

MEMORANDUM CIRCULAR NO. 117

TO : ALL DOMESTIC SHIPOWNERS / OPERATORS AND ALL CONCERNED

SUBJECT : RULES & REGULATION TO IMPLEMENT THE PROVISIONS OF EXECUTIVE ORDER NO. 213 (DEREGULATING DOMESTIC SHIPPING RATES)

Pursuant to the provisions of Sec. 3.1 thereof, and taking cognizance of the pertinent laws and jurisprudence, these Rules and Regulations to implement the provisions of Executive Order No. 213 (Deregulating Domestic Shipping Rates) are hereby promulgated, as approved by the Board of Directors of the Maritime Industry Authority (MARINA) in its 132nd Regular Meeting on 28 August 1996;

RULE 1: OBJECTIVES, COVERAGE & DEFINITIONS

Sec. 1.1. Objectives

This Circular is geared towards implementing the following objectives of government:

- a. Increase the attractiveness of investments in the domestic shipping industry through a healthy competitive environment wherein free market forces are allowed to govern competition; and
- b. Foster the deregulation of domestic shipping by way of lesser government intervention in rates setting, among others, and leaving instead the determination of rate levels to the users and providers of shipping services, as dictated by the factors of demand and supply under a consultative and negotiation mechanism to be institutionalized, and with public welfare and interest still protected, as well as reasonable rate of return fostered.

Sec. 1.2. Coverage

This Circular shall apply to all persons, partnerships, corporations, firms and entities engaged in the operation of domestic shipping liner service, for compensation, commercial or public use, involving the carriage of passengers and/or cargoes between various ports and places in the Philippines, as well as the users/recipients of such services.

Sec. 1.3. Definitions

- a. *Liner Service* – The operation of domestic water transportation which publicly offers its services without discrimination to any user, has regular ports of call/destination and has fixed sailing schedule and frequency.
- b. *Monopoly* – A case when a market or route is served either by only one (1) franchised operator, by a group of franchised operators beneficially owned by a single individual, or by a family/corporation, or by a cartel, which results in the absence of competition, or lack of effective competition, or exclusion of competition.
- c. *Cartel* – A group of individuals/operators having common interest which work concertedly to determine the cargo capacity to be allocated/offered and/or the rates to be charged in areas serviced by them, which practices constitute combination in restraint of trade prejudicial to public interest or results in the lack of effective competition in a route/link.
- d. *Cost-effective/Competitive Shipping Service* – When two or more operators in a given route are charging rates commensurate to the level and quality of shipping service being provided, such that any variation in the level and quality of shipping service provided among the operators will result in corresponding variations in rates being charged by each operator.

Lack of effective competition is deemed existing if any of the following is present:

- i) if the rates charged by the existing operators in a route do not vary despite differences in the level or quality of service being provided;
- ii) if the rates charged are unreasonably high and prejudicial to public welfare and interest as determined by MARINA;
- iii) if the service rendered is at the minimum level of the prescribed standards and not commensurate with the rates being charged.

In such cases, effective competition would be fostered by the entry of new operator which can offer either of the following:

- iv) better service at the given prevailing rate; or
- v) lower rates at the same level of service being provided.

- e. *Basic Commodities* – Refers to rice, palay, corn, corngrits, fruits and vegetables.
- f. *Fork Tariff System* – A system wherein rates are allowed to fluctuate between carefully defined upper and lower limits from a given reference/indicative rate.

The meaning of other terms/phrase used, are as defined in previous Memorandum Circular issuances, or as generally understood in maritime industry practice, or in accordance with legal interpretations.

RULE II: PASSAGE RATES

Sec.2.1. Deregulation of Passage Rates

- a. For liner vessels providing First, Second and Third Class passenger accommodations, the passage rate for First and Second Class accommodations shall continue to be deregulated provided the following conditions are complied with:
- (1). The vessel involved complies with the service standards prescribed under MARINA M.C. No. 65/65-A, or further amendments thereof; and
 - (2). At least fifty (50) percent of the authorized passenger capacity of the vessel shall be allocated and maintained for Third Class passenger accommodation.

Verification of compliance from the above conditions shall be done through vessel inspections conducted by the MARINA, from which a MARINA Certification shall be subsequently issued which will serve as prerequisite to the grant of authority for the herein deregulated rates.

