L. Rulemaking Summary

As required by 5 U.S.C. 553(b)(4), a summary of this rulemaking can be found in the Abstract section of the Department's Unified Agenda entry at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=2126-AC77.*

List of Subjects in 49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FMCSA proposes to amend 49 CFR part 390 as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

The authority citation would continue to read as follows:

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

§ 390.23 Automatic relief from regulations.

■ 1. In § 390.23(b), remove the number ''14'' and add, in its place, the number ''30.''

Issued under the authority of delegation in 49 CFR 1.87.

Derek D. Barrs,

Administrator.

[FR Doc. 2026–00268 Filed 1–8–26; 8:45 am]

BILLING CODE 4910–EX–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1144

[Docket No. EP 788]

Eliminating Regulatory Barriers to Competition: Review of Part 1144

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board proposes to repeal its regulations on ''Intramodal Rail Competition,'' which implement the agency's statutory authority to prescribe reciprocal switching agreements, through routes, and through rates. The approach set out in the regulations, which narrows the Board's statutory discretion, may no longer be appropriate on an industrywide basis, and its repeal would allow the Board to consider the prescription of through routes, through rates, and reciprocal switching agreements on a case-by-case basis under the applicable statutory standards.

DATES: Comments on this notice of proposed rulemaking are due by March 10, 2026. Reply comments are due by April 24, 2026.

ADDRESSES: Comments and replies may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 788, 395 E Street SW, Washington, DC 20423–0001. A summary of the proposed rule and the proposed rule are available on the Board's website at *www.stb.gov* and can be found by clicking ''Search STB Records,'' selecting Dockets in the ''Search For'' menu, selecting EP in the ''Docket Number'' menu and entering 788. Comments and replies will also be posted to the Board's website.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm, at (202) 918–5462. If you require accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION:

Background

Statutory History

Regulation of freight rail transportation in the United States is governed by the Interstate Commerce Act, which was amended substantially by the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4R Act), Public Law 94–210, the Staggers Rail Act of 1980 (Staggers), Public Law 96–448, and the ICC Termination Act of 1995 (ICCTA), Public Law 104–88. In the pre-Staggers era, the railroad industry was characterized by ''open routing'' and ''rate equalization,'' practices whereby through routes were created on practically all possible combinations of railroad tracks between two points (open routing) and where routes between the same two points—including single-line routes—were offered at the same rate, without regard to the actual cost (rate equalization). *Balt. Gas & Elec. Co.* v. *United States,* 817 F.2d 108, 110 (D.C. Cir. 1987).[1] The Board's predecessor, the Interstate Commerce Commission (ICC), supported these practices by using its statutory authority to prescribe and maintain through routes and joint rates and by considering attempts by railroads to lower the rate on one route as ''closing'' higher-priced through routes between the same points (*i.e.,* the ''commercial closing'' doctrine). *Id.* at 111. While some shippers enjoyed the choice of routes and unified rates, made available by ''open routing'' and ''rate equalization,'' many shippers began to oppose these practices, which on many routes forced the payment of rates higher than those that might have prevailed in a competitive environment. *Id.* Likewise, while some smaller railroads benefited from the proliferation of through routes, many suffered by their inability to lower rates on more efficient routings and raise rates when their share of joint rates on through routes did not cover variable costs and provide a fair rate of return. *Id.*

By the 1970s, the railroad industry had entered a state of ''financial crisis,'' *Baltimore Gas & Electric,* 817 F.2d at 111, with low rate divisions and a proliferation of uneconomic routes as among the ''major problems'' that led to its poor financial health, *Standards for Intramodal Rail Competition,* EP 445, slip op. at 5 (ICC served July 7, 1983) (citing H.R. Rep. No. 96–1430, at 111 (1980)); *see also* H.R. Rep. No. 96–1430, at 79 (''Earnings by the railroad industry are the lowest of any transportation mode and are insufficient to generate funds for necessary capital improvements.''). In response, Congress enacted ''two major pieces of legislation of a generally deregulatory thrust'': the 4R Act and Staggers. *Baltimore Gas & Electric,* 817 F.2d at 112–13. As relevant here, each statute reduced the ICC's discretion to deny or suspend the cancellations of through routes and joint

[1] A ''through route,'' or ''interline service,'' refers to a long-distance movement that is performed by two or more rail carriers. The shipment is transferred from one carrier to another *en route* between the point of origin and the final destination. Each participating rail carrier performs a portion of the line haul and earns a portion of the line-haul revenues. *Baltimore Gas & Electric,* 817 F.2d at 110.

Rail carriers typically charge either ''joint rates'' or ''proportional rates'' for interline service. A joint rate is a single rate that applies to the entire movement, from the point of origin to the final destination. The division of revenues under a joint rate is determined in the first instance by the rail carriers, subject to division by the Board as provided for in 49 U.S.C. 10705(b). In the case of proportional rates, each rail carrier establishes a separate rate for its portion of the movement, based on the carrier's participation in a through movement. *Cent. Power & Light Co.* v. *S. Pac. Transp. Co.,* 1 S.T.B. 1059, 1060, n.3 (1996). A ''through rate'' is a rate that applies to an entire origin-to-destination movement, without regard to how many rail carriers are involved in the movement. A joint rate and a proportional rate are each a form of through rate.

rates and thus made such ''cancellations easier to obtain.'' *Id.* at 112–13.[2]

Notwithstanding these statutory reforms, Congress retained the agency's longstanding authority to prescribe through routes. Under 49 U.S.C. 10705(a)(1), the Board may prescribe a through route when ''it considers [the through route] desirable in the public interest.'' 49 U.S.C. 10705(a)(1).[3] Section 10705(a)(2) includes additional guidelines when a prescribed through route would short haul a rail carrier.[4] In relevant part, the Board may prescribe such a through route only when inclusion of those lines would make the through route unreasonably long when compared with a practicable alternative that could be established or when needed to provide ''adequate, and more efficient or economic transportation.'' 49 U.S.C. 10705(a)(2). The Board must give reasonable preference to the rail carrier originating the traffic when prescribing through routes. 49 U.S.C. 10705(a).

