

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 711 (Sub-No. 2)

RECIPROCAL SWITCHING FOR INADEQUATE SERVICE

**JOINT OPENING COMMENTS BY
AMERICAN FOREST & PAPER ASSOCIATION
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

Karyn A. Booth
David E. Benz
Richard Couch
THOMPSON HINE LLP
1919 M Street, N.W., Suite 700
Washington, D.C. 20036
(202) 331-8800

*Counsel for the American Forest & Paper
Association and the Institute of Scrap Recycling
Industries, Inc.*

November 7, 2023

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The American Forest & Paper Association (“AF&PA”) and the Institute of Scrap Recycling Industries, Inc. (“ISRI”) (collectively, “Respondents”) hereby provide their comments (“Comments”) in response to the Notice of Proposed Rulemaking (“NPRM”) served on September 7, 2023 in this docket by the Surface Transportation Board (“Board” or “STB”).¹ As described in the NPRM, the Board is proposing new regulations that would make reciprocal switching available to shippers who demonstrate inadequate rail service in situations where the incumbent railroad lacks an affirmative defense.

The Board’s underlying rationale for reciprocal switching prescriptions as a remedy for inadequate rail service, including a “history of recurring service problems,” implementation of the rail transportation policy of 49 U.S.C. § 10101, and the public interest prong of 49 U.S.C. § 11102(c), apply equally to certain exempt commodities encompassed in Respondents’ revocation evidence in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions. Indeed, as explained herein, the very policy reasons articulated by

¹ The due date for comments was revised in a decision served September 29, 2023.

the Board as justification for proposing the new Part 1145 rules are entirely consistent with the revocation statute at 49 U.S.C. § 10501(d), which authorizes the Board to revoke an exemption in whole or in part when “necessary to carry out the transportation policy of section 10101 of this title.” Therefore, Respondents hereby respectfully request the Board include in the final rule a statement that for purposes of a reciprocal switching proceeding under new Part 1145, it is partially revoking the commodity exemption to the extent necessary to enable a shipper of certain forest and paper products and scrap metal commodities (“Covered Commodities,” as defined below) to make use of the new rules, meaning that no separate exemption revocation request would be necessary.

These comments focus on the Respondents’ need for the proposed reciprocal switching remedy to address inadequate rail service and support for partial revocation of the exemptions for the Covered Commodities. However, the Respondents also strongly endorse the Joint Comments submitted by the Coalition Associations which provide comprehensive feedback to the Board on the new proposed rules, including recommended modifications to the proposed service metrics to make them more effective and workable.²

I. Background.

The NPRM represents continuation of a proceeding that began over twelve years ago with a Petition for Rulemaking in Ex Parte No. 711 to change the Board’s existing rules governing reciprocal switching prescriptions to promote greater rail-to-rail competition. No final rules have been issued despite voluminous evidence and effort by the Board and commenting parties over the ensuing years in the original proceeding and the related Sub-No. 1 docket.

² The Coalition Associations includes American Chemistry Council, National Industrial Transportation League, and The Fertilizer Institute.

Similarly, modernization of certain commodity exemptions has been the subject of substantial endeavors by the Board and Respondents for even longer.³ The rules proposed in the NPRM provide an opportunity for the Board to address, to a certain extent, important regulatory reform needs established in both proceedings.

In the Board's Ex Parte No. 704 proceeding, AF&PA showed that rail transportation today is governed by a legal regime utterly different from that which existed in the 1980s and early 1990s when the forest and paper products exemptions were created. Railroads were hampered in responding quickly to requests for rates and service due to the tariff filing and other administrative burdens that existed at the time.⁴ Consequently, the forest and paper industry supported the proposed commodity exemptions because they facilitated railroads' ability to promptly respond to market needs and truck pricing. Now, however, tariff filing and other administrative burdens no longer exist. Railroads are not prevented by government regulation from efficiently quoting rates and providing service. AF&PA no longer supports the exemptions. In fact, AF&PA submitted substantial expert,⁵ industry,⁶ and historical⁷ evidence confirming that Board oversight of the relevant commodities would be in the public interest and that such oversight is sorely needed to address rail market power that did not exist when the

³ The effort to modernize commodity exemptions began with a Notice of Public Hearing in the original Ex Parte No. 704 (served Oct. 21, 2010).

