

CALIFORNIA ASSOCIATION OF PORT AUTHORITIES

FEDERAL MARITIME COMMISSION

AGREEMENT NO. 7345, AS AMENDED

APPROVED FEBRUARY 6, 1941
(Amended to January 10, 1975)

PARTIES TO THE AGREEMENT

Non-Operating Members

San Francisco Port Commission
Port of San Diego
Port of Richmond
Port of Los Angeles
Port of Long Beach
Port of Oakland
Encinal Terminals

Operating Members

Port of Stockton
Sacramento-Yolo Port District
(Port of Sacramento)
Oxnard Harbor District
(Port of Hueneme)

Footnote: This represents an unofficial copy of Agreement No. 7345, including all FMC approved amendments up to and including Agreement No. 7345-19.

Dated at San Francisco this 3rd day of February, 1975.


C. R. Nickerson
Executive Secretary

CALIFORNIA ASSOCIATION OF PORT AUTHORITIES

AGREEMENT

THIS AGREEMENT, entered into at San Francisco, California, by and between the undersigned on the 12th day of April, 1940, and amended at Long Beach, California on June 10, 1940, and at Oakland, California on October 18, 1940, and further amended as shown in connection with individual Articles.

WITNESSETH:

OBJECTS AND PURPOSES

That, in consideration of the benefits to be severally and collectively derived from this agreement, the parties hereto hereby associate themselves in an association to be known as the "CALIFORNIA ASSOCIATION OF PORT AUTHORITIES" hereinafter referred to as the "Association", to promote fair and honorable business practices among those engaged in the marine terminal industry, to more adequately serve the interests of the shipping public at their terminals in ports in the State of California and to establish and maintain just and reasonable, and, as far as practicable, uniform terminal rates, charges, classifications, rules, regulations and practices at such terminals for or in connection with interstate and foreign waterborne traffic, provided that it is recognized that each port or terminal may have a different situation and the term "uniform" shall not necessarily be construed to mean identical, and it is understood that all matters involved herein shall be worked out in a spirit of bona fide effort to accomplish an arrangement that will give no one an undue advantage, taking into consideration all competitive conditions, and to cooperate with port authorities and marine terminal operators of other districts either individually or through their associations, to the end that the purposes set forth above may be achieved as widely as possible.

ARTICLE 1 - MEMBERSHIP

(Amended April 12, 1966 - Agreement No. 7345-11)

Any port authority or marine terminal operator in the State of California may hereafter by consent of a majority of the parties hereto become a party to this agreement upon written acceptance of its terms and conditions, provided, however, no such admission shall become effective prior to the date of written advice thereof given by the Association to the Federal Maritime Commission, Washington, D. C. Two signed copies of each such written acceptance shall be furnished promptly by the Association to the Federal Maritime Commission. The admission of any such port authority or terminal operator shall not be denied without just and reasonable cause.

ARTICLE 2 - TARIFF COMPLIANCE

The parties hereto agree to assess and collect all rates and/or charges for or in connection with traffic handled by them within the scope of this agreement, strictly in accordance with the rates, charges, classifications, rules, regulations and/or practices set forth in their respective applicable tariffs; that they will not in any respect deviate from or violate any of the terms of said tariffs; and that no rates or charges assessed or collected pursuant to such tariffs shall be directly or indirectly illegally or unlawfully refunded or remitted in whole or in part in any manner or by any device.

ARTICLE 3 - TARIFF CHANGES

*(Amended February 1, 1973 - Agreement No. 7345-17)

(a) The members agree that no change shall be made in the rates, charges, classifications, rules, regulations or practices in any of their tariffs without first obtaining unanimous approval of all of the members of either the Committee on Tariffs and Practices or the Traffic Committee of Operating Members, whichever Committee has jurisdiction of such proposed change as provided in Article 17 hereof except, that if a member desires to make a change in tariff rate, charge, classification, rule, regulation, or practice that results in an increase in revenue solely in his own jurisdiction, approval by only a majority of all the members of either of said committees is required for such change; provided however, that in the event any proposed change fails to receive unanimous or majority approval as required, any member may take independent action with regard thereto in the manner hereinafter in paragraph (b) of this Article provided. Any member may publish an identical tariff item that exists in another member's tariff upon giving not less than five (5) days' prior written notice to the President, the Executive Secretary, and each member of the Association.

