

**Prepared Written Statement by
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United States Department of Agriculture
Before the Surface Transportation Board
EP 770: Urgent Issues in Freight Rail Service
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Chairman Oberman, Vice Chairman Shultz, and Members Fuchs, Primus, and Hedlund—the Department of Agriculture appreciates your holding this hearing. We are grateful for the opportunity to provide a perspective on the challenges the agricultural sector faces with respect to rail transportation. I'm Dr. Jewel Bronaugh, Deputy Secretary of Agriculture.

At USDA, we are working every day to build more, better and fairer markets that enhance competition and support resiliency and create economic opportunity across America's agriculture and food supply chains and in our rural communities.

As I've traveled the country, I've met Agricultural producers—farmers, ranchers, and growers—from every corner of our nation. These people produce the food, feed, fiber, and flora for not only their own communities, but in many cases, for communities on the other side of the country or even the other side of the world.

Unlike other industries, these producers grow and raise their products where the land and climate make sense to do so. They are unable to move their operations closer to end markets, many of which are far away. For many, rail transportation is the only shipping method available for agriculture's long-distance, high-volume shipments. Because agricultural shippers operate on thin margins in hyper-competitive global markets, efficient and reliable rail service is essential.

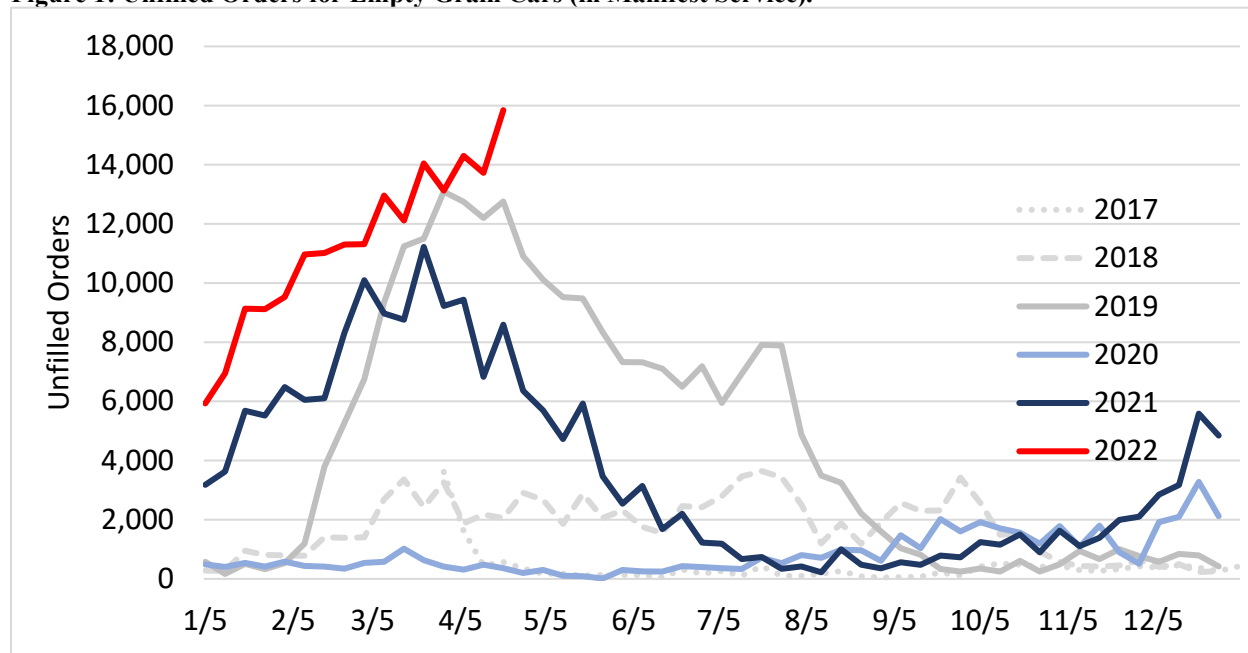
When railroads charge unreasonable rates and provide poor service, farmers struggle to make ends meet; consumers pay higher prices at the grocery store; and the United States becomes less competitive on the global market.

