BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE No. 788

ELIMINATING REGULATORY BARRIERS TO COMPETITION:
REVIEW OF PART 1144

Proposed Rulemaking

COMMENTS OF
AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS

I. Introduction

American Fuel & Petrochemical Manufacturers ("AFPM") respectfully submits these comments on the Surface Transportation Board's ("STB" or "the Board") Notice of Proposed Rulemaking ("NPRM") titled, "*Eliminating Regulatory Barriers to Competition: Review of Part 1144*".[1] In this NPRM the Board proposes to repeal 49 Code of Federal Regulations ("CFR") Part 1144, which governs "*Intramodal Rail Competition*" including procedures to challenge competition practices and seek remedies related to reciprocal switching, through routes, and rates.

The Board notes 49 CFR Part 1144 unnecessarily narrows the STB's statutory discretion and as such, is no longer appropriate on an industrywide basis. Repeal of Part 1144 would remove existing regulatory constraints on rail shippers and allow the Board to apply statutory standards on a case-by-case basis consistently, not only for reciprocal switching but for through rates and routing. AFPM supports the Board's NPRM proposing to eliminate Part 1144 in its' entirety for the following reasons:

- *Part 1144 is obsolete and an unnecessary barrier to rail competition*. This action will restore competitive access[2] as Congress intended. Under Part 1144's framework, petitioners must prove categories of anticompetitive behavior not found in §§ 10705 or 11102(c).[3] The "anticompetitive conduct" standard in Part 1144 clearly exceeds the statutory mandate of STB.
- *Repealing Part 1144 restores STB's proper statutory authority to a case-by-case standard.* This action will enable STB to use modern, case-specific oversight instead of outdated, rigid rules. With the repeal of Part 1144, the Board will return to case-by-case adjudication where outcomes would depend on facts, service issues, and the public interest.
- *Repealing Part 1144 provides meaningful competitive options to shippers.* This action will enable captive shippers to seek relief from poor service or unfair pricing, without having to undergo complex and costly proceedings with little chance of success. This action will enhance service quality, rate discipline, and supply-chain resilience as railroads will have stronger incentives to provide quality service and rates to customers or risk losing business.
- *Repealing Part 1144 Aligns with Federal Policy Goals to; Reduce Unnecessary Regulatory Burdens and Anti-competitive Regulations and Unleash American Energy*. This action aligns with three recent Executive Orders (EOs) and the Federal Trade Commission (FTC) and the Department of Justice (DOJ) Antitrust Division's joint letter to STB.[4] These actions share a common objective: federal agencies must remove outdated, inefficient, or anti-competitive regulations that distort markets, impose unnecessary burdens, or exceed statutory authority. This is precisely what repeal of 49 CFR Part 1144 does.

---

[1] *See 91 Fed. Reg. 945*, Eliminating Regulatory Barriers to Competition: Review of Part 1144 Notice of Proposed Rulemaking; Docket No. EP 788, published January 9, 2026.

[2] "Competitive access" refers to mechanisms allowing shippers served by only one railroad ("captive shippers") to access a competitor, often through reciprocal switching but also through rates and routing.

[3] *See* 49 U.S. Code § 10705 and 49 U.S.C. § 11102 — Use of terminal facilities; reciprocal switching. As a result of this anticompetitive standard, no competitive access prescriptions have been issued in 40 years.

[4] See Executive Order 14154 Issued February 19, 2025; Executive Order 14267 Issued April 9, 2025; Executive Order 14154 Issued January 20, 2025 and FTC and DOJ Joint Letter to EPA re: Reducing Anti-Competitive Regulatory Barriers Issued May 5, 2025.

II. AFPM's Interest in the Proceeding

AFPM is the leading trade association representing manufacturers of the fuels that keep America moving and the base petrochemicals that are essential building blocks for plastic products that make modern life possible and improve the health, safety, and living conditions of humankind. AFPM members are committed to sustainably manufacturing safe, high-performing fuels and the petrochemicals and derivatives that growing global populations and economies need to thrive.

Refineries and petrochemical manufacturers rely on a healthy rail network as a vital part of their supply chains. In 2022, over 2.3 million carloads of our members' feedstocks and products, including crude oil, natural gas liquids, refined products, plastics, and synthetic resins, are transported by rail.[5] In fact, on average between 2014 and 2024, 206 million barrels of crude oil, the main feedstock our members depend on upon, are moved annually on railroads.[6] Refineries and petrochemical manufacturers rely on efficient, predictable and competitive rail markets to provide consumers the affordable gasoline and petrochemical based products they depend on. With transportation and distribution accounting for ~10-20% of costs (varying by product), poor or costly rail service can delay distribution, compromise refinery and petrochemical manufacturing efficiency and raise costs of those products across the country.[7]

Decades of consolidation within the rail industry have left many shippers dependent on a single Class I carrier for essential transportation services.[8] Having captive customers has enabled railroads to raise rates, impose additional charges, decrease service and impose one-sided terms in transportation contracts. More recently, operational practices adopted by railroads have made service ever more unpredictable, elevated shipping costs, and reduced reliability throughout the supply chain. While industry has changed considerably, the regulations governing these markets have failed to keep pace and reflect those changes. The Board's proposal to repeal 49 Part 1144 will address these significant challenges and burdens on rail shippers and customers and the changing dynamics of the industry resulting from reduced competition.

