

**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.<sup>1</sup>

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.

<sup>1</sup> 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.*

[FR Doc. 2023-03537 Filed 2-17-23; 8:45 am]

BILLING CODE 4915-01-P

**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:** Andrew Brooks, Regional Environmental Program Manager, Airports Division, Federal Aviation Administration, 1 Aviation Plaza, Room

516, Jamaica, NY 11434. Phone Number: 718-553-2511.

**SUPPLEMENTARY INFORMATION:** This notice announces FAA's approval of the noise compatibility program (NCP) for EWR, effective on February 15, 2023. Per United States Code section 47504 (49 U.S.C. 47504) and Title 14, Code of Federal Regulations (CFR) part 150, an airport sponsor who previously submitted a noise exposure map (NEM) may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport sponsor for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the NEMs. As required by 49 U.S.C. 47504, such programs must be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and the FAA. The FAA does not substitute its judgment for that of the airport sponsor with respect to which measures should be recommended for action. The FAA approval or disapproval of an airports recommendations in their noise compatibility program are made in accordance with the requirements and standards pursuant to 49 U.S.C. 47504 and 14 CFR part 150, which is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of 14 CFR 150.23;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations of FAA's approval of NCPs are delineated in 14 CFR 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law.

Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the noise compatibility program nor a determination that all measures covered by the NCP are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests must be submitted to the FAA New York Airports District Office at 1 Aviation Plaza, Room 111, Jamaica, New York 11434.

EWR submitted the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study to the FAA and the FAA determined that the NEMs for EWR were in compliance with applicable requirements under 14 CFR 150, effective January 15, 2019 (Noise Exposure Map Notice for Newark Liberty International Airport, Newark, New Jersey, volume 84, **Federal Register**, pages 27183-4, June 11, 2019). The FAA formally received the NCP based on the accepted NEMs for EWR on August 8, 2022. The airport operator requested that the FAA review the submitted material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a NCP. The formal review period, limited by law to a maximum of 180 days with the exception of noise abatement procedures, was initiated on August 19, 2022. Notice of the intent to review the NCP was published in the **Federal Register** on August 24, 2022 (Notice of Receipt and Request for Review of Noise Compatibility Program, volume 87, **Federal Register**, page 52105, August 24, 2022). That **Federal Register** Notice also announced the start of a 60-day period of public review for the NCP documentation. The FAA received no comments from interested parties during the public review period.

The EWR proposed NCP is comprised of actions designed for phased implementation by airport management and adjacent jurisdictions within the next one to five years. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in 49 U.S.C. 47504. The FAA began its review of the program on August 19, 2022 and was required by a provision of 49 U.S.C. 47504 to approve or disapprove the program within 180 days, other than the use of new or modified flight

procedures for noise control in accordance with 14 CFR part 150.35(a). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such program.

The submitted program contained 28 proposed measures to minimize impacts of aviation noise on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the 49 U.S.C. 47504 and 14 CFR part 150 were satisfied. A Record of Approval for the overall program was issued by the FAA effective February 15, 2023.

The specific program elements and their individual determinations are as follows:

Noise Abatement (NA) Measure 1: Design and Implement an Offset Approach Procedure to Runway 22L—Partially Approved as Voluntary and Partially Disapproved.

NA Measure 2: Continue Use of Easterly Departure Headings on Runways 4L and 4R—No Action Required at This Time. This measure relates to flight procedures under Title 49 U.S.C. 47504(b). In accordance with 14 CFR part 150.35(a), additional coordination will be occurring with the Air Traffic Organization and a Supplemental Record of Approval with FAA's final decision on this proposed measure will be issued on or before August 14, 2023.

NA Measure 3: Continue Use of Easterly Departure Headings on Runways 22L and 22R—Approved as Voluntary.

NA Measure 4: Determine and Implement Optimal Easterly Departure Headings on Runways 4L and 4R—No Action Required at This Time. This measure relates to flight procedures under Title 49 U.S.C. 47504(b). In accordance with 14 CFR part 150.35(a), additional coordination will be occurring with the Air Traffic Organization and a Supplemental Record of Approval with FAA's final decision on this proposed measure will be issued on or before August 14, 2023.

NA Measure 5: Determine and Implement Optimal Easterly Departure Headings on Runways 22L and 22R—Disapproved.

NA Measure 6: Encourage Use of FAA-prescribed Distant Noise Abatement Departure Profile Procedures on a Voluntary Basis—Disapproved for Purposes of part 150.

NA Measure 7: Minimize Nighttime Intersection Departures—Partially Approved as Voluntary and Partially Disapproved.

NA Measure 8: Implement a Nighttime Preferential Runway Use Program—Approved as Voluntary.

NA Measure 9: Implement Nighttime Optimized Profile Descent Procedures—Disapproved for Purposes of Part 150.

NA Measure 10: Implement Nighttime Unlimited Climb Procedures—Disapproved for Purposes of Part 150.

NA Measure 11: Implement Nighttime “New Jersey Turnpike” Departure Procedures for Runways 4L and 4R—Disapproved for Purposes of part 150.

