

[**PSC, November 27, 1992**]

**REVISED IMPLEMENTING RULES AND REGULATIONS
PRESIDENTIAL DECREE NO. 1466**

Pursuant to Section 4(c) of Executive Order No. 514, the following rules are hereby promulgated concerning the use of Philippine flag vessel in accordance with Presidential Decree No. 1466.

SECTION 1. General Statement of Policy — It shall be the policy of the State to accord high priority to the development of the country's maritime transport industry. For this purpose, the Department of Trade and Industry through the Philippine Shippers' Bureau (SHIPPERCON) shall be tasked to:

1. Conserve the country's foreign exchange, promote the growth and development of the Philippine water transport industries; and
2. Enhance national self-reliance in the transport of passengers and cargoes.

SECTION 2. Definitions — For purposes of these Rules, the following terms are defined as follows:

1. **Decree** means Presidential Decree No. 1466 which amended Presidential Decree No. 894.
2. **SHIPPERCON** refers to the Philippine Shippers' Council created under Presidential Decree No. 165 as amended.
3. **Philippine Flag Vessels** refers to vessels which are duly registered in the Philippines and are owned or controlled or chartered by Philippine citizens or by a corporation or other entity owned or controlled by citizens of the Philippines.
4. **Foreign Flag Vessel** refers to a vessel which is not a Philippine flag vessel.
5. **Waiver** means a document issued by the SHIPPERCON or its duly authorized representative exempting the cargo covered by the application from the requirements of the Decree.
6. **Export Commodity Group** refers to a specific group of commodities for export to specific countries or areas, and not to broad classifications such as textiles, handicrafts, or construction materials, nor to individual exporters or groups of exporters.

SECTION 3. Government Office, Agency or Instrumentality — All government offices, agencies, or instrumentalities including government owned or controlled corporations shall be covered by the Decree under any of the following instances:

1. Whenever it shall procure, contract for, or obtain any transportation;
2. Whenever it shall export or import cargoes using water transportation between the Philippines and a place outside thereof;

Provided that, the payment of such transportation or export/import cargo shall be made or will ultimately be made, whether directly or indirectly, from funds of such government offices or instrumentalities or corporations.

SECTION 4. Private Entities or Persons Whether Natural or Juridical — Any person (whether natural or juridical), partnership, corporation, or entity shall be covered by the Decree under the following instances:

1. It has been granted a loan or credit or its obligation is guaranteed by the government or any of its financial institutions;
2. Its export or import cargoes are between the Philippines and a place outside thereof; and
3. The payment of the freight shall be made from the proceeds of such loans, credit or guaranteed loan or credit.

SECTION 5. Central Implementing Agency — The SHIPPERCON shall serve as the central implementing agency for the seaborne transport aspects of the Decree and these Rules. It shall be assisted by other government agencies and instrumentalities as provided in the succeeding Sections.

SECTION 6. The Maritime Industry Authority (MARINA) — The Maritime Industry Authority shall assist the SHIPPERCON in the imposition of penalties and administrative sanctions on owners, operators, agents, and officials of Philippine flag vessels for their failure to comply with their obligations under the Decree and these Rules. It shall furnish the SHIPPER on the following information:

1. Certified list of registered Philippine flag vessels which are owned or controlled and operated on charter by Philippine citizens or corporations, partnerships, or other entities owned by Philippine citizens. Similar lists of additional ships newly registered shall likewise be furnished the SHIPPERCON;
2. A list of current owners or operators of registered Philippine flag vessels giving a profile of their ownership and control, together with certified true copy of their articles of incorporation, partnership, charter, or other terms of reference. Any changes in such list shall likewise be furnished the SHIPPERCON. Only those owners or operators included in the lists submitted by MARINA, shall be recognized by the SHIPPERCON for purposes of the Decree.

SECTION 7. Owners and Operators of Philippine Flag Vessels — All Philippine citizens and partnerships, corporations and other entities which are owned or controlled by Philippine citizens that own or operate Philippine flag vessel(s) shall:

1. Furnish directly the SHIPPERCON, Philippine Consular Offices and authorized organizations abroad the following information:

- a. Monthly sailing schedules of such vessels on overseas liner service, including estimated time of arrival (ETA) at, and estimated time of departure (ETD) from each port of call. These schedules shall be furnished at least two (2) months in advance of the start of the monthly schedule. Any changes therein shall be immediately communicated in writing directly at the Philippine Consular Offices and authorized organizations abroad, which shall use the updated schedules furnished, as basis in determining the availability of Philippine flag vessel abroad; and
 - b. List of their Philippine flag vessels which are available for charter hire, including the period of availability and the ports where they start to be available. The list and any changes therein shall be furnished within the same periods prescribed in the next preceding paragraph. Only vessels included in the updated lists so furnished, shall qualify to be utilized for charter under the Decree.
2. Give priority, on first-come-first served basis, in accepting booking of cargoes of exporters or importers who are required to use Philippine flag vessels. The only acceptable reason for refusing to book such cargo is that no adequate, suitable, or unreserved space for the shipment is available in the vessel. The reason for refusal shall be given in writing to the exporter or importer or his duly authorized representative, by the ship's owner, operator, agent, or representative;
 3. Carry the cargoes which had already been booked and confirmed for carriage by their vessel as agreed upon, to the point of discharge; or comply with their obligations under the charter party;
 4. Keep their shipping agents or representative abroad promptly and properly posted on the implementation of the Decree; and require them to make themselves readily available to the Philippine Consular Offices or authorized organization abroad for consultations and technical advice; and
 5. Furnish the SHIPPERCON copy of the cargo manifests, together with the net freight cost of each shipment or charter hire covered by the Decree, within three (3) weeks after departure from/arrival at the Philippine port of their Philippine flag vessels; and report periodically on the effects of the Decree on their operations.

