

DATE: APRIL 28, 2021

FROM: CARGO MARKETING

SUBJECT: RESOLUTION NO. _____ - RESCINDING TEMPORARY AND PERMANENT ORDERS THAT AMENDED PORT OF LOS ANGELES TARIFF NO. 4, SECTION TWENTY-THREE, "INCENTIVES - GENERAL RULES AND REGULATIONS", ITEM NO 2325, "OCEAN COMMON CARRIER INCENTIVE PROGRAM" REMOVING THE QUALIFYING YEAR ELIGIBILITY REQUIREMENT

SUMMARY:

Staff requests to rescind Temporary Order No. 21-7297 and Permanent Order No. 21-7298 amending 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 Amendment removed the Qualifying Year as an eligibility requirement from the Ocean Common Carrier (OCC) Incentive Program (Program) effective April 1, 2021. While reviewing the effectiveness of the Program, staff discovered that OCCs that started moving container volumes through the Port after the effective date of the OCC Incentive Program (New Market Entrants) were not able to receive the same benefit existing OCCs received at the inception of the Program when the initial Qualifying Year did not apply. Staff will be requesting approval of a new Temporary and Permanent Order updating Tariff Item No. 2325 to both remove the Qualifying Year as an eligibility requirement effective April 1, 2021 and adjust the Program language to remove the Qualifying Year requirement that OCCs show more than "zero" TEUs during the effective period of the Program. This requested rescission will allow for the additional requested change to the Program in the follow-on Board item to be presented to City Council for approval through one Permanent Order and Ordinance, rather than as separate actions.

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; and

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2. Rescind Temporary Order No. 21-7297 and Permanent Order No. 21-7298 amending Port of Los Angeles Tariff No. 4, Section Twenty-Three, "Incentives - General Rules and Regulations", Item No. 2325 "Ocean Common Carrier Incentive Program", previously adopted by the Board during its April 1, 2021 Board Meeting.

DISCUSSION:

Background and Context

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. Effective April 1, 2021 OCCs Incentive Year (current year) performance would be compared to the Baseline Year (1 year prior) container volume, less Transpacific growth percentage volume, to determine payout eligibility.

Subsequent to this Board action and upon review of the effectiveness of the program, staff discovered that New Market Entrants were not eligible to receive the benefit existing OCCs received at the inception of the program (the initial Qualifying Year was inapplicable to all OCCs). The reference to "but not zero" container volume as a Qualifying Year requirement in Tariff Item No. 2325 means that an OCC has to have moved a minimum of "**one**" container through the Port during the Qualifying Year. Therefore, New Market Entrants are effectively ineligible to receive an incentive without showing TEU volume across three fiscal years.

The removal of the "but not zero" container volume reference in the Qualifying Year period effective retroactively to September 1, 2018 would effectively provide New Market Entrants a "waiver" of an initial Qualifying Year requirement consistent with that provided to OCCs at the Program's inception. Staff will be requesting approval of a new Temporary and Permanent Order updating Tariff Item No. 2325 to reflect the above recommended changes to the Program.

ENVIRONMENTAL ASSESSMENT:

The proposed action rescinds a previously adopted Temporary (Transmittal 1) and Permanent (Transmittal 2) Order by the Board during its April 1, 2021 Board Meeting, to amend Port of Los Angeles Tariff No. 4 OCC Incentive Program, to remove the Qualifying Year provision (Transmittal 3), 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.

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FINANCIAL IMPACT:

Approval of the proposed Resolution to rescind the previously adopted Temporary Order and Permanent Order would initially result in a \$4 million savings as the payouts associated with those orders would no longer be incurred. However, under a separate action, staff will bring forward revised Temporary and Permanent Orders which will not only remove the Qualifying Year provision, effective April 1, 2021 but also include language which will enable New Market Entrants to qualify for payouts under the OCC Incentive Program.

While the proposed Resolution will initially result in savings, those savings will be more than offset by the subsequent Temporary and Permanent Orders which will be separately considered by the Board under a separate action.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved this item as to legality.

TRANSMITTALS:

1. Temporary Order No. 21-7297
2. Permanent Order No. 21-7298
3. Tariff No. 4 Section Twenty-Three, Item No. 2325



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