⁴ See, e.g., AF&PA Comments, pages 25-27 (filed July 16, 2019) in Ex Parte No. 704 (Sub-No. 1), [Review of Commodity, Boxcar, and TOFC/COFC Exemptions](#).

⁵ See, e.g., AF&PA Comments at Exhibit A (filed July 26, 2016), and AF&PA Reply Comments at Exhibit 1 (filed Aug. 26, 2016) in Ex Parte No. 704 (Sub-No. 1), [Review of Commodity, Boxcar, and TOFC/COFC Exemptions](#).

⁶ See, e.g., AF&PA Supplemental Comments (filed Oct. 3, 2016) in Ex Parte No. 704 (Sub-No. 1), [Review of Commodity, Boxcar, and TOFC/COFC Exemptions](#).

⁷ See, e.g., AF&PA Comments, pages 7-15 (filed July 26, 2016) in Ex Parte No. 704 (Sub-No. 1), [Review of Commodity, Boxcar, and TOFC/COFC Exemptions](#).

exemptions were granted, and that the exemptions for certain forest and paper products should be revoked.

Ample evidence also supports revocation of the exemption for STCC 40211 (iron or steel scrap, wastes or tailings). The Board proposed revocation of this exemption in 2016 in EP 704 (Sub-No. 1).⁸ ISRI submitted extensive evidence supporting the Board's proposal and confirming that revocation would be in the public interest. ISRI established that statutory changes since the original exemption decision warrant revisiting the exemption; that is, ISRI supported the initial exemption due to former legal burdens on railroads, but these burdens no longer exist.⁹ Today, ISRI strongly opposes the exemption which no longer provides any benefits to its members. Rather, the exemption is a detriment, because it denies rail dependent shippers of ferrous scrap with direct access to STB remedies, including for inadequate rail service. ISRI also offered substantial quantitative evidence revealing that revocation is long overdue, including expert testimony.¹⁰ Finally, industry-specific information also showed the wisdom of the Board's 2016 revocation proposal.¹¹

It is noteworthy that in the past 30 years, the U.S. steel industry has dramatically changed both regionally and operationally. While the U.S. steel industry was once primarily located in the mid-west in states such as Pennsylvania, Ohio, Indiana, Michigan and Wisconsin, the industry

⁸ Notice of Proposed Rulemaking, slip op. at 3 (served March 23, 2016) in STB Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions.

⁹ See, e.g., ISRI Comments, pages 3-4 and 7-8 (filed July 26, 2016) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions.

¹⁰ See, e.g., ISRI Comments, pages 5-6 (filed July 26, 2016) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions. See also ISRI Reply Comments at Exhibit 3 (filed Aug. 26, 2016) in Ex Parte No. 704 (Sub-No. 1).

¹¹ See, e.g., ISRI Reply Comments at Exhibits 1 and 2 (filed Aug. 26, 2016) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions.

now includes substantial operations in states such as Virginia, North and South Carolina, Texas, Arkansas and Alabama. This geographic expansion makes rail service for the steel supply chain even more important than it was when the commodity exemptions were first instituted.

In this Ex Parte No. 711 (Sub-No. 2) proceeding, the Board has proposed rules that would provide an avenue for sole-served shippers to seek reciprocal switching where existing rail service fails to meet one of three specified rail service standards.¹² Reciprocal switching would only be available where practicable and where the incumbent railroad is a Class I carrier, but it would not be ordered if the incumbent railroad establishes one of the affirmative defenses.¹³ As described in the NPRM, the new rules are an exercise of the Board's statutory authority under the public interest prong of 49 U.S.C. § 11102(c), and are otherwise warranted to address inadequate rail service, a history of recurring service problems, the need to reduce unnecessary regulatory costs, and strengthen railroads' incentive to provide adequate service.¹⁴

Exempt traffic was specifically mentioned in the NPRM, wherein the Board stated:

The Board notes that some transportation that has been exempted from Board regulation pursuant to 49 U.S.C. § 10502 could be subject to an order providing reciprocal switching under part 1145. The Board retains full jurisdiction to deal with exempted transportation, which includes considering whether service received by the petitioner prior to filing the petition meets the performance standards under this proposed part.

NPRM, slip op. at 27. The Board also noted that it can revoke an exemption "at any time, in whole or in part, under § 10502(d)" and that it "would do so to the extent required." NPRM, slip op. at 27. Thus, in the NPRM, the Board clearly has raised the issue that some exempt traffic

¹² NPRM, slip op. at 12-13.

¹³ NPRM, slip op. at 25-26.

¹⁴ NPRM, slip op. at 2, 5, 9, and 10.

could be found to qualify under the Part 1145 rules, and that it maintains the authority to revoke an exemption in part “at any time.”

In light of the Board’s own statements in the NPRM regarding exempt traffic, including its authority to partially revoke exemptions and intent to do so “to the extent required,” as well as the showings of inadequate rail service made by Respondents in several STB proceedings since 2016, it would enhance efficiency for the Board to state, in the final rule, that it is revoking the exemptions for the following commodities identified by Standard Transportation Commodity Codes in the Board’s Ex Parte No. 704 proceeding (the “Covered Commodities”) to the extent necessary to enable shippers of such commodities to seek reciprocal switching under the newly-issued rules:

- 40211 – Iron or steel scrap, wastes or tailings
- 24114 – Pulpwood logs
- 24115 – Pulpwood or other wood chips
- 24211 – Lumber, rough or softwood cut stock or flooring
- 24321 – Plywood or veneer or built-up wood exc. plywood or veneer containers
- 24991 – Strand board
- 24996 – Wood particle board
- 26217 – Special industrial paper or paper car liners
- 26311 – Fiberboard, paperboard, pulp board exc. building insulating board
- 40241 – Paper waste or scrap
- the boxcar exemption to the extent it covers transportation of the above commodities¹⁵

As suggested in the NPRM, exemption revocation may be appropriate or “required” to facilitate utilization of the new reciprocal switching remedy described therein. The voluminous evidence of rail service challenges involving the Covered Commodities in Ex Parte No. 704, Ex

¹⁵ See AF&PA “Comments in Response to Memoranda Summarizing Ex Parte Communications,” page 2-3 (filed July 16, 2019), in STB Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions. See also Review of Commodity, Boxcar, and TOFC/COFC Exemptions, STB Ex Parte No. 704 (Sub-No. 1), slip op. at 3 (served March 23, 2016) (proposing revocation of the ferrous scrap commodity exemption).

Parte No. 770—Urgent Issues in Freight Rail Service, and Ex Parte No. 767—First Mile Last Mile Service) demonstrate that access to the proposed Part 1145 rules is needed by Respondents’ members. Also, given the clear relationship between the Board’s rationale for issuing the proposed Part 1145 rules and the exemption revocation statute, it would be appropriate for the Board to clarify, in the final rule, that access to the new Part 1145 rules is “necessary” to promote the NTP, and a separate revocation showing is not required for shippers of the Covered Commodities to seek reciprocal switching under the new Part 1145.

Indeed, such findings by the Board in its final rule would clearly be a “logical outgrowth” of the NPRM. “A final rule qualifies as a logical outgrowth ‘if interested parties ‘should have anticipated’ that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period.”¹⁶ Here, the Board’s express statements that some exempt traffic would likely qualify for reciprocal switching under Part 1145 and that it has the authority and intent to partially revoke exemptions where required, coupled with a clear opportunity for all stakeholders to file comments on the issue, satisfies the notice and logical outgrowth requirements of the Administrative Procedures Act.

II. The Urgent Need for Adequate Rail Service, As Described by the Board in the NPRM, Equally Applies to the Covered Commodities.

The Board explained in the NPRM that there is an unfortunate “history of recurring service problems that continue to plague the [rail] industry,” including “major service problems” since 2016.¹⁷ These concerns directly led to the proposed new Part 1145, as the new reciprocal switching standard would enable temporary competitive service and “provide appropriate

¹⁶ CSX Transportation, Inc. v. Surface Transportation Board, Petition for Rehearing, 584 F.3d 1076, 1079-80 (D.C. Cir. 2009) (citations omitted).

