

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
March 10, 2026
Part of
Public Record

Docket No. EP 788

ELIMINATING REGULATORY BARRIERS TO COMPETITION: REVIEW OF PART 1144

NATIONAL STONE, SAND & GRAVEL ASSOCIATION COMMENTS

The National Stone, Sand & Gravel Association (“NSSGA”) respectfully submits its comments in the above-captioned proceeding in accordance with the Surface Transportation Board (“STB” or “Board”) Notice of Proposed Rulemaking (“NPRM”) served on January 7, 2026. The NPRM proposes to repeal the Board's regulations at 49 C.F.R. Part 1144, which implement its statutory authority to prescribe reciprocal switching agreements, through routes, and through rates. NSSGA thanks the Board for this opportunity to voice its strong support for the proposed repeal, which will remove regulatory barriers that prevent competitive access to rail. A repeal will align the Board's approach with Congress’s original intent under 49 U.S.C. § 11102(c) and 49 U.S.C. § 10101. Repeal is necessary – and necessary now – in part because the rail industry has changed fundamentally since these and related regulations first were implemented. In addition to persistent service failures known to all rail shippers, this includes the implementation of Precision Scheduled Railroading (“PSR”) and looming further consolidation of Class I railroads.

NSSGA INTEREST IN THE PROPOSED REPEAL

NSSGA is the country's leading voice and advocate for the aggregates industry. Our members are stone, sand, and gravel producers and the equipment manufacturers and service providers who support them. NSSGA's member companies produce more than 90 percent of the crushed stone and 70 percent of the sand and gravel consumed annually in the United States. Aggregates are essential to the construction of new buildings, towns, cities, and the roads that connect them; they comprise – literally – the building blocks of American infrastructure. Put differently, without aggregates there would be no roads, railways, bridges, tunnels, water supply or sewers, electrical grids and even none of the towers on which telecommunication depends.

As a result, NSSGA members are essential participants in President Trump's ongoing improvements to U.S. infrastructure, the strategy underlying which focuses on using \$1.5 billion in new federal funding for competitive grants, prioritizing deregulation, and fostering private sector partnerships to modernize roads, bridges, and energy projects. President Trump's administration also is reviewing and removing funding for some renewable energy programs authorized by previous administrations so that his administration can redirect resources to its own infrastructural initiatives. The success of the President's initiatives in that regard depends on combatting persistent rail service failures that are actively preventing full realization of the Administration's goals. These rail carrier failures have substantially delayed rail shippers' movement of cargo, have increased the cost to aggregate companies and their customers, and have caused shortages of material for infrastructure projects for which time is of the essence. Lack of rail carrier competition even has increased the cost of flood control and maintaining a clean water supply. Moreover, when carriers allow rail service to falter, aggregates must be sourced from farther away, raising transportation costs and emissions.

NSSGA members are tangibly hurt by the lack of effective competitive rail access. Under the current regulations at Part 1144, which require proof of anticompetitive conduct, NSSGA members have never pursued reciprocal switching remedies and, in the current environment and with limited options, these American aggregates companies are frequently forced to overhaul their own operations to compensate for the failures of rail carriers. If the Board does not repeal these regulations, NSSGA members will be hamstrung in delivering aggregates to Trump-Administration-funded projects, stymying the Administration's goals and delaying, if not preventing altogether, the Administration's laudable efforts to improve the supply chain. The American public cannot afford for that to occur.

NSSGA is encouraged by the Board's efforts to promote competition in line with congressional intent and is grateful for the Board's oversight with regard to American businesses hurt by rail carrier excessive rates and poor service here. The proposed repeal would enable case-by-case consideration under statutory standards, ensuring a better, more competitive rail industry, which is in turn vital to the success of American companies moving aggregates. NSSGA urges the Board to repeal Part 1144, revitalizing a remedy dormant for decades and providing NSSGA members with a tool to counter Class I railroads' excessive market power.

BACKGROUND OF THE PROCEEDING

The Board initiated this proceeding with the NPRM served on January 7, 2026, proposing to repeal 49 C.F.R. Part 1144. The NPRM notes that these regulations, adopted in 1985 by the Interstate Commerce Commission ("ICC"), narrow the Board's statutory discretion by requiring proof of anticompetitive conduct, and other factors that may no longer be appropriate industry wide. Repeal would allow the Board to consider prescriptions on a case-by-case basis under 49 U.S.C. § 11102(c) and § 10705, beyond the present heavily restricted framework.

This proposal follows prior efforts in Docket No. EP 711 (Sub-No. 1), in which an unresolved 2016 NPRM sought new reciprocal switching regulations. In April 2024, the Board adopted a final rule in EP 711 (Sub-No. 2) allowing switching for inadequate service, but that rule was vacated by the U.S. Court of Appeals for the Seventh Circuit in July 2025 with the Court claiming it exceeded statutory authority. The current NPRM in EP 788 deregulates by repealing Part 1144 entirely, which will restore statutory flexibility.

The NPRM invites comments regarding whether repeal would promote competition, how shippers and railroads will be affected, and developments since Part 1144's adoption, including industry consolidation, PSR, and service failures.

LAW AND LEGISLATIVE HISTORY REGARDING RECIPROCAL SWITCHING

Rail carriers can allow reciprocal switching voluntarily or the Board can require it when it is practicable and in the public interest or is necessary for competitive rail service. 49 U.S.C. § 11102(c)(1). The Board may establish conditions and compensation where carriers cannot agree. Decisions are guided by the rail transportation policy at 49 U.S.C. § 10101.

