



## LOGISTICS STRATEGIES

September 2007 Vol 1  
Iss. 20

in this issue

[Fuel Surcharges Create  
Confusion, and Now  
Lawsuits](#)

[Some Mexican Trucks  
Will Be Allowed to Enter  
the US](#)

[Parcel Audit Provisions  
Grossly Misunderstood](#)

### ***Fuel Surcharges Create Confusion, and Now Lawsuits***

Our current fuel surcharge system is one that is totally misunderstood by most including those companies that have seen their freight costs increase by as much as 30%. First, it is important to point out that the current fuel surcharge system for Railroads, Airlines and Motor Carriers originally went into effect back in 1999 as a "Temporary" system of allowing these carriers to recoup some of their costs as the price of fuel began to rise above "Normal" levels. One thing is for sure, we will never see "Normal" again and they are certainly no longer temporary.

Another misnomer is that the Federal Government is responsible for establishing the fuel surcharge rates that transportation companies charge their customers. The Federal Government merely publishes weekly average fuel prices by region. The individual carriers establish their own percentages based on these average fuel costs which they usually add to the net rate on their invoices. We say usually because some motor carriers have been known to assess fuel surcharges on the gross rate before they apply any incentives. In addition, there are some transportation service providers that assess fuel surcharges to accessorial fees that do not require the use of fuel. Charges such as calling customers for appointment deliveries and inside delivery charges, etc. To compound matters, some truckload carriers charge a fuel surcharge based on a percentage of the revenue and others charge as a cost per mile. Is one better than the other?

What this all leads to is that since there is no standard system for applying fuel surcharges by mode, can a shipper negotiate fuel surcharge terms and conditions as well as charges individually with its carriers? The clear answer to this question is YES! However, in order to accomplish this effectively a shipper will need to understand the following:

1. Determine by carrier type what each carrier is charging as a fuel surcharge. In other words do the carriers charge a percentage of revenue or cost per mile for fuel related costs or some other method? In addition, shippers will need to know how these charges are calculated. For example, are they assessed on the net rate after discount as many LTL Motor Carriers do or are the fuel surcharges added to the invoice before the carrier applies the discount?

2. Once this information is assembled for ALL of the carriers a shipper does business with it is advisable to create a separate spreadsheet for each carrier type, i.e. Truckload Motor Carriers, LTL Motor Carriers, Railroads, Airlines or Air Freight Companies and Steamship Lines. These spreadsheets will now be an invaluable tool to observing not only how these carriers assess fuel surcharges but also the fees each carrier charges. And it will also clearly spell out any inconsistencies in how these charges are applied by the carriers.

3. These spreadsheets now clearly indicate the variables between carriers within each mode of transportation and the differences between each modes assessment of these fuel related fees. A shipper will want to use this information to standardize the fuel surcharges it is paying within each mode as well as using the data to change how a carrier assesses these costs if it is not in its best interest. If there are any anomalies in the fuel surcharge rating methods or fees, the shipper should re-negotiate those fees with their carriers.

This exercise is not intended to punish carriers that have borne the burden of these higher fuel costs since 1999, but rather as a means to insure that the fees are assessed logically and that the shipper has a means to measure these costs by carrier within each transportation mode. Having said that, fuel costs are part of the base cost analysis that all carriers perform when they price their services and also when they ask for any freight rate increase. So the real question is are the freight carriers double dipping here? Many believe this is the case. And if it is, shippers must reduce the fuel related costs now.

Fuel related costs are so critical today that some shippers have already sued Airlines and Railroads over fuel surcharge fees and how they are assessed. Now, there is a California based wholesaler who has filed a lawsuit claiming that 11 major LTL Motor Carriers conspired to fix prices with their fuel surcharges as well. The suit claims that these carriers violated federal antitrust laws by conspiring to fix fuel surcharges and seeks treble damages. We do not know if this case has any merit at this early stage. Only time will tell. What we can say however, is that each shipper should take charge of the fuel surcharges it pays to control its own costs and not wait for the results of what is sure to be a long drawn out affair.

## ***Some Mexican Trucks Will Be Allowed to Enter the US***

A recent US Court of Appeals decision has paved the way to open our Southern borders to Mexican trucks. As you might imagine, this has and will continue to cause much controversy. There are many that believe this idea is just plain crazy since Mexico does not closely monitor the safety of their motor carriers as the US does. In addition, we have the issue of border control that continues to plague our nation. Then there are others that believe the current costs of having to unload Mexican vehicles at the border then re-load those shipments in US vehicles just makes no sense whatsoever.

For those companies that have set up operations in Mexico, and there are many, the cross-border trucking program could eventually save companies millions of dollars annually. Some, like Janet Kavinoky, Director of Transportation Infrastructure for the US Chamber of Commerce believe strongly in the program stating "It's high time this program gets going, there is substantial money to be saved by American companies and, it's a key component of what the vision of NAFTA (North American Free Trade Agreement), was- the free flow of goods". On the other side of the fence, we have the Teamsters Union, Public Citizen and The Sierra Club, all of whom tried to block the program, but were unsuccessful.

The Federal Motor Carrier Safety Administration is undertaking a pilot program to allow 100 Mexican carriers to send trucks into the US and 100 US carriers to send trucks into Mexico. Where this leads us, no one really knows for sure. Many are concerned that US trucks entering Mexico will be targets for hijackers, so its not just safety on the US side that concerns many. There is another spin here which concerns competitive pricing and how the Mexican carriers might affect US transportation prices. Stay tuned. It will be interesting!

## ***Parcel Audit Provisions Grossly Misunderstood***

Here's a question for you to ponder. Can a shipper that utilizes a parcel carrier audit its invoices internally or through a third party audit firm? The obvious answer is YES! Why then are some sales representatives working for these parcel carriers attempting to prohibit their customers from doing so?

In one case, a shipper was said to have signed a "No Audit" clause in its contract with a parcel carrier. The reality is that the shipper may have waived its right to file for refunds for Guaranteed Service Delivery failures, but certainly did not waive its right to audit its invoices for billing errors. There is no such thing as a "No Audit" clause in a parcel carrier contract. And, if there is the shipper should never agree to waive its right to audit its invoices. It is important to state that the major parcel carriers, UPS, FedEx and DHL created the vehicles for monitoring their service as a means to show their customers the very valuable service they provide. Now that shippers have entered into contracts to hold these carriers to their pre-established delivery commitments some parcel carriers have been seeking to have their customers waive their right to file for these late delivery refunds. Is this a good idea? We do not believe so. Our experience has shown us that if a parcel carrier offers a percentage increase to the clients' incentive program for having the shipper waive its right to file for these refunds, the shipper is probably not receiving equal or greater compensation for waiving its audit rights. Why would a shipper agree to such a deal?

In addition, the shipper completely loses visibility of its shipments and has no way to monitor the level of service it receives from its parcel carrier partners. Why would they want to do that? The parcel carriers need to understand that their customers are merely holding them accountable for the service guarantees the parcel carriers have established. The shippers are not punishing the carriers as we have heard another parcel carrier sales representative claim. How



ridiculous is that statement! They are merely performing their fiduciary responsibility. What this all leads to is that shippers need to become more diligent in reviewing the contracts they sign with all of their freight carriers. They must read the fine print. They must make sure they understand all of the terms and conditions before signing any contract. On the other side of the coin, we believe that carrier sales representatives would be well served to treat their customers as business partners by looking out for the customers best interest and not their own.