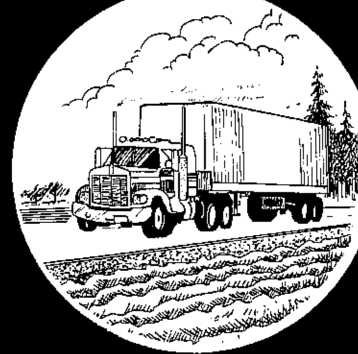
Transportation Deregulation and Agriculture



The Staggers Rail Act:

Provisions Important to Agricultural Shippers and Receivers

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Preface

The Motor Carrier and Staggers Rail Acts of 1980 have led to substantial change in the federal regulation of transportation, and the implications of these changes have caused concern in rural areas. Carriers have made some initial adjustments that have increased some of these concerns.

But these regulatory changes are not the only source of uncertainty in the transportation sector of the economy. Railroad bankruptcies and abandonments, declining public support for rural road construction and maintenance, deteriorating inland waterway facilities, and grain sales surges or embargoes all have contributed to the need for information or education programs in the area of agricultural transportation. Lack of such knowledge can delay or even prevent desirable developments in transportation, thereby impeding achievement of agricultural policy or rural development policy goals.

This is the first of eight papers in the Transportation Deregulation and Agriculture series, John O. Gerald and Ken L. Casavant, general editors, published by the Western Rural Development Center. The series deals with nature and potential impacts on agriculture of the Motor Carrier and Staggers Rail Acts of 1980. These acts in part removed federal regulation of the trucking and rail industries.

For a recent empirical evaluation see the report, *An Assessment of Impacts on Agriculture of the Staggers Rail Act and*

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Motor Carrier Act of 1980, a study conducted by USDA's Office of Transportation, published in August of 1982. The "Assessment Study," while narrower in scope than this series of papers, does describe developments in agricultural transportation since the passage of the two acts and provides recommendations for continued monitoring and/or regulatory change.

Goals and Policy Enunciated by Congress

An act to liberalize regulation of the railroads was signed by President Carter October 14, 1980, and became effective October 1, 1980. The official title is the Staggers Rail Act of 1980.

The general purpose of Congress in passing the Staggers Rail Act was to provide for the improvement of physical facilities and financial stability of the rail system of the United States. In order to achieve that purpose the specific goals were (1) to assist rehabilitating and financing the rail system in order to permit it to remain viable in the private sector of the economy, and (2) to reform previous rail regulations or to deregulate.

For regulating the railroad industry in the future, 15 policy statements were enumerated by Congress as being the policy of the United States. The most important of those policy statements may be summarized as follows:

1) To allow competition and the demand for services to establish reasonable rates.

2) To minimize the need for federal regulatory control.

3) To allow rail carriers to earn adequate revenues.

4) To maintain reasonable rates where there is an absence of effective competition.

5) To assure that state regulation (for intrastate commerce only) conforms with the standards of the Staggers Act; and

6) To require rail carriers, to the maximum extent possible, to rely on individual rate increases, and limit the use of general increases which have characterized the past.

Regulating Rate Changes

Market Dominance

In general, railroads are now given a great deal of freedom to change rates. However, certain restrictions are placed upon the railroads' ability to increase rates where they have market dominance. In the situation where a single railroad is the only mode of transportation (no trucks or barges), market dominance would exist and in the absence of regulation the railroad may be able to levy excessively high rates. The new act requires rates to be reasonable, in those instances where railroads have market dominance, and defines market dominance by specifying the level of rates at which a rail carrier cannot be found to have market dominance. Congress specified these levels for the first 3 years following passage of the act, but directed the Interstate Commerce Commission (ICC) to develop a cost recovery percentage level for following years. The act requires that the ICC shall find that the rail carrier does not have market dominance if the rail carrier proves that any challenged rate results in revenue that is less than

1. 160 percent of variable cost from October 1, 1980, to September 30, 1981

2. 165 percent of variable cost from October 1, 1981, to September 30, 1982

3. 170 percent of variable cost from October 1, 1982, to September 30, 1983

4. 175 percent of variable cost of a cost recovery percentage, specified by ICC, whichever is less from October 1, 1983, to September 30, 1984.

5. The cost recovery percentage each year after October 1, 1984, shall be no more than a revenue variable cost ratio of 180 percent.

Variable costs are those which vary directly with the volume of a product moved over the rails. The costs included as variable costs become very important, for they will determine the level of rates at which the ICC may exercise jurisdiction over proposed rate changes. There are five components of variable cost as follows:

1) Train costs—principally labor, power and fuel;

2) Some elements of repair which are sensitive to additional use;

3) Right-of-way costs associated with increased use, such as increased rail wear and tie deterioration;

4) Switching yard operations, including switch engines; and

5) General administrative costs associated with increased volume of traffic.

