U.S. House of Representatives
Committee on Transportation and Infrastructure

Washington, DC 20515

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May 5, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on "Rising Diesel Fuel Costs in the Trucking Industry"

PURPOSE OF HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Tuesday, May 6, 2008, at 10:00 a.m., in Room 2167 of the Rayburn House Office Building to receive testimony on the causes of rising diesel fuel costs and the impact of this trend on the trucking industry. The Subcommittee will also examine the relationship among motor carriers, brokers, shippers, and independent drivers with respect to setting and collecting fuel surcharges.

BACKGROUND

The Rising Cost of Fuel

On April 30, 2008, the Energy Information Administration ("EIA") released its weekly petroleum review, which reported that the average retail price for regular gasoline rose for the fifth consecutive week, to an all-time high price of 360.3 cents per gallon. Similarly, the average diesel price reached a record high of 417.7 cents per gallon.[1] The rise in gasoline and diesel prices has been a steady trend. EIA statistics show that the retail price of a gallon of gasoline has increased 25 percent between March 2007 and March of this year; 41 percent over the last three years; and 102 percent since 2003.[2] By comparison, a gallon of diesel fuel rose 48 percent in the past year; 78 percent in the last three years; and 166 percent since 2003.[3]

[1] Energy Information Administration, "This Week in Petroleum", published April 30, 2008 at www.eia.doe.gov.
[2] Energy Information Administration, Monthly Energy Review, April 2008; www.eia.doe.gov.
[3] Energy Information Administration, Weekly Retail Gasoline and Diesel prices, updated on 4/28/2008.

The price of gasoline and diesel are composed of a number of costs, including the price of a barrel of crude oil, refining costs, distribution costs, and Federal, State, and local taxes. According to the EIA, the "relative share of these cost components to the retail price varies over time and among regions of the country."[4] The most often cited reasons for rise in gas prices since 2005 are the sharp increase in the price of a barrel of crude oil, which was $47 in January of 2005 compared to $118 the week of April 25, 2008,[5] and the damage to U.S. production and refining capacity as a result of Hurricane Katrina. In addition, growing global demand for oil and a weak U.S. dollar have been contributing factors.

The national average price of diesel has historically been lower than the price of gasoline, apart from seasonal increases in the price of diesel. In the last few years, diesel has trended higher than gasoline due to growing demand for diesel around the world, particularly in China and an increase in the use of diesel cars in Europe. Further, U.S. demand for diesel has grown at a higher rate (three percent) than gasoline (one percent) per year,[6] while refining capacity has remained tight. The transition to low-sulfur diesel since 2006 in the U.S. has also affected production and distribution costs.[7]

Both gasoline and diesel are also subject to Federal, State, and local government taxes. The Federal excise tax for gasoline is 18.4 cents per gallon and 24.4 cents per gallon for diesel. State excise taxes for gasoline average 21 cents per gallon and 22 cents per gallon for diesel. Federal gas tax revenues are deposited into the Highway Trust Fund for exclusive use for surface transportation programs and improvements to the nation's highway, transit, and intermodal transportation infrastructure[8]. When the 18.4 cent gas tax rate was established in 1993, the average gallon of gasoline cost $1.05. Therefore, although the Federal gas tax has not changed in 15 years, the price of gasoline has nonetheless tripled.

Impacts on the Trucking Industry and Consumers

Rising fuel costs have had a significant impact on the trucking industry and drivers. The American Trucking Associations estimates that the trucking industry spent more than $112 billion on diesel fuel in 2007, and predicts that this figure will rise to over $140 billion in 2008. Further, every one-cent increase in the price of diesel fuel translates to an annual additional cost of $391 million to the trucking industry. It costs nearly $800 more for a driver to fill a standard tractor-trailer than five years ago.[9] Higher fuel costs have also contributed to changes in equipment sales and repossessions. Tractor-trailer repossessions and liquidations increased 110 percent between 2006 and 2007.[10] Truck manufacturers and dealers reported a 40 percent drop in sales the first quarter of 2008.[11]

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[4] Energy Information Administration, "A Primer of Diesel Fuel Prices", April 2007.