(b) Proposed tariff changes which have failed of unanimous approval by the Committee on Tariffs and Practices may be made by the membership acting unanimously at any regular or special meeting or may be made by independent action upon the giving of not less than ten (10) days prior written notice to the President, the Executive Secretary, and each member of the Association, during which period members of the Association shall be afforded an opportunity to consult with each other and to make recommendations. Upon the giving of not less than five (5) days prior written notice to the President, the Executive Secretary and each member of the Association, any other member may make such changes with regard thereto in its own rates, charges, classifications, rules, regulations and practices as such member may desire. Any recommendation made by any member shall be purely advisory and shall not be binding upon any member.

(c) Proposed tariff changes for services peculiar to and performed only by Operating Members which have failed of unanimous approval by the Traffic Committee of Operating Members may be made by independent action upon the giving of not less than ten (10) days prior written notice to the President, the Executive Secretary and each Operating Member of the Association, during which period the Operating Members of the Association shall be afforded an opportunity to consult with each other and to make recommendations. Upon the giving of not less than five (5) days prior written notice to the President, the Executive Secretary and each Operating Member of the Association, any other Operating Member may make such changes in the rates, charges, classifications, rules, regulations and practices for services peculiar to and performed only by Operating Members as such Operating Member may desire. Any recommendation made by any Operating Member shall be purely advisory and shall not be binding upon any Operating Member.

(d) Amendments, supplements or reissues of the tariff of any member shall be promptly furnished to the Association and to all other members.

** (e) Consideration of tariff changes and all other actions taken by the Committee on Tariffs and Practices and by the Traffic Committee of Operating Members shall be in accordance with this Agreement, and with procedures adopted by the Committees, approved by the Association and filed with the Federal Maritime Commission.

*Also amended May 16, 1972, by Agreement No. 7345-16

Also amended January 10, 1972 - Agreement No. 7345-15

Also amended January 25, 1971, by Agreement No. 7345-14

Also amended December 18, 1969, by Agreement No. 7345-13

Also amended April 12, 1966, by Agreement No. 7345-11

** Addition by Agreement No. 7345-16, approved May 16, 1972

ARTICLE 4 - COMMISSION FILINGS
(Amended April 12, 1966 - Agreement No. 7345 -11)

A copy of each tariff effective hereunder containing all rates, charges, rules, classifications, regulations and/or practices, including additions thereto and changes therein, shall be furnished promptly to each member of the Association, and to the Federal Maritime Commission, Washington, D. C., by the Association.

ARTICLE 5 - WITHDRAWAL PROCEDURE
(Amended April 12, 1966 - Agreement No. 7345-11)

Any member may resign from the Association at any time, upon three (3) months' previous written notice of such resignation mailed to the Association. Promptly upon the receipt of any such notice of resignation, the Association shall mail a copy thereof to the Federal Maritime Commission, Washington, D. C. Upon the effective date of said resignation, the member so resigning shall be relieved of all obligation to the Association, except for the amount of any dues of said member then due and unpaid, and except for the amount of any then delinquent assessment levied against said member.

ARTICLE 6 - SUBJECT TO APPROVAL

This agreement, or any modification thereof, shall not become effective until approved pursuant to Section 15 of the Shipping Act, 1916, as amended, provided, however, that the filing of and participation in this agreement shall not be construed as a waiver of, or in any respect prejudicial to, the contentions of any of the parties hereto as to their amenability to the provisions of the Shipping Act, 1916, as amended.

ARTICLE 7- EXECUTED IN TRIPLICATE
(Amended April 12, 1966 - Agreement No. 7345-11)

This agreement shall be executed in triplicate, two copies to be filed with the Federal Maritime Commission, Washington, D. C., and one copy to be retained by the Association.

ARTICLE 8 - HEADQUARTERS

The principal office of the Association shall, unless otherwise determined by the members, be at the office of the Executive Secretary of the Association in San Francisco, California.

