

**DATE: APRIL 19, 2023**

**FROM: CARGO MARKETING**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVE THE CALIFORNIA ASSOCIATION OF PORT AUTHORITIES (CAPA) FEDERAL MARITIME COMMISSION AGREEMENT NO. 224-007345 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND OTHER CAPA MEMBER PORTS**

**SUMMARY:**

Staff requests approval of an updated California Association of Port Authorities (CAPA) Federal Maritime Commission (FMC) Agreement No. 224-007345 (Agreement) between the City of Los Angeles Harbor Department, operating as the Port of Los Angeles (Port), and 10 other CAPA Member Ports. This Agreement enables the parties to meet, discuss, and exchange ideas to foster economic growth and provide greater economic benefits to Member Ports and the public.

On December 2, 2021, the Board of Harbor Commissioners (Board) approved a prior version of the Agreement. Since that time, an update to implement additional changes necessary to further modernize the parameters of the Agreement was needed, requiring staff to seek Board approval.

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:

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 updated California Association of Port Authorities Federal Maritime Commission Agreement No. 224-007345 between the City of Los Angeles 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;

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4. Authorize the Executive Director to approve the proposed California Association of Port Authorities Bylaws on behalf of the Board; and
5. Adopt Resolution No. \_\_\_\_\_

**DISCUSSION:**

Background and Context – The Shipping Act of 1984 (Shipping Act) grants immunity from certain United States (U.S.) anti-trust laws to common carriers and marine terminal operators regulated by the FMC 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 U.S. The Port is a marine terminal operator subject to the Shipping Act and FMC regulatory jurisdiction.

Founded in 1940, CAPA, comprised of 11 major deepwater port authorities across the state, is committed to advocating and advancing public policy objectives of the Ports at all levels of government. CAPA educates state and federal policy makers on port operations while also advancing the best interests of the maritime community. CAPA also maintains formal agreements on behalf of its Member Ports with the FMC.

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 Port and 10 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 Board approved a revised CAPA FMC Agreement on December 2, 2021. That Agreement was not filed with the FMC, allowing CAPA to make further revisions after communication with FMC staff. The proposed updated CAPA FMC Agreement (Transmittal 1) more plainly states terms and corrects errors and issues from the prior Agreement that need correction prior to formal submission.

Since 1940, the FMC Agreement No. 224-007345 has been amended 22 times, but the core structure of this agreement had not been fundamentally revised. The update to the prior Board approved Agreement covers 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. It remains a “Terminal Rate Discussion Agreement” and ensures that CAPA members retain antitrust immunity under the Shipping Act of 1984, as amended, for discussions among members, including discussion of rates and pricing, similar to virtually

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all modern agreements among ports filed with the FMC. The Agreement also clarifies 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.

The Agreement now states its purpose is to promote just and reasonable business practices among port authorities in the State of California. This Agreement will permit the parties to meet, discuss, exchange information, and agree on matters relating to their respective operations, facilities, services, and other matters, with the shared goal of fostering economic growth and providing greater economic benefits to Member Ports and the shipping public.

The updated 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 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 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 Port 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, 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 Port.

**CITY ATTORNEY:**

The Office of the City Attorney has reviewed the proposed Agreement and this Board Report, and there are no legal issues at this time.

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**TRANSMITTAL:**

1. California Association of Port Authorities Federal Maritime Commission Agreement

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:aa  
Author: Eric Caris