

[MIA MEMORANDUM CIRCULAR NO. 117, October 02, 1996]

RULES AND REGULATIONS 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 present 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 I

Objectives, Coverage and Definitions

SECTION 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.

SECTION 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/recipient of such services.

SECTION 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 combinations in restraint of trade prejudicial to public interest or result 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 charges 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:

i. better service at the given prevailing rate; or

ii. 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/phrases 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

SECTION 2.1 *Deregulation of Passage Rates.* —

a. For liner vessels providing First, Second, and Third Class passenger accommodations, the passage rates 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 a 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 requirements 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 such to either First or Second 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 of 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.

SECTION 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 provided 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

SECTION 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.
- b. Commodities of whatever class that are shipped as transit cargoes (interisland legs of international shipments).
- c. Livestocks.

SECTION 3.2 *Regulated Rates*. — The freight rates for other commodities not specified in Sec. 3.1 above shall continue to be regulated, with the MARINA prescribing the indicative/reference rates thereto.

SECTION 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 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

SECTION 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 and Industry (DTI)

— Ex-Officio Members:

— from appropriate government body:

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