

SEC. 4139. TRUCKLOAD FUEL SURCHARGE.

(a) IN GENERAL. – Chapter 137 of title 49, United States Code, is amended by adding at the end the following:

“§ 13714. Fuel surcharge

“(a) REQUIREMENT FOR FUEL SURCHARGE.—Any contract or agreement, providing for truckload transportation or service involving a motor carrier, broker, or freight forwarder subject to jurisdiction under chapter 135 of this title that regularly provides such transportation or service, shall include a requirement that the payer of transportation charges pay a fuel surcharge that is no less than the amount of the Increased Cost of Fuel as determined under subsection (c).

“(b) IMPLEMENTATION.—The surcharge required by subsection (a)—

“(1) shall apply during any period in which the Current Diesel Fuel Price surpasses, by \$0.05 per gallon of diesel fuel, the Benchmark Price determined under subsection (c);

“(2) shall expire when the Current Diesel Fuel Price equals or is less than \$0.05 above the Benchmark Price set forth in subsection (c);

“(3) shall be calculated on the date the applicable shipment is physically tendered to the motor carrier, broker, or freight forwarder;

“(4) shall be itemized separately on the invoices of the motor carrier, broker, or freight forwarder;

“(5) shall be paid to the motor carrier, broker, or freight forwarder by the payer of transportation charges;

“(6) shall not apply to any transportation contract or agreement, in effect on the date of enactment of this section, that provides for a fuel cost adjustment or surcharge;

and

“(7) may be expressed on a mileage basis, as a percentage of the freight charge, or in any other manner the motor carrier, broker, or freight forwarder elects.

“(c) CALCULATION OF INCREASED COST OF FUEL.—

“(1) INCREASED COST OF FUEL.—For purposes of this section, the Increased Cost of Fuel shall be the amount determined by subtracting the Benchmark Price from the Current Diesel Fuel Price and then multiplying the difference by the number of gallons of diesel fuel used in the transportation or service provided.

“(2) BENCHMARK PRICE.—For purposes of this section the following apply--

“(A) INITIAL PRICE.--For the period beginning on the date of enactment of this section and ending immediately before the effective date of the first adjusted Benchmark Price under subparagraph (B), the Benchmark Price shall be \$1.10 per gallon of diesel fuel.

“(B) SUBSEQUENT ADJUSTMENTS.--During each calendar year subsequent to the calendar year of enactment of this section, the Secretary of Transportation shall adjust the Benchmark Price by the percentage change in the previous calendar year’s Annual Truckload Producer Price Index as determined by the Department of Labor and shall publish that adjusted Benchmark Price in the Federal Register. The effective date of each adjusted Benchmark Price shall be the first day of the month following the date of such publication.

“(3) CURRENT DIESEL FUEL PRICE.—For purposes of this section, the Current Diesel Fuel Price shall—

“(A) be the latest weekly average price for retail on-highway diesel fuel published by the Energy Information Administration for the Petroleum Administration for Defense district or subdistrict where a shipment is physically tendered to the motor carrier, broker, or freight forwarder; and

“(B) take effect the midnight after the weekly average price is published.

“(4) AMOUNT OF FUEL USED.—In calculating the number of gallons of diesel fuel used in providing transportation or service under paragraph (1)—

“(A) it shall be assumed that a gallon of diesel fuel is used for each 5 miles of transportation; and

“(B) the mileage of the transportation or service provided shall be the number of miles as determined under the ‘Defense Table of Official Distances’

issued by the Surface Deployment and Distribution Command, Department of Defense, or under any applicable mileage guide established under section 13703(a)(1)(D).

“(d) LIMITATION ON AUTHORITY.—Notwithstanding any other provision of this part, any action to enforce this section may only be brought by the motor carrier, broker, or freight forwarder that provided the transportation services against the payor of the transportation charges or by the payor of the transportation charges against the motor carrier, broker, or freight forwarder that provided the transportation services. In such action, a court shall have the authority to determine whether a fuel surcharge required under this section has been assessed or paid. A court shall not have the authority in such action to review any other charges imposed by the provider of the transportation services. Notwithstanding the publication of the Benchmark Price under subsection (c)(2), neither the Secretary of Transportation nor the Surface Transportation Board shall have regulatory or enforcement authority relating to provisions of this section.

“(e) DEFINITIONS.—In this section the following definitions apply—

“(1) PAYER OF TRANSPORTATION CHARGES - The term ‘payer of transportation charges’ means any person who pays for the transportation or service involved.

“(2) PERSON RESPONSIBLE FOR PAYING FOR FUEL - The term ‘person responsible for paying for fuel’ means any person who bears the cost of fuel used for the transportation or service involved.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

“13714. Fuel surcharge.”.

(c) CONFORMING AMENDMENT - Section 14102 of title 49, United States Code is amended by adding at the end the following:

‘(c) MANDATORY PASS-THROUGH TO COST BEARER.

(1) IN GENERAL—A motor carrier, broker, or freight forwarder providing transportation or service using fuel not paid for by it—

“(A) shall pass through to the person responsible for paying for fuel any fuel surcharge or adjustment required pursuant to section 13714 for provided for in transportation contracts or agreements, at the same time payment for the transportation or service is made to the person responsible for paying for fuel;

“(B) shall disclose in writing to the person responsible for paying for fuel the amount of all freight rates, charges, and fuel surcharges applicable to that transportation or service; and

“(C) may not reduce, for the purpose of adjusting for or avoiding the pass-through of a fuel surcharge, non-fuel related compensatory transportation payments to the person responsible for paying for fuel.

(2) LIMITATION ON AUTHORITY- Notwithstanding any other provision of this part, the person responsible for paying for fuel may bring an action to enforce this subsection under section 14704 against the motor carrier, freight forwarder, or broker providing the transportation services with vehicles not owned by it or with fuel not paid for by it. Neither the Secretary of Transportation nor the Surface Transportation Board shall have regulatory or enforcement authority relating to provisions of this subsection.