III. Relevant Background and History

Decades of consolidation within the rail industry have led to increasingly concentrated markets, leaving many shippers dependent on market dominant Class I carriers for essential transportation services. This lack of effective competition has enabled railroads to raise rates and related charges, degrade service quality, and impose one-sided terms in transportation contracts. The U.S. freight rail network continues to experience significant service challenges that impose substantial burdens on shippers and their customers. In recent years, operational practices adopted by rail carriers, specifically Precision Scheduled Railroading ("PSR"),[9] have further increased service unpredictability, elevated shipping costs, and reduced overall supply-chain reliability.

---

[5] *See* Freight Rail Facts and Figures updated September 2025, accessed March 2026.
[6] *See* U.S. Energy Information Administration Movements of Crude Oil & Selected Products by Rail accessed March 2026.
[7] *See* Gas Prices Explained, accessed February 18, 2026.
[8] AFPM member surveys indicate over 75% of member facilities are captive to one Class I railroad.
[9] PSR is an operating model adopted by most Class I railroads that prioritizes asset utilization and cost reduction over service customization. Rather than building trains around customer schedules or individual shipper needs, PSR runs fewer, longer, point-to-point trains on fixed schedules, regardless of demand fluctuations.

Part 1144 is obsolete and imposes an unnecessary barrier to rail competition. Part 1144 requires shippers to prove "anticompetitive conduct", an evidentiary hurdle not required by the statutes governing reciprocal switching and through routes (49 U.S.C. §§ 10705, 11102). These additional hurdles were regulatory policy choices made in 1985 and do not reflect congressional intent. Furthermore, the regulatory framework no longer reflects today's freight rail market. Significant changes in rail industry structure, such as consolidation, fewer Class I carriers, and increasing numbers of single served origins, make Part 1144 inconsistent with modern market realities. Additionally, the stakeholder consensus that once supported Part 1144 has eroded, and the rule no longer meets the needs of shippers or the broader freight rail system.

This section summarizes the legislative, regulatory, and legal history relevant to the procedures used to challenge anticompetitive practices and to seek remedies involving reciprocal switching, through routes, and through rates as discussed in the NPRM.

A. Evolution of Part 1144 and Underlying Statute

The Staggers Rail Act of 1980 fundamentally restructured the U.S. freight rail regulatory system, replacing prescriptive rate and service regulation with a market-based model intended to restore railroad financial health while preserving targeted regulatory tools for shippers lacking competitive transportation options. Competitive access, such as reciprocal switching and the prescription of through routes and through rates, was among those tools intended to provide relief when market forces alone proved insufficient.[10] Under the Staggers Act, Congress preserved federal authority for two principal competitive-access mechanisms: 1) Reciprocal switching (49 U.S.C. § 11102)[11]; and 2) through routes and joint rates (49 U.S.C. § 10705).[12]

For reciprocal switching, Congress authorized the Interstate Commerce Commission ("ICC"), now the STB, to require one railroad to switch a shipper's traffic to another railroad "when practicable and in the public interest" *or* "necessary to provide competitive rail service."[13] This statutory standard remains unchanged, despite changes to the implementing regulations, and is still the core legal basis for all reciprocal switching proposals. Staggers similarly preserved authority for the ICC/STB to prescribe through routes and rates "when desirable in the public interest," enabling interline movements in situations where market conditions otherwise limit competitive options. [14] Both of these authorities functioned as safety valves in an increasingly deregulated environment.

Before 1985, the ICC administered competitive-access requests under the statutory framework later codified at 49 U.S.C. §§ 10705 and 11102(c) without any requirement that petitioners demonstrate "anticompetitive conduct." In the early post-Staggers period, however, both shippers and railroads were concerned that broad statutory language could be interpreted to mandate widespread open routing and aggressive regulatory intervention resembling pre-1980

[10] *See* *S.1946 - Staggers Rail Act of 1980* *Public Law 96-448* Signed October 14, 1980.
[11] *See* 49 U.S.C. § 11102 - Use of terminal facilities; reciprocal switching.
[12] *See* 49 U.S.C. § 10705 - Authority: through routes, joint classifications, rates, & divisions prescribed by the STB.
[13] *See* 49 U.S.C. § 11102 - Use of terminal facilities; reciprocal switching.
[14] *See* 49 U.S.C. § 10705 - Authority: through routes, joint classifications, rates, & divisions prescribed by the STB.

conditions. Seeking clearer and more predictable standards, the National Industrial Transportation League (NITL) and the Association of American Railroads (AAR) jointly petitioned the ICC to initiate a rulemaking.[15]

In response, the ICC adopted 49 CFR Part 1144 in 1985.[16] Part 1144 imposed a heightened anticompetitive-conduct requirement that must be satisfied before the agency may order competitive-access remedies. The rule established procedures for seeking Board-prescribed through routes, through rates, and reciprocal switching; required petitioners to attempt negotiation before filing; and authorized relief only when necessary to prevent conduct deemed inconsistent with national rail transportation policy or otherwise anticompetitive – standards not found in the governing statute.

Historically regarding the "anticompetitive standard" under 49 C.F.R. § 1144.2(a)(1) (the regulation adopted by the ICC in response to the petition), the STB required that mandatory reciprocal switching be ordered only if the switching "is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. § 10101 or is otherwise anticompetitive." Later in *Midtec Paper Corp. v. Chicago & North Western Transportation Co*., the ICC/STB interpreted "anticompetitive conduct" to mean that the railroad has either used its market power to extract unreasonable terms (i.e., exploiting captive shippers), or shown disregard for the shipper's needs by rendering inadequate service due to its monopoly position.[17]

Part 1144 has had profound effects. It requires petitioners to prove categories of anticompetitive conduct not present in §§ 10705 or 11102(c). As a result, no competitive access prescriptions have been issued in the 40 years since the rule's adoption. Rail shippers have consistently testified in STB proceedings that the standard is so onerous that many potentially meritorious cases are never filed. Although the 1985 rule was intended to create a predictable and broadly acceptable framework, several features of Part 1144 have become increasingly problematic and ultimately insurmountable, including:

- The anticompetitive-conduct requirement, which courts later recognized as a discretionary narrowing of the agency's statutory authority rather than a statutory mandate.[18]
- The requirement that petitioners demonstrate that a requested movement constitutes a "significant" portion of their traffic, a concept tied to a statutory provision that no longer exists; and
- The growing recognition among shippers that the rule has become an "insuperable barrier" to relief.