Moreover, out of recognition that the 4R Act and Staggers made changes that would, ''if taken advantage of, dramatically change both railroads' services and their pricing, [Staggers] offered new protection'' by expanding the agency's discretion to prescribe reciprocal switching agreements.[5] *Standards for Intramodal Rail Competition,* EP 445, slip op. at 6. As provided in section 11102(c), the Board ''may require rail carriers to enter into reciprocal switching agreements'' where the Board finds those agreements to be ''practicable and in the public interest''[6] or where those agreements are ''necessary to provide competitive rail service.''[7] 49 U.S.C. 11102(c). As the legislative history explained:

> The new railroad transportation policy established by this bill emphasizes the need for increased intramodal and intermodal competition, and section 203 [on reciprocal switching and other forms of market entry] deals with intramodal competition among railroads. . . . As the Government moves toward significantly less regulation of the services offered by railroads, the Government should encourage, rather than discourage, competition among railroads. Competition among railroads, or at least the realistic threat of competition, can serve as an important safeguard against inadequate service or unreasonably high prices.

S. Rep. No. 470, 96th Cong., 1st Sess. 41; *see also* H. Rep. No. 96–1430, at 134.

Part 1144

The first several years after passage of Staggers witnessed a ''phenomenon of increasing cancellations of railroad routes and rates.'' *Standards of Intramodal Rail Competition,* EP 445, slip op. at 1 n.3; *see also id.* at 9 (describing post-Staggers industry efforts to cancel joint rates, restrict routings, and develop new rate programs and noting that ''[a]s a general proposition, these actions comport[ed] with the Staggers Act mandate''). Based on an assumption that rail carrier activities limiting the application of joint rates and through routes, and the use of existing market power, are ''anticompetitive per se,'' the National Industrial Transportation League (NITL) requested that the ICC propose regulations that would, among other things, prohibit anticompetitive railroad cancellations of joint rates and through routes and implement the provision authorizing the prescription of reciprocal switching agreements. *Id.* at 1, 11. NITL did not offer suggested regulations itself, and the ICC denied NITL's petition. *Id.* at 15. The ICC emphasized that Staggers encourages the development of more efficient routings and rates that reflect costs and competitive conditions and that the through routing and reciprocal switching provisions cannot ''be interpreted in the broad sense NITL seeks'' by stating ''categorically which actions are lawful and which are not.'' *Id.* at 11–12. However, it also acknowledged that there ''will continue to be uncertainties, dislocations, and problems for individual shippers and carriers'' that may justify redress ''under existing remedies.'' *Id.* at 11. It explained that the ''existing statutory criteria require case-by-case analysis of individual economic and competitive circumstances in each case,'' and resolved to address ''such individual wrongs'' based on an ''analysis of unique fact patterns [as] required by the statute.'' *Id.* at 13.[8]

Soon thereafter, NITL again asked the ICC to adopt regulations that would provide standards for the cancellation of through routes and joint rates, and the prescription of through routes, through rates, and reciprocal switching. *See Intramodal Rail Competition* (*Original 1144 NPRM*), EP 445 (Sub-No. 1), slip op. at 1 (ICC served Mar. 27, 1985). But this time, the Association of American Railroads (AAR) joined the request, and the parties proposed specific regulations that they had agreed upon in ''a good faith effort to accommodate the legitimate interests of shippers and railroads.'' *Id.*[9] The ICC noted that it was encouraged by the proposed regulations as they were ''clear evidence that traditional adversaries can reach a meeting of the minds on issues important to both.'' *Id.* at 4. After providing notice and an opportunity for

[2] In narrowing the ICC's ability to reject through route and joint rate cancellations, these statutory reforms ''implicitly modified prior regulatory barriers,'' like the commercial closing doctrine, *Baltimore Gas & Electric,* 817 F.2d at 112, which the ICC later abandoned, *Standards for Intramodal Rail Competition,* EP 445, slip op. at 5 n.7. Ultimately, ICCTA repealed the statutory provisions that governed cancellations of joint rates and through routes. As explained by the Senate Committee on Commerce, Science, and Transportation, those provisions had achieved their purpose of allowing carriers an avenue of relief from unremunerative joint rates and were rendered obsolete by ICCTA's elimination of most rail tariffs. S. Rep. No. 176, 104th Cong., 1st Sess. (1995).

[3] In determining the public interest under 49 U.S.C. 10705(a), the agency has historically considered the interests of the general public, including shippers, affected by the relevant movements as well as the carriers participating in the routes, and has considered factors including (but not limited to) the economy, efficiency, and feasibility of the route; the practicability of the movement; the impact the route has on all the parties involved; and whether the route represents a departure from a well-established routing for the traffic. *See Canexus Chems. Canada L.P.* v. *BNSF Ry.,* NOR 42131, slip op. at 9 (STB served Feb. 8, 2012). ''This is a test driven by the facts and the record complied in [the] case.'' *Id.*

[4] The prescription of a through route would ''short haul'' a rail carrier if the carrier would be required to transfer the shipment to another rail carrier without having used the full length of its own track (or an affiliate's track) between the point of origin and the final destination. *See* 49 U.S.C. 10705(a)(2).

[5] The term ''reciprocal switching'' refers to transfers between rail carriers that take place within the terminal area in which the shipment originates or ends and that are incidental to a line haul. Under a reciprocal switching agreement, the rail carriers that serve a terminal area agree to undertake such transfers at the shipper's election, subject to operating requirements that are established through the agreement. The agreement promotes intramodal competition by allowing participating rail carriers to offer line haul service to/from shippers' facilities in the terminal area that are not directly connected to that carrier's tracks. The switching carrier (the carrier on whose tracks the shipper's facility is located) earns a fee for performing the transfer but does not participate in the line haul and therefore does not earn line-haul revenues. *See Reciprocal Switching for Inadequate Serv.,* EP 711 (Sub-No. 2) (STB served Apr. 30, 2024).

[6] The ''practicable and in the public interest'' set forth in section 11102(c) has been interpreted to require ''some actual necessity or compelling reason,'' which has itself been interpreted to require a ''finding of inadequate service by the incumbent rail carrier.'' *Grand Trunk Corp.* v. *STB,* 143 F. 4th 741, 749, 751 (7th Cir. 2025).

