an offense (Sec.1, Rule 113, Revised Rules of Criminal Procedure
- Complaint - is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.

| | |
|---------------------------|---|
| Confiscation | - the act of appropriating seized forest products and conveyances by the government after judgment duly issued by the proper authority, either administrative or judicial that the said property is illegal or has been used in the cutting, gathering, collecting and/or possessing and /or transporting illegal forest products. |
| Conveyance | - -any mode or type or class of vehicle or craft or any other means used for transportation either on land, water, air, or any combination thereof whether motorized or not, used in the gathering, collecting, transporting and/or possessing of the illegal forest products. |
| Department | - refers to the Department of Environment and Natural Resources. |
| Forest officers | - officials and employees of the DENR charged with the enforcement of forestry laws, rules and regulations of the Philippines. |
| Forest products | - refers to timber including lumber, pulpwood, firewood, bark, tree top, resin, gum, wood, oil , honey, beeswax, nipa, rattan, charcoal, or other forest growth, such as but not limited to grass, shrub, flowering plants in forest lands and others. |
| Forfeiture | - the loss of rights in a transaction involving property. |
| Information | - is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. |
| Inquest | - is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under the custody and correspondingly charged in court. |
| Judgment | - is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him by the proper penalty and civil liability, if any. It must be written in the official language, form personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based. |
| Preliminary Investigation | - is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. |
| Probable cause | - the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. |
| Secretary | - refers to the Secretary of the Department of Environment and Natural Resources. |
| Seizure | - official act of taking by persons authorized hereby those items subject of apprehension, seizure and confiscation into government custody, pending formal administrative proceedings for the disposition thereof. |

- Wildlife - means wild forms and varieties of flora and fauna, in all developmental stages, including those which are in captivity or are being bred or propagated.

1.3. Institutional Framework for Forest Law Enforcement

- 1.3.1. Department of Environment and Natural Resources (DENR) – under Executive Order No. 292, this is the primary government agency responsible for the enforcement of natural resources and environmental laws, rules and regulations. It has three levels of field offices which directly enforce these natural resources and environmental laws, rules, and regulations, namely: regional, provincial, and community environment and natural resources offices.
- 1.3.2. Local Government Units (LGUs) – under the Local Government Code of 1991, one of the devolved functions to provinces and cities is the enforcement of forestry laws limited to community-based forestry projects, pollution control law, small-scale mining law, and other laws on the protection of the environment. Aside from these devolved functions, the law also opened the avenue of joint sharing of responsibilities between the national government and the LGUs on the protection of the environment.
- At the individual level, local government officials have been deputized by the DENR as environment and natural resources officers with specific functions pertaining to forest law enforcement.
- 1.3.3. Other Government Agencies (OGAs) – these refer to government agencies that exercise control and supervision over portions of the public forest. It is incidental to their mandate over these forest lands to enforce existing laws, rules and regulations covering forests, environment, and natural resources. Academic and R & D institutions with land grants and forest reservations are also responsible in protecting the natural resources inside these land grants and forest reservations. The prosecution arm of the government, the Department of Justice is also involved during the preliminary investigation and prosecution of the offender.
- 1.3.4. Civil Society – this consists of groups or organizations involved in the enforcement of natural resources and environmental laws in their private capacities and only on a limited basis. Experience shows that civil society groups and organizations are usually active on surveillance, apprehensions, data gathering, and monitoring and evaluation of cases filed in court or other tribunals.
- 1.3.5. Multi-sectoral Bodies – these are bodies created by law whose functions include the enforcement of natural resources and environmental laws, rules and regulations. Examples are the Protected Areas Management Boards (PAMBs) and Multi-Sectoral Forest Protection Councils.
- 1.3.6. Law Enforcement Agencies – these include the Philippine National Police (PNP), National Bureau of Investigation (NBI), Philippine Coast Guard (PCG), Armed Forces of the Philippines (AFP), Task Force on Anti-illegal logging, PNP-Maritime Command, Philippine Navy, which are mandated to enforce all laws including natural resources and environmental laws, rules and regulations.
- 1.3.7. The Judiciary – the judiciary, represented by the courts, plays a critical role in the enforcement of natural resources and environmental laws, rules and regulations. The

courts try the complaints/informations filed before them and render decision finding the accused guilty or not guilty.

1.4. Forestry Offenses

1.4.1 Common forestry offenses under PD 705 as amended

1. Cutting, gathering and/or collecting timber or other forest products without license or possession of timber or other forest products without legal document (illegal logging).
2. Unlawful occupation or destruction of forest lands and grazing lands (kaingin making).
3. Pasturing livestock without authority in forest lands, grazing lands and undisposed A & D lands.
4. Illegal occupation of national parks systems and recreation areas and vandalism therein.
5. Destruction of wildlife resources.
6. Unlawful possession of implements and devices used by forest officers.
7. Failure or refusal to pay, collect or remit forest charges.
8. Sale of wood products without compliance to grading rules and standards.
9. Survey by unauthorized person.
10. Misclassification and survey by government official or employee.
11. Coercion and influence.
12. Unlawful possession of implements and devices used by forest officers.
13. Tax declaration on real property.

1.4.2. Offenses under RA 7586 (NIPAS Law)

1. Hunting, destroying, disturbing, or mere possession of any plants/animals or products without a permit.
2. Dumping of any waste products detrimental to the protected area or to the plants/animals/inhabitants therein.
3. Use of any motorized equipment without a permit.
4. Mutilating, defacing or destroying objects of natural beauty/objects of interest to cultural communities (of scenic value).
5. Damaging/leaving roads and trails in a damaged condition, squatting, mineral locating, or otherwise, occupying any land.
6. Constructing/maintaining any kind of structure, fence or enclosures, conducting any business enterprise without permit.
7. Leaving unexposed/unsanitary conditions refuse or debris, or depositing in ground or in bodies of water.
8. Altering/removing/destroying or defacing boundary marks/signs.

1.4.3. Offenses under RA 9175 (Chainsaw Act of 2002)

1. Selling, purchasing, reselling, transferring, distributing or processing a chainsaw without a permit.
2. Unlawful importation or manufacturing of chainsaws.
3. Tampering of engine serial number.
4. Actual unlawful use of chainsaw. Any person found to be in possession of chainsaw and uses the same to cut trees and timber in forestland or elsewhere except as authorized by the Department.
5. Public official or employee found to be in actual unlawful use of chainsaw.

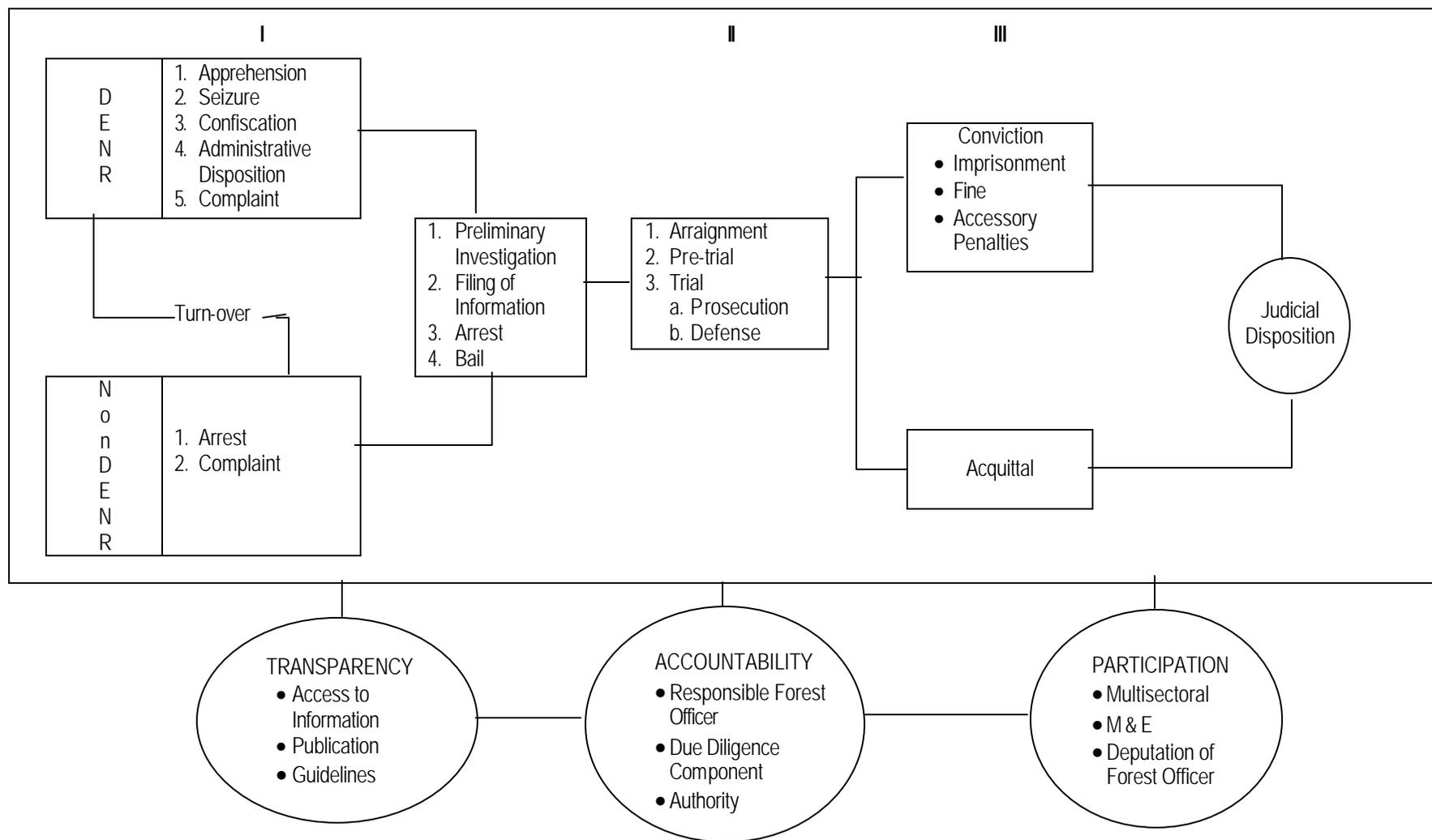


Figure 1. Forest Law Enforcement System

1.5. Administrative Apprehension, Seizure, and Confiscation

1.5.1. Apprehension

Apprehension is to lay hold of forest products, tools and equipment, implements and conveyances whether in transit or stationary for the purpose of inspection.

Persons authorized to make apprehensions:

- Forest officers
- Deputies (i.e. other government officials and private citizens duly deputized by the DENR Secretary or his duly authorized representative)
- Members of law enforcement agencies
- Private citizens as provided by law (Sec. 3, DAO 97-32)

Persons Authorized to Effect Seizure

- Community Environment and Natural Resources Officer (CENRO) or in his absence any DENR officer with the rank of Forester 3 or Land Management Officer 3 (LMO) actually assigned to the area of apprehension at the time thereof and,
- The Team Leader of the apprehending team.
- Protected Area Superintendent (PASU) (DAO 2000-45).
- The Secretary may from time to time also designate in writing such other DENR Officers for the purpose.

Items Subject to Apprehension and Seizure

- a. Forest products illegally cut, gathered, removed or possessed or abandoned (EO 277).
- b. Any forest products removed, cut, collected, processed and/or transported without the requisite authorization or permit; or with incomplete required supporting documents; with genuine authorization or permit and/or supporting documentation that has an expired validity, has been cancelled or that containing forged entries; or with spurious (fake) authorization, permit and/or supporting documentation. (Sec 2, DAO 97-32)
- c. Machinery, equipment, tools and implements used in the possession, gathering, collecting, processing and/or transporting of illegal forest products. (Sec 2, DAO 97-32)
- d. Conveyance – any mode or type or class of vehicle or craft or any other means used for transportation either in land, water, air, or any combination thereof whether motorized or not, used for or in taking and/or maintaining temporary or permanent possession or control, gathering, collecting, processing, disposing of, or otherwise transporting, moving or transferring illegal forest products. (Sec. 2, DAO 97-32).
- e. Wildlife illegally collected, gathered, acquired, transported or imported (DAO 91-36).

Documents required for the transport or shipment of forest products

1. For logs/timber: Original Certificate of Transport Origin (CTO); together with the tally sheet corresponding thereto;
2. For lumber: Original Certificate of Lumber Origin (CLO), together with the sales invoice, in case of lumber sales, and the tally sheet;
3. For non-timber forest products: Original Certificate of Non-timber Forest Products Origin (CNFPO), together with the delivery receipt. (Sec. 4, DAO 7,S-1994)

4. No Certificate of Origin shall be required in the following instances:
 - a. Logs/timber being transported from the licensee's/permittee's cutting area to its wood processing plant or main log storage area, provided that such facilities are located within the province of source; provided further that in cases where the wood processing plant is located outside the province, the transport/shipment thereof may be allowed, subject to prior approval by the RED(s) concerned. Such approval shall be in the form of a special authority issued by the RED for a period not exceeding one year, subject to the following conditions; that the conveyance(s) is/are company owned; that the delivery route is the normal route in the delivery of logs to the log pond or log yard of the firm's wood processing plant; and listing of the type and serial/plate number of the vehicle(s) authorized for the purpose.
 - b. Transport/shipment of finished, semi-finished, or knocked-down forest products, provided that these are accompanied by a delivery receipt or sales invoice, together with the tally sheets;
 - c. Lumber and lumber products transported from source to buyer/end-user within the confines of the province or within the Greater Manila area, provided that the same are covered by the corresponding sales invoice and/or delivery receipt;
 - d. Forest products transhipped from the point of initial unloading to its final point of destination, provided it is accompanied by a Certificate of Transshipment (COT) issued by the CENRO concerned indicating therein the kind, number, volume, and consignee of the shipment as well as the serial number of the Certificate of Origin accompanying the shipment.
 - e. Transport of logs/timber/lumber/other forest products derived from planted trees or non-wood forest products inside private lands, provided that the same is accompanied by a Certificate of Verification issued by a DENR local official at the CENRO level. (Sec. DAO 7, S-1994).

Forest products being shipped/transported without the accompanying original Certificate of Origin or the Special Authority to Transport duly issued by a DENR officer concerned shall be presumed as coming from illegal sources and as such, the forest products, including the conveyance used shall be subject to confiscation and disposition and the offender shall be prosecuted in accordance with PD 705, as amended, and other applicable laws and regulations. (Sec. 12, DAO 7, S-1994).

General rule: Search must be done with a search warrant in accordance with the Philippine Constitution

The right of the people to be able to secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized (Sec 2, Art. III, 1987 Constitution)

What should the officer enforcing the warrant do after seizing properties

1. The officer seizing property under warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in

which he found the seized property (Sec. 11, Rule 126, 2000 Revised Rules of Criminal Procedure)

2. The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath (Sec. 12, 2000 Revised Rules of Criminal Procedure)

1.5.2. Procedure for Administrative Apprehension and Seizure

1. Ocular inspection and cursory investigation - Involves the verification of authorizations, permits and accompanying documentation of forest products (transport documents in their original copies), machinery, equipment, tools and implements and conveyance(s).
2. Inventory and Documentation

If probable cause for apprehension and seizure is present, the apprehending officer shall:

- a. Verbally inform the person(s) apprehended of his findings.
- b. Take the names, addresses and other available data of all persons involved in the cutting, gathering or collecting and/or transporting or possessing the forest products.
- c. Write an itemized list of all on-site machinery, equipment, tools and implements used, if any, in the commission of, or otherwise connected with, the offense.
- d. In case the violation involves the use of a conveyance, the apprehending forest officer shall verify the certificate of registration and/or official receipt as well as the driver's license or similar authorizations. Said documents shall be returned to the holder thereof upon notation of his identity and address as well as the name and address of the owner of the conveyance, its license plate number and other identifying marks or information.
- e. Immediately conduct the scaling or measurement of the apprehended forest products. The assessment thereof shall be based on the gross volume without the benefit of deduction for natural defects. In case the scaling or measurement cannot be completed at the close of regular office hours of the day, assistance shall be secured from the local DENR offices for a sufficient number of scalers to finish the work.
- f. Seize the forest products, machineries, conveyance(s), tools and equipment.

