

MOTOR CARRIER FUEL COST EQUITY ACT OF 2000

SEPTEMBER 19, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 4441]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 4441) to amend title 49, United States Code, to provide a mandatory fuel surcharge for transportation provided by certain motor carriers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. MANDATORY 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) MANDATORY FUEL SURCHARGE.—

“(1) ASSESSMENT OF SURCHARGE.—Any motor carrier, broker, or freight forwarder subject to jurisdiction under chapter 135 regularly providing truck-load transportation service shall assess under each contract or agreement for such service the payor of transportation charges a surcharge under this section, or a surcharge or other fuel cost adjustment permitted under section 13715, for fuel used in the transportation provided to such payor commencing when an increase in the price of such fuel surpasses the benchmark in paragraph (2). A surcharge assessed under this section by the motor carrier, broker, or freight forwarder shall be calculated on the basis of mileage or percentage of revenue (whichever basis the motor carrier, broker, or freight forwarder elects) and shall be the amount necessary to compensate the motor carrier, broker, or freight forwarder or other person responsible for paying for fuel for the difference in the price of fuel between the Current Fuel Price and the Fuel Price Norm determined under paragraph (2).

“(2) BENCHMARK.—

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

“(B) CURRENT FUEL PRICE.—The Current Fuel Price referred to in paragraph (1) and subparagraph (A) shall be determined from the latest weekly Energy Information Administration’s Average Retail On-Highway Diesel Prices, National U.S. Average, as published by the Department of Energy.

“(C) FUEL PRICE NORM.—The Fuel Price Norm referred to in paragraph (1) and subparagraph (A) shall be determined by calculating the latest 52-week average of the Average Retail On-Highway Diesel Prices referred to in subparagraph (B).

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

“(1) calculated on the date the shipment is tendered to the motor carrier, broker, or freight forwarder;

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

“(3) paid by the payor of the related transportation charges.

“(c) FACTORS.—For purposes of calculating a surcharge under this section—

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

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

“(d) LIMITATION ON AUTHORITY.—Notwithstanding any other provision of this part, any action to enforce this section under section 14704 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 only have the authority to determine whether a fuel surcharge assessed 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. Neither the Secretary of Transportation nor the Surface Transportation Board shall have regulatory or enforcement authority relating to provisions of this section.

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

“§ 13715. Negotiated fuel adjustments

“(a) IN GENERAL.—Nothing in section 13714 shall be construed to abrogate provisions relating to fuel cost adjustments in any transportation contract or agreement in effect on the date of enactment of the Motor Carrier Fuel Cost Equity Act of 2000 and any renewal of such a contract or agreement thereafter. Nothing in this section and sections 13714 and 14102 shall be construed to prohibit any motor carrier, broker, or freight forwarder from including any reasonable privately negotiated fuel cost adjustment provision in any contract or agreement to provide transportation.

“(b) CONTINUATION OF AUTHORITY.—Nothing in section 13714 shall impair the ability of any person to enter into any contract or agreement after the date of enactment of the Motor Carrier Fuel Cost Equity Act of 2000 that provides for a fuel adjustment under this section or section 13714 during any period in which no fuel surcharge is required under section 13714.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 137 of such title is amended by adding at the end the following:

“13714. Fuel surcharge.

“13715. Negotiated fuel adjustments.”.

SEC. 3. 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 motor vehicles not owned by it and using fuel not paid for by it—

“(A) shall pass through to the person responsible for paying for fuel any fuel surcharge required pursuant to section 13714, or fuel cost adjustment permitted under section 13715, or provided for in transportation contracts or agreements;

“(B) shall disclose in writing to the person responsible for paying for fuel the amount of all freight rates and charges and fuel surcharges under sec-

tion 13714 and fuel cost adjustments permitted under section 13715 applicable to such transportation or service; and

“(C) is prohibited from—

“(i) intentionally reducing compensatory transportation costs (other than the fuel surcharge) to the person responsible for paying for fuel for the purpose of adjusting for or avoiding the pass through of the fuel surcharge; and

“(ii) intentionally imposing a fuel cost adjustment in accordance with section 13715 for the purpose of avoiding any payment under this section or section 13714.

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

“(3) EFFECTIVE PERIOD.—Paragraphs (1) and (2) shall be in effect beginning the 60th day following the date of enactment of this section and ending September 30, 2003.”.

INTRODUCTION

The Motor Carrier Fuel Cost Equity Act of 2000 is a targeted bill, designed to help those trucking companies and independent operators that primarily provide truckload transportation cope with surges in diesel fuel prices.