ARTICLE 9 - MEMBERS' REPRESENTATION

At an organization meeting in San Francisco, California, on the 12th day of April, 1940, and at each subsequent annual meeting as hereinafter provided each Association member shall declare the name of the person who shall represent it at meetings of the Association and such person shall serve until such time as his successor is named and seated. Each member shall be permitted to designate and appoint one alternate to serve instead of such accredited representative in the event of his absence.

ARTICLE 10 - OFFICERS

*(Amended May 16, 1972 - Agreement No. 7345-16)

The officers of the Association shall be a President, a First Vice President a Second Vice President, and a Treasurer. These officers shall be elected by the members by a majority vote at each annual meeting of the Association and shall serve, without compensation for one year or until their successors have been duly elected and installed in office. They shall perform the duties ordinarily performed by such officers and such other duties as may be assigned to them by the members. In the event the offices of either President or First Vice President shall for any reason become vacant during the term for which those officers were elected, the next lower ranking officer shall automatically succeed to the next higher office respectively; and in the event of any such vacancy in the office of Second Vice President, the members of the Association may fill the vacancy by a majority vote.

ARTICLE 11 - EXECUTIVE SECRETARY

(Amended September 5, 1967 - Agreement No. 7345-12)

The members may select and contract for or employ an Executive Secretary and such other help as may be necessary to carry on the activities of the Association and shall fix their duties and compensation.

ARTICLE 12 - DUTIES OF PRESIDENT

It shall be the duty of the President to preside at all meetings of the Association, and he shall be ex officio member of all committees.

ARTICLE 13 - DUTIES OF VICE PRESIDENTS

(Amended September 5, 1967 - Agreement No. 7345-12)

In the absence or disability of the President, the Vice Presidents in order of their rank shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President.

ARTICLE 14 - DUTIES OF EXECUTIVE SECRETARY

** (Amended May 16, 1972 - Agreement No. 7345-16)

The Executive Secretary shall keep an accurate record of the proceedings of the Association and shall issue all calls and notices ordered by the President. He shall have custody of all official papers and records, except those of the Treasurer. He shall furnish promptly to the Federal Maritime Commission, Washington, D. C., and to each member of the Association a copy of the Minutes of each meeting.

ARTICLE 15 - DUTIES OF TREASURER

The Treasurer shall keep an accurate record of the receipts and disbursements of the Association and shall be responsible for the funds of the Association. At the expiration of his term of office, he shall turn over to his successor the funds of the Association and the financial books and records.

* Also amended September 5, 1967-Agreement No. 7345-12

** Also amended April 12, 1966 - Agreement No. 7345-11

ARTICLE 16 - EXECUTIVE COMMITTEE

***(Amended May 16, 1972 - Agreement No. 7345-16).**

The President, First Vice President, Second Vice President, and Treasurer shall constitute the Executive Committee of which the President shall be the Chairman. It shall carry on the customary routine executive duties of the Association, subject at all times to the directions and orders of the Association.

ARTICLE 17 - COMMITTEES

**** (Amended January 10, 1975 - Agreement No. 7345-19)**

(a) The President shall appoint such committees as may from time to time be necessary; provided, however, there shall be a standing Committee on Tariffs and Practices, consisting of a representative of each Operating and Non-Operating Member appointed by such member and, in addition, there shall be a standing Traffic Committee of Operating Members, consisting of a representative of each Operating Member appointed by such Operating Member as listed on the Title Page of this Agreement, and each such Committee shall annually elect its own Chairman and Vice Chairman.

(b) The Committee on Tariffs and Practices shall, except as hereinafter provided in paragraph (d) of this Article, investigate and study operating costs, methods and practices, as well as traffic conditions, in order to determine just and reasonable rates, charges, classifications, rules, regulations and practices at ports in the State of California, and on behalf of the membership of the Association may approve by the unanimous vote of all of its members the adoption of such rates, charges, classifications, rules, regulations and practices.

(c) The Committee on Tariffs and Practices is authorized with reference to the rates, charges, classifications, rules and regulations of other than members of this Association, to take such actions, in the name of the California Association of Port Authorities, as are appropriate and necessary to represent the common interest of all Association members before regulatory bodies or rate-making bureaus to secure results in the best interests of California ports. Such action by the Committee on Tariffs and Practices shall be taken only upon unanimous approval of all members of the Committee, and only after each such action has been approved by the President of the Association.

