B.C.D. 04-65

DEC 1 4 2004

EMPLOYER STATUS DETERMINATION
Alamo North Texas Railroad Corporation

This is the determination of the Railroad Retirement Board concerning the status of Alamo North Texas Railroad Corporation, 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.).

In Surface Transportation Board Finance Docket No. 34002, Alamo North filed a notice of exemption to construct and operate approximately 2.25 miles of rail line in Wise County, Texas. In Surface Transportation Board Finance Docket No. 34266, Martin Marietta Materials, Inc., filed a notice of exemption to continue in control of Alamo North upon Alamo North's becoming a Class III railroad. The proposed line will connect a quarry near Chico, Texas, operated by Martin Marietta Materials Southwest, Ltd., with a line of the Union Pacific Railroad. Effective July 5, 2004, Alamo North hired one employee and is preparing the engineering for the construction of the rail line. It is expected that construction will begin before the end of the year and that operations will begin in 2005.

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 (26 U.S.C. § 3231).

Accordingly, it is determined that Alamo North 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 July 5, 2004, the date as of which it first compensated an employee. Cf. Rev. Ruling 82-100, 1982-1 C.B. 155, wherein the Internal Revenue Service ruled that a company becomes an employer under the Railroad Retirement Tax Act on the date it hires employees to perform functions directly related to its commencement of railroad carrier operations.

Original signed by:

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