

comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be available at <http://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments as prescribed in this preamble under the **DATES** heading. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 I.R.B. 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these regulations is Juli Ro Kim of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Gift taxes, Income taxes, Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

■ **Paragraph 1.** The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

■ **Par. 2.** Section 300.0 is amended by adding paragraph (b)(13) to read as follows:

§ 300.0 User fees; in general.

* * * * *

(b) * * *

(13) Requesting an estate tax closing letter.

■ **Par. 3.** Section 300.13 is added to read as follows:

§ 300.13 Fee for estate tax closing letter.

(a) **Applicability.** This section applies to the request by a person described in paragraph (c) of this section for an estate tax closing letter from the IRS.

(b) **Fee.** The fee for issuing an estate tax closing letter is \$67.

(c) **Person liable for the fee.** The person liable for the fee is the estate of the decedent or other person properly authorized under section 6103 of the Internal Revenue Code to receive and therefore to request the estate tax closing letter with respect to the estate.

(d) **Applicability date.** This section applies to requests received by the IRS after [date that is 30 days after these regulations are published as final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–28931 Filed 12–29–20; 4:15 pm]

BILLING CODE 4830–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Chapter X

[Docket No. EP 766]

Joint Petition For Rulemaking—Annual Revenue Adequacy Determinations

AGENCY: Surface Transportation Board.

ACTION: Petition for rulemaking.

SUMMARY: The Surface Transportation Board (Board or STB) opens a rulemaking proceeding to consider a petition by several Class I railroads to change the Board's procedures for annually determining whether Class I rail carriers are revenue adequate. The Board seeks public comment on the petition and several specific related issues.

DATES: Comments are due March 1, 2021; replies are due March 31, 2021.

ADDRESSES: Comments and replies may be filed with the Board via e-filing on the Board's website at www.stb.gov and will be posted to the Board's website.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245–0391.

Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On September 1, 2020, Union Pacific Railroad Company (UP), Norfolk Southern Railway Company, and the U.S. rail operating affiliates of Canadian National Railway Company

(collectively, Joint Carriers) filed a joint petition for rulemaking to change the Board's procedures for determining which Class I rail carriers are earning adequate revenues under 49 U.S.C. 10704(a)(3).

The Board annually determines each Class I railroad's revenue adequacy in successive subdockets under Docket No. EP 552, most recently in *Railroad Revenue Adequacy—2019 Determination*, EP 552 (Sub-No. 24) (STB served Oct. 1, 2020).¹ Under the Board's procedures, “a railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment (ROI) equal to at least the current cost of capital for the railroad industry.” *Id.* at 1.

The Joint Carriers propose two changes to the Board's procedures for annually determining revenue adequacy. First, the Joint Carriers propose that the Board determine whether a railroad is revenue adequate by comparing the extent by which its ROI exceeds the rail industry's cost of capital to the extent by which companies in the S&P 500 exceed their cost of capital—in short, to examine railroads in comparison with the larger universe of S&P 500 companies (the Comparison Proposal). (Pet. 3, 8.) The Joint Carriers contend that railroads compete against other firms for capital, and that the financial health of the railroad industry “must be considered in relation to the competition railroads face in the capital markets from other, unregulated firms.” (*Id.* at 3.) More specifically, the Joint Carriers argue that the Board should define annual revenue adequacy to mean that a railroad's “Adjusted STB ROI”² exceeds the rail industry cost of capital by more than the median S&P 500 firm's ROI exceeds its cost of capital. (*Id.* at 20–21.) Under the Comparison Proposal, the Board would direct the Association of American Railroads to submit “Adjusted STB ROI” and cost of capital calculations for every S&P 500 company, and the Board “would calculate the median difference between the Adjusted STB ROI and the cost of capital for all companies in the S&P 500, except for banking and real estate companies.”³ (*Id.* at 21.) As part

¹ In that decision, the Board found five carriers (BNSF Railway Company, CSX Transportation, Inc. (CSXT), Norfolk Southern Combined Railroad Subsidiaries, Soo Line Corporation, and UP) revenue adequate in 2019. *R.R. Revenue Adequacy—2019 Determination*, EP 552 (Sub-No. 24), slip op. at 2.

² The petition also proposes certain modifications to the calculation of ROI, as discussed below. (See also Pet. 35–36.)

³ The Joint Carriers state that banking and real estate companies were excluded from the comparison groups because they have different

of the Comparison Proposal, the Joint Carriers also propose including non-goodwill intangible assets in the railroads' and S&P 500 companies' asset bases. (*Id.* at 35.)

The second proposal from the Joint Carriers is that the Board change how it treats deferred taxes in the revenue adequacy determination (the Deferred Taxes Proposal). Rather than the Board's current "utility method," which removes annual deferred taxes from net operating income and removes accumulated deferred taxes from a company's investment base, the Joint Carriers propose a flow-through approach, under which annual deferred taxes and accumulated deferred taxes would not be removed from net operating income and the investment base, respectively. (*Id.* at 38.) The Joint Carriers state that the practical effect would be "an annual measurement that is on a cash basis, where the impact of any deferred taxes is captured by the measurement of financial health if and when those taxes come due." (*Id.* at 38–39.)

On September 21, 2020, the Board received three replies to the petition, one each from CSXT, the Western Coal Traffic League (WCTL), and a group of several shippers.⁴ CSXT supports the petition, while WCTL and the Joint Shippers oppose it.

CSXT urges the Board to grant the petition because doing so "would provide a more accurate picture of railroad financial performance." (CSXT Reply 2.) CSXT also urges the Board to consider the use of replacement costs when determining long-term revenue adequacy and argues that the Board should abandon the revenue adequacy constraint in determining whether individual rates are reasonable. (*Id.* at 3–8.)

WCTL argues that the petition misrepresents the role of revenue adequacy and is an attempt by the Joint Carriers to avoid being found revenue adequate and thus potentially subject to the revenue adequacy rate constraint. (WCTL Reply 4–5.) Regarding the Comparison Proposal, WCTL asserts that many S&P 500 firms have different capital structures than railroads and hundreds are not capital intensive. (*Id.* at 12.) WCTL also argues that the Comparison Proposal would result in revenue adequacy determinations at

odds with the investment community's perception of railroads' financial health. (*Id.* at 13 (citing Joint Opening Comments of WCTL 11–12, Sept. 5, 2014, *R.R. Revenue Adequacy*, EP 722).) Regarding the Deferred Taxes Proposal, WCTL argues that the flow-through approach ignores tax deferrals and the fact that railroads pay taxes below the corporate rate. (*Id.* at 14–16.) WCTL also questions the relevance and accuracy of the Joint Carriers' examples of the utility and flow-through methods. (*Id.* at 17.)

The Joint Shippers argue that the Comparison Proposal would "render all Class I railroads revenue-inadequate and likely maintain that status for decades to come." (Joint Shippers Reply 4.) They contend that the current annual revenue-adequacy determination already sets a conservatively high bar, (*id.* at 4–8), and assert that the Joint Carriers' rationales for the Comparison Proposal do not actually support the proposal, (*id.* at 11–12 (stating that the Joint Carriers' arguments "assume a role for revenue adequacy as a measure of market power, competitive failure and monopoly profits that Congress never intended"))).

On October 13, 2020, the Joint Carriers filed a motion for leave to respond to the reply comments, along with a response addressing WCTL's and the Joint Shippers' arguments against both proposals.⁵

The Board will open a rulemaking proceeding to further consider the Joint Carriers' petition and the issues that it raises.⁶ The Board invites comment on the issues raised in the petition generally as well as on the following specific questions:

General Considerations

1. With specificity, in what ways do each of the Joint Carriers' proposals advance or fail to advance each of the components of 49 U.S.C. 10704(a)(2)?⁷

⁵ Under 49 CFR 1104.13(c), a reply to a reply is not permitted. However, in the interest of a more complete record, the Board will grant the Joint Carriers' motion and accept their reply into the record. See *City of Alexandria—Pet. for Declaratory Order*, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing a reply to a reply "[i]n the interest of compiling a full record").

⁶ The Board has also received testimony and comments in two informational dockets related to revenue adequacy. See *Hearing on Revenue Adequacy*, Docket No. EP 761; *R.R. Revenue Adequacy*, Docket No. EP 722.

⁷ Under 49 U.S.C. 10704(a)(2), the Board shall maintain and revise as necessary standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction under this part that are adequate, under honest, economical, and efficient management, for the infrastructure and investment needed to meet the present and future demand for rail services and to cover total operating expenses, including depreciation and obsolescence, plus a reasonable

2. Are there other ways in which the Board's current procedures could be modified to further advance the statutory goals of 10704(a)(2)?

The Comparison Proposal

1. As noted above, the Joint Carriers propose that Class I carriers be considered revenue adequate only if their ROI exceeds their cost of capital by more than the median S&P 500 firm's ROI exceed its cost of capital. Why is the median S&P 500 firm's differential an appropriate benchmark and not, for example, the 25th, 33rd, or 75th percentile? Does the Joint Carriers' proposal assume that below-median S&P 500 firms do not earn adequate revenues, and, if so, why is that assumption appropriate (or inappropriate)?

2. WCTL and the Joint Shippers criticize the proposal to use the S&P 500 as a comparison group. (See WCTL Reply 12; Joint Shippers Reply 9–10.) The Joint Carriers express openness to using a different comparison group and note that similar results are reached if railroads are compared to the S&P 500 Industrials sector group or a group of S&P 500 railroad customers. (See Joint Carriers Response 11–12.) Would any of these alternative comparison groups be an appropriate benchmark? Are there other comparison groups that might be appropriate? Is it appropriate to compare regulated entities like railroads with a group that includes a significant number of non-regulated entities, and—if not—is there a set of regulated companies that could be used as a comparison group?

