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**COMMENTS OF THE  
AMERICAN CHEMISTRY COUNCIL  
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. EP 788

Eliminating Regulatory Barriers to Competition: Review of Part 1144  
Notice of Proposed Rulemaking

The American Chemistry Council (ACC) is pleased to provide comments on the Surface Transportation Board's (STB) Proposed Rule to repeal its regulations on "Intramodal Rail Competition." ACC strongly supports the full repeal of 49 CFR 1144, which narrows the Board's statutory authority to provide access to competitive rail service through reciprocal switching, through routes, and through rates. These regulations stand as an unwarranted barrier to competition, harming ACC member companies, other freight rail customers, and the American economy. Consistent with STB's statutory authority and President Trump's Executive Order 14267,<sup>1</sup> these regulations should be eliminated.

ACC represents more than 190 of America's leading chemical and plastics manufacturing companies. Our members produce a wide variety of chemicals, polymers, and related products that make our lives and our world healthier, safer, more productive, and more sustainable. The business of chemistry supports over 25% of the U.S. Gross Domestic Product and directly touches nearly all manufactured goods.

As a \$673 billion enterprise, our industry is a key element in the nation's economy and a large user of the U.S. freight transportation system across all modes. In 2024, railroads transported more than 2.2 million carloads of chemical and plastics products. Reliable and cost-effective rail service is vital to our U.S. manufacturing operations and the thousands of downstream customers that we supply.

**The Proposed Rule Aligns Intramodal Rail Competition Policy with STB's Governing Statute**

The Staggers Rail Act of 1980, as amended, directs the STB "to ensure effective competition among rail carriers." To help achieve this goal, Congress expressly empowers the Board to grant reciprocal switching when "practical and in the public interest" or "necessary to provide competitive rail

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<sup>1</sup> Executive Order 14267—Reducing Anti-Competitive Regulatory Barriers. April 9, 2025.

service.”<sup>2</sup> Similarly, the Board may prescribe a through route when “it considers [the through route] desirable in the public interest.”<sup>3</sup>

The Agency (then the ICC) previously adopted standards for the cancellation of through routes and joint rates, as well as the prescription of through routes, through rates, and reciprocal switching.<sup>4</sup> The Part 1144 standards, supported by both shipper and railroad stakeholders at the time, set a higher bar requiring a shipper to demonstrate that the incumbent carrier has engaged in “anticompetitive conduct” before the shipper can obtain reciprocal switching, through routes or through rates. In the *Midtec*<sup>5</sup> decision, the D.C. Circuit expressly confirmed that adoption of this anticompetitive conduct standard, while a permissible narrowing of Agency authority, was not compelled by statute.

STB’s current Proposed Rule is an equally permissible approach. While Part 1144 reflects a policy decision based on conditions that existed in the 1980’s, the Board retains the ability to appropriately rebalance its policy based on the realities of the modern freight rail system. The Board is free to change an existing regulation or policy so long as it “provides a reasoned explanation for the change.”<sup>6</sup>

By repealing Part 1144, the Proposed Rule would allow the Board to consider the prescription of reciprocal switching, through routes, and through rates on a case-by-case basis. STB would rely directly on its statutory authority to make fact-based findings considering all relevant factors. At its core, the Proposed Rule simply re-aligns Board policy on intramodal rail competition with the full authority granted by Congress.

### **Part 1144 Regulations Impose an Unreasonable Barrier to Competition**

Reciprocal switching is a particularly important tool to promote competition in the freight rail industry. It allows a shipper served by a single major railroad to have its freight switched to a second railroad within the same terminal area. Broadly implemented, reciprocal switching could provide market incentives for railroads to compete on rates and service quality. This, in turn, could drive more business to the railroads, with benefits to American manufacturing, energy production and consumer prices.

