

MEMORANDUM CIRCULAR NO. 161

TO : ALL SHIPOWNERS/OPERATORS IN THE DOMESTIC TRADE

SUBJECT : REVISED RULES AND REGULATIONS TO IMPLEMENT EO 185 ON OPENING THE DOMESTIC WATER TRANSPORT INDUSTRY TO NEW OPERATORS AND INVESTORS

Pursuant to PD 474 and EO 125/125-A, and consistent with the domestic shipping deregulation policy of the government as embodied under EO No. 185, series 1994, the Board of Directors of the Maritime Industry Authority (MARINA) in its 154th Regular Meeting held on November 2000, approved the following revised rules and regulations.

I. OBJECTIVES

1. To sustain an efficient domestic water transport industry in support of national economic growth;
2. To further enhance constructive competition and improve the quality of domestic shipping services in line with the general policy direction of liberalization;
3. To further attract new shipping investments by leveling the playing field for existing and new operators; and,
4. To strengthen the general policy framework of liberalization governing the operations in the domestic water transport industry.

II. COVERAGE

This Circular shall apply to all persons, partnership, corporations, firms and entities engaged in the operation of domestic shipping 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.

III. DEFINITION OF TERMS

1. **Abandonment of Service** - the unauthorized withdrawal/suspension of a vessel's service in its authorized link/route for a period of four (4) months

or more, or although authorized, when the withdrawal/suspension of the vessel's service exceeds six (6) months.

2. **Authorized Operator** – a domestic water transport service provider that is issued either a CPC, PA or SP.
3. **Authorized Route** – the approved pattern of ports of call starting and ending on the same port, as indicated in an existing CPC/PA/SP.
4. **Certificate of Public Convenience (CPC)** – an authority embodied in a Decision, issued by the MARINA to a domestic water transport service provider to operate a vessel for commercial/public use, for which no franchise, either municipal or legislative, is required by law.
5. **Constructive Competition** – when two (2) or more operators in a route compete for a share of the passenger and/or freight market on the basis of quality and efficiency in services, type of facilities and accommodation provided, and/or level of rates charged, resulting in the promotion of public interest and convenience and without endangering the financial viability of the operations therein.
6. **Financial Capability** – is the ability of the domestic water transport service provider to establish and/or maintain its operation and to meet the obligations and responsibilities arising therefrom other than that sufficiently covered by the appropriate insurance coverage.
7. **Liner Service** – the operation of the domestic water transportation which publicly offers its services without discrimination to any user, has regular ports of call/destination and has fixed sailing schedules and frequency.
8. **New Links** – port-to-port combinations created as a consequence of route combinations/amendments, which link areas are heretofore unserved by the liner operator but serviced by other franchised operators. When new links are created, approval shall depend on whether any of the conditions cited in Rule IV.3 will obtain.
9. **Pioneering Operator** – (a) as to route entry – is a domestic water transport service provider who introduces service to a route/link which does not have existing services, or an abandoned route/link; (b) as to type of service – is a domestic water transport service provider who introduces new or technologically-advanced type of service into a route/link with existing authorized operator/s.
10. **Prior Applicant Rule** – the priority given to the first applicant, among the mass of various applications, for a CPC.

11. **Provisional Authority (PA)** – a temporary authority embodied in an Order, issued by the MARINA to a domestic water transport service provider to operate a vessel, pending final determination of the application for issuance of CPC.
12. **Public Interest/Convenience** – the common good or that which is for the benefit of all people, or a majority thereof.
13. **Spacing of Sailing Schedule** – the reasonable time difference to be allowed for the departure of vessels in a given port.
14. **Special Permit** – a temporary authority embodied in an Order, issued by the MARINA to a domestic water transport service provider to operate a vessel, under the circumstances enumerated in this Circular.
15. **Suspension/Withdrawal of Service** – the authorized stoppage of a vessel's service in its authorized link/route which should in no case exceed six (6) months.
16. **Swapping** – the interchange of the authorized routes of two vessels, where no change in routing pattern, sequencing of port calls, frequency and schedule shall result therefrom.
17. **Tramp service** – the operation of a cargo which mostly does not run in any regular line but takes cargo wherever the shippers desire, is hired on a contractual basis, or chartered by any one or few shippers, under mutually agreed terms and usually carries full cargoes or bulk commodities.