¹⁷ NPRM, slip op. at 5.

regulatory incentives” such that railroads can “achieve and...maintain higher service levels on an ongoing basis.”¹⁸

The service concerns described by the Board mirror those of shippers of the Covered Commodities, as described in substantial evidence in Ex Parte No. 704 and other Board proceedings. In 2016, ISRI explained that “service reliability, equipment shortages, and a lack of investment in the gondola fleet” have harmed scrap shippers, and that “[r]ail car shortages make it extremely difficult for the scrap recycling industry to meet their customers’ needs and time sensitive supply chains.”¹⁹ Unfortunately, service for scrap shippers has not improved since then. ISRI recently informed the Board of a “deterioration of reliable rail service,” including the fact that “poor rail service” is preventing scrap shippers “from meeting the delivery requirements of their steel mill customers,” leading to “lost sales that cannot be recouped.”²⁰ Moreover, “missed switches, reduced service days, inconsistent car order deliveries, and extended dwell at local facilities” are just a few of the problems that “impacted...operations, labor, and costs,” causing “significant loss of revenues, and harm to relationships with...steel mill customers due to the failure to honor contractual supply commitments.”²¹ Additionally, ISRI explained to the Board in its Ex Parte No. 767 proceeding on first-mile last-mile (“FMLM”) service that “ISRI members frequently experience FMLM challenges, including missed switches, reduced service

¹⁸ NPRM, slip op. at 5.

¹⁹ ISRI Comments at page 7 (filed July 26, 2016) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions.

²⁰ Testimony of Consolidated Scrap Resources, Inc. on behalf of the Institute of Scrap Recycling Industries,” at pages 2-3 (filed April 27, 2022) in Ex Parte No. 770, Urgent Issues in Freight Rail Service.

²¹ Testimony of Consolidated Scrap Resources, Inc. on behalf of the Institute of Scrap Recycling Industries,” at pages 3-4 (filed April 27, 2022) in Ex Parte No. 770, Urgent Issues in Freight Rail Service.

days, mismatches between car orders and car deliveries, and extended dwell times at local facilities.”²² These service failures have significant adverse impacts on scrap processing operations, including inefficiencies, higher costs, customer relations with steel mills, and labor management at scrap processing facilities.²³

Similar experiences have adversely affected shippers of forest and paper products. In 2016, AF&PA members explained that “[b]ox car cleanliness and quality have deteriorated,” “[s]ervice from the larger railroads has gotten noticeably worse over the past 15-20 years,” “[t]he exempt status of forest products and box car transportation hinders the ability of paper companies to seek remedies for poor service,” “[r]ail service has...declined,” “[t]ransit times have become more unreliable,” there are “more claims from...customers for in-transit damage,” and “poor service” evinces “a general lack of [railroad] interest.”²⁴ No improvement has occurred in the ensuing years. In 2022, AF&PA informed the Board of ongoing “service failures” such as delayed transit times, reduced switching services, missed switches, and inadequate car supply, all causing shippers to divert attention from their core businesses to “track down delayed shipments and address...reduced switching services,” including a necessity to “use

²² ISRI Comments at pages 3-4 (filed Dec. 17, 2021) in Ex Parte No. 767, First-Mile Last-Mile Service.

²³ Id. at page 4.

²⁴ AF&PA Supplemental Comments at Exhibit A (filed Oct. 3, 2016) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions. The first quoted language is from the Verified Statement of Jeanne Sebring (p. 9), the second and third from the Verified Statement of Bruce Ridley (p. 9 and 10), and the remaining four from the Verified Statement of David White (p. 8 and 9).

expensive alternative transportation on an emergency basis.”²⁵ Shippers have been forced to incur warehousing costs and/or alter production schedules at their facilities.²⁶

III. Including the Covered Commodities Fulfills the Public Interest Justification for the New Rules.

Rail service does not occur in a vacuum. When service is delayed, substandard, or omitted altogether, there are very real impacts on business relationships, employees, and the economy as a whole. Orders cannot be filled, products cannot be provided, and emergency measures might need to be taken. Disruption affects supply chains and the local economy, leading to inefficiencies and harm to the public at large. As explained by AF&PA and ISRI in their various filings and meetings in the Board’s Ex Parte No. 704, Ex Parte No. 770, and Ex Parte No. 767 proceedings, these effects all contradict several aspects of the national rail transportation policy, such as promotion of an efficient rail transportation system (policy #3), continuation of a sound rail transportation system to meet the needs of the public (policy #4), and the fostering of sound economic conditions (policy #5). Consequently, AF&PA and ISRI have long sought revocation of certain commodity exemptions in order to advance the national rail transportation policy, in accordance with the revocation statute, which authorizes the Board to revoke an exemption “when it finds that application in whole or in part of a provision of this part . . . is necessary to carry out the transportation policy of section 10101 of this title”.²⁷

