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April 13, 2026

Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Chief Counsel
April 24, 2026
Part of
Public Record

Re: Docket No. EP 788, Eliminating Regulatory Barriers to Competition: Review of Part 1144

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

On behalf of The ScottsMiracle-Gro Company ("ScottsMiracle-Gro"), I am writing to submit these comments supporting the Opening Comments filed by The Fertilizer Institute on March 10 earlier this year. Like TFI, ScottsMiracle-Gro supports the Surface Transportation Board's ("STB" or the Board) Notice of Proposed Rulemaking (NPRM) in Docket No. EP 788 to fully repeal 49 CFR Part 1144. Repealing these outdated regulations will eliminate unwarranted barriers to competition and enable our manufacturing facility in Marysville, Ohio, along with our other locations nationwide, to have a greater opportunity to benefit from competitive and reliable freight rail service.

For background, ScottsMiracle-Gro is a leading American manufacturer of lawn and garden products, with a portfolio that includes Scotts®, Miracle-Gro®, AeroGarden®, Ortho®, and Tomcat®. The company was formed by the 1995 merger of O.M. Scott & Sons (established in 1868) and Miracle-Gro (established in 1951), and remains headquartered in Marysville, Ohio. With over 5,000 associates in 26 states, we operate numerous manufacturing facilities nationwide. These facilities recycle over 5 billion pounds of green waste a year. To produce fertilizers, soils, and other consumer products, we rely on freight rail to ship tons of material annually to our facilities. In Marysville alone we receive over 2,000 cars a year.

Safe, reliable, and competitive rail transportation is critical to supplying our customers and supporting our manufacturing operations. Like many other freight rail customers, our major facilities are captive and suffer from a lack of transportation choices. This has led to service disruptions and in some cases threatened manufacturing shutdowns. When Congress established the agency's statutory authority to grant reciprocal switching arrangements, through routes, and through rates, it intended to encourage intramodal competition as an important safeguard against inadequate service or unreasonably high prices.

Unfortunately, the "anticompetitive conduct" standard currently mandated by Part 1144 imposes an unreasonably high and unnecessary barrier to securing competitive access. By requiring shippers to prove that a railroad (i) engaged in conduct that harmed competition, (ii) lacked a legitimate business justification, and (iii) resulted in demonstrable competitive injury, the standard effectively operates as a total bar to relief. In the 40 years since the adoption of the Part 1144 regulations, the STB has never successfully applied them to grant a rail customer's request for reciprocal switching. Instead of promoting competition, the current regulation effectively

shields railroads from competition and preserves an unacceptable status quo for captive rail customers.

ScottsMiracle-Gro strongly supports the Board's proposal to repeal Part 1144 and return to a case-by-case framework for adjudicating requests for competitive access under the governing statutory provisions. Relying directly on statutory authority will provide a clean slate for shippers like us to seek practical remedies when our manufacturing plants receive inadequate service threatening our production and negatively impacting our employees. A case-by-case adjudicatory approach will allow the Board to thoughtfully consider current rail operations, the specific competitive situations at our facilities, and other important factors without the rigid constraints of an outdated standard.

Furthermore, as the Board finalizes this rule, we urge you to continue limiting the consideration of product and geographic competition evidence in these proceedings. Opening the door to such evidence imposes significant and well-documented burdens on shippers, which could discourage meritorious claims and prevent the expeditious resolution of Board proceedings.

Repealing the anticompetitive conduct standard is a necessary and sound deregulatory action that aligns with the statutory public interest standard and the reality of the modern freight rail system. We appreciate the Board's attention to this critical issue and respectfully request that the STB issue a final rule to fully repeal Part 1144.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Herrington", is written over a rectangular box.

Brian Herrington
Vice President External Affairs
The ScottsMiracle-Gro Company