

**DENR Memorandum Order
No. 36
May 6, 1988**

**SUBJECT : Guidelines on the Confiscation, Seizure
and Disposition of Illegally Cut,
Gathered, and/or Transported Forest
Products**

Pursuant to the provisions of Presidential Decree No. 705, as amended, and Letter of Instructions No. 1020 and other pertinent policies, laws and regulations, the following procedures in the arrest of offender(s), seizure/confiscation, disposition of illegal forest products are hereby issued for the information and guidance of all concerned:

1. Arrest of offenders, seizure and confiscation of illegally cut, gathered and/or questionable forest products.
 - a. In consonance with the Section 68-A of Executive Order No. 277, the Secretary of Environment and Natural Resources or his duly authorized representative have administrative authority to order confiscation of any forest products illegally cut, gathered, removed, possessed or abandoned, including 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. The term forest products as used herein shall include lumber.
 - b. DENR Officers and other authorized personnel of the DENR, shall have authority to seize/confiscate illegally cut, gathered, removed forest products under their respective jurisdiction.
 - c. Pursuant to Section 80 of P.D. 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 P.D. 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. The arresting forest officer shall immediately deliver the offender to the nearest police station.

- d. Immediately after seizure of the forest products together with the tools, conveyances and instrument used in the commission of the offense, the apprehending forest officer shall execute his sworn statement/affidavit surrounding the facts of the case in the form hereto attached as Appendix "A". He shall also take the affidavits or statements of witnesses, if any in the form hereto attached as Appendix "B".
- e. The scaling or measurement of the seized forest products shall be conducted immediately and the assessment thereof shall be based on the gross volume without benefit of deduction for natural defects, after which the corresponding seizure receipt shall be issued by the signing DENR officer(s). All logs confiscated and are to be sold shall be marked with the marking hatchet at both ends.
- f. In cases where the apprehension are made by the PC/INP, EIIB, Coast Guard and other government law enforcement agencies, the apprehending agency shall notify the nearest DENR office and turn over the seized forest products to the CENRO/PENRO/RED as the case may be for proper investigation and disposition. In the same manner, forest products seized/confiscated by the DENR Central Office personnel shall likewise be turned over to the CENRO/PENRO/RED concerned for further investigation and proper disposition in accordance with the procedure herein provided.
- g. In cases where the apprehension is made by the field DENR officer, the forest products and the conveyance used shall be deposited to the nearest CENRO/PENRO/RED office, as the case may be, for safekeeping, wherever it is most convenient. If the transfer of the seized forest products to the above places is not immediately feasible, the same shall be placed under the custody of any licensed sawmill operator or the nearest local public official such as the Barangay Captain, Municipal/City Mayor, Provincial Governor or the PC/INP; at the discretion of the confiscating officer taking into account the safety of the confiscated forest products. All TLA holders shall, upon request, provide transportation facilities for the transfer of the confiscated/seized forest products from the place of apprehension

to the place of custody. In any case, the custody of the forest products shall be duly acknowledged and received by the official taking custody thereof.

- h. All expenses incurred by the CENRO/PENRO/RED in the hauling and transportation of the forest products from the place of apprehension to the depository area as mentioned above shall be reimbursed by the office in the amount equivalent to not more than ten (10) percent of the proceeds of sales through public bidding of the confiscated forest products as administrative costs.
2. Filing of Complaint. — The forest officer shall forthwith file the complaint with the Fiscal's Office in the form prescribed by said office or if the Office of the Fiscal is too far from the place where the offense is committed, the criminal complaint shall be filed with the Municipal Trial Court of the locality in the form hereto attached as Appendix "C" hereof, against any and all person who appear to be responsible for the commission of the offense penalized under Section 68 of P.D. 705, as amended by Executive Order No. 277. In case of partnerships, associations, or corporations, the complaint shall be filed against the officers who ordered the cutting, gathering, collection or possession of the forest products.

The following documents should be attached to the complaint:

- a) Sworn statement of the apprehending/arresting officer; (Annex "A")
 - b) Affidavits of witnesses, if any, who may have knowledge of the commission of the offense; (Annex "B")
 - c) Copy of the Seizure Receipt or Statement showing the number, species and volume of the logs/timber/forest products seized;
 - d) Photographs showing the timber or other forest products seized including the tools, equipment, machinery and conveyances used in the commission of the offense.
3. Referral of Complaint. — 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 Legal Affairs.

