

DATE: JUNE 1, 2021

FROM: CARGO MARKETING

SUBJECT: RESOLUTION NO. _____ - ADOPT TEMPORARY ORDER TO AMEND PORT OF LOS ANGELES TARIFF NO. 4, SECTION TWENTY-THREE, "INCENTIVES - GENERAL RULES AND REGULATIONS", ITEM NO. 2325, "OCEAN COMMON CARRIER INCENTIVE PROGRAM" UPDATING THE QUALIFYING YEAR PROVISION

SUMMARY:

Staff requests approval of a second Temporary Order to amend (Amendment) Port of Los Angeles (Port) Tariff No. 4 (Tariff) Section Twenty-Three, "Incentives - General Rules and Regulations", Item No. 2325 "Ocean Common Carrier Incentive Program." The proposed amendment removes the "but not zero" container volume reference in the Qualifying Year period of the Ocean Common Carrier (OCC) Incentive program (Program), retroactive to September 1, 2018, and removes the qualifying year as an eligibility requirement effective April 1, 2021. Removing the qualifying year requirement would adjust the program in response to the unforeseen COVID-related decrease in container volume during Fiscal Year (FY) 2020. The "but not zero" container volume reference in the Qualifying Year did not consider OCCs that had not brought any container volume to the Port in the two years preceding their arrival, nor did it recognize OCCs that had very limited market participation and then dramatically increased container volumes through the Port, effectively "New Market Entrants".

Eligible OCCs can earn a financial incentive that could amount to \$10.00 per incremental Twenty-foot Equivalent Units (TEU) and a maximum payout of \$2,000,000 per OCC per Incentive Period as stated in Tariff No. 4 Item No. 2325.

Payouts to OCCs earned under the terms of the proposed OCC Incentive Program are the financial responsibility of the Harbor Department.

At the May 6, 2021, Board of Harbor Commissioners (Board) meeting, the Board approved a Temporary and Permanent Order amending Port Tariff No. 4 Item No. 2325. Changes in the Tariff require City Council approval. The City Council has not calendared and approved the Permanent Order and Ordinance. Therefore, a second Temporary Order is proposed to allow additional time for the Permanent Order to pass through the

SUBJECT: TEMPORARY ORDER TO AMEND TARIFF NO. 4, SECTION TWENTY-THREE, ITEM NO. 2325

City Council approval process. The second Temporary Order, if approved, will expire in 90 days after the day it is published or upon execution of the Permanent Order by the City Council, whichever occurs first.

RECOMMENDATIONS:

It is recommended that the Board of Harbor Commissioners:

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. Adopt Temporary Order No. _____ to amend Port of Los Angeles Tariff No. 4, Section Twenty-Three, "Incentives - General Rules and Regulations", Item No. 2325 "Ocean Common Carrier Incentive Program";
3. Authorize the Board Secretary to certify the adoption of the Temporary Order by the Board of Harbor Commissioners and cause the same to be published once in a newspaper printed and published in the City of Los Angeles, to take effect prior to adoption by Ordinance for a period not-to-exceed 90 days pursuant to City Charter Section 653(b); and
4. Adopt Resolution No. _____.

DISCUSSION:

Background and Context – On May 6, 2021, the Board approved Temporary Order No. 21-7302 and Permanent Order No. 21-7303 amending Tariff Item No. 2325. The amendments removed the "but not zero" container volume reference in the Qualifying Year period of the Ocean Common Carrier (OCC) Incentive program (Program), retroactive to September 1, 2018, and removed the qualifying year as an eligibility requirement effective April 1, 2021. Removing the Qualifying Year requirement adjusts the program in response to the unforeseen COVID-related decrease in container volume during Fiscal Year (FY) 2020 and incentivizes OCCs to drive future container volumes through the Port. The "but not zero" container volume reference in the Qualifying Year did not consider OCCs that had not brought any container volume to the Port in the two years preceding their arrival, nor did it recognize OCCs that had very limited market participation and then dramatically increased container volumes through the Port, effectively "New Market Entrants".

Following the significant year-over-year decline in global trade observed from January through June 2020 due to the onset of the COVID-19 pandemic, FY 2020 container volumes handled by OCCs, through no fault of their own, declined relative to FY 2019.

SUBJECT: TEMPORARY ORDER TO AMEND TARIFF NO. 4, SECTION TWENTY-THREE, ITEM NO. 2325

OCCs recovered a significant portion of the business lost in the first half of calendar year 2020. From July through December 2020, ten OCC's grew their business at the Port in excess of Transpacific growth. None of these ten OCC's were eligible for an incentive payout in FY 2021 because their FY 2020 Baseline Year performance did not exceed their respective FY 2019 Qualifying Year performance.

