

B.C.D. 11-72
EMPLOYER STATUS DETERMINATION
Patriot Woods Railroad, LLC

July 27, 2011

This is the determination of the Railroad Retirement Board concerning the status of Patriot Woods Railroad, LLC (PAW) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.). The status of PAW under the Acts has not previously been considered.

Information about PAW was provided by Mr. Louis E. Gitomer, Attorney for PAW. In Surface Transportation Board Finance Docket No. FD 35431, Patriot Woods Railroad, LLC filed a verified notice of exemption to acquire and operate approximately 21.5 miles of rail line known as Weyerhaeuser Woods Railroad Operating Division¹, from Weyerhaeuser NR Company. This transaction was related to a transaction in which Patriot Rail, LLC (a non-covered entity) and its subsidiaries entered into an asset purchase agreement on July 21, 2010, to acquire from Weyerhaeuser NR Company certain rail assets and the rail assets of five of its subsidiaries.

According to the letter dated February 3, 2011, from Attorney Gitomer, PAW is owned by Tennessee Southern Railroad Company (B.A. No. 5509) and Patriot Rail, LLC and its subsidiaries Patriot Rail Holdings, LLC (a non-covered entity) and Patriot Rail Corp. (B.A. No. 5406). PAW began operations on December 31, 2010, and has no employees². PAW interchanges with the Columbia & Cowlitz Railway, LLC. PAW will provide freight service over its lines to all shippers. No passenger service is proposed.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;
- (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

¹ According to Finance Docket FD 35431, Weyerhaeuser Woods Railroad Operating Division has been used as a spur line only to serve the facilities of Weyerhaeuser NR Company, not as a common carrier railroad.

² The employees of Weyerhaeuser Woods Operating Division were hired by the Columbia & Cowlitz Railway, LLC, whose status as an employer under the Acts has been addressed in a separate decision. Those employees continue to perform operations for PAW, and are compensated by the Columbia & Cowlitz Railway, LLC.

The evidence of record establishes that PAW is a class III rail carrier operating in interstate commerce. Accordingly, it is determined that Patriot Woods Railroad, LLC is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of December 31, 2010, the date as of which it began operations.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board