4. Prosecution of Offenses. — The prosecution of cases filed under these regulations shall be the primary responsibility of the Regional Office concerned subject to the supervision and control of the Assistant Secretary for Legal Affairs.

4. Disposition of confiscated forest products.

a. The RED/CENRO/PENRO, as the case may be, or his duly authorized representative(s) shall without delay sell at public auction and/or dispose in accordance with existing laws, all confiscated forest products, except the following:

- i) Those subject of judicial proceedings until proper authority is obtained for their disposition from the court where the case is pending.
- ii) Those earmarked for donation to other agencies or charitable and similar institution; and
- iii) Those determined by the DENR for its own infrastructure needs.

b. Confiscated forest products shall be disposed of through a Committee on Bids and Awards which shall be composed of the following:

- i).
 - (a) value of P50,000.00 or less-concerned CENRO as chairman, Local Government representative and COA representatives as members;
 - (b) For confiscated forest products with current market value of more than P50,000.00 up to P100,000.00 — concerned PENRO as chairman, and Local Government representative and COA representatives as members; and
 - (c) For confiscated forest products with current market value of more than P100,000.00 shall be disposed of by the Regional Committee on Bids and Awards composed of RED/RTD and Local Government

representative and COA representatives.

Subject to the approval of the Secretary of Natural Resources, the local government concerned may be given a share of the proceeds of the confiscated forest products especially in cases where they had a role in the apprehension/confiscation.

In all the foregoing, the assessment of the current market value shall also be made the Committee concerned based on updated price indices.

- ii) In cases of confiscated forest products that are the subject of court cases, representations with the proper court shall be made for the immediate disposition thereof through public auction to avoid loss of its economic value during the pendency of the case. The proceeds of the sale shall be deposited as the court directs and the same shall be awarded by the latter to whoever shall be entitled thereto based on the final court decision.

In the case of forest products that easily deteriorate like rattan, albizzia falcataria, gubas and similar forest products, efforts shall be made to convince the court that the same shall be disposed of immediately and without delay to avoid deterioration.

c. Invitation to Bid (ITB)

When confiscated forest products are to be sold through public auction, the Chairman shall convene the members immediately and issue an invitation to bid (Annex "C") containing the following:

- ii) Invitation number;
- iii) Place, date and time of opening of bids;
- iiii) Quantity of forest products;
- ivi) Accurate description and specification forest products;

- vi) Terms and conditions including the floor price (Annex "B");
- vii) Bond requirement;
- viii) Right to accept and reject bids (Government reservation clause);
- viii) Instruction to bidders; and
- ix) Bid proposals.

d. Posting and Publication

The Invitation to Bid and Notice of Sale (Annex "D") shall be posted in at least three (3) conspicuous places in the DENR local offices, as the case may be, and in other public places, and 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 fifteen (15) days before the opening of the bids. In areas where there is no local newspaper, the posting of notices at least thirty (30) days before the opening of the bids shall be deemed sufficient. Likewise, Letter of Invitation to Bid (Annex "E") shall be sent to prospective bidders such as the PWPA representative, furniture association manufacturers and all sawmills in the locality to inform them of the scheduled public auction sale and of the description of the forest products available for bidding.

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 (3) consecutive weeks, the last publication of which shall be one (1) week before the scheduled rebidding.

If after a rebid, no qualified bids are submitted, negotiated bids may be authorized with the approval of the DENR Secretary.

The Secretary may also authorize, negotiated bidding in cases where the value of the forest products is less than P50,000 and the prospective buyers are engaged in furniture and similar industries; and in other cases when social equity is involved. In the later case, the Regional Executive Director, upon prior clarification with the Undersecretary for Field Operations, may segregate the bidding into small lots. It is understood that the cost of bidding shall be deducted from the bidding price.

e. Accreditation of Bidders

The Committee, meeting on quorum, shall not honor the offer or proposal of any bidder unless he has formally submitted an application therefor under oath containing, among others; (a) name and address (b) citizenship; (c) nature of business; (d) statement that he has not committed any of the following grounds for disqualification:

- i) Conviction of a crime related to business, commerce, and trade, as well as for hoarding and profiteering;
- ii) Smuggling/conniving with smugglers of forest products; and
- iii) Deliberate error, omission or commission in the bid tender.

In addition to the above requirements, the prospective bidder shall likewise submit proofs that he is a duly registered lumber or log dealer or sawmill operator, furniture manufacturer for other forest products, or that they are operators of NACIDA registered/recognized cooperatives.

