

# Clearinghouse Rule 98-145

## CERTIFICATE

STATE OF WISCONSIN )  
 ) ss.  
DEPARTMENT OF TRANSPORTATION )

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

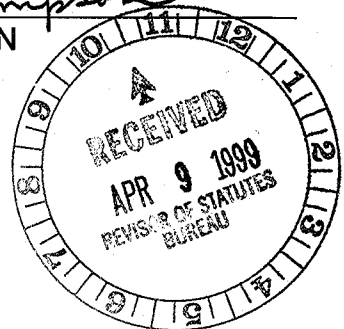
I, CHARLES H. THOMPSON, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **Excursion Permits on State-Owned Rail Lines**, was duly approved and adopted by this Department on April 7, 1999.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



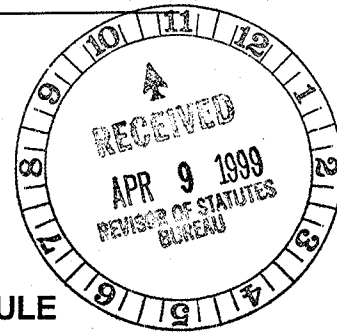
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 7 day of **April**, 1999.

*Charles H. Thompson*  
CHARLES H. THOMPSON  
Secretary



6-1-99

The Wisconsin Department of Transportation adopts an order to repeal TRANS 31.02(10), 31.03(5) and 31.04(1)(e)1. to 5.; renumber TRANS 31.02(1), (11) and (12), and 31.03(3)(a) and (9); renumber and amend TRANS 31.03(6) to (8); amend TRANS 31.01, 31.03(1), (1)(note), (3)(b) and (4), 31.04(1)(a), (e)(intro.), (h)1. to 3., and (2)(a)(intro.) and (a)1., 31.05(1) and 31.07(1)(intro.) and (2); repeal and recreate TRANS 31.02(8), 31.04(1)(h)5.; and create TRANS 31.02(1), (5m), (12) and (18), 31.03(3)(a)2., and 31.04(1)(h)6., (j)4. to 8. and (n), relating to Excursion Permits on State-Owned Rail Lines.

**ORDER ADOPTING RULE****Analysis Prepared by the Wisconsin Department of Transportation**

**STATUTORY AUTHORITY:** ss. 85.075, 85.08(2)(g) and 85.16(1), Stats.  
**STATUTES INTERPRETED:** ss. 85.08(2)(k) and 85.15, Stats.

**General Summary of Rule.** 1991 Wisconsin Act 269, ss. 548 and 551, effective May 1, 1992, authorized the Department to issue permits to operate rail passenger excursion trains on state-owned railroad lines. This rule amends the Department's policies and procedures relating to the operation of excursion trains on state-owned railroad lines.

The Department promulgated a rule establishing requirements and procedures for applying for a permit to operate an excursion train on state-owned railroad lines, as well as application and inspection fees in 1995.

The existing rule ensures public safety by requiring operators and sponsors to provide safe equipment; to operate an excursion train on safe track, bridges, and grade crossings; to perform necessary inspections; and to develop plans to handle medical emergencies.

This rule:

- Expands the definition of excursion trains to include a broader category of railroad recreational vehicles.
- Increases application and inspection fees for permits to operate on state-owned railroad lines.
- Alters the time limits for the Department to grant or deny applications for permits.

- Requires applicants to provide additional information when requesting permits, including plans for maintenance, environmental protection and cleanup, and control of vegetation.

- Requires applicants to assume liability for any injury or damage resulting from operation on state-owned railroad lines.

**Fiscal Impact.** The rule will increase revenues for application and inspection fees by about \$3,000 per year.

**Final Regulatory Flexibility Analysis.** The rule will have an adverse effect on a limited number of small businesses. These businesses will be required to modify or operate equipment used to provide excursion trips so that human waste is not discharged onto the rail corridor. The rule will increase the application and inspection fee for a permit.

**Copies of Rule.** Copies of this rule may be obtained, free of charge, upon request to the Bureau of Railroads and Harbors, P.O. Box 7914, Madison, WI 53707-7914, or by calling Ron Adams at (608) 267-9284. Alternate formats of the rule will be provided upon request.

**Contact Person.** Persons having questions about the rule may write or call Ron Adams, Wisconsin Department of Transportation, Bureau of Railroads and Harbors, P. O. Box 7914, Madison, Wisconsin 53707-7914, telephone (608) 267-9284. Legal questions may be addressed to Charles M. Kernats, Wisconsin Department of Transportation, Office of General Counsel, P. O. Box 7910, Madison, Wisconsin 53707-7910, telephone (608) 266-8810.

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### **TEXT OF RULE**

Under the authority vested in the state of Wisconsin, department of transportation by ss. 85.075, 85.08(2)(g) and 85.16(1), Stats., the department of transportation hereby amends a rule interpreting ss. 85.08(2)(k) and 85.15, Stats., relating to rail passenger excursions on state-owned rail lines.