[5] Figures for the price of crude oil are based on the Cushing, OK WTI spot price, available at www.eia.doe.gov

[6] American Petroleum Institute, Why Recent Retail Diesel Prices Have Been Higher Than Gasoline Prices, 4/3/2008.

[7] Energy Information Administration, "A Primer of Diesel Fuel Prices", April 2007.

[8] Of the Federal fuel tax, 18.3 cents and 24.3 cents for gasoline and diesel, respectively ,are deposited into the Highway Trust Fund. The additional $0.01 tax is deposited into the Leaking Underground Storage Tank fund.

[9] American Trucking Associations, "Fuel Facts", updated April 22, 2008; www.truckline.com.

[10] Nassau Asset Management data; www.nasset.com

[11] Transport Topics, "March Truck Sales Fall by 35% but Orders Rise for Sixth Month", April 21, 2008.

In addition to impacts on trucking firms and drivers, the increased cost of transporting goods to market has had a significant effect on the price of many consumer goods. For example, recent media reports have highlighted that retail food prices rose four percent in 2007, which represents the largest increase in almost two decades.[12] While the rising cost of fuel is not exclusively responsible for these price increases, it is a significant contributing factor. The Consumer Confidence Index, issued by the Conference Board, is reported to have hit a five year low this month, with rising gasoline prices cited as one reason for heightened consumer concerns.[13]

Property Brokers

Brokers are transportation intermediaries who arrange for the transportation of individual shipments of property for compensation, by securing the services of motor carriers. A broker is defined in the Federal statute as "a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation" (49 U.S.C. §13102). FMCSA data shows that there were 20,268 active property brokers registered with the agency as of April 2008, 813 of which were household goods brokers. The number of registered property brokers increased 15 percent over the last two years.

Until 1995, brokers of transportation of property in interstate commerce were required to obtain operating authority from the Interstate Commerce Commission ("ICC") and meet financial responsibility and other requirements. When the ICC was terminated in 1995 (by P.L. 104-88), Congress retained these requirements for brokers, but transferred the responsibility to the U.S. Department of Transportation. The Federal Motor Carrier Safety Administration ("FMCSA") was created in 1999 by the Motor Carrier Safety Improvement Act of 1999 (P.L. 106-159), and in this Act jurisdiction over brokers was conferred to FMCSA.

Currently, in accordance with 49 U.S.C. 13904, FMCSA grants operating authority to a broker to provide interstate transportation provided a broker is "fit, willing and able" to be a broker and comply with applicable regulatory requirements. FMCSA requires, pursuant to 49 CFR §387.307, a property broker to have a surety bond or trust fund in effect for $10,000. FMCSA regulations also require brokers to keep records for three years of each transaction, including consignors and the address and registration number of each carrier; the bill of lading or freight bill number; the amount of compensation received by the broker for the brokerage service performed; and the amount of any freight charges collected by the broker and the date of payment to the carrier (see 49 CFR §371.3). These record keeping regulations provide the ability for each party to the transaction to access information on how much the broker charges a shipper to haul a load.

The effectiveness of these regulations is difficult to gauge, as FMCSA does not have an active program in place to monitor whether brokers comply with these requirements as it does for monitoring motor carrier compliance with safety requirements. Additionally, FMCSA does not have authority to resolve routine commercial disputes. The former ICC, in its discretion, chose to engage

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[12] "Pizza and beer now cost an arm and a leg", MSNBC, February 29, 2008.
[13] "Consumer Confidence Hits 5-Year Low: Gas Prices, Weak Job Prospects Dim Shoppers' View Of U.S. Economy", April 29, 2008, www.cbsnews.com

in dispute resolution between consumers and carriers, but the ICC Termination Act eliminated this function, per the explicit direction of Congress.[14] Specifically, the ICC Termination Act provided for private parties to resolve disputes through the courts, just as other disputes among private parties are resolved. According to FMCSA, the agency has the ability to investigate a complaint of a violation of regulations, but has only investigated a small number of brokers, the majority of which have been household goods brokers, to ensure they have met registration and insurance requirements. Within the industry, the Transportation Intermediaries Association ("TIA") has established a "Watchdog" website, on which TIA members may report incidents involving fraudulent third party logistics transportation companies.

Fuel Surcharges

Given the sharp rise in the cost of transporting goods by truck, many motor carriers, brokers, and independent drivers are assessing fuel surcharges on shippers in order to haul their goods. A fuel surcharge is an additional charge above the standard rate to haul freight that is meant to cover the cost of an increase in the price of fuel. Fuel surcharges became prevalent in the trucking industry during the period of fuel price spikes in the 1970s, and have generally continued since then when fuel prices rise.

Trucking fuel surcharges are not fixed and are not regulated by any Federal entity.[15] The amount of the fuel surcharge is determined by formulas set by an individual motor carrier or other entity arranging for or providing the transportation. Typically, a carrier or other entity will peg the fuel surcharge to a national or regional average fuel price as published by the U.S. Department of Energy. The surcharge becomes applicable once diesel exceeds a pre-determined threshold. A common way to calculate the fuel surcharge is on a per-mile basis, and the amount charged per mile can rise as the price of diesel gets further above the threshold.[16]

Independent owner-operators have raised concerns over the lack of transparency and imperfect information in transactions with motor carriers, and particularly with freight brokers, with respect to fuel surcharges. Independent truck drivers contend that they do not control whether a broker is charging for the rising cost of fuel; the amount of the surcharge; or whether the surcharge is specifically itemized in the rate agreed to with a shipper (as opposed to just a flat increase in the charge for the load). These drivers argue that lack of disclosure requirements makes it difficult to verify whether the fuel surcharge is actually being passed on to those paying the higher price at the pump.

The Interstate Commerce Commission attempted to administratively address the impacts of high fuel prices in the late 1970s on independent owner-operators. After issuing a number of special exemptions to allow for surcharges and fuel rate increases by carriers, in 1981, the ICC issued a regulation requiring carriers to reimburse owner-operators for fuel cost increases at an initial rate of reimbursement set at 14 cents per mile. This regulation was set aside by the U.S. Court of Appeals

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[14] P.L. 104-88; see House Report 104-311, page 87.

[15] By contrast, the Surface Transportation Board determines the reasonableness of fuel surcharges assessed in the rail industry.

[16] Several websites explain and provide guidance on how to calculate a fuel surcharge. See for example American Truck Business Service, www.attrucktax.com and the Owner Operator Independent Drivers Association, www.ooida.com

in 1983 on the grounds that the ICC exceeded its statutory authority.[17] Since the authority of the ICC was transferred to FMCSA, the agency does not have existing statutory authority to take action with respect to fuel surcharges.

Several bills have been introduced in the 110th and previous Congresses regarding fuel surcharges. In the 110th Congress, on April 24, 2008, Senators Snowe and Brown introduced S. 2910 the "Trust in Reliable Understanding of Consumer Costs Act" (TRUCC Act) to require that fuel surcharges collected by a motor carrier or broker be passed through to the drivers bearing the cost of fuel. Representative Petri introduced a similar bill, H.R. 5934, in the House on April 30, 2008. In the 109th Congress, Section 4139 of H.R. 3, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as passed by the House, required motor carriers, brokers, and freight forwarders to institute a fuel surcharge, and required any fuel surcharge to be passed through to persons providing the transportation. This provision was based on H.R. 2161, the "Motor Carrier Fuel Cost Equity Act of 2001", as introduced by Representative Rahall in the 107th Congress.

[17] *Central Forwarding Inc. v. I.C.C.*, 628 F.2d (5th Cir. 1983).

<u>WITNESSES</u>

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