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Defense Acquisition Regulations System
Attn: Mr. Mark Gomersall
OUSD (AT&L) DPAP (DARS)
IMD 3D139
3062 Defense Pentagon
Washington, DC 20301-3062

Via e-mail: dfars@osd.mil

Re: DFARS Case 2008-D040
Implementing Fuel Related Adjustments in Department of Defense Contracts

The American Trucking Associations, Inc.¹ (“ATA”) represents the motor carriers and freight brokers who provide the logistical services critical to all government operations. ATA’s members are the parties most directly affected by the Interim Rule requiring that the Department of Defense (DOD) fuel surcharge (FSC) be passed through to the party that directly paid for the fuel.

A. Utility and Value of the Fuel Surcharge in Commerce

The trucking industry is an extremely competitive industry. Today, average profit margins range from zero to about one half of one percent (0%-1/2%).² Thus, when competing for freight business, the accuracy of determining the true cost of each component (driver wages and benefits, vehicle and business liability insurance, cost per mile to operate a Class 8 commercial vehicle, cost to maintain and operate a terminal and staff, etc.) is critical. However, the price of fuel is highly volatile and can fluctuate significantly in a short period of time. In general practice, commercial carriers will not

¹ The **American Trucking Associations** is a federation of trade associations representing the full scope of America’s trucking industry, including those companies supporting federal freight logistics. ATA is a united federation of motor carriers, freight brokers, state trucking associations from all 50 states, and national trucking conferences and councils created to promote and advance the safety, productivity, security and related interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies including every type and class of motor carrier operation.

² ATA Economics Department, 2009

commit to a fixed price that includes the cost of diesel for longer than 30 days.³ This is because the carrier's cost to purchase fuel could easily and entirely consume or exceed the razor-thin profit margins that typify our industry.

However, many shipper customers, including government agencies, want to know the cost of their operations protracted over a much longer time frame than just 30 days. The only way a responsible motor carrier or broker can do this is to assume a fixed cost of diesel fuel during the longer time frame, and provide a cost recovery mechanism in the contract, i.e. a fuel surcharge (FSC). The role of the FSC is to recoup excess cost when the actual price of diesel exceeds the assumed cost. Depending on the type of shipment the FSC is calculated on a per mile basis, or as a percentage of the overall rate.

To the best of our knowledge, it is customary in the motor carrier freight industry for at least 99 percent of fuel surcharges to be passed along to the party that pays for the fuel. This is regarded as a desirable practice to solidify the goodwill between a great many parties that may be involved in orchestrating the pickup, transport and delivery of a given shipment. Congress and the Department of Defense should know that there are 1,400,000⁴ individual shipments in transit on any given day in the United States. Also, our industry purchases 39.7 billion gallons of diesel fuel per year.⁵ It would be an extreme anomaly for any contract (other than a near term, one-time-only bid) not to include a FSC, and it is also highly infrequent that anything less than 100% of the FSC to be passed along to the motor carrier that provided the truck and bought the fuel.

Great efficiencies are achieved by minimal book keeping on the FSC activity. By contrast, new and perhaps more robust accounting requirements will be required to assure that each carrier and party involved in the chain of business transactions for each DoD shipment has records that can verify compliance with the new regulation. It is a consensus among ATA members that the perceived problem of the FSC not flowing down to the paying party is so miniscule as to be virtually non-existent. ATA is concerned that the new law requires documenting 100% of all activity to resolve some degree of minority discontent that is so small as to be virtually imperceptible. As a result, there will be additional administrative work and cost for no appreciable benefit. But until Congress may reconsider the merits of this new requirement, industry will fully comply.

B. Congress was not Absolute in Application of the General Requirement

Congress should be commended for perceiving that in an industry as complex as the freight industry, and its ultra dynamic supply chain, that there are some instances where it is not practicable to mandate an absolute requirement to pass the FSC to the

³ 2008 Poll of motor carriers in government freight service; ATA. This 30-day industry practice is also the basis of DoD Spot bids being effective for not more than 30 days.

⁴ ATA Economics Department, 2009

⁵ ATA Economics Department, 2008

party that paid for the fuel. Congress so recognized this in Public Law 110-417 as follows:

(a) PASS THROUGH TO COST BEARER.—The Secretary of Defense shall take appropriate actions to ensure that, to the maximum extent practicable, in all carriage contracts in which a fuel-related adjustment is provided for, any fuel-related adjustment is passed through to the person who bears the cost of the fuel that the adjustment relates to. [emphasis added]

C. Proposed Text for Contracts Should be Modified to Reflect Practicality

While ATA believes the proposed text mostly reflects the intent of Congress to require the flow-down of the FSC, it misses in a very significant respect in that the language DoD proposes in the Federal Register does not make any allowance for exceptions that Congress knew and stated would be inevitable in an industry as diverse, decentralized and dynamic as the modern supply chain. To remedy this important provision, ATA respectfully requests that DoD amend paragraph (a) to read as follows:

(a) Except in instances where doing so would be impracticable, or pose a disproportionate administrative burden, the contractor shall pass through any motor carrier fuel-related surcharge adjustments to the person, corporation, or entity that directly bears the cost of fuel for shipment(s) transported under this contract.

i. Examples of impracticable instances may include but not be limited to spot bids, one-time-only bids, or other services that are provided within 30 days of the time service was ordered.

[Requested amendment underlined]

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For the reasons set forth above, ATA believes that the modification noted above (to provide for mostly infrequent exceptions), should be adopted. In doing so, DoD will more accurately and properly implement the full Congressional intent.

If you have any questions concerning these comments, please contact the undersigned at work (703) 838-1997 or at bwanamak@trucking.org

Respectfully submitted,



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