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IMPLEMENTING RULES AND REGULATIONS OF EXECUTIVE ORDER NO. 435, DEVOLVING CERTAIN POWERS AND FUNCTIONS OF LTO, ATO, LTFRB, NTC, MARINA, PPA AND CAB TO THE AUTONOMOUS REGIONAL GOV...

DOTC DEPARTMENT ORDER NO. 97-1113, November 11, 1997

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Pursuant to the provisions of Executive Order No. 92, otherwise known as Administrative Order No. 1987 and Executive Order No. 435 dated August 28, 1997, the Department of Transportation, in consultation with the Autonomous Regional Government (ARG) of the Autonomous Region in Muslim Mindanao (ARMM), hereby promulgates the following:

Rule 1

Policy, Purpose, Objectives, Scope and Devolution of Powers and Functions

SECTION 1. Title - These Rules shall be known as the Implementing Rules and Regulations of Executive Order No. 435, s. 1997.
SECTION 2. Policy- It is hereby declared the policy of the National Government that powers, functions and responsibilities of departments of the National Government, its sectoral offices and attached agencies, devolved by virtue of the Constitution and RA 6734 be expeditiously transferred to, assumed and exercised by the Autonomous Regional Government (ARG) of the Autonomous Region in Muslim Mindanao (ARMM).

SECTION 3. Purpose/Objectives - These Rules and Regulations are promulgated to prescribe the procedures and guidelines in the implementation of Executive Order No. 435, devolving to the Autonomous Regional Government (ARG) of the Autonomous Region in the Muslim Mindanao (ARMM) certain powers, functions and responsibilities of the Department of Transportation and Communications (DOTC), its sectoral offices and attached agencies specifically enumerated in Sec. 5 of said Executive Order insofar as the exercise thereof is confined within the provinces of Lanao del Sur, Maguindanao, Tawi-Tawi and Sulu of the ARMM, and to ensure the expeditious and orderly transfer of such powers and functions.

SECTION 4. Scope of Application - These Rules and Regulations shall be applicable and confined to the DOTC sectoral and attached agencies provided in Sec.2, Rule ii hereof, with offices, branches or units situated in the provinces of ARMM, including their personnel, equipment, properties, budget, assets and liabilities appurtenant to the devolved functions.

SECTION 5. Devolution of Powers and Functions -The powers and functions of the DOTC, insofar as the exercise thereof is confined exclusively within ARMM and does not affect areas outside the autonomous region are devolved to the ARMM subject, however, to national transportation and communications policies and programs and to international agreements and conventions.

Rule II

DOTC Sectoral Offices and Attached Agencies and

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Specific Powers, Functions and Responsibilities

SECTION 1. Transferred Sectoral Offices and Agencies - The DOTC sectoral offices and attached agencies in the ARMM transferred to and placed under the control and supervision of the ARG shall cease to be part of the DOTC, its sectoral offices and attached agencies and shall no longer be under the control and sectoral offices and attached agencies and shall no longer be under the control and supervision of the DOTC Secretary or the governing boards of the attached agencies, as the case may be, insofar as the particular devolved functions are concerned.

SECTION 2. Specific Powers, Functions and Responsibilities - The specific, powers and functions and responsibilities of the following DOTC sectoral offices and attached agencies are hereby devolved to the ARMM insofar as the exercise thereof is confined within the territorial jurisdiction of ARMM and does not affect areas outside the autonomous region, subject, however, to national transportation and communications policies and programs and international agreements and conventions:
1. Land Transportation Office (LTO)

a. To issue licenses to operate motor vehicles within the ARMM to persons who, upon written and practical examinations, have shown proficiency in the operation of motor vehicles pursuant to RA4136 and other relevant laws. These licences issued by the ARG may be honored outside the ARMM, subject to the recording and validation procedures of the DOTC-LTO;

b. To register motorcycles and motorized tricycles and to charge registration fees therefor in accordance with existing laws and regulations;

c. To enforce land transportation and traffic taws, rules and regulations within the ARMM as LTO deputies insofar as R.A. 4136, as amended, is concerned. These includes the confiscation, revocation and suspension of driver's licenses and registration, impounding of motor vehicles if warranted by law to protect lives and property, imposition of fines and penalties to violators, subject to the observance of the due process of law and LTO rules and regulations; and

