

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE No. 788

ELIMINATING REGULATORY BARRIERS TO COMPETITION:
REVIEW OF PART 1144

Proposed Rulemaking

**REPLY COMMENTS OF
AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS**

I. Introduction

American Fuel & Petrochemical Manufacturers (“AFPM”) respectfully submits these reply comments on the Surface Transportation Board’s (“STB” or “the Board”) Notice of Proposed Rulemaking (“NPRM”) titled, “*Eliminating Regulatory Barriers to Competition: Review of Part 1144*”.¹ In this NPRM the Board proposes to repeal 49 Code of Federal Regulations (“CFR”) Part 1144, which governs “*Intramodal Rail Competition*” including procedures to challenge competition practices and seek remedies related to reciprocal switching, through routes, and rates.

AFPM reiterates its strong support for STB’s proposal to repeal 49 CFR Part 1144 in its entirety. As explained in AFPM’s initial comments, Part 1144 is an obsolete regulatory framework that exceeds the Board’s statutory authority and has operated as an insurmountable barrier to competitive access for more than four decades.² In these reply comments, AFPM addresses several recurring arguments raised by opponents of repeal, including attempts to improperly link repeal to the Board’s evaluation of the proposed UPNS merger, to overstate the operational and rate impacts of repeal, and to characterize repeal as non-deregulatory. Specifically, AFPM highlights the following in these reply comments:

- Part 1144 repeal should be independent and considered separately from the Union Pacific Norfolk Southern (“UPNS”) Merger. The Board should not treat repeal as a mitigating factor in assessing a transaction that may reduce competition, as doing so would improperly conflate distinct statutory analysis.
- Claims that Part 1144 is functioning effectively because of the absence of cases ignores the substantial evidence that the rule has operated as a barrier to claims, rather than advancing the statute’s purpose.
- Concerns that repeal will cause widespread operational disruptions are overstated. Remedies granted will remain limited, fact-based, and constrained to prevent system-wide impacts.
- Categorical exclusion of shipments under contract rate from remedies such as reciprocal switching and through routes frustrates the purpose of 1144’s rescission.
- Assertions that repeal is not deregulatory and will lead to overregulation or unwarranted remedies are unfounded given that existing statutory requirements continue to constrain Board action in every adjudication. Further repeal aligns with various Executive Orders including those related to deregulation and anti-competitive policies.

II. AFPM’s Interest in the Proceeding

AFPM is the leading trade association representing manufacturers of the fuels that keep America moving and the base petrochemicals that are essential building blocks for plastic products that make modern life possible and improve the health, safety, and living conditions of humankind. AFPM members are committed to sustainably manufacturing safe, high-performing fuels and the petrochemicals and derivatives that growing global populations and economies need to thrive.

¹ See 91 Fed. Reg. 945, [Eliminating Regulatory Barriers to Competition: Review of Part 1144](#) Notice of Proposed Rulemaking; Docket No. EP 788, published January 9, 2026.

² American Fuel & Petrochemical Manufacturers. Submitted March 10, 2026, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310981.

Refineries and petrochemical manufacturers rely on a healthy rail network as a vital part of their supply chains. In 2022, over 2.3 million carloads of our members' feedstocks and products, including crude oil, natural gas liquids, refined products, plastics, and synthetic resins, are transported by rail.³ In fact, on average between 2014 and 2024, 206 million barrels of crude oil, a main feedstock for our members, are moved annually on railroads.⁴ Refineries and petrochemical manufacturers rely on efficient, predictable and competitive rail markets to provide consumers the affordable gasoline and petrochemical based products they depend on. With transportation and distribution accounting for ~10-20% of costs (varying by product), poor rail service can delay distribution, compromise refinery and petrochemical manufacturing efficiency and raise costs of those products across the country.⁵

Decades of consolidation within the rail industry have left many shippers dependent on a single Class I carrier for essential transportation services.⁶ Having captive customers has enabled railroads to raise rates, impose additional charges, decrease service and impose one-sided terms in transportation contracts. More recently, operational practices adopted by railroads have made service ever more unpredictable, elevated shipping costs, and reduced reliability throughout the supply chain. While industry has changed considerably, the regulations governing these markets have failed to keep pace and reflect those changes. As stated in our previous comments, the Board's proposal to repeal 49 Part 1144 will address these significant challenges and burdens on rail shippers and customers and the changing dynamics of the industry resulting from reduced competition.

III. AFPM's Reply Comments on Part 1144 Repeal

AFPM extensively reviewed the comments submitted to the docket for this rulemaking. Following that review, AFPM found that opposition to rescission of Part 1144 was advanced primarily by certain Class I rail carriers—most notably Norfolk Southern, CSX, Canadian Pacific Kansas City, and Canadian National Railway Company, along with rail labor organizations that aligned with carrier positions. These commenters urge the Board to retain Part 1144, arguing that the rule is necessary to preserve regulatory certainty, limit the scope of competitive access remedies, and protect rail network operations from what they characterize as undue regulatory intrusion.

By contrast, BNSF Railway Company and Union Pacific Railroad Company did not oppose rescission outright but instead raised concerns regarding how repeal might be implemented and how the Board would evaluate competitive access requests in the absence of Part 1144. Their comments focus on the need for clear standards, consideration of operational feasibility, and safeguards to prevent speculative or overly broad applications of competitive access remedies. While framed as reservations rather than opposition, these concerns similarly reflect apprehension

³ See [Freight Rail Facts and Figures](#) updated September 2025, accessed March 2026.

⁴ See U.S. Energy Information Administration [Movements of Crude Oil & Selected Products by Rail](#) accessed March 2026.

⁵ See [Gas Prices Explained](#), accessed February 18, 2026.

⁶ AFPM member surveys indicate over 75% of member facilities are captive to one Class I railroad.

about expanding the Board's ability to assess carrier conduct without the prescriptive constraints imposed by the existing rule.

Rail carriers' opposition to repeal ignores the practical reality faced by captive shippers: Part 1144 has not constrained unfair or exclusionary conduct but instead has insulated it. Rail carriers employ practices that exploit market power rather than reflect legitimate operational necessity. These practices persist not because statutory remedies are unavailable, but because Part 1144's rigid, prescriptive framework has rendered those remedies functionally inaccessible. Examples of such conduct include:

- unilateral service degradation or deprioritization of captive facilities;
- conditioning interchange or routing on acceptance of higher rates or unfavorable contract terms;
- strategic use of embargoes, lane closures, or "operational feasibility" claims to foreclose competitive options; and
- demurrage and accessorial charges imposed without meaningful ability to avoid or mitigate them.

These practices distort competition, raise shipper costs, and undermine the national rail transportation policy's mandate to promote a competitive and efficient rail system. Repeal does not create new authority—it restores the Board's ability to evaluate such conduct under the governing statutes without artificial regulatory barriers. Below are AFPM's responses to third-party comments submitted on the NPRM.

A. Part 1144 Repeal Must Be Independent and Considered Separately from the UPNS Merger Application

Several commenters to the NPRM highlighted that it was critical for STB to view the repeal of Part 1144 as one way to address anti-competitive issues but not a comprehensive solution to the widespread lack of competition in rail markets. These same comments cautioned STB against any suggestion that the NPRM mitigates potential competitive harms associated with the proposed Union Pacific/Norfolk Southern merger. As such these proceedings (EP 788 and FD 36873) 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.