Rail Service Has Not Been Adequate

In recent months, rail-service complaints—similar to those USDA has heard for years—have grown in number and urgency. USDA's Agricultural Marketing Service has been at the table providing technical expertise and comments on major rail issues, including service, faced by agricultural stakeholders for many, many years. As Deputy Secretary, I am here today to emphasize just how serious these issues have become for our farmers and ranchers.

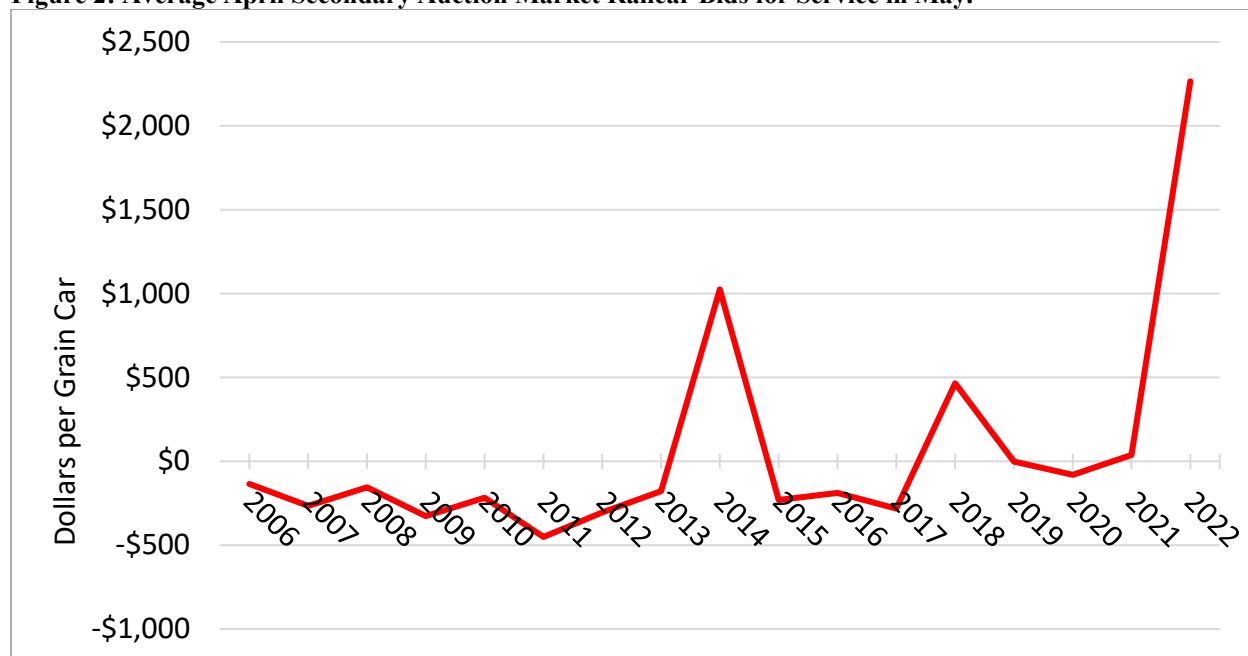
The Board's own metrics show severely degraded service. For example, unfilled grain car orders in 2022 have been significantly higher recently than in prior years, the highest on record—even years with bad weather. Figure 1 provides a depiction, which highlights the extent to which poor rail service has delayed the movement of grain. Unable to get needed cars, grain shippers have turned to the railroads' car auction markets to bid for guaranteed service. USDA data of recent months show shippers have paid thousands of dollars extra per car just to get service (fig. 2). These premiums can easily represent a 50-to-100 percent increase in the cost of shipping grain by rail.

Figure 1: Unfilled Orders for Empty Grain Cars (in Manifest Service).



Source: USDA analysis of Surface Transportation Board (EP 724) data.

Figure 2: Average April Secondary Auction Market Railcar Bids for Service in May.



Source: USDA analysis of Agricultural Marketing Service data from the *Grain Transportation Report*.

USDA has also heard directly from shippers that loaded cars are not being picked up for 10 or more days. Shippers in the Midwest have grain they are unable to ship. This has significant downstream and upstream impacts. Elevators are full and therefore cannot purchase more grain from farmers, and livestock operations are unable to receive the grain they need for feed. In recent weeks, we have heard from some producers that they are close to being unable to feed their livestock and poultry and were even

preparing to depopulate their animals, something a farmer should never have to do. At the same time, ethanol and biodiesel facilities report numerous slowdowns and even shutdowns due to delays in their outbound train service—delays which permeate through the entire supply chain from farmers selling grain to customers buying fuel.

Union Pacific recently announced a cut back in the number of cars it has online, and we have heard reports that the railroad has asked fertilizer shippers to reduce their volumes by 20 percent. USDA understands that, with limited capacity, some traffic must be prioritized, and that reductions in the number of cars online may help the system move. However, fertilizer and agricultural commodities are not the commodities to de-prioritize, especially as we enter the growing season. It is one thing to delay the movement of luxury goods; this results in an inconvenience. But it is another to delay essential commodities, where timing is crucial. Our Nation's farm products go on to feed the world and they should be far from the first commodity the railroads cut back. USDA believes this scenario aptly captures the incentive problem railroads are facing, where they prioritize their profits and push costs onto shippers, the rest of the country, and the world.

Not only are rail service disruptions impacting the American public and our agricultural stakeholders, they are also directly impacting USDA's ability to hire and retain grain inspectors and carry out our responsibilities under the U.S. Grain Standards Act. Because the grain industry cannot track their trains in real time, companies are forced to "guess" when to request grain inspection personnel to arrive onsite, resulting in changing start times and staff being placed "on call" for hours. It is difficult to retain employees under such erratic conditions.

Shippers' current complaints are not new. They simply amplify and give urgency to concerns that seemed to start with the industry's implementation of Precision Scheduled Railroading, or PSR. Since then, USDA has heard repeated claims from shippers that railroad service has worsened. The railroads say PSR is intended to improve service—they call it "doing more with less." However, when shippers' rail-service issues become progressively worse over time, it is hard to escape the conclusion that PSR is "doing less with less."

USDA is concerned that railroads have overemphasized short-term wins for their investors at the expense of long-term improvements in railroading. Lately, railroads have cited bad weather or the national labor shortage as the cause of their current issues. Undeniably, these factors have an effect, but they do not erase the railroads' responsibility. Indeed, as railroads sharply cut their assets and labor over the past few years, they moved away from resiliency, leaving them and their customers vulnerable to disruptions. USDA and shipper associations long warned it was only a matter of time before an unexpected increase in demand put railroads beyond their precision capacity.

USDA believes the Board has a responsibility to course-correct the railroad industry away from focusing on operating ratios and maximizing profits for investors. Railroads should, instead, be directed to focus on fulfilling their common carrier obligation. Railroads must provide quality, timely, low-cost service.

STB Can Help

USDA encourages the Board to consider both immediate solutions to the current crisis and more long-term correctives to inadequate incentives for railroads to provide better service.

Immediate Solutions

In terms of immediate steps to address rail service:

- I want to express my sincere appreciation for the Board's recent Notice of Proposed Rulemaking in EP 762 to update its emergency service rules, which will enable shippers to more quickly and directly get relief when they are not receiving adequate and timely service.

- USDA also appreciates the Board’s request that railroads provide detailed plans to improve service and share their expected timeline for recovery, and we encourage the Board to collect weekly reports from the railroads to ensure they follow through with those plans.
- Additionally, STB should use all authority it has in the short-term to incentivize the railroads to provide better service. We cannot continue a system where the railroads face no consequences for providing unpredictable service, and shippers—and ultimately farmers, ranchers, and the American public—pay for it when things go wrong.

The railroads will argue that they already face a profit motive that sufficiently incentivizes them to provide good service. Yet, the ongoing service issues demonstrate that the mere potential loss of traffic is not enough of an incentive for them to provide good service.

Given the history of the railroads’ actions until now, it is unclear why they would voluntarily change their behavior without a significant impact to their pocketbooks.

Proactive Solutions

This is the crux of the issue. The railroads currently face no consequences for providing delayed and unpredictable service. Instead, shippers bear that cost. And so, the incentives are all wrong. Railroads—the ones who are making decisions on how much labor to hire and keep—are not incurring the full costs of their decisions. They reap the profits when things go well, but it is rail shippers—and ultimately farmers, ranchers, and the American public—who pay for it when things go wrong.

Through proactive regulation, USDA believes the Board can generate positive change in the rail industry to avoid extreme service problems in the first place. We have three suggestions that would benefit service over a longer term.

First, USDA encourages the Board to define what the railroads’ common carrier obligation entails. In general, shippers across the country are suffering from severely underperforming railroads, and at some point, railroads need to experience consequences for not meeting their common carrier obligation.