**SECTION 1.** Trans 31.01 is amended to read:

**Trans 31.01 Purpose and applicability.** This chapter prescribes policies and procedures relating to applications for authority to operate rail passenger excursion trains on state-owned railroad lines. It also describes the procedures for requesting a permit to operate rail passenger excursion trains on state-owned railroad lines. This chapter does not apply to the operation of any railroad passenger train operated under ~~ICC~~ STB authority or direction nor to the operation of customer specials by an operator.

**SECTION 2.** Trans 31.02(1) is renumbered Trans 31.02(1m).

**SECTION 3.** Trans 31.02(1) and (5m) are created to read:

Trans 31.02(1) "Additional application" means a subsequent application for an additional excursion to be held during the same calendar year in which an applicant has applied for and obtained a permit to operate an excursion train by the same operator or sponsor.

(5m) "Day" means calendar, not work, day.

**SECTION 4.** Trans 31.02(8) is repealed and recreated to read:

Trans 31.02(8) "Excursion train" means a train or a dinner train operated for pleasure or recreation which carries passengers for a fee, or any other vehicle operated on rails for pleasure or recreation regardless of whether passengers are carried or a fee is charged. "Excursion train" does not include customer specials, commuter trains, and trains operated by the national railroad passenger corporation.

**NOTE:** Vehicles operated on rails for pleasure or recreation include railcars, railroad motorcars, railroad handcars, and railroad speeder cars.

**SECTION 5.** Trans 31.02(10) is repealed.

**SECTION 6.** Trans 31.02(11) and (12) are renumbered Trans 31.02(10) and (11).

**SECTION 7.** Trans 31.02(12) and (18) are created to read:

Trans 31.02(12) "Operating agreement" means a contract between a commission and an operator providing for rail service on state-owned railroad property.

(18) "STB" means the federal surface transportation board, which has regulatory authority over railroads, or any other governmental agency that assumes its authority and responsibilities.

**SECTION 8.** Trans 31.03(1) and (note) are amended to read:

Trans 31.03(1) WHEN REQUIRED. No person may operate an excursion train on state-owned railroad ~~lines~~ property without first obtaining a permit issued by the

department. An application for a permit shall be submitted to the department not less than ~~30 calendar~~ 45 days prior to the date of the first planned operation.

**NOTE:** Applications may be ~~sent~~ submitted to BR&H, 4802 Sheboygan Avenue, P. O. Box 7914, Madison, Wisconsin 53707-7914.

**SECTION 9.** Trans 31.03(3)(a) is renumbered Trans 31.03(3)(a)1.

**SECTION 10.** Trans 31.03(3)(a)2. Is created to read:

Trans 31.03(3)(a)2. An application may request multiple dates and locations during a calendar year.

**SECTION 11.** Trans 31.03(3)(b) and (4) are amended to read:

Trans 31.03(3)(b) *Inspection fee.* ~~Each~~ In addition to the application fee in sub. (3)(a), each application for a permit to operate an excursion train on state-owned railroad property shall be accompanied by the inspection fee determined in accordance with the following schedule:

| <u>Number of Days of Requested Operation</u> | <u>Inspection Fee</u> |
|--|-----------------------|
| <del>1-3</del>                               | <del>\$ 0</del>       |
| <del>4-10</del>                              | <del>\$ 500</del>     |
| <del>11-50</del>                             | <del>\$ 750</del>     |
| <del>51-150</del>                            | <del>\$1,000</del>    |
| <del>151-365</del>                           | <del>\$1,500</del>    |

| <u>Number of Days of Requested Operation</u> | <u>Inspection Fee (with Commission)</u> | <u>Inspection Fee (without Commission)</u> |
|--|---|--|
| <u>1-7</u>                                   | <u>\$100</u>                            | <u>\$200</u>                               |
| <u>8-10</u>                                  | <u>\$300</u>                            | <u>\$1,000</u>                             |
| <u>11-50</u>                                 | <u>\$750</u>                            | <u>\$1,500</u>                             |
| <u>51-150</u>                                | <u>\$1,000</u>                          | <u>\$3,000</u>                             |
| <u>151-365</u>                               | <u>\$1,500</u>                          | <u>\$5,000</u>                             |

(4)(title) ~~SUBSEQUENT~~ ADDITIONAL APPLICATIONS. An ~~applicant~~ additional application for a ~~subsequent permit for~~ extended operations during the same calendar year by the same operator or sponsor ~~is required to pay~~ shall be accompanied by an additional application fee of \$200 and an additional inspection fee for the additional days requested in the subsequent additional permit application.

**SECTION 12.** Trans 31.03(5) is repealed.

**SECTION 13.** Trans 31.03(6) is renumbered Trans 31.03(5) and, as renumbered, Trans 31.03(5)(a), (b)1. and (c) are amended to read:

Trans 31.03(5)(a) BR&H shall review an application and notify the applicant of approval or denial of the application within ~~10 working~~ 21 days following receipt of a complete application.

