

Issued: February 3, 2023

FEDERAL MARITIME COMMISSION

MEDITERRANEAN SHIPPING COMPANY -
INVESTIGATION FOR COMPLIANCE WITH §§
41104(a) AND 41102 OF DEMURRAGE OR
DETENTION CHARGES UNDER THE CHARGE
COMPLAINT PROCEDURES OF 46 U.S.C. § 41310

DOCKET NO. CC-001

ORDER DIRECTING MEDITERRANEAN SHIPPING COMPANY, S.A. TO SHOW CAUSE

Pursuant to 46 C.F.R. § 502.91, the Federal Maritime Commission (Commission or FMC) directs Respondent Mediterranean Shipping Company, S.A., 12-14 Chemin Rieu, CH-1208 Geneva, Switzerland, to show cause by February 28, 2023, as to why it should not be ordered to refund or waive charges assessed or paid for failure to comply with 46 U.S.C. §§ 41104(a) and 41102.

This proceeding is commenced under 46 U.S.C. § 41310 and 46 C.F.R. § 502.91, based on information submitted by Complainant SOFi Paper Products. In support of this Order to Show Cause, the Commission's Office of Enforcement makes the following allegations:

STATEMENT OF FACTS CONSTITUTING BASIS FOR COMMISSION ACTION

1. Mediterranean Shipping Company, S.A. (MSC or Respondent) is a vessel-operating common carrier, FMC Organization No. 001699.

2. According to records submitted to the Commission, MSC is represented in the United States by its U.S. agent, Mediterranean Shipping Company (USA) Inc., 420 5th Avenue, 8th Floor, New York, NY 10018-2702.

THE COMMISSION'S JURISDICTION AND REQUIREMENTS OF LAW

3. Under 46 U.S.C. § 41302(a), the Commission is empowered to investigate any conduct, fee, or charge that the Commission believes to be in violation of the Shipping Act as amended, 46 U.S.C. §§ 40101-41310.
4. Effective June 16, 2022, the Ocean Shipping Reform Act of 2022 (OSRA 2022) (P.L. 117-146) amended the Shipping Act of 1984 to set forth, *inter alia*, new provisions at 46 U.S.C. § 41310, entitled Charge Complaints.
5. The provisions of 46 U.S.C. § 41310 require the Commission to “promptly investigate” charges assessed by a common carrier for compliance with 46 U.S.C. §§ 41104(a) and 41102.
6. Unfair or unjust actions by a common carrier with respect to charges may constitute violations of 46 U.S.C. § 41102.
7. If the Commission determines that a charge does not comply with § 41102, the Commission shall, under 46 U.S.C. § 41310(c), “promptly” order the refund of charges paid or waiver of charges assessed.
8. If the Commission determines that a charge does not comply with § 41102, the Commission also is authorized under 46 U.S.C. § 41310(d) to issue a civil penalty under 46 U.S.C. §§ 41107 and 41109 to the common carrier making such charge.

**BASIS FOR ALLEGED VIOLATIONS
OF SECTION 41104(a) AND/OR SECTION 41102**

9. The Commission received a complaint from SOFi Paper Products (SOFi or Complainant) under 46 U.S.C. § 41310, as a party billed or assessed for certain charges by MSC.
10. Pursuant to bill of lading no. MEDUI0745188 dated July 14, 2022, Respondent assessed a congestion surcharge in the amount of \$1000.00 to SOFi.
11. Respondent claimed to have assessed this charge in accordance with its tariff rule MSU-032, Rule 10-AO, dated May 4, 2022, published by Descartes System Group Inc. at www.descartes.com.
12. As the party billed for the congestion surcharge on a pass-through basis, SOFi requested justification for the charge.
13. MSC has not, to date, provided justification for the charge.
14. MSC has not provided justification for the carrier's charge on the basis of congestion at U.S. ports of discharge.
15. Respondent's failure to show the reasonableness of the charge invoiced July 14, 2022, or provide a justification for the charge, demonstrates that the charge may constitute an unreasonable action or practice in violation of 46 U.S.C. § 41102(c) and 41104(a)(14).
16. Respondent's failure to demonstrate that the charge is in compliance with 46 U.S.C. § 41102(c) and 41104(a)(14) establishes that the Commission should promptly order the refund of charges paid, in the amount of \$1000.00.

