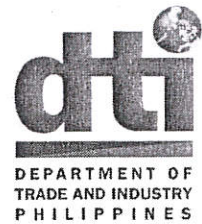




REPUBLIC OF THE PHILIPPINES  
Department of Health  
Department of Trade and Industry



JOINT MEMORANDUM CIRCULAR NO. 20 - 03  
Series of 2020

**SUBJECT : GUIDELINES ON THE IMPLEMENTATION OF JOINT DOH-DTI-DA-DOJ-BOC CIRCULAR NO. 001 (S2020) ON SEIZURE AND RELATED PROCEEDINGS FOR GOODS NECESSARY TO ADDRESS THE COVID-19 PUBLIC HEALTH EMERGENCY PURSUANT TO REPUBLIC ACT (RA) 7581, AS AMENDED BY RA 10623, OTHERWISE KNOWN AS THE PRICE ACT, AND RA 10863, OTHERWISE KNOWN AS THE CUSTOMS MODERNIZATION AND TARIFF ACT, IN RELATION TO RA 11469, OTHERWISE KNOWN AS THE BAYANIHAN TO HEAL AS ONE ACT**

**DATE : 30 April 2020**

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**WHEREAS**, Section 6 of Art. XII of the 1987 Constitution states that, "The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands."

**WHEREAS**, under Section 2 of Republic Act No. 7581, otherwise known as the Price Act, "It is the policy of the State to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate businesses a fair return of their investment."

**WHEREAS**, under the same section cited in the immediately preceding paragraph, "It is also a declared policy of the State to provide effective and sufficient protection to consumers against hoarding, profiteering and cartels with respect to the supply, distribution, marketing and pricing of said goods, especially during periods of calamity, emergency, widespread illegal price manipulation and other similar situations." To these ends, the State shall, among others, "develop, adopt and promulgate measures to stabilize prices at reasonable levels" and "establish a mechanism that will readily protect consumers from inadequate supply and unreasonable price increases on occasions of calamities, emergencies and like occurrences."

**WHEREAS**, the Department of Health and the Department of Trade and Industry are among the five (5) government agencies mandated by the Price Act to ensure the availability of basic necessities in the market, especially during such time of a public health emergency, and to protect consumers against illegal price manipulators.

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ANGELICA ISABEL P. ISNANI  
Head, Records Section  
Department of Trade & Industry

**WHEREAS**, Article 2 of Republic Act No.7394, otherwise known as the Consumer Act, states that, "It is the policy of the State to protect the interests of the consumer, promote his general welfare and establish standards of conduct for business and industry."

**WHEREAS**, available records show that certain business enterprises and the owners thereof have been apprehended and arrested for violation/s of the laws mentioned herein, including the confiscation by law enforcement authorities of basic necessities, articles intended for COVID-19 situation, or articles of prime necessity under the Bayanihan To Heal As One Act.

**WHEREFORE**, foregoing considered, this Memorandum Circular (MC) is hereby issued for the information and guidance of those concerned.

**Section 1. Objective.** – The objective of this MC is to ensure that seizure, inventory and disposal of goods that have been the subject of relevant confiscation by Law Enforcement Authorities during the duration of the declared State of Public Health Emergency is in order, uniformly applied and properly recorded and accounted for by concerned officials and personnel of the DOH through the Food and Drug Administration or the DTI.

**Section 2. Scope.** – The provisions hereof shall apply to any DOH-FDA or DTI official or personnel who is responsible for any of the following activities:

- 2.1 Coordination of monitoring, surveillance, and enforcement activities with other government agencies and law enforcement authorities, particularly the Philippine National Police – Criminal Investigation and Detection Group (PNP-CIDG) and the National Bureau of Investigation (NBI);
- 2.2 Conduct of monitoring, surveillance and/or enforcement activities, whether DOH-FDA or DTI-initiated or jointly undertaken with other government agencies or authorities,
- 2.3 Prosecution of cases, such as filing of Formal Charges,
- 2.4 Conduct of adjudication,
- 2.5 Sheriff functions,
- 2.6 Approval and signing of relevant communications, orders, decisions and recommendations.