Independent truck drivers operate at a very low profit margin, and even modest increases in overhead can diminish that small return even further. Although larger motor carriers are able to compensate for high diesel prices by negotiating floating rates that are pegged to the cost of fuel, independent operators and small truckload companies argue that they often lack the necessary leverage or market share to pass added costs on to shippers. Diesel fuel price spikes, such as the one the U.S. experienced earlier this year, forced some small motor carriers and independent operators to cancel deliveries and keep their trucks in the driveway rather than drive unprofitably.

These cancellations undoubtedly affect the industry. More than two-thirds of the trucking operations in the country operate six or fewer trucks. Owner-operators, who own their own vehicle and lease their services to a motor carrier, do not negotiate rates directly with the shipper. They collect the rate that the motor carrier to whom they are leased has contracted with shipper. When the price of diesel fuel suddenly increases, the owner-operator, who bears the cost of the fuel, cannot go to the shipper to renegotiate a rate that covers these added costs.

H.R. 4441 establishes a diesel price benchmark that, when surpassed, triggers a surcharge that a motor carrier, broker or freight forwarder must assess to the shipper as part of the total cost of transportation of truckload goods. In this way, although the motor carrier, broker or freight forwarder would have to absorb an increase in fuel costs, those costs would ultimately be paid by the customer and passed through to the entity bearing the cost.

The statutory trigger for the mandatory fuel surcharge is the difference between the latest weekly average retail on-highway diesel price as quoted by the Energy Information Administration, and the most recent 52-week average of such on-highway diesel prices. When the difference exceeds 5 cents-per-gallon, the surcharge is imposed. Regardless of whether the surcharge is calculated on the

basis of mileage or as a percentage of revenue, it must sufficiently cover the cost of the carrier's fuel overhead when the price surges.

This bill does not abrogate current or ongoing truckload transportation contracts, nor does it impair the ability of shippers and providers of truckload transportation to enter into future, privately negotiated fuel adjustments that are included in contracts as long as they are reasonable.

It is not the intention of the Committee to re-regulate the trucking industry, and nothing in this legislation should be construed to be part an effort to set trucking rates. This legislation is a response to a recent sharp increase in the cost of diesel fuel, and after a three-year probationary period, the bill will sunset. The surcharge provisions are enforced through a private right of action, not through the Secretary of Transportation or the Surface Transportation Board.

SECTION-BY-SECTION SUMMARY

Section 1—Short title

The short title of the bill is the Motor Carrier Fuel Cost Equity Act of 2000.

Section 2—Mandatory fuel surcharge

Section 2(a) creates two new sections of title 49, section 13714 and section 13715.

New section 13714(a) directs that any for truckload transportation services, a fuel surcharge imposed under section 13714 or a privately negotiated fuel surcharge assessed pursuant to section 13715 shall be imposed as part of any contract or agreement for such transportation services. This section applies only to companies whose principal business is providing truckload transportation. Carriers that routinely engage in less than truckload transportation are not subject to the provisions of the bill even if they occasionally provide truckload service. A surcharge under section 13714 shall be assessed when the weekly average price of diesel fuel for that week surpasses the 52-week average by more than five cents. These prices are to be drawn from the Energy Information Agency at the U.S. Department of Energy. The surcharge is calculated and assessed on either the basis of miles driven and the additional cost in fuel or by percentage of revenue, and shall be the amount necessary to compensate the payor of fuel for the increased fuel costs determined by section 13714(a)(2).

New section 13714(b) directs that the surcharge be calculated on the date that the shipment is tendered to the provider of transportation services, and that the surcharge be itemized separately on the invoice.

New section 13714(c) sets the average fuel economy and mileage distances to be used when calculating the amount of any fuel surcharge.

New section 13714(d) sets a limitation on the types of judicial actions that may be brought to enforce section 13714 to actions between the motor carrier, freight forwarder or broker that provided for the services and the shipper and that a court may only determine whether any surcharge assessed under this section has been assessed or paid, and may not review any other charges or actions

by any party. This subsection also clarifies that neither the Secretary of Transportation nor the Surface Transportation Board has regulatory or enforcement authority over this section. The Committee intends that the enforcement of this Act be entirely the responsibility of private parties using the private right of action in title 49, section 14704, as provided in the ICC Termination Act. This section authorized private parties to enforce certain statutes and regulations as an alternative to agency enforcement action.

New section (e) makes the requirement to include a fuel surcharge under section 13714 or a negotiated fuel adjustment included pursuant to section 13715 effective until September 30, 2003.

New subsection 13715(a) provides that no provision in section 13714 shall abrogate or preclude any privately negotiated fuel cost adjustment in any existing transportation contract or agreement, or any renewal of such contract or agreement. It also expressly permits any reasonable privately negotiated fuel cost adjustment to be included in any new or future contract or agreement. The purpose of this section is to allow larger motor carriers to maintain established reasonable fuel surcharge programs. The Committee intends that these privately negotiated surcharges be reasonable so that the payers of transportation services do not demand that a carrier accept a token or minimal fuel surcharge for the purposes of avoiding either the payment of the mandatory fuel surcharge or the payment of a privately negotiated surcharge that reasonably compensates the payer of fuel for its additional fuel costs.

New subsection 13715(b) clarifies that nothing in section 13714 shall prohibit entering into a contract or agreement that includes a privately negotiated fuel surcharge when no surcharge is required to be assessed under section 13714.

Section 2(b) conforms the table of contents in title 49 to incorporate the two new sections created by the bill.

Section 3—Conforming amendment

This section makes conforming changes to section 14102 of title 49. Existing section 14102 includes the rules established under the Interstate Commerce Act for leased vehicles.

New subsection 14102(c) provides that a motor carrier, freight forwarder or broker that collects a fuel surcharge pursuant to section 13714 or fuel cost adjustment pursuant to section 13715 must pass it on to the person paying the fuel charges, disclose the amount of such surcharge or assessment and is prohibited from intentionally attempting to avoid assessing the surcharge or assessment. An operator of a leased vehicle may only bring an action to enforce this section against the carrier leasing such vehicle. Neither the Secretary of Transportation nor the Surface Transportation Board has any regulatory or enforcement authority over the right of action described above. These changes shall be in effect until September 30, 2003.

HEARINGS AND LEGISLATIVE HISTORY

On June 8, 2000 the Subcommittee on Ground Transportation held a hearing on H.R. 4441, the Motor Carrier Fuel Cost Equity Act of 2000. Representatives of both the trucking and shipping industries offered testimony.

COMMITTEE CONSIDERATION

On July 19, 2000, the Subcommittee on Ground Transportation adopted a bipartisan amendment in the nature of a substitute by voice vote, and later that day, the Full Committee met in open session and favorably reported H.R. 4441 as amended.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. A motion by Mr. Shuster to order H.R. 4441 reported to the House was agreed to by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 4441.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4441 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 15, 2000.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4441, the Motor Carrier Fuel Cost Equity Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are James O’Keeffe (for federal costs), and Jean Wooster (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4441—Motor Carrier Fuel Cost Equity Act of 2000

Sixty days following enactment, H.R. 4441 would require motor carriers, brokers, and freight forwarders to include a fuel surcharge in their transportation services contracts under certain circumstances. The bill would require those contracts to contain a specified fuel surcharge, until September 30, 2003, if the average retail price of diesel fuel exceeds a specified benchmark price. CBO estimates that implementing H.R. 4441 would not have a significant impact on the federal budget because it would not expand the regulatory or enforcement authorities of federal agencies. H.R. 4441 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 4441 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant costs on state, local, or tribal governments.

H.R. 4441 would impose private-sector mandates, as defined by UMRA, on certain motor carriers, brokers, and freight forwarders that regularly provide transportation service. CBO cannot estimate the cost of the mandates because information on existing financial and business arrangements among shippers, motor carriers, brokers, freight forwarders, and independent truckers is not available.

The bill would require motor carriers, brokers, and freight forwarders to assess a surcharge or other fuel cost adjustment in any new contract or agreement with shippers. The fuel cost adjustment would be based on either a calculation specified in H.R. 4441 or a privately negotiated formula. According to information from industry sources, the administrative cost to assess the fuel adjustment would be small, particularly because this is now commonly done.

H.R. 4441 also would require motor carriers, brokers, and freight forwarders to pass on any fuel adjustment to independent truckers who they hire to transport the freight and are responsible for purchasing the fuel. In addition, the bill would require motor carriers, brokers, and freight forwarders to disclose in writing to the independent truckers the amount of that fuel adjustment collected from the shipper. Industry sources indicate that the cost of disclosure would be small. CBO cannot, however, estimate the amount of the fuel adjustment that would be required to be passed on to the independent truckers because information on existing financial and business arrangements among shippers, motor carriers, brokers, freight forwarders, and independent truckers is not available. As a result, we cannot determine whether the total costs of private-sector mandates imposed by H.R. 4441 would exceed the annual threshold established by UMRA (\$109 million in 2000, adjusted annually for inflation).