3. A company is typically removed from the S&P 500 index if its market capitalization falls below a certain threshold. Does the changing constituency of the index pose a problem with respect to the Joint Carriers' proposed methodology?

The Deferred Taxes Proposal

In *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986), the Board's predecessor, the Interstate Commerce Commission (ICC), based its decision to adopt the utility method on several grounds, including analogizing

and economic profit or return (or both) on capital employed in the business. The Board shall make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph. Revenue levels established under this paragraph should: Provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation; and attract and retain capital in amounts adequate to provide a sound transportation system in the United States.

capital structures than other firms; railroads were also excluded. (Pet. 35.)

⁴ The shippers are: The American Chemistry Council, Corn Refiners Association, American Fuel & Petrochemical Manufacturers, The National Industrial Transportation League, The Chlorine Institute, and The Fertilizer Institute (collectively, Joint Shippers).

captive rail shippers to utility customers, favoring an approach that conforms to Generally Accepted Accounting Principles (GAAP), and determining that removing the effect of deferred taxes led to a more accurate representation of railroad profitability. *See id.* at 272–75; *Consol. Rail Corp. v. United States*, 855 F.2d 78, 93 (3rd Cir. 1988) (affirming the ICC’s decision and finding that the “adjustment of its formula in the interests of accuracy is rational”). Does the ICC’s reasoning for adopting the utility method remain valid, specifically with respect to analogizing captive shippers to utility customers, determining whether the utility method continues to conform with GAAP today, and finding that the utility method led to a more accurate representation of railroad profitability?

Additionally, the Joint Carriers will be requested to file workpapers sufficient to replicate the analysis underlying their proposals and to make those workpapers available, upon request, to other participants in this proceeding, under an appropriate protective order.

Interested persons may file comments by March 1, 2021. If any comments are filed, replies will be due by March 31, 2021.

It is ordered:

1. A rulemaking proceeding is initiated, as discussed above.
2. Comments are due March 1, 2021; replies are due March 31, 2021.
3. The Joint Carriers are requested to file workpapers sufficient to replicate the analysis underlying their proposals and to make those workpapers available, upon request, to other participants in this proceeding, under an appropriate protective order.
4. Notice of this decision will be published in the **Federal Register**.
5. This decision is effective on its service date.

Decided Date: December 22, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Andrea Pope-Matheson,
Clearance Clerk.

[FR Doc. 2020–28864 Filed 12–30–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 229 and 697

[Docket No. 201221–0351]

RIN 0648–BJ09

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan to reduce the incidental mortality and serious injury to North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), and humpback whales (*Megaptera novaeangliae*) in northeast commercial lobster and crab trap/pot fisheries to meet the goals of the Marine Mammal Protection Act and the Endangered Species Act. In addition, this action also proposes a small revision to Federal regulations implemented under the Atlantic State Marine Fisheries Commissions’ Interstate Fishery Management Plan for Lobster to increase the maximum length of a lobster trap trawl groundline. This action is necessary to reduce the risks to North Atlantic right whales and other large whales associated with the presence of fishing gear in waters used by these animals.

DATES: Submit comments on or before March 1, 2021.

Public Hearings: Eight or more remote public meetings will be held during the public comment period. See **ADDRESSES** to obtain public hearing notification details.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2020–0031, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0031, click the “Comment Now!” icon and complete the required fields, and enter or attach your comments.

Instructions: All comments received that are timely and properly submitted

are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us.

Oral Comments: Remote public meeting access information will be posted on the Plan website fisheries.noaa.gov/ALWTRP or contact Colleen Coogan for information on locations and dates. Contact information below.

Copies of this action, including the Draft Environmental Impact Statement (DEIS) and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DEIS/RIR/IRFA) prepared in support of this action, are available via the internet at <https://www.regulations.gov/> or by contacting Colleen Coogan at the contact information below.

Several of the background documents for the Plan and the take reduction planning process can be downloaded from the Plan website. Copies of the DEIS/RIR/IRFA for this action can also be obtained from the Plan website. Information on the Decision Support Tool and Co-Occurrence model used to support the development and analysis of the proposed regulations can be found in appendices to the DEIS. The complete text of current regulations implementing the Plan can be found in 50 CFR 229.32 or downloaded from the Plan’s website, along with outreach compliance guides to current regulations. The complete text of current regulations implementing the Lobster Plan can be found at 50 CFR part 697.

FOR FURTHER INFORMATION CONTACT: Colleen Coogan, NMFS, Greater Atlantic Regional Fisheries Office, 978–281–9181, Colleen.Coogan@noaa.gov.

SUPPLEMENTARY INFORMATION:

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