

**[MIA MEMORANDUM CIRCULAR NO. 161, S. 2000,
November 16, 2000]**

**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 No. 125/125-A, and consistent with the domestic shipping deregulation policy of the government as embodied under EO No. 185, series of 1994, the Board of Directors of the Maritime Industry Authority (MARINA) in its 154th Regular Meeting held on 16 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 levelling 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, partnerships, corporations, firms and entities engaged in the operation of domestic shipping service, for compensation, commercial or public use, involving the carriage of passenger 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 operations 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 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 combination/amendments, which link areas are heretofore unserved by the liner operator but serviced by other franchised operators. Where 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 vessel 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 (SDO), 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:

$$\text{Number of years Protection} = \frac{\text{VAC} + \text{POC} + \text{BFR} + \text{CHF}}{\text{PR} - \text{PE}}$$

- 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:

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

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 Acquisition Cost

- d. Existing operators who may qualify as pioneering operator as described under Rule IV.2.a.1/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 in 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 vessel/s 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 left unserved:
- d.1 The vessel/s involved are ISM-certificated;