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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 788

**ELIMINATING REGULATORY BARRIERS TO
COMPETITION: REVIEW OF PART 1144**

**REPLY COMMENTS OF THE
NATIONAL GRAIN AND FEED ASSOCIATION**

The National Grain and Feed Association (“NGFA”) hereby provides these reply comments in support of the Notice of Proposed Rulemaking (“NPRM”) issued by the Surface Transportation Board (“STB” or “Board”) in this Docket on January 7, 2026. NGFA strongly supports the NPRM, which would repeal the Board’s regulations on “Intramodal Rail Competition” promulgated at 49 CFR Part 1144. This repeal would allow the Board to consider the prescription of through routes, through rates, and reciprocal switching on a case-by-case basis under the applicable statutory standard.

I. Identity and Interest of NGFA

The NGFA, established in 1896, consists of grain, feed, processing, exporting and other grain-related companies that operate facilities handling U.S. grains and oilseeds. Its membership includes grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed processors and millers; exporters; livestock and poultry integrators; and associated firms that provide goods and services to the nation’s grain, feed and processing industry. The NGFA consists of 24 affiliated State and Regional Grain and Feed Associations.

Nationwide, there are 9,683 grain and feed facilities that employ 175,737 employees

directly and help support 1.16 million total U.S. jobs. The industry also helps generate \$85.9 billion in wages, \$401.7 billion in economic impact, and \$32.7 billion in taxes across the country. For more information and a state-by-state breakdown of data, visit <https://www.ngfa.org/industry-impact/>.

II. Reply Comments of NGFA

NGFA continues to support the elimination of the anticompetitive conduct standard for all purposes, including the prescription of through routes or through rates under 49 U.S.C. §10705. However, these reply comments continue NGFA's focus on the repeal of Part 1144 as applied to the establishment of reciprocal switching arrangements under 49 U.S.C. §11102(c) given NGFA's prior focus on this topic in other Board proceedings.

The NGFA urges the Board to reject the efforts of railroad stakeholders to substantially condition and narrow the scope of the proposed repeal despite the fact that 49 U.S.C. §11102(c) by its terms is not limited to rail shippers. Rail carriers may also seek to establish rail-to-rail competition through Board-directed reciprocal switching. *See* NPRM at 5 (a "shipper or carrier" may seek relief); *see also*, 49 C.F.R. §1144.2(a)(2)(ii). Establishing such competition could increase their market share and overall profitability. Yet, railroad stakeholders approach the implementation of Section 11102(c) as though reciprocal switching may only be pursued by shippers, which leads to efforts to erect roadblocks and disincentives to pursue such relief. NGFA urges the Board to resist such efforts of railroad commenters in this proceeding to limit the scope of the Board's application of Section 11102(c) in individual adjudications, and to impose onerous evidentiary burdens such as product and geographic competition. Similarly, the Board should reject proposals to establish so-called "background principles" in the final rules repealing Part 1144, all of which as proposed would restrict the relief available and the processes by which relief

could be sought. As one example, the appropriate definition of a “terminal area” should be determined on a case-by-case basis, not narrowly prescribed at the outset in final rules. As the U.S. Department of Agriculture observes, an individual case involving a grain shipper in a remote region might involve a switch to a grain elevator located far beyond the relevant interchange point. USDA Op. Comments at 2.

The Board should also continue to reject the response by some railroads to any proposal to reduce regulation and encourage competition over the past 25 years: that the action will result in a “flood” of cases by rail shippers. There is no support for this prediction in any previous Board action. Indeed, NGFA concurs with other commenters that there is no certainty that rail carriers will actively compete with each other upon Part 1144 being repealed. Freight Rail Customer Alliance Op. Comments at 3; ACC Op. Comments at 5.

The Board should also reject the efforts of some carriers to try to redefine a finding of the lack of effective competition between railroads to always require an abuse of market power, or “competitive abuse,” or a “market failure.” That has never been the Board’s standard for determining whether “effective competition” exists, although NGFA adds that a finding of qualitative market dominance under 49 U.S.C. §10707 should not be a prerequisite to establishing competition through a reciprocal switch arrangement.

Additionally, the Board should reject proposals to hold another rulemaking on how it should implement Section 11102(c).

In regard to the procedures for pursuing a reciprocal switching arrangement, NGFA continues to maintain that a proceeding to consider the establishment of a reciprocal switching arrangement should proceed from the rebuttable presumption that the requested reciprocal switching arrangement is “necessary to provide competitive rail service.” NGFA Opening

Comments at 3. The bar to present a *prima facie* case in favor of such an arrangement should be low, subject to the right of the incumbent carrier to demonstrate why the proposed reciprocal switching arrangement is not necessary to provide competitive rail service. The rebuttable presumption and burden of proof requirement should apply to both the incumbent carrier and the potential alternative.

Finally, NGFA concurs with other stakeholders asserting that the repeal of Part 1144 should be made entirely separate from considerations of the impending proposed merger of Union Pacific Railroad Company and Norfolk Southern Railway and any potential merger conditions the Board may impose. Alliance for Chemical Distribution Op. Comments at 4; The National Industrial Transportation League Op. Comments at 10.

III. **Conclusion**

In conclusion, NGFA strongly supports the NPRM and urges the Board to finalize it expeditiously.

Respectfully submitted,

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