B.C.D. 03-51

JUN 1 0 2003

EMPLOYER STATUS DETERMINATION
Wallowa Union Railroad Authority

This is the determination of the Railroad Retirement Board concerning the status of Wallowa Union Railroad Authority 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.).

Information regarding Wallowa Union was provided by Michael Bagwell, President of Wallowa Union. According to Mr. Bagwell, Wallowa Union first hired an employee as of February 17, 2003. Wallowa Union was created by intergovernmental agreement between Union and Wallowa Counties. The railroad will provide rail services between Elgin and Joseph, Oregon, as well as operate an excursion train during the summer months and on special occasions. It will add two to three maintenance employees and two to three transportation employees for the excursion train. The Idaho Northern & Pacific Railroad Company, a covered employer under the Acts (B.A. No. 5733), will continue to operate the freight segment of the railroad until August 31, 2003, when Wallowa Union will take over that operation. The duties of Mr. Bagwell, Wallowa Union's current employee, are to manage the day to day and overall operations of the company, including financial responsibilities. He is currently working on the startup of the railroad.

In Surface Transportation Board Finance Docket No. 34214, Wallowa Union filed a notice of exemption to acquire and operate 62.58 miles of rail line of the Idaho Northern & Pacific Railroad Company. The Wallowa Union will interchange with the Idaho Northern & Pacific Railroad Company.

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 the same definition, as does section 3231 of the Railroad Retirement Tax Act (RRTA) (26 U.S.C. § 3231).

The evidence of record establishes that Wallowa Union will become a carrier operating in interstate commerce when it takes over freight railroad operations on August 31, 2003. Its employee is currently working on the start-up of this freight service. Accordingly, it is determined that Wallowa Union is an employer within the meaning of

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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 February 17, 2003, the date as of which it first hired an employee. Cf. Rev. Ruling 82-100, 1982-1 C. B. 155, finding 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.

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