- b. For liner passenger vessels which are accredited or certified by the Department of Tourism (DOT) as catering to tourism, the deregulation of passage rates shall be in terms of any of the following:
- (1). In the case of liner passenger vessels providing First, Second and Third Class accommodations which have been certified/accredited by the DOT based on accommodation standards, such vessels shall be exempted from the requirement of allocating 50% of its passenger capacity to Third Class accommodations, and thus grants the vessel's owner/operator the option/flexibility to convert or upgrade portion of, or all of such to either First or Second Class accommodations, the rates of which are accordingly deregulated. If such Third Class accommodations, or portions of it are not converted or upgraded to higher accommodations, and are retained as Third Class accommodations, the rates to be charged therein shall remain to be regulated by the MARINA.

The service standards under MARINA M.C. No. 65/65-A or further amendments thereof shall be used as reference for the conversion/upgrading of passenger accommodations, and such shall be duly verified by the MARINA through vessel inspection prior to grant of authority for the deregulated rates.

- (2). In the case of liner passenger vessels providing a uniform type or at most two types passenger accommodation, and are

accredited/certified by the DOT on the basis of the shipping service being provided to a tourist priority destination/link, or based on the nature of service and/or accommodations provided (i.e fastcrafts), the passage rates to be charged thereof are considered deregulated.

Sec.2.2. Instances Involving Continued Regulation of Passage Rates

Passage rates shall continue to be regulated and prescribed by the MARINA in the following cases:

- a. Third Class passage rates.
- b. The affected route/link is still monopolized, cartelized or lacks effective competition, as duly verified and substantiated by the MARINA.
- c. Liner passenger vessels where only First and Second Class passenger accommodations are provided, or where Third Class passenger accommodations is less than 50% of the vessel's total passenger capacity and are not DOT-accredited/certified. In such cases, the second class passage rates of such vessels shall be regulated in accordance with the prescribed rates as determined by the MARINA.
- d. The vessel's DOT accreditation/certification has expired or is not renewed.
- e. Where the vessel concerned does not meet the prescribed passenger service standards.
- f. Where the concerned vessel owners/operators opt to have their rates rationalized/prescribed by the MARINA.

RULE III: CARGO/FREIGHT RATES

Sec.3.1 Deregulated rates

Subject to Rule IV, the freight rates for the following are hereby deregulated, or shall continue to be deregulated:

- a. All commodities classified as Class A, Class B, and Class C under PSC Regulation as amended by MARINA Regulations, except for non-containerized basic commodities.
- c. Commodities of whatever class that are shipped as transit cargoes(interisland legs of international shipments)
- c. Livestocks.

Sec.3.2. Regulated Rates

The freight rates for other commodities not specified in Section 3.1 above shall continue to be regulated, with the MARINA prescribing the indicative/reference rates thereto.

Sec.3.3 Instances Warranting Government Intervention

The Government hereby reserves its right to intervene and exercise rates regulation under the following circumstances;

- a. Where unreasonable rates are being charged, especially involving basic commodities.
- b. Where the affected route/link is still monopolized, cartelized or lacks effective competition, as duly verified and substantiated by the MARINA, following which the freight rates to be charged therein shall remain regulated until such time that a new operator is authorized to operate in such route/link to provide cost-effective/competitive shipping service, as defined.
- c. Where the vessel concerned does not meet the prescribed cargo service standards, involving such considerations as adherence to service schedule, adequacy of vessel frequency/capacity, service speed, loading/unloading time, incidence of shutouts, adequacy/sufficiency of storage facilities, equipment & vans, claims & customer service, documentation/processing, etc. Pending the adoption of an official Cargo Service Rating System which will provide the basis on whether government intervention is warranted or not, government will initially be guided by records of complaints on concerned vessels in which the MARINA has rendered final decision on.
- d. Where it is sufficiently established that the rate adjustment(s) is prejudicial to public welfare and interest and/or the rate of return on investment involved is not reasonable.

RULE IV: IMPLEMENTATION OF DEREGULATED RATES

Sec.4.1 Formation of Domestic Shipping Consultative Councils (DOSCONS)

In order to ensure that full opportunity to be heard will still be provided to the public and affected parties on rate adjustments consequent to rates deregulation, and without government relinquishing its basic regulatory function on rate setting of public utilities, a consultative and negotiation mechanism shall

be promoted and institutionalized by the MARINA, in coordination with the Philippine Shippers Bureau (PSB), through the formation/organization of DOSCONs in major maritime centers where MARINA Regional Offices are situated. In the regional centers where a DOSCON is already formed, such are hereby recognized provided the composition and procedures hereunder provided are adhered to. The geographical areas of jurisdiction of such DOSCONs shall coincide with those delineated for each of the MARINA Regional Offices.