Variable costs will be determined by the use of a standard accounting form with adjustments specified by the Commission as appropriate for the type of traffic involved. A shipper or receiver may rebut the carrier's variable costs by evidence of such type and in accordance with such burden of proof as the ICC shall prescribe. Because of the cost involved in assembling the data and trained personnel necessary to rebut a carrier's variable cost, it is likely that all but the very large shippers or receivers will be forced to accept the carrier's evidence.

If a proposed rate exceeds the appropriate threshold, the ICC may, but is not required to, begin a proceeding to determine if the carrier(s) have market dominance of the traffic on which the proposed rate is to apply. If market dominance is ruled to exist, the ICC may, but is not required to, determine if the rate is reasonable. The ICC may not suspend a proposed rate unless it appears that (a) it is substantially likely that the protestant will prevail on the merits; (b) without suspension the proposed rate will cause substantial injury to the protestant; and (c) because of the peculiar economic circumstances of the protestant, a refund of overcharges would still not protect the protestant. A suspended rate may become effective if it is found to be reasonable.

Rate inceases are not limited to the threshold levels previously listed if the carrier proposing the rate has not attained adequate revenues to permit continued operation. A rate proposed to obtain adequate revenue may be above the applicable threshold by less than 20 percentage points if it is less than 190 percent of variable cost. The reasonableness of such a rate may be challenged by a shipper or receiver. If a rate proposed for adequate revenue purposes is 20 percentage points or more above the applicable threshold or 190 percent or more of variable cost, the burden of proof as to reasonableness is on the carrier. Once the ICC approves a rate, a shipper or receiver may challenge but the burden of proof as to the rate's reasonableness is upon him regardless of the revenue to variable cost percentage.

Contracts

The Staggers Rail Act encourages rail carriers to enter into contracts with purchasers of rail services under negotiated rates and conditions. Each contract must be filed with the ICC. The ICC shall publish special tariff rules for the contracts in order to assure that the terms of the contracts are available to the public in tariff format. Contracts are effective on 30 days' notice, unless the ICC begins a proceeding to review the contract.

A complaint against any contract may be filed by (1) any shipper, on the grounds that he will be harmed because the contract impairs the ability of the contracting carrier to meet his common carrier obligations, or (2) by a port only because the proposed contract will result in unreasonable discrimination against the port.

In addition to the foregoing, a contract for the transport of agricultural commodities may be challenged by any shipper or receiver on the grounds that (1) a rail carrier has unreasonably discriminated against him by refusing to enter into a contract similar to the one under attack, or (2) the proposed contract constitutes a destructively competitive practice. In determining whether a contract rate is destructive of competition, the ICC shall consider the difference between the contract rate and published single-car rates. If a complaint under (1) above is substantiated, the ICC may order the carrier to provide the protesting shipper(s) rates and service similar to those of the contract in question.

There are some limits placed upon the amount of a carrier's equipment which may be utilized under contracts for transporting agricultural commodities. (1) A carrier may not enter into agricultural hauling contracts (including forest products and paper) involving more than 40 percent of the carrier owned or leased equipment by major car type. The major car types for agriculture would be plain box cars, covered hoppers, and pulpwood rack cars. (2) In the case of a proposed contract between a Class I carrier and a shipper who originated traffic on that railroad in that type of equipment an average of 1,000 cars or more per year during the prior 3-year period, not more than 40 percent of the carrier owned or leased equipment utilized on the average during the 3-year period may be used for such contract. This provision prevents the large shipper from monopolizing all available cars.

The act requires the ICC to establish a railroad contract advisory service for the purpose of compiling and disseminating summaries of the nonconfidential provisions of individual contracts. The advisory service shall also provide the ICC and interested parties with advice regarding contracts. It must also assess the effect on competition of differences as between contract rates and single-car rates and report the findings to Congress. This requirement was added to assist Congress, the ICC, and the public in appraising the economic impact of the contract provisions of the act.

Rate Discrimination

The Staggers Rail Act exempts certain actions by the railroads from the antidiscrimination protection previously in effect. Among these are (1) approved contracts; (2) surcharges; (3) separate rates for distinct services; (4) rail rates applicable on different routes; and (5) customer solicitation expenses.

Joint Rate Surcharges and Cancellations

When one must move a product over two or more railroad lines, a joint rate is applicable. The act provides for a method of changing joint rates.