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

IV. RULES ON ENTRY INTO AND EXIT OUT OF ROUTES/LINKS

1. ROUTES WITH EXISTING SERVICES

- a. All routes/links shall have at least two (2) operators.
- b. All routes/links which have been serviced by any operator for an aggregate period of at least five (5) years shall be open for entry to additional operators provided that the entry thereto will not result to ruinous competition.

Competition is ruinous under any of the following conditions.

- b.1. When an existing operator/s in a given route carry less than the average annual break-even load factor as determined by the MARINA;
- b.2. When the audited financial statements of any of the operators in a given route/link show losses directly related to their operations for the last two (2) years, after a verification audit by a MARINA team to be composed of a representative each from the Domestic Shipping Office (DSO), Franchising Office (FO) and/or the concerned Maritime Regional Office (MRO); or,
- b.3. Such other analogous circumstances as may be determined by MARINA.
- c. The above notwithstanding, MARINA may exercise its plenary power to approve applications in the paramount interest of public service.

2. PIONEERING OPERATIONS

- a. Entry of vessels shall be encouraged into pioneering routes categorized as follows:
 - a.1. A route/link which does not have existing shipping services or an abandoned route/link; or
 - a.2. A route/link which may be considered developmental with respect to the introduction of new or technologically advanced type of service.
- b. An operator who will service a pioneering route/link shall be allowed to adopt deregulated rates subject to the provisions of Memorandum Circular No. 153, and its subsequent amendments.
- c. Pioneering operations classified in rule IV.2.a above shall be protected in its investments for a period to be determined by MARINA, taking into consideration the following:
 - c.1. Pioneering operator who introduces land-based infrastructure/facilities shall be accorded protection from entry using the general concept of cost recovery taking into account the relevant costs divided by net income which number of years protection shall not exceed five (5) years;

The general formula to be followed under this Rule is shown below:

$$\begin{array}{l} \text{Number} \\ \text{of years} \\ \text{Protection} \end{array} = \frac{\text{VAC} + \text{POC} + \text{PT} + \text{BFR} + \text{CHF}}{\text{PR} - \text{PE}}$$

- c.2. Pioneering operator who does not introduce land-based infrastructure/facilities shall also be accorded protection from entry using the same general concept of cost recovery, taking into account the relevant cost divided by net income which number of years protection shall not exceed five (5) years;

Under this sub-section, the general formula to be followed is shown below:

$$\begin{array}{l} \text{Number} \\ \text{of years} \\ \text{Protection} \end{array} = \frac{\text{VAC} + \text{POC}}{\text{PR} - \text{PE}}$$

Where:

- BFR - Cost of Constructing Berthing Facilities/Ramp
- CHF - Cost of Acquiring cargo Handling Facilities
- PE - Projected Expenses
- POC - Pre-Operating Cost
- PR - Projected Revenue
- PT - Cost of Constructing Passenger Terminal
- VAC - Vessels of Acquisition Cost

- d. Existing operators who may qualify as pioneering operator as described under Rule IV.2.a1/a.2 above may be accorded the rights herein provided, upon application, the approval of which may be given after a thorough evaluation by MARINA.

3. ENTRY OF NEWLY ACQUIRED VESSELS INTO ROUTES ALREADY SERVED

- a. This rule shall cover vessels acquired through the following modes:
- a.1. importation

- a.2. bareboat charter with option to purchase
 - a.3. lease purchase
 - a.4. local construction
- b. An existing operator or new operator who acquires a vessel through any of the modes enumerated under Rule IV.3.a above shall be allowed to operate in any route, even if the route is already served by existing authorized operators, provided it will not result to ruinous competition as defined under Rule IV.1.b
- c. The following conditions shall establish a prima facie presumption of public need in favor of the operator of a vessel described under Rule IV.3.a, to wit:
- c.1. The proposed operation shall introduce innovative, technologically-advanced, or pioneering shipping services in the route applied for, such as, but not limited to, the deployment of fast ferries, cruise, container and RoRo vessels, or the deployment of modern on-board cargo handling equipment as an integral part of the vessel's operation;
 - c.2. The proposed operation shall introduce improvements in the quality of shipping service in the applied route;
 - c.3. The vessel proposed to be deployed shall serve as an improvement over the existing vessels/operating therein, either in terms of age, size, capacity, hull material or other technical features;
 - c.4. The proposed operation shall foster cost effective/competitive shipping service in the route;
 - c.5. The proposed operation shall service priority tourist links as identified by the Department of Tourism in its Tourism Master Plan. Certification from DOT shall be required prior to the issuance of any authority to operate;
 - c.6. The route/link applied for warrants additional operators/services, as determined by MARINA or by pertinent local government units, resulting in public invitations for additional services therein. This covers cases wherein the existing authorized operators have not been sensitive to an increase in demand by offering to increase capacity only after another operator has offered to provide additional service in the route/link;