The CBO staff contacts are James O’Keeffe (for federal costs), and Jean Wooster (for the private-sector impact). This estimate

was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of Rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4.)

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1.)

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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SUBTITLE IV—INTERSTATE TRANSPORTATION

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PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

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CHAPTER 137—RATES AND THROUGH ROUTES

Sec.
13701. Requirements for reasonable rates, classifications,

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13714. Fuel surcharge.
 13715. Negotiated fuel adjustments.

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§ 13714. Fuel surcharge

(a) **MANDATORY FUEL SURCHARGE.**—

(1) **ASSESSMENT OF SURCHARGE.**—Any motor carrier, broker, or freight forwarder subject to jurisdiction under chapter 135 regularly providing truck-load transportation service shall assess under each contract or agreement for such service the payor of transportation charges a surcharge under this section, or a surcharge or other fuel cost adjustment permitted under section 13715, for fuel used in the transportation provided to such payor commencing when an increase in the price of such fuel surpasses the benchmark in paragraph (2). A surcharge assessed under this section by the motor carrier, broker, or freight forwarder shall be calculated on the basis of mileage or percentage of revenue (whichever basis the motor carrier, broker, or freight forwarder elects) and shall be the amount necessary to compensate the motor carrier, broker, or freight forwarder or other person responsible for paying for fuel for the difference in the price of fuel between the Current Fuel Price and the Fuel Price Norm determined under paragraph (2).

(2) **BENCHMARK.**—

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

(B) **CURRENT FUEL PRICE.**—The Current Fuel Price referred to in paragraph (1) and subparagraph (A) shall be determined from the latest weekly Energy Information Administration's Average Retail On-Highway Diesel Prices, National U.S. Average, as published by the Department of Energy.

(C) **FUEL PRICE NORM.**—The Fuel Price Norm referred to in paragraph (1) and subparagraph (A) shall be determined by calculating the latest 52-week average of the Average Retail On-Highway Diesel Prices referred to in subparagraph (B).

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

(1) calculated on the date the shipment is tendered to the motor carrier, broker, or freight forwarder;

(2) itemized separately on the motor carrier, broker, or freight forwarder's invoices; and

(3) paid by the payor of the related transportation charges.

(c) **FACTORS.**—For purposes of calculating a surcharge under this section—

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

(2) mileage means the number of paid miles driven as determined under the Department of Defense, Military Traffic Management Command's "Defense Table of Official Distances".

(d) *LIMITATION ON AUTHORITY.*—Notwithstanding any other provision of this part, any action to enforce this section under section 14704 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 only have the authority to determine whether a fuel surcharge assessed 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. Neither the Secretary of Transportation nor the Surface Transportation Board shall have regulatory or enforcement authority relating to provisions of this section.

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

§ 13715. Negotiated fuel adjustments

(a) *IN GENERAL.*—Nothing in section 13714 shall be construed to abrogate provisions relating to fuel cost adjustments in any transportation contract or agreement in effect on the date of enactment of the Motor Carrier Fuel Cost Equity Act of 2000 and any renewal of such a contract or agreement thereafter. Nothing in this section and sections 13714 and 14102 shall be construed to prohibit any motor carrier, broker, or freight forwarder from including any reasonable privately negotiated fuel cost adjustment provision in any contract or agreement to provide transportation.

(b) *CONTINUATION OF AUTHORITY.*—Nothing in section 13714 shall impair the ability of any person to enter into any contract or agreement after the date of enactment of the Motor Carrier Fuel Cost Equity Act of 2000 that provides for a fuel adjustment under this section or section 13714 during any period in which no fuel surcharge is required under section 13714.

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CHAPTER 141—OPERATIONS OF CARRIERS

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SUBCHAPTER I—GENERAL REQUIREMENTS

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§ 14102. Leased motor vehicles

(a) * * *

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(c) *MANDATORY PASS-THROUGH TO COST BEARER.*—

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

(A) shall pass through to the person responsible for paying for fuel any fuel surcharge required pursuant to section 13714, or fuel cost adjustment permitted under section

13715, or provided for in transportation contracts or agreements;

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

(C) is prohibited from—

(i) intentionally reducing compensatory transportation costs (other than the fuel surcharge) to the person responsible for paying for fuel for the purpose of adjusting for or avoiding the pass through of the fuel surcharge; and

(ii) intentionally imposing a fuel cost adjustment in accordance with section 13715 for the purpose of avoiding any payment under this section or section 13714.

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

(3) *EFFECTIVE PERIOD.*—Paragraphs (1) and (2) shall be in effect beginning the 60th day following the date of enactment of this section and ending September 30, 2003.

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