B.C.D. 05-4 **FEB 04 2005**

EMPLOYER STATUS DETERMINATION
Northern Lines Railway, LLC

This is the determination of the Railroad Retirement Board concerning the status of Northern Lines Railway, LLC, 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.).

Northern Lines hired its first employee January 16, 2005. It plans to hire six additional employees prior to commencing operations on March 1, 2005.

In Surface Transportation Board Finance Docket No. 34627, Northern Lines filed a notice of exemption to lease from the Burlington Northern Santa Fe Railway Company (BNSF) and operate several rail lines totaling approximately 22.4 miles along with certain incidental trackage rights. Northern Lines will interchange with BNSF.

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;

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 (RRTA) (26 U.S.C. § 3231).

The evidence of record establishes that Northern Lines is a carrier operating in interstate commerce. Accordingly, it is determined that Northern Lines 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 January 16, 2005, the date as of which it first hired an employee with a view to commencing operations. Cf. Rev. Rul. 82-100, 1982-1 C. B. 155, wherein the Internal Revenue Service ruled that a company becomes an employer subject to RRTA taxes on the date the company first hires employees to perform functions directly related to its carrier operations.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever