

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. EP 788**

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

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**OPENING COMMENTS OF  
THE NORTH AMERICA FREIGHT CAR ASSOCIATION**

The North America Freight Car Association (“NAFCA”) 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. NAFCA strongly supports the NPRM, which would repeal the Board’s regulations on “Intramodal Rail Competition” promulgated at 49 C.F.R. 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 NAFCA**

NAFCA is an organization made up of private (non-railroad owned) rail car manufacturers, owner/lessors, owner/lessees, lessees, other rail shippers and entities that support the railcar industry. Its members include some of the industry’s largest railcar manufacturers and lessors, as well as large rail shippers who collectively lease or own and maintain hundreds of thousands of

railcars that are furnished to the Class I railroads in order to receive rail transportation service.<sup>1</sup> Combined, NAFCA's 39 members own or lease in excess of 759,000 railcars.

## **II. Opening Comments of NAFCA on the NPRM**

Among the policies NAFCA advocates on behalf of its members is the efficient use of private railcars by the Class I railroads. The inefficient use of private railcars greatly increases the costs incurred by the provider of the railcars. Such costs occur in the form of lost business, failure to meet contract commitments to customers, and the costs of having to acquire and maintain a larger than necessary fleet of private railcars in order to try to mitigate the harms caused by poor rail service. NAFCA fully supports the use of competition and other market forces to incentivize the Class I carriers to utilize private railcars more efficiently and minimize the costs incurred by their customers who supply them, typically at no cost to the railroad.

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. NAFCA 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. In short, NAFCA fully supports any and all efforts by the Board to increase competition in the railroad industry

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). Pursuant to §11102(c), “the Board may require rail carriers to enter into reciprocal switching agreements,

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<sup>1</sup> <http://www.nafcahq.com/home>.

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. NAFCA 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, NAFCA 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.*

NAFCA does not have suggestions at this time for potential procedures for individual adjudications for reciprocal switching arrangement requests or for the establishment of a through route or through rate. However, NAFCA supports the Board’s pledge to ensure that such cases will be processed expeditiously. NAFCA also supports the NPRM’s suggestion that the Board “would consider incorporating into a non-binding guidance document” procedural recommendations submitted by stakeholders. *Id.* at 13, note 22.

### **III. Conclusion**

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

Respectfully submitted,

/s/ Thomas W. Wilcox

Thomas W. Wilcox

Law Office of Thomas W. Wilcox, LLC

1629 K. Street, NW, Suite 300

Washington D.C. 20006

(202) 508-1065

[tom@twilcoxlaw.com](mailto:tom@twilcoxlaw.com)

*Counsel for the North America*

*Freight Car Association*

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