AFPM did not originally comment on issues related to merger proceedings currently under consideration as we believed the separation of these dockets was understood. That said, we do support and emphasize other's comments stressing the need to independently consider these two dockets. AFPM emphasizes that repeal of Part 1144 must be considered independently from the Board's review of the proposed UPNS merger. Rescission is a procedural correction that aligns the Board's regulations with governing statutes and restores case-by-case adjudication under 49 U.S.C. §§ 11102 and 10705. It does not—and cannot—serve as a substitute for the Board's independent public-interest analysis under 49 U.S.C. § 11324. Specifically, AFPM supports and is strongly aligned with the following statements provided in the docket.

- American Chemistry Council - “Repealing the anticompetitive conduct standard would allow the Board to consider prescriptions for reciprocal switching, through routes, and through rates on a case-by-case basis. However, significant uncertainties remain over how STB will interpret the statutory standard and how broadly it may make such remedies available in the future. Additionally, because competitive access prescriptions following repeal of Part 1144 would provide inherently localized and individualized remedies on a case-by-case basis, they are not a solution for addressing widespread or large-scale competitive problems. Therefore, the Board’s action should not be viewed as a comprehensive solution to the loss of competition in the freight rail industry. For these reasons, ACC strongly cautions against any suggestion that the Proposed Rule mitigates potential competitive harms associated with the proposed Union Pacific/Norfolk Southern merger.”⁷
- Alliance for Chemical Distributors - 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.”⁸
- The Fertilizer Institute - 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

⁷ American Chemistry Council, Submitted March 10, 2026, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310961.

⁸ Alliance for Chemical Distribution, Submitted March 10, 2026, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310980.

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."⁹

- BNSF Railroad – “BNSF further notes that this proposal comes at a pivotal moment for competition in the railroad industry, as Union Pacific Railroad Company (UP) and Norfolk Southern Railway Company (NS) seek to consolidate an unprecedented amount of market power through their proposed merger. For reasons that BNSF will address in the merger proceeding, the long- 2 term competitive harms of that transaction pose a significant threat to the U.S. economy and the American consumer. Nothing in the NPRM alters the Board's responsibility to prevent those harms in addressing the proposed merger.”¹⁰ See also Section IV of their comments entitled “The repeal of the CARs would not affect the Board's responsibility to fully evaluate the proposed UP/NS transaction and prevent the creation of market power through the merger.”

The legality and competitive implications of the merger must be evaluated based on metrics outlined in statute or implementing regulations, not on speculative future access remedies that may never materialize. Reliance on hypothetical, post hoc reciprocal switching remedies would improperly dilute the Board's ex ante, comprehensive merger review. Competitive-access proceedings are fact-intensive, costly, and uncertain, and cannot replace merger conditions or justify approval where consolidation threatens competition. The Board should therefore make clear that repeal of Part 1144 cannot be cited in this or future merger proceedings as mitigating competitive concerns.

B. Lack of 1144 Cases Is Not Evidence It Is Working Properly

Norfolk Southern contends that the Board's reliance on the lack of cases under Part 1144 is misplaced, suggesting that the absence of complaints may indicate that the framework is functioning as intended rather than failing. That argument collapses under even minimal scrutiny of the record and the regulatory history. As AFPM explained in its opening comments, the complete absence of competitive-access relief over the forty years since Part 1144 was adopted is not evidence of a well-functioning framework; it is compelling evidence that the framework has failed so thoroughly that it has rendered statutory remedies illusory.

Norfolk Southern's position depends on the implausible premise that four decades of industry consolidation, widespread shipper captivity, rising rates, degraded service, and repeated shipper testimony of competitive harm somehow produced no legitimate competitive-access disputes. The rail industry has changed dramatically since 1985, yet under Part 1144 not a single reciprocal switching, through-route, or through-rate prescription has been granted. The ICC – the predecessor to STB – and the Board denied every petition brought under the rule, and shippers ultimately stopped filing cases altogether. A regulatory regime that generates zero relief across an entire industry for forty years does not reflect flawless operation; it reflects a framework that forecloses relief by design.

⁹ The Fertilizer Institute, Submitted March 10, 2026, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310987.

¹⁰ BNSF Railway Company, Submitted March 10, 2026, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310978.

AFPM’s comments explain why. Part 1144 imposed an extra-statutory “anticompetitive conduct” requirement that is not found in 49 U.S.C. §§ 10705 or 11102 and that fundamentally distorts the statutory inquiry. Instead of asking whether access is practicable, necessary, or in the public interest—as Congress directed—the rule forces shippers to prove conduct akin to intent-based abuse or egregious misconduct. In a modern, highly consolidated rail industry, where market dominance is structural rather than episodic, that standard is nearly impossible to satisfy. The absence of cases is therefore not evidence that no problems exist; it is evidence that the standard itself screens out claims before they can be meaningfully adjudicated.

Multiple shipper trade associations participating in this proceeding independently confirm AFPM’s assessment that Part 1144 has operated as an unreasonable and burdensome barrier to relief. ACC, which as the Board noted in the NPRM was a key party in reaching the agreement that resulted in the promulgation of 1144, now states unequivocally that Part 1144 “narrows the Board’s statutory authority” and imposes an “unwarranted barrier to competition,” preventing shippers from accessing reciprocal switching, through routes, and through rates as contemplated by statute.¹¹ ACC emphasizes that the anticompetitive-conduct requirement embedded in Part 1144 is not compelled by Congress and has, in practice, foreclosed relief under modern market conditions marked by consolidation and widespread shipper captivity. ACC further notes that the absence of any successful prescriptions under Part 1144 reflects the rule’s unworkability, not the absence of competitive harm, and supports repeal as necessary to realign Board practice with statutory intent.

Similarly, the American Petroleum Institute (“API”) and the National Industrial Transportation League (“NITL”) echo AFPM’s conclusion that Part 1144 has functioned as a structural impediment rather than a meaningful procedural safeguard. API explains that for energy shippers, Part 1144 has “functioned for four decades as an unnecessary and extra-statutory barrier to relief,” leaving captive shippers with diminished leverage and no realistic recourse in the face of monopoly pricing and service failures.¹² NITL, another key party in the agreement that resulted in 1144, likewise characterizes Part 1144 as imposing “extremely burdensome standards” that have “unduly narrowed the Board’s discretion” and discouraged the filing of even potentially meritorious claims.¹³ Taken together, these comments reinforce AFPM’s position that the lack of cases under Part 1144 is itself evidence of regulatory failure and that repeal is necessary to restore access to the limited, case-by-case competitive tools Congress preserved.

Norfolk Southern’s argument also ignores the well-documented chilling effect of Part 1144. Shippers’ comments make clear that many potentially meritorious cases are never filed because shippers understand that the costs, burdens, and near-certain denial associated with Part 1144 make pursuit of relief futile. Captive shippers are reluctant to spend years and millions of dollars litigating under a rule with a 40-year record of universal failure—particularly when they must

¹¹ American Chemistry Council, Submitted March 10, 2026, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310961.

¹² American Petroleum Institute, Submitted March 10, 2026, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310964.

¹³ The National Industrial Transportation League, Submitted March 10, 2026, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310977.

continue to rely on the same railroad during and after the proceeding. A regulatory system that deters claims wholesale cannot plausibly be described as functioning as Congress intended.

It is especially telling that Norfolk Southern treats the absence of complaints as a success only because the framework overwhelmingly favors railroads. Under Part 1144, carriers benefit from monopoly pricing, one-sided contract terms, and operational discretion free from competitive challenge, while shippers are left without a practical mechanism to seek relief Congress expressly preserved. To argue that such one-sided outcomes prove the rule is working borders on circular reasoning: the framework “works” only in the sense that it ensures railroads never have to defend their conduct on the merits. That is not regulatory effectiveness; it is regulatory abdication.