In cases where the apprehension is made by non-DENR personnel, i.e., PC/PNP, Coast guard, and other deputized law enforcers, they shall notify the nearest DENR office and turn over the seized forest products and conveyance to the authorized seizure officer.

In cases where the apprehended conveyance involved is a government vehicle, the procedure above shall be followed and the vehicle shall be immediately released to the highest regional officer of the office who owned the same upon acknowledging that the said conveyance has been used in violation of existing forestry laws, rules and regulations.

3. Issuance of seizure receipt

Upon completion of the foregoing procedure, seizure receipt shall be issued which shall be acknowledged and received by the owner/shipper of the forest products or by his

representative. In case of refusal, the fact shall be reflected thereon in their presence as proof of such action.

4. Preparation of apprehension and seizure reports.

The apprehension and seizure reports shall be prepared and the same, together with all the pertinent documents i.e., tally sheets, seizure receipts, photographs, etc., shall be submitted to the PENRO who shall conduct the confiscation proceedings.

Authority of the Secretary of Environment and Natural Resources

Sec. 68 - A of PD 705 authorizes the Secretary of the DENR or his duly authorized representative to order the confiscation of any forest products illegally cut, gathered, removed, or possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense and to dispose of the same in accordance with pertinent laws, regulations or policies on the matter.

Judicial Confiscation of Forest Products

Under Sec. 68 PD 705, as amended, the Court shall order the confiscation in favor of the government the timber or forest products cut, gathered, collected, removed or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found, but only after the case has been filed, tried and decided upon by the court.

1.5.3. Procedure for Summary Administrative Confiscation

A. Forest Products

1. Immediately after seizure, a notice of hearing shall be signed by the PENRO and to be served by the apprehending officer to the parties concerned. Included therein, an order to parties to submit a written explanation within 3 days from receipt thereof.
2. The concerned parties shall submit their written explanation under oath why the forest product/conveyance should not be confiscated.
3. The PENRO or in his absence, any Senior Forest Management Specialist (SFMS) or Senior Environmental Management Specialist (SEMS) shall preside as hearing officer with the guidance of a DENR lawyer.
4. The procedure shall be summary in nature where the parties are required to submit the necessary documents, affidavits and evidences. However, the hearing officer may ask for clarificatory questions if need be.
5. The hearing officer shall render his decision within a period of 15 days from receipt of the documents, affidavits and evidences.

If there is no substantial evidence sufficient to sustain an administrative decision adverse to interested parties, a ruling shall be issued dismissing the case and ordering the seized items to be returned to the owner.

When evidence so warrants, a ruling shall be issued declaring the seized items to be confiscated in favor of the government, together with recommendations for further prosecution of the persons involved.

6. The decision shall become final and executory upon the lapse of 15 days unless a motion for reconsideration is filed.
7. A party aggrieved by the decision may file only one motion for reconsideration within a non-extendible period of 15 days from receipt of the decision.
8. A party may file an Appeal within a non-extendible period of 15 days from receipt of the denial of the Motion for Reconsideration or receipt of the decision.
9. The appeal should be filed with the Office of the RED if the volume of forest products confiscated is less than 1,000 cu.m. and to the Office of the Secretary if more than 1,000 cu.m. and only upon payment of the corresponding appeal fee. The appeal shall contain a concise statement of all the issues of fact and law raised on appeal.
10. The appeal may be entertained only on any of the following grounds:
 - If there is prima facie evidence of abuse of discretion on the part of the PENRO.
 - If the decision, resolution or order was secured through fraud or coercion, including graft and corruption.
 - If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.
11. The decision of the Secretary shall be final and executory 15 days from receipt thereof, if no motion for reconsideration or appeal to the Office of the President is filed.

B. Abandoned Illegal Forest Products -- the following procedures shall apply in cases where illegal forest products, machinery, equipment and tools, as well as conveyance used are abandoned, or when the owner is unknown, cannot be determined, or cannot otherwise be found.

1. Illegal forest products/conveyances/machinery, equipment, tools and implements shall forthwith be apprehended.

Whenever practicable, photographs of the apprehension site and items seized shall be taken indicating the date, caption and full printed name and signature of the apprehending officer at the back of each photograph.

2. Prepare on-site record of violations, on-site report and issue seizure receipt.

In lieu of seizure receipt, notice of apprehension/seizure shall be left by the apprehending/seizing officer on-site, posted or tacked into the nearest tree, wall or other similar permanent structures.

The notice shall contain the: 1) date, time and place of apprehension, 2) full printed name, designation and signature of apprehending officer, 3) a complete, detailed list of item(s) apprehended, 4) summary statement of violation(s) cited, and 5) the full printed name and office address of the seizure officer to whom said items will be delivered.

3. Hearing Officer shall conduct summary confiscation proceedings.

Notice of hearing shall be posted at least 3 times, once a week for 3 consecutive weeks in at least 3 public places, including, but not limited to a) the barangay hall of the apprehension site, b) bulletin board of the DENR office where proceedings will be conducted, and c) at the municipal hall of the apprehension site.

Should the owner, claimant or any interested party fail to appear at the proceedings, such shall be deemed a waiver of the right to appear and of any/all rights to the items apprehended and seized in favor of the government.

The hearing officer shall state this fact in the records and enter certification that publication of Notice of Hearing had been effected in compliance herewith and thereupon issue his decision based on the evidence at hand.

A motion for reconsideration and/or appeal may be taken by the owner, claimant or any interested party in accordance with Section 7 hereof.

1.6. Judicial Prosecution of Offenses for Violation of Forestry Laws

1.6.1. Jurisdiction of Court to try offense

1. The Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts, shall have jurisdiction over all criminal cases where the penalty imposed is imprisonment not exceeding *prison correccional* or six years, regardless of the amount of fine, the civil liability, or the accessory penalties (RA 7691, Act Expanding Jurisdiction of the METC, MTC, and MCTC).
2. The Regional Trial Courts shall have jurisdiction over all criminal cases where the penalty imposed exceeds *prison correccional* or six years imprisonment regardless of the amount of fine, the civil liability, or the attendant accessory penalties. (RA 7691).
 - a) In cases where the only penalty provided by law is fine, the jurisdiction is determined by BP 129 (Sec. 32 (2) which provides that where the amount of fine does not exceed P4,000, the same shall fall under the jurisdiction of the MTC. In excess of such amount, the RTC.
 - b) However, in cases involving damage to property through criminal negligence, the case shall fall under the exclusive original jurisdiction of the MTC regardless of the amount of fine.

Table 1 shows the different kinds of cases that can be filed, the appropriate agency where to file them, the responsible lawyer or law enforcer to handle the case, the weight of evidence needed and the imposable penalties.

Table 1. Kinds of cases that can be filed.

| Kind of Case | Legal Basis | Who can file suit/case | Responsible Lawyer/Law Enforcer | Where to Lodge/File Case | Weight of Evidence Needed | Penalty/Sanction |
|---------------------|---|--|---|--|-------------------------------|---|
| Criminal Case | Penal law (law that defines crimes, treats of their nature and provides for their punishment) | Filipino people | Public Prosecutor or Fiscal | In court <ul style="list-style-type: none"> • MTC • MCTC • MTCC • RTC depending on weight of evidence | Proof beyond reasonable doubt | <ul style="list-style-type: none"> • Imprisonment • fine • both Imprisonment and fine |
| Civil case | Civil law (law that determines and regulates the private relations of the members of civil society) | Any person, corporation or association affected by the wrong doing of others | Private lawyer | In court <ul style="list-style-type: none"> • MTC • MCTC • MTCC • RTC depending on the amount of damages | Preponderance of evidence | <ul style="list-style-type: none"> • Temporary restraining order • payment of damages, etc |
| Administrative case | Administrative law (law being implemented by administrative agencies i.e. RAs, PDs, DAOs, etc.) | Anybody affected when this law is violated | <ul style="list-style-type: none"> • Private lawyer • Public lawyer • Ordinary citizen | In agencies implementing the laws violated e.g. DENR, BFAR, DILG, etc. | Sufficient evidence | <ul style="list-style-type: none"> • Fine • Revocation of license • Suspension or dismissal from service, etc. |

1.6.2. Institution of Criminal Action

A. Complaint or Information

Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.

Information, on the other hand, is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court

Who must prosecute criminal actions

All criminal actions either commenced by complaint or information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. (Supreme Court Resolution En Banc A.M. No. 02-2-07 – SC dated April 10, 2002, to take effect on May 1, 2002).

Who may file complaint – the complaint may be filed either by the CENRO, PENRO, RED or any forest officer.

Where to File Complaint

- a) For offenses where a preliminary investigation is required by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation (Sec. 1 Rule 110, 2000 Revised Rules of Criminal Procedure)
- b) For all other offenses, by filing the complaint or information directly with the MTC and MCTC or with the office of the prosecutor. (Sec. 1 Rule 110, 2000 Revised Rules of Criminal Procedure).

Place where action is to be instituted – the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred. In case of illegal transport of forest products on board a motor vehicle, train or aircraft, the complaint must be filed in the municipality or territory where such conveyances passed, including the place of departure and arrival. (Sec. 15, Rule 100, 2000 Revised Rules of Criminal Procedure)

Form and Content of Complaint

Complaint or information must be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.

The complaint or information must contain the name of the accused; designation of the offense given by the statute; acts or omissions complained of as constituting the offense (cause of

accusation); name of offended party; date of commission of offense and place where offense is committed.

In case of partnership, associations or corporations, the complaint shall be filed against the officers who ordered the cutting, gathering and collection or possession of timber or other forest products without any authority or legal documents as required under existing laws and regulations (Sec. 68, PD 705, as amended by EO 277).

Should the evidence in any administrative case arising by virtue hereof so warrants, the concerned CENRO, PENRO, RED or any forest officer shall initiate a criminal complaint before the City or Provincial Prosecutor or before the municipal trial court of appropriate jurisdiction for preliminary investigation and prosecution in accordance with law.

Under Sec. 80, PD 705, reports and complaints regarding the commission of any of the offenses defined herein, not committed in the presence of any forest officer or employee or any deputized officers, shall immediately be investigated by the forest officer assigned in the area where the offense was allegedly committed, who shall thereupon receive the evidence supporting the report or complaint.

If there is prima facie evidence to support the complaint or report, the investigating forest officer shall file the necessary complaint with the appropriate official authorized by law to conduct preliminary investigation and file information in court.

Documents to accompany complaint

1. Sworn statement of the apprehending/arresting officer.
2. Affidavits of witnesses, if any, who may have knowledge of the commission of the offense.
3. Copy of the seizure receipt or statement showing the number, species and volume of the logs/timber/forest products seized including all pertinent information on the machinery, equipment and tools as well as conveyance used.
4. Photographs and if not available, an inventory showing the timber or other forest products seized including the tools, equipment, machinery and conveyances used in the commission of the offense. (DENR Memo Order No. 36-88).
5. If the offense involves the unlawful occupation of a forest land, a map of the occupied area must be submitted together with an assessment of the value of the forest resources that may have been damaged.
6. Other pertinent documents.

In initiating and prosecuting criminal charges, the cognizant DENR officer shall, in addition to the indictment, contemporaneously file for actual damages in an amount equivalent to the value of the illegal forest products confiscated as well as moral and exemplary damages for prejudice to the environment, in an amount equivalent to 10 times the value of the forest products confiscated.

After the complaint is filed, the concerned forest officer shall transmit copy of the complaint and all supporting documents to the Regional Office for proper handling and disposition, copy furnished the Assistant Secretary for General Legal Services and the Task Force Taga-Usig.

B. Preliminary Investigation

Preliminary Investigation: when required

Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

A preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least 4 years, 2 months and 1 day without regard to the fine (Sec. 11, Rule 112, Revised Rules on Criminal Procedure).

The right of the accused to a preliminary investigation is a personal right and can be waived expressly or by implication. If not waived, the absence of a preliminary investigation may amount to a denial of due process. However, lack of a preliminary investigation, does not impair the validity of an information or render it defective.

When Preliminary Investigation is not required

When a person is lawfully arrested without a warrant involving an offense which requires preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules.

In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or persons.

Before complaint or information is filed, the person arrested may ask for a preliminary investigation but he must sign a waiver of the provisions of Article 125 Revised Penal Code (RPC) as amended, in the presence of his counsel. Notwithstanding the waiver he may apply for bail and the investigation must be terminated within 15 days from its inception. (Sec. 7 Rule 112, 2000 Revised Rules on Criminal Procedure).

Officers authorized to conduct preliminary investigation

1. Provincial or City Prosecutors and their assistants
2. Judges of Municipal Trial Courts and MCTC
3. National and Regional State Prosecutors
4. Other Officers as may be authorized by law

This authority to conduct preliminary investigation includes all crimes cognizable by the proper court in their respective territorial jurisdiction (Sec. 2 Rule 112, 2000 Revised Rules of Criminal Procedure).

Section 80 of PD 705, as amended, requires forest officers to deliver the offender and confiscated forest products, tools and equipment to appropriate officials designated by law to conduct preliminary investigation and file information in court within 6 hours from time of arrest

and seizure and if far from authorities within reasonable time sufficient for ordinary travel to and from place of arrest.

When warrant of arrest may issue

Within 10 days from the filing of a complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause he shall issue a warrant of arrest or a commitment order if the accused had already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Sec. 7, Rule 112, 2000 Revised Rules on Criminal Procedure. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within 5 days from notice and the issue must be resolved by the court within 30 days from the filing of complaint or information.

C. Arrest

Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense (Sec.1, Rule 113, Revised Rules of Criminal Procedure)

Who may execute arrest

- Forest officer or employee
- Appropriate official designated by law
- Deputies (other government officials/private citizens duly deputized by the DENR Secretary)
- Members of law enforcement agencies (PC/INP, AFP/Coast guard)
- Other government law enforcement agencies
- Private citizens (citizen's arrest)

How shall arrest be made

Arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest. No violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention (Sec.2, Rule 113 2000 Revised Rules of Criminal Procedure).

The warrant of arrest should be executed within 10 days from receipt thereof otherwise, after the expiration of such period, the officer whom it was assigned for execution, shall make a report to the judge who issued the warrant and in case of his failure to execute the same, state the reason therefore. (Sec. 4 Rule 113, 2000 Revised Rules of Criminal Procedure).

Modes of making arrest

- By virtue of a warrant of arrest
- By warrantless arrest

Arrest by officer by virtue of a warrant

Officer shall inform the person to be arrested of the cause of the arrest and should show him the warrant unless to do so would imperil himself or place himself in jeopardy.

A warrant of arrest is necessary when the offense is not committed in the presence of the arresting officer.

Arrest without warrant – There are only 3 instances when the arresting officer may arrest a person without warrant

1. When in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.
2. When an offense has in fact just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.
3. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another (Sec. 5, Rule 113, 2000 Rules of Criminal Procedure).

