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## SUBMITTED ELECTRONICALLY

**April 12, 2022**

**Clerk's Office**  
**Federal Maritime Commission**  
800 North Capitol Street, N.W  
Washington, D.C. 20573.

### **RE: Docket No. 22-04: Comments on the Federal Maritime Commission Advanced Notice of Proposed Rulemaking Regarding Demurrage and Detention Billing Requirements**

The California Trucking Association (CTA) and Harbor Trucking Association (HTA) appreciate the opportunity to submit the following comments on the Federal Maritime Commission's (FMC) Advance Notice of Proposed Rulemaking (ANPRM) Regarding Demurrage and Detention Billing Requirements.

The CTA is the nation's largest statewide association representing the trucking industry and HTA is the nation's largest not-for-profit trade association representing harbor drayage carriers serving America's ports.

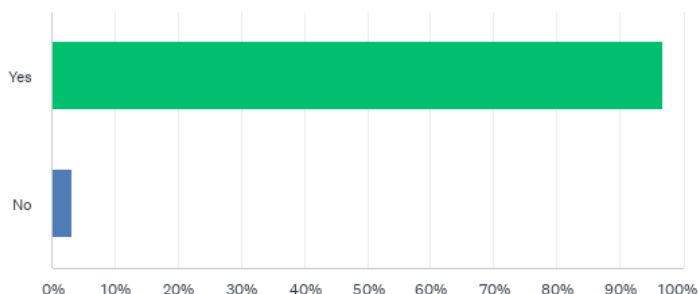
In response to the Federal Maritime Commission Advanced Notice of Proposed Rulemaking Regarding Demurrage and Detention Billing Requirements, the CTA and the HTA surveyed its membership to provide feedback that directly reflects the views of the state's intermodal motor carriers. The survey was delivered to CTA and HTA's intermodal conference members and closed on Tuesday, March 8, 2022.

The following comments are derived from the responses of more than 30 intermodal motor carriers to the 16 questions presented in the ANPRM:

#### **A. Scope.**

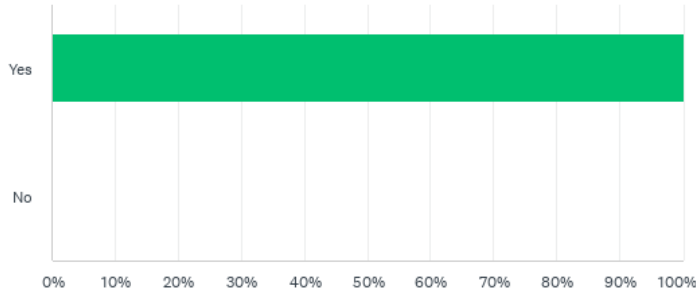
- 1. Should the Commission include both VOCCs and NVOCCs in a proposed regulation on demurrage and detention billing? - YES**

On the issue of including VOCCs and NVOCCs in proposed regulations, nearly all respondents indicated that the Commission should include both. All entities who may be party to any type of billings under service contracts should be included.



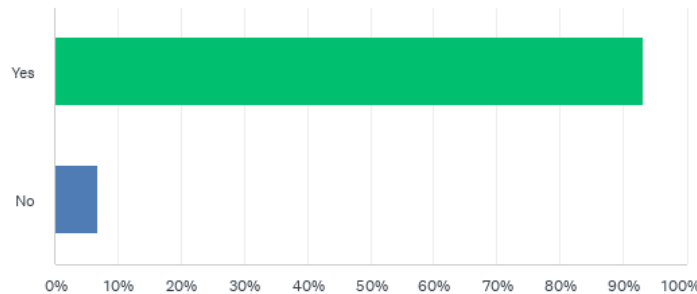
**2. Should the Commission include MTOs in a proposed demurrage billing regulation? – YES**

100 percent of respondents indicated that the Commission should include MTOs on demurrage and detention billing. Including the MTOs will help with additional transparency in what amounts are billed to Ocean Carriers under the Port Tariff and what subsequent amounts are billed to BCOs and Motor Carriers, which are much higher.



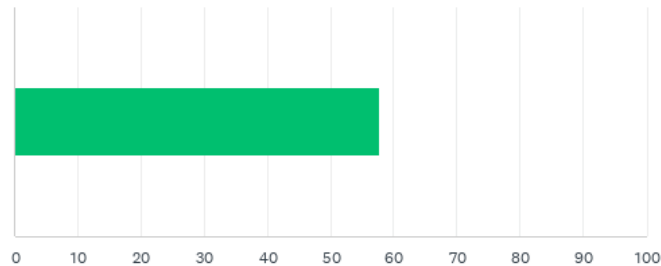
**3. Should a proposed demurrage billing regulation distinguish between the demurrage MTOs charge to shippers and the demurrage MTOs charge to VOCCs? That is, should the Commission regulate the format in which MTOs bill VOCCs? - YES**

Respondents indicated that requiring a format that distinguishes between the demurrage charged by MTOs to shippers and demurrage charge to VOCCs should be regulated to better make the distinction between these two different charges. As stated above, including the MTOs will help with additional transparency in what amounts are billed under the Port Tariff and what subsequent amounts are billed to BCOs and Motor Carriers, which are much higher. FMC should also consider limitations on how MTOs bill VOCCs and limit what VOCCs can bill BCOs and Motor Carriers above the established Port Tariff.



**4. What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed?**

When asked about the quality of information in demurrage and detention bills, respondents indicated that more than half of their invoices contain inaccurate information. However, often the detention and per diem bills contain inaccuracies since billing typically takes place 30 plus days after the charges have been accrued, while demurrage is assessed prior to container pick up so it only contains charges that were accrued leading up to container pick-up. If the demurrage is not paid, the container will not be released, so payment must be made in order to leave the Marine Terminal. Nevertheless, if a motor carrier is paying demurrage, it is impossible to know if the billing is accurate since the motor carrier is not party to the contractual arrangements and agreed upon free time. On detention and per diem, since Motor Carriers are in possession of the containers under the interchange, they are constantly surveying the restrictions that exist for return of the container. However, motor carriers are still not party to the contract and subsequent free time agreements and therefore must work with shippers to determine which contract the shipment was under and if there was additional free time available from what was billed. This is another reason why only billing between contracting parties should be allowed. Motor carriers are not party to these contracts and therefore should not be billed.



**5. How much does the type of information included on or with demurrage and detention billings vary among common carriers, among marine terminal operators, and between VOCCs and NVOCCs?**

A critical concern was raised on the significant variance on the type of information included on invoices, which seems to indicate that a regulatory requirement for standard information would potentially help to resolve some of the billing inaccuracies. Again, Motor Carriers are not party to the contracts that take place between shippers and their VOCC or NVOCC partners, so a set requirement for information that is to be available on detention and demurrage billings would help to provide consistency and provide an opportunity for a uniform dispute process since information on all billings would be the same. Below is a sample of some of the feedback received in the survey:

*"We saw significant variance on most demurrage and detention bills"*

*"There are significant variations. In nearly all cases the invoicing party does not provide enough information to support an audit."*

*"The cost of demurrage and detention varies so wildly amongst them all. Then, when we are not given an available return location, they should recognize that and halt all billing of per diem. The trucker wants to get rid of the containers to reuse our chassis, so to penalize us and not recognize the inability to return the empty in anywhere should be their responsibility to stop billing."*

*"Per Diem specifically as related to the newer SSL's calling the port with no empty removal process identified. Millions on Per Diem for SSL's and terminals not providing a way to return just seems like a major broken process."*

*"Most disputes are with the VOCCs and NVOCCs and the common carriers. The agreements with the VOCCs and NVOCCs and the MTOs are not always clear with regards to the BCOs and their motor carriers."*

## B. Minimum billing information.

### 6. What type of information should be required on billings? Should the Commission require certain essential information included on invoices such as:

In addition to requiring standard information, **container number** as well as **start/end dates** where the main type of data that respondents indicated would be most useful. Nevertheless, any information that is currently available to billing entities should be included on any invoices to a billable party. While respondents were less likely to identify certain items over others within the survey, ALL of this information should be included, especially “Container Availability Date” since that is the day that charges begin accruing as well as anything related to “Intervening Clock Stopping Events” as they are also critical to accurate billing for the aforementioned charges. For exports it is also important to have the Earliest Return Date (ERD) as well as any changes to ERD reflected on the invoice. Furthermore, a standardization of billing should also be considered, where all bills would be received by responsible party within 30 days from billable event.

a. Bill of lading number	79%
b. Container number	97%
c. Billing date	85%
d. Payment due date	79%
e. Start/end of free time	94%
f. Start/end of demurrage/detention/per diem clock	94%
g. Demurrage/detention/per diem rate schedule	85%
h. Location of the notice of the charge (i.e., tariff, service contract number and section or MTO schedule)	70%
i. For import shipments:	
i. Vessel arrival date	79%
i Container availability date	42%
j. For export shipments:	
i. Earliest return date, including identifying any modifications to the earliest return date	55%
k. Any intervening clock-stopping events, for example:	
i. Unavailability of container	82%
ii. Unavailability of pickup or return locations	88%
iii. Unavailability of appointments (where applicable)	88%
iv. Restrictions on chassis accepted	85%
v. Force majeure-related events	79%

**I. Please note if any portion of the charge is a pass-through of charges levied by the MTO or Port.**

For Motor Carriers, we make every attempt to pass through all billing to BCOs/Shippers on any charges the Motor Carrier ends up paying either directly to, or on behalf of the BCO/Shipper. This is a central reason why any billings for Detention, Demurrage or Per Diem should be levied directly to the contracting party to avoid the need for pass through. Please see below for direct survey results regarding this subject.

“We must pass the charges onto our customers 100% plus administration fees.”

“All are pass through to respective customers and BCO's”

“If billable to the customer after the charge is audited, yes we pass the charges to the customer.”

“All Demurrage is charged by the MTO. All per diem is charge by the VOCC or NVOCC.”

“I wish we could say that the charges are only pass through, but we can't. We have administrative costs we have to pass on as well due to the complexity of detention process, the time it takes, the burden of proof and the cost of doing business constantly increasing. If the BCO/Shipper received the invoices direct it would save them tens of thousands in admin charges.”

## C. Billing practices.

### 7. What information or timeframes should be required for VOCC and NVOCC demurrage and detention bills? Should the Commission require different types of information or timeframes?

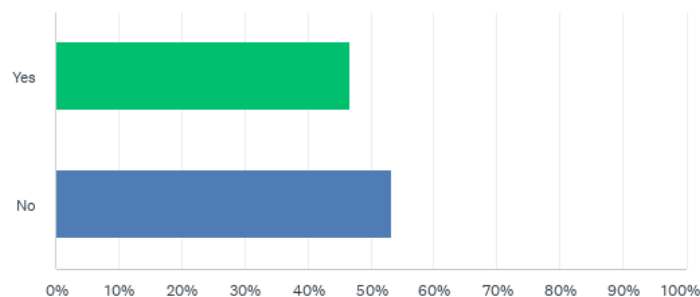
It is critical that any billing practices be standardized and provide consistency for all parties who are billed. Currently, there is little if any incentive by billing parties to have standardized billing practices. See survey response below.

*"In the current market environment, 30 days is proving to be a tall order to meet to either pay or dispute an invoice. If the EPs have 60 days to invoice us, I'd like to see the motor carriers allowed 60 days to pay or dispute. If we only have 30 days to pay or dispute, then their invoicing window needs to be restricted to 30 days to match."*

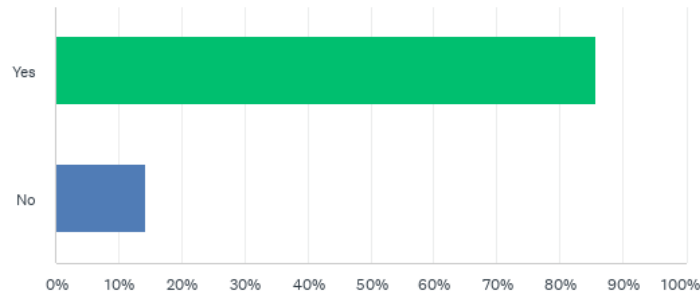
*"I am an LMC on the IIEC committee at IANA, and we went over this topic last fall. All parties saw that it made sense to put standardized invoicing terms of net 30 or 60 days, but it still didn't pass. It should have passed, but there is a real reluctance for change on the side of the EPs thus the lack of standardization."*

### 8. Do common carriers invoice multiple parties for demurrage and/or detention charges? If multiple parties are invoiced for charges, should the billing party be required to identify all such parties receiving an invoice for the charges at issue?

