

**EMPLOYER STATUS DETERMINATION
National Railroad Safety Services, Inc.**

This is the decision of the Railroad Retirement Board regarding the status of National Railroad Safety Services, Inc. (NRSS) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The following information was provided by Ms. Debby S. Shepherd, Treasurer of NRSS.

According to information provided by Ms. Shepherd, NRSS began operations on August 2, 2006. NRSS has seven full time employees, and four part time (seasonal) employees. Ms. Shepherd described NRSS's services as providing "railroad flagmen for construction projects that impact the Railroad's right-of-way * * * NRSS provides Railroad Flagmen to protect the Railroad's interests on construction projects; such as highway bridges, roadway bores, and overhead utility work. Flagmen also provide protection to the construction crews". According to NRSS's website (www.nrssinc.net), in addition to training provided by NRSS, its employees will meet the training requirements of the railroads clients by attending the railroad's training courses. Ms. Shepherd provided a sample written agreement used by NRSS, which indicates that railroad personnel working on a particular project must meet with the NRSS flagman and participate in all job safety briefings prior to entering the right-of-way. Authorized personnel are only permitted to be on the property when the railroad flagman is present.

Of NRSS's employees, 64% are railroad flagmen, the rest are management. Ms. Shepherd stated that NRSS does business with Indiana & Ohio Railroad; Chicago, Ft. Wayne, and Eastern Railroad; The Indiana Rail Road Co.; Indiana Southern Railroad; Missouri & Northern Arkansas Railroad; and Central Railroad of Indiana. NRSS's time doing business with these railroads is as follows: Indiana & Ohio Railroad – 2.75%; Chicago, Ft. Wayne, and Eastern Railroad – 33.86%; The Indiana Rail Road Co. – 31.46%; Indiana Southern Railroad – 6.36%; Missouri & Northern Arkansas Railroad – 25.24%; and Central Railroad of Indiana - .33%. Business is done pursuant to written agreement. All of NRSS's revenue "is ultimately received from government agencies such as DOT's and COE's, private construction companies, and utility companies". NRSS provides a trained railroad flagman, vehicle, radio, cell phone and necessary equipment to perform the work in accordance with a fee schedule specific to the

particular railroad. The railroad then invoices the entity responsible for paying for the service, or, if the railroad customer prefers, NRSS will bill the entity responsible for payment directly.

According to Ms. Shepherd, no railroad has a financial interest in NRSS, no individual has both a controlling interest in NRSS and a controlling interest in a rail carrier, and no officers or directors of NRSS are also officers or directors of a rail carrier. NRSS does not own any equipment or facility with a rail carrier; it is not a lessee or lessor of railroad track or equipment; the Federal Railroad Administration has not required NRSS to pay user fees; the Surface Transportation Board has not ruled regarding the status of NRSS; and the Internal Revenue Service has not ruled on the applicability of the Railroad Retirement Tax Act to NRSS.

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;
- (ii) any company which is directly or indirectly owned or controlled by or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

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 (26 U.S.C. § 3231).

NRSS is clearly not a carrier by rail. Further, the evidence of record indicates that it is not under common ownership with any rail carrier nor

controlled by officers or directors who control a railroad. Therefore, the Board finds that NRSS is not a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever