

106TH CONGRESS  
2D SESSION

# H. R. 4441

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## AN ACT

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



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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. MANDATORY FUEL SURCHARGE.**

5 (a) IN GENERAL.—Chapter 137 of title 49, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing:

8 **“§ 13714. Fuel surcharge**

9 “(a) MANDATORY FUEL SURCHARGE.—

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

1       warder or other person responsible for paying for  
2       fuel for the difference in the price of fuel between  
3       the Current Fuel Price and the Fuel Price Norm de-  
4       termined under paragraph (2).

5               “(2) BENCHMARK.—

6                       “(A) IN GENERAL.—The benchmark re-  
7                       ferred to in paragraph (1) is the difference be-  
8                       tween the Current Fuel Price and the Fuel  
9                       Price Norm, when such difference exceeds  
10                      \$0.05.

11                     “(B) CURRENT FUEL PRICE.—The Cur-  
12                     rent Fuel Price referred to in paragraph (1)  
13                     and subparagraph (A) shall be determined from  
14                     the latest weekly Energy Information Adminis-  
15                     tration’s Average Retail On-Highway Diesel  
16                     Prices, National U.S. Average, as published by  
17                     the Department of Energy.

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

24               “(b) IMPLEMENTATION.—The surcharge referred to  
25       in 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  
13           of 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  
22           the transportation services against the payor of the trans-  
23           portation charges or by the payor of the transportation  
24           charges against the motor carrier, broker, or freight for-  
25           warder that provided the transportation services. In such

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

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

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

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

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

8       (b) CLERICAL AMENDMENT.—The analysis for chap-  
9 ter 137 of such title is amended by adding at the end the  
10 following:

“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  
8 such 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  
13 for paying for fuel for the purpose of ad-  
14 justing for or avoiding the pass through of  
15 the fuel 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  
25 broker providing the transportation services with ve-

1 hicles not owned by it. Neither the Secretary of  
2 Transportation nor the Surface Transportation  
3 Board shall have regulatory or enforcement author-  
4 ity relating to provisions of this subsection.

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

Passed the House of Representatives October 10,  
2000.

Attest:

*Clerk.*