Arrest under PD 705

Pursuant to Section 80 of PD 705, as amended, the Forest Officer may arrest even without warrant any person who has committed or is committing in his presence any of the offenses defined under Chapter IV of PD 705 as amended. He shall also seize and confiscate in favor of the government the tools and equipment used in committing the offense and the forest products cut, gathered or removed by the offender.

Sec. 68 of PD 705, on the other hand, punishes the mere act of possession of forest products without legal documents, hence the offenders are in every case committing the unlawful act *in flagrante*. Therefore, their arrest without warrant is lawful because they were then actually committing the offense.

Delivery of arrested person

The person arrested with or without warrant must be delivered to the nearest police station or jail without necessary delay to prevent him from fleeing from the reach of law or going into hiding. Under Sec. 80 of PD 705, as amended, the arresting forest officer shall deliver within 6 hours from time of arrest and seizure the offender and the confiscated forest products, tools and equipment to, and file the proper complaint with, the appropriate official designated by law to conduct preliminary investigation and file information in court.

If the arrest and seizure are made in the forest, far from the authorities designated by law to conduct preliminary investigation, the delivery and filing of complaint shall be done within reasonable time sufficient for ordinary travel from the place of arrest to the place of delivery.

D. Arraignment and Plea

Immediately after the complaint is filed, the forest officer shall transmit copy of complaint and all supporting documents to the Regional Office for proper handling and disposition, copy furnished the Assistant Secretary for General Legal Services. The prosecution of cases shall be the primary responsibility of the Regional Office concerned subject to the supervision and control of the Assistant Secretary for Legal Affairs. (DENR Memo Order No. 36-88)

Arraignment is done in open court by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him and asking him whether he pleads guilty or not guilty. If he refuses to plead or makes a conditional plea, a plea of not guilty shall be entered for him.

Unless a shorter period is provided by a Special Law or Supreme Court Circular, the arraignment shall be held within 30 days from the date the court acquired jurisdiction over the person of the accused. The period of the pendency of a motion to quash or for a bill of particulars, or other causes justifying suspension of arraignment shall be excluded. (Sec. 2, SC Cir. No. 38-98, Implementing RA 8493, Speedy Trial Act of 1998).

At any time before entering his plea, the accused may move to quash the complaint or information on the following grounds:

That:

- a) The facts charged do not constitute an offense;
- b) The court trying the case has no jurisdiction over the offense charged;
- c) The court trying the case has no jurisdiction over the person of the accused;
- d) The officer who filed the information had no authority to do so;
- e) It does not conform substantially to the prescribed form;
- f) More than one offense is charged except when a single punishment for various offenses is prescribed by law;
- g) The criminal action or liability has been extinguished;
- h) It contains averments which if true, would constitute a legal excuse or justification;
- i) The accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (Sec 3., Rule 117, 2000 Rules on Criminal Procedure)

E. Pre-trial Conference

It is mandatory in all criminal cases to order a pre-trial conference after arraignment to consider the following:

- a. Plea bargaining
- b. Stipulation of facts
- c. Marking for identification of evidence of the parties
- d. Waiver of objections to admissibility of evidence
- e. Such other matters as will promote fair and expeditious trial of the criminal and civil aspects of the case (Sec. 3, SC Circular 38-98).

All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. These agreements shall be approved by the court (Sec. 4, SC Circular 38-98).

Considering the importance of the pre-trial conference, the apprehending forest officer must attend it and bring to the court the original copies of all records of the case being heard.

F. Trial

After arraignment and pre-trial, the accused shall prepare for trial. Trial shall commence within 30 days from receipt of the pre-trial order and shall continue until terminated. The order of trial shall proceed in the following order:

1. The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability. The apprehending forest officer and those who assisted him, together with the DENR officers who have personal knowledge about the subject matter must attend the hearings on this stage.
2. The accused may present evidence to prove his defense and damages, if any, arising from the issuance of a provisional remedy in the case.
3. The prosecution and the defense may, in that order, present rebuttal and sworn-rebuttal evidence unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.
4. Upon admission of the evidence of parties, the case shall be deemed submitted for decision unless the court directs them to argue orally or to submit written memoranda.
5. When the accused admit the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified (Sec. 11, Rule 119, 2000 Rules of Criminal Procedure).

Rights of the Accused at the Trial

In all criminal prosecutions, the accused shall be entitled to the following rights:

1. To be presumed innocent until the contrary is proved beyond reasonable doubt;
2. To be informed of the nature and cause of the accusation against him;
3. To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may however, waive his presence at the trial pursuant to the stipulations set forth in his bail bond, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without any justifiable cause at the trial on a particular date of which he had notice shall be considered a waiver of his right to be present during that trial. When an accused during custody had been notified of the date of trial and escapes, he shall be deemed to have waived his right to be present on said date and on all subsequent trial dates until custody is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his right without the assistance of counsel;
4. To testify as witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him;
5. To be exempt from being compelled to be a witness against himself;

6. To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deemed out of or cannot with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having had the opportunity to cross-examine him;
7. To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf;
8. To have a speedy, impartial and public trial;
9. To have the right of appeal in all cases allowed and in the manner prescribed by law (Sec. 1, Rule 115, 2000 Revised Rules of Criminal Procedure)

G. Judgment

Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him by the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

Content of Judgment

- a) If the judgment is of conviction it shall state:
 1. The legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission.
 2. The participation of the accused in the offense, whether as principal, accomplice, or accessory.
 3. The penalty imposed upon the accused.
 4. The civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.
- b) If judgment is of acquittal, it shall state:
 1. Whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

Promulgation of Judgment

The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

Entry of Judgment

After judgment has become final it shall be entered by the clerk in the book of entries of judgment. The date of finality of judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment and shall be signed by the

clerk, with a certificate that such judgment has become final and executory (Sec. 2, Rule 36, Revised Rules of Court).

1.7. Systems of Penalties

1.7.1 Imposable Penalties

1. Imprisonment

Sec. 68 of PD 705 provides that any person who cuts, gathers, collects, removes or possess timber and other forest products without license shall be punished with the penalties imposed under Art. 309 and 310 of the Revised Penal Code (RPC). It also states that in case of partnerships, association or corporation, the officers who ordered such illegal activities are also liable.

Art. 309 of the RPC prescribes the penalties for the crime of theft while Art. 310 prescribes the penalties for qualified theft which is next higher by two degrees than those specified in the crime of theft.

The duration of penalties is shown hereunder:

Table 2. Penalties for Cutting, Gathering, Collection, Removal and Possession and Transport of Timber and other Forest Products without Authority or Legal Permit.⁴

| VALUE | PENALTY | DURATION |
|---------------------------------|---|---|
| More than ₱22,000 | <i>Reclusion Temporal</i> in its medium and maximum periods (Maximum) | 18 years, 2 months and 21 days to 20 yrs (1 year for each additional ₱10,000 but total penalty shall not exceed 20 years) |
| More than ₱12,000 up to ₱22,000 | <i>Reclusion Temporal</i> in its medium and maximum periods | 14 years, 8 months and 1 day to 20 years. |
| More than ₱200 up to ₱6,000 | <i>Prison Mayor</i> in its medium and maximum periods | 8 years and 1 day to 12 years |
| More than ₱50 up to ₱200 | (see footnote ⁵) | (see footnote ⁵) |
| More than ₱5 up to ₱50 | (see footnote ⁵) | (see footnote ⁵) |
| ₱5 or less | <i>Prison Correctional</i> in its medium and maximum periods | 2 years, 4 months and 1 day to 6 years |

2. Confiscation and forfeiture of the proceeds or instruments of the crime

⁴ See Art. 310 in relation to Art. 309 and Art. 61 of the Revised Penal Code.

⁵ Applying the provisions of Art. 61 of the RPC, the penalty two degrees higher than what are prescribed in Art. 309 would be *prison mayor* in its medium period to *reclusion temporal* in its maximum period, or 8 years and 1 day to 14 years and 8 months (see also Table of Penalties, Appendix A in II L. REYES, THE REVISED PENAL CODE (12th ed.) p. 1011, No. 25). This penalty seems incongruous since it is higher same incongruity arises where the value is more than P200 up to P6,000. The P5 up to P50 as the penalty would be *prison mayor* in its fullest extent which has a duration of 12 years.

Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed. Such proceeds and instruments shall be confiscated and forfeited in favor of the government, unless they be the property of a third person not liable for the offense (Art. 45, Revised Penal Code of the Philippines, 1999 ed.).

Under Sec. 68, PD 705, the court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where timber or forest products are found.

Sec.68-A further provides that in cases of violations of this Code, or other forest laws and regulations, the Department Head or his duly authorized representative, may order the confiscation of any forest products illegally cut, gathered, removed or possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense and to dispose of the same in accordance with pertinent laws, rules or policies on the matter.

3. Fine- whether imposed as a single or as an alternative penalty, shall be considered an afflictive penalty if it exceeds ₱ 6,000.00; a correctional penalty, if it does not exceed ₱ 6,000.00 but is not less than ₱ 200.00 and a light penalty if it be less than ₱ 200.00. (Article 26, Revised Penal Code of the Philippines, 1999 ed.)
4. Perpetual disqualification from acquiring any such privilege upon a permittee, licensee or lessee who cuts timber from a license, leased areas of another without prejudice to whatever civil action the latter may bring against the offender.
5. Suspension/ revocation of license/permit etc.

1.8. DISPOSITION

1.8.1. Disposition of items confiscated in favor of the government

1. Items forfeited in favor of the government shall be disposed of in accordance with law.
2. Except for disposition through donation, and for DENR's own-use, the disposition shall be governed by the same requirement and rules of procedures applied by DENR Central Committee on Bids and Awards of the Office of the Secretary. The Central Committee shall reproduce its requirement and rules of procedure for adoption and strict compliance.
3. DENR employees and their relatives within the fourth civil degree of consanguinity or affinity shall in no way, directly or indirectly be allowed to participate in or otherwise be interested in any part of these proceedings.
4. In no case shall same individual(s) from whom items for disposition were confiscated be qualified as bidder in these proceedings. (Sec. 12, DAO 97-32)

1.8.2. Modes of Disposition

1. Sale/Auction

2. Donation
3. Own use

Approving Officials

Table 3 shows the level of approvals of those authorized to disposed through public auction and /or donation the forest products confiscated/retrieved in favor of the government.

The REDs/PENROs/CENROs shall submit to the Secretary, through the Undersecretary of Field Operations, monthly report of disposition of forest products.

Sale through Public Auction

Forest products subject of disposition through public auction:

- a. Confiscated forest products without court cases;
- b. Forest products retrieved/recovered/salvaged by the DENR or turned over to the DENR pursuant to approved permits (e.g. approved tree cutting, or road right-of-way permits)

Table 3. Forest products, modes of disposition and approving authorities.

| Types of Forest Products | Mode of Disposition and Limits of Authority | | Approving Authority |
|--|---|------------------------------|------------------------|
| | Public Auction | Donation | |
| Confiscated Forest Products Retrieved by or turned over to DENR (e.g. those covered by Cutting Road Right of Way Permits) | Worth more than ₱500,000.00 | More than 500.00 cu.m. | Secretary |
| | ₱ 300,000.05 to ₱ 500,000.00 | 100.01 cu.m. to 500.00 cu.m. | Usec, Field Operations |
| | ₱ 150,000.05 to ₱ 300,000.00 | 50.01 cu.m. to 100.00 cu.m. | RED |
| | ₱ 50,000.05 to ₱ 150,000.00 | 30.01 cu.m. to 50.00 cu.m. | PENRO |
| | ₱ 50,000.00 or less | 30.00 cu.m. or less | CENRO |
| | Worth more than ₱ 500,000.00 | More than 100.00 cu.m. | Secretary |
| | ₱ 300,000.05 to ₱ 500,000.00 | 50.01 cu.m. to 100.00 cu.m. | Usec, Field Operations |
| | ₱ 150,000.05 to ₱ 300,000.00 | 30.01 cu.m. to 50.00 cu.m. | RED |
| | ₱ 50,000.05 to ₱ 150,000.00 | 10.01 cu.m. to 30.00 cu.m. | PENRO |
| | ₱ 50,000.00 or less | 10.00 cu.m. or less | CENRO |

Source: DENR Adm. Order No 2003 – 18. Amendment to Sec. IX of DENR Administrative Order No. 2000-11 43 Re: Disposition of Forest Products.

Procedure for Disposition through Public Auction

1. The auction is conducted by the Committee on Bids and Awards who shall convene and issue an invitation to bid containing the following:

- a. Invitation number
- b. Place, date and time of opening of bids
- c. Quantity of forest products
- d. Accurate description and specification of forest products
- e. Terms and conditions including the floor price
- f. Bond requirement
- g. Right to accept and reject bids (Government reservation clause)
- h. Invitation to bidders
- i. Bid proposals.

2. Posting and publication

The invitation to bid and Notice of Sale shall be posted in at least three (3) conspicuous places in the DENR local offices and in other public places. It shall be published in at least two (2) newspapers of general circulation for three (3) consecutive days, the last publication of which shall be 15 days before the opening of the bids.

In case of rebidding, the Invitation to Rebid and Notice of Sale shall be published in the same newspaper of general circulation at least once every week for three consecutive weeks, the last publication of which shall be one week before the scheduled rebidding (DMO 36-88)

3. Accreditation of Bidders

The committee, meeting in quorum, shall not honor the offer or proposal of any bidder unless he has formally submitted an application therefore under oath containing among other information: his name and address; citizenship; nature of business; and statement that he has not committed any of the grounds for disqualification, i.e., a) conviction of a crime related to business, commerce, and trade, as well as for hoarding and profiteering; b) smuggling/conniving with smugglers of forest products; and, c) deliberate error, omission or commission in the bid tender (DMO 36-88).

4. Deposit

All bidders shall be required to deposit in either cashier's or manager's check in the name of the DENR Secretary the equivalent of 10% of the amount of bid, which deposit shall be returned to the losing bidder after the award is announced.

The 10% deposit of the winning bidder shall be automatically converted into partial payment and failure of the awardee to remit or pay the balance of the amount of the bid on or before 2:00 o' clock in the afternoon of the third working day from the date of the sale will render the award to him as null and void, and the 10% deposit forfeited in favor of the government.

5. Award of Bids

- a.) Award shall be given to the most advantageous offer to the government, provided that, the offer shall not be less than the minimum bid price set by the Committee.

- b.) In case of tie, the bidders shall submit another sealed bid immediately after the committee declares a tie and the bids shall likewise be opened after which, the committee shall prepare abstract of quotations and its order of award.
- c.) The committee shall prepare and send the award order or notification to the winning bidder. This award order shall serve as permit of the awardee to remove, transport and dispose the forest products subject of said award; Provided, however that the awardee shall have remitted/ paid the balance of the amount of bid before actual removal or transport of the same commences.

Donation

Forest products which may be disposed of through donation

- a. Those which are not subject of a pending case in court or with other appropriate office;
- b. Those without claimants or offenders against whom the case could be filed;
- c. Those found abandoned within forest areas, the ownership of which could not be ascertained and without claimants.

Beneficiaries qualified to receive donations

- i. Barangays
- ii. Municipal and provincial governments
- iii. Other government agencies, who by nature of their functions require wood materials or other forest products in order to enhance their services to the general public.