SECTION 8. Government and Private Financial Institutions —

1. Government offices, agencies, corporations, and instrumentalities which are covered by Section 2 of the Decree and those which, under Section 3 thereof, have granted a loan or credit to or guaranteed the obligation of any person, partnership, corporation, or entity as well as private financial institutions which service such accounts, shall be directly responsible within their respective jurisdictions for the enforcement of the Decree and these Rules.
2. Such financial institutions shall assist in the implementation of the Decree and these Rules by:
 - a. Requiring the beneficiary of such loan, credit, or guarantee to utilize the services of Philippine flag vessels, unless a waiver on such requirement is

secured, pursuant to the Decree or these Rules;

- b. Requiring that a foreign obligation which they are requested to guarantee, shall include a provision that a Philippine flag vessel shall be utilized in the carriage of the import or export cargoes whenever such cargoes and the transportation thereof are paid from the proceeds of such foreign obligation, pursuant to the Decree;
- c. Including a standard condition in the approval of loans, credits, or guarantees, the proceeds of which shall be used partly or wholly to pay for import or export goods and/or the freight cost thereof, that Philippine flag vessels shall be utilized for the transport of such goods, unless a waiver of this requirement is secured, pursuant to the Decree; and
- d. Adopting and implementing such administrative sanctions as may be necessary to assure faithful compliance with the requirements of the Decree and these Rules.

3. Applications of any persons, partnership corporation, or other entity granted a loan or credit or whose obligation is guaranteed by the government or government financial institutions for the importation under a letter of credit or other arrangement or the exportation of goods, merchandise or commodities, if the import/export cargoes and/or the freight thereof shall be paid from the proceeds of the loan/credit so granted or guaranteed, shall contain an undertaking by the applicant that Philippine flag vessel shall be utilized for the transport thereof, unless a waiver is secured, pursuant to the Decree and these Rules.

4. Banking institutions shall not service remittances of payments for such imports and the Central Bank shall not issue the corresponding release certificates, unless it is established that Philippine flag vessels were used for the transport of such imports or that waiver therefrom had been secured, pursuant to the Decree and these Rules.

SECTION 9. The Department of Foreign Affairs — 1. In order to expedite the grant of waiver, the authority of the SHIPPERCON to grant waivers is hereby delegated to the Philippine Consular Offices in areas abroad where they operate. The Philippine commercial attache office as SHIPPERCON resident representative in the area concerned, shall assist the consular offices in the processing of applications for waiver.

2. The Department of Foreign Affairs may consult with each other on matters necessary for the effective implementation of the Decree and these Rules; and regarding relevant international agreements entered into and national conventions adhered to by the Philippine Government and in matters involving foreign relations relevant to the Decree and its implementation.

SECTION 10. The Bureau of Customs — Upon request of the SHIPPERCON, the Bureau of Customs shall not allow specified export cargoes to be loaded nor import cargoes to be released from the piers in cases covered by the Decree, unless Philippine flag vessel shall be or was utilized for the overseas transport thereof or a waiver from this requirement had been duly secured, pursuant to the Decree and these Rules.

SECTION 11. Instances When Waivers on the Use of Philippine Flag Vessel May be Granted — The requirements on the use of Philippine flag vessels as prescribed in Sections 1 and 2, Rule III of these Rules may be waived in whole or in part and for a specified period not exceeding one (1) year by the SHIPPERCON in the case of all-water or combined water-and-land transportation, in any of the following instances:

1. When the services of a suitable Philippine flag vessel are not available at reasonable freight rates and within a reasonable period of time.

- a. When there is no Philippine flag vessel suitable to carry a particular type of cargo or operating on a specific liner route, a blanket waiver may be granted by the SHIPPERCON or its duly authorized representative;
- b. In determining the suitability of a vessel, the following factors shall be considered: (1) type, including cargo handling facilities aboard; (2) transit time; and (3) operating condition of the vessel;
- c. Availability within a reasonable period of time shall mean that, the vessel will be ready to load within ten (10) calendar days from the date the cargo is ready for loading;
- d. The reasonableness of the freight rates of the Philippine flag vessel shall be determined according to the circumstances of each case. The rates it charges for shipment shall be competitive with the total net freight charges of the foreign flag vessel which is available at the same time as the Philippine flag vessel and which is proposed to be used instead.
- e. In the case of liner service, freight rates shall refer to the total net amount to be paid to the shipping line, including all applicable surcharges such as bunker and currency surcharges, transshipment; and heavy-lift surcharge, but excluding cargo insurance and port congestion surcharge. In case of shipment on a through-bill of lading, involving combined water-and-land transport to final destination, freight rates shall refer to total freight cost of the water-and-land transport.
- f. In the case of chartered vessels, such as on voyage or time basis, the reasonableness of the freight rates shall be determined by comparing not only the charter hire or rate per ton/day/month but also the other terms and conditions stated in the charter parties.

2. When relevant international agreement entered into, or an international convention adhered to by the Philippine Government provides otherwise:

- a. The applicant for waiver shall have the burden of proof as to the existence of such relevant convention or agreement;
- b. In case of conflict in the interpretation made by the Department of Foreign Affairs shall prevail.

3. On the basis of reciprocity, when the government of a foreign country or any of its instrumentalities grants similar treatment in the utilization of Philippine flag vessel as flag vessel of such foreign country, in the transport of cargoes: