

SURFACE TRANSPORTATION BOARD**[Docket No. FD 36644]****Mid-Atlantic Gateway LLC—Lease and Operation Exemption—Certain Rail Line Assets of J.P. Rail, Inc. D/B/A Southern RR Company of New Jersey**

In this decision, for the reasons discussed below, the Board will decline to institute a revocation proceeding to address the petition to revoke filed by J.P. Rail, Inc. d/b/a Southern RR Company of New Jersey (J.P. Rail). Pursuant to 49 U.S.C. 10502(d), the Board's decision will be published in the **Federal Register**.

Background

On October 28, 2022, Mid-Atlantic Gateway LLC (MAG) filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease and operate over approximately 0.12 miles (634 linear feet) of track, located between mileposts 56.99 and 56.87 on the Pleasantville Branch Line in Atlantic County, N.J., owned by J.P. Rail. The verified notice stated that MAG had reached an agreement "in principle" with J.P. Rail under which MAG would acquire by lease and operate over the Line, and that MAG would hold itself out to provide common carrier rail freight service pursuant to the agreement. Notice of the exemption was served and published in the **Federal Register** on November 10, 2022 (87 FR 67,990), and the exemption became effective on November 27, 2022.

On November 18, 2022, J.P. Rail filed a short letter petitioning the Board to revoke the lease and operation exemption and stating that "[t]he parties have not reached an agreement to acquire by lease and operate over the line at this time." (Pet. 1.) MAG did not file a response.

Discussion and Conclusions

The notice of exemption here has already become effective, as no party sought a stay. Under 49 U.S.C. 10502(d), an already-effective exemption may be revoked, in whole or in part, if regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. Furthermore, pursuant to § 10502(d), the Board shall, within 90 days after receipt of a request for revocation, determine whether to begin an appropriate proceeding. The party seeking revocation bears the burden of showing that regulation is necessary to carry out the rail transportation policy. See 49 CFR 1121.4(f). A petition to revoke must be based on reasonable, specific concerns that demonstrate that reconsideration of the exemption is

warranted and more detailed scrutiny of the transaction is necessary. *Grand Elk R.R.—Lease & Operation Exemption—Norfolk S. Ry.*, FD 35187, slip op. at 2 (STB served July 13, 2009). Finally, if the Board decides not to begin a proceeding to revoke a class exemption, the reasons for the decision shall be published in the **Federal Register**.

J.P. Rail does not articulate reasonable, specific concerns with the notice of exemption and does not argue why Board regulation is necessary to carry out any particular provision of the rail transportation policy. It states only that "[t]he parties have not reached an agreement to acquire by lease and operate over the line at this time." (Pet. 1.) This lone statement, however, does not demonstrate that more detailed scrutiny of the transaction is required. There is no requirement that a party have a final agreement in place before obtaining a class exemption. Moreover, the authority granted under a notice of exemption is permissive and cannot be exercised unless the parties agree to go forward with the transaction. See *Chi., Lake Shore & S. Bend Ry.—Acquis. & Operation Exemption—Norfolk S. Ry.*, FD 34960, slip op. at 4 (STB served Feb. 14, 2008). The grant of the exemption here does not require the parties to complete the transaction, and revoking the exemption is not necessary simply because the parties have not reached a final agreement to go forward.¹

Accordingly, the Board will decline to institute a revocation proceeding to address J.P. Rail's petition.

It is ordered:

1. The Board declines to institute a proceeding to address J.P. Rail's petition for revocation.
2. This decision will be published in the **Federal Register**.
3. This decision is effective on its service date.

Decided: February 14, 2023.

¹ This is not a situation where there are questions whether the proposed acquisition would involve an actual agreement, as that term is understood, to transfer an existing rail line. See, e.g., *James Riffin—Acquis. and Operation Exemption—In York Cnty., Pa.*, FD 36548 (STB served April 21, 2022) (rejecting a notice of exemption where there were questions concerning whether there was an actual agreement to transfer an existing rail line), *pet. for reconsideration pending*. In *Riffin*, the Board rejected a notice of exemption because, *inter alia*, it was unclear whether the rail line still existed on the property at issue (*i.e.*, whether the line had been abandoned), whether the previous rail carrier owner and operator understood that a rail line might still exist on the property, and whether a determination in a quiet title action could constitute an agreement. *Id.* None of those concerns exist here.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Brendetta Jones,
Clearance Clerk.

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DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Approval of Newark Liberty International Airport (EWR) Noise Compatibility Program**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of approval of the Newark Liberty International Airport (EWR) Noise Compatibility Program.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings for the noise compatibility program submitted by EWR, see supplementary information for details. On January 15, 2019, the FAA determined that the noise exposure maps submitted by EWR were in compliance with applicable requirements. On August 19, 2022, the FAA determined that the noise compatibility program submitted by EWR would be initiating final review for approval or disapproval. On February 15, 2023, the FAA approved the EWR noise compatibility program. The noise compatibility program contained 28 recommended measures, including 13 noise abatement measures, three land use measures, and 12 program management measures. Of the measures proposed, 15 were approved, two were approved as voluntary, two were partially approved as voluntary and partially disapproved, five were disapproved, and one was determined to have no FAA action as continuations of existing mandatory practices at EWR. The remaining three measures are noise abatement procedures that require additional consultation with the Air Traffic Organization. The FAA will be issuing a supplemental ROA on or before August 14, 2023 to render determinations on these measures. Seven of the 13 noise abatement measures proposed at EWR are related to new or revised flight procedures.

DATES: The effective date of the FAA's approval of the EWR noise compatibility program is February 15, 2023.

FOR FURTHER INFORMATION CONTACT:

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