Documents to support request for donations

- i. Justification for the construction/ establishment of the infrastructure;
- ii. Bill of materials and building plan duly approved by the project engineer; Provided, that in case of Barangay construction or similar project, a simple sketch plan duly signed by the building foreman or barangay captain shall be sufficient;
- iii. Certification issued by the provincial auditor that there is no fund or appropriation for the purchase of the required wood materials; provided, that for barangay constructions or similar projects, a certification from the Municipal Development Officer shall be sufficient; and,
- iv. Certification from the CENRO/PENRO/Regional Office concerned that said volume or amount of forest products is available for disposition.

A certificate of completion of the project shall be submitted by the donee to the concerned DENR office duly attested to by the DENR official concerned and the provincial auditor, accompanied by the following documents:

- a. Certification by the Project Engineer of the completion of the project.
- b. Species and volume of timber and other forest products utilized
- c. Photographs of completed project showing specific portions where the donated materials were utilized (Malacañang Memo Order 162, S-1993)

Since donation is gratuitous in nature and for government use, the payment of forest charges shall not be required from the donee.

1.8.3. Expenses for the transfer, safekeeping, maintenance and delivery of apprehended, seized and confiscated items

1. Expenses for transfer, delivery and maintenance/safekeeping of apprehended items shall be added to the value thereof and shall attach as primary liens in favor of the DENR. It shall be deducted from and reimbursed to the DENR as administrative cost from the proceeds of the sale thereof.
2. The DENR shall allocate a fund to enable field officers to advance expeditiously the hauling of expenses and avoid deterioration and/or loss of economic value of the products/conveyances.
3. In cases where items forfeited in favor of the government are disposed of by judicial or other official mandate, the cognizant RED shall make official representations with the court or government agency concerned for the purpose of recovering the aforementioned primary lien.
4. The Undersecretary for Field Operations may promulgate such other guidelines, rules and regulations as may from time to time be deemed necessary or appropriate under the circumstances in order to ensure the recovery of expenses incurred by the DENR in this regard. (Sec. 13, DAO 97-32)

1.8.4. Remittance of proceeds of sales

- a. Proceeds from the sale of any items confiscated are property of the government of the Philippines. Proceeds in cash shall be deposited in a Special Fund and shall be applied in strict conformity with applicable laws, rules and regulations to priority needs of the DENR.
- b. The proceeds of sale of confiscated forest products, after deduction of all administrative costs related to the confiscation shall be remitted by the chairman of the CBA-CFP to the Secretary, DENR either in the form of cashier's or manager's check immediately upon receipt of the full payment of the bidden forest products (DMO 36-88).
- c. A quarterly report on all funds remitted to the Central Office shall be submitted by the cognizant officer to the Secretary which shall also be consolidated into an annual report to be similarly submitted at the end of the fiscal year. (Sec. 14, DAO 97-32)

1.8.5. Reportorial Requirements

Quarterly reports shall be submitted by the RED to the Secretary, copy furnished the Assistant Secretary for General Legal Services, Undersecretary for Field Operations, and the Director of the Forest Management Bureau on the following:

1. Status Report of Cases – a complete list of all administrative cases initiated, including the dates, places and parties involved, current status and estimated period for completion, as well as recommendations for the efficient and expeditious disposition thereof.
2. List of seized and confiscated items

- 2.1. All items seized and detained *pendente lite* with particular description of each item, current condition and place of detention/safekeeping.
 - 2.2. All conveyances temporarily released, stating names of recipients, conditions and amount of bonds
 - 2.3. All confiscated items awaiting final disposition, accurately described with recommendations as to final disposition
3. Items not recommended for disposition
- 3.1 Those submitted as evidence in court or other government agency
 - 3.2 Those recommended for use by the DENR
 - 3.3 Those recommended for donation
4. Items requiring urgent disposition
- 4.1 Items which cannot be detained for safekeeping until final disposition thereof is determined due to
 - a. the highly perishable nature thereof
 - b. the place for adequate safekeeping thereof cannot be provided, and
 - c. its continued detention until final disposition is impractical
 - 4.2 The list of these items shall be submitted to the Undersecretary for Field Operations without delay within 48 hours from discovery of urgency stating the particular description of the items, estimated value, reasons for recommending urgent disposition, and mode of disposition recommended.
5. Upon consultation with the Assistant Secretary for General Legal Services and the Director of FMB, and with the approval of the Secretary, the Undersecretary for Field Operations shall issue directives for the expeditious disposition of all such items.

2.0 DUE DILIGENCE MECHANISM

2.1 Introduction

One of the so-called hazards of government service is the threat of dissatisfied clients who resort to filing administrative and even criminal complaints against government officials. The experience of DENR officials shows quite a number of its officials being haled to court for a variety of reasons. This has resulted in a general sense of harassment that somehow takes away the initiative and aggressiveness of involved DENR officials in the performance of their job. This bureaucratic side-effect could adversely affect the over-all effectiveness of government officials in the discharge of the functions of their position.

To restore the confidence of these government officials in the integrity of the system, and give them a sense of security against harassment suits and baseless charges, there is a need to institute a due diligence mechanism (DDM) that will serve as a basis of determining the official conduct of any DENR official.

2.2 Elements of Due Diligence Mechanism

The proposed due diligence mechanism (DDM) is underpinned by the three componential elements of eco-governance:

1. transparency in all transactions and decisions
2. accountability of national and local leaders
3. participatory decision making

It also embodies the other core characteristics of good governance as defined by the United Nations Development Programme:

1. Rule of Law - legal frameworks are fair and enforced impartially, particularly the laws on human rights; public security and safety are a high level.
2. Responsiveness - institutions and processes serve all stakeholders.
3. Consensus Orientation - differing interests are mediated to reach broad consensus on what is the common good, in the best interests of the organization, community or country, and whenever possible, on policies and procedures.
4. Equity - all men and women have opportunities to improve or maintain their well-being and vulnerable and excluded are targeted to provide security of well-being to all.
5. Effectiveness and Efficiency - processes and institutions produce results that meet the needs while making the best use of the resources.
6. Strategic Vision - leaders and the public share a broad and long-term perspective on good society, good governance, and human development, along with a sense of what is needed for such development.

7. Legitimacy - authority is legitimate in terms of the established legal and institutional framework and specific decisions in terms of the accepted institutional criteria, processes and procedures.
8. Resource Prudence - resources are managed and used with a view to optimize the well-being of people over several generations, ideally in perpetuity, without mortgaging the future.
9. Ecological Soundness - the environment is protected and regenerated to ensure sustainable selfreliance.
10. Empowering and Enabling - all actors in society are empowered to pursue legitimate goals and enabling environments are created to optimize their successes and the realization of the well-being of all.
11. Partnership - governance is seen as a whole-system responsibility that cannot be discharged effectively by government alone, but involves institutionalized mechanisms and processes for working in partnerships of public, private and civic actors in conducting the business of governance at all levels.

This mechanism is further based on existing laws governing the conduct of government employees:

1. Republic Act 3019, as amended. Otherwise known as the Anti-graft and Corrupt Practices Act
2. Republic Act 6713, as amended entitled Code of Conduct and Ethical Standards for Public Officials and Employees
3. Executive Order 292, the Civil Service Law, Rules and Regulations as embodied in the Administrative Code of 1987
4. Administrative Agency's (DENR) Internal Disciplinary System

2.3 Operational Definitions

For purposes of this due diligence mechanism, the following terms shall be defined operationally as follows:

1. Due Diligence - is such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case (Black's Law Dictionary, 6th Ed).

Black's Law Dictionary makes a distinction between high degree of diligence, a common degree of diligence, and a slight degree of diligence. High or great diligence refers to such measure of care, prudence and assiduity as persons of unusual prudence and discretion exercise in regard to any and all of their own affairs. Common or ordinary diligence is that degree of diligence which men, in general, exercise in respect to their own concerns. Low

or slight diligence is that which persons of less than common prudence take of their own concerns.

This due diligence mechanism refers to common or ordinary diligence.

As mentioned in the position paper submitted by Atty. Antonio Oposa, Jr., the law punishes gross negligence which was described as “negligence characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.”

The position paper further stated the generally accepted test to determine negligence in a particular case which may be stated as, “Did a person, in doing the negligent act, use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.”

2. Good Faith - is an honest belief, the absence of malice and the absence of design to defraud or seek an unconscionable advantage (Black’s Law Dictionary, 6th Ed). It is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and generally speaking, means being faithful to one’s duty or obligation.

The law presumes that an official act was done in good faith and in the ordinary course of business. This presumption is an effective shield for government officials because the burden of proof to show bad faith is on the contesting party.

Bad faith is the opposite of good faith, generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive. It is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will (Black’s Law Dictionary, 6th Ed).

2.4 Checklist of Items to Consider in the Exercise of Due Diligence

- Is the matter under consideration within the scope of your functions?
- Are you familiar with the law and regulations on the matter pending before you?
- Have you followed the procedure before acting on the pending matter?
- Do you have any direct or indirect personal interest in the transaction?
- Are you acting on a pending matter within a reasonable time?
- In case of letters received by you from the public, have you acted on it and replied to the person writing the letter within 15 days?
- In case of an application for a permit, is the applicant legally entitled or qualified?

- ❑ Will the government or any private person be unduly disadvantaged by your decision?
- ❑ Are the endorsements by your subordinates complete?
- ❑ Is there a promise of anything in return for your action?
- ❑ Where there is a bidding required, have the bidders been given the chance to submit their bid?
- ❑ In case of your absence, have you designated the official next-in-rank to sign in your behalf?
- ❑ When there is a request to examine documents, except those that are strictly confidential in character, will you allow it?
- ❑ Are you acting in an oppressive manner to any client of your office?
- ❑ Have you in any way hinted at the possibility of something in exchange for your approval?

2.5 Code of Conduct of Good Environmental Governance

Recently, the DENR composed a Code of Conduct of Good Environmental Governance. All employees of the DENR shall swear and subscribe to this Code upon their appointment to the DENR. Violation of any of the undertakings contained in this Code shall be a ground for disciplinary action. On the other hand, the DENR shall integrate faithful compliance of DENR employees to this Code in the agency's incentives, merit and promotion system. Below, is a faithful reproduction of this Code:

I Commit to Abide by this Code of Conduct of Good Environmental Governance:

- ❑ I will perform my duties with an awareness that must be develop, protect, and judiciously utilize the natural wealth of my nation for public good;
- ❑ I will discharge the duties of my work with efficiency, urgency, professional competence and transparency in keeping with designation as personnel of the nation's primary environmental and natural resources protection agency;
- ❑ I will provide equal opportunity service;
- ❑ I will hold myself personally and solely accountable to the Filipino people for all my actions in line with the ethics of professionalism, policies of organizational discipline, and the laws and regulations of the Philippines, the Philippine Civil Service Code and the Department of Environment and Natural Resources;
- ❑ I will lead a simple, but respectable personal life, as befits, a public steward of our nation's environmental resources;
- ❑ I will ensure that due diligence is taken before any decision or actions are made or implemented that will concern either directly or indirectly present and future Filipinos, their heritage, and the natural resources they rely upon;
- ❑ I will pursue only the highest justice most beneficial and least cost to the greatest number of people;
- ❑ I will treat work colleagues, stakeholders, and other community members with respect, valuing their views and decisions and involving them in the protection of the environment; and

- I will lead by example in actively pursuing a sustained and systematic Environmental Governance of the country.

TO MANIFEST my commitment to this Code, and my intent to observe it in all my official acts, I hereby affix my signature the law with no reservation of any kind, or hesitance to execute the tenets stipulated herein.

This shall be my covenant and contractual obligation to my people, to the Department, and to the Republic of the Philippines.

Name

Designation

Date

Accepted:

ELISEA G. GOZUN

DENR Secretary

Date

2.6 Institutionalization of Due Diligence Mechanism

This proposed due diligence mechanism needs the imprimatur of the DENR Secretary to become a formal component of the agency's administrative system. Depending on the results of public consultations, an administrative issuance is needed to institutionalize this due diligence mechanism.

Considering the implications of this DDM to the administrative disciplinary system of the DENR, the impacts of the Civil Service Commission (CSC), Ombudsman, and the Department of Justice (DOJ), are vital and must be secured. The eventual objective is for this DDM to be formally recognized and respected by the CSC, Ombudsman and DOJ when dealing with an administration complaint against DENR employees.

2.7 Implementation

Once adopted by the DENR leadership and officially recognized by the CSC, Ombudsman and DOJ, the actual implementation of DDM can proceed within the agency bureaucracy. For every application involving the exploration, development, and use of natural resources, including transport, an integrated checklist shall be accomplished by all who acted on the

application and this self-accomplished document shall form part of the internal records of the application. The purpose is to document the compliance to the DDM on all applications involving the exploration, development and use of the country's natural resources.

2.8 Monitoring and Evaluation

The compliance to DDM will be monitored mainly through the submission and evaluation of reports, using the accomplished DDM checklist. This reportorial requirement can be integrated in the periodic performance evaluation system currently practiced by the DENR to determine the efficiency and effectiveness of its employees.

2.9 Conclusion

The DDM is being proposed for adoption to give meaning to the core elements of eco-governance of transparency, accountability, and participatory decision-making.

It is designed to document the exercise of due diligence on the part of the DENR Official when taking action on the matter brought before him/her. By doing so, it establishes a protective shield against baseless harassment suits usually filed by disgruntled clients and employees.

REFERENCES

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- DENR Memorandum Order 36-88. Guidelines on the Confiscation, Seizure and Disposition of Illegally Cut, Gathered, and/or Transported Forest Products. 6 May 1998.
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- DENR Memorandum Circular No. 12-92. Authority to Approve Donations of Confiscated Logs. 11 August 1992.
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- DENR Memorandum Circular NO. 2003-11. Clarifying the 1997 Rules in the Administrative Adjudication of Illegal Forest Products under DENR Administrative Order 97-32. 24 June 2003.
- Executive Order No. 277. Amending Section 68 of PD 705, as amended, otherwise known as the Revised Forestry Code of the Philippines, for the purpose of penalizing possession of timber and other forest products without documents required by existing forest laws, authorizing the confiscation of illegally cut, gathered, removed and possessed forest products, and grants of rewards to informers of violations of forestry laws, rules and regulations. 25 July 1987.
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2.0 Due Diligence

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Republic Act 3019, as amended. Anti-graft and Corrupt Practices Act

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Executive Order 292. Administrative Code of 1987 (Civil Service Law, Rules and Regulations)

Administrative Agency's (DENR) Internal Disciplinary System

PREPARED BY:

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DRAFT

REPUBLIC OF THE PHILIPPINES
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City

DENR Administrative Order
No. 2004-

SUBJECT: Manual on Forest Law Enforcement and Due Diligence Mechanism

In consonance with the provisions of PD 705, as amended, and pertinent policies, rules and regulations, a DENR Manual on Forest Law Enforcement and Due Diligence Mechanism is hereby adopted.

The manual, which shall form part of this Order, shall serve as the reference of all DENR offices including its bureaus and regional offices to enhance efficiency in the implementation of law enforcement activities.

All officers of the DENR charged with the enforcement of forestry laws, rules and regulations shall adhere to the provisions of this manual.

This Order repeals DENR Administrative Order 97-32. All other orders, circulars, and issuances, inconsistent herewith are hereby repealed and/or modified accordingly.

This Order shall take effect 15 days after its publication once a week for three consecutive weeks in a newspaper of general circulation.

