

**DEPARTMENT OF TRANSPORTATION****Maritime Administration**

[Docket No. MARAD 2015–0022]

**Use of Foreign-Flag Anchor Handling Vessels in the Beaufort Sea or Chukchi Sea Adjacent to Alaska****AGENCY:** Maritime Administration, Department of Transportation.**ACTION:** Notice and request for comments.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration, is authorized to make determinations permitting the use of foreign-flag anchor handling vessels in certain cases (and for a limited period of time) if no U.S.-flag vessels are found to be suitable and reasonably available.

A request for such a determination regarding anchor handling vessels with a minimum ice class A3 has been received by the Maritime Administration. If the Maritime Administration determines that U.S.-flag vessels are not suitable and reasonably available for the proposed service, a determination will be granted allowing for the conditional use of these vessels, within a set time frame. Those interested in providing the names of suitable and available vessels for the proposed service should refer to the docket number, and identify the U.S.-flag vessels available.

**DATES:** Submit U.S.-flag anchor handling ice class A3 or above vessel nominations on or before April 6, 2015.

**ADDRESSES:** U.S.-flag vessel nominations should refer to docket number MARAD 2015–0022. Written nominations may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30 West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. You may also send documents electronically via the Internet at <http://www.regulations.gov>. To do so, search “MARAD 2015–0022” and follow the instructions for submitting comments.

All submissions will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document, and all documents entered into this docket, is available on the World Wide Web at <http://www.regulations.gov>, key search “MARAD 2015–0022.” All comments and documents received will be posted

without change to the docket, including any personal or business information provided. For additional information on the availability of submitted material, see the section entitled Privacy Act.

**FOR FURTHER INFORMATION CONTACT:** You may contact Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–730 Room W21–304, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** The Maritime Administration has received a request from a company seeking permission to charter a foreign-flag ice-classed A3 anchor handling vessel adjacent to the coast of Alaska. The foreign-flag anchor handling vessel (TOR VIKING II 9199622) would operate in the Beaufort Sea or Chukchi Sea adjacent to Alaska, under certain conditions, and for a limited period of time. Section 306 of Public Law 111–281 allows the use of foreign-flag vessels in this regard if the Maritime Administration determines that U.S.-flag vessels are not suitable or reasonably available.

The Maritime Administration is posting this notice in the **Federal Register** providing the public notice 30 days in advance of our intention to provide a determination allowing for the use of a foreign-flag vessel in this regard, if suitable and available U.S.-flag vessels are not otherwise identified. Our determination will be for a period of one calendar year from July 2015. Foreign-flag anchor handling vessels may not be employed for the setting, relocation or recovery of anchors or other mooring equipment of a mobile offshore drilling unit after December 31, 2017.

**Privacy Act**

Anyone is able to search the electronic form of all comments and supporting documentation received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act system of records notice for the Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008, (73 FR 3316) at <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**Authority:** Section 306, Pub. L. 111–281 (Oct. 15, 2010).

By Order of the Maritime Administrator.

Dated: March 3, 2015.

**Thomas M. Hudson, Jr.**,  
*Assistant Secretary, Maritime Administration.*

[FR Doc. 2015–05226 Filed 3–5–15; 8:45 am]

**BILLING CODE 4910–81–P**

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board**

[Docket No. FD 35902]

**Elizabethtown Industrial Railroad LLC—Operation Exemption—Rail Holdings, Inc.**

Elizabethtown Industrial Railroad LLC (EZR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to operate a 1.0-mile line of railroad, known as the Conewago Industrial Track, between the connection with the Norfolk Southern Railway Company’s (NS) main line at milepost 0.0 in West Donegal Township, in Lancaster County Pa., (the Line), pursuant to an operating agreement with Rail Holdings, Inc. (RH), the owner of the Line.<sup>1</sup>

This transaction is related to a concurrently filed verified notice of exemption in *Eric Bickleman & Robert Lowe—Continuance in Control Exemption—Elizabethtown Industrial Railroad*, Docket No. FD 35903, in which Eric Bickleman and Robert Lowe seek Board approval to continue in control of Elizabethtown Industrial Railroad LLC under 49 CFR 1180.2(d)(2), upon EZR’s becoming a Class III rail carrier.

EZR states that it will provide common carrier freight service over the Line pursuant to an operating agreement it is negotiating with RH.<sup>2</sup> EZR states that the operating agreement between EZR and RH does not contain any provision or agreement which would limit future interchange of traffic with any third-party connecting carrier. EZR also states that it intends to interchange traffic with NS at Conewago.

EZR certifies that its projected annual revenues as a result of this transaction

<sup>1</sup> According to EZR, RH purchased the Line from Conewago Industrial Track, Inc. (Conewago) in September 2014. RH and Conewago, both are noncarriers.

<sup>2</sup> Once EZR enters into the agreement, it should submit the agreement into the record in this proceeding in order to provide sufficient information and documentation for the Board to determine whether the owner-lessor can exert undue control over the lessee-carrier’s operations. See *Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc.*, FD 35296, slip op at 3 (STB served Aug. 31, 2010); *N. Shore R.R.—Acquis & Operation Exemption—PPL Susquehanna, LLC*, FD 35377, slip op. at 3 (STB served Apr. 26, 2011).

will not result in the creation a Class I or Class II rail carrier and will not exceed \$5 million.