- c.7. Where the authorized operators have abandoned their operations in a given route; or,
- c.8. Other analogous circumstances as may be determined by MARINA.
- d. Vessels covered under the foregoing rule shall continuously serve its authorized route for at least one (1) year from the date of issuance of its CPC except under any of the following circumstances, provided that no route/link shall be unserved:
 - d.1. The vessel/s involved are ISM-certificated;
 - d.2. The amendment of route/link is part of the operator's rationalization/optimization program as duly verified by the MARINA; or,
 - d.3. Other analogous circumstances as may be determined by MARINA

4. VESSEL REROUTING, AMENDMENT AND CHANGE IN SAILING SCHEDULES AND FREQUENCY

- a. The following shall constitute change or amendment to the authorized routing pattern of existing authorized operator(s):
 - a.1. Omission or deletion of ports(s);
 - a.2. Addition of other ports(s);
 - a.3. Omission and subsequence of port(s);
 - a.4. Changing the sequence of port call(s); or,
 - a.5. Retention of authorized routing pattern but with addition of one or more port(s)
- b. Conditions for approval of change or amendment to the routing pattern:
 - b.1. Approval of change or amendment to the routing pattern shall be subject to evaluation taking into consideration, inter alia, the adequacy or sufficiency of shipping service in the vacated port(s) or link(s)/route(s);
 - b.2. No conflict in sailing schedule with other operator shall result from the change or amendment of sailing schedule, otherwise the MARINA shall prescribe, motu proprio, sailing schedule that will best serve public interest and convenience;

- b.3. In no case shall a change or amendment of routing pattern be authorized if it will result in a route/link left unserved;
- b.4. No shipowner/operator shall be allowed to change or amend its routing pattern unless the previously authorized route/link has been continuously served for at least one (1) year from the date of issuance of CPC except under the instances provided under Rule IV.3.d; and,
- b.5. If the change or amendment of sailing pattern does not result in the omission/addition of ports(s), the one (1) year requirement shall not apply.
- c. If the rerouting/route amendment of a vessel (either through importation, bareboat charter with option to purchase, lease purchase or local construction) into the authorized route of an operator/company, the policy of liberalized entry into route under Rule IV.3. above shall apply.
- e. If no newly-acquired vessel is involved and an application is filled for the rerouting/route amendment of a vessel, where an entirely new route will be served, a new application for CPC shall be filed and entry thereto will depend on whether any of the circumstances enumerated under Rule IV.3.c above is attendant. Priority, however, shall be given to newly-acquired vessels brought into the fleet, subject to Rule IV.3. in the grant of CPC to a given route.
- f. If the rerouting/route amendment involves a vessel which has been issued a PA/SP only, an appropriate application for amendment of route/rerouting shall be filed and considered by the MARINA, provided that the one (1) year continuous service in its authorized route is observed except under the instances provided under Rule IV.3.d.
- g. Application for change in sailing schedule the frequency shall also be evaluated under this rule.

V. RULES IN THE ISSUANCE OF AUTHORITY TO OPERATE

1. CERTIFICATE OF PUBLIC CONVENIENCE (CPC)

- a. The following requisites must be complied with by the domestic water transport service provider before a CPC may be granted:
 - a.1. Must be a citizen of the Philippines, or a corporation or co-partnership, association or joint-stock company constituted

and organized under the laws of the Philippines, at least sixty (60) per centum of stocks or paid-up capital of which belongs entirely to the citizens of the Philippines;

- a.2. Must be financially capable of undertaking the proposed shipping service and meeting the responsibilities incident to its operations; and,
 - a.3. Must prove that the proposed operation of the public service, and the authorization to do business, will promote public interest in a proper and suitable manner.
- b. In the interest of public safety, comfort and convenience, the following pre-approval requirements must be submitted:
1. Application
 - a. Must be duly notarized and verified;
 - b. Must contain a Certification of Non-Forum Shopping; and,
 - c. Must contain an explanation of service to affected parties (if any) pursuant to Sec. 11, Rule 13 of the revised Rules of Court

NOTE: Only a Letter of Intent is required in case of small banca operators and/or those covered under the Legalization Program.