SGD. ELIZEA G. GOZUN
Secretary

ANNEX E.2

REPUBLIC OF THE PHILIPPINES
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City

DENR Administrative Order
No. 2004 –

SUBJECT: New Rules and Regulations on Forest Law Enforcement

Pursuant to the provisions of PD 705, as amended and pertinent policies, rules and regulations, these new rules and regulations on Forest Law Enforcement is hereby promulgated.

Section 1. DEFINITION OF TERMS

As used in this Order, the following terms shall have the corresponding meanings:

- Apprehension - to lay hold of forest products , tools and equipment, implements and conveyance, whether in transit or stationary for the purpose of inspection.
- Arraignment - stage in prosecution whereby a complaint or information is read to the accused in a language or dialect known and understandable to him and asking whether he pleads guilty or not to the accusation filed against him.
- Arrest - is the taking of a person into custody in order that he may be bound to answer for the commission of an offense .
- Complaint - is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.
- Confiscation - the act of appropriating seized forest products and conveyances by the government after judgment duly issued by the proper authority, either administrative or judicial that the said property is illegal or has been used in the cutting, gathering, collecting and/or possessing and /or transporting illegal forest products.
- Conveyance - any mode or type or class of vehicle or craft or any other means used for transportation either on land, water, air, or any combination thereof whether motorized or not, used in the gathering, collecting, transporting and/or possessing of the illegal forest products.
- Department - refers to the Department of Environment and Natural Resources.

| | |
|---------------------------|---|
| Forest officers | - officials and employees of the DENR charged with the enforcement of forestry laws, rules and regulations of the Philippines. |
| Forest products | - refers to timber including lumber, pulpwood, firewood, bark, tree top, resin, gum, wood, oil , honey, beeswax, nipa, rattan, charcoal, or other forest growth, such as but not limited to grass, shrub, flowering plants in forest lands and others. |
| Forfeiture | - the loss of rights in a transaction involving property. |
| Information | - is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. |
| Inquest | - is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under the custody and correspondingly charged in court. |
| Judgment | - is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him by the proper penalty and civil liability, if any. It must be written in the official language, form personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based. |
| Preliminary Investigation | - is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. |
| Probable cause | - the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. |
| Secretary | - refers to the Secretary of the Department of Environment and Natural Resources. |
| Seizure | - official act of taking by persons authorized hereby those items subject of apprehension, seizure and confiscation into government custody, pending formal administrative proceedings for the disposition thereof. |
| Wildlife | - means wild forms and varieties of flora and fauna, in all developmental stages, including those which are in captivity or are being bred or propagated. |

CHAPTER I

ADMINISTRATIVE APPREHENSION, SEIZURE, AND CONFISCATION

Section 2. Persons authorized to make apprehensions:

1. Forest officers
2. Deputies (i.e. other government officials and private citizens duly deputized by the DENR Secretary or his duly authorized representative)
3. Members of law enforcement agencies
4. Private citizens as provided by law

Section 3. Persons Authorized to Effect Seizure

1. Community Environment and Natural Resources Officer (CENRO) or in his absence any DENR officer with the rank of Forester 3 or Land Management Officer 3 (LMO) actually assigned to the area of apprehension at the time thereof;
2. Team Leader of the apprehending team;
3. Protected Area Superintendent (PASU);
4. The Secretary may from time to time also designate in writing such other DENR Officials for the purpose.

Section 4. Items Subject to Apprehension and Seizure

1. Forest products illegally cut, gathered, removed or possessed or abandoned.
2. Any forest products removed, cut, collected, processed and/or transported without the requisite authorization or permit; or with incomplete required supporting documents; with genuine authorization or permit and/or supporting documentation that has an expired validity, has been cancelled or that containing forged entries; or with spurious (fake) authorization, permit and/or supporting documentation.
3. Machinery, equipment, tools and implements used in the possession, gathering, collecting, processing and/or transporting of illegal forest products.
4. Conveyance – any mode or type or class of vehicle or craft or any other means used for transportation either in land, water, air, or any combination thereof whether motorized or not, used for or in taking and/or maintaining temporary or permanent possession or control, gathering, collecting, processing, disposing of, or otherwise transporting, moving or transferring illegal forest products.
5. Wildlife illegally collected, gathered, acquired, transported or imported .

Section 5. Documents required for the transport or shipment of forest products

The following documents shall be required for the transport or shipment of forest products:

1. For logs/timber: Original Certificate of Transport Origin (CTO); together with the tally sheet corresponding thereto;
2. For lumber: Original Certificate of Lumber Origin (CLO), together with the sales invoice, in case of lumber sales, and the tally sheet;
3. For non-timber forest products: Original Certificate of Non-timber Forest Products Origin (CNFPO), together with the delivery receipt.
4. No Certificate of Origin shall be required in the following instances:
 - a. Logs/timber being transported from the licensee's/permittee's cutting area to its wood processing plant or main log storage area, provided that such facilities are located within the province of source; provided further that in cases where the wood processing plant is located outside the province, the transport/shipment thereof may be allowed, subject to prior approval by the RED(s) concerned. Such approval shall be in the form of a special authority issued by the RED for a period not exceeding one year, subject to the following conditions; that the conveyance(s) is/are company owned; that the delivery route is the normal route in the delivery of logs to the log pond or log yard of the firm's wood processing plant; and listing of the type and serial/plate number of the vehicle(s) authorized for the purpose.
 - b. Transport/shipment of finished, semi-finished, or knocked-down forest products, provided that these are accompanied by a delivery receipt or sales invoice, together with the tally sheets;
 - c. Lumber and lumber products transported from source to buyer/end-user within the confines of the province or within the Greater Manila area, provided that the same are covered by the corresponding sales invoice and/or delivery receipt;
 - d. Forest products transhipped from the point of initial unloading to its final point of destination, provided it is accompanied by a Certificate of Transshipment (COT) issued by the CENRO concerned indicating therein the kind, number, volume, and consignee of the shipment as well as the serial number of the Certificate of Origin accompanying the shipment.
 - e. Transport of logs/timber/lumber/other forest products derived from planted trees or non-wood forest products inside private lands, provided that the same is accompanied by a Certificate of Verification issued by a DENR local official at the CENRO level.

Forest products being shipped/transported without the accompanying original Certificate of Origin or the Special Authority to Transport duly issued by a DENR officer concerned shall be presumed as coming from illegal sources and as such, the forest products, including the conveyance used shall be subject to confiscation and disposition and the offender shall be prosecuted in accordance with PD 705, as amended, and other applicable laws and regulations.

Section 6. Procedure for Administrative Apprehension and Seizure

The following procedure shall be complied with in apprehension and seizure of illegal forest products and conveyances used in the commission of the offense:

1. Ocular inspection and cursory investigation - Involves the verification of authorizations, permits and accompanying documentation of forest products (transport documents in their original copies), machinery, equipment, tools and implements and conveyance(s).
2. Inventory and Documentation

If probable cause for apprehension and seizure is present, the apprehending officer shall do the following:

- a. Verbally inform the person(s) apprehended of his findings.
- b. Take the names, addresses and other available data of all persons involved in the cutting, gathering or collecting and/or transporting or possessing the forest products.
- c. Write an itemized list of all on-site machinery, equipment, tools and implements used, if any, in the commission of, or otherwise connected with, the offense.
- d. In case the violation involves the use of a conveyance, the apprehending forest officer shall verify the certificate of registration and/or official receipt as well as the driver's license or similar authorizations. Said documents shall be returned to the holder thereof upon notation of his identity and address as well as the name and address of the owner of the conveyance, its license plate number and other identifying marks or information.
- e. Immediately conduct the scaling or measurement of the apprehended forest products. The assessment thereof shall be based on the gross volume without the benefit of deduction for natural defects. In case the scaling or measurement cannot be completed at the close of regular office hours of the day, assistance shall be secured from the local DENR offices for a sufficient number of scalers to finish the work.
- f. Seize the forest products, machineries, conveyance(s), tools and equipment.
- g. In cases where the apprehension is made by non-DENR personnel, i.e., PC/PNP, Coast guard, and other deputized law enforcers, they shall notify the nearest DENR office and turn over the seized forest products and conveyance to the authorized seizure officer.

In cases where the apprehended conveyance involved is a government vehicle, the procedure above shall be followed and the vehicle shall be immediately released to the highest regional officer of the office who owned the same upon acknowledging that the said conveyance has been used in violation of existing forestry laws, rules and regulations.

3. Issuance of seizure receipt

Upon completion of the foregoing procedure, seizure receipt shall be issued which shall be acknowledged and received by the owner/shipper of the forest products or by his representative. In case of refusal, the fact shall be reflected thereon in their presence as proof of such action.

4. Preparation of apprehension and seizure reports.

The apprehension and seizure reports shall be prepared and the same, together with all the pertinent documents i.e., tally sheets, seizure receipts, photographs, etc., shall be submitted to the PENRO who shall conduct the confiscation proceedings.

Section 7. Procedure for Summary Administrative Confiscation

Immediately after seizure, a notice of hearing shall be signed by the PENRO and to be served by the apprehending officer to the parties concerned. Included therein, an order to parties to submit a written explanation within 3 days from receipt thereof.

The concerned parties shall submit their written explanation under oath why the forest product/conveyance should not be confiscated.

The PENRO or in his absence, any Senior Forest Management Specialist (SFMS) or Senior Environmental Management Specialist (SEMS) shall preside as hearing officer with the guidance of a DENR lawyer.

The procedure shall be summary in nature where the parties are required to submit the necessary documents, affidavits and evidences. However, the hearing officer may ask for clarificatory questions if need be.

The hearing officer shall render his decision within a period of 15 days from receipt of the documents, affidavits and evidences. If there is no substantial evidence sufficient to sustain an administrative decision adverse to interested parties, a ruling shall be issued dismissing the case and ordering the seized items to be returned to the owner. When evidence so warrants, a ruling shall be issued declaring the seized items to be confiscated in favor of the government, together with recommendations for further prosecution of the persons involved.

The decision shall become final and executory upon the lapse of 15 days unless a motion for reconsideration is filed. A party aggrieved by the decision may file only one motion for reconsideration within a non-extendible period of 15 days from receipt of the decision.

Appeal - A party may file an Appeal within a non-extendible period of 15 days from receipt of the denial of the Motion for Reconsideration or receipt of the decision. The appeal should be filed with the Office of the RED if the volume of forest products confiscated is less than 1,000 cu.m. and to the Office of the Secretary if more than 1,000 cu.m. and only upon payment of the corresponding appeal fee. The appeal shall contain a concise statement of all the issues of fact and law raised on appeal.

Grounds for Appeal - The appeal may be entertained only on any of the following grounds:

1. If there is prima facie evidence of abuse of discretion on the part of the PENRO.
2. If the decision, resolution or order was secured through fraud or coercion, including graft and corruption.

3. If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

The decision of the Secretary shall be final and executory 15 days from receipt thereof, if no motion for reconsideration or appeal to the Office of the President is filed.

Section 8. Procedure for Summary Administrative Confiscation of Abandoned Illegal Forest Products -- the following procedures shall apply in cases where illegal forest products, machinery, equipment and tools, as well as conveyance used are abandoned, or when the owner is unknown, cannot be determined, or cannot otherwise be found.

1. Illegal forest products/conveyances/machinery, equipment, tools and implements shall forthwith be apprehended. Whenever practicable, photographs of the apprehension site and items seized shall be taken indicating the date, caption and full printed name and signature of the apprehending officer at the back of each photograph.
2. The apprehending forest officer shall prepare on-site record of violations, on-site report and issue seizure receipt. In lieu of seizure receipt, notice of apprehension/seizure shall be left by the apprehending/seizing officer on-site, posted or tacked into the nearest tree, wall or other similar permanent structures. The notice shall contain the: a) date, time and place of apprehension, b) full printed name, designation and signature of apprehending officer, c) a complete, detailed list of item(s) apprehended, d) summary statement of violation(s) cited, and e) the full printed name and office address of the seizure officer to whom said items will be delivered.
3. The hearing officer shall conduct summary confiscation proceedings. The notice of hearing shall be posted at least 3 times, once a week for 3 consecutive weeks in at least 3 public places, including, but not limited to a) the barangay hall of the apprehension site, b) bulletin board of the DENR office where proceedings will be conducted, and c) at the municipal hall of the apprehension site.

Should the owner, claimant or other interested party fail to appear at the proceedings, such shall be deemed a waiver of the right to appear and of any/all rights to the items apprehended and seized in favor of the government.

The hearing officer shall state this fact in the records and enter certification that publication of notice of hearing had been effected in compliance herewith and thereupon issue his decision based on the evidence at hand.

A Motion for Reconsideration and/or Appeal may be taken by the owner, claimant or any interested party in accordance with Section 7 hereof.

CHAPTER II

JUDICIAL PROSECUTION OF OFFENSES FOR VIOLATION OF FORESTRY LAWS

Section 9. Institution of Criminal Action

All criminal actions either commenced by complaint or information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor maybe authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

The complaint may be filed either by the CENRO, PENRO, RED or any forest officer.

For offenses where a preliminary investigation is required. The complaint maybe filed with the proper officer for the purpose of conducting the requisite preliminary investigation and for all other offenses, by filing the complaint or information directly with the MTC and MCTC or with the office of the prosecutor as stated under Section 1, Rule 110, 2000 Revised Rules of Criminal Procedure.

The criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred. In case of illegal transport of forest products on board a motor vehicle, train or aircraft, the complaint must be filed in the municipality or territory where such conveyances passed, including the place of departure and arrival.

Form and Content of Complaint

The complaint or information must be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.

The complaint or information must contain the name of the accused; designation of the offense given by the statute; acts or omissions complained of as constituting the offense (cause of accusation); name of offended party; date of commission of offense and place where offense is committed.

In case of partnership, associations or corporations, the complaint shall be filed against the officers who ordered the cutting, gathering and collection or possession of timber or other forest products without any authority or legal documents as required under existing laws and regulations

Should the evidence in any administrative case arising by virtue hereof so warrants, the concerned CENRO, PENRO, RED or any forest officer shall initiate a criminal complaint before the City or Provincial Prosecutor or before the municipal trial court of appropriate jurisdiction for preliminary investigation and prosecution in accordance with law.

Reports and complaints regarding the commission of any of the offenses defined herein, not committed in the presence of any forest officer or employee or any deputized officers, shall immediately be investigated by the forest officer assigned in the area where the offense was allegedly committed, who shall thereupon receive the evidence supporting the report or complaint.

If there is prima facie evidence to support the complaint or report, the investigating forest officer shall file the necessary complaint with the appropriate official authorized by law to conduct preliminary investigation and file information in court.

Documents to accompany complaint

1. Sworn statement of the apprehending/arresting officer.
2. Affidavits of witnesses, if any, who may have knowledge of the commission of the offense.
3. Copy of the seizure receipt or statement showing the number, species and volume of the logs/timber/forest products seized including all pertinent information on the machinery, equipment and tools as well as conveyance used.
4. Photographs and if not available, an inventory showing the timber or other forest products seized including the tools, equipment, machinery and conveyances used in the commission of the offense.
5. If the offense involves the unlawful occupation of a forest land, a map of the occupied area must be submitted together with an assessment of the value of the forest resources that may have been damaged.
6. Other pertinent documents.

In initiating and prosecuting criminal charges, the cognizant DENR officer shall, in addition to the indictment, contemporaneously file for actual damages in an amount equivalent to the value of the illegal forest products confiscated as well as moral and exemplary damages for prejudice to the environment, in an amount equivalent to 10 times the value of the forest products confiscated.

After the complaint is filed, the concerned forest officer shall transmit copy of the complaint and all supporting documents to the Regional Office for proper handling and disposition, copy furnished the Assistant Secretary for General Legal Service and the Task Force Taga-Usig.

