

**EMPLOYER STATUS DETERMINATION
Oregon Coast Scenic Railroad**

This is the determination of the Railroad Retirement Board concerning the status of Oregon Coast Scenic Railroad (OCSR) 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). OCSR has not heretofore been ruled to be an employer under the Acts.

Information provided by Ms. Kim Wickert of OCSR indicates that OCSR is a non-profit museum group which operates a small tourist passenger service under steam power and also restores and displays other antique railroad equipment. OCSR leases its right to operate its steam engine on a small section of trackage owned by the Port of Tillamook Bay, a municipal corporation in the State of Oregon (B.A. No. 4769). OCSR began limited steam train operations on May 1, 2006 with four volunteer employees and effective June 1, 2007 added compensated employees. OCSR does not interchange with any railroad. OCSR runs its steam train from Garibaldi OR to Rockaway Beach, OR and return between mile posts 846.0 to 833.0 from Memorial Day weekend through mid-September.

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 OCSR operates a tourist railroad service, it does not provide railroad transportation as part of the interstate rail network and is thus not subject to STB jurisdiction. The Board therefore finds that OCSR 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

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