

identify non-retail order flow, but also to monitor whether such flow exceeded a *de minimis* amount. The commenter also questioned whether the potential difficulty of the Exchange monitoring the Program might increase the likelihood that members may be subject to unfair discrimination in the Program's approval and disqualification process.

In response, the Exchange noted that it will issue Equity Trader Alerts to provide clear guidance on how the "substantially all" standard will be implemented and monitored. The Exchange also noted that the Program is designed to attract as much retail order flow as possible, and that, should RMOs begin submitting substantial amounts of non-retail order flow, liquidity providers would become less willing to participate in the Program. Finally, the Exchange disagreed with the commenter's statement that a standard that provides a *de minimis* number of exceptions would be any harder to enforce than a standard that permitted no exceptions.

#### IV. Discussion and Commission Findings

After careful review of the proposal, the comment letter received, and the Exchange's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds that the proposed "substantially all" standard is a limited and sufficiently-defined modification to the Program's current RMO attestation requirements that does

not constitute a significant departure from the Program as initially approved by the Commission.<sup>13</sup> The proposal makes clear that to comply with the standard, RMOs may submit only isolated and *de minimis* amounts of agency orders that cannot be segregated from Retail Orders due to systems limitations.<sup>14</sup> Furthermore, as the Exchange notes, RMOs will need to adequately document their compliance with the "substantially all" standard in their books and records. Specifically, an RMO would need to retain adequate documentation that substantially all orders sent to the Exchange as Retail Orders met that definition, and that those orders not meeting that definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are *de minimis* in terms of the overall number of Retail Orders sent to the Exchange. The Commission also notes that FINRA will monitor an RMO's compliance with this requirement.

Additionally, the Commission finds that the Exchange has provided adequate justification for the proposal. The Exchange represented that, as explained to it by several significant retail brokers, the current "any order" standard is effectively prohibitive, given the brokers' order flow aggregation and management systems. The Exchange further represented that these retail brokers indicated their systems would allow them to comply with the "substantially all" standard, as proposed. By allowing these retail brokers to participate in the Program, the proposal could bring the potential benefits of the Program, including price improvement and increased transparency,<sup>15</sup> to the retail order flow that these brokers represent.<sup>16</sup>

<sup>13</sup> The Commission notes that it approved the Program on a pilot basis subject to ongoing Commission review. The Commission notes further that it recently approved nearly identical proposals submitted by NYSE, NYSE MKT, and BATS-Y concerning those exchanges' respective retail programs. See Securities Exchange Act Release Nos. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (NYSE and NYSE MKT), and 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (BATS-Y).

<sup>14</sup> While the Commission recognizes the potential benefit of the commenter's suggestion concerning a bright-line definition of *de minimis*, see *supra* note 10, the Commission believes that, in light of the facts surrounding the instant proposal, the proposal, and the guidance that the Exchange will provide to its members on this point, is sufficiently clear. The Commission also notes that the example the commenter cites is found in Regulation M, which governs different circumstances than those at issue here.

<sup>15</sup> For a more detailed discussion of the Program's potential benefits, see RPI Approval Order, *supra* note 7.

<sup>16</sup> The commenter also expressed concern that this proposal may increase the Exchange's burden

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NASDAQ-2013-031) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-14001 Filed 6-12-13; 8:45 am]

BILLING CODE 8011-01-P

#### DEPARTMENT OF STATE

[Public Notice 8353]

#### Spectra Energy Corp., Application for a New or Amended Presidential Permit

June 7, 2013.

**AGENCY:** Department of State.

**ACTION:** Notice of Receipt of Spectra Energy Corp., Application for a New or Amended Presidential Permit for Express Pipeline LLC to Operate and Maintain Pipeline Facilities on the Border of the United States and Canada.

**SUMMARY:** Notice is hereby given that the Department of State (DOS) has received from Spectra Energy Corp ("Spectra Energy") notice that it has acquired the entities that own Express Pipeline LLC ("Express"), which operates and maintains pipeline facilities including the Express Pipeline, which is permitted under a 2004 Presidential Permit issued to Express. Spectra Energy requests a new or amended Presidential Permit be issued reflecting these corporate transactions.

Spectra Energy owns and operates a large diversified portfolio of natural gas-related energy assets in the areas of gathering and processing, transmission, and distribution. Its natural gas pipeline systems consist of over 19,000 miles of transmission pipelines.

The Express Pipeline is a 515 mile, 24 inch crude oil pipeline running between the U.S.-Canada border near Wild

monitoring compliance with the Program. The Commission finds that any potential concerns raised by this assertion, which is disputed by the Exchange, are outweighed by the potential benefits of the proposal; namely, that the proposal may allow more retail orders the opportunity to participate in the Program and to receive the attendant benefits of the Program. With respect to the commenter's concern that members may be subject to unfair discrimination in the approval and disqualification process for participation in the Program, the Commission notes that it previously found that the Program's provisions concerning the certification, approval, and potential disqualification of RMOs are not inconsistent with the Act. See RPI Approval Order, *supra* note 7.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

Horse, Montana, to Caster, Wyoming and includes five pump stations. The Express Pipeline has been in operation since 1997 and transports crude oil from Hardisty, Alberta Canada to Casper, Wyoming.

On March 14, 2013, Spectra Energy (through its subsidiaries Spectra Energy Express (US) GP, LLC and Spectra Energy Express Holding, LLC) purchased all of the outstanding equity and debt interests in Express US Holdings LP. Immediately following these acquisitions, Spectra Energy became the 100 percent owner of the "upstream" entities that own Express and reorganized those entities, converting the direct parent corporation of Express into a limited liability corporation, Express Holdings (USA), LLC. Spectra plans to assign 40% of its ownership interests in Express Holdings (USA), LLC, to Spectra Energy Partners, LP, a publicly-traded master limited partnership. Spectra Energy has control over Spectra Energy Partners, LP; it indirectly owns 58% of the ownership interests in the limited partnership and also indirectly owns 100% of Spectra Energy Partners, LP's general partner, Spectra Energy Partners (DE) GP, LP.

Spectra affirms that operation and maintenance of the permitted facilities will remain substantially the same as before its acquisition of Express and acknowledges the Express is obligated to comply with the existing 2004 Permit. Spectra does not request any changes to the terms and conditions of the 2004 Permit.

Under E.O. 13337 the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of liquid petroleum, petroleum products, or other non-gaseous fuels to or from a foreign country. The Department of State is circulating this application to concerned federal agencies for comment. The Department of State has the responsibility to determine whether issuance of a new or amended Presidential Permit in light of Spectra's acquisition of the entities that own Express would be in the U.S. national interest.

**DATES:** Interested parties are invited to submit comments within 30 days of the publication date of this notice by email to [SpectraEnergypermit@state.gov](mailto:SpectraEnergypermit@state.gov) with regard to whether issuing a new Presidential Permit reflecting the corporate succession would be in the

national interest. The application is available at <http://www.state.gov/e/enr>.

**FOR FURTHER INFORMATION CONTACT:** Office of Energy Diplomacy, Energy Resources Bureau (ENR/EDP/EWA) Department of State 2201 C St. NW., Ste 4843 Washington, DC 20520 Attn: Michael Brennan Tel: 202-647-7553.

Dated: June 7, 2013.

**Michael Brennan,**

*Office of Europe, Western Hemisphere and Africa, Bureau of Energy Resources, U.S. Department of State.*

[FR Doc. 2013-14048 Filed 6-12-13; 8:45 am]

**BILLING CODE 4710-09-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2012-0093]

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 30, 2012, the Union Pacific Railroad Company (UP) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 219, Subpart G, Random Alcohol and Drug Testing Programs. FRA assigned the petition Docket Number FRA-2012-0093.

UP is requesting FRA's approval to periodically and intermittently adjust UP's random drug and alcohol testing rates at specific locations based on objective, performance-based criteria or, alternately, approval for a pilot program in which UP can increase random testing of its employees at specific locations based on objective, performance-based criteria.

A copy of the petition (included at the end of this notice), as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires

an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- **Web site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 29, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on June 10, 2013.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2013-14092 Filed 6-12-13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. AB 290 (Sub-No. 348X)]

#### Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Tipton and Howard Counties, Ind.

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 10.8-mile rail line between milepost I-41.0 (north of Market Road near Tipton) and milepost