On April 1, 2021, the Board approved the amendment to the OCC Incentive Program removing the Qualifying Year performance provision adjusting the program in response to the unforeseen COVID related decrease in container volume during FY2020.

Following the approval of the amendment to the OCC Incentive Program, which removed the Qualifying Year requirement effective April 1, 2021, it was discovered that "New Market Entrants" that started moving container volumes through the Port after the effective date of the OCC Incentive Program were not able to receive the same benefits existing OCCs were receiving at the Port. The reference to "but not zero" container volume in Tariff Section Twenty-Three, Item No. 2325 "Ocean Common Carrier Incentive Program and Eligibility Requirements", meant that an OCC has to have moved a minimum of "**one**" container through the Port during the qualifying year. "New Market Entrants" were effectively ineligible to receive an incentive, which is contrary to the intent of the program, attracting additional cargo volumes to the Port above the Transpacific growth percentage.

"New Market Entrants" should be able to receive the same benefits existing OCCs received when the program was first introduced; the Qualifying Year requirement did not apply for all OCC's during the initial Incentive Period of the Program. This is achieved with the removal of the "but not zero" container volume reference in the Qualifying Year period effective retroactively to September 1, 2018.

Staff estimates that the April 1, 2021 approved Tariff amendment eliminating the Qualifying Year provision would result in shipping line earned payouts between \$3.5 and \$4.0 million from April 1, 2021 to June 30, 2021. In addition, the removal of the "but not zero" container volume provision of this Program would allow one OCC to earn \$182,225.00 for their performance ending in Fiscal Year 2020, and another OCC would receive the maximum incentive amount of \$2 million upon completion of Fiscal Year end 2021.

All other terms and conditions of the current OCC Incentive Program would remain in effect.

Need for Approval

Pursuant to the Los Angeles City Charter, the Board has authority to make changes to Tariff No. 4 for a period of 90 days by Temporary Order. The first Temporary Order will expire on June 30, 2021, before the Permanent Order can be fully executed. Council is

SUBJECT: TEMPORARY ORDER TO AMEND TARIFF NO. 4, SECTION TWENTY-THREE, ITEM NO. 2325

unable to calendar and approve the Permanent Order and Ordinance before the expiration date, therefore, a second Temporary Order (Transmittal 1) is proposed to allow additional time for the Permanent Order to pass through the City Council approval process. The second Temporary Order, if approved, will expire 90 days after the day it is published or upon execution of the Permanent Order by the City Council, whichever occurs first.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a second Temporary Order amending Port of Los Angeles Tariff No. 4 OCC Incentive Program (Transmittal 2), to remove the “but not zero” container volume reference and the Qualifying Year provision, 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:

As was stated in the April 1, 2021, Board report on this Program, approval of the proposed Amendment eliminates the Qualifying Year performance provision associated with the current OCC Incentive Program, effective April 1, 2021. Based upon a proposed effective date of April 1, staff estimates that FY 2021 funding of \$4,000,000 will be required in order to meet anticipated payouts under the amended OCC Incentive Program.

Payouts related to incentivized OCC performance observed from April 1, 2021 through June 30, 2021, will not be recorded until FY 2022 once all container counts are finalized and incentive payout calculations can be completed. Therefore, staff will request that \$4,000,000 be included in the FY 2022 Budget within Account 59961 (Container Incentives), Center 0422, Program 000, subject to Board approval. Funding for future years will be requested as part of the annual budget adoption process, subject to Board approval.

In the event that removal of the Qualifying Year performance provision results in a one percent increase in the Port’s TTM Market Share, staff estimates that revenues could increase by \$6,290,000 per year.

Approval of the additional amendment removes the “but not zero” reference and enables New Market entrants to receive the same benefit of its volume not subject to the qualifying year provision of the program as it originally existed. Staff estimates that removing the “but not zero” reference would result in two shipping lines earning a payout of \$2,182,225.00.

DATE: JUNE 1, 2021

PAGE 5 OF 5

SUBJECT: TEMPORARY ORDER TO AMEND TARIFF NO. 4, SECTION TWENTY-THREE, ITEM NO. 2325

CITY ATTORNEY:

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

TRANSMITTALS:

1. Temporary Order
2. Tariff No. 4 Section Twenty-Three, Item No. 2325

FIS Approval: MB
CA Approval: SO



ERIC CARIS
Director of Cargo Marketing

Michael DiBernardo

MICHAEL DIBERNARDO
Deputy Executive Director

APPROVED:

Marla Bleavins For
EUGENE D. SEROKA
Executive Director

ES:MD:EC:ng
Author: Eric Caris