



October 30, 2019

Via Email

Rachel E. Dickon
Secretary
Federal Maritime Commission
800 North Capitol Street NW
Washington, DC 20573-0001
Email: secretary@fmc.gov

Federal Maritime Commission
Docket Number: 19-05
Interpretive Rule on Demurrage and Detention Under the Shipping Act

Dear Ms. Dickon:

The Dow Chemical Company (“Dow”) submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Maritime Commission (“Commission”) in the above-referenced docket on September 17, 2019. The Commission is seeking public comment on its interpretation of the Shipping Act prohibition against failing to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property with respect to demurrage and detention. Specifically, the Commission is proposing guidance, in the form of an interpretative rule, as to what it will consider in assessing whether a demurrage or detention practice is unjust or unreasonable.

Dow is a diversified chemical company that combines the power of science and technology to passionately innovate what is essential to human progress. Dow is committed to advancing science and innovation in response to the world’s most pressing challenges – enhancing the quality of life for current and future generations, while creating long-term sustainable value. Dow is dependent upon the maritime industry for the safe, secure and reliable transportation of raw materials and products around the globe. We appreciate the opportunity to comment in response to the NPRM and offer the following comments.

The interpretive rule will provide important guidance to the maritime industry regarding how the Commission will evaluate the reasonableness of port demurrage and container charges and seeks to align demurrage and detention rules and practices with their intended purpose of incentivizing efficient cargo handling and fluidity. There is a need for guidance to address concerns over ocean carrier and marine terminal demurrage and detention charges. The interpretive rule identifies key principles and examples of reasonable practices that will be considered by the Commission as to demurrage and detention, while providing the necessary flexibility to account for differing factual circumstances. The interpretive rule will greatly benefit the U.S. maritime industry by promoting efficient cargo handling and fluidity and improving commercial fairness in the assessment of the charges, while also reducing confusion and disputes.



Midland, Michigan USA



Cargo Availability. Dow believes encouraging notice of actual cargo availability will vastly improve port efficiencies and overall fluidity of the U.S. transportation network. This will help ensure the pickup is timely scheduled, reducing driver idle time waiting for a container to become available. Free time should be tied to actual cargo availability and not vessel arrival since efficient cargo pickup cannot be incentivized if the cargo may not yet be available. Free time should be stopped if the container is no longer available. It is important to consider the workings of terminal appointment systems in evaluating reasonableness - there should be some minimum period of appointment availability.

Notice of Cargo Availability. The Commission has correctly determined that the way notice of cargo availability is communicated is a critical aspect of reasonableness. Dow believes notice must be timely and readily accessible to the contracting party or its designee and must provide clear information as to when and where cargo may be retrieved. We support “push notifications” in addition to marine terminal operators making container status information available on their websites.

Government Inspections. Of the three proposals under consideration by the Commission, Dow would most prefer “In the absence of extenuating circumstances, demurrage and detention practices and regulations that do not provide for mitigation of demurrage or detention while cargo is undergoing government inspection, such as by waiver or extension of free time, are likely to be found unreasonable”. We could also support “In the absence of extenuating circumstances, demurrage and detention practices and regulations that lack a cap on the amount of demurrage or detention that may be imposed while cargo is undergoing government inspection are likely to be found unreasonable”.

Existence and Accessibility of Policies. Dow believes the Commission has properly identified the types of policies, rules and practices that would greatly improve dispute resolution processes.

Billing. Dow agrees with the Commission that demurrage and detention invoices must include adequate information to allow a shipper to audit and contest the charges.

Guidance on Evidence. Dow supports the Commission’s proposal encouraging the identification of information that can facilitate dispute resolution, such as appointment logs and trouble tickets.

Transparent Terminology. Dow supports the Commission’s proposal for the use of more consistent demurrage and detention terminology in carrier and terminal tariffs, including that the most common understanding of these terms is based on the source of the charge (land for demurrage and container for detention) as opposed to the location (inside or outside the terminal).

Dow believes the Commission should proceed to adopt the NPRM promptly. If you have any questions or require additional information, please do not hesitate to contact the undersigned at your convenience.

Sincerely,



Midland, Michigan USA



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