NA Measure 12: Implement Nighttime “New Jersey Turnpike” Departure Procedures for Runways 22L and 22R—No Action Required at This Time. This measure relates to flight procedures under Title 49 U.S.C. 47504(b). In accordance with 14 CFR part 150.35(a), additional coordination will be occurring with the Air Traffic Organization and a Supplemental Record of Approval with FAA’s final decision on this proposed measure will be issued on or before August 14, 2023.

NA Measure 13: Continue Existing Mandatory Departure Noise Limit—No Action.

Land Use (LU) Measure 1: Sound-Insulate Eligible Dwelling Units—Approved.

LU Measure 2: Sound-Insulate Eligible Non-Residential Noise-Sensitive Structures—Approved.

LU Measure 3: Port Authority Assistance with Establishing an Airport Noise Overlay Zone—Approved.

Program Management (PM) Measure 1: Maintain Noise Office—Approved.

PM Measure 2: Maintain Noise and Operations Management System—Approved.

PM Measure 3: Maintain Public Flight Tracking Portal—Approved.

PM Measure 4: Maintain Noise Complaint Management System—Approved.

PM Measure 5: Maintain Noise Office website—Approved.

PM Measure 6: Continue Community Outreach Activities—Approved.

PM Measure 7: Establish a Community Planners Forum—Approved.

PM Measure 8: Establish and Manage a Fly Quiet Program—Approved as Voluntary.

PM Measure 9: Make Aircraft Noise Contours Available in a Geographic Information System (GIS)—Approved.

PM Measure 10: Update the Noise Exposure Map—Approved.

PM Measure 11: Update the Noise Compatibility Program—Approved.

PM Measure 12: The Port Authority to Coordinate with the FAA on Development and Implementation of NextGen Procedures—Approved.

These determinations are set forth in detail in the Record of Approval signed by the FAA Airports Eastern Division

Director on February 15, 2023. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above. The Record of Approval also will be available on the internet on the FAA’s website at [http://www.faa.gov/airports/environmental/airport\\_noise/part\\_150/states/](http://www.faa.gov/airports/environmental/airport_noise/part_150/states/) and the Port Authority of New York and New Jersey’s website at [http://panynjpart150.com/EWR\\_documents.asp](http://panynjpart150.com/EWR_documents.asp).

Issued in Jamaica, NY on February 15, 2023.

**David A. Fish,**

*Director, Airports Division, Eastern Region.*

[FR Doc. 2023–03518 Filed 2–17–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[Docket No. 2022–0023]

#### Waiver of Buy America Requirements for Electric Vehicle Chargers

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).  
**ACTION:** Notice.

**SUMMARY:** The Federal Highway Administration (FHWA) is establishing a temporary public interest waiver to waive Buy America requirements for steel, iron, manufactured products, and construction materials in electric vehicle (EV) chargers. This short-term, temporary waiver enables EV charger acquisition and installation to immediately proceed while also ensuring the application of Buy America to EV chargers by the phasing out of the waiver over time. On the effective date of this waiver, it will apply to all EV chargers manufactured by July 1, 2024, whose final assembly occurs in the United States, and whose installation has begun by October 1, 2024. Beginning with EV chargers manufactured on July 1, 2024, FHWA will phase out coverage under this waiver for those previously covered EV chargers where the cost of components manufactured in the United States does not exceed 55 percent of the cost of all components. This second phase will therefore apply to all EV chargers that are manufactured on or after July 1, 2024, whose final assembly occurs in the United States, and for which the cost of components manufactured in the United States is at least 55 percent of the cost of all components. For all phases, EV charger housing components that are predominantly steel and iron

are excluded from the waiver and must meet current FHWA Buy America requirements. As of the effective date of this waiver, FHWA is also removing EV chargers from its existing general applicability waiver for manufactured products.

**DATES:** The temporary waiver is effective starting on March 23, 2023.

Comments may be submitted to FHWA’s website via the link to this waiver on <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm> by February 27, 2023.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202–366–1562, or via email at [Brian.Hogge@dot.gov](mailto:Brian.Hogge@dot.gov). For legal questions, please contact Mr. David Serody, FHWA Office of Chief Counsel, 202–366–4241, or via email at [David.Serody@dot.gov](mailto:David.Serody@dot.gov). Office hours for FHWA are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Priorities of the Administration

The Biden-Harris Administration has laid out a bold vision for making transformative transportation investments to support job growth and reshape the U.S. transportation system, strengthen the U.S. economy and competitiveness, and support a sustainable energy and climate future. In January 2021, President Biden issued Executive Order (E.O.) 14008, titled “Tackling the Climate Crisis at Home and Abroad” (86 FR 7619, Feb. 1, 2021). This E.O. states that the U.S. faces “a climate crisis that threatens our people and communities, public health and economy, and starkly, our ability to live on planet Earth.” The President directed the Federal Government “to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a governmentwide approach that reduces climate pollution in every sector of the economy,” including through the “deployment of clean energy technologies and infrastructure.” The President has set the ambitious goal of building a national network of 500,000 EV chargers by 2030.<sup>1</sup>

On November 15, 2021, the President signed into law the Bipartisan Infrastructure Law (BIL), enacted as the

<sup>1</sup> White House Fact Sheet: Biden Administration Advances Electric Vehicle Charging Infrastructure (Apr. 22, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-biden-administration-advances-electric-vehicle-charging-infrastructure/>.