

Union Calendar No. 521

106TH CONGRESS
2^D SESSION

H. R. 4441

[Report No. 106-865]

To amend title 49, United States Code, to provide a mandatory fuel surcharge for transportation provided by certain motor carriers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2000

Mr. RAHALL introduced the following bill; which was referred to the
Committee on Transportation

SEPTEMBER 19, 2000

Additional sponsors: Mr. BLUNT, Mr. NEY, Mr. LIPINSKI, Mr. BROWN of
Florida, Mr. BONIOR, Mr. VISCLOSKY, Mr. CUMMINGS, Mr. STRICKLAND,
Mr. MOLLOHAN, and Mr. WISE

SEPTEMBER 19, 2000

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 11, 2000]

A BILL

To amend title 49, United States Code, to provide a mandatory fuel surcharge for transportation provided by certain motor carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Motor Carrier Fuel Cost*
5 *Equity Act of 2000”.*

6 **SEC. 2. MANDATORY FUEL SURCHARGE.**

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

9 **“§ 13714. Fuel surcharge**

10 *“(a) MANDATORY FUEL SURCHARGE.—*

11 *“(1) ASSESSMENT OF SURCHARGE.—Any motor*
12 *carrier, broker, or freight forwarder subject to juris-*
13 *isdiction under chapter 135 regularly providing truck-*
14 *load transportation service shall assess under each*
15 *contract or agreement for such service the payor of*
16 *transportation charges a surcharge under this section,*
17 *or a surcharge or other fuel cost adjustment permitted*
18 *under section 13715, for fuel used in the transpor-*
19 *tation provided to such payor commencing when an*
20 *increase in the price of such fuel surpasses the bench-*
21 *mark in paragraph (2). A surcharge assessed under*
22 *this section by the motor carrier, broker, or freight*
23 *forwarder shall be calculated on the basis of mileage*
24 *or percentage of revenue (whichever basis the motor*
25 *carrier, broker, or freight forwarder elects) and shall*

1 *be the amount necessary to compensate the motor car-*
2 *rier, broker, or freight forwarder or other person re-*
3 *sponsible for paying for fuel for the difference in the*
4 *price of fuel between the Current Fuel Price and the*
5 *Fuel Price Norm determined under paragraph (2).*

6 *“(2) BENCHMARK.—*

7 *“(A) IN GENERAL.—The benchmark referred*
8 *to in paragraph (1) is the difference between the*
9 *Current Fuel Price and the Fuel Price Norm,*
10 *when such difference exceeds \$0.05.*

11 *“(B) CURRENT FUEL PRICE.—The Current*
12 *Fuel Price referred to in paragraph (1) and sub-*
13 *paragraph (A) shall be determined from the lat-*
14 *est weekly Energy Information Administration’s*
15 *Average Retail On-Highway Diesel Prices, Na-*
16 *tional U.S. Average, as published by the Depart-*
17 *ment of Energy.*

18 *“(C) FUEL PRICE NORM.—The Fuel Price*
19 *Norm referred to in paragraph (1) and subpara-*
20 *graph (A) shall be determined by calculating the*
21 *latest 52-week average of the Average Retail On-*
22 *Highway Diesel Prices referred to in subpara-*
23 *graph (B).*

24 *“(b) IMPLEMENTATION.—The surcharge referred to in*
25 *subsection (a)(1) shall be—*

1 “(1) *calculated on the date the shipment is ten-*
2 *dered to the motor carrier, broker, or freight for-*
3 *warder;*

4 “(2) *itemized separately on the motor carrier,*
5 *broker, or freight forwarder’s invoices; and*

6 “(3) *paid by the payor of the related transpor-*
7 *tation charges.*

8 “(c) *FACTORS.—For purposes of calculating a sur-*
9 *charge under this section—*

10 “(1) *average fuel economy is 5 miles per gallon*
11 *for calendar year 2000 and shall be determined on*
12 *January 1 of such year thereafter by the Secretary of*
13 *Transportation; and*

14 “(2) *mileage means the number of paid miles*
15 *driven as determined under the Department of*
16 *Defense, Military Traffic Management Command’s*
17 *‘Defense Table of Official Distances’.*

18 “(d) *LIMITATION ON AUTHORITY.—Notwithstanding*
19 *any other provision of this part, any action to enforce this*
20 *section under section 14704 may only be brought by the*
21 *motor carrier, broker, or freight forwarder that provided the*
22 *transportation services against the payor of the transpor-*
23 *tation charges or by the payor of the transportation charges*
24 *against the motor carrier, broker, of freight forwarder that*
25 *provided the transportation services. In such action, a court*