(d) The Traffic Committee of Operating Members shall investigate and study operating costs, methods and practices in order to determine just and reasonable rates, charges, classifications, rules, regulations and practices inherent in the furnishing of accessorial services peculiar to and performed only by Operating members at ports in the State of California, but may not investigate or study operating costs, methods and practices of non-operating members. The Traffic Committee of Operating Members, on behalf of the membership, may approve by the unanimous vote of all of its members the adoption of such rates, charges, classifications, rules, regulations and practices for such accessorial services. Except as expressly set forth herein, the powers and duties of the Traffic Committee of Operating Members shall not extend to any rate, charge, classification, rule, regulation or practice that is within the jurisdiction of the Committee on Tariffs and Practices under paragraph (b) of this Article.

(Continued on Page 6)

*Also amended September 5, 1967 - Agreement No. 7345-12

** Also amended April 12, 1966 - Agreement No. 7345-11, and

** also amended December 18, 1969 - Agreement No. 7345-13

Article 17 - Committees (Concluded)

(e) Nothing in this agreement is intended to nor shall preclude a member designated on the Title Page hereof as a "Non-Operating" member from including in its tariff and performing accessorial services which are peculiar to and customarily performed by "Operating" members. When any accessorial service peculiar to and customarily performed by Operating members is in fact performed by and/or is included in the tariff of a member or members designated as "Non-Operating", the Committee on Tariffs and Practices and not the Traffic Committee of Operating Members shall have jurisdiction with respect thereto, and all provisions of this agreement which relate to "services peculiar to and performed only by Operating members" shall be inapplicable thereto.

*(f) The President may appoint a Committee on Terminal Agreements, which committee shall not be a standing committee. The Committee on Terminal Agreements shall investigate, study, exchange information and discuss leases, agreements, licenses, assignments and other contracts relating to the use of terminal facilities of members of the Association. The Committee shall submit its reports and recommendations to the Association and any such report or recommendation shall not be binding upon any member of the Association.

ARTICLE 18 - MEETINGS

(Amended May 16, 1972 - Agreement No. 7345-16)

(a) The annual meeting of this Association shall be held between September 1st and November 30th of each year, at the call of the President, upon one month's written notice, provided the force of this section may be abrogated by unanimous consent.

(b) Special meetings of the membership shall be called by the President at his own discretion or upon the written request of five (5) members. The purpose of such special meeting shall be set forth in the notice which shall be mailed by the Executive Secretary to the members at least one (1) week before the date of the meeting, and no business other than that for which the meeting is called shall be transacted, provided, however, if all members are present and unanimously agree, any other matters within the scope of the agreement may be dealt with at such meetings.

(c) The President, at his own discretion, may, or upon the written request of five (5) members, shall call a meeting by correspondence and the President shall fix the date thereof. A notice of the call of any meeting by correspondence shall be given by the Executive Secretary in writing by mail to each member and shall be postmarked not less than ten (10) days prior to the date fixed for any such meeting by correspondence, which notice shall state the manner of call of said meeting by correspondence, state the date fixed for said meeting by correspondence, contain the subject or subjects to be voted upon at such meeting together with the text of any resolutions or any other actions proposed for vote and contain a ballot form of subjects corresponding to the agenda by which the members may register their votes upon any or all of the subjects set forth in the agenda for such meeting by correspondence. A member shall be deemed to have voted on a subject at a meeting by correspondence (a) if the member shall have communicated its vote, in the affirmative or in the negative, on such subject to the Executive Secretary in writing, by mail or otherwise, and if such communication is received by the Executive Secretary or is postmarked prior to midnight of the date fixed for such meeting by correspondence or (b) if the member shall have failed to communicate its vote on such subject to the Executive Secretary in the manner and within the time specified in Clause (a) above, in such event its vote on such subject shall be deemed to be and shall be entered as in the affirmative. Any resolution or other action proposed and adopted at a meeting by correspondence shall have the same force and effect as though such resolution or other action had been adopted or taken at an annual or special meeting of this Association.