2. Vessel Documents:
 - a. Certificate of Ownership (CO);
 - b. Certificate of Vessel Registry (CVR) (for vessels 16 GT and above);
 - c. Certificate of Inspection (CI); and,
 - d. Radio/Ship Station License (RSL) (for vessels 36 GT and above).
3. Provisional/Final Class (if required).
4. Passenger Insurance Coverage at P100,000/passenger covering the authorized passenger/passenger-cargo vessels per MC 149).
5. Oil pollution Cover Certificate (for tankers and barges carrying oil and/or petroleum products)/Certificate of Coverage against Third Party Liability (for Liquefied Petroleum Gas {LPG} carriers) [amount of coverage based on MC 128].
6. PPA certification that the vessel can be accommodated safely at all times within the draft limitations of the berth in fully loaded condition (for passenger/passenger-cargo vessels only per MC 74B).

7. Financial Evaluation Documents:
 - a. For Existing Operators:
 1. Latest Annual Report or Latest Audited Financial Statements containing the following:
 - 1.1 Latest Balance Sheet; and,
 - 1.2 Latest Income Statement.
 - b. For New Operators:
 1. Statement of Invested Capital, Beginning Balance Sheet or Certified Statement of Assets and Liabilities as of the producing properties and/or source of income & the average annual income from each; and,
 2. Estimated/Projected Income & expenses summary for at least a period of two (2) months.
8. NAMRIA Certificate of Distance/s (for pioneering liner routes).
9. Three (3) Colored Photographs of the vessel (size 5 x 7) showing port side, starboard side, astern view.
10. Accreditation under MARINA Memo Circular No.79.
11. Feasibility Study (for passenger/passenger-cargo vessels only intending to operate in routes already served by two or more operators)
12. Night Vision Equipment (for High Speed crafts operating at nighttime)

As post-approval condition, the applicant shall ensure strict compliance with all other requirements in the applicable and relevant MARINA Memorandum Circulars or its subsequent amendments.

Newly-acquired vessels under Rule IV.3 may be allowed to file the necessary application for CPC with the submission of a valid MARINA letter –approval of the vessel’s acquisition. It is understood, however, that the applicant shall acquire the rights of a prior applicant only upon the date of issuance of the vessel’s Certificate of Vessel Registry.

- c. For purposes of identifying affected operators and the issuance of authority to operate, the concept of ports sharing the same market shall not be considered, Routes/links, therefore, are treated as districts and separate for quasi-judicial purposes.

d. The CPC to be issued shall have the following period of validity:

VESSEL'S AGE UPON CPC ISSUANCE CPC VALIDITY

d.1. Steel-hulled vessels	
0-5 years old	20 years
6-10 years old	15 years
11-15 years old	10 years
16 years old and above	5 years

d.2. Wooden-hulled vessels	
0-5 years old	5 years
6 years old and above	3 years

d.3. Motorized Bancas	2 years
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d.4. Bareboat Chartered Vessels Pursuant to PD 760 as amended

0-10 years old	10 years or co-terminus with the Bareboat Charter Party, whichever is shorter.
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11 years old	5 years or co-terminus with the approved Bareboat Charter Party whichever is shorter.
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2. PROVISIONAL AUTHORITY

Pending final determination of an application for CPC, temporary relief by way of a PA, can be issued to a vessel applying in a given route/type of operation, upon determination by this Authority that it will promote public interest and convenience or there is an urgent public need for the said service, and subject further to the following:

- a. Pioneering as to route entry:
 - a.1 PA may be issued upon application, even prior to hearing, provided the documentary requirements are complied; and,
 - a.2 There must be verification of presence/absence of land-based facilities/infrastructure and of abandonment of route/link, in case the same was previously served by another operator.