Since the 1980s, the freight rail industry has undergone further consolidation, extensive line rationalization, and changes in traffic portfolios. Today's railroad industry is more financially stable and structurally concentrated than at the time Part 1144 was adopted, undermining many of the original assumptions underlying the rule. Since passage of the Staggers Act, Congress has

[15] *See* Standards of Intramodal Rail Competition, EP 445, slip op. at 1, 11
[16] *See* Intramodal Rail Competition, 1 I.C.C.2d 822 (1985)
[17] *See* Midtec Paper Corp. v. Chicago & North Western Transportation Co. (3 I.C.C.2d 171, 1986)
[18] *See* Midtec Paper Corp. v. United States, 857 F.2d 1487 (D.C. Cir. 1988) and Baltimore Gas & Electric Co. v. United States, 817 F.2d 108 (D.C. Cir. 1987).

enacted only two major pieces of legislation affecting the ICC/STB's institutional framework; 1) the ICC Termination Act of 1995, which abolished the ICC and created the STB as its successor;[19] and the Surface Transportation Board Reauthorization Act of 2015, which made the STB fully independent and expanded the Board from three to five members.[20] Neither statute modified the Part 1144 competitive-access regime, leaving efforts to modernize competitive-access regulations to the STB's regulatory processes, efforts that have been ongoing and largely unsuccessful for the past 15 years.

B. Relevant Regulatory Proceedings

The regulatory history of reciprocal switching is rooted in the 1985 adoption of Part 1144, which established stringent criteria for obtaining competitive-access remedies. As noted, these rules required shippers seeking reciprocal switching to demonstrate anticompetitive conduct, a burden far exceeding the statutory language in 49 U.S.C. §§ 10705 and 11102. No reciprocal switching orders have ever been issued under Part 1144, and both the STB and rail shippers have long recognized the rule's shortcomings.[21] Following continued consolidation in the 1980s and 1990s, shippers grew increasingly frustrated with the impracticality of the 1985 rules. Despite Congressional authorization for reciprocal switching, the STB repeatedly acknowledged that its own regulations rendered such relief effectively unattainable.[22] This further frustrated rail shippers.

In 2011, NITL, one of the original petitioners who helped shape Part 1144, filed a petition under EP 711 urging the Board to modernize competitive-access regulations. After years of record development, the STB issued an NPRM in July 2016 (EP 711, Sub-No. 1) proposing to revise reciprocal switching standards and operationalize the statutory "practicable and in the public interest" and "necessary to provide competitive rail service" tests under 49 U.S.C. § 11102(c).[23,24] This marked the Board's first major attempt since 1985 to address competitive-access barriers. However, the proceeding stalled and was eventually overshadowed by severe service deterioration across Class I railroads, driven in part by the implementation of PSR and pandemic-related supply-chain disruptions. These major service failures beginning in 2021–2022 ultimately shifted the Board's focus.

---

[19] *See* ICC Termination Act of 1995 (Pub. L. No. 104–88, 109 Stat. 803) signed December 29, 1995.
[20] *See* Surface. Transportation Board Reauthorization Act of 2015 (Pub L. No. 114–110) signed December 18, 2015.
[21] By the mid-1990s, ICC and STB reviewed and denied all four reciprocal switching requests they received, which resulted in no further petitions under these rules. *See* Golden Cat Division of Ralston Purina Co. v. St. Louis S.W. Ry., STB Docket No. 41550 (STB served Apr. 25, 1996); Shenango Inc. v. Pittsburgh, Chartiers & Youghiogheny Ry., 5 I.C.C.2d 995 (1989); Vista Chem. Co. v. Atchison, Topeka & Santa Fe Ry., 5 I.C.C.2d 331 (1989); Midtec Paper Corp. v. Chi. & N.W. Transp. Co., 3 I.C.C.2d 171 (1986).
[22] *See* Surface Transportation Board, STB Proposes Repealing 1985 Switching Rule (Jan. 9, 2026) (reporting that the requirements "narrowed its statutory discretion and have proven unworkable" and that the agency "has never issued a competitive access prescription under part 1144"); see also STB Moves to Scrap Reciprocal Switching Rules (Jan. 9, 2026) (noting the Board has never issued a service order under the rules and that the existing framework imposes "high thresholds" that are "impractical in real-world disputes."
[23] *See 81 Fed. Reg. 51149*, Petition for Rulemaking To Adopt Revised Competitive Switching Rules; Reciprocal Switching, Notice of Proposed Rulemaking, Docket No. EP 711 (Sub-No. 1), published August 3, 2016.
[24] *See* 49 U.S.C. § 10705 - Authority: through routes, joint classifications, rates, & divisions prescribed by the STB.

After a public hearing in April 2022 on national rail service failures,[25] the STB closed EP 711 (Sub-No. 1)[26] and reopened the matter under EP 711 (Sub-No. 2).[27] This new approach focused on a service-performance-based framework under which shippers could obtain reciprocal switching if a carrier failed to meet objective service standards over a defined period. The proposal also required carriers to provide new service-related data. The rule was designed to incentivize service improvement and require new railroad data reporting.

On April 30, 2024, the STB finalized these proposals and adopted Part 1145, the first major reciprocal switching rule the agency had ever promulgated. [28] Shortly after adoption, several rail carriers challenged the final rule arguing that it exceeded the STB's statutory authority under the Staggers Rail Act of 1980, which grants the agency authority to prescribe reciprocal switching. They also contended that aspects of the Final Rule exceeded the Board's ancillary powers and were arbitrary, capricious, and unsupported by the record.

On July 8, 2025, the United States Court of Appeals for the Seventh Circuit vacated that rule in *Grand Trunk Corp. v. STB*, holding that the Board exceeded its statutory authority because the final rule did not require a threshold finding of inadequate service before prescribing reciprocal switching.[29] The court emphasized that the Staggers Rail Act requires such a finding to determine that a reciprocal switching agreement is "in the public's interest". Consequently, the court granted the petition, vacated the Final Rule, and remanded the case to the STB for further proceedings. The U.S. Court of Appeals for the Seventh Circuit vacated Part 1145, holding that the Board exceeded statutory authority by failing to explicitly require a finding of inadequate service.[30]

Also in July 2025, AFPM participated in STB listening sessions[31] held as part of the Board's broader policy review in light of three Presidential EOs implementing the President's deregulatory agenda, reducing anti-competitive regulatory barriers, and unleashing American energy, and a joint letter from the FTC/DOJ Joint Letter to STB entitled "Reducing Anti-Competitive Regulatory Barriers."[32] In those sessions, and in light of the Seventh Circuit decision, AFPM recommended that if EP 711 were rescinded without replacement, the STB should pursue repeal of the anticompetitive-conduct standard in 49 CFR § 1144 and revert to the statute's case-by-case standard under 49 U.S.C. § 11102.

---

[25] *See* Hearing notice in Urgent Issues in Freight Rail Service, Docket No. EP 770, published April 22, 2022.
[26] *See 88 Fed. Reg. 63917*, Reciprocal Switching Proposed rule; closure of Docket No. EP 711 (Sub-docket No. 1), published September 18, 2023.
[27] *See 88 Fed. Reg. 63897*, Reciprocal Switching for Inadequate Service Notice of proposed rulemaking, Docket No. EP 711 (Sub-docket No. 2), published September 18, 2023.
[28] *See 89 Fed. Reg. 38646*, Reciprocal Switching for Inadequate Service Final Rule, Docket No. EP 711 (Sub-docket No. 2), published May 7, 2024.
[29] *See* Grand Trunk Corp. v. Surface Transportation Board, No. 24-1811 (7th Cir. July 8, 2025) (Seventh Circuit vacated STB's 2024 reciprocal switching rule, holding STB exceeded its statutory authority because the rule lacked a threshold inadequate-service finding.).
[30] *See* Grand Trunk Corp. v. Surface Transportation Board, No. 24-1811 (7th Cir. July 8, 2025)
[31] *See* Chairman Fuchs Kicks Off Meetings on Improving Competition and Reducing Regulatory Barriers STB Press Release No. 25-26, issued July 21, 2025.
[32] *See* Executive Order 14154 Issued February 19, 2025; Executive Order 14267 Issued April 9, 2025; Executive Order 14154 Issued January 20, 2025 and FTC and DOJ Joint Letter to STB: Reducing Anti-Competitive Regulatory Barriers Issued May 5, 2025.

On January 7, 2026, the Board unanimously proposed repealing Part 1144 in its entirety.[33] This shift reflects the Board's recognition that meaningful competitive-access relief cannot be achieved under the 1985 framework and that a return to the statute's text is necessary to restore the agency's ability to adjudicate requests based on individual facts, legal arguments, and established reliance interests without exceeding or constraining its statutory authority.

C. Relevant Case Law

Following the Supreme Court's decision in *Loper Bright*, courts no longer reflexively defer to reasonable interpretations of ambiguous statutory language.[34] Courts must apply all the traditional tools of statutory interpretation to determine the meaning of the statute, upholding only the best interpretation.[35] As a result, agencies will be upheld when they adopt a new statutory interpretation only if it aligns with the best interpretation of the statute.

Black letter administrative law provides that agencies can depart from a prior position, but the agency must "display awareness" of the position shift, provide a "good reason[]" for its changed position, and consider reliance interests engendered by the previous rule The agency need not necessarily "provide a more detailed justification than what would suffice for a new policy created on a blank slate."[36] Ultimately, there must be "a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy."[37]

In the wake of the Board's enactment of Part 1144, several foundational cases upheld the Part 1144 framework and the Board's application of that framework to shippers seeking reciprocal switching. First, in *Baltimore Gas & Electric Co. v. U.S.*,[38] the D.C. Circuit upheld the reciprocal switching regulations under the *Chevron* framework as "a reasonable accommodation of the conflicting policies set out in [the Staggers Act]."[39] In holding that the standard imposed under Part 1144 for reciprocal switching—"necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101 or is otherwise anticompetitive"— was "reasonable" under *Chevron*, the Court never held that the ICC's interpretation was the best interpretation of the statute. Nor did the *Baltimore Gas* court deploy all the traditional tools of statutory interpretation that courts must apply when assessing whether an agency's interpretation was the best interpretation. Instead of interpreting the statutory terms, the court focused on the balance the regulations achieved between the "fifteen different and not entirely consistent goals" in the national rail transportation policy section of the Staggers Act.[40] This was perhaps not surprising, since in enacting Part 1144 the ICC offered no interpretation of the statutory provisions applicable

---

[33] *See 91 Fed. Reg. 945*, Eliminating Regulatory Barriers to Competition: Review of Part 1144 Notice of Proposed Rulemaking; Docket No. EP 788, published January 9, 2026.
[34] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 396 (2024) ("The deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA.").
[35] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) ("It therefore makes no sense to speak of a "permissible" interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible.").
[36] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).
[37] *Id.* at 515-16.
[38] 817 F.2d 108 (D.C. Cir. 1987)
[39] *Balt. Gas,* 817 F.3d at 115 (citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 845 (1984)).
[40] *Balt. Gas*, 817 F.3d at 112; see id. at 115.

to reciprocal switching (at the time, 49 U.S.C. § 11103), merely restating the requirements of Section 11103(c) and stating that the regulations would require satisfying the statutory criteria.[41]

The next year, the D.C. Circuit in *Midtec Paper Corp. v. U.S.* denied a petition for review seeking reciprocal switching and terminal trackage rights. [42] A captive shipper brought the case, arguing that a railroad with a monopoly on rail transport exploited its market power to the shipper's detriment, which necessitated imposing these remedies to promote the public interest and the Staggers Act's competition policies. Like *Baltimore Gas*, the *Midtec* court expressly applied the *Chevron* deference framework instead of identifying whether the agency's rule comported with the best interpretation of the statute by deploying all the traditional tools of statutory interpretation to determine the statutory meaning.[43] Importantly, in *Midtec* the court stated that "the [competition access rules] ... *narrow* the agency's discretion under section 11103," and upheld that narrowing of discretion as reasonable under *Chevron*.[44] Beyond this, the case assessed whether ICC arbitrarily and capriciously applied the competitive access rules to the shipper, not whether the issues the ICC focused on in dismissing the shipper's complaint—rate reasonableness and market dominance, service adequacy, and geographic and intermodal competition—were prerequisites to obtaining a reciprocal switching remedy under the statute.

In light of these cases, it is clear that no judicial decision prevents STB from eliminating its regulations that impose a heightened anticompetitive conduct standard, as no cases have held that Part 1144's anticompetitive conduct requirements comport with the best interpretation of the statute.[45]

IV. Part 1144 is Obsolete and an Unnecessary Barrier to Rail Competition

The repeal of 49 CFR Part 1144 is both necessary and long overdue. The original rule and anticompetitive standard were adopted under circumstances that no longer resemble the modern freight rail industry. Furthermore, it has become a structural barrier to competition and a direct impediment to the Statutory protections Congress intended to provide shippers under the Staggers Rail Act of 1980.

A. The Anticompetitive Conduct Requirement Exceeds Statutory Mandate

The "anticompetitive conduct" standard in Part 1144 clearly exceeds the statutory mandate of STB (49 U.S.C. §§ 10705, 11102). Part 1144's foundational flaw is that it requires shippers to

---

[41] *Ex Parte 445, Intramodal Rail Competition*, 1 I.C.C. 2d 822 (1985), 1985 ICC LEXIS 112 at *36.
[42] 857 F.2d 1487 (D.C. Cir. 1988).
[43] *See Midtec*, 857 F.2d at 1497-97 ("We first examine the text of the implicated statute and, where appropriate, its legislative history; using the traditional tools of statutory construction, we seek to determine whether and how Congress resolved the specific issues of law raised in the proceeding under review, and confine the agency to consistency with Congress's intent. If we find that Congress did not clearly resolve those issues, however, we must accept the agency's interpretation so long as it is reasonable--*i.e.*, "rational and consistent with the statute." (citing *Chevron USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-45 (1984)); id. at 1497 ("[W]e must defer to the agency's statutory interpretation in order to give effect to the will of the legislature.").
[44] *Midtec*, 857 F.2d at 1500 (emphasis added).
[45] This contrasts with cases such as *Grand Trunk Corp. v. Surface Transp. Bd.*, 143 F.4th 741 (7th Cir. 2025) and *Central States Enterprises, Inc. v. ICC*, 780 F.2d 664 (7th Cir. 1985) that interpreted the statute and, in *Grand Trunk*, applied the court's *Loper Bright* framework.

prove "anticompetitive conduct" before the agency may even consider ordering remedy for reciprocal switching, through routes, or through rates. This evidentiary prerequisite (unique to the regulation) does not appear anywhere in the governing statutes, and turns a statutorily-prescribed flexible standard into a virtually-insurmountable burden: the Board may prescribe access when doing so is "*practicable and in the public interest*", or "*necessary to provide competitive rail service*". Congress intentionally drafted these provisions to allow the Board broad discretion to intervene when market forces fail, not to limit intervention only to cases where railroads can be shown to have acted with anticompetitive intent.

The ICC's decision in 1985 to graft an additional "anticompetitive conduct" hurdle onto the statutory framework was a policy choice and in no way reflected congressional direction. It was influenced by the unique concerns of that era, including fears that newly deregulated markets might be destabilized by excessive access mandates. But whatever purpose that requirement once intended to serve, it is now clear that it has become an unnecessary and counterproductive constraint. It narrows the Board's authority beyond what the statute requires, undermines the Staggers Act's competitive-access provisions, and forces shippers to satisfy a threshold Congress never intended.

Repealing Part 1144 would eliminate this extra-statutory barrier and allow the Board to evaluate requests under the plain statutory standards Congress enacted, unburdened by arbitrary thresholds or procedures. Doing so restores balance; it prevents over-regulation while ensuring that shippers can pursue the protections Congress designed for situations where market power distorts service, pricing, or access. In an environment where the deck is already stacked against shippers because industry consolidation has concentrated market power in the hands of very few Class I railroads, the "anticompetitive conduct" prerequisite makes even less sense.

