

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange represents that waiver of the operative delay would provide the Exchange additional time to implement the Directed Orders functionality and ensure that it is properly functioning prior to implementation on INET. The Exchange states that it provided notice of the proposed rule change to Members on February 17, 2017. The Commission notes that the Exchange represents that there will be no adverse effect from turning off this functionality for a short period of time because no market participant has utilized the Directed Orders functionality in the last thirteen months. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>12</sup>

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement in this case.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has also

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2017-15 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISE-2017-15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal

considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2017-15 and should be submitted on or before March 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2017-03984 Filed 2-28-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SOCIAL SECURITY ADMINISTRATION**

[Docket No. SSA-2016-0029]

**Social Security Ruling 17-1p; Titles II and XVI: Reopening Based on Error on the Face of the Evidence—Effect of a Decision by the Supreme Court of the United States Finding a Law That We Applied To Be Unconstitutional**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling (SSR).

**SUMMARY:** We are giving notice of SSR 17-1p. This SSR explains how we apply our reopening rules when we have applied a Federal or State law to a claim for benefits that the Supreme Court of the United States later determines to be unconstitutional, and we find the application of that law was material to our determination or decision. We expect that this ruling will clarify our policy in light of recent questions that we have received on this issue.

**DATES:** *Effective Date:* March 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Peter Smith, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-3235. For information on eligibility or filing for benefits, call our national toll-free number 1-800-772-1213, or TTY 1-800-325-0778, or visit our Internet site, Social Security online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so under 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans

<sup>13</sup> 17 CFR 200.30-3(a)(12).

benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004—Social Security—Survivors Insurance; 96.006 Supplemental Security Income.)

**Nancy A. Berryhill,**

*Acting Commissioner of Social Security.*

#### POLICY INTERPRETATION RULING

SSR 17–1p:

#### TITLES II AND XVI: REOPENING BASED ON ERROR ON THE FACE OF THE EVIDENCE—EFFECT OF A DECISION BY THE SUPREME COURT OF THE UNITED STATES FINDING A LAW THAT WE APPLIED TO BE UNCONSTITUTIONAL

**PURPOSE:** In recent years, we have received a number of questions regarding how our reopening rules should be applied when we applied a Federal or State law in making our determination or decision, and the Supreme Court of the United States later determines that the law we applied is unconstitutional. The issue has arisen most recently in light of the Supreme Court's decisions regarding the constitutionality of the Defense of Marriage Act in *United States v. Windsor*, 133 S. Ct. 2675 (2013) and the constitutionality of State law bans on same-sex marriage in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). We are issuing this SSR to explain our policy on reopening a determination or decision due to an error on the face of the evidence when, in making that determination or decision, we applied a Federal or State law that the Supreme Court of the United States later determines to be unconstitutional, and we find that application of that law was material to our determination or decision.

**CITATIONS:** Sections 702(a)(5) of the Social Security Act, as amended; 20 CFR 404.988, 404.989, 416.1488, 416.1489.

**BACKGROUND:** Generally, if a claimant is dissatisfied with a determination or decision made in the administrative review process, but does not request further review within the stated time period, he or she loses the right to further review and that determination or decision becomes final.<sup>1</sup> However, under our rules of administrative finality, in limited circumstances, either on our own initiative or at the request of a party, we may reopen and revise a determination or decision that is otherwise final.<sup>2</sup> Our regulations set out the grounds for reopening and the timeframes for doing so. In many cases, we may reopen and revise a determination or decision only within specified time limits for “good cause.”<sup>3</sup> In other cases, there are no regulatory time limits for reopening.<sup>4</sup> Under our regulations, we may find “good cause” to reopen in part when we find that there is an error on the face of the evidence, as described in the relevant regulations.<sup>5</sup>

Our regulations do not further specify what constitutes grounds for reopening a determination or decision based on an “error on the face of the evidence.” Under our longstanding policy, a legal error may constitute an error on the face of the evidence.<sup>6</sup> However, our regulations also explain that we will not find “good cause” to reopen a prior determination or decision based solely on a “change of legal interpretation or administrative ruling upon which the determination or decision was made.”<sup>7</sup>

In recent years, we have received questions about whether and how we may apply our reopening rules when we made a determination or decision by applying a Federal or State law that the Supreme Court of the United States later determines to be unconstitutional. We are issuing this SSR to explain how we

interpret the reopening rules in this specific situation to ensure that our adjudicators interpret and apply our reopening rules correctly and consistently.

