

Before the Surface Transportation Board
Eliminating Regulatory Barriers to Competition: Review of Part 1144
Docket No. EP 788

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Part 1144 should be fully repealed and replaced with a straightforward, case-by-case application of the statutory standards, while maintaining a stable, efficient, and safe freight rail network that supports both Class I and short-line railroads, shippers, and the American public.

Full Repeal of Part 1144

I favor the Board's proposal to repeal Part 1144 in its entirety. After nearly four decades, the rule has not proven to be a workable framework for evaluating competitive-access requests under 49 U.S.C. §§ 10705 and 11102(c). In practice, the anticompetitive-conduct requirement and related provisions have prevented the Board from meaningfully applying the statutory standards. The fact that no prescription has ever been issued under Part 1144 underscores the practical limitations of the rule. Returning to the statutory framework would allow the Board to evaluate requests on their merits, using the tools Congress provided.

The circumstances that led to the adoption of Part 1144 in 1985 are very different from the conditions that exist today. The rail industry is more consolidated, financially stronger, and operationally more sophisticated. At the same time, freight rail remains essential to the national economy, and the Board's oversight continues to play an important role in ensuring that the system functions efficiently and safely. Repealing an outdated regulation does not diminish that role; it simply removes a barrier that no longer serves its intended purpose.

Partial Repeal Would Be Less Effective

The Board has asked whether it should repeal Part 1144 only as it applies to reciprocal switching. I do not believe a partial repeal would be a productive approach. The concerns the Board identifies with Part 1144—particularly the anticompetitive-conduct requirement—apply equally to through routes, through rates, and switching. Keeping the rule for some forms of competitive access but not others would leave in place a framework the Board has already found to be obsolete.

It would also create two different regulatory regimes governing similar statutory remedies, which could lead to confusion and unnecessary disputes. A full repeal provides a clearer and more consistent path forward and allows the Board to apply the statutory standards uniformly, while still considering operational and economic concerns on a case-by-case basis.

Considerations to Support Network Stability and Long-Term Investment

While I favor full repeal, I also recognize the importance of maintaining a stable and reliable freight rail system. Class I railroads make long-term investments that are critical to the national economy, and short-line and regional railroads play an important role in connecting local industries to the broader network. For these reasons, I believe the Board can take several steps to provide clarity and predictability as it transitions away from Part 1144, without recreating the barriers that have prevented meaningful access to statutory remedies.

A. Consideration of Reliance Interests in Individual Proceedings

Given how long Part 1144 has been in place, it is reasonable to expect that railroads may have made investment or operational decisions in reliance on the stability of the existing framework. While these interests should not limit the Board's statutory authority, acknowledging that parties may raise reliance interests in individual cases—and that the Board may consider them as part of the public-interest analysis—would help provide reassurance without imposing new thresholds. A brief statement in the final rule confirming that reliance interests may be raised and considered in individual adjudications would provide helpful clarity.

B. Clarifying the Role of Operational Feasibility

Operational feasibility is central to any competitive-access arrangement. Rail networks are interconnected, and changes in routing or switching can have broader effects on service and fluidity. It would be helpful for the Board to clarify that operational feasibility will remain an important factor in case-by-case adjudication. This would support the continued reliability of the network while still allowing the Board to grant relief where appropriate.

C. Providing Procedural Clarity Without Re-Creating Regulatory Barriers

Repeal of Part 1144 may lead to more petitions under the statutory standards. To help ensure that these proceedings remain efficient and focused, the Board could offer non-binding guidance on procedural expectations, such as early identification of operational issues and evidentiary needs. This type of guidance would promote clarity without imposing rigid requirements that could inadvertently replicate the limitations of Part 1144. Even an informal statements of expectation would be helpful.

Additional Considerations

These considerations do not weigh against repeal, but acknowledging them would help ensure a smooth transition.

Repealing Part 1144 may also produce several secondary effects that are worth acknowledging as the Board transitions back to the statutory framework.

First, it is reasonable to expect a short-term increase in petitions as parties adjust to the restored standards. Some of this activity may simply reflect the fact that the existing rule has effectively closed the door to competitive-access cases for many years. Recognizing this possibility in the final rule would help set expectations for the initial period following repeal.

Second, the first few decisions issued under §§ 10705 and 11102(c) may carry more weight than usual, given the absence of recent precedent. Clear and well-explained reasoning in early cases would help avoid unintended precedent and provide guidance to all parties as the new framework takes shape.

Finally, competitive-access prescriptions can affect traffic flows in ways that may create new opportunities for some short-line and regional railroads while requiring operational adjustments for others. Because these carriers play an important role in connecting local industries to the national network, it would be helpful for the Board to remain attentive to these dynamics when evaluating individual cases.

Clarifications That Would Improve the Final Rule

A few clarifications would help ensure a smooth transition to a case-by-case framework.

Evidentiary Expectations Under the Statutory Standards

The proposal does not fully explain how the Board anticipates applying the statutory standards once Part 1144 is repealed. Offering general guidance on the types of evidence the Board expects to consider—without creating new regulatory thresholds—would help parties prepare focused submissions and reduce uncertainty. A brief discussion of evidentiary expectations in the final rule would help avoid confusion. Nothing in this comment is intended to suggest new evidentiary burdens beyond those in the statute.

Treatment of Product and Geographic Competition Evidence

The proposal indicates that the Board “anticipates” excluding product and geographic competition evidence, but it is not clear whether this applies uniformly across switching, through-route, and through-rate cases. Because this type of evidence can be burdensome and may not be necessary for evaluating competitive-access requests, clarifying the Board’s intended approach would be helpful. A short clarification in the final rule would help ensure consistent application.

Avoiding Unintended Precedent or System-Wide Effects

The Board notes the importance of avoiding (initial) decisions that could lead to a “radical restructuring” of the rail industry. A brief explanation of how the Board intends to balance case-specific relief with broader system considerations would help ensure that early decisions do not inadvertently create far-reaching precedent.

Conclusion

For the reasons discussed above, I favor the full repeal of 49 CFR Part 1144. At the same time, I believe it is important to recognize the essential role that freight railroads—both Class I carriers and short line and regional railroads—play in the national economy. Streamlining outdated regulation should be accompanied by a continued commitment to maintaining a stable, efficient, and safe rail network. As the Board transitions to a case-by-case approach under the statutory standards, maintaining that balance will remain important.

Respectfully submitted,

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