B.C.D. 05-9 **MAR 16 2005**

EMPLOYER STATUS DETERMINATION
West Coast Railcar Services, Inc.

This is the determination of the Railroad Retirement Board concerning the status of West Coast Railcar Services, Inc. (WCRS) 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.).

Mr. Robert M. Bloomer, President, WCRS, advised that WCRS is an independent, unaffiliated corporation incorporated on March 31, 1986, which has no employees and has not conducted any business to date. He stated that WCRS is planning to operate a recreational, excursion and dinner train for passenger tourist service only in central California on track and equipment that it plans to lease from San Joaquin Valley Railroad (SJV) (B.A. No. 3780), a wholly owned subsidiary of RailAmerica. Mr. Bloomer stated that the entire operations of WCRS will be intrastate and will not interchange with other railroads. WCRS has not requested Surface Transportation Board authority for its proposed operations.

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 [45 U.S.C. § 231(a)(1)(i)].

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

The Surface Transportation Board (STB) has jurisdiction over rail transportation that occurs between a place in the "a State and a place in the same or another State as part of the interstate rail

network" (49 U.S.C. §10501(a)(2)(A)). The evidence in this case indicates that although WCRS will operate a railroad excursion service, it will not provide railroad transportation as part of the interstate rail network and will thus not be subject to STB jurisdiction. The Board therefore finds that WCRS is not an employer covered under the Railroad Retirement Act and the Railroad Unemployment Insurance Act because the evidence of record indicates that it is not subject to the jurisdiction of the Surface Transportation Board under Part A of Subtitle IV of Title 49 of the United States Code.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

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