Section 10. Preliminary Investigation: when required

Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

A preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least 4 years, 2 months and 1 day without regard to the fine.

The right of the accused to a preliminary investigation is a personal right and can be waived expressly or by implication. If not waived, the absence of a preliminary investigation may amount to

a denial of due process. However, lack of a preliminary investigation, does not impair the validity of an information or render it defective.

When Preliminary Investigation is not required

When a person is lawfully arrested without a warrant involving an offense which requires preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules.

In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or persons.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation but he must sign a waiver of the provisions of Article 125 Revised Penal Code (RPC) as amended, in the presence of his counsel. Notwithstanding the waiver he may apply for bail and the investigation must be terminated within 15 days from its inception.

Officers authorized to conduct preliminary investigation

1. Provincial or City Prosecutors and their assistants
2. Judges of Municipal Trial Courts and MCTC
3. National and Regional State Prosecutors
4. Other Officers as may be authorized by law

This authority to conduct preliminary investigation includes all crimes cognizable by the proper court in their respective territorial jurisdiction.

When warrant of arrest may issue

Within 10 days from the filing of a complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause he shall issue a warrant of arrest or a commitment order if the accused had already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Sec. 7, Rule 112, 2000 Revised Rules on Criminal Procedure. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within 5 days from notice and the issue must be resolved by the court within 30 days from the filing of complaint or information.

Section 11. The following may execute arrest:

1. Forest officer or employee
2. Appropriate official designated by law
3. Deputies (other government officials/private citizens duly deputized by the DENR Secretary)

4. Members of law enforcement agencies (PC/INP, AFP/Coast guard, etc.)
5. Other government law enforcement agencies
6. Private citizens (citizen's arrest)

Arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest. No violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention.

The warrant of arrest should be executed within 10 days from receipt thereof otherwise, after the expiration of such period, the officer whom it was assigned for execution, shall make a report to the judge who issued the warrant and in case of his failure to execute the same, state the reason therefore.

The arresting officer shall inform the person to be arrested of the cause of the arrest and should show him the warrant unless to do so would imperil himself or place himself in jeopardy.

A warrant of arrest is necessary when the offense is not committed in the presence of the arresting officer.

There are only 3 instances when the arresting officer may arrest a person without warrant:

1. When in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.
2. When an offense has in fact just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.
3. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Delivery of arrested person

The person arrested with or without warrant must be delivered to the nearest police station or jail without necessary delay to prevent him from fleeing from the reach of law or go into hiding. The arresting forest officer shall deliver within 6 hours from time of arrest and seizure, the offender and the confiscated forest products, tools and equipment to, and file the proper complaint with, the appropriate official designated by law to conduct preliminary investigation and file information in court.

If the arrest and seizure are made in the forest, far from the authorities designated by law to conduct preliminary investigation, the delivery and filing of complaint shall be done within reasonable time sufficient for ordinary travel from the place of arrest to the place of delivery.

Section 12. Arraignment and Plea

Immediately after the complaint is filed, the forest officer shall transmit copy of complaint and all supporting documents to the Regional Office for proper handling and disposition, copy furnished the Assistant Secretary for General Legal Services. The prosecution of cases shall be the primary responsibility of the Regional Office concerned subject to the supervision and control of the Assistant Secretary for General Legal Services.

Arraignment is done in open court by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him and asking him whether he pleads guilty or not guilty. If he refuses to plead or makes a conditional plea, a plea of not guilty shall be entered for him.

Unless a shorter period is provided by a Special Law or Supreme Court Circular, the arraignment shall be held within 30 days from the date the court acquired jurisdiction over the person of the accused. The period of the pendency of a motion to quash or for a bill of particulars, or other causes justifying suspension of arraignment shall be excluded.

At any time before entering his plea, the accused may move to quash the complaint or information on the following grounds:

That:

1. The facts charged do not constitute an offense;
2. The court trying the case has no jurisdiction over the offense charged;
3. The court trying the case has no jurisdiction over the person of the accused;
4. The officer who filed the information had no authority to do so;
5. It does not conform substantially to the prescribed form;
6. More than one offense is charged except when a single punishment for various offenses is prescribed by law;
7. The criminal action or liability has been extinguished;
8. It contains averments which if true, would constitute a legal excuse or justification;
9. The accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

Section 13. Pre-trial Conference

It is mandatory in all criminal cases to order a pre-trial conference after arraignment to consider the following:

1. Plea bargaining
2. Stipulation of facts
3. Marking for identification of evidence of the parties
4. Waiver of objections to admissibility of evidence
5. Such other matters as will promote fair and expeditious trial of the criminal and civil aspects of the case

All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. These agreements shall be approved by the court.

Considering the importance of the pre-trial conference, the apprehending forest officer must attend it and bring to the court the original copies of all records of the case being heard.

Section 14. Trial

After arraignment and pre-trial, the accused shall prepare for trial. Trial shall commence within 30 days from receipt of the pre-trial order and shall continue until terminated. The order of trial shall proceed in the following order:

1. The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability. The apprehending forest officer and those who assisted him, together with the DENR officers who have personal knowledge about the subject matter must attend the hearings on this stage.
2. The accused may present evidence to prove his defense and damages, if any, arising from the issuance of a provisional remedy in the case.
3. The prosecution and the defense may, in that order, present rebuttal and sworn-rebuttal evidence unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.
4. Upon admission of the evidence of parties, the case shall be deemed submitted for decision unless the court directs them to argue orally or to submit written memoranda.
5. When the accused admit the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified.

Section 15. Rights of the Accused at the Trial

In all criminal prosecutions, the accused shall be entitled to the following rights:

1. To be presumed innocent until the contrary is proved beyond reasonable doubt;
2. To be informed of the nature and cause of the accusation against him;
3. To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may however, waive his presence at the trial pursuant to the stipulations set forth in his bail bond, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without any justifiable cause at the trial on a particular date of which he had notice shall be considered a waiver of his right to be present during that trial. When an accused during custody had been notified of the date of trial and escapes, he shall be deemed to have waived his right to be present on said date and on all subsequent trial dates until custody is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his right without the assistance of counsel;
4. To testify as witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him;
5. To be exempt from being compelled to be a witness against himself;

6. To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deemed out of or cannot with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having had the opportunity to cross-examine him;
7. To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf;
8. To have a speedy, impartial and public trial;
9. To have the right of appeal in all cases allowed and in the manner prescribed by law.

Section 16. Judgment

Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him by the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

If the judgment is of conviction it shall state:

1. The legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission;
2. The participation of the accused in the offense, whether as principal, accomplice, or accessory.
3. The penalty imposed upon the accused, and;
4. The civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

If judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

16.1. Promulgation of Judgment

The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

16.2 Entry of Judgment

After judgment has become final it shall be entered by the clerk in the book of entries of judgment. The date of finality of judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment and shall be signed by the clerk, with a certificate that such judgment has become final and executory .

CHAPTER III

DISPOSITION

Section 17. Disposition of items confiscated in favor of the government

Items forfeited in favor of the government shall be disposed of in accordance with law. Except for disposition through donation and for DENR's own- use, The disposition shall be governed by the same requirement and rules of procedures applied by DENR Central Committee on Bids and Awards of the Office of the Secretary. The Central Committee shall reproduce its requirement and rules of procedure for adoption and strict compliance.

DENR employees and their relatives within the fourth civil degree of consanguinity or affinity shall in no way, directly or indirectly be allowed to participate in or otherwise be interested in any part of these proceedings. In no case shall same individual(s) from whom items for disposition were confiscated be qualified as bidder in these proceedings.

Section 18. Procedure for Disposition through Public Auction

Confiscated forest products without court cases and forest products retrieved/recovered/salvaged by the DENR or turned over to the DENR pursuant to approved permits (e.g. approved tree cutting, or road right-of-way permits) shall be available for disposition through public auction. The following procedure shall be strictly followed in the disposition of forest products through public auction and/or sale:

1. The auction shall be conducted by the Committee on Bids and Awards who shall convene and issue an invitation to bid containing the following:
 - a. Invitation number
 - b. Place, date and time of opening of bids
 - c. Quantity of forest products
 - d. Accurate description and specification of forest products
 - e. Terms and conditions including the floor price
 - f. Bond requirement
 - g. Right to accept and reject bids (Government reservation clause)
 - h. Invitation to bidders
 - i. Bid proposals.
2. Posting and publication

The invitation to bid and Notice of Sale shall be posted in at least three (3) conspicuous places in the DENR local offices and in other public places. It shall be published in at least two (2) newspapers of general circulation for three (3) consecutive days, the last publication of which shall be 15 days before the opening of the bids.

In case of rebidding, the Invitation to Rebid and Notice of Sale shall be published in the same newspaper of general circulation at least once every week for three consecutive weeks, the last publication of which shall be one week before the scheduled rebidding

3. Accreditation of Bidders

The committee, meeting in quorum, shall not honor the offer or proposal of any bidder unless he has formally submitted an application therefore under oath containing among other information: his name and address; citizenship; nature of business; and statement that he has not committed any of the grounds for disqualification, i.e., a) conviction of a crime related to business, commerce, and trade, as well as for hoarding and profiteering; b) smuggling/conniving with smugglers of forest products; and, c) deliberate error, omission or commission in the bid tender .

4. Deposit

All bidders shall be required to deposit in either cashier's or manager's check in the name of the DENR Secretary the equivalent of 10% of the amount of bid, which deposit shall be returned to the losing bidder after the award is announced.

The 10% deposit of the winning bidder shall be automatically converted into partial payment and failure of the awardee to remit or pay the balance of the amount of the bid on or before 2:00 o' clock in the afternoon of the third working day from the date of the sale will render the award to him as null and void, and the 10% deposit forfeited in favor of the government.

5. Award of Bids

Award shall be given to the most advantageous offer to the government, provided that, the offer shall not be less than the minimum bid price set by the Committee.

In case of tie, the bidders shall submit another sealed bid immediately after the committee declares a tie and the bids shall likewise be opened after which, the committee shall prepare abstract of quotations and its order of award.

The committee shall prepare and send the award order or notification to the winning bidder. This award order shall serve as permit of the awardee to remove, transport and dispose the forest products subject of said award; Provided, however that the awardee shall have remitted/ paid the balance of the amount of bid before actual removal or transport of the same commences.

Section 19. Forest products which may be disposed of through donation shall be:

1. Those which are not subject of a pending case in court or with other appropriate office;
2. Those without claimants or offenders against whom the case could be filed;
3. Those found abandoned within forest areas, the ownership of which could not be ascertained and without claimants.

Beneficiaries qualified to receive donations

- a. Barangays
- b. Municipal and provincial governments
- c. Other government agencies, who by nature of their functions require wood materials or other forest products in order to enhance their services to the general public.

Documents to support request for donations

- a. Justification for the construction/ establishment of the infrastructure;
- b. Bill of materials and building plan duly approved by the project engineer; provided, that in case of Barangay construction or similar project, a simple sketch plan duly signed by the building foreman or barangay captain shall be sufficient;
- c. Certification issued by the provincial auditor that there is no fund or appropriation for the purchase of the required wood materials; provided, that for barangay constructions or similar projects, a certification from the Municipal Development Officer shall be sufficient; and,
- d. Certification from the CENRO/PENRO/Regional Office concerned that said volume or amount of forest products is available for disposition.

A certificate of completion of the project shall be submitted by the donee to the concerned DENR office duly attested to by the DENR official concerned and the provincial auditor, accompanied by the following documents:

- a. Certification by the Project Engineer of the completion of the project.
- b. Species and volume of timber and other forest products utilized
- c. Photographs of completed project showing specific portions where the donated materials were utilized

Since donation is gratuitous in nature and for government use, the payment of forest charges shall not be required from the donee.

Section 20. Expenses for the transfer, safekeeping, maintenance and delivery of apprehended, seized and confiscated items

Expenses for transfer, delivery and maintenance/safekeeping of apprehended items shall be added to the value thereof and shall attach as primary liens in favor of the DENR. It shall be deducted from and reimbursed to the DENR as administrative cost from the proceeds of the sale thereof.

The DENR shall allocate a fund to enable field officers to advance expeditiously the hauling of expenses and avoid deterioration and/or loss of economic value of the products/conveyances.

In cases where items forfeited in favor of the government are disposed of by judicial or other official mandate, the cognizant RED shall make official representations with the court or government agency concerned for the purpose of recovering the aforementioned primary lien.

The Undersecretary for Field Operations may promulgate such other guidelines, rules and regulations as may from time to time be deemed necessary or appropriate under the circumstances in order to ensure the recovery of expenses incurred by the DENR in this regard.

Section 21. Remittance of proceeds of sales

Proceeds from the sale of any items confiscated are property of the government of the Philippines. Proceeds in cash shall be deposited in a Special Fund and shall be applied in strict conformity with applicable laws, rules and regulations to priority needs of the DENR.

The proceeds of sale of confiscated forest products, after deduction of all administrative costs related to the confiscation shall be remitted by the chairman of the CBA-CFP to the Secretary, DENR either in the form of cashier's or manager's check immediately upon receipt of the full payment of the bidden forest products.

A quarterly report on all funds remitted to the Central Office shall be submitted by the cognizant officer to the Secretary which shall also be consolidated into an annual report to be similarly submitted at the end of the fiscal year.

Section 22. Reportorial Requirements

Quarterly reports shall be submitted by the RED to the Secretary, copy furnished the Assistant Secretary for General Legal Services, Undersecretary for Field Operations, and the Director of the Forest Management Bureau on the following:

1. Status Report of Cases – a complete list of all administrative cases initiated, including the dates, places and parties involved, current status and estimated period for completion, as well as recommendations for the efficient and expeditious disposition thereof.
2. List of seized and confiscated items
 - 2.1. All items seized and detained *pendente lite* with particular description of each item, current condition and place of detention/safekeeping.
 - 2.2. All conveyances temporarily released, stating names of recipients, conditions and amount of bonds
 - 2.3. All confiscated items awaiting final disposition, accurately described with recommendations as to final disposition
3. Items not recommended for disposition
 - 3.1 Those submitted as evidence in court or other government agency
 - 3.2 Those recommended for use by the DENR
 - 3.3 Those recommended for donation

4. Items requiring urgent disposition
 - 4.1 Items which cannot be detained for safekeeping until final disposition thereof is determined due to
 - a. the highly perishable nature thereof
 - b. the place for adequate safekeeping thereof cannot be provided, and
 - c. its continued detention until final disposition is impractical
 - 4.2 The list of these items shall be submitted to the Undersecretary for Field Operations without delay within 48 hours from discovery of urgency stating the particular description of the items, estimated value, reasons for recommending urgent disposition, and mode of disposition recommended.
5. Upon consultation with the Assistant Secretary for General Legal Services and the Director of FMB, and with the approval of the Secretary, the Undersecretary for Field Operations shall issue directives for the expeditious disposition of all such items.

Section 23. Repealing Clause.

This Order repeals DENR Administrative Order 97-32. All other orders, circulars and issuances inconsistent herewith are hereby repealed and/or modified accordingly.

Section 24. Effectivity.

This Order shall take effect fifteen (15) days after its publication once a week for three consecutive weeks in a newspaper of general circulation.

