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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 788

**ELIMINATING REGULATORY BARRIERS TO
COMPETITION: REVIEW OF PART 1144**

**OPENING COMMENTS OF THE
NATIONAL GRAIN AND FEED ASSOCIATION**

The National Grain and Feed Association (“NGFA”) hereby provides these opening comments in support of the Notice of Proposed Rulemaking (“NPRM”) issued by the Surface Transportation Board (“STB” or “Board”) in this Docket on January 7, 2026. NGFA strongly supports the NPRM, which would repeal the Board’s regulations on “Intramodal Rail Competition” promulgated at 49 CFR Part 1144. This repeal would allow the Board to consider the prescription of through routes, through rates, and reciprocal switching on a case-by-case basis under the applicable statutory standard.

I. Identity and Interest of NGFA

The NGFA, established in 1896, consists of grain, feed, processing, exporting and other grain-related companies that operate facilities handling U.S. grains and oilseeds. Its membership includes grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed processors and millers; exporters; livestock and poultry integrators; and associated firms that provide goods and services to the nation’s grain, feed and processing industry. NGFA consists of 24 affiliated State and Regional Grain and Feed Associations.

Nationwide, there are 9,683 grain and feed facilities that employ 175,737 employees

directly and help support 1.16 million total U.S. jobs. The industry also helps generate \$85.9 billion in wages, \$401.7 billion in economic impact, and \$32.7 billion in taxes across the country. For more information and a state-by-state breakdown of data, visit <https://www.ngfa.org/industry-impact/>.

II. Opening Comments of NGFA on the NPRM

The NPRM's discussion of the history of Part 1144 and the many reasons for its long overdue repeal is thorough and compelling. The Board also thoroughly explains how it possesses the authority to take this action. The salutary primary effect of repealing Part 1144 in its entirety would be the elimination – once and for all – of the anticompetitive conduct standard in the rule, as applied in *Midtec Paper Corp. v. Chi, & N.W. Transp. Co.*, 3 I.C.C. 2d 171 (1986) *aff'd sub nom Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988) and other decisions. The NGFA wholly supports the elimination of the anticompetitive conduct standard for all purposes, including the prescription of through routes or through rates under 49 U.S.C. §10705. However, these opening comments are focused on the repeal of Part 1144 as applied to the establishment of reciprocal switching arrangements under 49 U.S.C. §11102(c) given NGFA's prior focus on this topic in other Board proceedings.

A. General Considerations

Pursuant to §11102(c), “the Board may require rail carriers to enter into reciprocal switching agreements, where . . . such agreements are necessary to provide competitive rail service. The rail carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the rail carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Board may establish such conditions and compensation.” As the NPRM points out, the legislative history of this provision clearly

establishes that Congressional intent was for the agency to apply this statute to “encourage, rather than discourage, competition among railroads.” NPRM at 4. NGFA agrees that repealing Part 1144 and the anticompetitive conduct requirement more generally will free the Board up to “develop more flexible standards for today’s rail environment via case-by-case adjudication.” *Id.* at 12. For these reasons, NGFA submits that such adjudicatory standards should prioritize encouraging and establishing rail-to-rail competition and the benefits it would provide shippers, and to a lesser extent on the incumbent railroad’s “revenue needs” and operational considerations of the incumbent and the alternative railroad. *Id.*

B. Procedural Suggestions

The NPRM does not contain proposals concerning procedures for pursuing a reciprocal switching arrangement, other than to state “the Board also anticipates continuing to conduct such proceedings expeditiously, even if that commitment is not memorialized in a regulation.” *Id.* at 13. NGFA also supports the NPRM’s suggestion that the Board “would consider incorporating into a non-binding guidance document” procedural recommendations submitted by stakeholders. NPRM at 13, note 22. NGFA believes such a guidance document would aid both railroads and shippers who are considering pursuing relief under §11102(c).

In terms of procedural suggestions from NGFA, in today’s highly concentrated railroad industry with the number of Class 1 railroads potentially shrinking to five and perhaps even lower, a proceeding to consider the establishment of a reciprocal switching arrangement – which NGFA suggests should be commenced by a petition – should proceed from the rebuttable presumption that the requested reciprocal switching arrangement is “necessary to provide competitive rail service.” The bar to present a *prima facie* case in favor of such an arrangement should therefore be low, subject to the right of the incumbent carrier to demonstrate why the proposed reciprocal

switching arrangement is not necessary to provide competitive rail service. It is also possible that in situations where a shipper petitions the Board to establish a reciprocal switching arrangement the potential alternative railroad could balk at the opportunity. Such behavior has been documented in cases where shippers have sought emergency alternative service under 49 U.S.C. §11123. *See* STB Docket No. EP 762, *Revisions to Regulations for Expedited Relief for Service Emergencies* (served January 24, 2024) at 9-11. In either case, the incumbent and alternative railroad provider should bear the burden of proof to demonstrate that the requested reciprocal switching arrangement is not “necessary to provide competitive rail service.”

NGFA further suggests that the Board’s procedures should aim to expeditiously decide such cases by creating a set time frame for decision. NGFA suggests that the Board consider a 120-day schedule from the filing date of the petition. Creating such an expeditious schedule will serve the additional role of discouraging incumbent (and perhaps potential alternative) railroads from driving up the cost and burden of a proceeding by pursuing expansive discovery and attempting to expand the scope of the issues into broad inquiries about how such an order at one discreet location would affect the railroads’ entire system. Further to this end, NGFA suggests that proceedings could be further streamlined through the use of technical conferences with Board staff on such subjects as operational issues raised by shippers, incumbent railroads, and potential alternative railroads.

Finally, §11102(c) requires the involved railroads to “establish the conditions and compensation applicable to such agreement . . . within a reasonable period of time.” The Board’s guidance document referenced above should contain some explanation of what the Board would consider to be a reasonable period of time under the statute. Additionally, in individual adjudications the Board should consider whether the facts and circumstances justify directing the

reciprocal switching arrangement to commence under Board supervision pending the carriers or the Board finalizing the conditions and compensation applicable to such agreement.

III. Conclusion

In conclusion, NGFA strongly supports the NPRM, and looks forward to further participating in this proceeding.

Respectfully submitted,

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