

B.C.D. 12-44

November 20, 2012

**EMPLOYER STATUS DETERMINATION
Big Spring Rail System, Inc. (BSRS)**

This is a determination of the Railroad Retirement Board concerning the status of Big Spring Rail System, Inc. (BSRS) 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 BSRS under the Acts has not previously been considered.

BSRS is owned by Baxter D. Wellman, Ronald A. Bowes, David W. Lee, and Thomas F. Erickson, Jr. BSRS is a wholly owned subsidiary of Transport Handling Specialists, Inc. of West Chester, Pennsylvania which is in turn wholly-owned by QEM, Inc., also of West Chester, Pennsylvania. Neither of the affiliated companies owns or operates any railroads other than BSRS. Mr. Thomas F. Erickson, the General Manager of BSRS, provided information on BSRS's operations and corporate structure. Mr. Erickson provided information in a response dated September 7, 2012 to an Audit and Compliance questionnaire and provided the Surface Transportation Board (STB) decision regarding BSRS's operations as an enclosure. Mr. Erickson represented that BSRS commenced operations when employee training began on August 27, 2012. Mr. Erickson advised that locomotive operations would commence as soon as an engine was finished being upgraded and was certified for safe operation. BSRS's corporate office is in West Chester, Pennsylvania.

The Surface Transportation Board (STB) in Finance Docket 35553 decided October 5, 2011 in favor of BSRS's verified notice of exemption to operate 2.07 miles of rail line in Howard County, Texas. The rail line consists of a single line of track between approximately milepost 0.0 and milepost 2.07 in Howard County, Texas. Pursuant to an agreement with Transport Handling Specialists, Inc., which leases the rail line from the city of Big Springs, Texas, BSRS will provide freight rail service over the line connecting with and interchanging traffic with Union Pacific Railroad Company at milepost 0.0.

BSRS plans to haul carloads of plastic pellets for its existing customer and carloads of pipe for an additional customer with which BSRS executed a traffic agreement. The projected revenues of BSRS will not exceed those that would qualify it as a Class III rail carrier. BSRS has 5 employees who began to be compensated on

September 7, 2012. Mr. Erickson also reported that BSRS will pursue additional freight traffic with an open-ended volume potential.

Section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)), 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 BSRS is a rail carrier operating in interstate commerce. Accordingly, it is determined that Big Spring Rail Systems, Inc. became 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 effective August 27, 2012, the date BSRS first began training its employees. Cf. Rev. Rul. 82-100, 1982-1 C.B. 155.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board