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

March 10, 2025

Via Electronic Submission

The Honorable Patrick Fuchs, Chair
The Honorable Michelle Schultz, Vice Chair
The Honorable Karen Hedlund, Member
Surface Transportation Board (STB)
395 E Street, SW
Washington, DC 20423-0001

RE: Docket No. EP 788, “Eliminating Regulatory Barriers to Competition: Review of Part 1144,” (91 FR 945), January 9, 2026.

Dear Chair Fuchs, Vice Chair Schultz, and Member Hedlund:

The Fertilizer Institute (TFI) appreciates the opportunity to provide comments in response to the Surface Transportation Board’s Notice of Proposed Rulemaking (NPRM) on “Eliminating Regulatory Barriers to Competition: Review of Part 1144.”

TFI’s approximately 250 member companies participate in all aspects of the fertilizer supply chain in the United States, from manufacturing and distribution to the retailers who directly serve America’s farmers.¹ The industry produces and delivers the nutrients essential for crop production, supporting food security in the United States and around the world. Fertilizer enables roughly half of all global food production, underscoring its central role in agriculture and food systems.

The U.S. is both a major producer and consumer of fertilizer. It is the fifth-largest producing nation, accounting for over 7 percent of global production.² As the world’s third-largest fertilizer-consumer, the U.S. represents nearly 11 percent of global consumption.³ Each year, the domestic fertilizer industry contributes \$140 billion to the economy, supports nearly 500,000 jobs, and generates more than \$36 billion in income for American workers.⁴ This includes a robust U.S. fertilizer production base of manufacturing plants and mines, regional terminals and distributors, local retailers, and the transportation network that connects these operations together.

Rail transportation is essential to fertilizer’s multimodal supply chain.

Each year, ninety million tons of fertilizer are transported throughout the U.S., with nearly two-thirds of all domestic fertilizer ton-miles moved by freight rail.⁵ This makes the fertilizer industry one of the most significant freight rail users, and TFI member companies value strong, day-to-day operational partnerships with the rail industry.

¹ “Our Members,” The Fertilizer Institute. <https://www.tfi.org/membership/our-members/>.

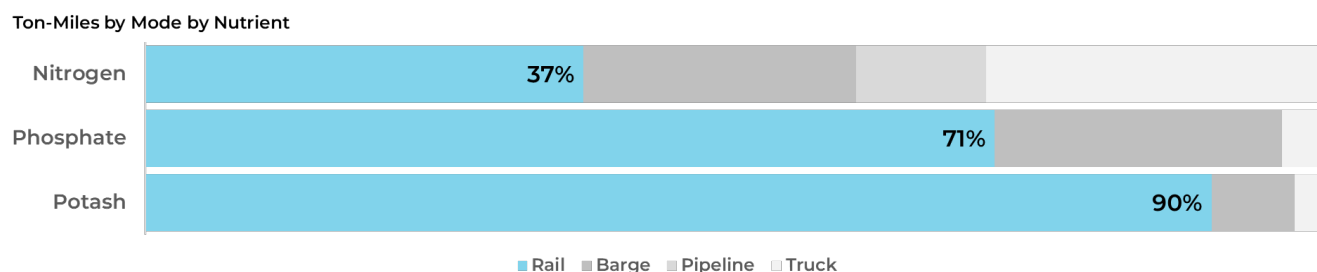
² TFI data.

³ “TFI Study Highlights Fertilizer Industry’s \$140 Billion Impact and Global Trade Tie,” The Fertilizer Institute, December 12, 2024. <https://www.tfi.org/media-center/2024/12/12/tfi-study-highlights-fertilizer-industrys-140-billion-impact-and-global-trade-ties/#:~:text=E2%80%9CWhile%20the%20latest%20data%20reveals,our%20needs%20are%20so%20high.>

⁴ “2024 Fertilizer Industry Economic Impact Study,” The Fertilizer Institute, December 12, 2024. <https://www.tfi.org/insights/economic-impact/>.

⁵ “Fertilizer Modal Assessment 2022,” The Fertilizer Institute, January 1, 2022. https://www.tfi.org/wp-content/uploads/_pda/2024/03/tfi_2022_fertilizer_modal_assessment.pdf.

Fertilizer is shipped as a bulk product, and most rail shipments of fertilizer are long-distance, traveling around 1,000 miles. As illustrated in the chart below, rail carries the highest share of ton-miles for two of the three primary fertilizer macronutrients.



Source: "Fertilizer Modal Assessment 2022," The Fertilizer Institute, Table 4.

TFI supports the Board's proposed repeal of Part 1144.

TFI strongly supports the Board's proposal to repeal regulations that unnecessarily restrict its statutory discretion to prescribe reciprocal switching agreements, through routes, and through rates. Part 1144 of Title 49, a regulation originally adopted through rulemaking by the Board's predecessor the Interstate Commerce Commission (ICC) in 1985, requires that the Board may only provide the prescription of a through rate, through route, or reciprocal switching arrangement if the relief is necessary to remedy or prevent an act that is anticompetitive and where the shipper has demonstrated the rail carrier has engaged in anticompetitive conduct.