B. The Regulatory Framework No Longer Reflects Today's Freight Rail Market

Putting aside the fact that Part 1144 is inconsistent with the statute, the rule no longer fits the modern freight rail marketplace that has changed so much since 1985. The rule was created at a time when industry was still transitioning out of crisis, railroads were financially fragile, and competitive routing options were far more common. It was created at a time when there were over 30 Class I railroads (now there are just 6) that competed vigorously against each other to survive and there were very few captive rail shippers (whereas now over 75% of shippers are captive). This has been further exacerbated by the spread of PSR which eliminated service lanes, closed yards, reduced interchange frequency and reduced labor levels. Today's rail system is fundamentally different, and the regulations must reflect that. As the court in *Baltimore Gas* stated, while the Staggers Act was deregulatory on the whole, it actually "*increased* the agency's regulatory power" in its reciprocal switching authority.[46] There is simply no need to impose extra-statutory constraints on that authority today.

Four decades of consolidation have dramatically reduced the number of Class I carriers and created vast territories served by a single railroad. Line sales, network rationalization, and mergers have further limited routing choices and increased dependence on market-dominant

[46] *Balt. Gas*, 817 F.3d at 113 (emphasis original).

carriers. Part 1144's framework does not account for these changes. A rule designed to protect railroads from regulatory overreach in 1985 now functions as an obstacle preventing shippers from accessing even the narrow competitive tools Congress preserved in statute.

The broad stakeholder consensus that once supported Part 1144 has also eroded. Shippers across commodity groups now view the rule as unworkable and fundamentally misaligned with today's service environment. In fact, NITL, who co-petitioned for the development of 49 CFR Part 1144, is now one of the loudest proponents for reform related to competitive remedies. Shippers no longer attempt to bring competitive-access cases at all, knowing that the rule imposes burdens that no shipper can realistically satisfy. Meanwhile, railroads themselves now operate in a more stable and financially secure environment than at any point in the last half-century, weakening the original rationale for insulating carriers from case-by-case competitive-access oversight. Railroads have increasingly been able to circumvent long standing, consensus-based agreements, while shippers remain bound by the terms of those same agreements.[47]

Part 1144 has outlived its purpose. The regulation imposes requirements Congress never enacted, ignores the statutory language that governs competitive access, and no longer reflects the structure or competitive dynamics of the U.S. freight rail system. Repealing Part 1144 would not mandate new access rules; instead, it would restore the statutory balance Congress intended, one that allows the STB to evaluate reciprocal switching, through-route, and through-rate requests based on the facts of each case and the public interest.

V. Repealing Part 1144 Restores the STB's Proper Statutory Authority to apply a Case-by-Case Standard that Addresses Complex Competitive Contexts

Eliminating Part 1144 restores the Board's statutory mandate to evaluate whether competitive access is in the public interest on a case-by-case basis, as intended by Congress. The competitive-access provisions of the statute are deliberately flexible. They authorize the Board to impose reciprocal switching, through routes, or through rates whenever such action is "practicable and in the public interest" or "necessary to provide competitive rail service." Nothing in the statute requires shippers to prove "anticompetitive conduct," nor does Congress mandate rigid evidentiary thresholds that effectively prevent access to relief. For example, it may be necessary to provide competitive rail service via reciprocal switching due to things like structural factors, including industry consolidation, without needing to show that a particular railroad is acting anticompetitively.

Part 1144, however, created exactly those barriers. By layering an extra-statutory "anticompetitive conduct" standard on top of the statute, it replaced Congress's intentionally open, case-specific framework with a rigid and often unattainable test. Repeal corrects this mismatch. It returns the Board to the statutory approach: a fact-specific evaluation of each case based on

[47] In particular, railroads have adopted creative mechanisms to bypass prior frameworks developed with broad stakeholder support, such as Ex Parte 328. Rather than petitioning the Board to formally amend the mileage equalization framework established in Ex Parte 328, railroads have instead implemented tariff provisions that remove empty car movements from mileage equalization and reclassify them as empty revenue miles. This unilateral approach effectively undermines the agreed upon framework without Board review or approval. By contrast, shippers have been effectively precluded from seeking relief through reciprocal switching, as they remain constrained by the specific eligibility and procedural requirements set forth in 49 CFR § 1144.

competitive conditions, operational realities, and whether public-interest considerations warrant the prescription of competitive access.

Reinstating this case-by-case standard is particularly important for captive shippers, who currently lack meaningful rail competition in vast regions of the country. Without the procedural and substantive constraints of Part 1144, these shippers will finally have access to the remedies Congress intended them to have—remedies tailored to their specific circumstances rather than foreclosed by an inflexible regulatory framework.

A case-by-case adjudicatory framework offers a range of substantive, procedural, and policy advantages that rigid, one-size-fits-all rules like Part 1144 simply cannot provide. Competitive-access disputes are inherently fact-intensive and deeply dependent on local operational realities, competitive conditions, shipper needs, and network impacts. Congress predetermined that these factors are to be evaluated - they are relevant to the prevailing conditions the shipper faces, regardless of whether the railroad is acting with anticompetitive intent or simply underinvesting in service facilitated by a longstanding monopolistic business environment. Returning to a statutory case-by-case model positions the STB to evaluate these factors holistically and to tailor remedies in ways that promote competition while avoiding undue disruption to the rail network. A prescriptive regulatory framework cannot account for this variability. A case-by-case framework, by contrast, benefits the Board and stakeholder by providing:

- *Tailored, Fact Specific Relief* - Competitive access problems vary widely across facilities, regions, and service conditions. Some shippers face chronic service failures, others face monopoly pricing, and others face interchange bottlenecks. A rigid rule like Part 1144 cannot account for these differences. Railroading involves complex, location specific factors, yard capacity, crew availability, interchange congestion, train make up, and local operating practices. A case-by-case approach allows the Board to evaluate the specific characteristics of each movement and craft remedies that fit the actual circumstances rather than forcing every dispute into the same inflexible framework. This is exactly what Congress intended when it used flexible terms such as "*practicable*," "*necessary to provide competitive rail service*," and "*in the public interest*."