- b. Pioneering as to type of service:

PA may be issued after initial hearing to establish compliance with jurisdictional and documentary requirements.

- c. Tramping:

PA may be issued upon application, even prior to hearing, provided the documentary requirements are complied with.

- d. Applications not falling under a, b, and c above:

- d.1 Uncontested:

PA may be issued upon application, even prior to hearing, provided the documentary requirements are complied with.

- d.2 Contested:
 - d.2.1 For vessels Covered under Rule IV.3:

There must be an initial hearing to establish compliance with jurisdictional and documentary requirements.

If ruinous competition is alleged, the Hearing officer shall set the hearing on the Motion for issuance of PA not later than fifteen (15) days form the initial hearing to afford the oppositor/s the opportunity to substantiate its/their claim. The Motion for Issuance of PA shall thereafter be deemed submitted for resolution.

In addition, the feasibility study submitted by applicant shall be validated by the MARINA through a market survey pursuant to Rule V.10 hereof. The Hearing Officer shall direct the conduct of the market survey not later

than five (5) days from date of the initial hearing which shall be terminated within twenty (20) days thereon.

- e. The PA to be issued shall have the following period of validity:
 - e.1 For uncontested CPC applications, a PA with a maximum validity of one (1) year shall be issued.
 - e.2 For contested CPC applications, a PA with a maximum validity of six (6) months, which may be extended for another six (6) months, shall be issued.

The above provisions notwithstanding, the MARINA may grant a Provisional Authority (PA), at any stage in the proceeding, in the paramount interest of public service.

3. **SPECIAL PERMI**

- 1. Special Permit may be granted to an operator under any of, but not limited to, the following circumstances:
 - a. Without prior notice and hearing:
 - a.1. Fortuitous event;
 - a.2. Emergency/Calamity situations;
 - a.3. Omission/Deletion of ports;
 - a.4. Substitution/re-deployment/replacement/swapping/rerouting of vessel due to drydocking or repair;
 - a.5. side trips/special trips to carry shut-out cargoes, empty containers, or overbooked cargoes;
 - a.6. Trial run;
 - a.7. Vessel Conduction;
 - a.8. Conversion of vessel and its operation from liner to tramping;
 - a.9. Vessel operation in routes where there are no existing operators, provided immediate deployment is warranted;
 - a.10. drydocking/Repair/Lay-up;
 - a.11. Contracted voyage (within the authorized route); or,
 - a.12. Other analogous circumstances as may be determined by the MARINA

- b. With prior notice and hearing:
 - b.1. Increase of frequency in authorized route;
 - b.2. Change in schedule within the authorized route;
 - b.3. Addition of ports where applicant is an authorized operator;
 - b.4. Omission and subsequent addition of ports (where applicant is an authorized operator);
 - b.5. Changing the sequence of port calls
 - b.6. Retention of authorized routing pattern but with addition of one or more ports (where applicant is an authorized operator);
 - b.7. Peak seasons (Holy week, Christmas, Summer vacation, holiday, etc.);
 - b.8. Fiesta celebration;
 - b.9. Public clamor (request from LGUs, NGOs);
 - b.10. Suspension/Withdrawal/Abandonment;
 - b.11. Contracted voyage (outside the authorized route);
 - b.12. Conversion of vessel and its operation from tramper to liner; or,
 - b.13. Other analogous circumstances as may be determined by the MARINA
2. The operator who seeks the issuance of Special Permit under 3.b above must serve notice to the affected operator/s at least three (3) days prior to the scheduled hearing thereof.
3. Conditions for the approval of a Special Permit:
 - a. No route/link shall be left unserved;
 - b. The proposed scheduled will not conflict with the existing operators in the area;
 - c. The proposed operation will serve an urgent public need; and,
 - d. The present authority (CPC/PA) is deemed suspended for the duration of the Special Permit (SP).
4. The SP to be issued shall be valid for a maximum period of thirty (30) days, and renewable up to a maximum of ninety (90) days per vessel/year except in cases of drydocking or replacement of major parts which in no case shall exceed a period of six (6) months. Thereafter, the vessel shall automatically revert to its previously authorized route/link unless it files the appropriate amendment of CPC.