(SGD.) ELIZEA G. GOZUN
Secretary

Draft

Department Administrative Order

on

**NEW RULES AND REGULATIONS ON
FOREST LAW ENFORCEMENT**

ANNEX E.2

REPUBLIC OF THE PHILIPPINES
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City

DENR Administrative Order
No. 2004 –

SUBJECT: New Rules and Regulations on Forest Law Enforcement

Pursuant to the provisions of PD 705, as amended and pertinent policies, rules and regulations, these new rules and regulations on Forest Law Enforcement is hereby promulgated.

Section 1. DEFINITION OF TERMS

As used in this Order, the following terms shall have the corresponding meanings:

- Apprehension - to lay hold of forest products , tools and equipment, implements and conveyance, whether in transit or stationary for the purpose of inspection.
- Arraignment - stage in prosecution whereby a complaint or information is read to the accused in a language or dialect known and understandable to him and asking whether he pleads guilty or not to the accusation filed against him.
- Arrest - is the taking of a person into custody in order that he may be bound to answer for the commission of an offense .
- Complaint - is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.
- Confiscation - the act of appropriating seized forest products and conveyances by the government after judgment duly issued by the proper authority, either administrative or judicial that the said property is illegal or has been used in the cutting, gathering, collecting and/or possessing and /or transporting illegal forest products.
- Conveyance - any mode or type or class of vehicle or craft or any other means used for transportation either on land, water, air, or any combination thereof whether motorized or not, used in the gathering, collecting, transporting and/or possessing of the illegal forest products.
- Department - refers to the Department of Environment and Natural Resources.

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|---------------------------|---|
| Forest officers | - officials and employees of the DENR charged with the enforcement of forestry laws, rules and regulations of the Philippines. |
| Forest products | - refers to timber including lumber, pulpwood, firewood, bark, tree top, resin, gum, wood, oil , honey, beeswax, nipa, rattan, charcoal, or other forest growth, such as but not limited to grass, shrub, flowering plants in forest lands and others. |
| Forfeiture | - the loss of rights in a transaction involving property. |
| Information | - is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. |
| Inquest | - is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under the custody and correspondingly charged in court. |
| Judgment | - is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him by the proper penalty and civil liability, if any. It must be written in the official language, form personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based. |
| Preliminary Investigation | - is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. |
| Probable cause | - the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. |
| Secretary | - refers to the Secretary of the Department of Environment and Natural Resources. |
| Seizure | - official act of taking by persons authorized hereby those items subject of apprehension, seizure and confiscation into government custody, pending formal administrative proceedings for the disposition thereof. |
| Wildlife | - means wild forms and varieties of flora and fauna, in all developmental stages, including those which are in captivity or are being bred or propagated. |

CHAPTER I

ADMINISTRATIVE APPREHENSION, SEIZURE, AND CONFISCATION

Section 2. Persons authorized to make apprehensions:

1. Forest officers
2. Deputies (i.e. other government officials and private citizens duly deputized by the DENR Secretary or his duly authorized representative)
3. Members of law enforcement agencies
4. Private citizens as provided by law

Section 3. Persons Authorized to Effect Seizure

1. Community Environment and Natural Resources Officer (CENRO) or in his absence any DENR officer with the rank of Forester 3 or Land Management Officer 3 (LMO) actually assigned to the area of apprehension at the time thereof;
2. Team Leader of the apprehending team;
3. Protected Area Superintendent (PASU);
4. The Secretary may from time to time also designate in writing such other DENR Officials for the purpose.

Section 4. Items Subject to Apprehension and Seizure

1. Forest products illegally cut, gathered, removed or possessed or abandoned.
2. Any forest products removed, cut, collected, processed and/or transported without the requisite authorization or permit; or with incomplete required supporting documents; with genuine authorization or permit and/or supporting documentation that has an expired validity, has been cancelled or that containing forged entries; or with spurious (fake) authorization, permit and/or supporting documentation.
3. Machinery, equipment, tools and implements used in the possession, gathering, collecting, processing and/or transporting of illegal forest products.
4. Conveyance – any mode or type or class of vehicle or craft or any other means used for transportation either in land, water, air, or any combination thereof whether motorized or not, used for or in taking and/or maintaining temporary or permanent possession or control, gathering, collecting, processing, disposing of, or otherwise transporting, moving or transferring illegal forest products.
5. Wildlife illegally collected, gathered, acquired, transported or imported .

Section 5. Documents required for the transport or shipment of forest products

The following documents shall be required for the transport or shipment of forest products:

1. For logs/timber: Original Certificate of Transport Origin (CTO); together with the tally sheet corresponding thereto;
2. For lumber: Original Certificate of Lumber Origin (CLO), together with the sales invoice, in case of lumber sales, and the tally sheet;
3. For non-timber forest products: Original Certificate of Non-timber Forest Products Origin (CNFPO), together with the delivery receipt.
4. No Certificate of Origin shall be required in the following instances:
 - a. Logs/timber being transported from the licensee's/permittee's cutting area to its wood processing plant or main log storage area, provided that such facilities are located within the province of source; provided further that in cases where the wood processing plant is located outside the province, the transport/shipment thereof may be allowed, subject to prior approval by the RED(s) concerned. Such approval shall be in the form of a special authority issued by the RED for a period not exceeding one year, subject to the following conditions; that the conveyance(s) is/are company owned; that the delivery route is the normal route in the delivery of logs to the log pond or log yard of the firm's wood processing plant; and listing of the type and serial/plate number of the vehicle(s) authorized for the purpose.
 - b. Transport/shipment of finished, semi-finished, or knocked-down forest products, provided that these are accompanied by a delivery receipt or sales invoice, together with the tally sheets;
 - c. Lumber and lumber products transported from source to buyer/end-user within the confines of the province or within the Greater Manila area, provided that the same are covered by the corresponding sales invoice and/or delivery receipt;
 - d. Forest products transhipped from the point of initial unloading to its final point of destination, provided it is accompanied by a Certificate of Transshipment (COT) issued by the CENRO concerned indicating therein the kind, number, volume, and consignee of the shipment as well as the serial number of the Certificate of Origin accompanying the shipment.
 - e. Transport of logs/timber/lumber/other forest products derived from planted trees or non-wood forest products inside private lands, provided that the same is accompanied by a Certificate of Verification issued by a DENR local official at the CENRO level.

Forest products being shipped/transported without the accompanying original Certificate of Origin or the Special Authority to Transport duly issued by a DENR officer concerned shall be presumed as coming from illegal sources and as such, the forest products, including the conveyance used shall be subject to confiscation and disposition and the offender shall be prosecuted in accordance with PD 705, as amended, and other applicable laws and regulations.

Section 6. Procedure for Administrative Apprehension and Seizure

The following procedure shall be complied with in apprehension and seizure of illegal forest products and conveyances used in the commission of the offense:

1. Ocular inspection and cursory investigation - Involves the verification of authorizations, permits and accompanying documentation of forest products (transport documents in their original copies), machinery, equipment, tools and implements and conveyance(s).
2. Inventory and Documentation

If probable cause for apprehension and seizure is present, the apprehending officer shall do the following:

- a. Verbally inform the person(s) apprehended of his findings.
- b. Take the names, addresses and other available data of all persons involved in the cutting, gathering or collecting and/or transporting or possessing the forest products.
- c. Write an itemized list of all on-site machinery, equipment, tools and implements used, if any, in the commission of, or otherwise connected with, the offense.
- d. In case the violation involves the use of a conveyance, the apprehending forest officer shall verify the certificate of registration and/or official receipt as well as the driver's license or similar authorizations. Said documents shall be returned to the holder thereof upon notation of his identity and address as well as the name and address of the owner of the conveyance, its license plate number and other identifying marks or information.
- e. Immediately conduct the scaling or measurement of the apprehended forest products. The assessment thereof shall be based on the gross volume without the benefit of deduction for natural defects. In case the scaling or measurement cannot be completed at the close of regular office hours of the day, assistance shall be secured from the local DENR offices for a sufficient number of scalers to finish the work.
- f. Seize the forest products, machineries, conveyance(s), tools and equipment.
- g. In cases where the apprehension is made by non-DENR personnel, i.e., PC/PNP, Coast guard, and other deputized law enforcers, they shall notify the nearest DENR office and turn over the seized forest products and conveyance to the authorized seizure officer.

In cases where the apprehended conveyance involved is a government vehicle, the procedure above shall be followed and the vehicle shall be immediately released to the highest regional officer of the office who owned the same upon acknowledging that the said conveyance has been used in violation of existing forestry laws, rules and regulations.

3. Issuance of seizure receipt

Upon completion of the foregoing procedure, seizure receipt shall be issued which shall be acknowledged and received by the owner/shipper of the forest products or by his representative. In case of refusal, the fact shall be reflected thereon in their presence as proof of such action.

4. Preparation of apprehension and seizure reports.

The apprehension and seizure reports shall be prepared and the same, together with all the pertinent documents i.e., tally sheets, seizure receipts, photographs, etc., shall be submitted to the PENRO who shall conduct the confiscation proceedings.

Section 7. Procedure for Summary Administrative Confiscation

Immediately after seizure, a notice of hearing shall be signed by the PENRO and to be served by the apprehending officer to the parties concerned. Included therein, an order to parties to submit a written explanation within 3 days from receipt thereof.

The concerned parties shall submit their written explanation under oath why the forest product/conveyance should not be confiscated.

The PENRO or in his absence, any Senior Forest Management Specialist (SFMS) or Senior Environmental Management Specialist (SEMS) shall preside as hearing officer with the guidance of a DENR lawyer.

The procedure shall be summary in nature where the parties are required to submit the necessary documents, affidavits and evidences. However, the hearing officer may ask for clarificatory questions if need be.

The hearing officer shall render his decision within a period of 15 days from receipt of the documents, affidavits and evidences. If there is no substantial evidence sufficient to sustain an administrative decision adverse to interested parties, a ruling shall be issued dismissing the case and ordering the seized items to be returned to the owner. When evidence so warrants, a ruling shall be issued declaring the seized items to be confiscated in favor of the government, together with recommendations for further prosecution of the persons involved.

The decision shall become final and executory upon the lapse of 15 days unless a motion for reconsideration is filed. A party aggrieved by the decision may file only one motion for reconsideration within a non-extendible period of 15 days from receipt of the decision.

Appeal - A party may file an Appeal within a non-extendible period of 15 days from receipt of the denial of the Motion for Reconsideration or receipt of the decision. The appeal should be filed with the Office of the RED if the volume of forest products confiscated is less than 1,000 cu.m. and to the Office of the Secretary if more than 1,000 cu.m. and only upon payment of the corresponding appeal fee. The appeal shall contain a concise statement of all the issues of fact and law raised on appeal.

Grounds for Appeal - The appeal may be entertained only on any of the following grounds:

1. If there is prima facie evidence of abuse of discretion on the part of the PENRO.
2. If the decision, resolution or order was secured through fraud or coercion, including graft and corruption.

3. If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

The decision of the Secretary shall be final and executory 15 days from receipt thereof, if no motion for reconsideration or appeal to the Office of the President is filed.

Section 8. Procedure for Summary Administrative Confiscation of Abandoned Illegal Forest Products -- the following procedures shall apply in cases where illegal forest products, machinery, equipment and tools, as well as conveyance used are abandoned, or when the owner is unknown, cannot be determined, or cannot otherwise be found.

1. Illegal forest products/conveyances/machinery, equipment, tools and implements shall forthwith be apprehended. Whenever practicable, photographs of the apprehension site and items seized shall be taken indicating the date, caption and full printed name and signature of the apprehending officer at the back of each photograph.
2. The apprehending forest officer shall prepare on-site record of violations, on-site report and issue seizure receipt. In lieu of seizure receipt, notice of apprehension/seizure shall be left by the apprehending/seizing officer on-site, posted or tacked into the nearest tree, wall or other similar permanent structures. The notice shall contain the: a) date, time and place of apprehension, b) full printed name, designation and signature of apprehending officer, c) a complete, detailed list of item(s) apprehended, d) summary statement of violation(s) cited, and e) the full printed name and office address of the seizure officer to whom said items will be delivered.
3. The hearing officer shall conduct summary confiscation proceedings. The notice of hearing shall be posted at least 3 times, once a week for 3 consecutive weeks in at least 3 public places, including, but not limited to a) the barangay hall of the apprehension site, b) bulletin board of the DENR office where proceedings will be conducted, and c) at the municipal hall of the apprehension site.

Should the owner, claimant or other interested party fail to appear at the proceedings, such shall be deemed a waiver of the right to appear and of any/all rights to the items apprehended and seized in favor of the government.

The hearing officer shall state this fact in the records and enter certification that publication of notice of hearing had been effected in compliance herewith and thereupon issue his decision based on the evidence at hand.

A Motion for Reconsideration and/or Appeal may be taken by the owner, claimant or any interested party in accordance with Section 7 hereof.

CHAPTER II

JUDICIAL PROSECUTION OF OFFENSES FOR VIOLATION OF FORESTRY LAWS

Section 9. Institution of Criminal Action

All criminal actions either commenced by complaint or information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor maybe authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

The complaint may be filed either by the CENRO, PENRO, RED or any forest officer.

For offenses where a preliminary investigation is required. The complaint maybe filed with the proper officer for the purpose of conducting the requisite preliminary investigation and for all other offenses, by filing the complaint or information directly with the MTC and MCTC or with the office of the prosecutor as stated under Section 1, Rule 110, 2000 Revised Rules of Criminal Procedure.

The criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred. In case of illegal transport of forest products on board a motor vehicle, train or aircraft, the complaint must be filed in the municipality or territory where such conveyances passed, including the place of departure and arrival.

Form and Content of Complaint

The complaint or information must be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.

The complaint or information must contain the name of the accused; designation of the offense given by the statute; acts or omissions complained of as constituting the offense (cause of accusation); name of offended party; date of commission of offense and place where offense is committed.

In case of partnership, associations or corporations, the complaint shall be filed against the officers who ordered the cutting, gathering and collection or possession of timber or other forest products without any authority or legal documents as required under existing laws and regulations

Should the evidence in any administrative case arising by virtue hereof so warrants, the concerned CENRO, PENRO, RED or any forest officer shall initiate a criminal complaint before the City or Provincial Prosecutor or before the municipal trial court of appropriate jurisdiction for preliminary investigation and prosecution in accordance with law.

Reports and complaints regarding the commission of any of the offenses defined herein, not committed in the presence of any forest officer or employee or any deputized officers, shall immediately be investigated by the forest officer assigned in the area where the offense was allegedly committed, who shall thereupon receive the evidence supporting the report or complaint.

If there is prima facie evidence to support the complaint or report, the investigating forest officer shall file the necessary complaint with the appropriate official authorized by law to conduct preliminary investigation and file information in court.

Documents to accompany complaint

1. Sworn statement of the apprehending/arresting officer.
2. Affidavits of witnesses, if any, who may have knowledge of the commission of the offense.
3. Copy of the seizure receipt or statement showing the number, species and volume of the logs/timber/forest products seized including all pertinent information on the machinery, equipment and tools as well as conveyance used.
4. Photographs and if not available, an inventory showing the timber or other forest products seized including the tools, equipment, machinery and conveyances used in the commission of the offense.
5. If the offense involves the unlawful occupation of a forest land, a map of the occupied area must be submitted together with an assessment of the value of the forest resources that may have been damaged.
6. Other pertinent documents.

In initiating and prosecuting criminal charges, the cognizant DENR officer shall, in addition to the indictment, contemporaneously file for actual damages in an amount equivalent to the value of the illegal forest products confiscated as well as moral and exemplary damages for prejudice to the environment, in an amount equivalent to 10 times the value of the forest products confiscated.

