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March 10, 2026
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AMERICAN
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PROJECT

**Before the Surface Transportation Board
Response to Docket No. EP 788
("Eliminating Regulatory Barriers to Competition: Review of Part 1144.")
Written Comments from the American Economic Liberties Project (AELP)¹
March 10, 2026**

AELP submits this response to Surface Transportation Board (STB) Docket No. EP 788, a notice of proposed rulemaking (NPRM) regarding regulations on "Intramodal Rail Competition."² Repealing the aspects of those regulations relating to reciprocal switching³ would remove burdensome requirements on shippers seeking to gain access to a second railroad and empower the Board to finally use its statutory authority to prescribe reciprocal switching agreements to ensure such access in appropriate circumstances.⁴ In tandem, we encourage the STB to reinstate rulemaking on reciprocal switching to ensure clear standards guide its decision-making. Moreover, none of this is a substitute for blocking the pending application for a transcontinental merger between Union Pacific and Norfolk Southern—which would only make a host of anticompetitive problems worse.⁵

As the NPRM explains, the otherwise deregulatory Staggers Rail Act of 1980 *expanded* the STB's discretion to prescribe reciprocal switching⁶—but then the STB adopted regulations that *shrank* its own discretion.⁷ Those regulations (codified at 49 CFR Part 1144) place the burden of proof upon

¹ AELP is a nonpartisan, nonprofit research and advocacy organization dedicated to understanding and addressing the problem of concentrated economic power in the United States. AELP's address is 2001 Pennsylvania Ave NW, Suite 540, Washington, DC 20006.

² See Surface Transportation Board, "STB Proposes to Eliminate Barriers to Competition by Repealing Regulations at 49 C.F.R. Part 1144," 2026, <https://ebs.publicnow.com/view/9CD980A7D61312B7DE6A3EFAD93CF490FC8330BC> (NPRM).

³ "Reciprocal switching" means "transfers between rail carriers that take place within the terminal area in which the shipment originates or ends and that are incidental to a line haul. Under a reciprocal switching agreement, the rail carriers that serve a terminal area agree to undertake such transfers at the shipper's election, subject to operating requirements that are established through the agreement. The agreement promotes intramodal competition by allowing participating rail carriers to offer line haul service to/from shippers' facilities in the terminal area that are not directly connected to that carrier's tracks. The switching carrier (the carrier on whose tracks the shipper's facility is located) earns a fee for performing the transfer but does not participate in the line haul and therefore does not earn line-haul revenues." NPRM at 3-4.

⁴ This comment only addresses aspects of Part 1144 related to standards for reciprocal switching.

⁵ See Erik Peinert and Ashley Nowicki, "The New Railroad Barons: Why the Union Pacific/Norfolk Southern Railroad Merger Must Be Blocked," Sept. 2025, <https://www.economicliberties.us/wp-content/uploads/2025/10/2025-09-30-AELP-Railroad-Brief.pdf> (AELP Brief).

⁶ NPRM at 3.

⁷ *Id.* at 7.

shippers during competitive access requests.⁸ Shippers, including small businesses with few other transportation options, “rarely invoked” that Part 1144 procedure, because it “set an unrealistically high bar.”⁹ Indeed, in the four decades since Part 1144 was adopted, “the agency has **never** issued a prescription under its framework.”¹⁰

Meanwhile, the Class I railroad industry consolidated down to a pair of regional duopolies.¹¹ In the years following the Staggers Act, shippers reported a deterioration in services, decreased on-time performance, job losses, and higher prices.¹² The anti-competitive, consolidated character of the railroad industry has harmed shippers and privileged the interests of big businesses over national manufacturing and security interests for decades. The onerous Part 1144 standards further entrap shippers in an already anticompetitive and consolidated system.

Repealing these regulations would restore shippers’ power to diversify their options. The reinvigoration of American manufacturing is contingent upon competitiveness in the railroad industry. Promoting competition in the rail industry would ensure the prospering of shippers that are integral to American manufacturing, utilities, and agriculture. Further, the U.S. Army relies on “a single rail carrier” in various areas and has expressed concern about conflicts between its defense activities and the priorities of such carriers.¹³ Thus, it supports the rule change, arguing that the increased flexibility it would bring would mitigate the risks of service disruptions in the case of a large-scale deployment or mobilization.¹⁴

However, simply repealing the rule without eventually implementing new standards would not be ideal. Shippers have expressed a need for “standards, timelines, and enforcement mechanisms” to ensure a “practical, timely, and predictable” process.¹⁵ Unfortunately, last year, the Seventh Circuit vacated¹⁶ a proposed STB reciprocal switching rule on the basis that the performance standards set forth in the rule did not “define what constitutes adequate rail service” and did not require the board to make a “finding of inadequate service.”¹⁷ The STB should consider initiating a

⁸ Bill Stephens, “STB proposal would make it easier for shippers to reach a second railroad,” 2026 <https://www.trains.com/pro/freight/class-i/stb-proposal-would-make-it-easier-for-shippers-to-reach-a-second-railroad/>

⁹ *Id.*

¹⁰ *Id.* (bold and underline added).

¹¹ AELP Brief at 2.

¹² See Paul D. Larson and H Barry Spraggins, “Union Pacific/Southern Pacific merger: impact on shippers,” 1998, <https://digitalcommons.wayne.edu/jotm/vol10/iss1/7/>; AELP Brief at 8.

¹³ David Lassen, “U.S. Military Weighs in on New STB Rules on Reciprocal Switching,” *Trains*, Feb. 27, 2026 <https://www.trains.com/pro/regulatory/u-s-military-weighs-in-on-new-stb-rules-on-reciprocal-switching/>

¹⁴ *Id.*

¹⁵ Bill Stephens, “STB proposal would make it easier for shippers to reach a second railroad,” *TrainsPro*, Jan. 7, 2026, <https://www.trains.com/pro/freight/class-i/stb-proposal-would-make-it-easier-for-shippers-to-reach-a-second-railroad/>.

¹⁶ Adam Yanelli, “Railroads: Appeals Court Vacates US Regulator’s Reciprocal Switching Rule.” *ICIS*, July 10, 2025, <https://www.icis.com/explore/resources/news/2025/07/10/1118205/railroads-appeals-court-vacates-us-regulator-s-reciprocal-switching-rule/>; *Grand Trunk Corp. v. STB*, No. 24-1811 (7th Cir. July 8, 2025), [7th Circuit EP711 Decision PDF](#).

¹⁷ STB, “STB Adopts Final Rule For Reciprocal Switching,” (Apr. 30, 2024), <https://www.stb.gov/news-communications/latest-news/pr-24-20/>.

new rulemaking process to gather input from the public on how to address the Seventh Circuit's concerns.¹⁸

Sincerely,

American Economic Liberties Project¹⁹

¹⁸ Based on the concerns articulated by the U.S. Army, the STB might, for example, consider factoring national security into its analysis.

¹⁹ This filing is submitted by Laurel Kilgour, Research Manager, on behalf of AELP.