



Groups Weigh In on Proposed Freight Rail Reform

Could more regulation reduce rail capacity?

The demand for rail freight transportation is expected to almost double by the year 2035, requiring an extra investment of \$148 billion in the nation's freight rail infrastructure over the next 27 years. Nearly, everyone agrees that the railroad industry must continue to invest in infrastructure to maintain and grow capacity. Legislation being considered by the U.S. House and U.S. Senate to re-regulate railroads could severely hamper the railroads' ability to fund needed rail capacity improvements, according to the Association of American Railroads.

The bills are the Railroad Antitrust Enforcement Act (H.R.1650 in the House and S.772 in the Senate) and the Railroad Competition and Service Improvement Act (H.R.2125 in the House and S.953 in the Senate) and would remove antitrust exemptions for the freight rail industry.

The National Conference of State Legislatures and the Eastern Regional Conference of the Council of State Governments have urged Congress to reject efforts to alter the current regulatory system because it would discourage investment in the rail infrastructure and significantly reduce the ability of railroads to raise the capital needed for future infrastructure expansion. The groups note that expanding the capacity of the freight rail network would yield impressive public benefits by relieving worsening congestion, reducing highway costs, providing a critical inter-modal link to international trade and improving air quality and fuel efficiency.

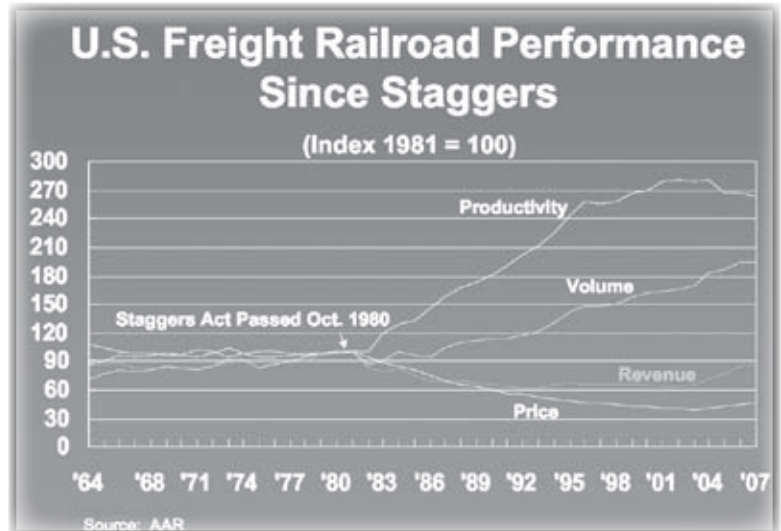
Supporters of rail reform legislation, including the Minnesota Association of Cooperatives and the Midwestern Legislative Conference of the Council of State Governments, believe more regulation is needed to make rail rates competitive, especially for "captive shippers" who don't have other transportation options available to them and who are often charged higher rates for this reason. They note that since the Staggers Rail Act was passed in 1980 to deregulate the industry, the number of ma-

ior railroads has dropped from more than 40 to seven, reducing competition. They also say the Surface Transportation Board (STB) which oversees rail transportation has been difficult for small shippers to work with.

Brian Sweeney, legislative council with **BSNF Railway** says it's a mistake to turn back the clock on rail regulation. "We tried heavy-handed legislation in past. In Minnesota, the Rock Island line went bankrupt in the 1970's and the Milwaukee Road in the early 80's because of federal regulation. This resulted in a lot of deferred maintenance and poor tracks," he says. "Deregulation has worked. The rail industry has been re-investing and rebuilding and rates have stabilized. Rates are down for all shippers including captive shippers when measured with inflation-adjusted dollars."

A quick look at history illuminates the effect of government regulation. "The government-regulated railroad industry was absolutely bankrupt by the early 1980's. The government had the choice of nationalizing the railroad industry or deregulating it. They decided to deregulate and give it a shot at survival," explains **John Apitz**, executive director, **Minnesota Regional Railroads Association**.