- *More Proportionate and Balanced Outcomes* - Part 1144's "anticompetitive conduct" test is an all or nothing gatekeeper that blocks many legitimate cases and sometimes sweeps too broadly when met. Case-by-case adjudication allows the STB to tailor relief, limiting switching to defined movements, designing conditions that minimize operational impact, or prescribing targeted through rates when appropriate. This proportionality is impossible under the current rigid threshold.

- *Greater Administrative Transparency and Precedent* - Case specific review gives parties a meaningful opportunity to present facts, enables STB to provide reasoned decisions, and builds a body of precedent and an administrative record that guides stakeholders over time. Because Part 1144 is unworkable, no reciprocal switching remedies have been issued under it, leaving shippers and carriers without a path for regulatory relief. Fact driven decisions, grounded in statutory criteria, promote fairness, transparency, and confidence among shippers and carriers, especially in a highly concentrated industry where many shippers

have no competitive alternatives. Rigid regulations are more vulnerable to legal challenges when they impose requirements not found in statute.

- *Flexibility in a Changing Industry* - Since 1985, the industry has undergone consolidation, adopted Precision Scheduled Railroading, seen shifts in commodity flows, and faced new supply chain expectations. Static rules cannot keep pace with these changes. Case-by-case adjudication provides an adaptive decision-making framework that evolves with market realities without requiring a new rulemaking each time conditions shift.

In summary, competitive access problems in rail are not uniform—they stem from varying network, geographic, operational, and shipper-specific factors. Part 1144's rigid imposition of a requirement to prove anticompetitive intent prevents the Board from weighing these realities. Repeal restores the Board's ability to consider the full range of statutory factors, operational feasibility, network fluidity, shipper needs, market dominance, and public interest, on their merits.

A case-by-case approach also lets the Board address modern competitive conditions that Part 1144 never contemplated, including consolidation, PSR-driven operating models, line rationalization, and shifting supply chains. Rather than weakening oversight, repeal strengthens it by eliminating a barrier to the Board's consideration of specific facts, ensuring competitive access is granted when justified and withheld when not, exactly as Congress intended.

VI. Repealing Part 1144 Provides Meaningful Competitive Options and Strengthens Supply Chain Reliability

Repealing Part 1144 restores practical competitive options for captive shippers by making reciprocal switching, through routes, and through rates attainable under a clear, statutory, case-by-case framework. Removing this regulatory barrier gives shippers a realistic path to request access to a second carrier at a nearby interchange, without constructing new track, and fundamentally changes the negotiating dynamic. The credible prospect of rail-to-rail competition encourages carriers to negotiate, moderate rate increases, and improve service. Under current rules, no shipper has ever successfully obtained reciprocal switching, illustrating how Part 1144 creates impossible barriers.

Shippers must navigate complex regulatory procedures or pursue costly, time-consuming legal challenges that can take years and millions of dollars. Repealing Part 1144 finally enables shippers to seek competitive access under manageable standards, giving them genuine alternatives to single-carrier dependence. Furthermore, when railroads are presented with the potential for increased competition in the form of alternative access, railroads are incentivized to negotiate rather than impose unilateral changes as well as moderate rate increases. Rail behavior will improve overall and competitive pressure will finally be introduced into the rail market.

For example, imagine a Gulf Coast chemical plant is single-served by one railroad, even though a second Class I line runs nearby. Under Part 1144, the cost and difficulty of securing reciprocal switching effectively forces the plant to accept the incumbent's rates and service. Repeal would allow the shipper to request access to the nearby interchange based on factual

circumstances, providing competitive leverage and encouraging the incumbent to negotiate on service and price. The prospect of a second carrier entering the market would immediately pressure the incumbent to negotiate operational policies, moderate rates, and improve service. In this example, repeal finally gives a captive refiner or chemical shipper real competitive leverage.

Competitive options extend beyond switching. Consolidation in the rail industry has allowed carriers to control routes and rates, leaving shippers with limited or poor service. Repealing Part 1144 restores the ability for shippers to petition for through routes and through rates, expanding routing flexibility and improving cooperation between carriers. These petitions, evaluated case by case under statutory criteria, create a meaningful incentive for railroads to maintain service reliability and engage constructively with shippers. The credible possibility of through routes and through rates incentivize railroads to maintain reliable service, address service failures prior to escalation, and engage constructively with shippers.

Consider another example where a Midwestern refinery relies on a single Class I carrier for all routing and pricing, despite another railroad connecting just 20 miles away. Even though a second railroad connects just 20 miles away, the refinery cannot request a joint through route or through rate under current rules, leaving it stuck with limited service windows and rising rates.[48] After repeal of Part 1144, the refinery could petition the STB for a through route using the nearby carrier, allowing the two railroads to divide service responsibilities and pricing. The credible threat of such a petition would push the incumbent railroad to improve service, address chronic delays before they escalate, and negotiate more reasonable rates.

