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Rail Service Crisis Heats Up

The freight railroad service crisis has gotten so bad that it has attracted the attention of powerful congressional and Biden administration officials. At a recent hearing in Congress, it was revealed that it is fueling inflation, threatens to starve livestock and is preventing delivery of paper for ballots to be cast in elections around the country.

At a House committee hearing in late May, members of the Surface Transportation Board were pressed to act swiftly in making the railroads to correct issues that have left a nation struggling with widespread supply chain failure and that it is a factor in burgeoning inflation.

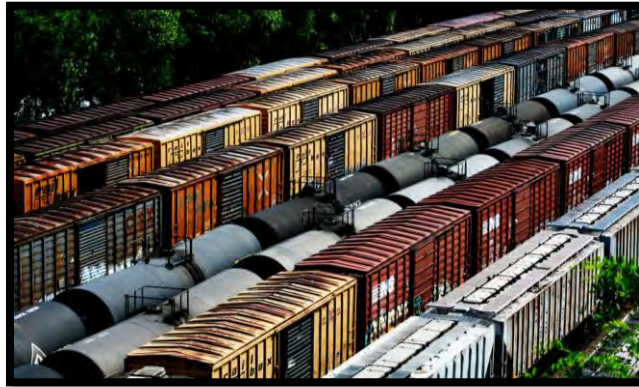
“We’re at a point of crisis and we have to deal with that crisis meaningfully. This is contributing to inflation,” said Rep. Peter DeFazio (D-OR), said at the hearing held in late May by the House Subcommittee on Railroads, Pipelines, and Hazardous Materials.

In addition to serving on the subcommittee, DeFazio chairs its parent body, the powerful Committee on Transportation and Infrastructure.

He told STB Chairman Martin Oberman and the other four board members present that when it comes to the rail crisis, there is no time to waste, “You are the people who can stop it. We have to act more quickly, and you have to act more decisively because we have to protect the freight rial system in this country. Your testimony suggests that you have

all the powers you need. If that is the case, then use them. We need to re-instill competition.”

DeFazio also said he communicated with top officials at the White House the day before. He observed that the Biden administration is “well aware it and are extraordinarily concerned” about the rail crisis and is looking at steps they can take by executive order “to deal with this mess that has been created by the leeches on Wall Street. Stock buyback dividends can’t be he measure of success of freight rail in this country.”.



Rep. Rodney Davis (R-IL), a leader in bipartisan House efforts to assure fair and efficient elections, revealed at the hearing that the special kind of paper needed for machines to count the ballots is in short supply because of the rail crisis.

More voters are relying on paper ballots as distrust in computerized voting machines has grown – 92% of voting jurisdictions will use paper ballots this year, up from 72% in the 2018 mid-term elections.

The paper shortage also extends to paper needed for voter registration forms, envelopes, voter guides and those ubiquitous "I Voted" stickers.

The STB exempts paper and forest products from regulation. Although the board has opened a proceeding to lift that and other commodity

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exemptions, it is still pending. However, Oberman said the board is prepared to deal with the issue quickly when approached directly by shippers.

“We have the ability to lift exemptions for the purposes of a specific case, and we have done that in a pending matter involving a different commodity,” he said, noting he had heard from the forest products and paper industries about lack of rail service in general.

“If there are concern, those shippers can come to us right now for relief and for the purpose of lifting the exemption. We will listen and they won’t have to wait for the overall rule if they have a valid complaint of lack off service.”

This spurred STB member Karen J. Hedlund to interject: “We are worrying about world famine, now you are telling us that we should be worried about saving our democracy.”

Among the essential supply shortages traced to the railroad service crisis are chemicals needed to produce fuel for vehicles and clean water, fertilizer, grain that filled grain silos and is being piled on the ground, and shipments needed to keep assembly lines from shutting down, something that already has happened. **Some critics say the crisis is reaching the point where it could endanger national security.**

Subcommittee member Rep. Hank Johnson (D-GA), said you can add potential inhumane treatment of animals to the rail crisis. He revealed that the U.S. Department of Agriculture sent him a letter claiming that herds of dairy livestock and other animals are in real danger of starving because of the lengthy delays in animal feed shipments and skyrocketing feed prices created by the crisis.

In April, the STB held two days of hearings where shippers outlined in great detail how bad the rail service crisis has gotten, and they predicted it will get much worse unless the government steps in.

At the House hearing in May, Oberman announced that the board’s proceeding to allow reciprocal switching should be issued by the end of the year.

He also said the STB has ordered detailed reporting of data by the railroads and about how they are addressing the crisis and will issue service orders where needed most to address the crisis. In fact, the board created a new office to deal with rail service complaints that come in, Oberman noted.

Rail services problems have been traced to the Precision Scheduled Railroading (PSR) operations model adopted by North American Class 1 railroads over the past five years under pressure from hedge fund managers who saw it as a way to grow shareholder value through extreme cost cutting.