However, experience has demonstrated that the Board’s anticompetitive conduct standard in Part 1144 imposes an unreasonably high and unnecessary barrier to a shipper seeking a reciprocal switching prescription. To prevail, a shipper typically must prove not only that a railroad engaged in conduct that harmed competition, but also that the conduct lacked a legitimate business justification and resulted in demonstrable competitive injury—essentially equivalent to the threshold for an antitrust complaint. This would likely require complex economic modeling and

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<sup>2</sup> 49 USC 11102(c).

<sup>3</sup> 49 USC10715(a).

<sup>4</sup> Standards of Intramodal Rail Competition, EP 445.

<sup>5</sup> *Midtec Paper Corporation v. U.S.*, 857 F.2d 1487, 1500 (D.C. Cir. 1988).

<sup>6</sup> *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

extensive discovery. It is extremely unlikely that the potential benefits of a reciprocal switching prescription would ever justify the cost of pursuing a case, particularly for smaller shippers.

The dearth of reciprocal switching cases bears this out. In the 40 years since the adoption of the Part 1144 regulations, ICC/STB has never granted a rail customer request for reciprocal switching under this framework. In fact, no requests for reciprocal switching have even been filed since 1996, despite growing shipper concerns about the dramatic losses of rail-to-rail competition following decades of consolidation in the freight rail industry.

### **Part 1144 Restrictions on Rail Competition Can No Longer Be Justified**

ACC strongly agrees with the Board's conclusion that dramatic changes in the freight rail industry since the 1980's contribute to Part 1144's "obsolescence." As discussed in the Proposed Rule, the rail industry is significantly healthier than it was 40 years ago. The Board has determined most Class I carriers to be revenue adequate in at least two of the last four years. Furthermore, "Class I carriers' revenue growth has outpaced inflation amid declining ton-miles."

Without question, rail-to-rail competition has been reduced substantially since the passage of the Staggers Act of 1980 and since the ICC adopted the current reciprocal switching rules in 1985. In 1981, there were thirty-one Class I rail carriers. Today, there are only six, with the four largest railroads now controlling more than 90% of rail traffic.

This dramatic consolidation has driven decades of rate increases. Inflation adjusted rail rates increased 44% over the last 20 years. In addition, railroads are collecting more of their revenues from non-competitive pricing. Over the last 20 years, the total revenue that railroads earned from competitive traffic increased 49% while the revenue earned from non-competitive traffic increased 265%.

Under the Staggers Act, as reenacted in the ICC Termination Act of 1995 (ICCTA), Congress established a clear preference for competition over regulation in the freight rail sector. The Staggers Act's first rail policy objective is "to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail."<sup>7</sup> The Act then authorizes STB to require reciprocal switching agreements where the Board finds those agreements to be "practical and in the public interest" or "necessary to provide competitive rail service."<sup>8</sup> The legislative history states

*As the Government moves toward significantly less regulation of the services offered by railroads, the Government should encourage, rather than discourage, competition among railroads. Competition among railroads, or at least the realistic threat of competition, can serve as an important safeguard against inadequate service or unreasonably high prices.<sup>9</sup>*

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<sup>7</sup> 49 USC §10101.

<sup>8</sup> 49 USC 11102(c).

<sup>9</sup> S. Rep. No. 470, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 41.

Unfortunately, the limitations in Part 1144 prevent the Board from utilizing the tools Congress provided to carry out this policy. Rather than promoting competition, the anticompetitive conduct standard effectively shields railroads *from competition* and preserves an unacceptable status quo for captive rail customers. Perversely, this drives demand for prescriptive rate regulation, contrary to both ICCTA and the Administration's drive to reduce unwarranted regulation.

ACC and many other stakeholders have long called for repeal of the anticompetitive conduct standard. The dockets for previous reciprocal switching proceedings<sup>10</sup> provide extensive evidence that the conditions that led to the adoption of Part 1144 no longer exist and that its repeal is not only permissible, but necessary.

### **Case-By-Case Decisions Relying on Statutory Authority Provide a Reasonable Path Forward**

For more than a decade, the STB has considered various proposals to revise its reciprocal switching regulations, including elimination of the anticompetitive conduct standard. The proposals contemplated replacing the existing Part 1144 rules with an alternative regulatory process and standards for eligible rail shippers to obtain reciprocal switching. While ACC previously supported the adoption of new standards, we believe the Board also can provide significant benefits and reduce barriers to competition simply by rescinding Part 1144.

