

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[Docket No. FD 35425]

Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Columbia & Cowlitz Railway, LLC, DeQueen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma & Eastern Railroad, LLC

Tennessee Southern Railroad Company (TSRR), Patriot Rail, LLC (PRL), and its subsidiaries Patriot Rail Holdings LLC (PRH), and Patriot Rail Corp. (Patriot) (collectively, parties), have filed a verified notice of exemption to continue in control of Columbia & Cowlitz Railway, LLC (CLC), DeQueen and Eastern Railroad, LLC (DQE), Golden Triangle Railroad, LLC (GTRA), Mississippi & Skuna Valley Railroad, LLC (MSV), Patriot Woods Railroad, LLC (PAW), and Texas, Oklahoma & Eastern Railroad, LLC (TOE) upon their becoming Class III rail carriers.

This transaction is related to 6 concurrently filed verified notices of exemption, as follows: Docket No. FD 35426, *Columbia & Cowlitz Railway, LLC—Acquisition and Operation Exemption—Columbia & Cowlitz Railway Company*, wherein CLC seeks to acquire and operate approximately 8.5 miles of rail line between Longview, milepost 0.0, and Ostrander Junction, milepost 8.5, including auxiliary and spur tracks, in Cowlitz County, Wash.; Docket No. FD 35427, *DeQueen and Eastern Railroad, LLC—Acquisition and Operation Exemption—DeQueen and Eastern Railroad Company*, wherein DQE seeks to acquire and operate approximately 47 miles of rail line between the Oklahoma-Arkansas state border, milepost 40.0, and Perkins, Ark., milepost 87.0, including auxiliary, temporary storage, and spur tracks, in Howard and Sevier Counties, Ark.; Docket No. FD 35428, *Golden Triangle Railroad, LLC—Acquisition and Operation Exemption—Golden Triangle Railroad Company*, wherein GTRA seeks to acquire and operate approximately 8.6 miles of rail line between Trinity, Miss., milepost 8.6, and Triangle Jct., Miss, milepost 0.0, including the side track at Bell Avenue, in Lowndes County, Miss.; Docket No. FD 35429, *Mississippi & Skuna Valley Railroad, LLC—Acquisition and Operation Exemption—Mississippi & Skuna Valley Railroad Company*,

wherein MSV seeks to acquire and operate approximately 21 miles of rail line between Bruce Junction, milepost 21.0, and Bruce, milepost 0.0, in Yalobusha and Calhoun Counties, Miss.; Docket No. FD 35430, *Texas, Oklahoma & Eastern Railroad, LLC—Acquisition and Operation Exemption—Texas, Oklahoma & Eastern Railroad Company*, wherein TOE seeks to acquire and operate approximately 40 miles of rail line between the Oklahoma-Arkansas state border, milepost 40.0, and Valliant, Okla., milepost 0.0, including auxiliary, storage, and spur tracks, in McCurtain County, Okla.; and Docket No. FD 35431, *Patriot Woods Railroad, LLC—Acquisition and Operation Exemption—Weyerhaeuser NR Company, Weyerhaeuser Woods Railroad Operating Division*, wherein PAW seeks to acquire and operate approximately 21.5 miles of rail line between the connection with the Columbia & Cowlitz Railway Company at Ostrander Junction, milepost 8.5, and Green Mountain, milepost 30.0, including auxiliary and temporary storage tracks, in Cowlitz County, Wash.

The parties intend to consummate the transaction on or after December 21, 2010.

PRL and its subsidiaries, including CLC, DQE, GTRA, MSV, PAW, and TOE, entered into an Asset Purchase Agreement (Agreement) dated July 21, 2010, with Weyerhaeuser NR Company (Weyerhaeuser) and Weyerhaeuser's subsidiaries, Columbia & Cowlitz Railway Company, DeQueen and Eastern Railroad Company, Golden Triangle Railroad Company, Mississippi & Skuna Valley Railroad Company, and Texas, Oklahoma & Eastern Railroad Company to acquire substantially all of the assets of the Weyerhaeuser subsidiaries, and the assets of Weyerhaeuser Woods Railroad, a noncarrier operating division of Weyerhaeuser. The Agreement was filed under seal in this docket on October 28, 2010.¹

TSRR is a subsidiary of PRL, PRH, and Patriot and does not control any other railroad subsidiaries. PRL is a noncarrier limited liability company that owns not less than 51% of the equity interests in PRH, which owns 100% of the stock of Patriot. Patriot is a noncarrier holding company that owns 100% of the stock of 7 Class III railroads: Tennessee Southern Railroad Company (TSRR); Rarus Railway Company (Rarus); Utah Central Railway Company (Utah); Sacramento Valley

Railroad, Inc. (SAVR); Louisiana and North West Railroad Company LLC (L&NW); Temple & Central Texas Railway, Inc. (TC); and Piedmont & Northern Railway, Inc. (P&N). Patriot also owns 100% of the stock of the noncarrier subsidiaries CLC, DQE, GTRA, MSV, PAW, and TOE.

PRL, PRH, and Patriot state that they have successfully managed short line railroads for more than a decade and that they intend to use that experience and expertise and their financial resources to provide rail freight service to communities and industries that wish to have additional transportation options. They also intend to make CLC, DQE, GTRA, MSV, PAW, and TOE financially viable railroads.

The parties represent that: (1) The rail lines to be operated by CLC, DQE, GTRA, MSV, PAW, and TOE will not connect with any of the subsidiary railroads of PRL, PRH, and Patriot; (2) the acquisition of CLC, DQE, GTRA, MSV, PAW, and TOE is not intended to connect with any railroads in the corporate family of PRL, PRH, and Patriot²; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

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. Stay petitions must be filed no later than November 19, 2010 (at least 7 days before the exemption becomes effective).

² TSRR's lines are located in Tennessee and Alabama, Rarus' lines are located in Montana, Utah's lines are located in Utah, SAVR's lines are located in California, L&NW's lines are located in Arkansas and Louisiana, TC's lines are located in Texas, and P&N's lines are located in North Carolina. As noted, CLC will operate lines in southwestern Washington, DQE will operate lines in southwestern Arkansas, GTRA will operate lines in northeastern Mississippi, MSV will operate lines in north central Mississippi, PAW will operate lines in southwestern Washington, and TOE will operate lines in eastern Oklahoma.

¹ A motion for protective order was filed on October 27, 2010. The motion is being addressed in a separate decision.

An original and 10 copies of all pleadings, referring to Docket No. FD 35425, 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 Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: November 10, 2010.

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

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2010-28828 Filed 11-15-10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2010-0288]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt thirty-two individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective November 16, 2010. The exemptions expire on November 16, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Room W64-224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12-140 on the ground level of the

West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

Background

On September 28, 2010, FMCSA published a notice of receipt of Federal diabetes exemption applications from thirty-two individuals and requested comments from the public (75 FR 59788). The public comment period closed on October 28, 2010 and no comments were received.

FMCSA has evaluated the eligibility of the thirty-two applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The September 3, 2003 (68 FR 52441) **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such

drivers to operate CMVs in interstate commerce.

These thirty-two applicants have had ITDM over a range of 1 to 40 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the September 28, 2010, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive