Moreover, we proposed to update this rate to account for subsequent interest rate changes.

8. Consistent with the CAPM approach, we estimate the average return on investment in the general equity market. Using the S&P 500 from 1987 through the third quarter of 1995, the average compounded return has been 13.53%. Applying the CAPM formula, the general equity market premium above the risk-free rate of return is 6.26% (13.53%–7.27%). The 1.42 beta for cable equity investment multiplied by 6.26% provides a cable equity premium of 8.89 percentage points above the average risk-free rate. Adding the risk-free rate to the cable equity premium results in an equity cost figure of 16.16%. We propose that the average cost of equity for investment in cable operators providing regulating cable services is 16.16%. We propose to adjust the figures used to estimate the equity cost periodically. We ask comment on this approach.

9. We also request comment on a method that would, consistent with the goal of maintaining administrative feasibility, adjust the equity cost to reflect extraordinary financial risk. For example, should the Commission consider debt-to-cash flow multiples as a mechanism to quantify risk levels? We solicit data to establish equity cost figures above and below the proposed 16.16% average equity cost estimate for operators with debt burdens significantly above and below the average in our sample.

C. Cost of Debt

10. The other principal component of the overall cost of capital is the cost of debt. In the Cost Order, we relied on debt cost estimates for the cable industry specifically and concluded that the range for the average cost of fixed rate debt established by information submitted in the cost of service proceeding was 7.8% to 8.65%. The Commission noted the substantial proportion of floating rate debt among cable entities and determined that a cautious estimate would place average debt cost at 8.5%.

11. We propose to rely on more direct estimates of capital cost by gauging an operator's debt cost to its actual cost. This debt cost would encompass fees or other premiums that the operator may pay to obtain debt financing. We invite comment on this proposal.

D. Capital Structure

12. In the Cost Order, we decided against using embedded capital structures and market equity values to establish the capital structure used to calculate the overall rate of return. We indicated that a capital structure range may be more appropriate for the debt-laden cable industry and set that range at 40% to 70% debt and used that range in setting the overall capital cost.

13. We tentatively conclude, however, that actual, i.e., individualized, capital structures should be applied to the estimation of the overall cost of capital. The estimation of debt costs is relatively straightforward because the cost of debt can be documented and certified by independent accounting services. Because debt costs can be measured directly, we tentatively conclude that reliance on the actual percentage of debt in an operator's capital structure will ensure the most accurate estimation of interest costs. Thus, if an operator elected not to rely on the presumptive 11.25% rate of return in favor of the alternative capital cost measure described in this Order, we would look to the actual capital structures of the operator to determine the appropriate overall capital cost.

14. Estimating the amount of equity in an operator's structure is a complex proposition. Many operators have a negative net worth. We recognize, however, that, in the case of several publicly-traded cable companies, the stock of operators with negative book values trades in significant volumes in the open market. While public utility regulation has relied traditionally on book value estimations of equity in determining capital structures for regulated utilities, it may be appropriate to take note of the equity transactions in the cable industry that occur frequently, including the decisions of cable investors to pay multiples of cash flow for cable systems that, based on book value, should be worth less than nothing.

15. In order to rely on actual capital structures, however, we must ensure that measurement of the equity proportion filters out a ''premium'' for anticipated gains in unregulated services. As we consider this alternative, however, we recognize that several issues must be addressed and resolved. Moreover, we remain committed to an approach that is administratively feasible. To assist the Commission in this endeavor, we request comment on the following issues:

a. What mechanism or analysis should guide the Commission in estimating the equity proportion of an operator's capital structure that is dedicated to regulated services?

b. How should the Commission estimate the proportion of equity in an operator's capital structure when that operator is not publicly-traded?

c. Should the Commission rely on the book value of debt or the market value of debt in estimating the proportion of debt in an operator's capital structure?

d. Can the Commission develop a reasonable estimate of an operator's capital structure by combining the market value of its equity and the book value of its debt?

e. If market capitalization is used to measure the proportion of equity in an operator's capital structure, will increases in the operator's stock price drive up subscriber rates by increasing the proportion of equity in the operator's capital structure? If so, how can the Commission ensure that reliance on market capitalization measures for equity will not unduly impact subscriber rates?

III. Regulatory Flexibility Analysis

16. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (''IRFA'') of the expected impact of these proposed policies and rules on small entities:

The proposals, if adopted, will not have a significant effect on a substantial number of small entities.

List of Subjects in 47 CFR Part 76

Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5426 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 528]

Disclosure, Publication, and Notice of Change of Rates and Other Service Terms for Rail Common Carriage

AGENCY: Surface Transportation Board, DOT.

ACTION: Advance Notice Of Proposed Rulemaking.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) eliminated the tariff and tariff filing requirements formerly applicable to rail carriers, but imposed in lieu thereof certain obligations to disclose common carriage rates and service terms as well as a requirement

for advance notice of an increase in such rates or change in service terms. The ICCTA requires the Board to promulgate regulations to administer these new obligations by June 29, 1996. The Board seeks public comment on appropriate regulations for that purpose, and encourages the affected interest groups to discuss and seek mutually agreeable regulations to propose.

DATES: Comments are due on April 8, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 528 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, abolished the Interstate Commerce Commission (ICC) and transferred responsibility for the economic regulation of rail transportation to a new Surface Transportation Board (the Board). *See* ICCTA Section 101 (abolition of the ICC). *See also* new 49 U.S.C. 701(a) (establishment of the Board), as enacted by ICCTA Section 201(a). The transfer took effect on January 1, 1996. *See* ICCTA Section 2 (effective date).[1]

The substantive provisions of the new law differ in several important respects from the former law. As pertinent here, the former law required that rail carriers file with the ICC *tariffs* containing the specific rates and charges (or the basis for calculating them) for their common carriage transportation services. Rail carriers had to adhere to the rates and terms contained in their tariffs. *See* former 49 U.S.C. 10761 and 10762. *See also* 49 CFR part 1314 (1995).

The ICCTA eliminated the rail tariff requirements, effective January 1, 1996. Accordingly, no new rail carrier tariffs are to be filed with the Board, and the rail carrier tariffs that were previously filed with the ICC are no longer effective tariffs as of January 1, 1996. The ICC regulations at 49 CFR part 1314, governing rail carrier tariffs, are likewise not effective as of that date and are being formally repealed in another proceeding recently initiated by the Board.

Nevertheless, new 49 U.S.C. 11101(b) and (d) require disclosure of rail common carriage rates and service terms. New 49 U.S.C. 11101(c) further requires that rail carriers, when providing common carriage, not increase their rates or change their service terms without advance notice. Finally, new 49 U.S.C. 11101(e) requires rail carriers to adhere to the rates and service terms published or otherwise made available under new 49 U.S.C. 11101(b)–(d).[2]

New 49 U.S.C. 11101(f) directs the Board to establish rules to implement the requirements of new 49 U.S.C. 11101. In accordance with this directive, we intend to promulgate new regulations to implement the requirements of new 49 U.S.C. 11101(b), (c), and (d). We do not believe that implementing rules are required for new 49 U.S.C. 11101(a), which simply reenacts the longstanding common carrier obligation that the carrier provide transportation or service on reasonable request. We believe that this obligation, which has been well developed through case law, is best addressed on a case-by-case basis.

Similarly, our preliminary view is that implementing rules are not required for new 49 U.S.C. 11101(e), which requires a rail carrier to provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under new 49 U.S.C. 11101(b), (c), or (d). This requirement appears to be clear on its face.

The regulations implementing new section 11101 would appear to apply to any transportation or service provided by a rail carrier subject to our jurisdiction under new 49 U.S.C. 10501, with two exceptions. They would not apply, it would seem, to transportation or service provided by a rail carrier (1) under a contract pursuant to former 49 U.S.C. 10713 or new 49 U.S.C. 10709, or (2) covered by an exemption issued under former 49 U.S.C. 10505 or new 49 U.S.C. 10502, to the extent that such exemption remains in effect and applies to rate notice and disclosure requirements.

The new regulations would first need to address the requirement of new 49 U.S.C. 11101(b) that a rail carrier promptly provide to any person, on request, its rates and other service terms. It would appear that this requirement applies both to the disclosure of an existing rate (and related service terms) and to the establishment of a new rate (and related service terms) where none exists.

In the situation where the carrier has existing rates covered by the rate information request, the provisions of 49 U.S.C. 11101(b) and (f) require the carrier ''immediate[ly]'' to disclose its ''rates and service terms, including classifications, rules, and practices'' to any person requesting such information. We seek suggestions for a rule that would implement these provisions in a way that would provide the rate requester with complete information about all relevant terms and conditions. We also seek input on whether we should attempt to define the word immediately, or instead should simply establish general guidelines to be applied on a case-by-case basis, setting up broad parameters governing disclosure.

There may be instances in which a shipper or prospective shipper requests the carrier to establish a rate for a type of traffic for which no existing rate is in place. Again, the provisions of 49 U.S.C. 11101(b) appear to require that the rail carrier provide a rate, as well as any related charges and service terms, promptly. We seek input on whether we ought to define the word promptly, or instead should simply adopt broadly applicable guidelines.

The new regulations also need to address the requirement of new 49 U.S.C. 11101(c) that a rail carrier may not increase a common carriage rate or change a common carriage service term without first giving 20 days' notice to any person who, within the previous 12 months, (1) has requested that rate or term under new subsection (b), or (2) has made arrangements with the carrier for a shipment that would be subject to the increased rate or changed term. It seems to us that the advance notice requirement would apply to known users of the transportation or service to which the increase or change is applicable (i.e., a person who has made a shipment within the past year or has already made arrangements for a future shipment) and also to known prospective users of such transportation or service (i.e., a person who has requested that rate to be established). Our preliminary view is that it would not be necessary or appropriate to require a carrier to keep a record of and notify all persons who have requested rate information but are not users of the

[1] The ICCTA also made several changes to the rail regulatory authority that had been administered by the ICC. In this notice, when referring to the provisions of the United States Code affected by ICCTA we use the word *former* to refer to the law in effect prior to January 1, 1996, and the word new to refer to the law in effect on and after January 1, 1996.