d. To issue and promulgate rules and regulations consistent with existing national and international transport regulations to govern traffic and transportation within the ARMM.
2. Air Transportation Office (ATO)

a. To manage, supervise and control all government airports' landslide facilities only within the ARMM- These include the airport terminal building, crash fire and rescue, hangars, aircraft parking area, vehicle parking area, ground handling facility, security and perimeter fence;

a.1 The DOTC-ATO shall continue to exercise control and supervision over the airside facilities as defined by the ICAO - " any part of the movement area where an aircraft uses its own power and receives or requires air traffic and maintenance services will comprise the airside facility". These include all navigational facilities providing services such as runways, taxiways, connecting trips, navigational aids (VOR, NDB, DME), landing aids (ILS, .PAPI, APPROACH LIGHTS), air traffic control facilities including the control tower and its equipment, radar/ approach building (site and operations), communications (air and ground, point to point and FOBS) and emergency power plant.

a.2 The security force of the landside facility shall be under the supervision and control of the ARMM, while the security force of the airside facility will remain with the DOTC-ATO.

b. To promulgate, upon close consultation with the DOTC-ATO, rules and regulations to promote safety and

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security in civil aviation within the ARMM, consistent with both national and international regulation and standards;

c. To fix and impose charges and other fees for the use of airports landslide and related facilities under its control

and supervision in accordance with established guidelines and procedures;

d. To recommend to the DOTC-ATO the designation and establishment of airways within its jurisdiction and to participate in studies pertaining to the development of civil aviation within its jurisdiction;

e. To extend technical assistance to private airport operation entities within its territorial jurisdiction;

f. To operate and maintain aircraft necessary to carry out the objectives and activities of the ARG of the ARMM;

g. To coordinate with the DOTC-ATO in the design, installation, management, operation, maintenance and repair of airports in the ARMM in accordance with national and international standards;

h. To enforce rules and regulations issued pursuant to RA 776 and other air transportation laws within its jurisdiction in coordination with the DOTC-ATO; and

i. To conduct investigations, impose fines and penalties for violations upon observance of due process, provided that on appeal, the President shall cause the ATO to review the findings and conclusions of the ARG and to make recommendations relative thereto.

3. Land Transportation Franchising and Regulatory Board (LTFRB)
a. To prescribe and regulate routes, economically viable capacities and zones or areas of operation of public land transportation services provided by motorized vehicles within the ARMM consistent with national public land transportation development policies and plans;

b. To issue, amend or revise Certificates of Public Convenience (CPC's) or permits authorizing the operation of public land transportation services provided by motorized vehicles operating exclusively within the ARMM, suspend, cancel or revoke the same for cause. However, jurisdiction over public utility vehicles with inter-regional CPC's or permits that ply routes within the ARMM, shall remain exclusively with the DOT-LTFRB;

c. To determine, prescribe, approve, review and adjust fares relative to the operation of public land transportation services provided by motorized vehicles exclusively within the ARMM;

d. To issue preliminary or permanent injunction in all cases within its jurisdiction in accordance with the applicable pertinent provision of the Rules of Court;

e. To punish for contempt both direct and indirect, in accordance with the pertinent provisions of, and the penalties prescribed by, the Rules of Court;

f. To issue subpoena and summon witnesses to appear in any proceedings of the appropriate office, to administer oaths and affirmations, to order search and seizure of all vehicles and documents, upon probable cause and as may be necessary for the proper disposition of the cause before it;

g. To conduct investigations and hearing of complaints for violation of public service laws on land transportation and impose fines and penalties for such violations upon observance of due process. If violators possess inter-regional CPC's or permits, the appropriate office of the ARG shall file and prosecute the appropriate cases with the DOTC-LTFRB;

h. To review motu proprio the decisions/actions of the Provincial Franchising and Regulatory Offices within the

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ARMM;

i. To promulgate rules and regulations governing proceedings before the appropriate office of the ARG and the Provincial Franchising and Regulatory Office;

j. To fix, impose, collect, review and adjust reasonable fees and other related charges for services rendered within the ARMM;

k. To formulate, promulgate, administer, implement and enforce rules and regulations on land transportation public utilities, standards of measurements or design, requiring operators of any public land transportation service to equip, install and provide in their utilities and in their stations such devices, equipment, facilities and operating procedures and techniques as may promote safety, protection, comfort and convenience to persons and property in their charges, as well as, the safety of persons and property within their areas of operation; provided, that the same shall apply only within the ARMM and on public transport vehicles under its regulations as are consistent with existing laws and national policies, and the designs and standards are not below nationally prescribed levels; and

I. Coordinate and cooperate with other government agencies and entities concerned with any aspect involving land transportation in order to improve such services within the region.