The above provisions notwithstanding, the MARINA may grant a Special Permit (SP) during emergency situation or peak season or in the paramount interest of public service.

4. SAILING SCHEDULE

- a. The determination of sailing schedule the frequency shall remain to be regulated by the MARINA.
- b. The spacing of sailing schedule shall be undertaken by the MARINA taking into consideration of the following factors:
 - b.1. travel time;
 - b.2. size and type of vessel, including its carrying capacity;
 - b.3. number of existing operators and vessels;
 - b.4. distance to be traversed;
 - b.5. availability of berthing space/port facilities;
 - b.6. whether ports to be served shall cater to tourists;
 - b.7. restrictions as to nighttime and daytime navigation;
 - b.8. tidal conditions;
 - b.9. proximity to other ports;
 - b.10. lean/peak season/market day;
 - b.11. condition of channel/vessel traffic in sealanes which allow limited number of vessel in certain hours; or,
 - b.12. other analogous circumstances as may be determined by the MARINA.
- c. If the new entrant in the route proposes a time schedule earlier than those of the existing operator, this may be allowed in acknowledgement of its recognition of need for services at the proposed time, unless previous acts of the existing authorized operator will show its intention to provided an earlier service.
- d. The MARINA shall, whenever practicable, evenly spread the departure time of vessels in the morning, afternoon and evening schedules.
- e. The provisions of Memorandum Circular No.121, Section V.1 thereof, as regards prescription of sailing schedules of High Speed Crafts are hereby adopted.

5. ADDITION/EXPANSION OF SHIPING SERVICES

- a. An existing authorized operator may be allowed to increase its capacity through:

- a.1. introduction/deployment of additional vessel(s);
 - a.2. increase in the vessels' sailing frequency subject to Rule IV.4.b; or,
 - a.3. jumboization or rearrangement of the vessel's passenger accommodation plan, as duly approved by the MARINA.
- b. When the proposed additional vessel has been chartered from a franchised operator, the original franchise of the vessel should be revoked.

6. REPLACEMENT/SUBSTITUTION OF VESSEL

- a.. Existing authorized operators shall be allowed the replacement of an operating vessel.
- c. Replacement/substitution by smaller vessels can be allowed.
- d. Vessel replacement shall entail the revocation of the authority to operate the vessels to be replaced.

7. SWAPPING/SUBSTITUTION/CHANGES IN SEQUENCE OF PORT CALLS OF PURELY CARGO LINER VESSELS

- a. the swapped vessels shall adhere strictly to their authorized routes, sailing frequencies and sequencing of port calls, without limitation on the capacities of the swapped vessels.
- b. Changes in the sequence of port calls shall be limited to the operator's authorized port of call, provided that no new links shall result therefrom.

8. ABANDONMENT/WITHDRAWAL/SUSPENSION OF SHIPPING SERVICE

- a. An authorized operator may be allowed to withdraw/suspend its services provided that a notice of withdrawal/suspension is filed with the MARINA, fifteen (15) days prior to such and after informing the public of such decision, through publication in a newspaper of general or local circulation, as the case may be.
- b. In cases where prior notice is not practicable, as in suspension due to marine casualty, major machinery damage, and other fortuitous events, the operator can file the notice with MARINA within fifteen (15) days after the incident. Such notice must also contain an information as to when the service may resume.

- c. Authorized withdrawal/suspension shall not, however, exceed, six (6) months, in which case, the same shall be considered as abandonment of its authorize route or portions thereof.
- d. An authorized route, or portion thereof, for a period of four (4) months or more, is treated as abandonment of its authorized route of portions thereof, as the case may be.

9. EVALUATION OF FINANCIAL CAPABILITY

- a. The issuance of financial capability of applicants shall be based on the sufficiency of equity and value of the fixed assets. The applicant may be deemed financially capable to sustain operations if it can be shown that there is excess in capitalization using the formula below:

$$\text{Capitalization} = (\text{Equity} - \text{fixed assets net of long-term liabilities}) + \text{total depreciation}$$

- b. In case where the applicant is not deemed financially capable of undertaking a shipping service, the MARINA may require the applicant to undertake an increase in capitalization equivalent to the computed deficiency. Proof of such increase and the corresponding documents shall be submitted to the MARINA for re-computation/re-evaluation of the applicants financial capability.