[7] The agency has indicated that it would ''consider all types of competition'' in determining whether an agreement is ''necessary to provide competitive rail service'' under section 11102(c). *Midtec Paper Corp.* v. *Chi. & NW Transp. Co.,* 1 I.C.C.2d 362, 369 (1985).

[8] The ICC also initiated an industry-wide study of changes brought about by Staggers, noting that such an approach would be far more useful than attempting to establish new standards through a rulemaking, ''and in conjunction with ongoing adjudications, should address the concerns expressed by many commenters.'' *Id.* at 14–15.

[9] A subsequent joint petition was filed by the AAR and the Chemical Manufacturers Association (CMA) that clarified the negotiated NITL–AAR agreement. *Original 1144 Final Rule,* 1 I.C.C.2d at 822.

comment, the ICC adopted the regulations proposed by NITL and AAR, with some modification. *See Intramodal Rail Competition (Original 1144 Final Rule),* 1 I.C.C.2d 822 (1985). As the agency explained, the adoption of these regulations was ''responsive to two basic principles'': (i) that the regulations be consistent with statutory requirements; and (ii) that they ''be acceptable to as broad a section of the marketplace as possible.'' *Original 1144 NPRM,* EP 445 (Sub-No. 1), slip op. at 4. The ICC advanced the first principle by explaining how the proposed regulations complied with statutory requirements then in effect, and making certain modifications not at issue here, *Original 1144 Final Rule,* 1 I.C.C.2d at 824–31, and it advanced the second principle by ''preserv[ing] to the maximum extent possible'' what had been proposed by NITL and AAR, *id.* at 823.

NITL and AAR's proposed regulations included a number of provisions related to the suspension and investigation of joint rate and through routes cancellations, which the Board subsequently removed by a direct-to-final rule after ICCTA removed the underlying statutory authority. *See Removal of Joint Rate Cancellation Reguls.,* 67 FR 61290 (Sept. 30, 2002); *see also supra* note 2. As relevant here, NITL and AAR also proposed—and the Board adopted—a provision providing for the prescription of a through rate, joint rate, or reciprocal switching agreement only where ''necessary to remedy or prevent an act contrary to the competition policies of 49 U.S.C. 10101 or which is otherwise anticompetitive.'' *Compare Original 1144 NPRM,* EP 445 (Sub-No. 1), slip op. at 8 *with Original 1144 Final Rule,* 1 I.C.C.2d at 841 *and* 49 CFR 1144.2(a)(1). The ICC later explained that the ''essential questions'' under this anticompetitive conduct test are (i) whether the railroad has used its market power to extract unreasonable terms on through movements; or (ii) whether because of the railroad's monopoly position it has shown a disregard for the shipper's needs by rendering inadequate service. *Midtec Paper Corp.* v. *Chi. & N.W. Transp. Co.,* 3 I.C.C.2d 171, 181 (1986), *aff'd sub nom. Midtec Paper Corp.* v. *United States,* 857 F.2d 1487 (D.C. Cir. 1988).[10] By adopting the proposed regulations, the ICC ''narrow[ed] the agency's discretion under section 1110[2]'' to grant relief to only those circumstances where there is a ''reasonable fear of anticompetitive behavior.'' *Midtec,* 857 F.2d at 1500.

NITL and AAR's proposed regulations further included a so-called ''standing'' requirement—also adopted by the ICC—providing that a shipper or carrier seeking a through route, through rate, or reciprocal switching prescription demonstrate that it has utilized or would utilize the through route, through rate, or reciprocal switching to meet a significant portion of its transportation needs or move a significant portion of traffic. *Compare Original 1144 NPRM,* EP 445 (Sub-No. 1), slip op. at 8, *with Original 1144 Final Rule,* 1 I.C.C.2d at 841, *and* 49 CFR 1144.2(a)(1). This provision was responsive to a statutory requirement—since removed—prohibiting the ICC from suspending cancellation of a through route and/or a joint rate unless it appeared that failure to suspend would cause substantial injury to the protestant. *Intramodal Rail Competition,* 1 I.C.C.2d at 825–26, 830; *see also supra* note 2. And, finally, with respect to the prescription of through routes, joint rates, and reciprocal switching, NITL and AAR's agreement provided that (i) the agency would not consider product competition, (ii) the railroad would have to prove the existence of geographic competition by clear and convincing evidence (if it ''wishes to rely in any way on geographic competition''), and (iii) overall revenue adequacy of the defendant railroad shall not be a basis for denying a prescription that is necessary to remedy or prevent an anticompetitive act. *See Original 1144 NPRM,* EP 445 (Sub-No. 1), slip op. at 9. The ICC adopted these provisions with minimal change, *Original 1144 Final Rule,* 1 I.C.C.2d at 841, and to them added (based on an alternative proposal by a group of regional railroads, Railroads Against Monopoly) that any such prescription proceedings would be conducted on an expedited basis, *Original 1144 Final Rule* 1 I.C.C.2d at 841 and 49 CFR 1144(b)(4).

On judicial review, the D.C. Circuit found that, overall, part 1144 reflected a ''reasonable accommodation of the conflicting policies set out'' at 49 U.S.C. 10101. *Baltimore Gas & Electric,* 817 F.2d at 115. The court noted how the rule accommodated railroads' needs in avoiding participation in unremunerative and inefficient through routes with shippers' needs in setting aside anticompetitive through route cancellations and ''preserving and enhancing'' competition, while ''at the same time restrict[ing] the circumstances'' under which agency would order a through route, joint rate, or reciprocal switching prescription. *Id.* The Court also rejected an argument that the ICC unlawfully delegated its authority to create regulations, notwithstanding that they ''differ[ed] little from the private parties' proposal.'' *Id.* at 117.

While concluding that part 1144 (as it was then structured) reflected a permissible accommodation of the ''conflicting'' policies set out in the agency's governing statute, the court left open the possibility that the agency could reach a different and equally permissible balance. *Id.* at 115 (noting that not all policies ''point in the same direction''). A subsequent decision by the D.C. Circuit expressly confirmed that adoption of the anticompetitive conduct test was not compelled by the statute but was instead the product of a permissible ''narrow[ing of] the agency's discretion.'' *Midtec,* 857 F.2d at 1500.

Criticisms of Part 1144

In the 40 years since its adoption, part 1144 has been rarely invoked, and the agency has never issued a prescription under its framework. For years, shippers and shipper groups such as NITL—collectively representing agricultural, manufacturing, energy, and other businesses that use rail, many of which are small and medium-sized with limited to no transportation choice—have argued that part 1144's requirement of anticompetitive conduct, as interpreted by the Board, has ''set an unrealistically high bar for shippers to obtain'' competitive access. *E.g., Pet. for Rulemaking to Adopt Revised Switching Rules* (*2016 Switching NPRM*), EP 711 et

[10] The agency explained in *Midtec* that it would consider ''classical categories of competitive abuse: foreclosure; refusal to deal; price squeeze; or any other recognizable forms of monopolization or predation,'' as well as whether there was any ''evidence of abuses'' under the competitive standards of the Rail Transportation Policy (RTP), ''including inadequate service or excessive prices.'' *Midtec,* 3 I.C.C.2d at 173–74. In the latter category of cases, to show entitlement to relief under part 1144, evidence of market power is not enough; rather, the petitioner must demonstrate that the carrier *abused* that market power through affirmative, anticompetitive conduct. *See Shenango Inc.* v. *Pitt., Chartiers & Youghiogheny Ry.,* 5 I.C.C.2d 995, 1001 (1989) (''[A] finding of market dominance does not show that the carrier has behaved anticompetitively, nor is it grounds in itself for imposing a competitive access remedy . . . . Rather, it relates to the structure of the market in which the carrier operates and the potential for market abuse power, not to the carrier's actual conduct.''); *Vista Chem. Co.* v. *Atchison, Topeka & Santa Fe Ry.,* 5 I.C.C.2d 331, 338 (1989) (explaining that evidence of uncompetitive rates is not ''dispositive,'' but ''serves as a background against which to evaluate the defendant's conduct and with which to assess the likelihood of future anticompetitive conduct''); *Midtec,* 3 I.C.C.2d at 181 (same); *see also Golden Cat Div. of Ralston Purina Co.* v. *St. Louis Sw. Ry.,* NOR 41550, slip op. at 9 (STB served Apr. 25, 1996) (asking whether the carrier has ''used any competitive market power over [the shipper] to its own advantage through the provision of inadequate service'').

al., slip op. at 8 & n.8 (STB served July 27, 2016) (summarizing comments from the National Grain and Feed Association, the Agricultural Retailers Association, the National Chicken Council, the National Association of Wheat Growers, the National Council of Farmer Cooperatives, the National Corn Growers Association, E.I. du Pont de Nemours & Co., Consumers United for Rail Equity, and the U.S. Department of Agriculture); NITL Pet. for Rulemaking 16 (July 7, 2011), EP 711.[11] In the *2016 Switching NPRM,* the Board emphasized that the ''sheer dearth of cases'' brought in the three decades since the *Original 1144 Final Rule* was propounded ''despite continued shipper concerns about competitive options and quality of service, suggests that part 1144 and *Midtec* have effectively operated as a bar to relief rather than as a standard under which relief could be granted.'' *2016 Switching NPRM,* EP 711, slip op. at 8–9. Noting that the constrained approach taken in the part 1144 regulations emerged from ''decades of inefficiencies and serial bankruptcies,'' the Board cited the ''many changes that have occurred in the rail industry'' since then, including, the improved economic health of the railroad industry, the increased consolidation of Class I railroads, increased productivity and technological advances, and other reasons. *Id.* at 9.[12] The Board stated that the anticompetitive conduct standard makes ''less sense in today's regulatory and economic environment.'' *Id.*[13]

In the *2016 Switching NPRM,* the Board proposed new regulations to govern the prescription of reciprocal switching orders. Under the proposed regulations, the petitioner would no longer need to show anticompetitive conduct or that it has or would use the prescribed switch for a significant amount of traffic. *2016 Switching NPRM,* EP 711, slip op. at 9, 26 (''[T]he Board proposed to reverse that policy'' of a ''competitive abuse standard.'') With regard to the ''necessary to provide competitive rail service'' standard, the Board proposed prescribing reciprocal switching based on a lack of intermodal and intramodal competition. *Id.* at 41–42.[14] Rail carriers who opposed the proposed rule argued that Congress authorized the Board to compel switching only upon a showing of anticompetitive behavior and, even if not, removing that requirement would be misguided as a matter of policy because it ''would drive rates down to the point of undermining carriers' ability to raise sufficient capital'' and lead to ''economically inefficient'' switching arrangements. *Reciprocal Switching,* EP 711 (Sub-No. 1), slip op. at 5 (STB served Dec. 28, 2021). Other commenters—including NITL and the American Chemistry Council (the successor organization to the CMA)—continued to urge the Board to revise the existing regulations to make switching arrangements more available, while also seeking more specific standards or thresholds for when the Board would require the establishment of a switching arrangement. *Id.*

Ultimately, the Board decided not to adopt the regulations proposed in the *2016 Switching NPRM* and instead to advance a new rule in which it would prescribe a reciprocal switching agreement under the ''practicable and in the public interest standard,'' without invoking the ''necessary to provide competitive rail service'' standard, based on certain objective performance standards. *See id.* at 5–6 (explaining that the Board shifted focus given major service problems that emerged subsequent to the *2016 Switching NPRM*); *see also Reciprocal Switching for Inadequate Rail Serv. (Part 1145 Final Rule),* EP 711 (Sub-No. 2) (STB served Apr. 30, 2024).[15] The rule, codified at 49 CFR part 1145, was subsequently vacated after the reviewing court found that the ''practicable and in the public interest'' standard in section 11102(c) requires a finding of inadequate service, *see supra* note 6, and that part 1145 exceeded the Board's authority because it did not mandate such a determination. *Grand Trunk,* 143 F.4th at 754. That remanded proceeding remains pending before the Board.

Shippers, shipper associations, and others have continued to argue that the anticompetitive conduct standard in part 1144 remains an impediment to relief and have called for its reversal. Indeed, NITL, ACC, The Fertilizer Institute (TFI), U.S. Department of Transportation and Federal Railroad Administration, International Warehouse Logistics Association, Celanese Corporation, Freight Rail Customer Alliance, National Coal Transportation Association, Portland Cement Association, Olin Corporation, and National Mining Association all reiterated their long-time requests that the Board ''overturn[ ] the 'anti-competitive conduct test' '' in their comments on 49 CFR part 1145. *See Part 1145 Final Rule,* EP 711 (Sub-No. 2), slip op. at 5.

Most recently, in response to a U.S. Department of Justice (DOJ) initiative launched to investigate anticompetitive state and federal laws and regulations,[16] NITL called for partial repeal of 49 CFR part 1144. *See* NITL Comments 4, ATR–2025–0001, Anticompetitive Regulations Task Force (May 27, 2025).[17] NITL emphasized that the part 1144 regulations ''have never been successfully applied to promote or restore rail competition'' in the 40 years since their adoption, and given the ''daunting precedent'' under the anticompetitive conduct standard, no requests for such an arrangement have been filed in the last 30 years. *See id.* at 4, 8 & n.21 (noting that the four petitions for reciprocal switching filed under 49 CFR part 1144 all resulted in denials). Unlike in the proceeding surrounding the *2016 Switching NPRM,* NITL did not argue for replacement regulations, but rather for ''case-by-case adjudications'' under the specific facts and circumstances and based on the ''broader standards in the statute.'' *Id.* at 10–11. ACC argued that ''the Board can provide significant regulatory relief and reduce barriers to competition simply by rescinding the [part] 1144

[11] While the *2016 Switching NPRM* focused on reciprocal switching, the Board proposes here to revoke 49 CFR part 1144 in its entirety. As explained further below, parties are encouraged to comment on whether the Board should limit its revocation only to those aspects of 49 CFR part 1144 that pertain to reciprocal switching.

[12] The Board categorizes rail carriers into three classes: Class I, Class II, and Class III, based on each carrier's annual operating revenue. Class I rail carriers generate the most revenue. At present, there are six Class I carriers. Each operates across a vast territory. Most areas of the United States are served by at most two Class I carriers.

[13] Senators have also told the Board that ''the current rules are not working'' and urged the Board to revise its rules to make reciprocal switching more available ''so that freight rail shippers have more options and better service.'' Comment of Senators Tammy Baldwin, David Vitter, and Al Franken (Oct. 10, 2014), EP 711.

[14] The Board also proposed prescribing switching under the ''practicable and in the public interest standard'' based on certain enumerated, non-exhaustive factors.

[15] Under the vacated Part 1145 Final Rule, the Board would prescribe a reciprocal switching agreement where the rail carrier failed to meet one of three objective standards designed to address the following aspects of the rail carrier's performance: reliability in time of arrival, consistency in travel time, and reliability in providing first-mile/last-mile service. *Part 1145 Final Rule,* EP 711 (Sub-No. 2), slip op. at 142–47. Prescription was subject to the Board's consideration of affirmative defenses and claims that any such prescription would be operationally infeasible or would unduly impair the service to other customers. *Id.* at 150–51; *see also id.* at 147–48 (describing affirmative defenses).

[16] DOJ launched its Anticompetitive Regulations Task Force in response to Executive Order 14192, which directs federal agencies to ''alleviate unnecessary regulatory burdens placed on the American people.'' *See Unleashing Prosperity Through Deregulation,* 90 FR 9065 (Jan. 31, 2025).

[17] NITL proposed repealing the regulation just as it pertains to reciprocal switching. It offered no explanation for why it does not similarly ''advocate for repeal of [the part 1144] regulations to the extent they apply to prescriptions of railroad through rates and through routes.'' *Id.* at 4 n.6.

regulations,'' thereby ''creat[ing] a clean slate for shippers to seek reciprocal switching under the Board's statutory authority.'' ACC Comments at 2–3, ATR–2025–0001, Anticompetitive Regulations Task Force (May 27, 2025). And TFI ''put it bluntly'': ''the anticompetitive conduct standard is a regulatory barrier to achieving the congressionally established objective of competitive rail service and to advancing the Administration's goal of increasing competition and growing American business.'' TFI Comments at 3, ATR–2025–0001, Anticompetitive Regulations Task Force (May 27, 2025).

Discussion and Conclusions

The Board is ''free to change'' an existing regulation or policy so long as it ''provides a reasoned explanation for the change.'' *Encino Motorcars, LLC* v. *Navarro,* 579 U.S. 211, 221 (2016). The Board must ''display awareness that it is changing position,'' show that there are ''good reasons for the new policy,'' and consider ''serious reliance interests.'' *Id.* at 221–22 (citing *FCC* v. *Fox Tele. Stations, Inc.,* 556 U.S. 502, 515 (2009)); *see also FDA* v. *Wages & White Lion Invs., LLC,* 604 U.S. 542, 568 (2025). The Board need not necessarily ''provide a more detailed justification than what would suffice for a new policy created on a blank slate.'' *Encino Motorcars,* 579 U.S. at 221. Any new policy must be consistent with ''statutory jurisdiction, authority, or limitations'' or within ''statutory right.'' 5 U.S.C. 706. For the following reasons, the Board proposes to repeal part 1144 and to consider the prescription of through routes and reciprocal switching agreements on a case-by-case basis under the applicable statutory standards.

Repeal of Part 1144

As the Board has already explained, nothing in the plain language of 49 U.S.C. 11102 mandates that the Board prescribe a reciprocal switching agreement only when necessary to remedy or prevent an anticompetitive act. *See 2016 Switching NPRM,* EP 711 (Sub-No. 1), slip op. at 10.[18] Indeed, the court in *Midtec* made clear that 49 U.S.C. 11102(c) ''is cast in discretionary terms.'' *Midtec,* 857 F.2d at 1499. The same must be said for 49 U.S.C. 10705, which is cast in even more discretionary language. *See* 49 U.S.C. 10705(a) (providing that the Board ''may'' prescribe through route and joint rates and ''shall'' do so when it finds it ''desirable in the public interest''). Thus, the Board may ''narrow [its] discretion'' to prescribe a reciprocal switching agreement or prescribe through routes ''where it believes [granting relief under the statute] would be unwise as a matter of policy,'' *Midtec,* 857 F.2d at 1499, and it ''did just that'' when it adopted the anticompetitive conduct standard, *id.* at 1500. It follows that if the Board can narrow its discretion when ''wise'' to do so, then necessarily the Board can choose to no longer narrow its discretion in the same manner when it has sound reasons for changing course. *See 2016 Switching NPRM,* EP 711 (Sub-No. 1), slip op. at 12 (''If the ICC was able to narrow its discretion, by implication, it must also be able to broaden its discretion, so long as the agency does not exceed the limitations set forth in the statute.'').[19] The Board is choosing to restore its discretion here to the full extent provided by the statute in order to better effectuate Congressional intent.