- iv) In no case shall the person from whom the forest products were confiscated be qualified as a bidder.

The DENR officers concerned shall develop and implement an ID Card system for buyers and agents to properly identify them and safeguard against possible misrepresentation.

f. Pre-Bid Conference

If necessary, the Committee may hold a pre-bid conference before the bidding to clarify or explain doubts or ambiguities on the specifications or conditions on the Invitation to Bid. The pre-bid conference shall not be used as an occasion for amending, modifying, or revising advertised specifications and conditions.

g. Deposit

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

On the other hand, the 10 percent bid value deposited by the awardee shall be automatically converted into partial payment and failure of the awardee to remit/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 percent deposit shall be forfeited in favor of the government.

h. Opening of Bids

- i) Sealed bids — All sealed bids shall be submitted to and received by the Chairman, Committee on Bids and Awards on Confiscated Forest Products only on the date, time and place for opening of the bids as indicated in the Invitation to Bid. Bidders or authorized representatives may witness the proceedings.

After the bid tenders are opened, all copies shall be properly identified and initialed by the Committee members and shall be recorded in the appropriate record book by the Secretariat the Committee.

- ii) Postponement — No opening of any bid shall be postponed by the Committee. However, in case there is only one (1) bidder, the bidding shall be postponed and rescheduled by the Committee. Likewise, if there is more than one (1) bidder and the date set for the opening of bids falls on a declared/legal holiday, the bids shall be opened on the following working day at the same hour and place specified in the bid.
- iii) Late Bids — Bids submitted after the scheduled time of opening shall not be accepted by the Chairman of the CBACFP.
- iv) Correctness of Bids — After the bids are opened, no bidder shall be allowed to make any correction, alteration or improvement on his bid which may prejudice the government or the other bidders.
- v) Abstract of Bids — The offers submitted by the bidders shall

be abstracted in the prescribed form which shall be certified as to its correctness and authenticity by the CBACFP. The abstract shall serve as the guide in the evaluation of the offers by the CBACFP.

i. Appreciation of Bids

In the appreciation of bids, the Committee shall be guided by the following:

- i) Invalid Bids — Bids submitted which are not signed nor covered by the required bond or does not meet all the requirements shall be declared as "NO BID" to be signed by the Committee members.

j. Bases of Award

Award shall be given to the most advantageous offer. In case of a tie, the bidders shall submit another sealed bid immediately after the Committee declares a tie and the bids shall likewise be opened, which, after the Committee shall prepare the abstract of quotations and its order of award. Furthermore, a certificate of disposal of the forest products seized indicating the quantity, species, the amount of specific taxes and penalties due thereon, together with five (5) copies of the auxiliary invoice shall be prepared furnishing a set of copy thereof to the following: Undersecretary for Field Operations, Regional Executive Director, PENRO, CENRO and representatives of the Local Government concerned and COA.

k. Approval and Notification of Awards

The Committee shall prepare and send the award order or notification to the winning bidder. This award order shall serve as the permit of the awardee to remove, transport and dispose the forest products subject of said award.

6. Expenses in the Transfer of the Seized Forest Products from the Place of Apprehension to a Depository Area

All expenses to be incurred in the hauling and transport of the seized forest product from the place of apprehension to a depository

area shall be added to the value of the forest products to be added to the value of the forest products to be bidded and included in the minimum bid price. These expenses shall be reimbursed as administrative costs not to exceed the equivalent of ten (10) percent of the total proceeds of the sale.

In cases of forest products that are subject of court cases and sold/disposed at public auction upon proper representations with the court, the expenses to be incurred in the bidding and transport of the seized forest products from the place of apprehension to a depository area shall likewise be added to the value of forest products to be auctioned and included in the minimum bid price.

7. Remittance of Proceeds of Sale

The proceeds of sale of confiscated forest products, after deducting all administrative costs related to the confiscation of the forest products and their disposition shall be remitted by the Chairman of the CBACFP to the Secretary, DENR either in the form of Cashier's or Manager's check immediately upon receipt of the full payment of the bidded forest products.