The current regulations at 49 C.F.R. Part 1144, promulgated in 1985, require showing anticompetitive conduct to satisfy the criteria under § 11102(c). In *Midtec Paper Corp. v. Chicago & N.W. Transp. Co.*, 3 I.C.C.2d 171 (1986), the I.C.C. focused on anticompetitive behavior, a standard too high for shippers to prove in each case, and the remedy was rendered effectively unavailable to the shippers bearing the burden of rail service failures and excessive rates.

The proposed repeal rightly eliminates the anticompetitive conduct requirement, allowing case-by-case application of statutory standards. This aligns with the Staggers Rail Act of 1980's emphasis on competition to regulate rates and service. 49 U.S.C. § 10101(1), (4)-(6), (12).

Legislative history confirms Congress intended reciprocal switching to foster competition, balancing ratemaking freedom with access remedies for shippers. H.R. Rep. No. 96-1430, at 80 (1980); Conf. Rep. No. 96-1430, at 89, 116; S. Rep. No. 96-470, at 41-42 (1979).

The NPRM follows Congress's intent, removes barriers to competition, and promotes Staggers' deregulatory vision.

COMMENTS

1. Repealing Part 1144 is Necessary to Provide Shippers with a Remedy Against the Ongoing Problems of PSR and Class I Railroad Consolidation.

The developments with PSR since Part 1144's adoption alone justify repeal here. Adopted by all Class I railroads except BNSF, PSR has transformed operations and has allowed rail carriers to prioritize cutting their operational costs over providing American businesses adequate service at a reasonable cost, catalyzing unreliable service and sticking rail shippers with a higher bill.

For their part, the railroads attempt to frame PSR as precise planning for efficiency, ostensibly allowing them to restructure local service, increase car velocity, minimize train miles, and standardize their service offerings. The PSR reality bears no resemblance to that framing. In practice, PSR has allowed the carriers to fire American workers in droves, has led them to use longer trains, and has increased service disruptions. NSSGA members have reported that as part of PSR, the Class I's determine days of frequency of service at a given location based on volume being shipped in an area. For example, if a shipper in a different industry is experiencing a volume decline, the railroad may impact service levels to all or select shippers in that area with their one size fits all, non-customer centric approach. These decisions are often unilateral on the part of the railroad.

Freight rail service failures persisted, with on-time performance averaging below 70% in mid-2022, disrupting the American supply chain with American rail shippers and their customers footing the bill.

Service quality plummeted with PSR rollouts: CSXT's 2017 implementation caused immediate problems that prompted STB monitoring. By 2022, crew shortages created further widespread problems, with then STB Chairman Oberman noting that the railroads' widespread firing of their workers had exacerbated such disruptions. In 2023-2025, Class I employment hovered between 120,000 and 122,000 rail workers, down from pre-PSR levels, according to FRA and STB data. By 2025, CSX's workforce was down to approximately 16,000 STB from 17,250 in 2021; Union Pacific was down by more than 2,000 workers, from 32,494 approximately 30,000; Norfolk Southern fired approximately 1,000 people, from 18,011 to about 17,000 last year. Operating ratios fell further with CSX's 56.3% in 2021 falling to ~52% in 2025; UP's 57.2% to ~54%, and NS's 60.1% to ~56%.

As service failed America's rail shippers, the railroads also forced them to pay more: real rates increased ~15-20% from 2022-2026, outpacing inflation and trucking, according to industry reports. The railroads' non-competitive traffic revenue grew, but aggregates-related companies were forced to try to absorb the cost of their poor service. PSR has de-marketed less-profitable traffic, leaving shippers without viable options, even as they already navigate widespread truck shortages. Repealing Part 1144 would enable competitive access, countering PSR's many carrier-created dysfunctions.

2. Increased Use of Reciprocal Switching Will Actually Increase Revenues for Class I Railroads.

Railroads argue competitive access deters investment, but repeal could attract new shippers through better rates and service, actually *increasing* their revenue. With coal revenue losses, railroads need growth; reciprocal switching is likely to increase carload traffic. From 2010-2019, railroads returned \$164 billion to shareholders while discretionary capital was \$26.6 billion — repeal could spur revenue-focused strategies. As just one example, switching would enable more frequent service, shifting traffic from trucks and boosting rail volumes.

3. Repealing Part 1144 Will Promote Efficient, Flexible Rail Service amid Ongoing Supply Chain Challenges.

Supply chains remain disrupted in 2026, and rail is crucial to their recovery. Aggregates demand has increased over the past five years¹, but rail workforce shortages exacerbated by PSR cuts have caused missed switches and congestion, among other problems. Repeal allows rail shippers to switch to better-prepared carriers or more efficient routes. Historical crises including 2022 crew shortages underscore and reflect the need here; repeal introduces competition, it improves preparedness, and it promotes efficiency in an industry in dire need thereof. Moreover, switching should result in more competitive rates moving traffic from truck to rail, a dynamic the railroads need during a time of stagnant growth.

CONCLUSION

Based on the foregoing, NSSGA strongly urges the Board to repeal 49 C.F.R. Part 1144, which will enable NSSGA members to deliver aggregates for critical infrastructure projects around the country. For the reasons described above, repeal is necessary, and necessary now.

¹ Phoenix Center for Advanced Legal & Economic Public Policy Studies, The Economic Impact of the Natural Aggregates Industry: A National, State, and County Analysis, Industry Scorecard (Washington, DC: Phoenix Center, April 2025), <https://phoenix-center.org/scorecards/AggregatesIndustry2025ScorecardFinal.pdf>.

Respectfully submitted,

/s/ Daniel R. Elliott

Daniel R. Elliott

John H. Kester

GKG Law, P.C.

1055 Thomas Jefferson St., NW

Suite 620

Washington, DC 20007

(202) 342-5248

delliott@gkglaw.com

Attorneys for NSSGA

Dated: March 10, 2026