



Comments of the American Chemistry Council

To the Department of Justice

Anticompetitive Regulations Task Force

Docket No. ATR-2025-0001

The American Chemistry Council (ACC)¹ welcomes the efforts of the Department of Justice's Anticompetitive Regulations Task Force (Task Force) to advocate for the elimination of anticompetitive laws and regulations that undermine free market competition and harm consumers, workers, and businesses. As part of this effort, ACC urges the Task Force to review Surface Transportation Board (STB) regulations for freight rail transportation, specifically, the STB's standards for reciprocal switching under 49 CFR §1144. These anticompetitive regulations harm a wide range of American businesses, including manufacturing, agricultural, and energy industries, and ultimately lead to higher consumer costs.

Regulatory Barriers to Freight Rail Competition

ACC supports the Task Force's interest in competition across the nation's transportation sectors. The Task Force states that laws and regulations in areas such as rail and ocean shipping

can grant antitrust immunities, outright monopolies, or safe harbors for conduct that undermines competition, causing Americans pay more for fuel and a variety of other products.

These concerns are particularly acute for the freight rail network. The four largest Class I railroads control well over 90% of freight rail traffic. As a result, more than 75 percent of rail stations that pick up or receive freight are served by only one major railroad, leaving many customers with no competitive choice for rail service. Rather than growing rail volumes and competing for new business, railroads have increasingly leveraged their hold over their customers to extract higher rates and shift costs onto the consumers they are supposed to serve. These disturbing trends signal both a market and policy failure with negative

¹ ACC represents the leading companies in the business of chemistry. Our members provide innovative products and services that make people's lives better, healthier, and safer. As a \$633 billion enterprise, our industry is a key element in the nation's economy and a large user of the U.S. freight transportation system across all modes.

ramifications for U.S. economic growth and investment.² From 2005 to 2023, overall freight rail rates increased 98%³, far outstripping rail industry costs⁴ and the rate of inflation.⁵

The Staggers Rail Act of 1980, which serves as the STB's governing statute, directs the Board "to ensure effective competition among rail carriers." To help achieve this goal, Congress expressly empowers the STB to grant reciprocal switching when "necessary to provide competitive rail service."⁶ Reciprocal switching allows a shipper served by a single major railroad to have its freight switched to a second railroad at a nearby interchange. Unfortunately, the Board's existing rules impose such high regulatory barriers that no rail customer request for reciprocal switching has ever been granted. In fact, no requests for reciprocal switching have even been filed since 1996, despite the dramatic losses of rail-to-rail competition following the rail mega-mergers of the 1990s.

Rather than adhering to the statutory goal of promoting competition, the regulations in 49 CFR §1144 require a shipper to demonstrate the incumbent carrier has engaged in "anticompetitive conduct" before the shipper can obtain reciprocal switching relief. This anticompetitive conduct standard imposes an unreasonably high and unnecessary barrier to competition.

Repeal of 49 CFR §1144

ACC strongly believes that the 49 CFR §1144 requirements reduce competition and hold back the American economy. Consistent with President Trump's Executive Order 14267, these regulations should be eliminated or modified.

For more than a decade, the STB has considered various proposals to revise its reciprocal switching regulations, including elimination of the anticompetitive conduct standard. The dockets for these proceedings⁷ provide extensive evidence that this standard serves as an unreasonable barrier to competition. The proposals contemplated replacing the existing §1144 rules with an alternative regulatory process for eligible rail shippers to obtain reciprocal switching. However, the Board can provide significant regulatory relief and reduce barriers to competition simply by rescinding the §1144 regulations.

² Martha Moore, "[U.S. Freight Customers Increasingly Taxed by Higher Rail Rates](#)," *Regulatory Review*, June 24, 2019.

³ Association of American Railroads "Railroad Facts" book.

⁴ *Ibid.*

⁵ Based on the Consumer Price Index.

⁶ 49 USC 11102(c).

⁷ PETITION FOR RULEMAKING TO ADOPT REVISED COMPETITIVE SWITCHING RULES, Docket No. EP 711 (Sub-No. 0); RECIPROCAL SWITCHING, Docket No. EP 711 (Sub-No. 1).

Rescinding these regulations would create a clean slate for shippers to seek reciprocal switching under the Board's statutory authority, without the additional barriers that have been imposed through regulation.

Benefits to American Manufacturers, Farmers, and Energy Producers

Repealing the anticompetitive conduct standard in §1144 will advance the Administration's objectives of onshoring manufacturing, achieving energy dominance, and supporting American farmers.

Below are just a few examples of the broad range of industry groups expressing support for expanding access to reciprocal switching and repeal of the STB's anticompetitive conduct standard.

American Fuel and Petrochemical Manufacturers (AFPM)

Under the current process for the reciprocal switching remedy, AFPM members do not bring forward cases and are often forced to modify operations to their detriment because no other viable options are present. This results in negative impacts throughout the supply chain ultimately impacting not only AFPM members, but their customers and consumers.⁸

American Petroleum Institute (API)

Competition drives quality service, and in this current environment poor service only drives increased pressure on supply chains, instability in markets and ultimately increased costs to consumers for all commodities from agriculture, to manufactured products, to energy...It is our hope that the Board will not lose sight of the issues that need to be addressed to drive competition in the industry beyond just service considerations.⁹

National Grain and Feed Association (NGFA)

NGFA enthusiastically commends the Board's action in this docket to revise the current regulations and overturn 30-year-old agency precedent implementing section §11102(c) that has stifled its use by rail shippers...Switching arrangements pursuant to reasonable fees and terms are essential for many agricultural industry

⁸ [American Fuel & Petrochemical Manufacturers Comments](#), Docket No. EP 711 (Sub-No. 1); February 14, 2022.

⁹ [Comments of the American Petroleum Institute](#), Reciprocal Switching for Inadequate Service (Docket No. EP 711 Sub-No. 2); November 7, 2023.

stakeholders to efficiently move their commodities to domestic and export markets.¹⁰

Steel Manufacturers Association (SMA)

SMA views expanded access to reciprocal switching as a necessary method to promote competition in rail markets in which competition is too often severely strained.¹¹

Western Coal Traffic League (WCTL)

WCTL opposed the...adoption of the anticompetitive conduct standard in 1985 for application to coal movements and has continued to oppose the continuing use of the standard ever since because proving relief under the standard, as construed by [the STB], is impossible.¹²

Conclusion

Reciprocal switching is a critical tool to promote competition in the freight rail industry. Broadly implemented, reciprocal switching can provide market incentives for railroads to provide reasonable rates and adequate service. This will drive more business to the railroads, with benefits to American manufacturing, energy production and consumer prices. The STB can provide immediate regulatory relief and reduce barriers to competition simply by rescinding the §1144 regulations. ACC strongly urges the Task Force to address this issue as part of its mission to advocate for the elimination of anticompetitive laws and regulations.

Thank you for your consideration of these comments. For questions or additional information regarding this submission, please contact Jeff Sloan, Senior Director of Regulatory Affairs, at (202) 249 6710 or jeffrey_sloan@americanchemistry.com.

¹⁰ [Comments of the National Grain and Feed Association](#), Reciprocal Switching (Docket No. EP 711 Sub-No. 1); October 26, 2016.

¹¹ [Comments of the Steel Manufacturers Association](#), Docket No. EP 711; August 17, 2011.

¹² [Joint Comments of the Western Coal Traffic League and Minnesota Power](#), Reciprocal Switching (Docket No. EP 711 Sub-No. 1); October 26, 2016.