There are ample reasons for repealing part 1144. As an initial matter, the agency adopted these regulations in large part because NITL and CMA (now ACC) asked for them, and one of the two ''basic principles'' underlying the rule—that it be ''acceptable to as broad a section of the marketplace as possible'' (*Original 1144 NPRM,* EP 445 (Sub-No. 1), slip op. at 4)—clearly no longer applies.[20] Neither the rule's original shipper proponent, NITL, nor seemingly any other shipper group (including ACC) finds it acceptable, at least as applied to reciprocal switching. *See supra* pp. 7–10, 9 n.17. And it makes little sense to continue to hold shippers to NITL's 1985 agreement with AAR that was rendered largely obsolete by subsequent statutory and regulatory changes. Indeed, much of the original rule at part 1144 concerned through route and joint rate suspensions and investigations. *See Original 1144 Final Rule,* 1 I.C.C.2d at 839–41. But as noted above, those parts were abrogated by ICCTA's termination of tariff requirements and resulting elimination of the Board's authority to set aside proposed joint rate cancellations. *See supra* note 2. Part 1144 is the vestige of an agreement that essentially no longer exists.

Even more fundamentally, removing part 1144 is sound policy because it eliminates what appears to have created, in practice, an unnecessarily high barrier to statutory relief. No doubt always requiring a petitioner to demonstrate the ''classical categories of competitive'' abuse, or some other type of abusive, anticompetitive conduct under the standards of the RTP—requirements that nowhere exist in section 10705 or section 11102(c)—presents a regulatory impediment to cases that might otherwise be meritorious under those statutory provisions. Indeed, that there remains a ''dearth of cases'' under part 1144 continues to suggest (strongly) that the anticompetitive conduct requirement within part 1144 effectively operates as a bar to relief. And shippers continue to complain that the anticompetitive conduct requirement presents an ''insuperable barrier'' to promoting competition. *E.g.,* NITL Comments 10, Anticompetitive Regulations Task Force, ATR 2025–0001; NITL Comments 11, Apr. 12, 2011, *Competition in the R.R. Indus.,* EP 705. The Board sees no compelling reason to keep in place a rule that substantially narrows the set of cases that may be brought under sections 10705 and 11102(c), especially where the Board can develop more flexible standards for today's rail environment via case-by-case adjudication.

The rail industry has changed significantly since the 1980s, further leading to part 1144's obsolescence. Over more than 40 years, extensive line rationalization and consolidations have impacted the network structure and carrier interactions.[21] They have also

[18] Notwithstanding the rail carriers' arguments in response to the *2016 Switching NPRM* that such a showing of anticompetitive conduct is statutorily mandated, none raised that argument directly in their later comments or litigation pleadings regarding part 1145, which did not include such a standard. *See* CPKC Reply 5 n.2 (Dec. 20, 2023) (citing *Midtec,* 857 F.2d at 1507 for the proposition that 49 U.S.C. 11102(c) has been held to ''have a limited scope and cannot be used to restructure the industry,'' but not contending that an anticompetitive conduct showing is required), EP 711 (Sub-No 2).

[19] In the *2016 Switching NPRM,* the Board rebutted rail carrier arguments that Congress somehow mandated—as a matter of legislative ratification—the anticompetitive conduct standard when it passed ICCTA and reenacted 49 U.S.C. 10705 and 11102(c) without change. *See 2016 Switching NPRM,* EP 711 (Sub-No. 1), slip op. at 10–13. As the Board explained, if Congress ratified anything, it was simply that the agency had discretion under those provisions to impose such a standard, not that it was required to do so. *Id.* at 12–13. The Board's 2016 conclusion regarding ratification remains accurate and parties are free to comment further on this issue.

[20] The other ''basic principle''—consistency with statutory requirements—is met here where the Board has authority to no longer narrow its discretion and may resolve requests for through route, joint rate, and reciprocal switching prescriptions through the adjudicatory process. *See infra* pp. 13–14.

[21] In the twenty years following Staggers' passage in 1980, Class I carriers shed tens of thousands of miles of track. *See* U.S. Dep't of Transp., Bureau of Transp. Stat., Transp. Stat. Annual Report 2023 (Washington, DC: 2023), at 1–28, available at: *https://doi.org/10.21949/1529944;* Transp. Rsch. Bd. of the Nat'l Academies (TRB), Modernizing Freight Rail Regul. (Washington, DC: 2015), at 27 (''By 1995, Class I railroads had learned to make much more intensive use of their inputs and assets:

Continued

contributed to a rail industry that today is significantly healthier financially than it was forty years ago. For example, under the Board's annual revenue adequacy determination, no Class I rail carrier was earning adequate revenues forty years ago, *see* 102d Annual Report of the Interstate Commerce Commission 104 (1989), and now five of the now-six Class I carriers that remain today have earned adequate revenues for at least two of the past four years, *see Railroad Revenue Adequacy,* EP 552 (Sub-No. 27) (STB served Sept. 5, 2023); EP 552 (Sub-No. 26) (STB served Sept. 6, 2022). Indeed, since 2004, Class I carriers' revenue growth has outpaced inflation amid declining ton-miles. *See* TRB, Modernizing Freight Rail Regul., at 28–29, Table 1–1; STB, Office of Econ., Annual Rail Rate Study Index: 1985–2022 (June 5, 2024), at 2; *see also* U.S. Bureau of Transp. Stat. at n.21. Thus, the problems of inefficient routes and insolvent railroads that so concerned Congress and the agency at the time of part 1144's adoption, and which underpinned the accommodation reached by AAR and NITL (and CMA, which is now the ACC), are of far less concern today. Continuing to rigidly narrow the Board's statutory discretion, by regulation, to prescribe reciprocal switching and through routes only when the carrier has taken steps to abuse its market power is no longer warranted. As discussed below, a case-by-case approach under the applicable statutory standards would permit the Board to consider current rail operations, carrier revenue needs, concerns regarding the particular competitive situation, and other important issues.

