

MEMORANDUM CIRCULAR NO. 153

TO : SHIPOWNERS/OPERATORS ENGAGED IN
DOMESTIC SHIP-PING AND ALL
CONCERNED

SUBJECT : REVISED RULES & REGULATIONS
IMPLEMENTING DEREGULATION OF
DOMESTIC SHIPPING RATES

Pursuant to PD 474, and E.O. 125/125a, and consistent with the domestic shipping deregulation policy of the government as embodied under E.O. 185 and 213, the Board of Directors of the Maritime Industry (MARINA) in its 151st Regular Meeting held on 16 December 1999 approved the following rules and regulations to implement the deregulation of domestic shipping rates:

I. OBJECTIVE

1. To deregulate domestic shipping rates in line with the general policy direction of deregulation;
2. To create an investment climate designed to attract more and new players in the domestic shipping industry under the environment of free market competition; and
3. To foster the deregulation of domestic shipping by way of lesser government intervention.

II. 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/receipients of such services.

III. DEFINITION OF TERMS

1. *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.
2. *Monopolized Route/Link* - When a market or route/link 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 competition.

3. *Cartelized Route/Link* - When a market or route/link is served by a group of individuals/operators which enters into an informal agreement, arrangement or understanding among themselves, whereby such consenting parties by concerted action or in conspiracy with each other, shall by any artificial means restrict trade or prevent free competition, including any act allocating markets or customers, pooling returns or profits, charging unreasonably high rates to the detriment of public interest or engaging in cutthroat or ruinous competition to the detriment of other shipowners or operators in a particular route, or other similar acts.
4. *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 the rates being charged are unreasonably high and prejudicial to public welfare and interest as determined by MARINA or the service rendered is at the minimum level of the prescribed standards and not commensurate with the rates being charged and other similar cases.

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

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

5. *Basic Commodities* - Refers to rice, palay, corn, corngrits, fruits, and vegetables.
6. *Transit Cargoes* - Cargoes intended for import or export carried by vessels engaged in the domestic inter-island trade between ports of the Philippines.
7. *Pioneering Route/Link* - When a market or route/link is not presently served by any operator.

The meaning of other terms/phrases used herein is as defined in relevant Memorandum Circulars or as generally understood in maritime industry practice.

IV. GENERAL PROVISIONS

1. All vessels, whether DOT or non-DOT accredited, shall comply with the MARINA-prescribed service standards.
2. Adjustments in passage and freight rates due to increases/decreases in fuel prices shall continue to be governed by the provisions of Memorandum Circular No. 67 or its subsequent amendments.
3. Shipowner/operators who intend to adopt an upward adjustment of their regulated rates shall continue to be governed by the relevant provisions of Memorandum Circular No. 74/74A/74B or its subsequent amendments.

V. DEREGULATION OF PASSAGE RATES

1. Non-DOT Accredited Vessels

All non-DOT accredited passenger-carrying vessels are hereby required to reserve and allocate at least fifty percent (50%) of their total authorized passenger capacity for third class accommodations in accordance with the MARINA-prescribed service standards. The rates for these accommodations shall continue to be regulated by the MARINA.

The rates for first and second class accommodations of non-DOT accredited passenger-carrying vessels shall continue to be deregulated provided that such accommodations meet the MARINA-prescribed service standards.

2. DOT-Accredited Vessels

All passenger-carrying vessels catering tourism as duly certified by the Department of Tourism, or vessels of any size, or type serving DOT-identified priority links or areas, are hereby exempt from the requirement of allocating fifty percent (50%) of its total authorized passenger capacity for third class accommodation. The rates for first and second class accommodations of all passenger-carrying DOT- accredited vessels shall continue to be deregulated provided that such accommodations meet the MARINA-prescribed standards.

3. Route/s or Links/s determined by the MARINA as pioneering subject to the provisions of Section VIII (1.a) hereof.

VI. DEREGULATION OF CARGO/FREIGHT RATES

1. Class "A", "B" and "C", whether containerized or non-containerized
2. Transit Cargoes
3. Livestocks

4. Unitized cargoes
5. Those carried in a pioneering route/link as determined by the MARINA subject to the provisions of Section VIII (1.a) hereof.

VII. INSTANCES WHERE REGULATED RATES APPLY

1. Third Class accommodation, whether DOT or non-DOT accredited vessel
2. Second Class accommodation under any of the following:
 - a.) Non-DOT accredited vessel which offers only First and Second Class accommodation under the MARINA-prescribed service standards.
 - b.) Non-DOT accredited vessel which offers Third Class accommodation of less than 50% of the total authorized passenger capacity.
3. Tourism-oriented vessels whose owners opt to have their passage rates rationalized/prescribe by the MARINA.
4. Non-Containerized/Non-Unitized Basic Commodities
5. Monopolized or Cartelized Route/Link

The passage and freight rates where a route/link is still monopolized or cartelized shall remain regulated until such time that the new operator offering the same type of service is authorized to provide cost-effective/competitive shipping service.

6. Lack of effective competition in the route/link

VIII. GUIDELINES FOR ADOPTION OF DEREGULATED RATES AND RATE ADJUSTMENTS

1. Adoption of Deregulated Rates
 - a.) Upon the effectivity of this Circular, domestic shipowners/operators with franchise (CPC/PA) whose rates are presently regulated but are deemed qualified for regulated rates as provided under Section IV and V hereof, shall file a formal notice with the MARINA for adoption of deregulated rates as prescribed form shall indicate the same of covered vessel/s, authorized route/s, authorized rates per link/s.
 - b.) Shipowners/operators who are qualified under this Circular to adopt deregulated rates shall be issued an Order by the MARINA which shall contain, among others, the name of the vessel/s, authorized route/s, authorized rate/s and validity of CPC/PA, within thirty (30) days from receipt of the notice to adopt deregulate rates.