**Section 3. Covered Goods.** – This MC shall cover any and all basic necessities or prime commodities as enumerated in the Price Act, or those goods classified as essential or vital under the Bayanihan To Heal As One Act, or otherwise declared as essential by DOH-FDA, DTI or a deputizing implementing agency to address the COVID-19 situation, that were the subject of confiscation pursuant to duly authorized monitoring, surveillance and/or enforcement activities or operations conducted by a DOH-FDA or DTI team in coordination or jointly with other agencies or law enforcement authorities, or by a deputized law enforcement authority pursuant to the Joint Memorandum Circular No. 001 (S2020) or Office of the President Memorandum Circular No. 77 dated 17 March 2020.

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ANGELICA ISABEL P. ISNANI  
Head, Records Section  
Department of Trade & Industry

**Sec. 4. Confiscation and/or Seizure of Goods.** – Confiscation and/or seizure of goods shall be done by the DOH-FDA, DTI or any of the implementing agencies or law enforcement authorities as an administrative action for violations of the Price Act, the Consumer Act and other pertinent laws, rules and regulations within the mandate of any or all of the implementing agencies enumerated in the Price Act.

**Section 5. Summary Proceedings for Confiscation/Seizure of Covered Goods or Commodities.** – Pending investigation and litigation, confiscation/seizure of covered goods or commodities falling under the conditions mentioned hereunder shall be summary in nature and shall proceed as follows:

5.1 Exclusive DOH-FDA and/or DTI enforcement or DOH-FDA and/or DTI-led enforcement confiscation/seizure shall be conducted in accordance with current applicable DOH-FDA or DTI procedures or guidelines or herein Guidelines, whichever is more expeditious, without disregarding administrative due process.

5.2 Exclusive enforcement by a deputized law enforcement authority that resulted to confiscation/seizure shall be processed as follows:

5.2.1. The written communication from the deputized agency or enforcement authority formally turning over the confiscated goods or commodities, including inventories and other reports prepared pertinent thereto, shall be received and recorded;

5.2.2. If the confiscation/seizure involves a combination of goods or commodities under the jurisdiction of different agencies, the turn-over and the reports shall be done separately;

5.2.3. Samples of confiscated/seized products shall be endorsed to the Food and Drug Administration or other regulatory bodies, as the case may be, for proper determination of the products' safety or fitness for human consumption, or for distribution and utilization. If declared unsafe or unfit, the goods shall be returned to the law enforcement agency or to the prosecutor, as the case may be, to be used as evidence and, thereafter, be ordered for further disposition in accordance with law.

5.2.4. The date and place of conduct of inventory shall be coordinated with the concerned deputized agency or enforcement authority;

5.2.5. On the agreed date and place, the DOH-FDA, or DTI shall bring copies of inventories and reports received from the deputized agency or law enforcement authority concerned for reference purposes in connection with the actual inventory-taking or counting of goods on a per company; per site; per commodity; per brand; per type; per piece/box/package, per volume basis, whichever is applicable. A template for this purpose shall be prepared by DOH-FDA or DTI;

5.2.6. The template inventory shall, in addition to those mentioned in the preceding paragraph, reflect the place, date and duration of the inventory, names of those present and those actually conducting the inventory, to be signed by the duly authorized DOH-FDA or DTI official or personnel and witnessed by the respective representatives of the deputized law enforcement authority and a representative of the DTI Resident Auditor of the Commission on Audit (COA) (in case of DTI covered products). Goods or commodities that were set aside for evidentiary purposes by the

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ANGELIZA ISABEL P. ISNANI  
Head, Records Section  
Department of Trade & Industry

deputized agency or enforcement authority shall be deducted from the total quantity of the inventoried goods or commodities, which shall likewise be reflected in the template Inventory;

5.2.7. The inventoried goods or commodities shall be transported, preferably within the day the inventory-taking was completed, by the DOH-FDA or DTI, from the place where the inventory was conducted to a secure storage facility designated by the DOH-FDA or DTI for warehousing or storage purposes.

If there is a big volume of commodities seized and as far as practicable, the inventoried items shall be stored in the firm's premises. The premises shall be padlocked in the presence of the owner or his representative and other witnesses if present and the concerned agency shall provide security to ensure that the commodities seized are kept intact pending the investigation of the case;

5.2.8. Within twenty-four (24) hours from storage, a report together with the template inventory shall be submitted to DOH-FDA or to the head of the DTI bureau/office concerned for immediate assignment to the division or section concerned, for the filing of the Formal Charge pursuant to existing DOH-FDA or DTI procedures.