(Continued on Page 7)

*Added by Agreement No. 7345-19, January 10, 1975.

Article 18 - Meetings (Concluded)

**** (d)** The President, at his own discretion, when in the judgment of the President time is of the essence and a special meeting or a meeting by correspondence will result in undue delay, may call a meeting by telephone and fix the date and purpose thereof.

The notice of the call of any meeting by telephone shall be given by the Executive Secretary to each member by telephone and by arranging a telephonic conference on the date so fixed between the President and all or so many of the members (but not less than one-half (1/2) of the membership of the Association in good standing) as may be available, and by stating at such telephonic conference the manner of call of said meeting by telephone and the purposes for which such meeting is called, together with the text of any resolutions or other actions proposed. No business other than that which is within the purposes for which the meeting by telephone was called shall be transacted, provided, however, if all members are present and unanimously agree, any other matters within the scope of the agreement may be dealt with at such meeting by telephone. The President shall preside at such meeting by telephone and shall entertain motions, seconds and discussion, put matters to vote and otherwise carry on the business of the meeting by telephone as if such meeting were an annual or special meeting of the Association in person.

In the event any member is absent from a meeting by telephone, the Executive Secretary shall, as soon after such meeting has adjourned as such absent member may be reached by telephone, advise such member of the purposes of the call and the subject or subjects acted upon at such meeting, of the text of any resolutions or other actions voted upon or taken at such meeting together with the vote thereon, and shall ask for, receive, and, subject to confirmation by telegram or other written communication within twenty four hours thereafter by such absent member, record such member's vote on each of such resolutions or other actions.

Any resolution or other action proposed and adopted at a meeting by telephone shall have the same force and effect as though such resolution or other action had been adopted or taken at an annual or special meeting of the Association.

*** (e)** The Committee on Tariffs and Practices and the Traffic Committee of Operating Members shall conduct their business in regular or special meetings, or in meetings by telephone or by correspondence in accordance with procedures adopted by the Committees, approved by the Association and filed with the Federal Maritime Commission.

ARTICLE 19 - QUORUM (Amended May 16, 1972 - Agreement No. 7345 - 16)

For the purpose of transacting business at a meeting of the Association, a quorum shall consist of not less than one-half (1/2) of the membership of the Association in good standing. For the purpose of transacting business at a meeting of the Committee on Tariffs and Practices or of the Traffic Committee of Operating Members, a quorum shall consist of not less than two-thirds (2/3) of the entire membership of such Committee.

* Article 18(e) added by Agreement No. 7345-16, May 16, 1972.

** Article 18(d) added by Agreement No. 7345-11, April 12, 1966.

ARTICLE 20 - VOTING

** (Amended May 16, 1972 - Agreement No. 7345-16)

Except as provided in Articles 1, 10, 17 and 25, all action shall be taken in behalf of the Association by a three-fourths vote of the members, provided that no action shall be taken in behalf of the Association relative to approving the amendment, supplementing, or reissuance of, or agreeing to amend, supplement or reissue, any or all of the tariffs of members with respect to any of the rates, charges, classifications, rules, regulations or practices prescribed therein except on unanimous vote of the members.

At all Association meetings (other than meetings by correspondence), any member may have more than one representative present who may participate in the discussions and offer motion, but each member is limited to one vote, provided that any member absent or present and recorded as not voting, may subsequently on proposed action that require an unanimous vote or that have failed to pass without the vote or votes of any such absent or non-voting members or members, within ten (10) days from the date of mailing of registered notice, which shall be sent forthwith by the Executive Secretary to the member thus entitled, cast the vote of such member thereon in writing by registered mail to the Executive Secretary; provided further, that if no dissenting vote is cast, said member's vote, after said ten (10) days' limitation, shall be declared to have been cast in the affirmative.

No member of the Association shall have the right to vote at any meeting, or to be represented on any committee, or to participate in any other Association activity, if delinquent in the payment of any assessment or if delinquent two (2) months or more in the payment of dues, and any such member so delinquent shall be excluded in determining the number of members required to constitute a "majority vote", a "three-fourths vote", or an "unanimous vote", wherever such terms are used in this Agreement.