The other provisions of part 1144 also appear to be obsolete or unnecessary. As noted above, the requirement that the petitioning shipper or carrier show that it has used or would use the through route or reciprocal switching agreement to meet a ''significant' portion of its transportation needs or move a ''significant'' portion of its traffic corresponds to a statutory provision that no longer exists. *See* 49 CFR 1144.2(a)(2); *Original 1144 Final Rule,* 1 I.C.C.2d at 825 (explaining that former 49 U.S.C. 10707(c)(1)(B) prohibited suspension of a through route or joint rate cancellations unless failure to suspend would cause ''substantial injury''). As the Board remarked in 2016, it is ''not necessary'' to include such a requirement as a prerequisite to a prescription under section 10705(a) or section 11102(c). *See 2016 Switching NPRM,* slip op. at 26–27. The Board is also concerned about, and seeks comment on, the possibility that this requirement could have the effect of locking out small businesses from seeking competitive-access relief. Further, part 1144's restrictions on product and geographic competition evidence are unnecessary because—in light of the Board's findings on the burden of such evidence as part of the market dominance inquiry in rate proceedings under 49 U.S.C. 10707—the Board anticipates excluding evidence of product and geographic competition from such proceedings. *See 2016 Switching NPRM,* EP 711 (Sub-No. 1), slip op. at 27 (noting that consideration of product and geographic competition is not statutorily required and imposes a ''substantial burden'' on the Board and parties) (citing, *e.g., Mkt. Dominance Determinations—Prod. & Geographic Competition,* 3 S.T.B. 937 (1998)). Under the case-by-case approach, however, any rail carrier wishing to present such evidence in an individual proceeding should indicate that it intends to do so early on so that the Board may consider whether and to what extent the evidence may be presented. Finally, the Board also anticipates continuing to conduct such proceedings expeditiously, even if that commitment is not memorialized in a regulation.

Case-by-Case Adjudication

Upon repeal of part 1144, the Board would consider the prescription of through routes, through rates, and reciprocal switching agreements on a case-by-case basis under the applicable statutory standards at 49 U.S.C. 10705(b) and 11102(c), which may be further refined through agency adjudication under the standards set forth in the Administrative Procedure Act, 5 U.S.C. 706.[22] It is well established that agencies may regulate by rulemaking or adjudication, and it is clearly within the Board's discretion to act by adjudication under 49 U.S.C. 10705 and 11102(c); neither provision requires the Board to act by rule. *See, e.g., Shalala* v. *Guernsey Mem'l Hosp.,* 514 U.S. 87, 96 (2003) (''The APA does not require that all the specific applications of a rule evolve by further, more precise rules rather than by adjudication.''); *NLRB* v. *Bell Aerospace Co.,* 416 U.S. 267, 295 (1974) (agency ''is not precluded from announcing new principles in an adjudicative proceeding and . . . the choice between rulemaking and adjudication lies in the first instance within the [agency's] discretion''); *SEC* v. *Chenery Corp.,* 332 U.S. 194, 203 (1947) (''[A]gency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective.''). Indeed, the agency originally resolved to address post-Staggers petitions for through routes and reciprocal switching on a ''case-by-case'' basis, emphasizing how adjudication ''lends itself to the in-depth analysis of unique fact patterns required by the statute.'' *Standards for Intramodal Rail Competition,* EP 445, slip op. at 12–13.[23] The agency passed part 1144 only after NITL and AAR (and CMA) requested its adoption based on the parties' agreement. *Original 1144 Final Rule,* 1 I.C.C.2d at 823. Moreover, reversion to a case-by-case adjudicative approach is consistent with the ''two basic principles'' that drove adoption of part 1144 in the first instance, *Original 1144 NPRM,* EP 445 (Sub-No. 1), slip op. at 4: it is plainly ''consistent with statutory requirements'' and reflects the current lack of ''broad'' support in the marketplace for more defined standards.

Critically, by acting through adjudication here, the Board would have the opportunity to consider parties' legal and policy arguments and to identify relevant factors in the context of specific circumstances. For example, in response to prior proposals to replace the standards and processes in part 1144 with new regulations, rail carriers have argued that changes to the Board's existing reciprocal approach ''would upset[ ] reliance interests built around the Board's existing framework. . . .'' *See* AAR Further Suppl. Comments 4, Apr. 4, 2022, *Reciprocal Switching,* EP 711 (Sub-No. 1); *see also* CSX Transportation Reply Comments 6 n.16, Jan. 13, 2017; *id.* (arguing that capital investments ''have been made in reliance on the current regulatory scheme''). But these rail carriers would be free to argue, and attempt to demonstrate, adverse impacts from a potential through route or switch prescription based on investments and other expenses they may have incurred in reliance on the anticompetitive

ton-miles per track mile tripled, ton-miles per carload nearly doubled, and tons per train grew by nearly 60 percent compared with 1970.''), available at *https://www.nationalacademies.org/read/21759.*

[22] Commenters may propose suggestions for the conduct of these proceedings, including expectations regarding case initiation, discovery, evidence, and burden of proof, which the Board would consider incorporating into a non-binding guidance document. But as explained above, the Board anticipates that the standards for the granting of a switching or through route prescription would be further developed through case-by-case adjudication, as NITL and others have requested.

[23] The agency did precisely that in *Del. & Hudson Ry.* v. *Consol. Rail Corp.,* 367 I.C.C. 718 (1983), and *Cent. States Enters., Inc.* v. *Seaboard Coast Line R.R.,* NOR 38891 (ICC served May 15, 1984), *aff'd sub nom. Cent. States Enters., Inc.* v. *ICC,* 780 F.2d 664 (7th Cir. 1985).

conduct standard. Nothing within section 10705 or section 11102(c) would appear to preclude the Board from declining to prescribe relief based on such ''reliance interests.'' *Wages & White Lion,* 604 U.S. at 568; *see also Midtec,* 857 F.2d at 1499 (''[T[he [agency] is under no mandatory duty to prescribe reciprocal switching where it believes that doing so would be unwise as a matter of policy.'') Likewise, shippers would be free to argue that their existing rail service has not met whatever expectations they may have had when they made their own investment decisions related to securing and facilitating rail service. The Board would also be able to consider, and guard against, decisions that, if applied consistently as precedent, could lead to a ''radical restructuring of the railroad regulatory scheme,'' *Baltimore Gas & Electric,* 817 F.2d at 115, or other policy problems related to revenue adequacy.