5.2.9. A Notice shall be issued immediately from receipt of assignment, informing the owner or his legal counsel that the confiscated goods or commodities have been seized and are now under the custody of DOH-FDA or DTI for safekeeping and evidentiary purposes and for them to comment within forty-eight (48) hours from receipt thereof on the government's prerogative to dispose such goods or commodities through any of the modes allowed by applicable laws and regulations pending investigation or litigation of the criminal and/or administrative charges filed against him by the government.

5.2.10. Failure to receive any comment from the owner or legal counsel shall cause the issuance of an Order directing the forfeiture and disposal of the subject goods or commodities using any of the modes allowed by applicable laws and regulations including this Circular,

5.2.11. Meanwhile, the law enforcement agency concerned shall institute the criminal proceedings before the Investigating or Inquest Prosecutor in charge.

**Section 6. Criteria for Disposal.** – Pending investigation or litigation involving goods or commodities covered by this Circular, subject to the prior determination of the DOH-FDA, DTI or other regulatory bodies, as the case may be and when applicable, the disposal or sale to the general public of the confiscated/seized goods provided in the Price Act shall apply under any of the following conditions:

6.1 When the nature of such goods necessitates the fast disposal thereof, taking into consideration the expiry date, shelf life, and spoilage;

6.2 When there is a high demand for such goods or necessities taking into consideration reported and validated lack or insufficiency of their supply in the market;

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ANGELINA ISABEL P. ISNANI  
Head, Records Section  
Department of Trade & Industry

6.3 When there is difficulty in logistics or movement of such goods or commodities due to the implementation of any enhanced or improved Community Quarantine, lockdown, curfew, travel ban and the like;

6.4 Any conditions analogous to the foregoing which would warrant immediate disposition.

Seized/confiscated goods may be also disposed of in accordance with the FDA Act and other pertinent laws, rules and regulations on proper disposal.

**Section 7. Modes and Manner of Disposal.** – Within seven (7) working days from the issuance of the Order of Disposal, the seized goods or commodities shall, upon prior certification by the proper agency, such as the Food and Drug Administration (FDA), certifying that such are safe for distribution or utilization and upon prior notice to the owner thereof, or unsafe or unfit for human consumption, or for distribution and utilization, be disposed of in accordance herewith:

### **7.1 Sale**

7.1.1. A request for Certification or Attestation that subject goods or commodities are safe for distribution or utilization shall be sent to the proper agency within twenty-four (24) hours from issuance of the Notice to the owner or his legal counsel;

7.1.2. Within twenty-four (24) hours from receipt of the Certification or Attestation that subject goods or commodities are safe for distribution and utilization, a Notice to the Public shall be issued through any expedient means informing of the government's prerogative to purchase the subject goods or commodities or to offer them for sale to priority stakeholders in dire need of such goods or commodities using existing Prize Freeze Lists as basis for the selling price;

7.1.3. The purchase by the government or the sale to a priority stakeholder shall be documented, recorded, signed and witnessed by the authorized DOH-FDA or DTI's representative, the DOJ prosecutor or the representative of the law enforcement agency/authority concerned, whichever is applicable, and an authorized COA representative;

7.1.4. The proceeds of the sale shall be held in escrow by DOH-FDA or DTI investigation or litigation;

7.1.5. In the event that a decision on the criminal or administrative case is issued in favor of the government and the same becomes final and executory, such proceeds of sale shall form part of the government funds and deposited with the National Treasury. Otherwise, the proceeds shall, upon prior coordination with the DOJ Prosecutor or the representative of the law enforcement agency/authority concerned, be turned over to the owner of the disposed goods or commodities;

7.1.6. The turnover of proceeds of sale shall likewise be documented and recorded.

### **7.2 Donation**

7.2.1 Seized and forfeited health products covered by DOH-FDA found and certified as safe, effective and fit for human consumption or for utilization, and upon prior

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ANGELICA ISABEL P. ISNANI  
Head, Records Section  
Department of Trade & Industry

notice to the owner thereof may be ordered donated to the DOH for further proper disposition.

7.2.2 Once ordered for donation by the DOH-FDA, it must be ensured that the donation, acceptance and distribution of health products intended to address the COVID-19 public health emergency are not unnecessarily delayed.

### **7.3 Destruction**

7.3.1. A request for Certification or Attestation that subject goods or commodities are unsafe or unfit for human consumption, or for distribution and utilization shall be sent to all relevant government agencies within twenty-four (24) hours from issuance of the Notice to the owner;

7.3.2. Within twenty-four (24) hours from receipt of the Certification or Attestation that subject goods or commodities are unsafe for consumption, distribution or utilization, a Notice to the Public shall be issued through any expedient means informing of the government's prerogative to destroy the seized goods or commodities;

7.3.3. Within twenty (24) hours from receipt of the Certification or Attestation that subject goods or commodities are unsafe for consumption, distribution or utilization, DOH-FDA or DTI shall, in writing, inform the law enforcement agency/authority and the DOJ Prosecutor concerned of such development, with a recommendation to either conduct joint destruction proceedings or to turn over the remaining quantity of goods or commodities after deducting samples submitted for determination purposes to them. Joint destruction or turnover proceedings shall be documented, recorded and signed by an authorized DTI representative, witnessed by the prosecuting personnel of both the DOJ and DTI or a representative of the law enforcement authority, whichever is applicable, an authorized COA representative and a representative of the Department of Environment and Natural Resources (DENR), whenever applicable.

**Section 8. Turn-over of Goods or Commodities Certified as Unsafe.** – If the law enforcement agency/authority and the DOJ Prosecutor shall decide that the goods or commodities certified as unsafe for distribution or utilization shall be turned over to them by DOH-FDA or DTI for evidentiary purposes, the procedure shall be as follows:

8.1 Transmit a letter to the law enforcement authority and concerned Prosecutor's Office of the DOJ, requesting for a Certification or Attestation that the subject goods or commodities shall be used for evidentiary purposes and for the preferred date and place of turnover;

8.2 Attach a copy of the updated inventory of goods or commodities, together with the Certification or Attestation of FDA or the relevant regulatory agencies, to the letter mentioned in 8.1;

8.3 Within three (3) working days from receipt of the certification and information issued by the law enforcement agency/authority and/or DOJ Prosecutor, an Order shall be issued, specifying therein the date, time and place and the total quantity and general description of goods or commodities to be turned over, including the transfer

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ANGELICA ISABEL P. ISNANI  
Head, Records Section  
Department of Trade & Industry

of accountability over the subject goods or commodities. The updated inventory of DOH-FDA or DTI shall form an integral part of the Order;

8.4 A copy of the Order shall be served on the law enforcement authority and the DOJ Prosecutor concerned and retain proof of receipt thereof to be submitted to the DOH-FDA or DTI personnel concerned.

**Section 9. Administrative Prosecution and Adjudication Proceeding.** – The provisions of existing DOH-FDA, or DTI procedures shall be applied in the prosecution and adjudication of cases for violation of the Price Act, the Food and Drug Administration Act or other pertinent laws, rules and regulations. Penalties and sanctions to be imposed, however, shall either be that provided under the Price Act as amended, the Food and Drug Administration Act or the Bayanihan To Heal As One Act, whichever is applicable.

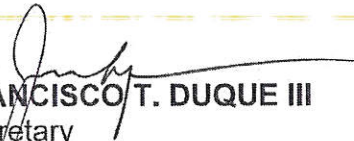
**Section 10. Separability Clause.** – The provisions of this Circular are hereby declared to be separable. In the event any provision or part thereof is declared unconstitutional or invalid, the other provisions or parts thereof which are not affected thereby shall remain in full force and effect.

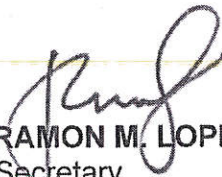
**Section 11. Repealing Clause.** – The provisions of any similar Order or issuance that are inconsistent with this Circular are hereby repealed or modified accordingly.

**Section 12. Retroactive Effect.** – The provisions of this MC shall apply to goods or commodities confiscated by law enforcement authorities supported by a Certification issued by DOH-FDA or DTI before the effectivity of the DOH-DTI-DA-DOJ-DILG-BOC JMC No. 001 (S2020) but not earlier than the Declaration of State of Public Health Emergency.

**Section 13. Effectivity.** – This Memorandum Circular shall take effect immediately upon publication hereof.

Issued this 30<sup>th</sup> day of April 2020 in Makati City, Philippines.

  
**FRANCISCO T. DUQUE III**  
Secretary  
Department of Health

  
**RAMON M. LOPEZ**  
Secretary  
Department of Trade and Industry

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**ANGELICA SABEL P. ISNAN**  
Head, Records Section  
Department of Trade & Industry