

MEMORANDUM CIRCULAR NO.39

TO : ALL OWNERS /OPEARATORS OF INTERISLAND VESSELS
AND ALL CONCERNED

SUBJECT : POLICY GUIDELINES ON THE INSSUANCE CERTIFICATES
OF PUBLIC CONENIENCE (CPC)

Henceforth, subject to underlying principle that the interest of public service shall be paramount, the following guidelines shall govern the issuance of Certificate of Public Convenience (CPC), to wit:

Part ONE: MARKET EVALUATION

I. APPLICATION for CPC

A. By New Entrant

1. To a development route

Entry to the development route shall be allowed the applicant therein shall be protected in his investment by not allowing another operator to ply the same route until such time that the applicant shall have recovered his investment, unless market conditions warrant additional tonnage there in and subject further to the prior operator rule .

2. To an already serviced route

a) Served by a franchised operator

If it appears from the MARINE records that the route applied for is already served by a franchised operator (s) shall be duly notified by MARINA for comment and a market study of the route shall be made. The route may be declared open for entry in any of the following cases:

- i. Abandonment or withdrawal of service by franchised operator ;
- ii. Inadequate quality of service of franchised operator;
- iii. Violations by franchised operator of the Public Service Act, conditions of CPC, and / or orders of MARINA.

b) Served by non franchised operator

If it appears from the MARINA records that the route is already served by non-franchised operator(s), the “prior applicant rule” shall apply.

B. By Existing Franchised Operator

1. For additional capacity

If an existing franchised operator in a particular route shall apply for additional capacity/tonnage therein, the procedure as in (A) (2) (a) above shall be applicable. As among existing franchised operators in the same route , the” prior applicant rule “ shall apply.

II. Application for Amendment of CPC

A. Vessel Substitution / Replacement

Since a CPC attaches to a particular vessel , the substitution or replacement of the vessel pre-supposes the amendment of the CPC.

Application by an existing franchised operator for replacement of an existing vessel shall be granted provided that :

1. Vessels to be replaced with ages beyond thirty (30) years shall be scrapped / sold to foreign buyers.
2. Vessels to be replaced but not scrapped may be re routed to a MARINA approved route.

B. Re routing of vessel

Vessel re-routing is discouraged and becomes illegal if such re –routing is pursued without the corresponding amendment of the vessel CPC/PA. It shall be governed by the same rules governing a new entrant or franchised operator , as the case may be.

C. Amendment of Schedule/Frequency of Sailing

Any change in the authorized sailing frequency and schedule of franchised vessel shall be subject to prior approval of MARINA and any deviation therefrom without appropriate authority shall be penalized in accordance with the Public Service Act.

III. Abandonment / Withdrawal / Suspension of Service

Abandonment / Withdrawal /Suspension of service shall not be allowed without prior authority from the MARINA. In the interest of the public, the MARINA may require the ship owner/ ship operator to continue the service for a month after notification of such abandonment / withdrawal suspension of service or even for a longer period of time, as it may be necessary to avoid disruption of service.

A vessel withdrawn from its authorized route due to market conditions therein may not be deployed if any other liner route, unless authority to do so has been acquired from the MARINA.

IV. Port Sharing the Same Market

Shipping line of authorized to call on a port sharing the same market with other ports may be authorized to shift operation to the other ports in order to maintain the efficiency or regularity of service . However, necessary amendment of CPC should be applied for to include the other port sharing the same market as in the case of re-routing.

The specific ports sharing the same market shall be identified by the private sector and verified by the MARINA.

A shipping line authorized to call a port sharing the same market with other ports may be allowed to shift operations to the other port only if :

1. Port conditions and service in the former port limit the vessel's capability to provide efficient services;
2. Considerable savings in the transport cost component of the commodity/ commodities transported shall result from the shift in operation: and
3. Public is not jeopardized as a result of shift in operations.

The shift operations shall be subject to the approval of MARINA and shall not result in the expansion of company's offered capacity in a particular market unless there exists demand that is largely unserved , i.e., under tonnage.

V. Quality of Service

The "prior applicant" "prior operator" and "protection of investment" rule shall generally be observed . However, they cannot take precedence over public interest in cases where the resulting competition

shall benefit the public through improvement in services, over capacity or under utilization in the subject route /link not with standing .

