

[PDEA GUIDELINES ON THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF SECTION 21 OF REPUBLIC ACT NO. 9165 AS AMENDED BY REPUBLIC ACT NO. 10640, May 28, 2015]

PDEA GUIDELINES ON THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF SECTION 21 OF REPUBLIC ACT NO. 9165 AS AMENDED BY REPUBLIC ACT NO. 10640

*Adopted: 28 May 2015
Date Filed: 21 July 2015*

WHEREAS, Section 21 of Republic Act (RA) No. 9165 provides for rules on the *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*;

WHEREAS, on July 22, 2014, RA No. 10640, entitled "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002", was enacted and amended paragraphs 1 and 3 of Section 21 of RA No. 9165;

WHEREAS, Section 2 of RA No. 10640 provides also that the Philippine Drug Enforcement Agency (PDEA) shall issue the necessary guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of RA No. 9165 in consultation with the Department of Justice (DOJ) and relevant sectors to curb increasing drug cases;

WHEREFORE, to effectively implement the provisions of Section 21 of RA No. 9165, as amended by RA No. 10640, the PDEA, in consultation with the DOJ and relevant sectors, hereby promulgate these guidelines:

Section 1. Implementing Guidelines. The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

A. Marking, Inventory and Photograph; Chain of Custody Implementing Paragraph "a" of the IRR

A.1 The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall,

immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

- A.1.1 The marking, physical inventory and photograph of the seized/confiscated items shall be conducted where the search warrant is served.
- A.1.2 The marking is the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized.
- A.1.3 In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.
- A.1.4 In cases when the execution of search warrant is preceded by warrantless seizures, the marking, inventory and photograph of the items recovered from the search warrant shall be performed separately from the marking, inventory and photograph of the items seized from warrantless seizures.
- A.1.5 The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his/her representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.
- A.1.6 A representative of the NPS is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected.
- A.1.7 To prevent switching or contamination, the seized items, which are fungible and indistinct in character, and which have been marked after the seizure, shall be sealed in a container or evidence bag and signed by the apprehending/seizing officer for submission to the forensic laboratory for examination.
- A.1.8 In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall estimate its count or gross weight or net weight, as the case may be. If it is safe and practicable, marking, inventory and photograph of the seized plant sources may be performed at the plantation site. Representative samples of prescribed quantity pursuant to Board Regulation No. 1, Series of 2002, as amended, and/or Board Regulation No. 1, Series of 2007, as amended, shall be taken from the site after the seizure for laboratory examination, and retained for presentation as the corpus delicti of the seized/confiscated plant sources following the chain of custody of evidence.
- A 1.9 Noncompliance, under justifiable grounds, with the requirements of Section 21(1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

- A 1.10 Any justification or explanation in cases of noncompliance with the requirements of Section 21(1) of RA No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of RA No. 9165 shall be presented.
- A 1.11 The chain of custody of evidence shall indicate the time and place of marking, the names of officers who marked, inventoried, photographed and sealed the seized items, who took custody and received the evidence from one officer to another within the chain, and further indicating the time and date every time the transfer of custody of the same evidence were made in the course of safekeeping until submitted to laboratory personnel for forensic laboratory examination. The latter shall continue the chain as required in paragraph B.5 below.

B. Laboratory Examination, Custody and Report Implementing Paragraphs “b” and “c” of the IRR

- B.1. Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to PDEA Forensic Laboratory for a qualitative and quantitative examination, subject as provided further below:
- B.1.1 In support of the PDEA, the forensic or crime laboratories of the Philippine National Police (PNP) and the National Bureau of Investigation (NBI) shall conduct qualitative and quantitative examination of the seized/confiscated or surrendered items submitted by the anti-illegal drug operating units/task forces, or apprehending officer/team consistent with paragraph E.2.4 of these guidelines.
- B.1.2 Where the violations of RA No. 9165 require laboratory examination of the seized/confiscated items, the positive result of the qualitative examination rendered by the forensic chemist shall serve to support the criminal charge/s.
- B.1.3 Quantitative examination may be done upon request by the apprehending team or upon issuance of court order when the determination of purity of the seized/confiscated dangerous drugs is required by law.
- B.2 A certification or chemistry report of the forensic laboratory examination results, which shall be done by the forensic examiner, shall be issued immediately upon the receipt of the subject item/s within the reglementary period that would enable the apprehending officer/team to file the criminal charge/s with the prosecutor's office against the violator/s as prescribed by law.
- B.3 When the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals would not

allow the completion of testing within the time frame to file the criminal charge/s against the violator/s, a partial laboratory examination report shall be provisionally issued by the forensic chemist, stating therein the quantities of dangerous drugs or controlled precursors and essential chemicals still to be examined by the forensic laboratory. Provided, that a final certification or chemistry report shall be issued immediately upon completion of the said examination.

B.4 In provinces where no forensic or crime laboratories are equipped and operational for scientific drug analysis, or when the distance from the existing PNP, NBI or PDEA forensic or crime laboratory to the place of seizure/confiscation of the subject items or office of the apprehending officer/team requires several hours of travel, copy of the facsimile or any electronic transmission of the certification or chemistry report of the laboratory examination results issued to the apprehending officer/team for submission to the prosecutor's office concerned shall be considered as sufficient copy of laboratory report for the filing of criminal charge/s with the prosecutor's office. Provided the original certification or chemistry report shall be forwarded and submitted immediately by the apprehending officer/team to the prosecutor's office.

B.5 In any case, the chain of custody of the seized/confiscated items received from the apprehending officer/team, and examined in the forensic or crime laboratory shall be observed, where it shall document the chain of custody each time a specimen is handled, transferred or presented in court until its disposal, and every individual in the chain of custody shall be identified following the laboratory control and chain of custody form.

B.6 To expedite the immediate disposition and destruction of seized/confiscated plant sources of dangerous drugs at the eradication site, the seizing officer or forensic chemist shall get and preserve their representative samples, after their seizure and confiscation, and perform field or screening test at the site, as far as practicable. The release of the certification or chemistry report shall be after the confirmatory test of the samples examined.

C. Filing of Complaint and Destruction of Confiscated or Seized Items Implementing Paragraphs "d" and "e" of the IRR

C.1 In cases of seizure or confiscation where a criminal case is filed, the following shall be performed:

C.1.1 Appropriate criminal charges must be filed in the prosecutors office against the arrested violator/s within the reglementary period provided by law.

C.1.2 When the seizure is executed by virtue of search warrant, the return must be filed with the Court which issued the search warrant with the request to take custody of the seized/confiscated items if the criminal case has been filed with the prosecutor's office.

C.1.3 (a) Request to take custody of the marked and inventoried items

seized/ confiscated by virtue of search warrant must be supported or accompanied by the following:

- 1) Motion to take/retain custody of the seized/confiscated or surrendered dangerous drugs, plant sources of dangerous drugs, or controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment taken from the site by the apprehending officer;
 - 2) Certificate of inventory;
 - 3) Photograph showing the seized items and witnesses;
 - 4) Certification or chemistry report of the results of the laboratory examination;
 - 5) Affidavits of apprehending officers/team;
 - 6) Accomplished chain of custody form;
 - 7) Accomplished authority to operate form;
 - 8) Accomplished pre-operation report form;
 - 9) Certification/record of coordination stated in paragraph A.1.10 of these guidelines; and
 - 10) If applicable, record/certification of orderly search, the sworn statements of the apprehending or seizing officers stating the circumstances and justification for non-compliance with inventory and photograph and/or presence of the prescribed witnesses during the inventory and photograph, and the steps taken to preserve the integrity and the evidentiary value of the seized/confiscated items.
- (b) The above requirements stated in paragraph C.1.3, except its number "1", for the filing of criminal charges shall also apply in buy-bust operation.

C.1.4 In cases of bulk or voluminous seizures, where it is not practical or safe to bring the seized/confiscated physical items or evidence to the issuing court, the presentation and examination of certificate of the inventory and the photographs, as supported by the same documentary exhibits mentioned in paragraph C.1.3, with motion to take or retain custody of the seized/confiscated items, are sufficient for purposes of the return of search warrant.

C.1.5 After filing the criminal charges with the prosecutor's office, the apprehending officer/team or PDEA shall file urgent motion for the immediate destruction of the seized/confiscated or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment, with prayer for ocular inspection within seventy-two (72) hours, with the Regional Trial Court (RTC) of the city or province where the confiscation/seizure and/or surrender took place, with prior written conformity of the Provincial or City Prosecutor of the province or city, as the case may be, where the confiscation/seizure and/or surrender took place or the Prosecutor General or his duly authorized representative which shall be indicated in the pleading. The urgent motion for destruction shall be heard and resolved within five (5) days upon receipt of its filing.

C.1.6 Upon hearing the motion for destruction, the Court shall, within seventy-two (72) hours, conduct an ocular inspection where the representative samples shall be taken, marked and sealed in the presence of the arrested violator, his/her counsel or