

DATE: NOVEMBER 16, 2021

FROM: CARGO MARKETING

SUBJECT: RESOLUTION NO. _____ - APPROVE THE CALIFORNIA ASSOCIATION OF PORT AUTHORITIES FEDERAL MARITIME COMMISSION AGREEMENT BETWEEN THE PORT OF LOS ANGELES AND OTHER CAPA MEMBER PORTS

SUMMARY:

Staff requests approval of a revised and updated California Association of Port Authorities (CAPA) Federal Maritime Commission (FMC) Agreement (Agreement) between the City of Los Angeles Harbor Department (Port) and other CAPA Member Ports to enable the parties to discuss fostering economic growth and providing greater economic benefits to Member Ports and the public. The proposed FMC Agreement contains various changes from the existing CAPA FMC Agreement No. 224-007345 that are designed to modernize and streamline the agreement and to remove administrative provisions better suited for a separate document for CAPA's bylaws.

The FMC filing fee associated with this Agreement is the financial responsibility of CAPA and would be borne as an administrative expense.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Approve the California Association of Port Authorities Federal Maritime Commission Agreement between the City of Los Angeles Harbor Department and other CAPA Member Ports, as listed on the Agreement;
3. Authorize the Executive Director to execute and the Board Secretary to attest to said Agreement, for and on behalf of the Board;
4. Authorize the Executive Director to approve the proposed California Association of Port Authorities Bylaws on behalf of the Board; and

SUBJECT: APPROVAL OF CALIFORNIA ASSOCIATION OF PORT AUTHORITIES
FMC AGREEMENT

5. Adopt Resolution No. _____

DISCUSSION:

Background and Context – The Shipping Act of 1984 (Shipping Act) grants immunity from certain U.S. anti-trust laws to common carriers and marine terminal operators regulated by the Federal Maritime Commission when notice is provided to the FMC, through filed agreements, detailing the actions the parties intend to undertake that might otherwise potentially be in violation of U.S. anti-trust laws. The immunity conferred by the Shipping Act allows regulated entities to, among other things, discuss and agree upon services, rates, practices, and other operational decisions related to the common carriage of goods by water in the foreign commerce of the United States. The City of Los Angeles Harbor Department is a marine terminal operator as defined by the Shipping Act and must comply with its requirements.

Need for Approval – The current CAPA FMC Agreement No. 224-007345, which has been in effect since 1940 with various amendments since that time, enables the Harbor Department and other CAPA Member Ports to jointly discuss and establish just and reasonable terminal rates, charges, classifications, rules, regulations and practices at their respective terminals in connection with interstate and foreign waterborne traffic. The proposed CAPA FMC Agreement (Transmittal 1) contains changes from the existing agreement that are designed to modernize and streamline the agreement and to remove administrative provisions better suited for a separate document containing CAPA's bylaws (Transmittal 2, for reference only).

Since 1940, the FMC Agreement No. 224-007345 has been amended 22 times, but the core structure of this agreement has not been fundamentally revised. The current FMC Agreement is outdated and combines bylaws for CAPA with provisions that are more commonly found in filed FMC agreements. These provisions state that any changes to agreements are subject to fees, FMC review and oversight. This adds regulatory burdens in instances where CAPA wishes to amend its bylaws.

The proposed Agreement will cover only the elements required by the Shipping Act and, therefore, allow more flexibility for CAPA. The updated Agreement language better conforms to current business and regulatory practices. The new agreement will remain a "Terminal Rate Discussion Agreement" and ensures that CAPA retains antitrust immunity under the Shipping Act of 1984, as amended, for discussions among members, including discussion of rates and pricing, similar to virtually all modern agreements among ports and marine terminal operators (MTOs) filed with the FMC. The Agreement also makes clear the scope of permissible activities in which CAPA members may engage along with streamlining the agreement for easier review, and, as noted, removes bylaw provisions that are not related to the Shipping Act or antitrust immunity. A separate set of bylaws will be approved by the Harbor Department's Executive Director.

The proposed Agreement has an open-ended term, and any party may withdraw from the Agreement upon providing 30-days prior written notice to the other parties. The

SUBJECT: APPROVAL OF CALIFORNIA ASSOCIATION OF PORT AUTHORITIES
FMC AGREEMENT

Agreement is subject to termination upon mutual agreement of the parties, or if all but one of the parties withdraws from the Agreement. Upon approval by all of the CAPA members, the Agreement will be filed with the FMC and become effective after a 45-day waiting period, unless FMC staff requests additional information from CAPA in which case the effective date is extended during that time.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an FMC Agreement between the Harbor Department and other CAPA Member Ports, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II, Section 2 (f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed Agreement is subject to a filing fee of \$3,454.00, pursuant to 46 C.F.R. 535.401(g). The FMC filing fee associated with this Agreement is the financial responsibility of CAPA and would be borne as an administrative expense. There is no financial responsibility for the Harbor Department.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the proposed agreement as to form and legality.

TRANSMITTALS:

1. California Association of Port Authorities Federal Maritime Commission Agreement
2. California Association of Port Authorities Bylaws



ERIC CARIS
Director of Cargo Marketing

FIS Approval: MB
CA Approval: SO

Michael DiBernardo
MICHAEL DIBERNARDO
Deputy Executive Director

APPROVED:

Marla Bleavins For

EUGENE D. SEROKA
Executive Director