The Staggers Act of 1980 allowed the rail industry to consolidate and improve operations without government regulation of rates and routes. A large number of railroads went out of business. The number of Class 1 (large) railroads went from 42 to seven today (includes two from Canada). At



From 1981 through 2007, rail traffic volume was up 93 percent and rail productivity was up 163 percent. Average inflation adjusted rail rates fell more than 50 percent.

the same time the number of regional and shortline railroads grew to over 500. The Staggers Act did not completely deregulate railroads. Among other things the Surface Transportation Board (STB) can set maximum rates and take other actions if a railroad is found to have market dominance or to have engaged in anti-competitive behavior.

"We would like reform legislation, but not legislation that takes us back to pre-Staggers Act. We want legislation that would address the ability to move freight to a competing railroad," explains **Bob Zelenka**, executive director of the **Minnesota Grain and Feed Association**. "Under a 1996 STB decision railroads don't have to provide a rate for moving a shipment to a competing railroad. The STB has also supported paper barriers that require shortline railroads to only work with the railroad they lease track

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MINNESOTA
AGRI-GROWTH
COUNCIL



The Minnesota Agri-Growth Council is a unique trade association whose mission is the promotion of Minnesota agriculture with elected officials, the general public, media, and the farm community. The Agri-Growth Council's 200 members represent the entire food and agriculture sector, from agribusinesses and processors to producer-based commodity organizations. The Council is based in St. Paul and has been working to promote Minnesota agriculture since 1968.

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Member IN FOCUS

Company: Fagen, Inc.

Web site: www.fageninc.com

Headquarters: Granite Falls, Minn.

Locations: Regional offices in Columbus, Neb., and Greenville, S.C. Marketing offices in Kansas City, Kan., and Houston, Texas.

Founded: 1988

Sales: \$2.01 billion in 2007

Employees: 3,000

Business Description:

Fagen, Inc., is a national industrial design-builder servicing the power, renewable energy, and industrial process markets. It is the largest Green Energy Design-Builder in the United States. Fagen was ranked #30 in the *Engineering News-Record's* list of Top 400 Contractors in the U.S.

Products/Services: Fagen is a full Engineering Procurement Construction merit shop contractor that self-performs work in multiple disciplines.

The company provides project development in the ethanol, biomass-to-energy, and anaerobic digestion industries. Fagen, Inc., has built nearly 100 ethanol plants to date, which is more than half of the dry-mill corn ethanol industry.

Fagen is experienced in ethanol, simple cycle and combined cycle power generation, wind turbines, pharmaceutical, pulp and paper, auto manufacturing, water treatment, metals, food processing, natural gas, rubber, grain and seed handling, and mining industries.

Q & A with Ron Fagen, President & CEO

What's new with your company?

Fagen, Inc., recently announced its partnership with Frontline BioEnergy to market and construct its biomass gasification technology. It is currently operating at a commercial scale in Benson, Minn., at an ethanol plant. The gasifier uses wood chips and corn cobs as a feedstock and turns them into a synthesis gas that is injected in the same burner as natural gas. This renewable gas has the potential to directly displace up to 90 percent of the ethanol plant's thermal energy needs.

Fagen, Inc., has also been selected by California Ethanol and Power to construct multiple ethanol plants in California that utilize sugarcane as a feedstock. Fagen is currently performing initial engineering and permitting services, while CE&P

and Fagen are finalizing the terms of a pre-financial close agreement and the post-financial close engineering, procurement and construction contract.

What are key industry trends?

We feel as though we really fall into two different industries. Our core business puts us in the construction industry, but because we have worked successfully with our clients to take the ethanol industry from 9 million gallons to 9 billion gallons, we find ourselves deeply rooted in the ethanol industry. The coincidence is that both industries are facing a common challenge, volatile commodities. The construction industry has seen the price of concrete and carbon steel escalate to the point that pricing on some inputs may only be good for five days. The ethanol industry has watched the price of corn double and then fall 33 percent in a very short time frame. The volatility is forcing both industries to think in new ways.