*The vote of a member of the Association entitled to vote at a meeting of the Association or at a meeting of any committee of the Association shall be cast at such meeting for such member by the accredited delegate or duly appointed alternate representative, or by the holder of a written proxy from such member.

ARTICLE 21 - ANNUAL BUDGET

An annual budget of revenue and expenditures shall be prepared by the Executive Committee, and presented to the membership at the annual meeting. Adoption of the budget shall require a three-fourths vote of the membership.

ARTICLE 22 - DUES AND ASSESSMENTS

The monthly membership dues shall be fixed by the members, and shall be due and payable monthly in advance on the first day of each month. The members shall not fix uniform dues for all members, but shall graduate the dues of the various members upon such basis as may be equitable.

(Continued)

**Also amended Sept. 5, 1967- Agreement No. 7345-12

* Added by Agreement No. 7345-16, May 16, 1972

Article 22 - Dues and Assessments (Concluded)

In order to meet extraordinary expenses the members shall have power to levy assessments, which assessments shall be graduated for each member upon the same basis as the dues are graduated. Such assessments shall be payable when levied, and shall become delinquent four (4) months after the date of mailing notice thereof to each member.

ARTICLE 23 - ORDINARY EXPENSES

(a) Ordinary expenses shall be understood to mean those provided for in the Annual Budget and shall be handled in accordance with *Section 24.

(b) The President and Treasurer may disburse for extraordinary expenses not to exceed \$100.00 per month unless prior approval has been obtained from three-fourths (3/4's) of the members of this Association.

ARTICLE 24 - PAYMENT OF BILLS

Bills against the Association shall be paid by the Treasurer when approved by the President.

ARTICLE 25 - AMENDMENTS

This Agreement may be amended at any regular or special meeting of the membership of the Association. Any proposal to amend this agreement shall be submitted in writing. Unanimous vote of all the parties hereto shall be required for adoption of any amendment.

ARTICLE 26 - COMMISSION APPROVAL
(Amended April 12, 1966 - Agreement No. 7345 - 11)

No amendments of this Agreement shall become effective until approved by the Federal Maritime Commission pursuant to Section 15 of the Shipping Act, 1916, as amended.

ARTICLE 27 - SHIPPERS' REQUESTS AND COMPLAINTS
(Amended December 22, 1965 - Agreement No. 7345-10 and further amended December 18, 1969 - Agreement No. 7345-13)

Shipper's requests and complaints regarding matters included within the meaning of such phrase, as defined by the Federal Maritime Commission shall, when presented in written form and filed with the Executive Secretary of the Association, be referred to either the Committee on Tariffs and Practices or to the Traffic Committee of Operating Members; provided, however, the Executive Secretary of the Association shall not assign any such request or complaint to the Traffic Committee of Operating Members unless such request or complaint directly concerns an accessorial service

(Continued)

* The word "Section" refers to "Article".

ARTICLE 27 - Shippers' Requests and Complaints (Concluded)

peculiar to and performed only by Operating Members. Any shipper requesting an oral hearing on its request or complaint presented pursuant to the provisions hereof shall be granted such hearing. The Committee on Tariffs and Practices or the Traffic Committee of Operating Members, in accordance with the procedures adopted by the Association and filed with the Federal Maritime Commission, shall, upon consideration of the matters involved, submit its recommendation to the Association for such action as the Association membership shall deem appropriate in accordance with the provisions of this Agreement. The decision of the Association shall be promptly communicated to the proponent or complainant by the Executive Secretary. Action by the Association will not abridge the right of individual action under the provisions of Article 3 hereof.

**ARTICLE 28 - MARITIME TRANSPORTATION AND
ENVIRONMENTAL PLANNING**
(Addition by Agreement No. 7345-18 - January 10, 1975)

The members of this Association may engage in such activities involving the joint participation of two or more of its members in planning projects relating to the marine terminal industry, transportation, and environmental matters as may be of interest to the members in order to establish, coordinate, and present the Association's point of view in such planning processes as the Association may determine to participate.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized.

- The End -