The transaction may be consummated on or after March 20, 2015, the effective date of the exemption (30 days after the verified notice of exemption was filed).

If the verified 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 effectiveness of the exemption. Petitions for stay must be filed no later than March 13, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35902, must be filed with Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John K. Fiorilla, Capehart & Scatchard, P.A., 8000 Midlantic Drive, Suite 300S, Mount Laurel, NJ 08054.

Board decisions and notices are available on our Web site at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: March 3, 2015.

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

**Brendetta S. Jones,**

*Clearance Clerk.*

[FR Doc. 2015-05212 Filed 3-5-15; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Contracting Initiative

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The DOT is announcing an initiative to permit, on an experimental basis, Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) recipients and subrecipients to utilize various contracting requirements that generally have been disallowed due to concerns about adverse impacts on competition. This initiative will be carried out as a pilot program for a period of 1 year (unless extended) under the FHWA and FTA's existing authorities. The purpose of this pilot program is to determine whether the use of such requirements "unduly limit competition," as provided in an August 23, 2013, opinion from the Department of Justice's Office of Legal Counsel (OLC). Should DOT

find that such restrictions do not unduly limit competition, DOT may provide further guidance regarding their use.

**DATES:** This pilot program is effective March 6, 2015.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Mr. Michael Harkins, Deputy Assistant General Counsel for General Law, Office, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-0590 (telephone), [Michael.Harkins@dot.gov](mailto:Michael.Harkins@dot.gov) (email).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register) and the Government Publishing Office's Web page at <http://www.gpoaccess.gov>.

##### Background

##### Interpretation of Competition Mandate

Traditionally, DOT has prohibited its recipients and subrecipients from using certain contracting provisions that do not directly relate to the bidder's performance of work in a competent and responsible manner. An example of such provisions includes local and other geographic-based labor hiring preferences. The DOT's position was reinforced by a 1986 opinion of the OLC, which concluded that 23 U.S.C. 112 ("section 112") obligated the Secretary of Transportation to withhold Federal funding from highway construction contracts that were subject to a New York City law imposing disadvantages on a class of responsible bidders, where the city failed to demonstrate that its departure from competitive bidding requirements was justified by considerations of cost-effectiveness. *See Compatibility of New York City Local Law 19 with Federal Highway Act Competitive Bidding Requirements*, 10 Op. O.L.C. 101 (1986).

However, in August 2013, at DOT's request, the OLC provided DOT with a memorandum opinion, clarifying its 1986 opinion on section 112. *See Competitive Bidding Requirements Under the Federal-Aid Highway Program*, 23 U.S.C. 112, (Aug. 23, 2013) ("2013 opinion"). The 2013 opinion is available at <http://www.justice.gov/olc/opinions>. The 2013 opinion clarifies that section 112 does not compel the DOT's position with respect to contracting requirements that do not directly relate to the bidder's performance of work, but rather provides the Secretary with discretion to permit other types of state or local

requirements as long as they do not "unduly limit competition."<sup>1</sup>

The 2013 opinion explains that competition would not be unduly limited by "[a] state or local requirement that has only an incidental effect on the pool of potential bidders or that imposes reasonable requirements related to the performance of the necessary work. . . ." 2013 opinion at 2. In contrast, "a requirement that has more than an incidental effect on the pool of potential bidders and does not relate to the work's performance would unduly limit competition unless it promotes the efficient and effective use of federal funds." *Id.* at 2-3. In assessing whether a requirement does promote the efficient and effective use of federal funds, the agency "may take into account whether the requirement promotes such efficiency in connection with the letting of a particular contract and also whether it more generally furthers the efficient and effective use of federal funds in the long run or protects the integrity of the competitive bidding process itself." *Id.* at 3. So long as a state or local requirement serves these purposes, "the Administrator may reasonably determine, consistent with section 112, that the requirement does not unduly limit competition, even if it may have the effect of reducing the number of eligible bidders for a particular contract." *Id.*

Thus, DOT retains discretion under the statute to evaluate whether a particular State or local law or policy that has more than an incidental effect on the pool of potential bidders is nonetheless compatible with section 112(b)(1)'s competitive bidding requirement. The process used to evaluate whether state and local requirements satisfy section 112 also is a matter of agency discretion. *Id.* at 17-18 ("It is for FHWA and DOT to determine the regulatory approach the agency should take in exercising this discretion and in evaluating whether certain state and local requirements are consistent with [section 112's] statutory mandates. . . .").

##### Experimental Authority

In 1988, a Transportation Research Board (TRB) task force, comprised of representatives from all segments of the highway industry, was formed to evaluate Innovative Contracting Practices. This TRB task force requested

<sup>1</sup> While the 2013 opinion was specific to section 112, which only applies to highway projects, it also is relevant in interpreting and implementing FTA's statutory mandate under 49 U.S.C. 5325(a) that broadly requires full and open competition in the award of contracts utilizing financial assistance from the FTA.