Because many shippers are captive to a single carrier, the rail industry experiences limited competitive pressure. This environment enables railroads to deprioritize service reliability and raise costs without consequence. Repealing Part 1144 introduces market-based competition that improves pricing discipline, enhances service reliability, and gives shippers practical avenues to address operational burdens.

Even the potential for competitive access improves carrier performance, providing shippers with alternatives when service becomes chronically unreliable. The result is more predictable cycle times, better equipment availability, fewer production disruptions, and a more balanced negotiating environment. In short, repealing Part 1144 restores market discipline, strengthens network resilience, and enhances the reliability of the freight system that critical manufacturing sectors like refining and petrochemical manufacturing depend on.

VII. Repeal Aligns with Federal Policy Goals to Reduce Unnecessary Regulatory Burdens and Anti-competitive Regulations.

The Board's proposal to repeal 49 CFR Part 1144 aligns directly and powerfully with the federal government's 2025 directives to eliminate unlawful regulatory barriers, advance competitive markets, support national economic priorities (including energy production) and

[48] The Union Pacific Railroad provides an example of this pricing power in practice. STB waybill data from 2023 shows that the UP is pricing 60% of their business ($13.7 billion of 22.7 billion) at rates more than 180% Revenue-to-Variable-Cost Ratio as they know shippers have no realistic avenue to challenge rates. UP has increased its revenue from potentially captive STB-reviewable rates by 350% since 2004.

modernize agency governance.[49] This effort also aligns with a FTC/DOJ joint letter to STB asking them to identify and eliminate rules that suppress competition or restrict market entry.[50] Across these documents, the federal government instructed agencies to:

- Remove unnecessary or unlawful regulatory burdens,
- Eliminate anti-competitive rules,
- Improve competitive conditions in concentrated markets, and
- Support national economic priorities, including energy production and supply-chain resilience.

Part 1144 conflicts with all four objectives and its repeal directly supports all four. Each of the relevant Executive Orders and federal competition initiatives reflects a common objective: federal agencies must remove outdated, inefficient, or anti-competitive regulations that distort markets, impose unnecessary burdens, or exceed statutory authority. The STB's repeal of Part 1144 is entirely consistent with these mandates.

Repeal advances the objectives of Executive Order 14154 ("Unleashing American Energy") by removing regulatory barriers that raise logistics costs and hinder access to competitive rail service for energy and industrial shippers. It supports Executive Order 14192 ("Unleashing Prosperity Through Deregulation") by eliminating a procedurally burdensome rule that forces shippers into years-long, costly evidentiary proceedings simply to seek basic competitive access. Repeal also fulfills Executive Order 14267 ("Reducing Anti-Competitive Regulatory Barriers"), which directs agencies to remove rules that entrench monopoly power; Part 1144 is precisely such a rule, having blocked all competitive-access petitions for four decades.

Finally, repeal is consistent with the FTC/DOJ's 2025 competition initiative, which urges agencies to identify and eliminate regulatory barriers that stifle competition. Part 1144 undermines competitive entry, imposes proof requirements far beyond what the statute demands, and prevents the Board from applying case-specific remedies that would discipline dominant carriers' behavior. Returning to the statutory case-by-case standard modernizes the competitive-access framework, restores lawful governance, and brings the STB into alignment with the federal government's broader economic and competition priorities.

VIII. Other Considerations and Evidentiary Standards

Section 1144.2(b) sharply limits the competitive-effects evidence the Board may consider.[51] Specifically, § 1144.2(b) bars railroads from introducing product-competition evidence and allows geographic-competition arguments only if the railroad proves effective competition by "clear and convincing evidence," Product-competition evidence is categorically excluded, and a railroad offering geographic-competition evidence must prove effective competition by clear and convincing evidence, a deliberately high burden designed to prevent expansive, resource-intensive disputes and keep competitive-access cases focused and manageable. These safeguards ensure

[49] *See* Executive Order 14154 Issued February 19, 2025; Executive Order 14267 Issued April 9, 2025; and Executive Order 14154 Issued January 20, 2025.
[50] *See* FTC and DOJ Joint Letter to STB: Reducing Anti-Competitive Regulatory Barriers Issued May 5, 2025.
[51] *See* 49 CFR § 1144.2(b)

shippers are not forced into costly economic battles over purported product or geographic substitutes.

The NPRM, however, is unclear about whether these protections will survive repeal of Part 1144. While the Board suggests it may continue excluding such evidence, it stops short of a commitment. This ambiguity invites railroads to test the limits, increasing litigation burdens and uncertainty. Because the NPRM does not preserve § 1144.2(b)'s explicit prohibitions or its heightened burden of proof, shippers may face broader, more complex challenges in competitive-access cases which runs counter to the Board's goal of eliminating regulatory barriers to competition.

To avoid this chilling effect, the Board should reaffirm its rationale for adopting these restrictions, focusing on direct, rail-to-rail competition. The Board also should explain that it is likely to continue to apply these protections absent compelling, case-specific justifications. As experience shows, evaluating product and geographic competition imposes substantial burdens on both shippers and the Board. Maintaining the current exclusions and the elevated standard for geographic competition is essential to ensuring a streamlined, accessible, and predictable competitive-access process.

IX. Conclusion

AFPM strongly supports the proposed repeal of Part 1144. Eliminating this outdated rule will restore competitive access as Congress originally intended, give captive shippers real and meaningful transportation choices, and strengthen service quality, rate discipline, and overall supply-chain resilience. Repeal will also allow the Board to rely on modern, case-specific oversight rather than rigid and obsolete regulations, ensuring that remedies can be tailored to today's network realities. We respectfully urge the Board to finalize the repeal promptly to promote fair, competitive, and efficient freight rail service nationwide.