The DOSCONs shall, among others, provide the fora for the process of consultations and negotiations involving the implementation of deregulated rates, as will be separately prescribed in Sec.4.2 hereunder, the results of which shall be considered by the MARINA for actions to be taken thereon.

a. The DOSCON shall be constituted as follows:

. Regular Members:

__ from service provider group:

Shipowners
Ship Operators
Shipping Associations

__ from service user group:

Consumers Group
Shippers' Association

__ from government regulatory body:

Philippine Shipper's Bureau (PSB)
Department of Trade & Industry (DTI)

. Ex-Officio Members:

__ from appropriate government body:

Maritime Industry Authority (MARINA)
Local Government Unit (LGU)

. Guest Members:

Representatives from other concerned groups

b. Each of the regular members and ex-officio members shall be represented by a duly-appointed representative with an alternate representative named in advance. Said representatives and alternates should have the authority

to commit and bind the group they represent to the agreements reached in the Council meetings.

The service user group represented in the DOSCON should be a legitimate and a DTI-recognized group in the area. The number of representation will vary from region to region depending on the availability and nature of groupings in the area. The Chairmanship of the DOSCON shall be determined by election among the regular members, through a majority vote, and shall serve a term of one (1) year. Moreover, the elected Chairman shall come alternately from the shipping service provider group (shipowners/operators) and from the user group (shippers/consumers or passengers).

A majority of the Regular Members shall constitute a quorum, provided representatives from the service provider group and service user group are both present, with official actions/decisions/recommendations adopted requiring a consensus. Agreements reached by the Council shall be binding to all sectors represented therein. Whenever applicable and necessary, MARINA shall issue a Memorandum Circular/Order/Decision on the agreements reached.

- c. Representatives from other concerned groups may be invited to participate in the deliberations and consensus of the Council.
- d. Aside from matters of rates deregulation implementation, the DOSCON shall likewise serve as the shippers' and shipowners' designated body/forum where consultations, discussions and negotiations of shipping issues and concerns are made.
- e. The MARINA and the PSB shall coordinate with the organized DOSCONs in the formulation of further guidelines, procedures, rules and regulations for the latter's operation, including but not limited to, consultation, representation, negotiation, agreements and arbitration.
- f. The MARINA shall provide secretariat support.

Sec.4.2. Guidelines & Procedures for Adoption of Deregulated Rates

- a. Upon the effectivity of this Memorandum Circular, domestic shipowners/operators with franchised liner vessels qualified for deregulated rates as discussed in Rule II and Rule III hereof, shall apply with the MARINA for amendment of their Certificate of Public Convenience (CPC) or Provisional Authority to Operate (PA), in so far as the pertinent rates provisions therein is concerned. Those with pending application for CPC/PA way likewise file similar applications with MARINA.

After the MARINA has duly verified that the vessel applied for qualifies for a deregulated rate(s), a Rider to the vessel's PA/CPC shall be issued, reflecting as "*Unregulated*" the shipping rates being deregulated, with an accompanying provision included that, except for automatic fuel adjustments pursuant to MARINA M.C. No.67, all freight rate adoptions/adjustments to be made on such deregulated rates, or any subsequent modifications made thereon in the future, shall go through the process specified hereunder.

- b. Henceforth, all liner vessels previously authorized to charge deregulated rates shall likewise go through the herein prescribed process prior to any subsequent freight rate adjustments/adoptions
- c. Once a MARINA authority to charge deregulated rates for cargo/freight is granted, the process outlined hereunder, or an amended version thereof as may be subsequently deemed warranted by the MARINA, shall precede any adoptions and implementation of specific rate levels for such deregulated rates;
 - (1) The concerned shipowners/operators shall notify the MARINA/MROs concerned and the DOSCON(s) which has jurisdiction of the ports served by its vessel, of the specific freight rate levels intended to be adopted/implemented for the authorized deregulation of rates, and providing bases/justifications for such.
 - (2) The Secretariat of the concerned DOSCON(s) in turn, shall immediately disseminate the notice of freight rate adjustment to the members upon receipt thereof, and the Chairman shall convene a meeting within 15 days from receipt thereof, with official notice to the MARINA of the date of such first meeting.
 - (3) Within 30 days from its first meeting, the concerned DOSCON(s) is required to submit to the MARINA its official recommendation for approval or disapproval, together with the corresponding justification(s) and minutes of meeting(s), on the proposed freight rate adjustment.

Failure on the part of the concerned DOSCON(s) to submit a recommendation to the MARINA within the prescribed period, without valid cause, shall compel the MARINA to assume immediate jurisdiction, and take appropriate action within 15 days from assumption of jurisdiction, of the proposed rate adjustment.