1 *shall only have the authority to determine whether a fuel*
2 *surcharge assessed under this section has been assessed or*
3 *paid. A court shall not have the authority in such action*
4 *to review any other charges imposed by the provider of the*
5 *transportation services. Neither the Secretary of Transpor-*
6 *tation nor the Surface Transportation Board shall have reg-*
7 *ulatory or enforcement authority relating to provisions of*
8 *this section.*

9 “(e) *EFFECTIVE PERIOD.*—Subsections (a) through (d)
10 *and section 13715 shall be in effect beginning the 60th day*
11 *following the date of enactment of this section and ending*
12 *September 30, 2003.*

13 **“§ 13715. Negotiated fuel adjustments**

14 “(a) *IN GENERAL.*—Nothing in section 13714 shall be
15 *construed to abrogate provisions relating to fuel cost adjust-*
16 *ments in any transportation contract or agreement in effect*
17 *on the date of enactment of the Motor Carrier Fuel Cost*
18 *Equity Act of 2000 and any renewal of such a contract*
19 *or agreement thereafter. Nothing in this section and sections*
20 *13714 and 14102 shall be construed to prohibit any motor*
21 *carrier, broker, or freight forwarder from including any*
22 *reasonable privately negotiated fuel cost adjustment provi-*
23 *sion in any contract or agreement to provide transpor-*
24 *tation.*

1 “(b) *CONTINUATION OF AUTHORITY.*—Nothing in sec-
 2 tion 13714 shall impair the ability of any person to enter
 3 into any contract or agreement after the date of enactment
 4 of the Motor Carrier Fuel Cost Equity Act of 2000 that
 5 provides for a fuel adjustment under this section or section
 6 13714 during any period in which no fuel surcharge is re-
 7 quired under section 13714.”.

8 (b) *CLERICAL AMENDMENT.*—The analysis for chapter
 9 137 of such title is amended by adding at the end the fol-
 10 lowing:

 “13714. Fuel surcharge.

 “13715. Negotiated fuel adjustments.”.

11 **SEC. 3. CONFORMING AMENDMENT.**

12 Section 14102 of title 49, United States Code, is
 13 amended by adding at the end the following:

14 “(c) *MANDATORY PASS-THROUGH TO COST BEAR-*
 15 *ER.*—

16 “(1) *IN GENERAL.*—A motor carrier, broker, or
 17 freight forwarder providing transportation or service
 18 using motor vehicles not owned by it and using fuel
 19 not paid for by it—

20 “(A) shall pass through to the person re-
 21 sponsible for paying for fuel any fuel surcharge
 22 required pursuant to section 13714, or fuel cost
 23 adjustment permitted under section 13715, or

1 *provided for in transportation contracts or*
2 *agreements;*

3 “(B) shall disclose in writing to the person
4 responsible for paying for fuel the amount of all
5 freight rates and charges and fuel surcharges
6 under section 13714 and fuel cost adjustments
7 permitted under section 13715 applicable to such
8 transportation or service; and

9 “(C) is prohibited from—

10 “(i) intentionally reducing compen-
11 satory transportation costs (other than the
12 fuel surcharge) to the person responsible for
13 paying for fuel for the purpose of adjusting
14 for or avoiding the pass through of the fuel
15 surcharge; and

16 “(ii) intentionally imposing a fuel cost
17 adjustment in accordance with section
18 13715 for the purpose of avoiding any pay-
19 ment under this section or section 13714.

20 “(2) *LIMITATION ON AUTHORITY.*—Notwith-
21 standing any other provision of this part, the person
22 responsible for paying for fuel may only bring an ac-
23 tion to enforce this section under section 14704
24 against the motor carrier, freight forwarder, or broker
25 providing the transportation services with vehicles not

1 *owned by it. Neither the Secretary of Transportation*
2 *nor the Surface Transportation Board shall have reg-*
3 *ulatory or enforcement authority relating to provi-*
4 *sions of this subsection.*

5 *“(3) EFFECTIVE PERIOD.—Paragraphs (1) and*
6 *(2) shall be in effect beginning the 60th day following*
7 *the date of enactment of this section and ending Sep-*
8 *tember 30, 2003.”.*

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