In this light, Norfolk Southern’s suggestion that repeal risks disturbing a settled and functional system is not just incorrect, it is fundamentally backward. The unfairness of Part 1144 lies precisely in its ability to suppress claims, shield dominant carriers from scrutiny, and convert statutory safety valves into dead letters. The notion that zero remedies in forty years should be treated as validation rather than indictment is, frankly, a remarkable assertion. Repealing Part 1144 does not create new rights or guarantee outcomes; it restores the Board’s ability to apply the statute Congress wrote. If anything, it is the current framework, not repeal, that represents the true departure from congressional intent.

C. Opponents Overstate and Mischaracterize Alleged Operational Impacts

Opponents of repeal, particularly major Class I carriers, frame their concerns in terms of the potential operational, service, and market consequences of eliminating Part 1144. BNSF, CSX, and Union Pacific argue that expanding access to competitive remedies (particularly reciprocal switching) risks disrupting the finely balanced operational dynamics of the national rail network. These carriers contend that broader use of such remedies could increase the number of car handlings, introduce additional operational complexity into dispatching and routing decisions, and interfere with network planning that is currently optimized for efficiency and throughput. In their view, these cumulative effects could degrade overall service reliability, not only for the shippers seeking relief but across the broader network. Accordingly, they assert that any competitive-access remedy should be granted only in narrow circumstances where there is clear evidence that it will produce demonstrable improvements in service outcomes. But this is precisely the function of the Board’s case-by-case review process. The Surface Transportation Board is both empowered and obligated to evaluate these operational, service, and market considerations when and if a case is brought. At this stage, the Board should not limit its own authority or prejudge the outcome of hypothetical future cases. Moreover, these are the same practical considerations that shippers must weigh in deciding whether to pursue relief at all, further ensuring that only viable, well-supported cases are presented.

These claims ignore the current realities of the operational practices of rail carriers. Over the past several years, changes in railroad operating practices have coincided with measurable declines in service quality, including increased delays, reduced reliability, and diminished operational flexibility across the freight rail network. These outcomes are not speculative or prospective; they reflect ongoing, system-wide conditions that continue to impose significant burdens on shippers and the broader supply chain.

As AFPM previously described, the U.S. freight rail network is experiencing significant service challenges that have made rail service increasingly unpredictable and less reliable. Shippers regularly encounter recurring delays, missed switches, and extended cycle times that disrupt the timely movement of both raw materials and finished products. These service deficiencies carry direct economic consequences, including delayed distribution, reduced manufacturing efficiency, and higher costs borne by producers and consumers alike. Given the central role rail transportation plays in moving essential feedstocks and finished goods, these disruptions are already affecting multiple sectors of the national economy.

AFPM further underscored that a principal driver of these service issues has been railroads' widespread adoption of Precision Scheduled Railroading ("PSR") and related operational strategies. Under PSR, carriers prioritize internal efficiency metrics—such as asset utilization, crew reductions, and cost minimization—over service responsiveness and operational flexibility. As AFPM explained, this model relies on fewer, longer trains operating on rigid schedules, often without regard to fluctuations in shipper demand or localized operating conditions. While these practices may advance certain railroad cost objectives, they have also reduced network adaptability, constrained yard capacity, and increased the likelihood of congestion and missed service.

Compounding these effects are significant reductions in railroad labor levels. As part of their efficiency initiatives, carriers have reduced workforces across operating crafts, leaving fewer personnel available to manage daily operations, recover from service disruptions, or respond to unexpected demand. When combined with longer trains and inflexible operating plans, these labor reductions have made the rail network less resilient and more vulnerable to bottlenecks and cascading delays, conditions entirely separate from, and predating, any regulatory relief sought by shippers.

Taken together, AFPM's prior comments establish that the delays, congestion, and service instability cited by carriers are not the product of regulatory oversight or competitive-access remedies. They are the foreseeable result of railroads' own choices regarding train length, staffing levels, network rationalization, and operating philosophy. These impacts are felt most acutely by captive shippers, who lack alternative transportation options and must absorb the consequences of degraded service without recourse.

