

# FEDERAL MARITIME COMMISSION

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DOCKET NO. 21-09

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**HAPAG-LLOYD, A.G. and HAPAG-LLOYD  
(AMERICA) LLC. —POSSIBLE VIOLATIONS  
OF 46 U.S.C. § 41102(c)**

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## **SETTLEMENT AGREEMENT**

This Agreement is entered into between:

- (1) The Federal Maritime Commission's Bureau of Enforcement, hereinafter referred to as the BOE, and
- (2) Hapag-Lloyd AG, hereinafter referred to as Hapag-Lloyd or Respondent.

WHEREAS, the Federal Maritime Commission (Commission) initiated this proceeding against Respondent for the recovery of civil penalties for alleged violations of 46 U.S.C. § 41102(c) of the Shipping Act of 1984 (Shipping Act); and

WHEREAS, BOE was made a party to this proceeding; and

WHEREAS, such a proceeding is based on the Commission's allegation that Respondent engaged in certain practices; to wit:

Between May 18, 2020, and May 18, 2022 Hapag-Lloyd knowingly and willfully failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property, by unreasonably refusing to waive detention charges, in violation of 46 U.S.C. §41102(c) of the Shipping Act of 1984;

WHEREAS, Respondent denies such allegation;

WHEREAS, the Commission is authorized under section 41109 of the Shipping Act, 46 U.S.C. § 41109, and Subpart W of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.601, et seq. to settle and collect civil penalties arising from the alleged violations set forth and

described above; and

WHEREAS, BOE and Respondent believe it is in the best interests of the parties and the shipping public to resolve this proceeding under the conditions stated herein rather than engage in continued litigation;

WHEREAS, as set forth below and without admitting that any of its practices constituted a violation of the Shipping Act, Respondent has agreed to modify its practices and agreed to undertakings intended to address the conduct that is the basis of the alleged violations set forth and described above;

NOW THEREFORE, in consideration of the premises herein, and in compromise of all civil penalties arising from the alleged violations set forth and described above, Respondent and the BOE hereby agree upon the following terms:

1. Respondent would make no admission of a 46 U.S.C. § 41102(c) (hereinafter, “Shipping Act”) violation.
2. Respondent shall pay \$2,000,000.00 to the Commission by cashier’s or certified check or an online payment.
3. The Commission would waive its right to bring any further enforcement action against Respondent with respect to any alleged violation of the Shipping Act on the basis of Respondent’s practices with respect to the billing or assessment of detention, or per diem, or Respondent’s processing of disputes related to any of the foregoing during the period May 18, 2020 to May 18, 2022.
4. Hapag-Lloyd will cease collection attempts with respect to detention assessed against the Shipments at Issue which were previously enumerated in the Order of Investigation and Hearing issued on November 10, 2021.
5. Respondent will agree to the following undertakings:
  - A. Hapag-Lloyd will publish to its website and tariff the following policy with respect to the submission of requests for waivers or refunds of detention charges:
    - i. All disputes or requests for waiver or refund of detention charges imposed by or on behalf of Hapag-Lloyd should be submitted to:

<Website will list current email address and phone no.>
    - ii. Request for a Waiver

When a person (for the purposes hereof, “person” shall include a person or entity) requests a waiver or refund of detention charges imposed by or on behalf of Hapag-Lloyd, a person must provide credible evidence that at all locations where Hapag-Lloyd equipment could be returned for all days covered by the dispute:

- a. (1) An appointment was required for a transaction involving only the return of equipment of the size and type at issue or (2) the acceptance of an empty container of the size and type at issue was conditioned upon the pickup of a loaded container from the terminal (a “dual-transaction”); and
- b. For all days covered by the dispute, the motor carrier was (as applicable) unable to secure an appointment or did not have a dual-transaction available.

iii. Evidence of Unavailability

For purposes of the foregoing, the following guidance is provided as to proof of unavailability of appointments:

- a. A person wishing to obtain a waiver or refund of detention charges imposed for a specific date (each such date a “Waiver Date”) on the grounds that an appointment was not available on the Waiver Date must provide a screenshot of the appointment system(s) of each terminal utilized by Hapag-Lloyd at the relevant port (in the case of equipment returned to the port) or of the appointment system of each inland facility used by Hapag-Lloyd in a particular inland region (in the case of equipment return to such a facility) taken the day prior to the Waiver Date and on the Waiver Date. Such screenshots must be taken between 6:00 a.m.-12:00pm (noon) the day before the Waiver Date and between 6:00a.m. and 9:00 a.m. on the Waiver Date, in the time zone of the applicable terminal.
- b. Screenshots of third-party websites purporting to show unavailability of appointments will be accepted as valid evidence of the information displayed therein provided they meet the following criteria:
  1. The third-party website is in widespread use and is generally recognized as reliable and accurate.
  2. The screenshot(s) shows the entire screen (including URL) and appointment information for all shifts for all Hapag-Lloyd terminals.
  3. The screenshot(s) include an automatically generated date/time stamp or an image of the date and time displayed on screen.



7. Upon the Commission's approval of the Agreement, the \$2,000,000.00 shall be paid to the Commission within 30 business days of the approval.
8. BOE and Respondent hereby waive all rights now and in the future to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this Agreement.
9. Upon approval of the terms set forth in this Agreement by the Administrative Law Judge and the Commission, this instrument shall forever bar the commencement or institution by the Commission of any assessment or enforcement proceeding or other claim for recovery of civil penalties from Respondent, its officers, directors, or employees with respect to any alleged violation of the Shipping Act on the basis of Respondent's practices with respect to the billing or assessment of detention or per diem or Respondent's processing of disputes related to any of the foregoing that occurred between May 18, 2020 to May 18, 2022.
10. It is expressly understood that this Agreement is not, and is not to be construed as, an admission by Respondent to the alleged violations set forth and described above.

**HAPAG-LLOYD AG**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

**APPROVAL AND ACCEPTANCE**

The above Terms and Conditions and Amount of Consideration are hereby approved and accepted:

By the Federal Maritime Commission:

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Benjamin K. Trogon, Director  
Bureau of Enforcement