[2] A central feature of both the old and new law is the requirement that a rail carrier adhere to its established rates. Therefore, as a transition matter, a question that arises is whether a rail carrier must continue to adhere to its established rates and service terms—those that were in effect (in tariffs on file with the ICC) on December 31, 1995—unless and until changed in a manner consistent with the requirements of new section 11101. Otherwise, it could be argued that there could be a break in the continuity of rates that Congress did not intend.

affected transportation service. We request comment on what guidance, if any, should be given for determining which members of the shipping public are covered by the 20-day notice period.

We note that the notice requirement does not apply to a rate decrease, which a carrier may apply without notice. Similarly, it would not seem that the notice requirement should apply to, and hence delay, a change in service terms that is clearly beneficial to shippers. Our initial view is that it is not necessary to establish rules addressing how to determine whether a service change is clearly beneficial to shippers. Commenters may wish to address this issue.

The new regulations also need to address the publication requirement of new 49 U.S.C. 11101(d), which requires railroads to ''publish, make available, and retain for public inspection [their] common carrier rates, schedule of rates, and other service terms,'' and any changes thereto, for the transportation of agricultural products (including grain, as defined in 7 U.S.C. 75, and all products thereof) and fertilizer. It should be noted that the publication requirement for these commodities is in addition to the disclosure and notification requirements of new subsections (b) and (c). This additional requirement reflects Congress' concern that broad dissemination of market information on a timely basis is particularly critical to the agricultural sector of the economy, given the seasonal nature of its transportation needs and the short time frame within which such needs must be met.

It would seem that the required publication could be provided by the rail carrier itself or by an agent (e.g., a publishing service or another rail carrier) acting at the rail carrier's direction. It would also seem that these publications would need to be made available to all interested persons, but that the rail carrier or its agent should be able to impose reasonable charges for such publications.[3] We seek comment on how best to implement this provision. Again, we request input on how to interpret the requirement that publication of any proposed or actual changes be made promptly.

Finally, the new regulations should provide for the required information to be supplied either in writing or in electronic form. It would appear that the form chosen would depend upon the technical capacities of the carrier to transmit, and of the requester to receive, the information.

Request for Comments

We invite all interested persons to comment and to offer suggestions for the new regulations. We encourage affected interest groups to discuss these new requirements with each other and to seek a mutually agreeable set of regulations that would meet the needs of all affected interests—both shipper and carrier, and both large and small.

Comments (an original and 10 copies) must be in writing, and are due on April 8, 1996.

We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we need not conduct at this point an examination of impacts on small entities. We will certainly welcome, of course, any comments respecting whether regulations that commenters may suggest would have significant economic effects on any substantial number of small entities.

Environment

The issuance of this advance notice of proposed rulemaking will not significantly affect either the quality of the human environment or the conservation of energy resources. Furthermore, we would not expect that regulations suggested for implementing new 49 U.S.C. 11101 would significantly affect either the quality of the human environment or the conservation of energy resources. We certainly welcome, of course, any comments respecting whether suggested revisions would have any such effects.

Authority: 49 U.S.C. 721(a) and 11101.

Decided: February 29, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5515 Filed 3–7–96; 8:45 am]

BILLING CODE 4915–00–P

[3] Of course, to accommodate particular segments of the agricultural sector, it would seem that carriers could, at their discretion, continue to issue more narrowly focused publications as well.

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–144; Notice–1]

Risk-Based Alternative to the Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration (RSPA) invites representatives of industry, state, and local government, and the public to an open meeting to discuss a proposal by the American Petroleum Institute (API) for a risk-based alternative to the pressure testing older hazardous liquid and carbon dioxide pipelines rule (see Attachment). The purpose of this meeting is to obtain public views before RSPA considers API's proposal.

DATES: The meeting will be held on March 25, 1996, from 1:00 p.m. to 5:00 p.m. Written comments, in duplicate, are due by April 15, 1996.

ADDRESSES: Interested persons should submit written comments in duplicate to Dockets Unit, room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

The meeting will be held at the U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW, room 9230–34, Washington, DC. Non-federal employee visitors are admitted into DOT headquarters building through the southwest entrance at Seventh and E Streets, SW.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, regarding the subject matter of this document, or the Dockets Unit (202) 366–5046, for copies of this notice, the attachment or other material referenced in this notice.

SUPPLEMENTARY INFORMATION: On June 7, 1994, RSPA issued a final rule (59 FR 29379) requiring the hydrostatic pressure testing of certain older hazardous liquid and carbon dioxide pipelines. On June 23, 1995, API filed a petition on behalf of many liquid pipeline operators expressing strong concerns about the pressure testing rule in its present form and proposing a risk-based alternative to the pressure testing rule. API argued that its proposal would allow operators to focus resources for a greater reduction in the overall risk from pipeline accidents. In addition, RSPA has received a few requests for waivers of compliance with the June 7, 1994, final rule.