Respondents were split on this question, which would suggest that either such practices are not uniform amongst VOCC/NVOCC/MTOs or billing practices vary dependent on the involved motor carrier and BCO. However, it is important to understand the need to limit billing to one party. In practice, only the contracting party should be receiving any type of bill for detention, demurrage or per diem. Nevertheless, if there are multiple parties that are being billed all, should be identified on all invoices.

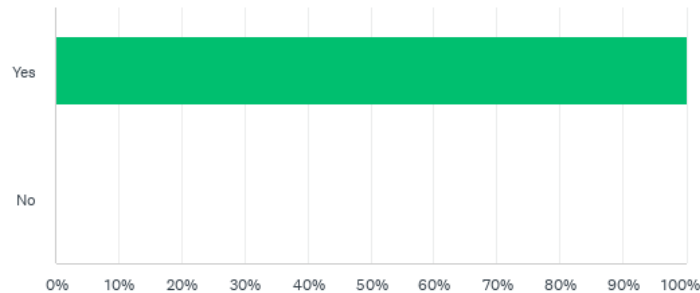


For instances where multiple parties are invoiced the overwhelming majority of respondents agree that the billing party must be required to identify all invoice recipients as invoice is issued. Nevertheless, as described above, there should be a specific consideration for billing the contracting party and only the contracting party. To this end billing parties should be required to provide billing invoices per container as opposed to standard practice now where billing parties aggregate onto a single billing invoice



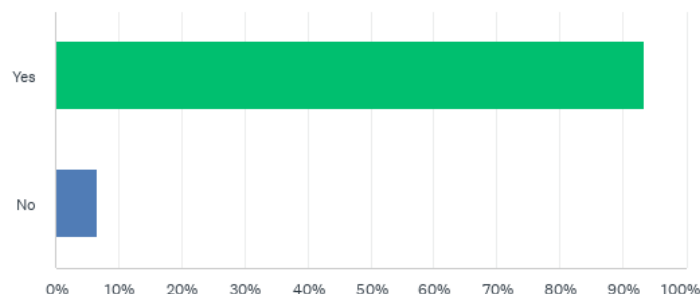
9. **Should the billing party be required to identify the basis of why the invoiced party is the proper party in interest and therefore liable for the charges? (i.e., as shipper, consignee, beneficial cargo owner, motor carrier or an agent, or as a party acting on behalf of another party pursuant to the common carrier’s merchant clause in its bill of lading.)**

In addition to requiring that invoices identify all parties billed, respondents also indicated that billing parties should identify the reason for why they are requesting payment. Once again, only the contracting party should be receiving any type of bill for detention, demurrage or per diem.



10. **Should the Commission, for purposes of clarity and visibility of charges, require MTOs to bill demurrage directly to shippers (rather than billing VOCCs who then bill shippers for demurrage)? In that scenario, MTOs would bill shippers directly for demurrage, and carriers would continue to bill detention to shippers.**

Respondents agree and as described previously, detention, demurrage or per diem charges should be billed directly to the contracting party.





**11. How long from the point of accrual of a demurrage or detention charge does it typically take to receive a demurrage or detention invoice or billing?**

Survey responses indicated 30 – 60 days as the typical timeframe that respondents received a demurrage or detention invoice, with some indicating up to six months. See below for survey samples.

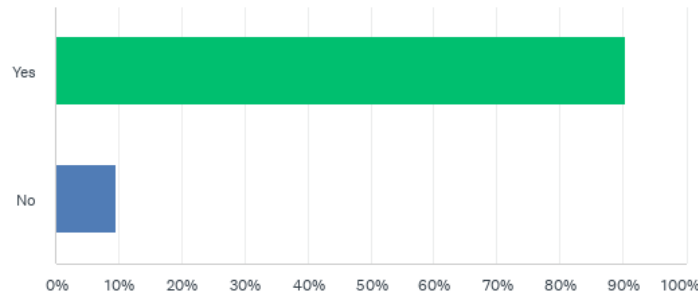
*“Payment of demurrage charges are a condition of container release by the MTO. Detention charges are typically invoiced within 30 days of the container’s empty return but exceptions do arise.”*

*“Demurrage must be paid before the container is picked up at the marine terminal. Per diem invoicing is all over the board... from 24 hours after container return to 30,60,90 days and beyond after the container is returned. We have received invoices as from as far back as two years.”*