Alternative Proposal: Partial Repeal of Part 1144

The Board specifically seeks comments on whether it should partially repeal part 1144 as it applies to reciprocal switching but leave the regulation in place as to the prescription of through routes and through rates.

Seemingly all of the Board's reasons given above for repealing part 1144, and replacing it with a case-by-case adjudicatory approach under the governing statutory provisions, apply just as much to through route and through rate prescription as they do to the prescription of reciprocal switching agreements. The anticompetitive conduct and standing requirements, as applied to both forms of competitive access, were the product of a consensus among railroads and shippers that no longer exists and a statute that has since been significantly amended. *See supra* pp. 5–6. And there has likewise been a dearth of petitions for through routes filed with the Board over the years, with the agency (both ICC and Board) having never prescribed a through route or joint rate under part 1144's framework. *See Canexus Chemicals,* NOR 42131, slip op. at 10 n.50 (prescribing through route in proceeding where the parties had agreed that part 1144 did not apply to ''review of this dispute''). Moreover, the agency's decision to narrow its discretion by requiring an anticompetitive conduct threshold showing with respect to through routing and joint rate prescriptions would appear to make no more ''sense in today's regulatory and economic environment'' than it does with respect to switching. *2016 Switching NPRM,* EP 711 (Sub-No. 1) at 9.[24]

Nonetheless, NITL and others have indicated interest in the repeal of part 1144 ''only as to prescriptions of reciprocal switching arrangements and . . . do[ ] not advocate for repeal of those regulations to the extent they apply to prescriptions of through rates or through routes,'' NITL Comment at 4 n.6, Anticompetitive Regulations Task Force, ATR–2025–0001. In other proceedings, the Board has also considered iterative approaches that would modify the reciprocal switching regulations but not disturb the regulations as they apply to through routes. *See 2016 Switching NPRM,* EP 711 et al.; *Part 1145 Final Rule,* EP 711 (Sub-No. 2). Accordingly, the Board seeks comment on whether its repeal of part 1144 should be so limited.

Environmental Review

The proposed action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009). Here, the Board proposes to repeal existing rules, and those rules are not directed at small entities.[25] Accordingly, pursuant to 5 U.S.C. 605(b), the Board certifies that the proposed action would not have a significant economic impact on a substantial number of small entities within the meaning of the Act. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

Paperwork Reduction Act

Under the Paperwork Reduction Act and regulations thereunder, *see* 44 U.S.C. 3501–3521 and 5 CFR 1320.8(d)(3), the Board must assess whether proposed rules would impose burdens with respect to the collection of information. Here, the Board proposes to repeal existing rules, and those rules do not relate to the collection information. The proposed action therefore imposes no burdens within the meaning of the Act.

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 14192 (Unleashing Prosperity Through Deregulation)

Executive Order 12866, as modified by Executive Order 14215, provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is significant under section 3(f) of Executive Order 12866. This action is considered an Executive Order 14192 deregulatory action.

Repealing part 1144 would allow the Board to consider the prescription of through routes, through rates, and reciprocal switching agreements on a case-by-case basis under the applicable statutory standards alone. This will remove an unnecessarily high barrier to competition in freight rail transportation without negatively impacting operations or investment decisions by carriers. Should part 1144 be repealed, the Board anticipates that, at least initially, there may be an increase in the number of matters that shippers bring before the Board for resolution under the statutory standards than have historically been brought under the part 1144 regulations, with associated administrative costs for carriers, shippers and the Board in resolving such matters. While the results, and quantitative impacts, of future case-by-case adjudications are uncertain, increasing competitive options for shippers can lead to better service and lower rates. These more efficient market outcomes may be the result of Board-ordered relief, but additionally, increased access to the Board may also incentivize carriers and shippers to privately negotiate competitive solutions to avoid further Board intervention. The Board anticipates that this rule will be net deregulatory, as the benefits of a more competitive market resulting from removing these regulatory barriers will outweigh any increase in administrative

[24] At all times, parties are free to argue that the anticompetitive conduct standard should not apply to proceedings to establish terminal trackage rights under 49 U.S.C. 11102(a), *see Midtec,* 3 I.C.C.2d at 177–78, as was done recently based on the facts of that particular matter, *see Commuter Rail Div. of the Reg'l Transp. Auth.—Terminal Trackage Rights—Union Pac. R.R.,* FD 36844, slip op. at 23–25 (STB served Sept. 3, 2025).

[25] For the purpose of RFA analysis for rail carriers subject to the Board's jurisdiction, the Board defines a ''small business'' as including only those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regul. Flexibility Act,* EP 719 (STB served June 30, 2016). Class III rail carriers have annual operating revenues of $46.3 million or less in 2022 dollars. Class II rail carriers have annual operating revenues of less than $1.03 billion but more than $46.3 million in 2022 dollars. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds in decisions and on its website. 49 CFR 1201.1–1; *Indexing the Ann. Operating Revenues of R.Rs.,* EP 748 (STB served June 29, 2023).

or other costs borne by shippers, carriers, or the Board.

List of Subjects in 49 CFR Part 1144

Common carrier, Freight, Railroads, Rates and fares, and Shipping.

It is ordered:

1. The Board proposes to amend its regulations by repealing part 1144 thereof. Notice of the proposed action will be published in the **Federal Register**.

2. Comments are due by March 10, 2026. Reply comments are due by April 24, 2026.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

4. This decision is effective on its date of service.

Decided: January 6, 2026.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, subchapter B of the Code of Federal Regulations as follows:

PART 1144—[REMOVED AND RESERVED]

■ 1. Remove and reserve part 1144, consisting of §§ 1144.1 through 1144.3.

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