8. Reporting

a. Individual Cases/Report

- i) Confiscated/seizure/impounding shall be reported immediately by the seizing DENR officer to the CENRO within 24 hours from the time of seizure, through the fastest means of communication followed by a detailed report within three (3) days from the date of seizure together with the circumstances on such confiscation/seizure and action taken thereon.
- ii) Thereafter the CENRO concerned shall likewise send a flash report to the PENRO and Regional Executive Director concerned.
- iii) If confiscation/seizure is made by personnel from the Regional Office the same procedure shall be followed by a flash report of the Regional Executive Director concerned to

the Undersecretary for Field Operations.

b. Monthly Report

- i) A monthly confiscation report shall be submitted by the CENRO/PENRO to the Regional Executive Director together with the status of the confiscated forest products.
- ii) The Regional Executive Director, shall consolidate the monthly confiscation report of all the CENRO/PENRO under his region and in turn forward the same to the Undersecretary for Field Operations concerned.

c. Quarterly Report

- i) The RED shall submit to the DENR Secretary through the Undersecretary for Field Operations a quarterly report on the status of confiscated forest products within the region.

9. Records Keeping and Monitoring

A Secretariat shall be created in the DENR Central Office, which shall handle all paper work and keep all records, data and accounts of all confiscated and disposed forest products.

A monthly summary report on confiscated/disposed forest products shall be submitted to the DENR Secretary within fifteen (15) days after the end of each month.

10. Implementing Guidelines and Instruction

The Undersecretary for Field Operations is hereby authorized to issue implementing guidelines and instructions from time to time for the orderly and effective implementation of this Order. Such guidelines/instructions shall include, among others, other detailed mechanics on the disposition of funds generated from the sale of confiscated forest products through public auction.

11. Repealing Clause

All policies, memoranda, rules and regulations which are inconsistent with this Order are hereby repealed and/or amended accordingly.

12. Effectivity

This Order takes effect immediately.

(Sgd.) FULGENCIO S. FACTORAN, JR.
Secretary

REPUBLIC OF THE PHILIPPINES)
MUNICIPALITY OF _____:
PROVINCE OF _____)

A F F I D A V I T

I, _____, of legal age and a resident of _____, after being duly sworn, depose and state:

1. That I am an _____ of the Department of Environment and Natural Resources, Region _____ with place of assignment at _____;

2. That on or about _____ at _____, I was (state activity such as conducting surveillance, patrolling, etc.);

3. That in the course of the permanence of my work on or about _____ in _____ I apprehended a certain _____ for having cut, gathered, removed, transported and/or in possession of _____ pieces of _____ of logs/timber of lumber with a total volume of _____ cu. m. and with a total value of P _____ without a permit or license or legal supporting documents;

4. That said logs/timber/lumber were cut, gathered, removed, transported and/or possessed without permit, license or legal supporting documents upon order of _____ company, more particularly, _____ who are officials of said company or corporation.

5. That the pieces of logs/timber/lumber do not bear the FMB official log hatchet marking nor any licensee's/permittee's log markings nor supported by any legal document in violation of Section 68 of PD 705, as amended, and as further amended by Executive Order No. 277, series of 1987.

IN WITNESS WHEREOF, I have hereunto signed this affidavit this _____ day of _____ 1988 at _____.

Affiant

SUBSCRIBED and SWORN to before me this _____ day of
_____, 1988 at _____.

Administering Official

REPUBLIC OF THE PHILIPPINES)
MUNICIPALITY OF _____:
PROVINCE OF _____)

AFFIDAVIT

I, _____ of legal, age and a resident of _____, after being duly sworn, depose and state:

1. That on or about _____ I was at _____;
2. That on or about said time and date I saw _____.
3. That _____ was later apprehended by _____;
4. That I execute this affidavit to attest to the truth of the foregoing narration.

IN WITNESS WHEREOF, I have hereunto signed this affidavit this ____ day of _____ 1988 at _____.

Affiant

SUBSCRIBED and SWORN to before me this _____ day of _____, 1988 at _____.

Administering Official

Republic of the Philippines
MUNICIPAL TRIAL COURT OF _____
_____ JUDICIAL REGION
PROVINCE OF _____

PEOPLE OF THE PHILIPPINES CRIMINAL CASE NO. _____
versus FOR: Violation of Section 68,
JUAN DE LA CRUZ, PD 705, as amended, and
as further amended by
Executive Order No. 277.

CRIMINAL COMPLAINT

The undersigned, under oath, accuses JUAN DE LA CRUZ for violation of Section 68 of PD 705, as amended, and as further amended by Executive Order 277, committed as follows:

That on or about the ____ day of _____, 1988, in Barangay _____, Municipality _____ of _____, Province of _____, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously cut, gather, collect, remove and/or possess and/or caused, to be cut, gathered collected, removed and/or possessed ____ pieces of _____ with a total volume of _____ cubic meters and with a total value of _____, from the public forest described in FMB Control Map No. _____, located in _____, without having first secured and obtained from the proper authorities the necessary permit or license and/or legal supporting documents.
CONTRARY TO LAW.