Repealing Part 1144 regulations would create a clean slate for shippers to seek reciprocal switching, through rates, and/or through routes under the Board's statutory authority, without additional regulatory barriers that are not required by the statute and no longer serve the public interest. As highlighted in the Proposed Rule, this would permit the Board to consider current rail operations, carrier revenue needs, concerns regarding specific competitive situations, and other relevant factors. The Board would also have the opportunity to consider legal and policy arguments presented by both shippers and carriers in the context of individual circumstances.

ACC agrees that such case-by-case adjudication is clearly within the Board's statutory authority and consistent with the Administrative Procedures Act.

### **ACC Supports the Full Repeal of Part 1144**

ACC previously filed comments to the Department of Justice's Anticompetitive Regulations Task Force<sup>11</sup> calling for the repeal of Part 1144. While those comments focused specifically on prescriptions for reciprocal switching, ACC supports repeal of Part 1144 in its entirety. As discussed in the Proposed Rule,

*[T]he reasons given above for repealing part 1144, and replacing it with a case-by-case adjudicatory approach under the governing statutory provisions, apply just as much to through route and through rate prescription as they do to the prescription of reciprocal switching agreements.*

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<sup>10</sup> PETITION FOR RULEMAKING TO ADOPT REVISED COMPETITIVE SWITCHING RULES, Docket No. EP 711 (Sub-No. 0); RECIPROCAL SWITCHING, Docket No. EP 711 (Sub-No. 1).

<sup>11</sup> U.S. Department of Justice Anticompetitive Regulations Task Force (Docket No. ATR-2025-0001)

ACC agrees with the Board's conclusion that Part 1144's restrictions on product and geographic competition evidence are no longer necessary, given its previous findings regarding the burdens of such evidence. However, ACC urges STB to state more clearly that it will continue its limits on evidence of product and geographic competition in case-by-case proceedings on reciprocal switching and other competitive access remedies. Opening the door to the presentation of such evidence would require shippers to respond to the railroad's attempts to introduce it, creating significant and well-documented burdens. This could discourage otherwise meritorious claims and prevent the expeditious resolution of Board proceedings.

### **Repealing Part 1144 Does Not Ensure Enhanced Competitive Access**

While ACC strongly supports the Proposed Rule, it is important to note that, by itself, this action does not ensure that shippers will gain greater access to competitive rail service options. Repealing the anticompetitive conduct standard would allow the Board to consider prescriptions for reciprocal switching, through routes, and through rates on a case-by-case basis. However, significant uncertainties remain over how STB will interpret the statutory standard and how broadly it may make such remedies available in the future. Additionally, because competitive access prescriptions following repeal of Part 1144 would provide inherently localized and individualized remedies on a case-by-case basis, they are not a solution for addressing widespread or large-scale competitive problems. Therefore, the Board's action should not be viewed as a comprehensive solution to the loss of competition in the freight rail industry. For these reasons, ACC strongly cautions against any suggestion that the Proposed Rule mitigates potential competitive harms associated with the proposed Union Pacific/Norfolk Southern merger.

### **Conclusion**

The Anticompetitive Conduct standard adopted in Part 1144 stands as an outdated and unwarranted barrier to competition in the freight rail industry. The conditions that led to the adoption of the standard no longer exist; its repeal is not only permissible, but necessary. ACC strongly supports the Proposed Rule to fully repeal Part 1144 and allow the Board to consider requests for reciprocal switching, through routes, and through rates on a case-by-case basis under its statutory authority.

Thank you for your consideration of these comments. For questions or additional information regarding this submission, please contact Jeff Sloan, Senior Director of Regulatory Affairs, at (202) 249-6710 or [jeffrey\\_sloan@americanchemistry.com](mailto:jeffrey_sloan@americanchemistry.com).