

**EMPLOYER STATUS DETERMINATION
Brookhaven Rail, LLC (Brookhaven)**

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

Brookhaven is wholly owned by Oakland Transportation Holdings, LLC, which obtained ownership pursuant to a Call Option Agreement. In correspondence dated April 1, 2012, Mr. Daniel Miller, an employee of U.S. Rail of New York/Brookhaven stated that Brookhaven began operations in December 2011 with three compensated employees. The employees were compensated beginning November 2011. Mr. Miller also stated that the trade names of "Brookhaven Terminal Rail LLC" and "US Rail of New York LLC" are used.

In Surface Transportation Board Finance Docket No. 35141, service date September 9, 2010, U.S. Rail Corporation was granted authority to build and operate a rail line in Brookhaven, New York that would connect U.S. Rail Corporation (U.S. Rail) with Long Island Rail Road (LIRR). The new line would allow U.S. Rail to provide rail freight service to the Brookhaven Rail Terminal, thereby reducing truck traffic in the New York metropolitan area. The total length of the track to be constructed was about 18,000 feet. The track was going to connect with an existing rail line of the LIRR, over which the New York & Atlantic Railway Company provided freight service. U.S. Rail also proposed constructing various facilities on the Brookhaven Rail Terminal site, including a rail switch, crushed stone aggregate handling and storage facilities, an intermodal freight storage area, and a transload area with truck scales. The construction approval was subject to environmental mitigation conditions.

Gabriel Hall filed a verified notice of exemption for a transaction within a corporate family. The transaction involved the creation of U.S. Rail New York (USR-NY) and the acquisition by USR-NY of the leasehold rights and construction and operation rights of U.S. Rail related to the Brookhaven Rail Terminal. The Surface Transportation Board granted approval in Finance Docket 35458, Service Date January 7, 2011.

Brookhaven handles freight of about 2,000 rail cars per year. Brookhaven does not now intend to provide any rail passenger service.

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;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that Brookhaven is a rail carrier operating in interstate commerce. Accordingly, it is determined that Brookhaven Rail, LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective December 1, 2011, the first day of the month in which Brookhaven began operations.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board