*“Up to 60 days max for per diem. However, it would be highly beneficial for truckers to receive such per diem sooner than 60 days. Within 30 days instead of 60 would be ideal. This will give the trucker a fair opportunity to notify our customer and bill the customer sooner for per diem. Demurrage charges are billed immediately and are due upon receipt prior to us picking up the load from the port.”*

**12. Should the Commission require demurrage and detention invoices to be issued within 60 days of date when the detention/demurrage/per diem stops accruing?**

Respondents believe that the Commission should require demurrage and detention invoices to be issued within 60 days of date when the detention/demurrage/per diem stops accruing.



13. Should the Commission require specific information be included on the invoice regarding how to dispute a charge? If so, what information should be required? For example, should the Commission require invoices to include contact information for disputing charges, identify circumstances for when a charge may be waived, or identify the billing parties' evidentiary requirements sufficient to support a waiver of the charges?

Responses indicate support for requiring specific data on invoices with an appropriate contact as the minimum information that should be provided on these documents. Additionally, instructions on how to dispute charges was also recommended. Standardization is critical to prevent multiple confusing criteria.

**Comments:**

*"Yes, contact information to dispute a per diem invoice would be ideal. Many truckers are confused on who to dispute charges to and how. Not having this information easily accessible gives the steamship lines an edge on denying a dispute in the event a dispute is sent to the wrong email address. I propose the following: - Contact information - Requirements on what is needed to dispute a per diem invoice successfully. - Clear instructions on how to access certain documents required to bill. For example, MSC and Hapag Lloyd requires a spreadsheet to be filled out in order for them to view your dispute. If the spreadsheet isn't filled out properly, your dispute is either denied or severely delayed."*

*"The commission should require invoices to include instructions on how to dispute charges. Invoices should also specify rights that receivers of invoices have from the UIIA agreement."*

*"Yes, they should have a dispute email included. Also, if the Steam Ship Lines have 60 days to send us an invoice, we should have 60 to dispute."*

*"Dispute contact names, phone numbers, email addresses, mailing address. The circumstances should not be limited."*

*"Dispute contact information including email and phone number should be included along with payment options and directions as well as UIIA website page for Dispute Resolution Process on each invoice."*

**14. How long from the point of dismissal of a charge does it typically take to receive a refund? Should the Commission require that refunds of demurrage or detention bills be issued within a certain time period and what should that timeframe be?**

The length from point of dismissal of charge to receiving a refund varies but it suggests 30 days as a common standard, as such, respondent have indicated that requiring refunds of demurrage or detention bills be done within a 30-day time period. It would also be important to consider a requirement to refund/reimburse motor carriers within a 30-day period as well. It is not uncommon for reimbursement to extend beyond 120 days.

**Comments:**

*“Yes, 30 days max. We've sometimes had to wait over 6 months for charges to be refunded.”*

*“When disputes are accepted for detention, specific invoices are canceled usually immediately. - Demurrage refunds usually takes a couple months to receive.”*

*“At least 30 days or provide a credit.”*

**15. How would a regulation on demurrage and detention billing requirements impact, conflict with, or preempt any other applicable laws, regulations, or arrangements (such as the UIIA)?**

Responses indicate that regulation of demurrage and detention billing requirements would provide a benefit and any new rulemaking should complement and perhaps revamp the existing UIIA and other relevant policies. FMC has the opportunity here to take the lead and set the tone for all future billing practices across the industry.

**Comments:**

*“Any Federal laws governing detention and demurrage would naturally preempt UIIA and UIIA would need to adapt to match.”*

*“The UIIA contract agreement should reflect any new regulations, so they won't contradict each other and instead complement each other. Currently the UIIA contract agreement gives the line up to 90 days max to bill for per diem under special circumstances only. 60 days max under normal circumstances.”*

*“Per diem should be eliminated. D&D invoicing should be between the VOCC and the BCO. MTO should be prohibited from holding cargo based on outstanding Demurrage. The UIIA should only be for the lost or damage to the IEP equipment.”*

*“The regulation on demurrage should reinforce rights that the UIIA provides other stakeholders have to mitigate unfair billing practices from VOCC's.”*