One trend that is emerging in the ethanol industry is fractionation. This is a process whereby the corn kernel is separated into three main components; endosperm, germ, and pericarp. The endosperm is starch that goes to the ethanol plant. The germ contains food grade corn oil and the pericarp is a high-fiber source. Fractionation is driving increased returns and products from the same kernel of corn.

Back in the construction industry, we are having success executing work for the wind industry. The expansive growth has led to an increased demand for cranes and Fagen, Inc., is well positioned because we own several large cranes. We have a modern fleet that can erect to the higher hub heights and the staff to deliver a turn-key construction package.



Fagen, Inc., 100 million gallon per year ethanol plant

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from. Due to the way STB has ruled on these issues, most grain elevators are captive shippers. As an oversight agency, the STB needs to be more responsive to the interests of rail users. Reform is needed for more market access, which should translate into more competition, better rates and better service.”

The railroads say that’s already happened. Since the 1980’s the railroads were free to lower their rates to win back traffic from trucks. Then in 2004 demand for freight rail rose because of higher fuel prices and changes in hour and service rules for trucks. The demand became overwhelming and the railroads responded by raising rates and they began investing in new tracks to handle the traffic. From 1980 to 2007, freight railroads have reinvested some \$420 billion back into their systems.

“Deregulation was a great success because the rail industry became more efficient, and productive,” says Apitz. “Rail freight volume increased 93 percent from 1981 to 2007 while average inflation-adjusted rail rates fell more than 50 percent, saving shippers billions of dollars.” (See table on page 1.)

“While rates have increased in recent years, many shippers did not have their rail rates increase for 25 years,” says

Apitz. Despite this, some shippers feel recent rate increases were unfair and they had no recourse as prices rose. That’s because until last year the railroad’s regulatory agency, the STB charged more than \$100,000 to any shipper wanting to file a rate case. That was cost prohibitive for small shippers. In the fall of 2007, the STB created new procedures designed to ensure that small and medium-sized freight rail rate disputes can be resolved in a simplified, expedited and affordable manner. It reduces the filing rate to \$150 for a small rate case and expedites review of cases. Prior to these changes more than 70 percent of rail traffic was effectively blocked from Board review due to high costs.

CHS Inc. and its customers are big users of the rail system. While CHS does not support re-regulation, it does support having a neutral body that works in a timely and cost-efficient manner to resolve conflicts between shippers and rail providers. “CHS supports three things: efficient transportation, available transportation and cost effective transportation,” says **Jim Bareksten**, director of government affairs. “We don’t support any decisions that would upset the



marketplace or economics because we are concerned about the long term investment in rail infrastructure.”

Mark Wegner, president of **Twin Cities & Western Railroad** says, “There needs to be more talking to each other rather than at each others in regards to shippers and large railroads. If you re-regulate and prohibit the industry from raising rates there is no way for them to regulate demand on the existing structure and they won’t have the money to reinvest in the rail system.”

He continues, “As a short line railroad we’ve been at the receiving end of recent large rate increases as well. That’s forced us to be more creative to get our low value commodity customers the best rates while satisfying the large railroads’ need for better returns. For example we ship corn 12 miles from Farmers Cooperative elevator in Montevideo to an ethanol plant in Granite Falls. We run 10 cars at a time and the ethanol plant has them unloaded within six hours. By turning the cars that quickly we can offer a freight rate that competes well with trucks. For our large railroad partners we try to bundle cars of various commodities in St. Paul for shipments to Chicago and the eastern U.S. If we can bundle 10 cars of ethanol, 10 cars of soybeans and 15 cars of corn it improves their efficiency.”

Fagen, Inc. ...continued from page 2

What are your legislative priorities?

