

March 10, 2026

Surface Transportation Board
Attention: Docket No. EP 788
395 E Street, S.W.
Washington, DC 20423

The Alliance for Chemical Distribution submits the following comments in response to the Surface Transportation Board's ("STB" or "Board") Notice of Proposed Rulemaking (NPRM) regarding **Docket No. EP 788, Eliminating Regulatory Barriers to Competition: Review of Part 1144**, published in the *Federal Register* January 9, 2026.

About ACD

The Alliance for Chemical Distribution (ACD) supports and champions the chemical distribution experts the world depends on to safely, reliably, responsibly, and sustainably move the chemical products essential to our daily lives. ACD's more than 400 chemical distribution industry members are primarily small, multi-generational family-owned businesses. They provide critical chemical products used in medicine and health care, food and agriculture, clean water and sanitation, energy production, electronics, communication, and more to over 750,000 end users.

As leaders of the \$27 billion chemical distribution industry, ACD member companies have the extensive expertise, commitment to safety and sustainability, and access to a deep well of resources needed to ensure chemicals are moved safely and responsibly when and where they are needed. ACD owners and operators have a personal stake in the health, safety, and security of their employees, companies, and communities. They demonstrate their commitment through strict adherence to the highest standards in quality, safety, sustainability, and performance through compliance with ACD Responsible Distribution™.

Moving goods by rail is critical to chemical distribution as it is the safest form of transportation for hazardous materials. The U.S. relies on this movement to transport chemicals, such as chlorine, which are essential to industries including public safety, infrastructure, agriculture, and transportation.

Although ACD members have struggled to receive consistent, on-time rail service, railroads continue to increase their rates and charges. ACD members are also unable to negotiate reasonable service protections and reasonable rates in their rail contracts. This is due to inadequate competition in the freight rail industry, which allows Class I railroads to exercise market power over ACD members' rail traffic. Thus, ACD members strongly support action by the Board to remove regulatory barriers that limit the Board's authority to increase rail-to-rail

competition via reciprocal switching arrangements and through route prescriptions where warranted.

STB's Proposed Repeal of Part 1144

In its NPRM, the Board is proposing to repeal its rules published at 49 CFR part 1144, which implement its statutory authority to prescribe reciprocal switching agreements pursuant to 49 U.S.C. 11102(c) and through routes and rates pursuant to 49 U.S.C. 10705. These remedies would allow increased competition between railroads to resolve service, rate, and other challenges faced by rail customers, and would involve case-by-case adjudications applying the applicable statutory standards.

The STB acknowledged in its NPRM that, in the 40 years since the part 1144 rules were adopted, “[t]he rail industry has changed significantly since the 1980s leading to part 1144’s obsolescence.” The Board further noted that removing the evidentiary burden in part 1144 to establish the existence of “competitive abuse” would eliminate “an unnecessarily high barrier to statutory relief.” ACD greatly appreciates the Board’s willingness to consider innovative ways to modernize its regulatory system of freight railroads to ensure that the intent of Congress in establishing pro-competitive statutory remedies is realized and that outdated obstacles to applying such remedies are removed. ACD commends the Board for its proposal to review part 1144, as it is a positive step toward giving shippers an opportunity for relief when facing poor rail service and other challenges, and toward allowing increased rail competition via reciprocal switching or through routes when justified under the statute.

Current Rules Governing Reciprocal Switching Do Not Work

Under the current part 1144 regulations, a reciprocal switch, through rate, or through route may be prescribed only if it is determined necessary to remedy or prevent an anticompetitive act that meets other specific criteria. Proving anticompetitive conduct, as interpreted by the Board, has “set an unrealistically high bar for shippers to obtain” competitive access, as evidenced by the “dearth of cases” filed at the STB in recent decades. However, considering the dramatic consolidation of the rail industry since the 1990s, these pro-competitive mechanisms are critical for shippers, given the overwhelming number of rail customer facilities that are captive to a single carrier, which leaves them unable to secure rail service from an alternative provider. Being captive undermines their ability to negotiate reasonable rates or address poor service, which these remedies were put in place to address. In a recent survey of ACD member companies that use rail, 77.8% reported having at least one facility captive to a single rail carrier.¹

¹ Alliance for Chemical Distribution, “2025 First Half Rail Survey Results,” ACD, <https://www.acd-chem.com/pub/?id=F095F51C-F9B9-CB2F-ED19-591CFE3D89E9>.

Despite the importance of reciprocal switching as a remedy for captive facilities receiving poor service or experiencing other unreasonable conduct from their rail provider, a switch has never been successfully prescribed under the part 1144 framework, as the STB notes in the preamble of this proposal. This is not due to a lack of interest in reciprocal switching as a remedy for rail customers. In fact, ACD's rail survey found that 61.8% of respondents would pursue a reciprocal switch to allow another carrier to serve an otherwise captive facility from a nearby interchange if they had the option.² The reason there has not been a successful switch prescribed, or even any recent attempts to obtain this remedy, is that current regulations make it nearly impossible to do so.

The current regulatory framework requires shippers to prove a switch is necessary to remedy or prevent anticompetitive behavior by their rail carrier before it can be prescribed. This imposes an excessively difficult standard. To meet this threshold, a shipper would need detailed information about their carrier's operations, the carrier's competitors, and more. Additionally, this requirement completely removes reciprocal switching as a remedy when shippers experience poor service, since poor service alone does not meet the regulatory standard for justifying a switch.

ACD strongly supports STB's proposal to remove part 1144. Part 1144 imposes an unrealistic burden of proof on rail shippers for a reciprocal switch, through route, or through rate to be prescribed, and discounts the reasons a prescription should be considered outside of anticompetitive behavior. Instead, the STB should rely on the standards set forth in 49 U.S.C. § 11102 for reciprocal switches and in 49 U.S.C. § 10705 for through rates and through routes. These frameworks permit the Board to make these prescriptions — if found to be in the public interest — a more reasonable standard.

Need for Increased Competition

Many chemical shippers rely on freight rail shipments to move goods. This is due to freight rail's impressive safety record compared to other modes of transport, as 99.99% of all hazardous materials moved by rail do not experience any release from a train accident enroute to their destination.³ This is a contributing factor to why chemical shipments make up such a large portion of freight rail's total tonnage —over 2 million carloads in a typical year.⁴

Despite this significant use of freight rail, the industry has experienced worse service and higher costs, as the top four Class I carriers are hauling 7% fewer loads than in 2003, while rates have

² *Ibid*

³ Association of American Railroads, "Why Freight Rail is the Safest Mode for Hazmat," AAR, <https://www.aar.org/article/freight-rail-safest-mode-hazmat/>.

⁴ National Railway Labor Conference, "Freight Rail Industry Fact Sheet," NRLC <https://railnegotiations.com/wp-content/uploads/2024/10/Freight-Rail-Media-Fact-Sheet.pdf>.

increased more than twice as fast as inflation.⁵ This issue has a significant impact on ACD members, who have consistently reported service problems and a lack of competition among freight rail carriers. In ACD's survey, 68.2% of respondents reported that a typical delivery was late by 1-3 days, with 29.5% respondents reporting having to wait over 10 days for at least one shipment during that period.⁶ This contributes to the 25.6% of respondents signaling that rail service had deteriorated in the first half of 2025 compared to the second half of 2024, compared to only 7% who saw improvement.⁷

A significant contributor to this issue is the lack of competition among freight rail carriers, with only six Class I carriers operating in the United States. Removing part 1144 as proposed would greatly improve the opportunities to increase competition among Class I rail carriers through reciprocal switches and through routes. Also, shippers would be empowered to negotiate more competitive prices in the form of through rates. This regulatory change would also encourage freight carriers to ensure their service remains adequate for current customers, as customers will have the opportunity to use another railroad if reciprocal switching or a new through route is prescribed by the STB when service is unacceptable. Removing part 1144 and simplifying the process for determining reciprocal switches, through routes, and through rates would create opportunities to greatly improve the competitiveness of the freight rail industry, benefiting shippers and receivers while also improving rail service.

Removing Part 1144 is a Separate Issue from the Proposed UP-NS Merger

While the STB considers this proposal, it is also being asked to weigh the approval of the largest rail merger in this nation's history. It is critical that any decisions regarding this proposal be made entirely separate from considerations of the merger proposal and any potential merger conditions the Board may impose. Removing part 1144 and providing a meaningful opportunity for rail users to pursue reciprocal switches, through routes, and through rates — remedies that were designed to be utilized but have since been rendered ineffective — is a long-awaited and much-needed change for the freight rail industry, regardless of any new merger. Moreover, ACD strongly urges the Board to make these considerations separately, because case-by-case adjudications of these remedies should not be assumed to provide an appropriate response to competitive harm caused by a major railroad merger, or to qualify as competitive enhancements needed to satisfy the public interest in the context of any approval of a rail merger. While removal of part 1144 would provide opportunities to increase rail competition, there are many unknowns as to the standards to be applied, and the length and cost of these STB proceedings, which will impact the extent to which rail customers will seek these remedies from the STB.

⁵ American Economic Liberties Project, "The New Railroad Barons: Why the Union Pacific/Norfolk Southern Railroad Merger Must Be Blocked," <https://www.economicliberties.us/wp-content/uploads/2025/10/2025-09-30-AELP-Railroad-Brief.pdf>.

⁶ Alliance for Chemical Distribution, "2025 First Half Rail Survey Results," ACD, <https://www.acd-chem.com/pub/?id=F095F51C-F9B9-CB2F-ED19-591CFE3D89E9>.

⁷ *Ibid*

Entirety of Part 1144 Should be Removed

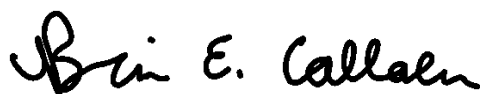
In this proposal, the Board seeks comment on whether it should repeal the entirety of part 1144 or only the portion that applies to reciprocal switching. ACD urges the Board to repeal part 1144 in its entirety. Providing shippers with additional access to request through routes and through rates will provide a similar benefit to the freight rail industry as reciprocal switching, by increasing competition and providing additional mechanisms to address service and other challenges. The burden placed upon shippers to secure a prescription under Part 1144 is insurmountable, and having this framework still apply to through rates and through routes would effectively remove these regulatory remedies as realistic levers, contrary to the intent of Congress. The use of more flexible standards should apply to both reciprocal switching and through route prescriptions, and thus, part 1144 should be removed in its entirety.

Conclusion

ACD appreciates the opportunity to provide input as the STB moves forward with establishing a system for rail shippers to request a reciprocal switch, through route, and through rate. ACD strongly supports the intention of this rulemaking and believes it is a positive step towards improving rail service.

ACD commends the Board for addressing the important issue of rail service and for issuing this proposal as a positive step to improve the situation. We look forward to working with the Board to continue to develop solutions to make critical rail service more dependable. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



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