After the complaint is filed, the concerned forest officer shall transmit copy of the complaint and all supporting documents to the Regional Office for proper handling and disposition, copy furnished the Assistant Secretary for General Legal Service and the Task Force Taga-Usig.

Section 10. Preliminary Investigation: when required

Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

A preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least 4 years, 2 months and 1 day without regard to the fine.

The right of the accused to a preliminary investigation is a personal right and can be waived expressly or by implication. If not waived, the absence of a preliminary investigation may amount to

a denial of due process. However, lack of a preliminary investigation, does not impair the validity of an information or render it defective.

When Preliminary Investigation is not required

When a person is lawfully arrested without a warrant involving an offense which requires preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules.

In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or persons.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation but he must sign a waiver of the provisions of Article 125 Revised Penal Code (RPC) as amended, in the presence of his counsel. Notwithstanding the waiver he may apply for bail and the investigation must be terminated within 15 days from its inception.

Officers authorized to conduct preliminary investigation

1. Provincial or City Prosecutors and their assistants
2. Judges of Municipal Trial Courts and MCTC
3. National and Regional State Prosecutors
4. Other Officers as may be authorized by law

This authority to conduct preliminary investigation includes all crimes cognizable by the proper court in their respective territorial jurisdiction.

When warrant of arrest may issue

Within 10 days from the filing of a complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause he shall issue a warrant of arrest or a commitment order if the accused had already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Sec. 7, Rule 112, 2000 Revised Rules on Criminal Procedure. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within 5 days from notice and the issue must be resolved by the court within 30 days from the filing of complaint or information.

Section 11. The following may execute arrest:

1. Forest officer or employee
2. Appropriate official designated by law
3. Deputies (other government officials/private citizens duly deputized by the DENR Secretary)

4. Members of law enforcement agencies (PC/INP, AFP/Coast guard, etc.)
5. Other government law enforcement agencies
6. Private citizens (citizen's arrest)

Arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest. No violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention.

The warrant of arrest should be executed within 10 days from receipt thereof otherwise, after the expiration of such period, the officer whom it was assigned for execution, shall make a report to the judge who issued the warrant and in case of his failure to execute the same, state the reason therefore.

The arresting officer shall inform the person to be arrested of the cause of the arrest and should show him the warrant unless to do so would imperil himself or place himself in jeopardy.

A warrant of arrest is necessary when the offense is not committed in the presence of the arresting officer.

There are only 3 instances when the arresting officer may arrest a person without warrant:

1. When in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.
2. When an offense has in fact just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.
3. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Delivery of arrested person

The person arrested with or without warrant must be delivered to the nearest police station or jail without necessary delay to prevent him from fleeing from the reach of law or go into hiding. The arresting forest officer shall deliver within 6 hours from time of arrest and seizure, the offender and the confiscated forest products, tools and equipment to, and file the proper complaint with, the appropriate official designated by law to conduct preliminary investigation and file information in court.

If the arrest and seizure are made in the forest, far from the authorities designated by law to conduct preliminary investigation, the delivery and filing of complaint shall be done within reasonable time sufficient for ordinary travel from the place of arrest to the place of delivery.

Section 12. Arraignment and Plea

Immediately after the complaint is filed, the forest officer shall transmit copy of complaint and all supporting documents to the Regional Office for proper handling and disposition, copy furnished the Assistant Secretary for General Legal Services. The prosecution of cases shall be the primary responsibility of the Regional Office concerned subject to the supervision and control of the Assistant Secretary for General Legal Services.

Arraignment is done in open court by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him and asking him whether he pleads guilty or not guilty. If he refuses to plead or makes a conditional plea, a plea of not guilty shall be entered for him.

Unless a shorter period is provided by a Special Law or Supreme Court Circular, the arraignment shall be held within 30 days from the date the court acquired jurisdiction over the person of the accused. The period of the pendency of a motion to quash or for a bill of particulars, or other causes justifying suspension of arraignment shall be excluded.

At any time before entering his plea, the accused may move to quash the complaint or information on the following grounds:

That:

1. The facts charged do not constitute an offense;
2. The court trying the case has no jurisdiction over the offense charged;
3. The court trying the case has no jurisdiction over the person of the accused;
4. The officer who filed the information had no authority to do so;
5. It does not conform substantially to the prescribed form;
6. More than one offense is charged except when a single punishment for various offenses is prescribed by law;
7. The criminal action or liability has been extinguished;
8. It contains averments which if true, would constitute a legal excuse or justification;
9. The accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

Section 13. Pre-trial Conference

It is mandatory in all criminal cases to order a pre-trial conference after arraignment to consider the following:

1. Plea bargaining
2. Stipulation of facts
3. Marking for identification of evidence of the parties
4. Waiver of objections to admissibility of evidence
5. Such other matters as will promote fair and expeditious trial of the criminal and civil aspects of the case

All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. These agreements shall be approved by the court.

Considering the importance of the pre-trial conference, the apprehending forest officer must attend it and bring to the court the original copies of all records of the case being heard.

Section 14. Trial

After arraignment and pre-trial, the accused shall prepare for trial. Trial shall commence within 30 days from receipt of the pre-trial order and shall continue until terminated. The order of trial shall proceed in the following order:

1. The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability. The apprehending forest officer and those who assisted him, together with the DENR officers who have personal knowledge about the subject matter must attend the hearings on this stage.
2. The accused may present evidence to prove his defense and damages, if any, arising from the issuance of a provisional remedy in the case.
3. The prosecution and the defense may, in that order, present rebuttal and sworn-rebuttal evidence unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.
4. Upon admission of the evidence of parties, the case shall be deemed submitted for decision unless the court directs them to argue orally or to submit written memoranda.
5. When the accused admit the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified.

Section 15. Rights of the Accused at the Trial

In all criminal prosecutions, the accused shall be entitled to the following rights:

1. To be presumed innocent until the contrary is proved beyond reasonable doubt;
2. To be informed of the nature and cause of the accusation against him;
3. To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may however, waive his presence at the trial pursuant to the stipulations set forth in his bail bond, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without any justifiable cause at the trial on a particular date of which he had notice shall be considered a waiver of his right to be present during that trial. When an accused during custody had been notified of the date of trial and escapes, he shall be deemed to have waived his right to be present on said date and on all subsequent trial dates until custody is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his right without the assistance of counsel;
4. To testify as witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him;
5. To be exempt from being compelled to be a witness against himself;

6. To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deemed out of or cannot with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having had the opportunity to cross-examine him;
7. To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf;
8. To have a speedy, impartial and public trial;
9. To have the right of appeal in all cases allowed and in the manner prescribed by law.

Section 16. Judgment

Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him by the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

If the judgment is of conviction it shall state:

1. The legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission;
2. The participation of the accused in the offense, whether as principal, accomplice, or accessory.
3. The penalty imposed upon the accused, and;
4. The civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

If judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

16.1. Promulgation of Judgment

The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

16.2 Entry of Judgment

After judgment has become final it shall be entered by the clerk in the book of entries of judgment. The date of finality of judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment and shall be signed by the clerk, with a certificate that such judgment has become final and executory .

CHAPTER III

DISPOSITION

Section 17. Disposition of items confiscated in favor of the government

Items forfeited in favor of the government shall be disposed of in accordance with law. Except for disposition through donation and for DENR's own- use, The disposition shall be governed by the same requirement and rules of procedures applied by DENR Central Committee on Bids and Awards of the Office of the Secretary. The Central Committee shall reproduce its requirement and rules of procedure for adoption and strict compliance.

DENR employees and their relatives within the fourth civil degree of consanguinity or affinity shall in no way, directly or indirectly be allowed to participate in or otherwise be interested in any part of these proceedings. In no case shall same individual(s) from whom items for disposition were confiscated be qualified as bidder in these proceedings.

Section 18. Procedure for Disposition through Public Auction

Confiscated forest products without court cases and forest products retrieved/recovered/salvaged by the DENR or turned over to the DENR pursuant to approved permits (e.g. approved tree cutting, or road right-of-way permits) shall be available for disposition through public auction. The following procedure shall be strictly followed in the disposition of forest products through public auction and/or sale:

1. The auction shall be conducted by the Committee on Bids and Awards who shall convene and issue an invitation to bid containing the following:
 - a. Invitation number
 - b. Place, date and time of opening of bids
 - c. Quantity of forest products
 - d. Accurate description and specification of forest products
 - e. Terms and conditions including the floor price
 - f. Bond requirement
 - g. Right to accept and reject bids (Government reservation clause)
 - h. Invitation to bidders
 - i. Bid proposals.
2. Posting and publication

The invitation to bid and Notice of Sale shall be posted in at least three (3) conspicuous places in the DENR local offices and in other public places. It shall be published in at least two (2) newspapers of general circulation for three (3) consecutive days, the last publication of which shall be 15 days before the opening of the bids.

In case of rebidding, the Invitation to Rebid and Notice of Sale shall be published in the same newspaper of general circulation at least once every week for three consecutive weeks, the last publication of which shall be one week before the scheduled rebidding

3. Accreditation of Bidders

The committee, meeting in quorum, shall not honor the offer or proposal of any bidder unless he has formally submitted an application therefore under oath containing among other information: his name and address; citizenship; nature of business; and statement that he has not committed any of the grounds for disqualification, i.e., a) conviction of a crime related to business, commerce, and trade, as well as for hoarding and profiteering; b) smuggling/conniving with smugglers of forest products; and, c) deliberate error, omission or commission in the bid tender .

4. Deposit

All bidders shall be required to deposit in either cashier's or manager's check in the name of the DENR Secretary the equivalent of 10% of the amount of bid, which deposit shall be returned to the losing bidder after the award is announced.

The 10% deposit of the winning bidder shall be automatically converted into partial payment and failure of the awardee to remit or pay the balance of the amount of the bid on or before 2:00 o' clock in the afternoon of the third working day from the date of the sale will render the award to him as null and void, and the 10% deposit forfeited in favor of the government.

5. Award of Bids

Award shall be given to the most advantageous offer to the government, provided that, the offer shall not be less than the minimum bid price set by the Committee.

In case of tie, the bidders shall submit another sealed bid immediately after the committee declares a tie and the bids shall likewise be opened after which, the committee shall prepare abstract of quotations and its order of award.

The committee shall prepare and send the award order or notification to the winning bidder. This award order shall serve as permit of the awardee to remove, transport and dispose the forest products subject of said award; Provided, however that the awardee shall have remitted/ paid the balance of the amount of bid before actual removal or transport of the same commences.

Section 19. Forest products which may be disposed of through donation shall be:

1. Those which are not subject of a pending case in court or with other appropriate office;
2. Those without claimants or offenders against whom the case could be filed;
3. Those found abandoned within forest areas, the ownership of which could not be ascertained and without claimants.

Beneficiaries qualified to receive donations

- a. Barangays
- b. Municipal and provincial governments
- c. Other government agencies, who by nature of their functions require wood materials or other forest products in order to enhance their services to the general public.

Documents to support request for donations

- a. Justification for the construction/ establishment of the infrastructure;
- b. Bill of materials and building plan duly approved by the project engineer; provided, that in case of Barangay construction or similar project, a simple sketch plan duly signed by the building foreman or barangay captain shall be sufficient;
- c. Certification issued by the provincial auditor that there is no fund or appropriation for the purchase of the required wood materials; provided, that for barangay constructions or similar projects, a certification from the Municipal Development Officer shall be sufficient; and,
- d. Certification from the CENRO/PENRO/Regional Office concerned that said volume or amount of forest products is available for disposition.

A certificate of completion of the project shall be submitted by the donee to the concerned DENR office duly attested to by the DENR official concerned and the provincial auditor, accompanied by the following documents:

- a. Certification by the Project Engineer of the completion of the project.
- b. Species and volume of timber and other forest products utilized
- c. Photographs of completed project showing specific portions where the donated materials were utilized

Since donation is gratuitous in nature and for government use, the payment of forest charges shall not be required from the donee.

Section 20. Expenses for the transfer, safekeeping, maintenance and delivery of apprehended, seized and confiscated items

Expenses for transfer, delivery and maintenance/safekeeping of apprehended items shall be added to the value thereof and shall attach as primary liens in favor of the DENR. It shall be deducted from and reimbursed to the DENR as administrative cost from the proceeds of the sale thereof.

The DENR shall allocate a fund to enable field officers to advance expeditiously the hauling of expenses and avoid deterioration and/or loss of economic value of the products/conveyances.

In cases where items forfeited in favor of the government are disposed of by judicial or other official mandate, the cognizant RED shall make official representations with the court or government agency concerned for the purpose of recovering the aforementioned primary lien.

The Undersecretary for Field Operations may promulgate such other guidelines, rules and regulations as may from time to time be deemed necessary or appropriate under the circumstances in order to ensure the recovery of expenses incurred by the DENR in this regard.

Section 21. Remittance of proceeds of sales

Proceeds from the sale of any items confiscated are property of the government of the Philippines. Proceeds in cash shall be deposited in a Special Fund and shall be applied in strict conformity with applicable laws, rules and regulations to priority needs of the DENR.

The proceeds of sale of confiscated forest products, after deduction of all administrative costs related to the confiscation shall be remitted by the chairman of the CBA-CFP to the Secretary, DENR either in the form of cashier's or manager's check immediately upon receipt of the full payment of the bidden forest products.

A quarterly report on all funds remitted to the Central Office shall be submitted by the cognizant officer to the Secretary which shall also be consolidated into an annual report to be similarly submitted at the end of the fiscal year.

Section 22. Reportorial Requirements

Quarterly reports shall be submitted by the RED to the Secretary, copy furnished the Assistant Secretary for General Legal Services, Undersecretary for Field Operations, and the Director of the Forest Management Bureau on the following:

1. Status Report of Cases – a complete list of all administrative cases initiated, including the dates, places and parties involved, current status and estimated period for completion, as well as recommendations for the efficient and expeditious disposition thereof.
2. List of seized and confiscated items
 - 2.1. All items seized and detained *pendente lite* with particular description of each item, current condition and place of detention/safekeeping.
 - 2.2. All conveyances temporarily released, stating names of recipients, conditions and amount of bonds
 - 2.3. All confiscated items awaiting final disposition, accurately described with recommendations as to final disposition
3. Items not recommended for disposition
 - 3.1 Those submitted as evidence in court or other government agency
 - 3.2 Those recommended for use by the DENR
 - 3.3 Those recommended for donation

4. Items requiring urgent disposition
 - 4.1 Items which cannot be detained for safekeeping until final disposition thereof is determined due to
 - a. the highly perishable nature thereof
 - b. the place for adequate safekeeping thereof cannot be provided, and
 - c. its continued detention until final disposition is impractical
 - 4.2 The list of these items shall be submitted to the Undersecretary for Field Operations without delay within 48 hours from discovery of urgency stating the particular description of the items, estimated value, reasons for recommending urgent disposition, and mode of disposition recommended.
5. Upon consultation with the Assistant Secretary for General Legal Services and the Director of FMB, and with the approval of the Secretary, the Undersecretary for Field Operations shall issue directives for the expeditious disposition of all such items.

Section 23. Repealing Clause.

This Order repeals DENR Administrative Order 97-32. All other orders, circulars and issuances inconsistent herewith are hereby repealed and/or modified accordingly.

Section 24. Effectivity.

This Order shall take effect fifteen (15) days after its publication once a week for three consecutive weeks in a newspaper of general circulation.

(SGD.) ELIZEA G. GOZUN
Secretary