Fagen, Inc., supports the tax credits that drive innovation in renewable energy. The U.S. government spends a substantial amount of money subsidizing the petroleum industry to find more creative ways of using scarce fossil fuels. We feel it is more important to direct those funds toward alternative energy sources that give consumers choice. This country is addicted to oil because the consumer does not have fuel choice. Fagen, Inc., feels that with evolving technologies, renewable fuels and renewable power can deliver that alternative. We admire Brazil for having their legislative priorities consistent so that it no longer relies on imported petroleum.

Fagen supports:

- Defending the Renewable Fuels Standard. Congress had the foresight to put in place the renewable fuels standard and send the message that America needs renewable innovation, investment, and ultimately fuel. Detractors have gotten wrapped-up in

the mistruths and antiquated data that mainstream media prints. The facts are on our side and it is our job to make them known.

- A long term extension of the federal wind production tax credit. The annual amount of installed wind power in the United States graphically depicts the certainty level of the tax credit over the next few years. When extension of the credit is an unknown, development comes to a halt and we lose momentum in the wind industry.
- Obtaining approval of the Environmental Protection Agency for mid-level blends of ethanol. The state of Minnesota will be requesting a waiver from EPA for use of a 20 percent ethanol blend in the state’s motor fuel supply. Separate studies conducted by the University of Minnesota and The University of North Dakota Energy & Environmental Research Center (EERC) in conjunction with the Minnesota Center for Automotive Research (MnCAR) showcase the positive benefits of mid-level blends of ethanol.

New Regulations for Feedlots

The Minnesota Pollution Control Agency (MPCA) has proposed changes to the feedlot permitting process. Producers will no longer be able to spread manure after Dec. 1, and they will have to keep more detailed records of transferred manure. Also, when a feedlot changes ownership the MPCA now will have to approve the permit transfer. A significant change moves the issuance date of permits up to Feb. 1, 2011, to better align with spring construction. For more details visit www.state.mn.us/hot/feedlots/html.



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UPCOMING EVENTS

September

19.... Board Meeting

October

30 ... Annual Meeting

Save the Date Annual Meeting

Thursday, October 30, 2008
St. Paul RiverCentre

Watch for more details and a registration form to be included in next month's newsletter.

House Ag Committees Tour Northwest Minnesota Agriculture

Members of the House Agriculture Policy and Finance committees took part in a three-day ag tour of northwestern Minnesota in August. The group visited the **American Crystal Sugar Company** plant, research projects conducted by the Agricultural Utilization Research Institute and the Northwest Research and Outreach Center at the University of Minnesota-Crookston, the Dahlgren & Company sunflower plant, turf seed and biomass research plots, a wild rice processing plant, a community supported agriculture farm and the **RDO** potato

processing plant.

"We really got a sense of how diverse the cropping systems are in northwestern Minnesota. In Roseau there are a dozen different crops they routinely plant to minimize risk," says Rep. **Al Juhnke**, chair of the finance committee. "We got to see the TB fencing project we've funded to keep infected deer away from cattle. We also saw research on alternative grasses for biofuels. It's great for legislators and their staff to reach out and touch the projects you've funded. Plus it's a chance to hear what our constituents are concerned about."

They heard concerns about trucking regulations, new fees for feedlot permits and support for sustainable food operations.

"The tour was very informative and will help us legislate better," says Rep. **Mary Ellen Otremba**, chair of the policy committee. "It's one thing to read about something and talk with lobbyists about something. It's a whole different thing to be there and see it. Additionally, it's good



Dana Wilson, Mary Larson, Quinn Cheny (MDA) and Rep. Tim Faust listen to **Sen. Skoe** discuss the wild rice industry at his farm in Clearbrook.

for members and staff to get to know each other better."

Rep. **Al Doty**, Royalton enjoyed learning about AURI's research on a canola press for farmers to produce their own fuel on farm. "The press fits in a pick-up truck and 66 acres of canola could provide fuel for a 1,000-acre farm," he notes. "It's great to talk to people who are on the ground making things work. They have real insight because they have a real stake in it."



Attendees pick vegetables at The Secret Garden community-shared agriculture farm in Park Rapids.