- c.) Shipowners/Operators who are not qualified to adopt deregulated rates shall be informed of their deficiencies and/or lacking requirements within five (5) days from receipt of such notice.
- d.) Shipowners/operators with pending application for issuance of CPC/PA shall adopt and observe the procedures under item (a) above.

2. Passage and Freight Rate Adjustments

- a.) Shipowners/operators who intend to adopt an upward adjustment of their deregulated rates shall file a written notice in a prescribed form with the MARINA.
- b.) The Shipowners/Operators shall cause the simultaneous publication of such notice once in one (1) daily newspaper of national circulation and one (1) daily newspaper of regional circulation in the port/s affected by the rate adjustment. For regional operations, publication once in a newspaper of regional circulation in the areas/ports affected by the rate adjustment shall be sufficient. The size of the notice as published must at least be 4" X 5 1/2". The affidavit of publication, newspaper clipping and copy of the newspaper shall be submitted to MARINA within five (5) days from such publication.
- c.) The shipowners/operators shall cause the posting of such notice in conspicuous places at the affected port/s, vessel/s, company premises, passenger terminals and ticketing office/s. The size of the notice shall approximate the size of a cartolina.
- d.) The adjusted rates shall take effect fifteen (15) days after the date of publication subject to the provisions of Section VIII hereof.
- e.) In the case of deregulated passage and freight rates, specific rate levels adopted shall remain in force for at least three (3) months before any upward adjustments thereof can be availed of by the concerned shipowner/operator.
- f.) Domestic shipowners/operators who intend to adopt a downward adjustment of their deregulated rates shall file a written notice with the MARINA and the same shall take effect immediately.

IX. CONDITIONS WHICH WARRANT MARINA INTERVENTION/REGULATION

- 1. The MARINA shall, after due notice and hearing, intervene under any of the following:
 - a.) Passengers and/or shippers file a complaint against the rates and services of the shipowners/operators provided sufficient basis/justification is submitted.

- b.) Shipowners/operators refuse to carry cargoes especially basic commodities without just and reasonable cause.
 - c.) MARINA, in the course of its regular enforcement and monitoring activities, finds any violation under this Circular committed by the shipowners/operators.
2. The MARINA shall, after due notice and hearing, reassume regulation under any of the following:
- a.) The route/link has become monopolized, cartelized or lacked effective competition.
 - b.) The vessel's Certificate of Compliance (COC) issued pursuant to the provisions of MARINA-prescribed service standards has been withdrawn/cancelled or has expired.
 - c.) The vessel's DOT accreditation has been withdrawn/cancelled or has expired.

X. REPORTORIAL REQUIREMENTS

1. Shipowners/operators shall submit to the MARINA quarterly reports of the actual rates charged by their vessel/s for each category of passage and freight, as well as other special rates charged, not later than thirty (30) days after each quarter, whether such rates are regulated or deregulated.
2. As provided under MC 49-B or its amendments, shipowners/operators shall submit an Annual Report of Operations and Finances, as certified by an independent auditor, in the MARINA-prescribed form.
3. The MARINA may subject to audit the financial statement submitted by the concerned shipowners/operators by the Commission of Audit.
4. Within ninety (90) days from effectivity of this Circular, shipowners/operators shall apply with the MARINA's Domestic Shipping Office to subject their vessel/s to the Passenger Service Rating System (PSRS) and/or Cargo Service Rating System (CSRS).

XI. FILING FEES

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| 1. For vessels below 35 GT | P 300/vessel |
| 2. For vessels 35 GT to 49 GT | P 500/vessel |
| 3. For vessels 50 GT to 100 GT | P1,000/vessel |
| 4. For vessels 101 GT to 500 GT | P2,000/vessel |

5. For vessels above 500 GT

P3,000/vessel

XII. SANCTIONS AND PENALTIES

After due notice and hearing, shipowners/operators found to have committed any of the following violations shall be subject to the fines and penalties as herein provided:

1. First Category:

a.) Violations:

- (i) Non-submission of Quarterly Reports on Rates
- (ii) Late submission of Quarterly Reports on Rates
- (iii) Incomplete Submission of Quarterly Reports on Rates
- (iv) Failure to issue passenger tickets
- (v) Failure to issue Bill of Lading

b.) Penalties:

- (i) First Infraction P5,000.00 per violation plus warning
- (ii) Second Infraction P10,000.00 per violation and/or suspension of CPC/PA of not less than one (1) week
- (iii) Third Infraction P25,000.00 per violation and/or revocation of CPC/PA

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.

2. Second Category:

a.) Violations:

- (i) For refusal to carry and shutout of cargo without just and reasonable cause
- (ii) Practices which constitute combinations in restraint of trade or which results in the lack of effective competition in a route/link.

b.) Penalties:

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

3. Third Category:

a.) Other violations of any of the provisions of this Circular nor falling under (1) and (2) above.

b.) Penalty

Fine of P 25,000.00 per violation and/or suspension/revocation of CPC/PA.

XIII. REPEALING CLAUSE

Memorandum Circular No. 117 is hereby repealed. Any provision of other MARINA circulars otherwise inconsistent herewith is modified/amended accordingly.

XIV. 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 hereof shall remain in full force and effect and shall continue to be valid and effective.

XV. EFFECTIVITY

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

16 December 1999, at Manila, Philippines.

By Authority of the Board:

AGUSTIN R. BENGZON
Administrator

SECRETARY'S CERTIFICATE

This is to certify that Memorandum Circular No. 153 has been approved in during the 151st Regular meeting of the Maritime Industry Board of Directors held on 16 December 1999.

ATTY. M.A. HIYASMIN HIMBING-DELOS SANTOS
Acting Deputy Board Secretary