4. Maritime Industry Authority (MARINA)
a. To issue Certificates of Public Convenience (CPC's), Provisional Authority (PA's) and Special Permits (SP's) to vessels homeported and to be operated exclusively within the territorial boundaries of the ARMM. However, issuance of CPC's, PA's and SP's to vessels homeported in the ARMM and to be operated outside the territorial boundaries of the ARMM shall be subject to the approval of MARINA.

b. To accredit banca operators whose principal office is located within the ARMM jurisdiction;

c. To issue coastwise license, bay and river license and pleasure yacht license on all domestic vessels homeported and operated within the ARMM;

d. To issue motorboat operator's license (MBOL) to operators of vessels weighing three (3) gross tonnage (gt) and below which are homeported and operated exclusively within the ARMM;

e. To issue licenses to shipyards within the ARMM subject to existing guidelines of MARINA; and

f. To collect fees and charges not to exceed those set by the MARINA circulars and to issue receipts therefor in the exercise of devolved functions, subject to national budgeting, accounting and auditing policies, rules and regulations.
5. Philippine Ports Authority (PA)

a. To formulate, in coordination with the regional development office and other regional agencies, a

comprehensive port development plan for the ARMM, to review and update the implementation of these plans;

b. To supervise, control, regulate, construct, maintain, operate and provide the necessary facilities and services needed in ail these ports within the ARMM;

c. To prescribe rules and regulations, procedures and guidelines governing the establishment, construction, maintenance and operation of additional ports, both public and private, within the ARMM;

d. To license, control, regulate and supervise any construction or structure within any port in the ARMM;

e. To provide services (whether on its own, by contract or otherwise) within the region and approaches thereof including but not limited to:

e.1 berthing, towing, mooring, moving, slipping or docking any vessel

e.2 loading or discharging any vessel.

e.3 sorting, weighing, measuring or otherwise, handling goods.

f. To control, regulate and supervise pilotage and the conduct of pilots in any port within the ARMM;

g. To provide or assist in the provision of training programs and facilities for its staff or those of the port operators and users for the efficient discharge of its functions, duties and responsibilities;

h. To exercise corporate powers and police authority now vested in the Philippine Ports Authority, provided that these powers shall not extend to the areas outside the autonomous region; and

i. To perform such other functions or provide such services as may be deemed proper and necessary to carry out and implement the provisions of the Executive Order.

6. National Telecommunications Commission (NTC)

a. To issue Certificates of Public Convenience (CPC's) for the operation of local exchange carriers and international gateway facilities within the ARMM and to establish and prescribe rules and regulations governing the issued CPCs and administer and enforce the same within its territorial jurisdiction. The international Gateway Facility (IGF) shall be allowed only if originating within ARMM and terminating outside the Philippines and vice versa;

b. To establish, prescribe and regulate areas of operation of particular operators of public service communications within the ARMM. These include the prescription of rates or charges pertinent to the operation of such public utilities, facilities or services, except in cases where charges or rates are established by international bodies or associations wherein the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;

c. To process applications for the use of radio frequencies for wireless telephone, telegraph and radio communication systems, including amateur radio stations, radio and television broadcasting systems within the region. The assignment and allocation of these radio frequencies however shall remain with the NTC to avoid duplication of assignments and to ensure the proper monitoring, management and use of such frequencies;

d. To coordinate and cooperate with government agencies in all aspects of the communications service within the ARMM;

e. To promulgate rules and regulations as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television facilities and maintain effective competition among private entities in these activities whenever the appropriate office in the ARG finds it reasonably feasible;

f. To supervise and inspect the operation of radio stations and telecommunications facilities within the ARMM;

g. To conduct the examination and licensing of radio operators within the region in accordance with both national and international rules and regulations; and

h. To undertake the registration of al! radio transmitters and transceivers operated and used within its territorial jurisdiction.