DeFazio did not mince words when referring to E. Hunter Harrison, the late head of CSX credited with the invention of the PSR model later copied by the other Class 1 railroads over the past five years.

“The evil ghost of Hunter Harrison lives on,” DeFazio declared. “The legacy of this man is disgusting. He has addicted the CEOs of the railroads to watching the tickers on Wall Street and using their resources to benefit their shareholders and not run railroads like railroads.”

A major issue driving the deteriorating rail service is that the widespread cost cutting also included a deep slashing of employee payrolls. More than 45,000 operating, maintenance and other personnel lost their jobs. Those who remained began leaving in droves because of excessive pressure they are under due to the lack of adequate backup staff.

Railroad management has tried to blame the service crisis on not being able to recruit and train enough employees to replace the additional 20% of their workforce who were laid off between March and June 2020 due to the Covid 19 pandemic. Oberman pointed out that rail management failed to build back employee ranks after rail traffic returned to 97% its pre-Covid level by the end of 2020.

He explained, “When it comes to rail employment, it has become clear to me that they don’t have a cushion You wouldn’t send a football team out on the field without a backup quarterback What the railroads have done is just that. They had no backup so when there was Covid, when there was any disruption on the job, the trains stopped running.”

Around the same time as the House hearing, Oberman received a letter from a group of 21 Democrat and Republican senators pressing the STB to take action to protect rail shippers.

"We are very concerned over the significant rail service disruptions occurring throughout the U.S. freight rail network," the May 23 letter said. "We urge the STB to examine all constructive options towards ensuring reliable, consistent rail service is available to shippers across the U.S. rail network."

Courts Reject CA Board Laws

Two California laws mandating female and minority representation on boards of directors for public companies have been struck down by two separate state courts.

In 2018, California enacted a female representation mandate for corporate boards. Two years later, the legislature expanded that to require a specified number of board seats be allocated to members of statutorily specified underrepresented communities.

But later, a Los Angeles Superior Court judge declared the law regarding underrepresented communities unconstitutional and also enjoined the state from seeking to enforce it.

The court said the state couldn't demonstrate the law's racial and other classifications were narrowly tailored enough to address specific harms which the state had a compelling interest in addressing.

The law requiring specified numbers of females be on corporate boards was then overturned by a different Superior Court judge in a separate case.

The judge found that the state failed to show the law was narrowly tailored to address compelling state interests, noting that there is no compelling governmental interest in remedying generalized non-specific societal discrimination.

Both laws are now void and California-based public corporations are not obligated to comply with them. For Nasdaq issuers, however, beginning Aug. 8, an initial board matrix must be filed reflecting board diversity statistics using a Nasdaq template, notes attorney Jennifer B. Rubin of the Mintz law firm.

In addition to the Nasdaq initiative, other states such as Washington, Illinois and New York have passed legislation addressing corporate board representation, she points out.

Statutory initiatives may move the needle toward inclusiveness but should not be the primary drivers of boardroom diversification. Rubin believes. "The California experience demonstrates how legal challenges can derail important initiatives."

ADA Covering Opioid Users

The Department of Justice issued a guidance for employers on how to deal with opioid use disorder (OUD) under the Americans with Disabilities Act. But the guidance raises almost as many questions as it answers, says Fiona W. Ong, an attorney with the law firm of Shawe Rosenthal.

DOJ says drug addiction is considered a disability under the ADA only as long as the individual is not currently using illegal drugs. The ADA regulations exclude the "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."



Ong notes, "The DOJ, as well as the Equal Employment Opportunity Commission, are taking a more aggressive approach to the definition. Thus, the DOJ states that, although those engaged in the current illegal use of drugs are not protected by the ADA, those in treatment or recovery from OUD are (subject to ADA protections)."

Employers may conduct drug testing for opioids. However, an employee who tests positive because they are taking legally prescribed opioids may not be fired or denied employment unless they cannot do the job safely and effectively or they are disqualified under another federal law, such as Department of Transportation regulations.

Employees taking legally prescribed opioids may be entitled to a reasonable accommodation if the condition causing the pain requires treatment with opioids, Ong points out.

"Such accommodation could include allowing the use of opioid medications, although as noted above, such use cannot prevent the safe and effective performance of the job or violate some other law. But even in that case, employers may need to consider transferring the employee to an open position that would permit such use, if no other reasonable accommodation is available."

FMCSA Extends HOS Deadline

The Federal Motor Carrier Safety Administration extended relief from federal hours-of-service regulations for truckers hauling essential Covid 19 supplies to the end of this year.



FMCSA cited continuing public health concerns about the Covid pandemic and continuing supply chain issues. The most recent deadline for the exemption had been the end of May.

FMCSA said it is continuing the exemption, “because the presidentially declared emergency remains in place, persistent issues arising out of Covid 19 continue to affect the U.S. including impacts on supply chains, and nationwide reporting continues to demonstrate substantial ongoing use of the regulatory relief.”

The extended declaration also was modified to include transportation of:

- Livestock and livestock feed.
- Medical supplies and equipment related to Covid testing, diagnosis and treatment.
- Vaccines, constituent products and medical supplies and equipment, including ancillary supplies/kits for administering vaccines.
- Supplies and equipment needed for community safety, sanitation and prevention, such as masks, gloves, hand sanitizer, soap and disinfectants;
- Food, paper products and groceries for emergency restocking of DCs or stores.
- Gasoline, diesel, diesel exhaust fluid (used to make diesel fuel) and jet fuel.

FMCSA amended the emergency declaration to address fuel needs arising from the emergency and to broaden the categories of fuel shipments covered. Many of the shipments have suffered from poor railroad service. “Currently the production and transport of these fuels is significantly impacted by the effects of the Covid 19 national emergency so no demonstration is required,” the agency said.

NRF Forecasts Better Economy

“Though many people fear an extreme cooling off of the economy, there is not an overwhelming amount of evidence to support such predictions,” National Retail Federation Chief Economist Jack Kleinhenz declared on June 1. “In general, the data suggests that we remain in an ongoing expansion.”

His observations follow an earlier report he and NRF issued also predicting that a strengthening of the economy will take place later this year.

The Federal Reserve faces “a tricky job” in addressing inflation but continuing growth in employment, wages and consumer spending make it unlikely the effort will backfire into a major setback for the economy, Kleinhenz asserted.

“With changes underway that focus on taming inflation without splintering the economy, the nation’s economic system is in the process of being rebalanced in ways that are testing its resilience,” he further explained.

The Fed increased interest rates by half a percentage point in May, following a quarter-point increase in March, and it is paring its holdings of Treasury bills, bonds, notes and other government securities, all to tighten monetary policy and slow inflation.

The labor market is a key driver of consumer spending, and 428,000 jobs were added in April, topping the 400,000 for the 12th month in a row.

April retail sales reported by NRF – excluding automobile dealers, gasoline stations and restaurants – were up 0.9% seasonally adjusted from March and 6.4% year over year. On a three month moving average, sales were up 7.1% year over year.

Consumer spending is shifting from the pandemic-era focus on goods toward services as people re-engage in activities they had cut back on.

Data shows out-of-the-house “mobility” in retail and recreation was only 11% below its pre-pandemic trend as of mid-April and other measures such as the number of diners at restaurants, air traffic and hotel occupancy are close to 2019 rates.

Skills/Labor Crunch Hurts 3PLs

While most companies (93%) are actively engaged in logistics digital transformation, the people/skills deficit is the No. 1 obstacle (53%) standing in the way of their efforts, say expert researchers.

This is according to the third annual study that was jointly conducted by ToolsGroup, a producer of supply chain planning software, and the Council of Supply Chain Management Professionals

With respondents' top growth investment for 2022 being "increasing recruitment and training efforts," this year's study is said to reveal the profound effect that current labor shortages are having on digital supply chain transformation and other targeted changes, CSCMP reported.

While most of the companies surveyed started 2022 with a positive business outlook, they remain extremely concerned about external factors that have impacted supply chain planning strategies in the last two years.

Supply chain delays (25%), surging inflation (24%) and escalating fulfillment costs (19%) are said to top the list of suppliers' external concerns.

In comparison, respondents said they were less concerned about internal issues such as shorter product life cycles, risk of obsolescence, or more production options.

External factors also influence the 2022 objectives for digital transformation in supply chain planning, the research found. As a response to labor shortages and the "great resignation," where many employees were lost during Covid epidemic, 51% of companies say they will increase automation in 2022 to focus staff on higher value activities.

Polled at 47% each, the prospects of developing better and faster reactions to unplanned disruptions and increasing supply chain resilience are the other top objectives for 2022.

Last year's top survey objective -- to keep up with is a three-dimensional evolving customer behavior

and expectations -- has plummeted to number five in 2022, and are said to be demonstrating just how profoundly external factors are disrupting all kinds of supply chain activities.



But while external factors are pushing the digital transformation initiatives, it is the people factors that are perceived as being the most critical success factors, according to the researchers.

Half of the survey respondents (50%) said a continued focus on people, process, technology and security implications is vital to delivering successful digital transformation results, which are followed by change management and effective communication (45%) and the need to develop leadership-driven goals (43%).

"The past two years have put a spotlight on the need for digitizing supply chain planning, and fortunately, more companies than ever are responding by stepping up efforts to transform their operations," said Caroline Proctor, chief marketing officer of ToolsGroup.

"The percentage of companies that are not pursuing a digital transformation strategy at all is, at 7%, the lowest we have measured so far. Our findings reveal increasing investments in software, automation and people," she added.

Mark Baxa, president of CSCMP, further explained., "The survey results show that companies are charting a steady course toward digital transformation."

"As supply chain challenges become more frequent and intense, company leaders are increasingly focused on implementing solutions that can help them better manage risk, bypass skills shortage and become more resilient."

CSCMP is the preeminent worldwide professional association dedicated to the advancement and dissemination of research and knowledge on supply chain management, including professional development and academic institutional support.