10. MARKET SURVEY

- a. Instances when market evaluation shall be undertaken:
 - a.1 to validate the public clamor for additional shipping services; or,
 - a.2. to determine if entry is warranted despite the absence of the conditions mentioned in rule IV.3.
- b. The market survey shall consists of two parts, namely:
 - b.1. fact-finding survey; and
 - b.2. data analysis
- c. One representative from each opposing parties may be invited as observer in the fact-finding survey which consists of the following:

- c.1. ocular inspection of existing situation in the ports of origin and destination including conditions in nearby ports which share the same market;
- c.2. conduct of interview in any or all of the following concerned parties:
 - c.2.1. passengers
 - c.2.2. shippers
 - c.2.3. shipowners
 - c.2.4. local officials
 - c.2.5. port authorities
- c.3. collection of data pertaining to:
 - c.3.1. passenger and cargo traffic
 - c.3.2. revenue and expense account of each vessel in the subject link/route
 - c.3.3. appreciation of the submitted financial feasibility studies, if there are any
 - c.3.4. other information which may be relevant to data analysis
- c.4. certification in writing given by the opposing parties attesting to the credibility and sufficiency of the collected data which are to be used in data analysis
- d. Data analysis covers the following major considerations:
 - d.1. load factor analysis and simulation
 - d.2. profit and loss account analysis
 - d.3. analysis of the statistics of ports sharing the same market
 - d.4. regression analysis
- e. Results of the market survey shall be communicated to the requesting party, copy furnished the Franchising Office or the concerned Maritime Regional Office (MRO).
- f. The determination of the quality of service and service standards shall be accordingly evaluated under the Passenger Service Rating System (PSRS)/Cargo Service Rating System (CSRS) and Memo Circular No. 65/65A and subsequent amendments thereof.

11. ROUTE SERVICE STANDARD

This Authority shall conduct a route capacity measurement, or an alternative evaluation scheme, of identified liner or ferry route/link. The results shall serve as basis for the issuance of public advisory on routes deemed warranting the entry of additional operators, or to serve as guide on whether the further entry of additional operators in a certain route, for a particular category/type of shipping service, is still warranted.

VI. SANCTION 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.

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 violations(s) previously committed shall warrant a suspension or revocation of the CPC/PA/SP.

1. FIRST CATEGORY

A. Violation

1. Rerouting, amendment or change in sailing schedules and frequency without prior MARINA approval
2. Failure to file a notice as to abandonment/withdrawal/suspension of shipping services within fifteen (15) days from stoppage.

B. Penalties

First Infraction	:	P5,000.00 with warning
Second Infraction	:	P10,000 and/or suspension of CPC/PA/SP of not less than one (1) week but not more than six (6) months
Third Infraction	:	P25,000 and/or revocation of CPC/PA/SP

2. SECOND CATEGORY

A. Violation

Submission of any false statement or misrepresentation or fraudulent or tampered document in an application for availment of privileges under this Circular.

B. Penalty

Fine of P25,000 per violation and/or suspension/ revocation of CPC/PA

3. THIRD CATEGORY

A. Violation

Other violations of any of the provisions of this Circular not falling under (1) and (2) above.

B. Penalty

Fine of P25,000 and/or suspension/revocation of CPC/PA/SP.

VII. TRANSITORY PROVISIONS

Existing vessels which may be classified as pioneering under this Circular are hereby given ninety (90) days from effectivity hereof, to apply for recomputation of number of years protection following the formula under IV.2.c.

VIII. REPEALING CLAUSE

The provisions of Memorandum Circular No. 106 are hereby expressly repealed. The provisions of Memorandum Circular Nos, 74-A, 110 and 121 and other issuances inconsistent with this Circular are hereby amended/modified accordingly.

IX. SEPARABILITY CLAUSE

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

X. EFFECTIVITY CLAUSE

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

Manila, Philippines, 16, November 2000,

BY AUTHORITY OF THE BOARD:

ATTY. OSCAR M. SEVILLA
Administrator

SECRETARY'S CERTIFICATE

This is to certify that Memorandum Circular No. 161 was approved during the 154th Regular Meeting of the Maritime Industry Board held on 16 November 2000.

ATTY. GLORIA J. VICTORIA-BANAS
Acting Corporate Board Secretary