Part TWO: TECHNICAL EVALUATION

I. Basis for Technical Evaluation

The MARINA shall ensure the vessels to be utilized for public conveyance are seaworthy and properly maintained to enable he utility operator to provide safe, reliable, comfortable and efficient shipping service .

The public utility operator in the maritime sector assumes the responsibility for providing maintaining safe, reliable, and efficient shipping service. On the other hand, the government should allow only those that meet established physical, technical service standards to operate the inter island trade.

Section 17 of the Public Service Act states that “ The Commission (now MARINA) shall have power without previous hearing subject to established limitations and exceptions and saving provision to the contrary: a) to require any public service to furnish safe , adequate, and proper service as the public interest may require and warrant; b) to enforce compliance with any standard rule , regulations , order or other requirement of this Act on the Commission Upon assumption of BOT’S functions , the MARINA has acquired the power to regulate the quality of shipping service on accordance with said Section 17.

II. Guidelines for Evaluation

Based on the assumption that MARINA would have already been implementing the PCG functions acquired per E.O. 125/125-A the following guidelines shall be adopted:

- A. All vessel shipping for CPC, regardless of size shall be inspected by MARINA surveyors prior to issuance of CPC to determine compliance with the shipping service standards and provision of the Philippine Merchant Marine Rules and Regulations (PMMR) governing safety of life at sea.

The certificate of inspection clearly identifies whether the vessel is adequately constructed and equipped , properly manned fit to encounter the ordinary perils of the sea , and safe to transport passenger or cargo .

The SOLAS functions which be implemented by MARINA provide safety measures relative to the design, construction , equipment, and operation of the vessel. Compliance with appropriate requirements is also necessary to ensure maximum safety operation .

- B. Re- evaluation and validation of passenger accommodation plans for existing vessel to determine compliance with the provisions of the Philippine Merchant Marines Rules and Regulations (PMMR).

The Inter island Shipping Service Standards Project provides a set of guidelines to be imposed as basis for assessing quality of shipping services. Compliance with the set of guidelines will ensure acceptable quality of shipping for passenger comfort and convenience.

Part THREE: PERIOD OF VALIDITY OF A FRANCHISE

I. Period of Validity of CPC for Owned Tonnage

- A. The duration of period of validity of a CPC will depend on the vessel's remaining economic life. For domestic vessels, economic life shall be taken as twenty (20) years for steel-hulled ships and fifteen (15) years for wooden hulled ships.

- B. On the basis of the remaining useful life of a vessel, the duration of CPC will be categorized as follows:

(1) Steel – Hulled Vessels

- a. For new buildings - Maximum CPC duration of twenty (20) years.
- b. For vessels 15 years and below – Maximum CPC duration shall be difference of the vessel's age and her maximum life of 20 years; provided, that the duration shall in no case be less than 10 years.
- c. For vessels above 15 years – Fixed duration of 10 years provided vessel is classed
- d. For vessels above 15 years but not classed -Fixed duration of 5 years.

(2) Wooden hulled Vessels

- a. For new buildings – Maximum CPC duration of fifteen (15) years
- b. For vessels 12 years and below –Difference of vessel age and her maximum economic life of 15 years
- c. For vessels above 12 years –Fixed duration of 3 years.

(3) Motorized Bancas (35 GT and below)

a. Fixed duration of two (2) years

II. Period of Validity for Chartered Tonnage

Vessel utilized for domestic trade under the Temporary Certificate of Philippine Registry/ Bare boat Charter Arrangement shall be issued a CPC which shall be coterminus with the BB Charter Party, subject to the limitations of item B above.

Part FOUR: DETERMINATION OF FINANCIAL CAPABILITY OF PA/CPC APPLICANTS

I. The issue of financial capability applicant as a pre- condition to the issuance of franchise shall be construed as the simultaneous satisfaction of two basic financial requirements :

A. The availability of funds sufficient to establish/ initiate and sustain operations

The applicant is deemed financially capable to establish /initiate and sustain operations if its actual working capital is equal or greater than the required working capital , where:

Actual Working Capital = Current Assets minus
Current Liabilities

Required Working Capital = Two months operating ,
Administrative and Interest
Expense , minus two months
Revenue (qualified by the
Average Aging Receivables)

B. The availability of sufficient financial reserves to meet claims arising from accidents

The applicant is deemed financially capable to meet claims arising from accidents if he secures a satisfactory insurance coverage of any other form of security acceptable to the MARINA.