

1 **SEC. 4137. TRUCKLOAD FUEL SURCHARGE.**

2 (a) *In General.*--Chapter 137 of title 49, United States Code, is amended by adding at the end
3 the following: "§13714. Fuel surcharge"

4 " (a) *Requirement for Fuel Surcharge.*--Any contract or agreement, providing for truckload
5 transportation service provided, sold or arranged by a motor carrier, broker, or freight forwarder
6 subject to jurisdiction under chapter 135 of this title-that regularly provides such transportation or
7 service-shall include a requirement that the payer of transportation charges pay a fuel surcharge
8 that is no less than the amount of the Increased Cost of Fuel as determined under subsection (c).

9 "(b) *Implementation.*--The surcharge required by subsection (a)--

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

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

14 "(3) shall be calculated on the date the applicable shipment is physically tendered to the motor
15 carrier,

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

18 "(5) shall be paid to the motor carrier, broker, or freight forwarder by the payer of
19 transportation charges; and a broker or freight forwarder shall remit the fuel surcharge in full to
20 the motor carrier.

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

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

25 "(c) *Calculation of Increased Cost of Fuel.*--

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

30 "(2) **BENCHMARK PRICE.**--For purposes of this section, the following apply:

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

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

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

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

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

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

18 “(A) it shall be assumed that a gallon of diesel fuel is used for each 4 miles of transportation,

19 “(B) the mileage of the transportation service provided shall be the number of miles a
20 shipment is transported as determined under the `Defense Table of Official Distances' issued by
21 the Surface Deployment and Distribution Command, Department of Defense, any applicable
22 mileage guide established under section 13703(a) (1) (D), or any commercially available mileage
23 guide used by the carrier to calculate its freight charges.

24 “(C) **FUEL USED IN REEFER UNIT** – When a motor carrier, broker or freight forwarder
25 subject to this section is required by this section to assess a fuel surcharge, and the transportation
26 service being provided, sold, or arranged by the motor carrier, broker, or freight forwarder
27 requires the operation of a refrigeration or reefer unit attached to the trailer, container, or other
28 cargo carrying portion of the commercial motor vehicle to protect the property being transported,
29 the carrier, broker, or freight forwarder shall include in the applicable contract or agreement and
30 the payer of the freight charges shall pay, an assessment in addition to the fuel surcharge
31 described in subsection (a) of this section, a surcharge of \$0.0025-for each \$0.01 of the fuel
32 surcharge otherwise required by this section.

33 “(d) **Limitation on Authority.**--Notwithstanding the publication of the Benchmark Price under
34 subsection (c) (2), neither the Secretary of Transportation nor the Surface Transportation Board
35 shall have regulatory or enforcement authority relating to provisions of this section.

36 “(e) **Definitions.**--In this section, the following definitions apply:

1 “(1) **PAYER OF TRANSPORTATION CHARGES.**--The term ‘payer of transportation
2 charges’ means any person who pays for the transportation or service involved. With respect to
3 the motor carrier providing the transportation service the ‘payer of the transportation charges’
4 includes any broker or freight forwarder involved with respect to a shipment as well as a shipper
5 or other party.

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

9 (b) *Clerical Amendment.*--The analysis for such chapter is amended by adding at the end the
10 following:

11 “§13714...Fuel surcharge.”.

12 (c) *Conforming Amendment.*--Chapter 141 of title 49, United States Code, is amended by
13 adding following §14102 the following: “§14102a *Mandatory Payment of Fuel Surcharge to*
14 *Cost Bearer*”

15 “§14102a) .--*Mandatory Payment of Fuel Surcharge to Cost Bearer*

16 “**IN GENERAL.**--A motor carrier, (except with respect to the portion of a fuel surcharge
17 assessed pursuant to section 13714 (4) (C)), broker, or freight forwarder providing transportation
18 service using fuel not paid for by it--

19 “(a) shall pay to the person responsible for paying for fuel an amount equal to the fuel
20 surcharge or adjustment required pursuant to section 13714 at the same time payment for the
21 transportation service is made to the person responsible for paying for fuel.

22 “(b) may not reduce, for the purpose of adjusting for or avoiding the payment of a fuel
23 surcharge, nonfuel related compensatory transportation payments to the person responsible for
24 paying for fuel.

25 (d) *Conforming Amendment.*--Title 49, United States Code is amended by adding the
26 following:

27 “§ 14710 PRIVATE ENFORCEMENT OF SURCHARGE REQUIREMENT

28
29 “(a) Except as provided in paragraph (e) of this section, the exclusive remedy for a person
30 responsible for paying for fuel in the event that a motor carrier, broker or freight forwarder
31 which does not make the payment required by § 14102a shall be to bring a civil action for
32 declaratory and injunctive relief and actual damages in an appropriate State court or United
33 States district court against the motor carrier, broker, or freight forwarder, solely for the
34 failure of the motor carrier, broker, or freight forwarder to pay to the person responsible for
35 paying for fuel the amount of any surcharge required to be paid pursuant to section 14102a.
36

1 “(b) In a civil action under this section, trial is in the judicial district in which the motor
2 carrier, broker, freight forwarder maintains its principal place of business in the United
3 States or if it does not maintain a facility in the United States, in any State in which it
4 conducts business.

5 “(c) A payer of fuel costs must begin a civil action for damages under this section within 18
6 months after the claim accrues.

7 “(d) Nothing in this section shall limit or restrict the right of a motor carrier to bring a civil
8 action to recover its charges for transportation service including collection of any unpaid
9 fuel surcharge assessed under section 13714, against a payer of transportation charges
10 pursuant to § 14705 of this chapter.

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13 (e) CLERICAL AMENDMENT- The analysis for chapter 147 of such title is amended by
14 adding at the end the following:

15 “14710 Private enforcement of surcharge requirement.

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