7. Civil Aeronautics Beard (CAB)

a. To monitor and enforce, in coordination and compliance with the DOTC-CAB, laws, rules and regulations governing those engaged in air transportation and commerce within the ARMM; and

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b. To regulate the activities of air carriers, airfreight forwarders, general sales agents and cargo sales agents Operating within the ARMM consistent with existing laws. However, the issuance of Certificates of Public Convenience and Necessity (CPCN's), authority to operate and to promulgate rules and regulations shall remain vested in the Civil Aeronautics Board (CAB).

Rule III

Infrastructure Projects

SECTION 1. Transfer of Locally Funded Projects -_Locally funded projects of this Department, its sectoral offices and attached agencies within the ARMM, including he corresponding project, staff, budget and assets thereof, ire hereby transferred to the ARG, subject to the provisions)f Rule VI hereof.

SECTION 2. Foreign Funded or Assisted Projects -foreign funded or assisted projects covered by existing contracts that are to be implemented within the ARMM, shall)e the subject of a Memorandum of Agreement (MOA) between the ARG and this Department or Agency concerned.

Rule IV

Transfer of Personnel, Budget, Property and Other Assets and Liabilities

SECTION 1. Personnel Matters - Plantilla positions, whether filled or unfilled of the DOTC sectoral offices and attached agencies allocated to the particular functions [evolved, corresponding to the four (4) provinces of ARMM, ire hereby transferred to and placed under the control and supervision of the ARG.
SECTION 2. Status and Security of Tenure - Officers and employees in the career executive service in the offices 3 be absorbed by the ARG shall be considered regular and permanent officials and employees of ARG and shall retain their seniority rights, compensation, and other benefits. They shall enjoy security of tenure and shall not be removed except for valid cause, after due notice and hearing in accordance with Civil Service laws, rules and regulations.

Casual, contractual, emergency or daily wage personnel of devolved or transferred offices or agencies whether covered or not by a Position Allocation List (PAL) duly approved by the Department of Budget and Management (DBM) shall likewise be devolved, transferred or absorbed by ARG subject to existing laws, rules and regulations.
SECTION 3. Options for Personnel - The following options are available to the personnel who may desire not to be absorbed by the ARG;

1. Regular retirement;

2. Transfer to an office of the DOTC, its sectoral offices or its attached agencies if an appropriate position is available and the management of such office approves the same; and

3. Transfer to another depending on the availability of vacant positions.

Nothing herein shall be interpreted or construed as depriving any affected personnel of any rights and benefits under existing retirement laws and the Civil Service Laws, rules and regulations.

SECTION 4. Offices, Land, Equipment and Assets -Ail existing offices and land where the edifices were built, equipment and assets being utilized or programmed for use in the four (4) provinces of the ARMM are hereby turned over to the ARG subject to the Rule VI hereof.

SECTION 5. Proportionate Share of Personnel, Budget and Other Resources - DOTC sectoral offices or attached agencies which do not have offices within the ARMM but have regional offices in Regions IX, XII that cater to

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the four (4) provinces of the ARMM, shall immediately transfer to the ARG a PROPORTIONATE SHARE of their plantilla positions, filled or unfilled, budgets, equipment, assets and other resources as may be determined by the Ad Hoc Transition Committee for Fiscal Years 1997 and 1998 budget. Thereafter, the same shall be included in the budget of the ARMM.

Rule V

Separation and Retirement

SECTION 1. Separation and Retirements - Any personnel affected by the devolution under E.O. 435 who may opt for voluntary separation or retirement from the service shall be entitled to the maximum benefits under existing laws, rules and regulations and such policies as may be adopted by the ARG, to receive the retirement gratuities and other benefits accruing thereunder, provided however, that such option should be exercised within a definite period to be determined by the ARG.
SECTION 2. Payment of retirement benefits and separation pay to those who opted for such benefits shall be charged to the appropriate government unit concerned to which they belong.
SECTION 3. Proper representation with the DBM shall be made to provide funding priority to personnel retirement and separation pay and other benefits arising from the implementation of the devolution.

Rule VI

Transitory Provisions

SECTION 1. Monitoring of Transfer - All DOTC sectoral offices and attached agencies affected by the transfer of functions shall submit to the ARG or ARMM a timetable for the transfer of assets, liabilities, personnel, equipment; records and other properties within sixty (60) days after the promulgation of this Implementing Rules and Regulations.
SECTION 2. Existing Obligations - All existing contracts relating to project implementation; management, supply and other form of agreements entered into by the DOTC and/or its sectoral offices or attached agencies shall remain in force and respected by the ARMM insofar as applicable;

The manufacture and supply of drivers licenses and motorcycle registration forms, other accountable forms and motorcycle plates shall remain with the DOTC-LTO;

Inasmuch as the function of registration of motor vehicles remains with the LTO, real properties, equipment and other assets in offices within the four (4) provinces of the ARMM shall be shared by the DOTC-LTO and ARG of ARMM in order not to hamper the delivery of such vital services to the public.