²⁵ Statement of Julie Landry, Director of Government Affairs, The American Forest & Paper Association, at pages 2-4 (filed April 28, 2022) in Ex Parte No. 770, Urgent Issues in Freight Rail Service.

²⁶ Statement of Julie Landry, Director of Government Affairs, The American Forest & Paper Association, at page 5 (filed April 28, 2022) in Ex Parte No. 770, Urgent Issues in Freight Rail Service.

²⁷ 49 U.S.C. § 10502(d).

In proposing the new reciprocal switching rules, the Board, too, invoked the public interest aspects of the national rail transportation policy. See, e.g., NPRM, slip op. at 6 (the new rules will help meet the needs of the public, policy #4) and slip op. at 9 and 10 (the new rules will foster several aspects of the policy). More broadly, the statutory authority for the proposed rules is based on the public interest prong of § 11102(c).²⁸ Given the public interest similarity between Respondents' commodity exemption evidence and the Board's foundation for the proposed Part 1145, there is a clear need for and inherent wisdom in granting Respondents' request for partial revocation as to the Covered Commodities.

As explained by the Board, the proposed rules would "help ensure that the transportation system as a whole meets the public need" and "help to advance the policies in § 10101."²⁹

Significantly, in the NPRM, the Board stated:

[i]t is clear that both the reliable and timely delivery of rail shipments and the efficient movement of shipments through the rail system are essential to meeting the public need for adequate rail service. The public need for adequate rail service is, in turn, central to the design of the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803: an essential aspect of the rail transportation policy set forth in the Act is to ensure the development and continuation of a rail system that meets the needs of the public and the national defense. 49 U.S.C. § 10101(4).

Therefore, inclusion of the Covered Commodities would align perfectly with these goals in light of the overwhelming evidence of the need for access to STB remedies to address inadequate rail service expressed in Ex Parte No. 704, Ex Parte No. 770, and other Board proceedings, as well as the national transportation policy benefits of treating the Covered Commodities the same as non-exempt commodities for purposes of the new reciprocal switching rule.

²⁸ See, e.g., NPRM, slip op. at 2 and 7.

²⁹ NPRM, slip op. at 9 and 10.

IV. Partial Revocation is Appropriate Here.

In the NPRM, the Board found the requisite rail transportation policy foundation for the proposed Part 1145 rules. The Board also has the authority to “revoke an exemption, in whole or in part, at any time” under 49 U.S.C. § 10502(d) if regulation is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101.³⁰ As already explained, evidence of record in Ex Parte Nos. 704, 770, 767 establishes that partial revocation of the Covered Commodities’ exemptions to enable direct access to the Part 1145 reciprocal switching rules to address inadequate rail service is necessary to carry out the national rail transportation policy. See Section III above.

Additionally, Respondents’ request is consistent with prior partial revocation decisions of the Board. In the PYCO case cited by the Board at page 27 of the NPRM, partial revocation of a commodity exemption was found warranted for a rail-dependent shipper suffering from poor rail service and an exercise of railroad market power.³¹ Similar circumstances have adversely affected shippers of the Covered Commodities for many years, as explained in Ex Parte No. 704. AF&PA previously established that the Covered Commodities are rail-dependent for a wide variety of reasons.³² Although the Board has recently stated that a market power analysis is *not*

³⁰ PYCO Industries, Inc. – Alternative Rail Service – South Plains Switching, Ltd. Co., STB Docket No. 34802, slip op. at 4 (served June 21, 2006).