SUBSCRIBED and SWORN to before me this ____ day of _____, 1988 at _____.

Administering Official

ANNEX C

INVITATION TO BID

SEALED BIDS for the purchase of _____ pieces of
_____ with an equivalent volume of
_____ cubic meters will be received at the Office of the

_____ until _____, 1988 at 9:00 A.M.

Only legitimate timber licensees, log and lumber dealers, operators of sawmills, plywood, veneer or paper mills and operators of Nacida Registered Industries, in case of forest product other than timber shall be allowed to participate in the bidding.

The envelope containing the bids should be sealed and plainly marked "BID for _____ cubic meters board feet/linear meter of confiscated log/lumber/other forest products."

The CBACFP reserves the right to reject any or all bids, or to accept such bids as may be advantageous to the government.

Additional information relative hereto will be furnished upon request. Address all communications to the CBACFP
_____.

CHAIRMAN, CBACFP

TERMS AND CONDITIONS

1. The above-mentioned forest products shall be sold to the highest bidder as determined herein below and the said forest products may be inspected by the prospective bidder three (3) days before the date of sale. Assessment shall be based on the gross volume without benefit of deducting for rot cavities, or natural defects.
2. The minimum amount for the bid proposal on the confiscated forest products shall not be less than the amount as determined by the DENR including specific taxes, surcharges or penalties due thereon.
3. Before commencing the bidding, all bidders shall be required to register their names together with the Residence Certificate as well as their tax account number.
4. Bid tender shall be accepted before the actual sale and it shall be accompanied by cash deposit, cashier's or manager's check in the name of DENR equivalent to 10% of the amount of the bid for a particular lot which deposits shall be returned to the losing bidder after the award is made.
5. The opening of the bid tenders shall be done by the Committee on Bids and Awards on Confiscated Forest Products and may be witnessed by the bidders or their duly designated representatives.
6. After the opening of all bid tenders, the forest products shall be awarded by the CBACFP to the bidder who shall have offered the price equal or higher than the floor price. In case of tie, a new bidding shall be conducted immediately between or among the tied bidders until such tie is broken.
7. The ten (10%) percent bid value deposited by the awardee shall be automatically converted into partial payment and failure of the awardee to remit/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 null and void and the 10% deposited shall be forfeited in favor of the government.

8. Unless otherwise indicated, the forest products shall be offered for sale "AS IS, WHERE IS" and the DENR shall give warranty as to their condition.
9. Where goods are put up for sale by auction in lots, each lot is the subject of separate contract of sale.
10. Nature of forest products listed in the Notice of Sale is subject to exact determination before delivery and in case of any excess discovered, the same shall be withheld and withdrawn unless the buyer is willing to increase the bid price proportionate to the number/volume/quality of excess forest products, and in case of shortage discovered, inspection by bidder of the forest products offered for sale shall not be ground to nullify the bidding proceeding. In the event the highest bidder refuses to accept the award, the ten (10%) percent cash deposit shall be forfeited in favor of the government and the bid of the second highest bidder shall be immediately recognized and accepted.
11. Storage fee shall be imposed on forest products awarded but not claimed within ten (10) days from the date of sale and goods withdrawn after twenty (20) days from the date of sale/award will be rebid and all moneys including the ten (10%) percent bid deposit will be considered forfeited.

ANNEX D

NOTICE OF SALE

Pursuant to the provision of PD 705 as amended, Letter of Instructions No. 1020 dated 14 May 1980 and Executive Order No. 277, the Committee on Bids and Awards for Confiscated Forest Products shall sell at public auction _____ cubic meters of _____ on _____ at _____ to be held at _____, _____.

Name of Officer

Designation

Office Address

The President/General Manager

Sir:

This is to inform you that the DENR is now accepting bids up to 9:00 a.m. of _____, 198____, for the purpose of selling at price auction _____ cubic meters of confiscated _____ described as follows:

SPECIES	NO. OF PIECES	VOLUME
Total	_____	_____

The above forest products were confiscated by this Office and are now stockpiled at _____ and ready for auction sale in accordance with Letter of Instruction No. 1020 and Executive Order No. 277.

If you are interested in buying said forest products, please submit your sealed bid to the Chairman, CBACFP _____.

You may address inquiries to the above-mentioned office.

Very truly yours,

Chairman, CBACFP