- (4) In case of a favorable or qualified indorsement from DOSCON of the proposed freight rate adjustment, the MARINA shall require the petitioner, within five (5) days from receipt thereof, to publish the same and the notice of hearing in a newspaper of general circulation and MARINA shall then conduct a public hearing within 5 days after said publication. Within five (5) working days from the hearing, the MARINA shall draft an Order/Decision adopting the indorsed specific rate level(s) and submit the same within 15 days to the MARINA Board for approval. The said Order/Decision shall then be published by the petitioner in a newspaper of general circulation within 5 days and shall become effective immediately. In case a Motion for Reconsideration is filed, it shall be resolved by the MARINA within 15 days from receipt thereof. Should conditions however, warrant a disapproval pursuant to Sec.3.3 of Rule III above, or other legitimate considerations proceeding from the hearing the corresponding Order/Decision for disapproval will be drafted instead and accordingly submitted to the MARINA Board.
- (5) In case of an indorsement for disapproval of the proposed freight rate adjustment by the concerned DOSCON(s), the MARINA shall require the petitioner, within five (5) days from receipt thereof, to publish the same and the notice of hearing in a newspaper of general circulation and MARINA shall then conduct a hearing within 5 days after said publication. If it is determined by the MARINA that none of the conditions provided under Sec.3.3 of Rule III above does not obtain to warrant a disapproval, the MARINA shall draft within five (5) working days from the hearing an Order/Decision adopting nevertheless the proposed specific rate levels, and submit the same within 15 days to the MARINA Board for approval. The said Order/Decision shall then be published by the petitioner in a newspaper of general circulation within 5 days and shall become effective immediately. In case a Motion for Reconsideration is filed, it shall be resolved by the MARINA within 15 days from receipt thereof. If the indorsement for disapproval is determined to be warranted based on the provisions of Sec.3.3 of Rule III above, or other legitimate considerations proceeding from the hearing, the MARINA shall draft instead an Order/Decision disapproving the proposed rate adjustment and accordingly submit such to the MARINA Board.

Upon its own initiative, or on motion of an interested or affected party, the MARINA may suspend/modify/revoke the implementation of an approved/prescribed/adopted rate level(s), if it is sufficiently established that any of the conditions enumerated

under Sec.2.2 of Rule II and Sec.3.3 of Rule III above are present/obtaining.

- d. Pending compliance with the above-prescribed process for adoption of deregulated freight rates, affected liner vessels already in operation shall continue to charge their currently authorized freight rates, while for those liner vessels to be authorized for initial operation, the MARINA shall prescribe the interim freight rates to be charged.
- e. In the case of deregulated passage rates, specific rate levels adopted shall remain in force for at least three (3) months before any upward adjustments thereof can be made by the concerned shipowner/operator, and with such upward adjustments being preceded by the appropriate notice to the public in conspicuous places at the affected ports, at least two (2) weeks prior to such adjustments.
- f. Shipper or passengers may likewise initiate a rate adjustment, provided sufficient basis/justification is similarly submitted, in which case, the process prescribed in Sec. 4.2c (1-6) above shall likewise be observed.

RULE V : GENERAL POLICY GUIDELINES, REPORTING REQUIREMENT & ADDITIONAL INSTITUTIONAL MECHANISMS

Sec. 5.1. General Policy Guidelines on Rates Prescription

The following guidelines shall be observed for purposes of rates prescription still to be exercised by the MARINA;

- a. A fork tariff rate with a maximum range of + 10% and –15% from the MARINA – determined indicative/reference rate, as provided for under MARINA M.C. No. 67, is hereby reiterated. This shall be applicable to the rates of liner service vessels which are still regulated by the MARINA, following the application for availment of such by the concerned shipowner/operator and subsequently approved by the MARINA. As a further policy guideline, the fork tariff system is hereby clarified as an adjustment mechanism for regulated shipping rates, wherein the providers and users of shipping services will negotiate, based on consultations, on the rate to be adopted, within the band set by government, based on the level, volume or quality of service involved. The fork tariff system shall not be used for rate adjustments outside of the aforecited grounds which would otherwise be subject to existing quasi-judicial processes.

- b. The automatic fuel adjustment mechanism, as also provided under MARINA M.C. No. 67, with the corresponding procedures/guidelines stated therein, are likewise reiterated. This shall be applicable to the rates of liner service vessels which are still regulated by the MARINA. The mechanism becomes operative whenever fuel prices, specifically diesel oil, bunker and special fuel oil, are increased/decreased by at least 10%.
- c. Provision for meals in passenger-carrying liner service vessels are at the option of the concerned shipowner/operator, as provided for under MARINA M.C. No. 92.