When Congress established the authorities to grant through rates, through routes, or reciprocal switching arrangements, now codified at 49 U.S.C. 10705 and 11102(c), it also adopted a public interest standard for the Board to apply when determining whether to grant any of these forms of relief. The heightened anticompetitive conduct standard later created through regulation in Part 1144 has no basis in the statute and was adopted by the ICC at a time when the railroad industry experienced vastly different operating and financial conditions. As TFI and other shipper organizations noted in comments to the Trump Administration's Anticompetitive Regulations Task Force (Task Force), in addition to exceeding the statutory requirements, the provisions of Part 1144 set a bar that is counter to Congress' intention "to ensure effective competition among rail carriers".⁶

In practice, Part 1144's anticompetitive conduct standard effectively forecloses meaningful access to these forms of relief. As such, and as noted by the shipper organizations in their comments to the Task Force, Part 1144 not only bars shipper access to the forms of relief Congress intended, but it also functions as an obstacle to advancing the effective rail-to-rail competition and other goals of the national rail transportation policy established in 49 U.S.C. 10101.

The Board underscores this point in the text of the NPRM, observing that Part 1144 "presents a regulatory impediment to cases that might otherwise be meritorious under...statutory provisions."⁷ In reviewing its own history of adjudicating claims for relief, the Board found that it "has never issued a prescription under its framework."⁸ The Board further concludes that "there are ample reasons for repealing Part 1144" and that "removing Part 1144 is sound policy because it eliminates what appears to have created, in practice, an unnecessarily high barrier to statutory relief."⁹

⁶ See comments from The Fertilizer Institute, the American Chemistry Council, The National Industrial Transportation League, and others to ATR-2025-0001, Anticompetitive Regulations Task Force (May 27, 2025).

⁷ NPRM at 949.

⁸ NPRM at 947.

⁹ NPRM at 949.

The Board's proposed repeal of Part 1144 through rulemaking is a sound deregulatory action in support of advancing the national rail policy objective of effective competition. Aligned with the statutory public interest standard, it is removing an "unnecessarily high barrier to competition in freight rail transportation."¹⁰ The proposed repeal further enables the utilization of forms of relief that are, by their very nature, grounded in the objective of fostering rail-to-rail competition and incentivizing reasonable service levels, rules, and rates from rail carriers versus relying on the Board to regulate through other statutory forms of relief.

The Board's proposal does not replace the rail merger rules' obligation to ensure enhanced rail-to-rail competition.

The proposed repeal of Part 1144 comes as the Board is also reviewing a proposed merger between two Class I rail carriers. While TFI strongly supports the Board's proposal to repeal Part 1144, it likewise urges the Board and other stakeholders not to view this action as a substitute for the separate and independent requirement that the current merger proceeding, or any future merger proposal must demonstrate enhanced rail-to-rail competition and mitigate associated competitive harms. These proceedings are two distinct actions, and a policy change by the Board does not relieve the merger applicants from their obligations under 49 C.F.R. 1180, nor should it impact the Board's evaluation of the applicants' claims.

The Board's proposal restores Congressional intent.

In enacting rail regulatory reform legislation in response to the industry's financial challenges in the late 1970s, Congress maintained several important authorities that provide protection and relief for shippers. For through routes, through rates, and reciprocal switching agreements, Congress established a public interest standard as the basis for review, while additionally providing a "necessary to provide competitive rail service" standard for reciprocal switching.

In addition their statutory foundations, the adoption of both standards align with the overarching rail transportation policy objectives established in 49 U.S.C. 10101, which seek "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, *to meet the needs of the public* and the national defense."¹¹ Congress further determined that policy should "allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail" (49 U.S.C. 10101(1)) and those that "foster sound economic conditions in transportation and ensure[s] effective competition" (49 U.S.C. 10101(5)).

Congress did not impose additional layers of review for these forms of relief, least of all an unwarranted anticompetitive conduct standard that would significantly restrict shippers' ability to access the remedies provided in the statute. Instead, Congress intended these forms of relief to, by their very existence, "encourage...competition among railroads...to serve as an important safeguard" for shippers.¹² The legislative record shows that lawmakers also intended that the ICC (and later the Board) would retain significant discretion to evaluate claims and prescribe relief to encourage greater rail-to-rail competition, without requiring shippers to demonstrate competitive abuse as a prerequisite.

When the ICC restricted this description and adopted the Part 1144 anticompetitive conduct standard, it did so through its own regulatory authority, not to meet any statutory requirement. This was reinforced by the D.C. Circuit in 1988's *Midtec* decision.¹³ As discussed in the proposed rule this same authority for the Board to narrow its direction also provides the Board with the authority to remove this policy.

¹⁰ NPRM at 951.

¹¹ 49 U.S.C. 10101(4), emphasis added.

¹² S. Rep. No. 470, 96th Congress, 1st Session, 41.

¹³ *Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988) at 1500.