This record is directly relevant to the claims raised by railroads in this proceeding. To the extent carriers argue that targeted, case-specific competitive-access remedies would increase delays or disrupt network performance, those arguments overlook the reality that many of the cited operational challenges already exist under the status quo and are self-inflicted. The Board's consideration of competitive-access remedies would occur on a case-by-case basis, with full authority to assess practicability and operational impacts. Assertions that such remedies would create systemic service disruptions are therefore overstated, unsupported by the record, and inconsistent with the demonstrated causes of current service failures.

As AFPM explained, competitive-access remedies are not self-executing and cannot be imposed absent detailed findings addressing practicability, operational feasibility, and

public-interest considerations. STB is expressly empowered to assess yard capacity, interchange logistics, crew availability, labor demands, safety considerations, and service reliability before granting any relief. Repeal does not eliminate STB's job to provide regulatory oversight. To the contrary, STB would remain responsible for calling balls and strikes on a case-by-case basis

Moreover, repeal eliminates a rigid regulatory framework in favor of fact-specific adjudication, which reduces rather than increases the risk of system-wide impacts. Under a case-by-case approach, the Board may confine relief to discrete movements, specific facilities, defined timeframes, or narrowly tailored operating conditions. Nothing in the NPRM compels broad, network-wide mandates, and nothing relieves shippers of the burden to demonstrate that requested access can be implemented without undue operational harm.

As AFPM noted, railroads already evaluate interchange feasibility and network impacts in numerous other regulatory contexts, including service orders, rate cases, and existing routing disputes. Repeal of Part 1144 does not meaningfully alter these practices; it merely removes an outdated regulatory barrier that precluded the Board from weighing operational impacts on their merits. Repeal restores the Board's ability to distinguish genuine operational constraints from claims invoked to preserve monopoly advantages.

D. Concerns About Rate Reduction Abuse are Unfounded

Relatedly, Norfolk Southern Railway and CSX advance a broader argument grounded in the structure of the rail industry and the intent of Congress. These commenters emphasize that the statutory framework established under the Staggers Rail Act does not seek to impose perfect competition across rail markets but rather reflects a deliberate balance between deregulation and limited oversight. They argue that rail carriers may lawfully possess and exercise a degree of market power, including pricing above marginal cost, without such conduct constituting anticompetitive behavior or warranting regulatory intervention. From this perspective, they caution that competitive-access remedies should not be used as a substitute for rate regulation or as a mechanism to reduce rates absent a showing that those rates are unreasonable under the governing statutory standards. In their view, expanding access to such remedies risks upsetting the balance struck by Congress by effectively transforming targeted competitive tools into broader instruments of rate and service regulation.

Rail carrier claims that repeal of Part 1144 would invite improper rate challenges ignore the well-documented reality of sustained rate escalation, monopoly pricing, and asymmetric bargaining power that already characterize much of the freight rail industry. As AFPM explained in its opening comments, decades of consolidation have left a substantial majority of shippers captive to a single Class I railroad, enabling carriers to raise rates, impose additional charges, and dictate one-sided contract terms without meaningful competitive discipline. In these single-served markets, railroads routinely price far above marginal cost, not as a reflection of efficient market forces, but because shippers lack any practical alternative. AFPM's comments detail how the absence of competitive options has allowed carriers to extract monopoly rates, layer on accessorial charges, and leverage their dominance in negotiations. These conditions are exacerbated, not constrained, by the regulatory barriers imposed by Part 1144.

Against this backdrop, it is difficult to credit railroads' claims that repeal would somehow enable abuse by shippers seeking to reduce rates. The reality reflected in the record is precisely the opposite: shippers have borne the brunt of abuse for forty years under a framework that has insulated carriers from competitive pressure and foreclosed meaningful remedies. Characterizing potential competitive-access petitions as opportunistic rate challenges is the height of hypocrisy, given that the existing system has systematically favored carriers' unilateral exercise of pricing power while depriving captive customers of any viable recourse.