Moreover, captive shippers—those without alternatives—must simply bear unpredictable and slow rail service, continuing to ship their grain with a poorly performing railroad. It is not clear what consequences exist for railroads providing poor service to these captive shippers. Regardless, whatever consequences do exist seem insufficient to incentivize meeting the common carrier obligation.

In the ongoing Sanimax proceeding, Union Pacific told the Board it cannot be expected to cater to shippers’ every wish. Asking for (and being willing to pay for) 5-day per week service seems eminently reasonable, but without transparent guidelines from the Board on the common carrier obligation, the task of judging whether service is adequate passes exclusively to the railroads, which is unacceptable. The railroads may often make decisions based on the principles of fairness and equity toward shippers or the greater good enshrined by the common carrier obligation. However, they must also seek to satisfy the profit motives driven by investors and shareholders. Thus, railroads are burdened by this potential conflict of interest. Only the Board, by setting transparent guidelines, can deliver greater certainty and clarity about how rail-served markets should function to serve the National interest, and not just Wall Street.

Second, to directly incentivize the railroads to provide better service, the Board needs to provide quick, effective, and low-cost methods for shippers to obtain relief from poor rail service. To that end:

1. USDA urges the Board to finalize a reciprocal switching rule that would give shippers relief from a poorly performing railroad, enhance competition in the rail industry, and give shippers additional marketing options, all while compelling railroads to provide better service in the first place.

2. USDA also urges the Board to finalize its Final Offer Rate Review proposal, which would establish a low-cost and flexible process shippers could use to dispute their rates. While rate review may seem separate from service, USDA believes they are directly related. When railroads cut costs by cutting service but keep rates the same, shippers should have a stronger case that their rates are unreasonable. Final Offer Rate Review would offer the flexibility needed for shippers to make the case that their poor service justifies lower rates. The ability to challenge rates based on service quality would be a powerful incentive for railroads to provide better service.
3. USDA appreciates the Board initiating a comment period in EP 768 to examine regulations pertaining to private railcar use by railroads. While it is too early in that proceeding to provide more concrete comments, USDA strongly supports enhancing the incentives for compelling railroads to provide better service and to make the fees around car use more reciprocal. According to reports to USDA, a railroad will take 10+ days to pick up a shipper's cars, while facing no penalties, but then heavily fine a shipper that even slightly exceeds its 24-hour allotted loading time. Such fines, if imposed, should be applied equitably to both parties to incentivize market efficiency.

The *third* way STB can improve rail service is with data.

Although the existing metrics have illuminated some of the current service issues, USDA has long heard from shippers about first-mile/last-mile service problems—even when the available service metrics looked normal. The Board should begin collecting first-mile/last-mile service data as soon as possible to measure service for the full railroad shipment—not just the linehaul. Without first-mile/last-mile data, the Board does not capture the full extent of the ongoing service issues and will be unable to accurately monitor whether a full recovery has taken place.

In general, the Board should consider significantly increasing the scale and scope of its current service data collection. At the reciprocal switching hearing, multiple railroad panels said the onus is on shippers to show their service is significantly worse than what other shippers receive. However, as was keenly noted by Chairman Oberman at the time, shippers do not have access to that kind of comparative data. The Board should take the railroads' suggestion to provide shippers the kind of real-time, shipper-level performance data that is needed to fully assess railroad conduct.

Each of these suggestions are solutions that USDA has long promoted in proceedings before the Board, some of which have been open for years. Now is the time to move from deliberation into action to make a real difference for agricultural shippers, and ultimately for farmers, ranchers, and consumers.

Closing

USDA appreciates the Board holding this hearing to get rail service back on track.

Thank you for this opportunity to provide a perspective on the challenges agricultural rail shippers face, as well as some possible solutions.

More generally, USDA sincerely commends the Board and its staff for their diligence and tenacity in tackling a number of issues of vital importance to shippers, railroads, and American consumers. From considering first-mile/last-mile service issues, rate review procedures and reciprocal switching to navigating the first potential Class I rail merger in over 20 years—the prodigious volume of activity undertaken by the STB in recent months is very much welcomed by USDA and the agricultural community. USDA stands by to assist the Board's efforts in any way possible. Thank you for all you do.