Under the 1980 act, a carrier may apply a surcharge for either increasing or decreasing its return on traffic moved on a joint rate without the concurrence of the other railroad over whose lines the commodity must move to reach its destination. Any surcharge levied must be applied in equal dollar amounts over all routes between two points in which the carrier initiating the surcharge participates. In addition, when the surcharge increases the joint rate, the carrier initiating the surcharge must increase by the same dollar amount all of its single line route charges between the same two places.

A connecting carrier may ask the ICC to cancel the application of a surcharge to a route in which it participates by demonstrating that the surcharging carrier's revenues, prior to the filing of the surcharge, were equal to or exceeded 110 percent of the surcharging carrier's variable cost. The connecting carrier may also cause the surcharging carrier to cancel the surcharge by putting into effect a new division of the joint rate, which provides the carrier proposing the surcharge at least 110 percent of its variable cost—in other words, changing the division of the revenues derived from a through rate among the participating carriers.

The ICC may cancel an application for a surcharge if an affected shipper demonstrates (1) that he has no competitive alternative route, and (2) that the new rate will cause the carrier's share of joint revenues to exceed 110 percent of the variable cost of providing service over that route. If the surcharge is cancelled, the ICC shall immediately authorize a new surcharge which would set the revenue to that carrier at 110 percent of the surcharging carrier's variable cost.

Surcharges which increase joint rates may only be applied once each calendar year.

The act provides an alternative to surcharges as a means of obtaining adequate revenues from joint rates—namely, cancelling the application of joint rates on through routes. This can be done without the concurrence of other rail carriers participating in the joint rate. Another carrier participating in that route, or shipper having no competitive alternative to the route, may prevent the cancellation in the same manner as they block a surcharge. Even if a complaining party cannot make the required demonstration, the ICC may suspend the cancellation of the joint rate if the complaining carrier agrees to a new division of rates covering 110 percent of the applicant's variable cost of providing the service in question.

The provisions just discussed for applying joint rate surcharges and cancellations are not to be construed as limiting the ICC in prescribing joint rate divisions, which provide participating carriers with revenues equal to or greater than 110 percent of the variable cost of providing the service.

A rail carrier applying a surcharge or cancelling the application of a joint rate must file a tariff with the ICC. The tariff will not be effective for at least 45 days. Within 5 days after the request by an affected carrier or shipper, the ICC must make available its determination of the variable costs and revenues over the route or routes to which the surcharge or cancellation applies.

The authority to apply new joint line surcharges expires October 1, 1983, unless extended for 1 more year by the ICC.

Surcharges on Light Density Lines

On light density lines the railroads' right to levy surcharges depends upon both the traffic density (gross ton miles) and the revenue needs of the railroad. Any surcharges are to be used to raise revenue to 110 percent of the variable cost of moving the traffic to and from the line, plus 100 percent of the carrier's reasonably expected costs of continuing to operate the line. The ICC was given the responsibility of defining the term "reasonably expected costs."

A shipper on a light density line may petition the ICC for relief in two ways. First, the shipper may demonstrate that the surcharge exceeds 110 percent of the carrier's variable cost of operation plus the carrier's reasonably expected costs of continuing to operate the line. If he so demonstrates, the ICC may reduce the surcharge to a level just sufficient to operate the line. Second, a shipper may show he is being required to bear more than a reasonable proportion of the line's cost—in which case the ICC may reallocate the surcharge among the traffic originating or terminating on the line.

Inflation Rate Increases

A carrier may, on a quarterly basis, raise any rate in effect Ocober 1, 1980, by an amount sufficient to compensate for inflationary cost increases. The ICC shall prescribe permitted rate increases or a range within which increases may take place.

Zone of Rate Flexibility Increases

Until October 1, 1984, a carrier may increase annually, any rate by percent of the adjusted base rate (starting October 1, 1980), but not more than 18 percent over the 4-year period. Any portion of the permissible increase not used in 1 year may be carried over to the next year of the 4-year period, and any part not implemented by the end of the 4-year period may be implemented in the 2 succeeding years up to 10 percent per year.

Beginning October 1, 1984, carriers without adequate revenues may raise rates 4 percent per year of the adjusted base rate. Unused portions of these authorized increases may not be carried forward to succeeding years.

Cost increases due to inflation that are recovered, either through a general rate increase or via inflation-based rate increases, may not also be recovered under flexible rate increases.

The ICC may not suspend a rate increase under the flexible rate provision. If the proposed rate is 20 percentage points or more above the applicable revenue-variable cost rates or 190 percent or more of variable costs, whichever is less, the ICC may only investigate the proposed rate. If the ICC refuses to investigate it must explain why, but the decision itself is not reviewable in court. It will be extremely difficult to win a complaint against a proposed rate increase under this section of the bill.

