FOR FURTHER INFORMATION CONTACT: Elizabeth Komiskey at 202–366–3169, or by e-mail to *Elizabeth.Komiskey@dot.gov*.

SUPPLEMENTARY INFORMATION:

1. Background

A recent natural gas leak from a steel catenary export riser in the Gulf of Mexico created significant and unexpected risk, as well as major supply disruption. Though a root cause analysis of this incident is not yet complete, visual inspection by divers has determined that the source of the leak was a flexible joint on the riser. PHMSA regularly monitors pipeline incidents and operator performance nationwide and responds as incident trends necessitate, through an array of regulatory measures including advisory bulletins.

In 2004, another offshore riser flexible joint failure resulted in a small oil spill. Subsequent preemptive visual inspections performed on other steel catenary riser flexible joints in the Gulf of Mexico discovered damage to the elastomeric seal area near the rotating ball and drove the replacement of four flexible joints. The flexible joint riser failures described above have created potential safety risks on floating production facilities, and have impacted delivery of energy supplies from the Gulf of Mexico.

The national consensus standard for dynamic risers, American Petroleum Institute Recommended Practice 2RD, is currently under revision. The revised version will directly address concerns raised in this Advisory Bulletin by including guidance for integrity management of dynamic risers. PHMSA will consider adopting the revised standard into its regulations for both natural gas and hazardous liquid pipelines.

Advisory Bulletin (ABD–08–06)

To: Owners and operators of hazardous liquid and natural gas pipelines located on offshore floating facilities.

Subject: Dynamic Riser Inspection, Maintenance, and Monitoring Records on Offshore Floating Facilities.

Purpose: To remind owners and operators of the importance of retaining inspection, maintenance, and monitoring records for dynamic risers located on offshore floating facilities.

PHMSA advises operators of hazardous liquid and natural gas pipelines with dynamic risers, such as steel catenary risers on offshore floating production facilities, to perform regular inspection and maintenance of these risers, monitor nearby environmental conditions, and maintain records of these activities. Failure of a dynamic riser could significantly impact safety, the environment, and delivery of an important source of natural gas and petroleum products used in the United States. PHMSA strongly urges operators to perform the above-listed actions and any other actions needed to ensure the safe and reliable operation of these systems.

Issued in Washington, DC on June 25, 2008.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E8–14953 Filed 7–1–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 646 (Sub-No. 2)]

Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Surface Transportation Board seeks public comments on a proposal to adjust its Revenue Shortfall Allocation Method (RSAM), which is a component of its simplified standards for reviewing the reasonableness of a challenged rail rate, in order to account for taxes.

DATES: Comments are due by August 1, 2008. Reply comments are due by September 2, 2008. Rebuttal comments are due by September 22, 2008.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should file a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 646 (Sub-No.2), 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying in the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Timothy Strafford at 202–245–0356. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rail rate. Each benchmark is expressed as a ratio of revenues to variable costs (R/VC ratio). RSAM is intended to measure the average markup that the railroad would need to collect from all of its ''potentially captive traffic'' (traffic with an R/VC ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2) (i.e., earn a return on investment equal to the railroad industry cost of capital). The second benchmark, the $R/VC_{>180}$ benchmark, measures the average markup over variable cost currently earned by the defendant railroad on its potentially captive traffic. The third benchmark, the R/VC_{comp} benchmark, is used to compare the markup being paid by the challenged traffic to the average markup assessed on other comparable potentially captive traffic.

In *Simplified Standards for Rail Rate Cases,* STB Ex. Parte 646 (Sub-No. 1) (STB served Sept. 5, 2007) (*Simplified Standards*), the Board changed the way the RSAM benchmark is calculated to address a flaw in that calculation.[1] Under the current RSAM formula, the Board uses the confidential Carload Waybill Sample [2] to estimate the total revenues earned by the carrier on potentially captive traffic ($REV_{>180}$) and the total variable costs of the railroad to handle that traffic ($VC_{>180}$). The Board also uses the carrier's revenue shortfall (or overage) shown in the Board's annual revenue adequacy determination ($REV_{short/overage}$). RSAM is then calculated as follows:

$$RSAM = (REV_{>180} + REV_{short/overage}) \div VC_{>180}$$

In *E.I. DuPont de Nemours and Co.* v. *CSX Transportation, Inc.,* STB Docket

[1] Previously, RSAM had been calculated by computing the uniform markup above variable cost that would be needed from all potentially captive traffic ''for the carrier to recover all of its URCS fixed costs.'' *Rate Guidelines—Non-Coal Proceedings,* 1 S.T.B. 1004, 1027 (1996). When a carrier is not ''revenue adequate'' under the Board's annual calculations, its RSAM figure (what it needs to collect) should be greater than its $R/VC_{>180}$ figure (what it is actually collecting) and, conversely, when a carrier is ''revenue adequate'' its RSAM figure should be less than or equal its $R/VC_{>180}$ figure. The problem was that this relationship between RSAM and $R/VC_{>180}$ did not hold true under the Board's prior method. *See, e.g., Simplified Standards* at 19–20.

[2] The Carload Waybill Sample is a statistical sampling of railroad waybills that is collected and maintained for use by the Board and by the public (with appropriate restrictions to protect the confidentiality of individual traffic data). *See* 49 CFR 1244.

Nos. 42099, 42100, and 42101 (the DuPont cases), CSX Transportation, Inc. (CSXT) raised an issue with this RSAM formula. It observed that the revenue shortfall ($REV_{short/overage}$)—which is calculated as the difference between the return on net investment that a carrier needs to earn in order to achieve revenue adequacy and the amount that the carrier actually earns—is calculated after all taxes have been paid, and are thus stated on an ''after-tax'' basis. However, the revenues to which the revenue adequacy shortfall is added ($REV_{>180}$), are calculated before any allowance for taxes, and are thus stated on a ''pre-tax'' basis. Therefore, CSXT asserted that the inclusion of an ''after-tax'' revenue shortfall would not provide sufficient revenues to achieve adequate revenues once the additional revenues are subject to taxes.

In the DuPont cases, CSXT proposed that, to correct this deficiency, the Board change the RSAM formula adopted in *Simplified Standards* by applying the Federal statutory tax rate of 35% in conjunction with CSXT's railroad-specific state tax rate of 4.9% to convert the after-tax shortfall to a pre-tax level. But DuPont argued that no adjustment to the RSAM formula was necessary because the revenue adequacy adjustment factor is overstated. It argued that this overstatement occurs because the variable costs used to calculate the RSAM and $R/VC_{>180}$ benchmarks include an over-recovery of income taxes as measured by the Uniform Rail Costing System. This over-recovery of income taxes raises the variable costs, thereby understating the total revenue from potentially captive traffic with R/VC greater than 180% ($REV_{>180}$). Less revenue from traffic moving at R/VC greater than 180%, in turn, increases the revenue adequacy adjustment factor. Alternatively, DuPont argued that, if the Board were to adjust the RSAM formula to account for taxes, it should use an ''effective'' or ''marginal'' tax rate, rather than the statutory tax rate advocated by CSXT.

In this rulemaking, the Board seeks broader public input on whether to modify the RSAM formula adopted in *Simplified Standards* and, if so, what tax rate should be used to adjust the revenue adequacy shortfall. Commenters are asked to address the following issues. First, does the treatment of taxes in URCS make the adjustment to RSAM unnecessary, as DuPont suggested? Second, if an adjustment is appropriate, should the statutory, effective or marginal tax rate be used? Third, should the Board use the railroad's individual tax rate or an industry average tax rate? Finally, how should the appropriate tax rate be applied to calculate a pre-tax revenue shortfall? [3]

The Board seeks comments on these questions and on any other methodologies that could be used in accounting for taxes under the RSAM benchmark.

Pursuant to 5 U.S.C. 605(b), the Board certifies that the proposed action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. No new reporting requirements will be instituted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: June 25, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–15024 Filed 7–1–08; 8:45 am]

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[3] In abandonment cases, the Board applies Federal and state taxes to convert the cost of capital to a pre-tax cost of capital by dividing the cost of equity by one minus the sum of the Federal and state tax rates.