ORDER

NOW THEREFORE, IT IS ORDERED That, pursuant to 46 U.S.C. §§ 41102, 41104(a), 41304, 41310, and 46 C.F.R. §§ 502.61 and 502.91, Mediterranean Shipping Company, S.A. is directed to show cause, within 25 days of service of this Order, why the Commission should not find that Respondent's action in assessing a congestion surcharge with respect to bill of lading no.

MEDUI0745188 dated July 14, 2022 constitutes a violation of 46 U.S.C. § 41102(c) and 41104(a)(14). Failure of Respondent to file a response will be deemed to constitute a waiver of the Respondent's right to appear and contest the allegations in the Order to Show Cause and to authorize the Commission to enter a decision on default as provided for in 46 C.F.R § 502.65. Well pleaded factual allegations in this Order not answered or addressed will be deemed to be admitted.

IT IS FURTHER ORDERED That Mediterranean Shipping Company, S.A. is directed to show cause why the Commission should not promptly order the refund of charges paid by SOFi Paper Products with respect to charges that do not comply with § 41102 and § 41104(a)(14), as provided under § 41310(c);

IT IS FURTHER ORDERED That Mediterranean Shipping Company, S.A. is directed to show cause why the Commission should not impose a civil penalty, under §§ 41310(d) and 41107 upon such finding of noncompliance with § 41102 and § 41104(a)(14); and provided that, in such event, Mediterranean Shipping Company, S.A. shall have the opportunity for a hearing prior to assessment of a civil penalty, as provided under § 41109(a);

IT IS FURTHER ORDERED That this proceeding be limited to the submission of affidavits of fact, memoranda of law, and documentary evidence;

IT IS FURTHER ORDERED That Mediterranean Shipping Company, S.A. be named as Respondent in this proceeding. Affidavits of fact, memoranda of law, and documentary evidence shall be filed by Respondent no later than February 28, 2023;

IT IS FURTHER ORDERED That the Commission's Office of Enforcement be made a party to this proceeding;

IT IS FURTHER ORDERED That reply affidavits, memoranda of law, and documentary evidence shall be filed by the Office of Enforcement in opposition to Respondent no later than March 27, 2023;

IT IS FURTHER ORDERED That:

- (a) Should any party believe that the submission of oral testimony or additional evidence is required, that party must submit a request together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such testimony or other evidence cannot be submitted by affidavit; and
- (b) Should any party believe that oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case; and
- (c) Any request for submission of oral testimony, additional evidence or for oral argument shall be filed no later than March 27, 2023;

IT IS FURTHER ORDERED That, pursuant to 46 C.F.R. § 502.10, the Commission hereby waives the provisions of Subparts A - E, I - L and P of Part 502, and all other provisions of the Commission's Rules of Practice and Procedure except as consistent with this Order.

IT IS FURTHER ORDERED That notice of this Order to Show Cause be published in the Federal Register, and that a copy thereof be served upon Respondent's U.S. office or agent at its last known address;

IT IS FURTHER ORDERED That all documents submitted by any party of record in this proceeding shall be filed in accordance with 46 C.F.R § 502.2, as well as e-mailed directly to all parties of record. Certain requirements related to the paper filing of documents, ink signatures, and service by mail of complaints have been waived at this time. *See*, Order of May 12, 2020 in Docket No. CC-001, <https://www2.fmc.gov/readingroom/proceeding/CC-001/>; see also Temporary Adjustments in FMC Operations (Mar. 19, 2020), www.fmc.gov/temporaryadjustments-in-fmc-operations/. Filing and service by email is preferred; and

FINALLY, IT IS ORDERED That pursuant to the terms of 46 C.F.R. § 502.61, the final decision of the Commission in this proceeding shall be issued no later than May 8, 2023, which date may be extended by the Commission order.

By the Commission.

William Cody

Secretary