Moreover, these concerns fundamentally mischaracterize the effect of repealing Part 1144. Repeal does not transform competitive-access remedies into de facto rate regulation, nor does it entitle shippers to relief based on generalized dissatisfaction with pricing. As AFPM emphasized, the governing statutes remain unchanged, and the Board retains full discretion to reject opportunistic or unsupported claims. Any petition for relief must still satisfy rigorous statutory standards, including practicability, feasibility, and consistency with the public interest. The Board remains free to deny access where a complainant cannot demonstrate that relief is legally and factually warranted, and nothing in the NPRM compels the Board to substitute competitive-access adjudication for traditional rate reasonableness standards.

The case-by-case framework restored by repeal is therefore a safeguard against abuse, not an invitation to it. By replacing an extra-statutory barrier with fact-based adjudication, repeal ensures that only meritorious claims proceed while preserving the Board's authority to police overreach on either side. Far from upsetting the balance struck by Congress, rescinding Part 1144 restores that balance by allowing the Board to consider competitive access where monopoly conditions distort outcomes—while continuing to reject claims that fail to meet statutory requirements.

E. Exclusion of Contract Tariffs from Relief Eliminates the Benefits of Repeal

In its comments, CN contends that traffic moving under rail transportation contracts is categorically ineligible for reciprocal switching, through routes, or through rates, and urges the Board to treat the existence of a contract as a threshold jurisdictional bar.¹⁴ That position overstates the law and, if adopted, would entrench the very anticompetitive conditions this proceeding seeks to remedy. The statutory exemption for rail contracts limits rate regulation; it does not displace the Board's independent authority under 49 U.S.C. § 11102 to prescribe switching or routing remedies where necessary to promote competition and serve the public interest. CN's approach would improperly convert a narrow rate-related exemption into blanket immunity from competitive access, an outcome Congress did not intend.

Moreover, CN's characterization of rail contracts as voluntary, market-based agreements ignores the realities facing many rail-dependent shippers. As AFPM explained in its prior comments, approximately 75 percent of member shipments are captive to a single rail carrier.¹⁵ Furthermore, the vast majority of these movements are under contract, not tariff rates. For these

¹⁴ Canadian National Railway, Submitted March 10, 2026, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310989.

¹⁵ American Fuel & Petrochemical Manufacturers. Submitted March 10, 2026, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310981.

movements, contracts are often executed under monopoly conditions, without meaningful transportation alternatives. Treating such agreements as evidence of competitive choice is wrong. Often these contracts are necessary just to secure service (at any cost), with the alternative being to shut down the facility because you cannot get your product to market.

CN's proposed categorical exclusion would also create a perverse incentive for railroads to rely on contract carriage strategically to foreclose competitive access review, insulating traffic from oversight simply by conditioning service on the execution of a contract. That result would frustrate the national rail transportation policy favoring competition and undermine the purpose of repealing Part 1144.

Finally, CN's call for automatic dismissal of cases involving contract traffic improperly forecloses the fact-specific inquiry the statute requires. The Board need not abrogate or rewrite contracts to consider whether competitive access is warranted; rather, a limited, case-by-case approach preserves the Board's ability to address anticompetitive harm while respecting existing contractual arrangements.

For these reasons, the Board should reject CN's proposed categorical exclusion of contract traffic and retain the flexibility contemplated in the NPRM to evaluate competitive-access remedies where necessary to protect shippers and the public interest.