**POLICY INTERPRETATION:** When we make a determination or decision by applying a Federal or State law that the Supreme Court of the United States later determines to be unconstitutional, and we find that application of that law was material<sup>8</sup> to our determination or decision, we may reopen the determination or decision within the time frames specified in our regulations based on an error on the face of the evidence under 20 CFR 404.988(b), 404.988(c)(8), 404.989(a)(3), 416.1488(b), and 416.1489(a)(3). In this specific situation, we do not consider a holding by the Supreme Court that a Federal or State law is unconstitutional to be a “change of legal interpretation or administrative ruling upon which the determination or decision was made,” as contemplated in 20 CFR 404.989(b) and 416.1489(b).

Under our policy, the rules governing a change in legal interpretation apply when a policy or legal precedent that we previously adhered to in the adjudication of cases, which was correct and reasonable when made, is changed as a result of subsequent court decisions or other applicable legal precedents or new policy considerations.<sup>9</sup> When we have made a determination or decision by applying a Federal or State law that the Supreme Court of the United States later determines to be unconstitutional, the application of that law would not have been correct and reasonable when made. Consequently, we do not interpret the change in legal interpretation criteria in our rules to prevent us from applying our reopening rules in that specific situation.

Accordingly, we may reopen a determination or decision based on an error on the face of the evidence in the limited circumstance where all of the following criteria are met: 1) we made our determination or decision by applying a Federal or State law that the Supreme Court of the United States later determines to be unconstitutional; 2) we find that the application of that law was

<sup>1</sup> 20 CFR 404.987(a), 416.1487(a).

<sup>2</sup> 20 CFR 404.987(b), 416.1487(b).

<sup>3</sup> See e.g., 20 CFR 404.988(b), 416.1488(b).

<sup>4</sup> 20 CFR 404.988(c)(8) (Under title II, we may reopen a determination or decision at any time if it was fully or partially unfavorable to a party to correct “an error that appears on the face of the evidence that was considered when the determination or decision was made.”)

<sup>5</sup> 20 CFR 404.989(a)(3) (Under title II, we may reopen a determination or decision for good cause within four years of the date of the notice of initial determination when the “evidence that was considered in making the determination or decision clearly shows on its face that an error was made.”), 416.1489(a)(3) (Under title XVI, we may reopen a determination or decision for good cause within two years of the date of the notice of initial determination when the “evidence that was considered in making the determination or decision clearly shows on its face that an error was made.”)

<sup>6</sup> Social Security Ruling 85–6c ([https://www.ssa.gov/OP\\_Home/rulings/di/05/SSR85-06-di-05.html](https://www.ssa.gov/OP_Home/rulings/di/05/SSR85-06-di-05.html)).

<sup>7</sup> 20 CFR 404.989(b), 416.1489(b).

<sup>8</sup> For purposes of this Ruling, this type of error on the face of the evidence is “material” to our determination or decision when our application of a Federal or State law that the Supreme Court of the United States later determines to be unconstitutional affected the individual's entitlement to title II benefits, the individual's eligibility for title XVI payments, or the amount of the individual's title II benefits or title XVI payments.

<sup>9</sup> See Program Operations Manual System GN 04001.100A (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0204001100>).

material to our determination or decision; and 3) we reopen and revise the determination or decision within the following time frames:

- For claims under title II of the Social Security Act (Act), within four years of the notice of the initial determination, for good cause, under 20 CFR 404.988(b), 404.989(a)(3);
- For claims under title II of the Act, at any time, if the determination or decision was fully or partially unfavorable, under 20 CFR 404.988(c)(8); and
- For claims under title XVI of the Act, within two years of the notice of the initial determination, for good cause, under 20 CFR 416.1488(b), 416.1489(a)(3).

CROSS REFERENCES: Social Security Ruling 85–6c; Program Operations Manual System GN 04001.100A, GN 04010.020, GN 04020.080.

[FR Doc. 2017–03932 Filed 2–28–17; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF STATE

[Public Notice 9900]

### Notice of Determinations; Culturally Significant Object Imported for Exhibition Determinations: “Michelangelo: Divine Draftsman and Designer” Exhibition

*Summary:* Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that an object to be included in the exhibition “Michelangelo: Divine Draftsman and Designer,” imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, New York, from on or about November 6, 2017, until on or about February 12, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

*For Further Information Contact:* For further information, including an object list, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PA, SA–5, Suite 5H03, Washington, DC 20522–0505.

#### Alyson Grunder,

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2017–04039 Filed 2–28–17; 8:45 am]

BILLING CODE 4710–05–P

## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36098]

### BG & CM Railroad, Inc.—Acquisition and Operation Exemption—Rail Line of Great Northwest Railroad, Inc.

BG & CM Railroad, Inc. (BG&CM), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Great Northwest Railroad, Inc. (GNR), and operate approximately 27.5 miles of rail line (the Line), between milepost 3.5 at or near Konkolville, Idaho, to the end of the Line at milepost 31.0 at or near Jaype, Idaho, in Clearwater County, Idaho.<sup>1</sup>

BG&CM certifies that the projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed \$5 million.

BG&CM further certifies that the transaction does not include interchange commitments.

The transaction may be consummated on March 15, 2017, the effective date of the exemption (30 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than March 8, 2017 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD

<sup>1</sup>The Line was authorized for abandonment in 2004. See *Great Nw. R.R.—Aban. in Clearwater Cty., Idaho*, AB 872X (STB served Nov. 1, 2004). However, the abandonment was never consummated due to an unfulfilled historic preservation condition, and the Line remains an active line of railroad.

36098, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Charles H. Montange, 426 NW 162d St., Seattle, WA 98177.

According to BG&CM, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at [WWW.STB.GOV](http://WWW.STB.GOV).

Decided: February 24, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**  
*Clearance Clerk.*

[FR Doc. 2017–03977 Filed 2–28–17; 8:45 am]

BILLING CODE 4915–01–P

## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36099; Docket No. FD 36100; Docket No. FD 36101; Docket No. FD 36102]

### Indiana Harbor Belt Railroad Company—Trackage Rights—Consolidated Rail Corporation, CSX Transportation, Inc., and Norfolk Southern Railway Company; CSX Transportation, Inc.—Trackage Rights—Consolidated Rail Corporation and Norfolk Southern Railway Company; Norfolk Southern Railway Company—Trackage Rights—Consolidated Rail Corporation and CSX Transportation, Inc.; and Consolidated Rail Corporation—Trackage Rights—CSX Transportation, Inc. and Norfolk Southern Railway Company

The Indiana Harbor Belt Railroad Company (IHB), Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) (collectively, the Parties) have submitted four combined verified notices of exemption in these four dockets pursuant to the class exemption at 49 CFR 1180.27(d)(7) for trackage rights over rail lines and ancillary trackage owned by Conrail, CSXT, and NSR in the vicinity of Gibson and Ivanhoe, Ind., and Calumet Park, Ill. The trackage rights are pursuant to a written trackage rights agreement (Agreement) to be entered into among IHB, Conrail, CSXT, and NSR.<sup>1</sup>

<sup>1</sup>The Parties state that, pursuant to 49 CFR 1180.6(a)(7), a copy of the executed Agreement will be filed with the Board within 10 days of its execution. A redacted copy of the Agreement was filed with the notices of exemption. An unredacted copy also was filed under seal along with a motion