The Board's proposal addresses limitations from past reciprocal switching approaches.

TFI has long advocated for the Board to adopt reforms to reciprocal switching regulations, with efforts going back several decades. In 2024, the Board adopted reciprocal switching regulations which required a determination by the Board that a railroad was providing inadequate service. However, the rule was limited to traffic that moved under rail tariffs and excluded traffic moved under contracts, which are a substantial portion of the fertilizer industry's rail transportation.

While TFI appreciates the diligent work of the Board and staff in developing the 2024 regulation, the rule's limitations largely prevented it from being an effective form of relief for shippers. Moreover, the rule was vacated by the U.S. Court of Appeals for the Seventh Circuit on July 8, 2025, concluding that the Board had exceeded its statutory authority.

The Board's current proposed repeal of Part 1144 meaningfully addresses these limitations. First, by removing the regulation's reliance on a metric-based determination of inadequate service, the Board will be able to assess each claim based on its specific facts, allowing each party to make its own legal and policy arguments. Second, as the Board explains in the NPRM, there is clear statutory authority, supported by established judicial precedent, for the agency to revise its rules in a manner that "restore[s] its discretion here to the full extent provided by the statute in order to better effectuate Congressional intent."¹⁴ Part 1144 was adopted through a rulemaking, and the Board is repealing the provision through a rulemaking.

TFI supports a full repeal of Part 1144 and urges the Board to include important guidance in its final decision.

While TFI's May 2025 comments to the Task Force focused on the repeal of Part 1144 as it pertains to reciprocal switching arrangements, we support the Board's proposal to fully repeal Part 1144 for competitive access requests under both 49 U.S.C. 10705 and 11102(c). TFI agrees with the Board that the rationale for eliminating Part 1144 and its anticompetitive conduct requirement applies equally to through routes, through rates, or reciprocal switching arrangements.¹⁵ The existing regulatory provisions unduly constrain the Board's discretion in evaluating claims for relief, establishing an unnecessarily high barrier for shippers. Each of these three forms of relief is intended to achieve the Congressionally established objective of promoting rail-to-rail competition to improve service and reduce rates, limiting the need for the Board to rely on its rate and service regulatory authorities.

Repealing Part 1144 would return the Board to a case-by-case framework for adjudicating requests for through routes, through rates, and reciprocal switching arrangements. This approach would allow the Board to evaluate each claim on its merits under the applicable statutory standards, exercising its adjudicatory authority without narrowing the effects of the current regulations. As the Board outlines in the NRPM, the repeal of Part 1144 would provide "the opportunity to consider parties' legal and policy arguments and to identify relevant factors in the context of specific circumstances."¹⁶ Further, and as also pointed out by the Board, the case-by-case approach would "guard against, decisions that, if applied consistently as precedent" could lead to unintended consequences.¹⁷

The repeal of Part 1144 would be a straightforward deregulatory action. To support this step, TFI encourages the Board to include additional clarifying material in the preambulatory text of its decision. This should include guidance on a standard set of facts the Board expects shippers to present in their petitions; such information would not only reduce the burden on shippers in the initial post-Part 1144 cases but also provide the Board with an opportunity to streamline information gathering and support a balanced process. Similarly, the Board should

¹⁴ NPRM at 949.

¹⁵ NPRM at 951.

¹⁶ NPRM at 950.

¹⁷ NPRM at 951.

commit to resolving petitions in a timely manner with a level of predictability and clarity of outcome; this harkens back to concerns raised by the members of the Board in a previous proceeding.¹⁸ Further, TFI encourages the Board to adopt its commitment to providing updates to petitioners, respondents, and the public on the status of proceedings when addressing cases to adjudicating requests for through routes, through rates, and reciprocal switching arrangements.

Finally, TFI urges the Board to clarify that the longstanding limits on considering product and geographic competition will continue to apply without exception. Reaffirming both the established inadmissibility of product-competition evidence and the requirement that any claim of effective geographic competition be proven by a railroad through “clear and convincing evidence” would help prevent the unintended introduction of significant additional complexity into competitive-access cases. Such complexity, even if notified early by the railroad, could deter shippers from seeking relief and would run counter to the proposal’s deregulatory objectives and its aim of promoting enhanced rail-to-rail competition.

Conclusion.

TFI strongly supports the Board’s proposal to repeal Part 1144 and appreciates the opportunity to provide these comments. If you have any questions or need additional information, please contact Ryan Bowley, Vice President of Government Affairs, at rbowley@tfi.org.

Sincerely,



Ryan Bowley
Vice President, Government Affairs
The Fertilizer Institute

¹⁸ See *North America Freight Car Association*; *American Fuel & Petrochemicals Manufacturers*; *The Chlorine Institute*; *The Fertilizer Institute*; *American Chemistry Council*; *Ethanol Products, LLC D/B/A Poet Ethanol Products*; *Poet Nutrition, Inc.*; and *Cargill Incorporated v. Union Pacific Railroad Company*, NOR 42144, (STB served Jan. 15, 2025).