F. Claims That Part 1144 Repeal Is Not Deregulatory Are Critically Flawed

Railroad commenters' contention that repeal of Part 1144 would depart from the deregulatory framework established by Congress reflects a fundamental misreading of the statute and the role Part 1144 has played in practice. As AFPM explained in its opening comments, the Staggers Act was deregulatory in form but not absolute in effect. Congress deliberately preserved limited competitive-access authorities under 49 U.S.C. §§ 10705 and 11102 as targeted safety valves, to be exercised where market forces fail.¹⁶ Part 1144 did not implement that balance; it distorted it. By overlaying an extra-statutory anticompetitive-conduct requirement nowhere found in the statute, the rule narrowed the STB's discretion well beyond what Congress prescribed and converted flexible, case-specific standards into rigid gatekeeping hurdles that have foreclosed relief for decades.

The arguments advanced by CPKC and NS that Part 1144 reflects the STB's best reading of its authority and appropriately limits intervention are contradicted by the record. As AFPM and other shipper groups have demonstrated, no competitive-access remedies have been granted under Part 1144 in the forty years since its adoption, despite widespread consolidation, pervasive shipper captivity, rising rates, and recurring service failures. ACC, API, and NITL independently confirm that this outcome reflects not the absence of competitive harm, but the presence of an unworkable and prohibitive standard that deters even potentially meritorious claims.¹⁷ A regulatory framework

¹⁶ See 49 U.S.C. §§ 10705 and 11102

¹⁷ See American Chemistry Council, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310961 (submitted March 10, 2026); American Petroleum Institute, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310964 (submitted March 10, 2026); The National Industrial Transportation League, Comment on Docket EP 788, Surface Transportation Board, Filing ID 310977 (submitted March 10, 2026).

that yields zero relief across an industry over multiple decades cannot credibly be described as a faithful implementation of congressional intent; it operates instead to nullify the statute's competitive-access provisions.

Nor does repeal represent an expansion of regulation, as railroads suggest. Repealing Part 1144 does not broaden the STB's authority, mandate access, or substitute competitive-access remedies for rate regulation. It restores the statutory framework Congress enacted, returning the STB to case-by-case adjudication governed by practicability, feasibility, and public-interest findings. That framework is inherently restrained and self-limiting, preserving full Board discretion to deny opportunistic or unsupported claims. As AFPM, ACC, API, and NITL all emphasize, fact-driven adjudication under the statute is a form of regulatory discipline—not expansion—replacing categorical barriers with meaningful analysis.

Finally, as stated in our formal comments, AFPM maintains that rescission of Part 1144 aligns with federal policy goals. This action aligns with three recent Executive Orders (EOs) and the Federal Trade Commission (FTC) and the Department of Justice (DOJ) Antitrust Division's joint letter to STB.¹⁸ Each direct agencies to eliminate regulatory barriers that exceed statutory authority, entrench monopoly power, or hinder energy production and supply-chain resilience. Part 1144 fits that description precisely. Far from departing from deregulation, rescission corrects a longstanding regulatory overreach, restores the statutory balance Congress intended, and allows the STB to apply its limited competitive-access tools as Congress designed. By reaffirming statutory standards instead of outdated regulatory overlays, repeal provides greater clarity and predictability for both carriers and shippers and aligns with broader federal directives to eliminate unlawful and anti-competitive regulations.

IV. Conclusion

For these reasons, AFPM urges the Board to finalize repeal of Part 1144. Rescission restores adherence to statutory authority, enhances competitive discipline, and preserves the Board's ability to evaluate competitive-access requests based on real-world facts. At the same time, it does so without undermining merger review, operational integrity, or existing statutory protections. Repeal is lawful, long overdue, and essential to restoring balance in today's highly concentrated rail industry.

Regards,

A handwritten signature in black ink that reads "Robert Kelsey". The signature is written in a cursive, flowing style.

Robert Kelsey

¹⁸ See [Executive Order 14154 Issued February 19, 2025](#); [Executive Order 14267 Issued April 9, 2025](#); [Executive Order 14154 Issued January 20, 2025](#) and FTC and DOJ Joint Letter to EPA re: Reducing Anti-Competitive Regulatory Barriers Issued May 5, 2025.