Abandonment

Abandonment will be easier and much more rapid than in the past. Previously, a mandatory waiting period was required after an abandonment certificate was issued and before abandonment could take place. This is no longer necessary.

Once an abandonment application is filed, a shipper has 30 days to file a protest. If no protest is received, the ICC shall, 45 days after application, issue a certificate permitting discontinuance to occur within 75 days of the original filing.

If a protest is received within 30 days after application, the ICC shall within 45 days of the filing date decide whether an investigation is needed. If the ICC decides no investigation is necessary, it shall within 75 days of filing date decide whether to allow the discontinuance of service. If the ICC permits abandonment, it must grant the petition within 90 days of application and permit final discontinuance within 120 days after application is filed.

If the ICC decides to investigate, the investigation must be completed within 135 days. Thirty days later (195 days total) the initial decision shall become final, unless the ICC decides to hear appeals. If the initial decision is appealed and considered, the ICC shall issue a final abandonment decision within 255 days of the date of application. Should the ICC permit abandonment, a permit must be issued 15 days after the final decision, which permits an abandonment to occur within 75 days of the date of the final decision. Even when investigated and appealed, abandonment could take place in 330 days (255 + 75).

The railroad applying for a certificate must prove that the present or future public convenience and necessity requires or permits an abandonment or discontinuance.

The findings of the ICC leading to approval of abandonment must be published in the Federal Register. Within 10 days, any person may offer to pay the carrier a subsidy or offer to purchase the line. If within 15 days the ICC finds that a financially responsible person has offered sufficient assistance to enable the line to continue, the ICC shall postpone the issuance of a certificate of abandonment.

If the carrier and the person offering financial assistance reach agreement to continue service, the ICC shall postpone abandonment for the duration of the agreement. If the carrier and a person offering to purchase a line enter into an agreement for continued service, the ICC shall approve the transaction and dismiss the application for discontinuance. Should the parties not agree to terms of the subsidy or purchase, either party may within 30 days of the offer ask the ICC to establish the conditions and amount of compensation. If no agreement is reached and no request for ICC action made within 30 days after the offer, abandonment must be approved immediately.

Whenever the ICC is requested to establish conditions and amount of compensation, it must reach a decision within 60 days. The decision of the ICC shall be binding on both parties. However, the person who has offered to subsidize or purchase a line may withdraw his offer within 10 days of the ICC decision. If an offer is withdrawn, the ICC must immediately issue a certificate of abandonment unless other valid offers are pending. The act sets out in some detail the procedures in case of more than one offer.

No purchaser of a line sold under the abandonment section of the act may transfer or discontinue service on the line for 2 years. No transfer can be made for 5 years, except to the carrier from whom purchased.

Any subsidy may be discontinued on 60 days' notice. The ICC must immediately issue a certificate of abandonment at the carrier's request, unless within the 60-day period another financially responsible party enters into an agreement as beneficial to the carrier as the one being withdrawn.

In most instances, the time between announcement and abandonment is very short. This makes it necessary for any person or group of persons or firms contemplating subsidy or purchase to make plans prior to the filing of a certificate of abandonment. If this is not done, there may not be sufficient time prior to abandonment to develop a financially sound subsidy or purchase program.

Intrastate Rates

A state wishing to continue exercising jurisdiction over intrastate rates, rules, and practices must submit to the ICC the standards and procedures (including timing requirements) used in exercising such jurisdiction. The ICC must approve the state's program as being consistent with the standards and procedures applicable to the regulation of rail carriers by the ICC under the Staggers Rail Act. Certification of the state authority is to be denied unless standards and procedures are consistent. Any state authority so certified may exercise jurisdiction over intrastate rates and practices for a 5-year period from date of certification. Even if certified, a state may not exercise jurisdiction over general or inflation-based rate increases nor fuel adjustment surcharges.

Any rail carrier may petition the ICC to review any state regulation on the grounds that the state standards and procedures were not in accordance with the provisions of the 1980 act. If not in accordance, the ICC may authorize the carrier to establish appropriate rate, classification, rule, or practice.

This is the first of eight papers in the Transportation Deregulation and Agriculture series, John O. Gerald and Ken L. Casavant, general editors. Other titles in this series are:

(2) Contracting for Railroad Freight Service (Marc A. Johnson and L. Orlo Sorenson. WRDC 17)

(3) The Staggers Rail Act: Impact on Rate Structures and Services (Gene C. Griffin. WRDC 18)

(4) Railroad Deregulation: Impact on Grain Shippers (C. Phillip Baumel. WRDC 19)

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(8) Freight Regulatory Reform: Policy Issues After 1980 (James D. Shaffer and C. Phillip Baumel. WRDC 23)

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