³¹ See, e.g., PYCO Industries, Inc. – Alternative Rail Service – South Plains Switching, Ltd. Co., STB Docket No. 34802, slip op. at 4 (served June 21, 2006). See also PYCO Industries, Inc. – Alternative Rail Service – South Plains Switching, Ltd. Co., STB Docket No. 34889, slip op. at 1, 2, and 4 (served Nov. 21, 2006).

³² AF&PA Comments, page 8 (filed July 26, 2016) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions. See also AF&PA Comments, pages 13-16 (filed July 16, 2019) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions.

required by the statute for exemption revocation in a case involving rail service,³³ evidence that the Covered Commodities are subject to railroad market power clearly exists. In Ex Parte No. 704, AF&PA submitted expert testimony demonstrating “not only the *likely* exercise of market power but an *actual* exercise of market power.”³⁴ Along the same lines, evidence in Ex Parte No. 704 revealed the rail-dependent nature of scrap iron and steel traffic, as well as an increasing exercise of railroad market power over scrap iron and steel shipments.³⁵ In that proceeding, the Board itself found that revocation of the scrap iron and steel commodity exemption was consistent with the national rail transportation policy.³⁶ In short, partial revocation as requested herein is warranted under the facts, would advance the public interest, would foster the national rail transportation policy, and is otherwise consistent with Board precedent.³⁷

V. Partial Exemption Revocation Would Foster Regulatory Efficiency.

Through granting partial revocation of the commodity exemptions for the Covered Commodities, the national rail transportation policies to require fair and expeditious regulatory decisions when regulation is required as well as the expeditious handling of proceedings would

³³ Sanimax USA LLC v. Union Pacific Railroad Co., STB Docket No. NOR 42171, slip op. at 3 (served Nov. 1, 2021).

³⁴ AF&PA Comments, page 6 (filed July 26, 2016) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions (italics original). See also AF&PA Comments, pages 16-21 (filed July 16, 2019) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions.

³⁵ ISRI Comments at pages 5-7 (filed July 26, 2016) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions. See also ISRI Reply Comments at pages 17-22 (filed Aug. 26, 2016) in Ex Parte No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions.

³⁶ Ex Parte No. 704, Notice of Proposed Rulemaking, slip op. at 4.

³⁷ Cf. Caldwell Railroad Commission – Exemption from 49 U.S.C. Subtitle IV, STB Docket No. 32659 (Sub-No. 1), slip op. at 2 (served Nov. 26, 2014) (“the Board will revoke an exemption if a petitioner has demonstrated conduct that frustrates the RTP and the Board has determined that the reinstated regulatory provisions could ameliorate the alleged harms”).

both be advanced. See 49 U.S.C. §§ 10101(2) and (15). Respondents have already made a substantial showing as to the need for regulatory oversight, and the requirements of the Part 1145 proposal ensure that only worthy claims will move forward. A separate revocation request for the Covered Commodities would unnecessarily consume limited agency resources, delay expeditious decisions and proceedings, and otherwise be duplicative and redundant.

Furthermore, requiring Respondents' members to file a separate revocation request each time they have suffered inadequate rail service would impose unnecessary litigation costs, burdens, and uncertainties upon those shippers, and effectively chill the likelihood that those exempt shippers who are deserving of the remedy will even attempt to pursue reciprocal switching before the Board. Indeed, the railroads have clearly demonstrated that they will contest partial exemption revocations, requiring petitioners to incur additional litigation costs and burdens and delaying prompt resolution of service disputes, before even reaching the merits of the underlying rail service dispute.³⁸

VI. Conclusion.

For all the reasons stated herein, Respondents hereby respectfully request that the Board partially revoke the commodity exemptions for the Covered Commodities such that shippers of these commodities can seek reciprocal switching under the new Part 1145 without having to make a separate revocation request. The Respondents also strongly endorse the Joint Comments

³⁸ Sanimax USA LLC v. Union Pacific Railroad Co., STB Docket No. NOR 42171, (served Nov. 1, 2021).

submitted by the Coalition Associations which provide comprehensive feedback to the Board on the new proposed rules.

Respectfully submitted,

/s/ Karyn A. Booth

Karyn A. Booth

David E. Benz

Richard Couch

THOMPSON HINE LLP

1919 M Street, N.W., Suite 700

Washington, D.C. 20036

(202) 331-8800

*Counsel for the American Forest & Paper
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