Sec. 5.2. Reporting Requirement

All domestic shipowners/operators of liner shipping service are required to submit to the MARINA quarterly report of the actual rates charged by their vessels for each category of passage and freight, as well as other special rates charged, not later than 30 days following the period to be reported, whether such rates are regulated or deregulated.

Sec. 5.3. Additional Institutional Mechanisms

In order to foster a more effective implementation of these Rules and Regulations, the following shall also be undertaken;

- a. The MARINA, in coordination with the PSB and other concerned government agencies and private sector associations/entities, shall institute/adopt and implement a Domestic Shipping Service Monitoring System (DOSSMONS) that will provide up to date information on shipping service adequacy in various routes, problems and complaints of shippers and passengers (e.g. shutouts), charging of unreasonable rates, and other related matters.
- b. The MARINA shall likewise adopt and implement inspection and rating systems of vessels to monitor service standards provided and their compliance with prescribed standards. These systems are specifically a Vessel Safety Inspection System (VSIS), Passenger Service Rating System (PSRS) and Cargo Service Rating System (CSRS). Once such systems are in place and in effect, the failure of concerned vessels to pass such rating systems could additionally serve as basis for MARINA to withhold the implementation of a proposed rate adjustment involving such vessel, as stipulated under the pertinent portions of Sec. 2.2 of Rule II and Sec. 3.3 of Rule III of this Circular, and as a reference in evaluating rates adopted within the fork tariff band.

- c. The MARINA shall continue to monitor the return on investment of domestic shipping liner operators, the results of which shall serve as basic inputs in any Order/Decision to be arrived at on adoption of specific rate levels involving deregulated rates, or in initiating, motu proprio, rates adjustments where unreasonable rate of return is determined.

RULE VI: SANCTIONS AND PENALTIES

After due notice and hearing, each vessel found to have committed the following violations shall be subject to the fines and penalties as herein provided;

Sec. 6.1. First Category of Violations, Fines and Penalties

- a. Non-submission of Quarterly Reports on Rates;
- b. Late submission of Quarterly Reports on Rates;
- c. Incomplete Submission of Quarterly Reports on Rates;
- d. Failure to issue passenger tickets;
- e. Failure to issue Bill of Lading;
- f. Other Violations of any of the provisions of this Circular not falling under herein second category of violations.

The following penalties shall be imposed, after due process, for the above-mentioned violations:

- a. First Infraction P 5,000.00 per violation.
- b. Second Infraction P 10,000.00 per violation and/or suspension of
 CPC/PA/SP of not less than one (1)
 week.
- c. Third Infraction P 25,000.00 per violation and/or revocation of
 CPC/PA/SP.

Each infraction of a vessel may constitute one or more violations which shall be heard and decided upon by the MARINA. Subsequent infractions of the same vessel not necessarily involving the same violation(s) previously committed shall warrant a suspension or revocation.

Sec. 6.2. Second Category of Violations, Fines and Penalties

- a. For refusal to carry and shutout of cargo without just and reasonable cause;
- b. Overcharging/Undercutting of regulated rates;
- c. Unauthorized Amendment in unregulated rates;

- d. Practices which constitute combinations in restraint of trade or result in the lack of effective competition in a route/link.

For above mentioned violations, a P 25,000.00 fine per violation and revocation of CPC/PA/SP shall be imposed

RULE VII: SAVING CLAUSE

Cases/ situations not covered by the foregoing provisions of this Circular shall be immediately referred to the MARINA for resolution or decision.

RULE VIII : REPEALING CLAUSE

Any provisions of existing MARINA Circulars, rules and regulations which are inconsistent herewith are hereby repealed or modified accordingly.

RULE IX : SEPARABILITY CLAUSE

Should any provision or part of this Circular be declared by competent authority to be invalid or unconstitutional, the remaining provisions or parts thereof shall remain in full force and effect and continue to be valid and effective.

RULE X: EFFECTIVITY

This Memorandum Circular shall take effect fifteen (15) days after its publication once in a newspaper of general circulation in the Philippines.

Manila, Philippines, October 2, 1996.

By Authority of the Board:

RADM PIO H GARRIDO JR AFP (Ret)
Administrator

SECRETARY'S CERTIFICATE

This is to certify that Memorandum Circular No. 117 has been approved in the meeting of the Maritime Industry Board on 28 August 1996.

EDITA A. RAFER
Deputy Corporate Board Secretary

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