Infrastructure projects under implementation or in the pre-construction stage whether locally funded or foreign assisted remain with the DOTC.

SECTION 3. Ad-Hoc Transition Committee - An Ad-hoc Transition Committee shall be immediately organized, composed of members representing the Department and its sectoral offices and attached agencies designated by the Secretary and their counterparts from the ARG designated by the Regional Governor.

The Committee shall perform, during the transition period, the following functions and responsibilities:

1. Identify and undertake an inventory of transferred offices, plantilla of positions, filled and unfilled, budget, equipment, properties, assets and other resources, as well as transferred programs and projects with the corresponding project staff budget and assets, and fast track the expeditious, full and actual turn-over to the ARG;

2. Determine and perform related tasks and activities as may be necessary to effectively implement the devolution

order and these Rules;

3. Coordinate, monitor and oversee the implementation of various services, programs, projects and related activities on transportation and communications in the ARMM, during the transition period;

4. Serve as the functional forum of coordinating and harmonizing policies, plans and programs, as well as the exercise of related powers, functions, responsibilities and services in the ARMM during the transition period;

5. Fast track extension of special assistance and related supports needed for effective and full implementation of the devolution; and

6. Perform other related tasks as may be necessary and proper.

SECTION 4. Procedure and Guidelines - The following procedures and guidelines shall be observed in the order of sequence in the implementation of the Executive Order:

1. Identification, determination and inventory of:

a. All transferred offices and attached agencies, including their personnel, equipment, properties, budget, assets and liabilities existing in the ARMM;

b. All existing assets programmed for use in the provinces of the ARMM;

c. Proportionate shares of the ARG from the positions/ personnel, equipment, budgets, assets and other resources of the Department's offices and its attached agencies which do not have offices within the ARMM, but have regional offices in Regions IX and XII; and

d. Programs and projects within the ARMM, including their project staff, budget and assets.

2. Effect the actual transfer and turn-over of such offices, personnel, budget, equipment, properties, assets and other resources, as well as the programs and projects with their corresponding project staff, budget and assets to the ARG;

3. Recommend and fast track the extension of special assistance to the ARG for the proper organization and operations of its regional counterpart agencies;

4. Coordinate closely and oversee the implementation of various programs and projects on transportation and communications in the ARMM;

5. Identity and define functional and operational linkages or relationship between the Department and its sectoral offices or attached agencies on one hand and the ARG on the other; and

6. Formulate and recommend special arrangements under the appropriate Memorandum of Agreement (MOA) defining such linkages and working relationships, as well as such powers and functions, not otherwise devolved, and delineating and assigning specific roles and responsibilities of both parties and their attached agencies.

Rule VII Final Provisions

SECTION 1. Other Functions - Such other functions not expressly devolved but deemed necessary and related to a devolved function may be the subject of an appropriate Memorandum of Agreement (MOA) mutually agreeable to the parties concerned.
SECTION 2. Technical Assistance - The DOTC, its sectoral offices and attached agencies, shall extend technical assistance and other related services to the ARG in improving the administrative, fiscal and technical capabilities of its personnel and regional counterpart agencies and offices as may be necessary.

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SECTION 3. Rules of interpretation - In the interpretation of the provisions of these rules, the following shall apply:

1. Any provision on the powers, functions and responsibilities of the ARG shall be interpreted in favor of

autonomy and, in no case, be meant to diminish the authority, power and jurisdiction over matters expressly devolved to it by the Constitution and the Organic Act;

2. In the event of conflict in the provisions of these Rules and the Executive Order, the latter prevails.

SECTION 4. Separability Clause - If any portion or provision of this IRR is declared unconstitutional, the same shall not affect the validity and effectivity of other provisions not affected thereby.
SECTION 5. Effectivity-This Implementing Rules and Regulations shall take effect after fifteen (15) days following the completion of its publication in a newspaper of general circulation.

Adopted: 11 Nov. 1997

(SGD.) ARTURO T. ENRILE
Secretary

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