**16. Please provide any other views or data you believe would help inform the Commission's decision whether to pursue a proposed regulation on demurrage and detention billing information and practices.**

**Comments:**

*"There are too many unfair practices on detention & demurrage charges as shippers and truckers have no control over."*

*"There should be some regulation by the commission regarding per diem. As someone who manages per diem directly, it's an area that lines take advantage of far too often. The UIIA contract agreement has many gray areas and hasn't had any drastic updates in years (since before the terminals began requiring appointments) With all new requirements at the ports and equipment restrictions with empties, but also chassis- it has given the lines an edge to bill per diem when it's not valid."*

*There is no clear restriction on the UIIA contract agreement that prevents lines from imposing per diem when there are no appointments available- it opens the door for assumptions that are not valid. In other words, lines make up their own understanding of the contract agreement that- by no surprise- benefits them financially.*

*For example, I have used force majeure section G-12 of the contract agreement as my argument for disputing per diem. Many disputes have been denied by the lines because their argument is that Force Majeure "doesn't apply". In other cases, I have also used SB-45 law as an argument to prove per diem isn't valid and many lines continue to deny per diem disputes for the same reasons listed in the paragraph above. "It doesn't apply".*

*"The lines have been given so much power over the truckers and one of their common tactics to get a trucker to pay for invalid per diem is to issue a shut-out notice in the event we disagree with the reasoning behind their denial to waive the charges- even if we very well know they aren't valid. If I dispute a per diem invoice today and it's denied to be waived by the line- tomorrow; if I contest their denial sometimes they will stop responding to my email and just submit a shut-out notice."*

*In order for us to go to arbitration to report the violation truckers must pay the fees to submit a claim (up to \$300.00) and if the invoice is less than \$500.00; it's cheaper for one to just pay the invalid invoice instead of spending the time and labor to fill out an arbitration claim and handling all the requirements in between during the arbitration process. How many truckers do the lines do this to?*

*If the same scenario happens with 50 truckers- that's an additional \$25,000.00 in revenue (assuming the invoices are at least \$500.00 each). That's \$25,000.00 in payments for invalid per diem charges. In addition to the the information I shared on this survey, these are other reasons why I feel it's essential that the commission gets involved to regulate many of these bad business practices. There are too many loopholes in SB-45 and the UIIA contract agreement that the steamship lines use to their full advantage."*

*"DnD needs an overhaul. Truckers are responsible for the safety of the container and chassis on the road, hence an interchange in their name. That is all based on DOT and FMCSA guidelines. Any fee or charge is a contractual agreement between the line and BCO, thus DnD should be between those parties. The lines must be required to send valid invoices that show proof of the charges so they can be validated."*

*The invoices need to be able to come over electronically so large operations to manage.*

*DnD needs to be updated since the industry has changed so much since the shipping act of 1984 and update of 1998. The lines do not own the chassis nor terminal. They used to own trucking companies as well as the chassis, container, terminal and ship. Regulations need to be updated for accountability reasons. I.e., if this happens, this party is responsible.*

*Examples:*

*1 – if the terminal is responsible for setting the ERD for exports, then when it changes, we should invoice the terminal for the extra charges.*

*2 – if the lines is responsible for setting the cut-off date for exports, then when it changes, we should invoice the line for all the extra charges.*

*3 – the container is the responsibility and asset of the steamship line – thus when we cannot return it, we should be able to charge for our costs, plus market conditions (a small profit) for storage, chassis use and shuttling between yard and terminal.*

*4 – if the terminal is responsible for when a container is available – then why is free time cut short and were only allowed 1-2 apt slots.*

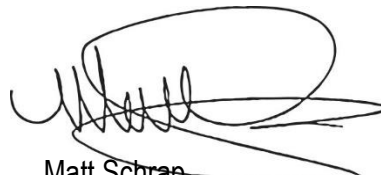
*5 – regulations to protect our exporters – ag and others is necessary or the lines will keep gouging. I don't know if a certain percentage needs to be met per line, per ship, per quarter or per month to handle exports...*

We appreciate the opportunity to provide comments on this ANPRM and look forward to on-going dialogue with FMC to address these critical issues. Both CTA and HTA believe a new regulation governing terms and conditions regarding billing of detention, demurrage and per diem is needed to ensure fairness and consistency.

Respectfully,



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California Trucking Association



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