(b)1. Submittal less than ~~30 calendar~~ 21 days prior to the first planned operation of the excursion train.

(c) BR&H may require additional information from an applicant to complete its review of an application. ~~BR&H shall have 10 working days from the receipt of the additional information to render its decision about the application.~~ If an application is received at least 45 days prior to the date of the first planned operation, BR&H shall have 21 days from the receipt of the additional information to render its decision about the application.

**SECTION 14.** Trans 31.03(7) and (8) are renumbered Trans 31.03(6) and (7) and are amended to read:

Trans 31.03(6) RESUBMITTAL. (a) An application which has been denied by BR&H in accordance with sub. ~~(6)(b)1.~~ (5)(b)1. may be resubmitted in compliance with this section.

(b) An application which has been denied by BR&H in accordance with sub. ~~(6)(b)2~~ (5)(b)2. or 3. may be resubmitted with the additional information identified in BR&H's letter denying the original application.

(c) An application which has been denied by BR&H in accordance with sub. ~~(6)(b)4~~ (5)(b)4. or 5. may not be resubmitted until after the sanctions imposed by s. Trans 31.07(3) have expired.

(d) An additional application fee of \$200, plus inspection fees, shall accompany a resubmitted application under this subsection.

(7) PERMIT. The department shall issue an applicant a written permit for the proposed operation following its approval of an application. A copy of the permit shall be forwarded to the sponsor and commission as appropriate.

**SECTION 15.** Trans 31.03(9) is renumbered Trans 31.03(8).

**SECTION 16.** Trans 31.04(1)(a) and (e)(intro.) are amended to read:

Trans 31.04(1)(a) The name and address of the sponsor and the name and daytime telephone and facsimile number of a representative of the sponsor.

(e)(intro.) The specific type of motive power for railroad equipment to be used including all of the following: for example, steam, diesel or gas.

**SECTION 17.** Trans 31.04(1)(e)1. to 5. are repealed.

**SECTION 18.** Trans 31.04(1)(h)1. to 3. are amended to read:

Trans 31.04(1)(h)1. The track to be used is in compliance with the FRA track safety standards for ~~the proposed maximum speed of operation~~ class 1 track, or track rehabilitated to a higher standard.

2. All active grade-crossing warning devices are functional and can be operated by the equipment proposed to be used unless BR&H waives this requirement in writing on the permit.

3. All on-going track, signal and equipment inspections will be performed as required, and current FRA roadway worker safety rules are enforced at all times.

**SECTION 19.** Trans 31.04(1)(h)5. is repealed and recreated to read:

Trans 31.04(1)(h)5. Other powered or non-powered vehicles operating as excursion trains are in compliance with the North American railcar operators association latest book of rules, and motorcar inspection reports for each vehicle are available.

**SECTION 20.** Trans 31.04(1)(h)6. is created to read:

Trans 31.04(1)(h)6. All at-grade crossings are in full compliance with the requirements in s. 195.29(6), Stats.

**SECTION 21.** Trans 31.04(1)(j)4. to 8., and (n) are created to read:

Trans 31.04(1)(j)4. Continued maintenance of track, bridges, warning devices and equipment.

5. Control of vegetation.

6. Service and storage of railroad equipment on state-owned railroad property.

7. Environmental protection and clean-up procedures, including petroleum spills and scrap tie disposal.

8. Handling and disposal of human waste. Human waste may not be discharged onto the track.

(n) A statement that the operator and sponsor agree to pay any claim for any bodily injury or property damage resulting from operation under the permit for which the operator or sponsor are legally responsible; and that the operator and sponsor will indemnify and hold harmless the state, its subdivisions, officers, employees and agents from any claim which may arise from operation under the permit.

**SECTION 22.** Trans 31.04(2)(a)(intro.) and (a)1. are amended to read:

Trans 31.04(2)(a) The first application submitted by ~~an operator as~~ a sponsor shall include a business plan in addition to the items in sub. (1). The business plan shall cover



a period of 2 full fiscal years plus the portion of the operator's fiscal year remaining as of the date of the proposed operation. The business plan shall include all of the following:

1. Pro forma balance sheet, including budgeted costs for inspections, maintenance, equipment and improvements.

**SECTION 23.** Trans 31.05(1) is amended to read:

Trans 31.05(1) BY A SPONSOR. Any person ~~who is not an operator~~ may sponsor an excursion train on state-owned track only with the concurrence of the operator, except where there is not an operator on that track. A sponsor shall prepare its application in cooperation with the operator. The operator, or the sponsor if there is no operator, shall submit the application to the department by the date specified in s. Trans 31.03(1).

**SECTION 24.** Trans 31.07(1)(intro.) and (2) are amended to read:

Trans 31.07(1) The department may deny or immediately cancel a permit for any one of the following reasons:

(2) Notice of denial or cancellation of a permit shall be given to the sponsor and the operator. The notice may be delivered by facsimile, U.S. mail or in person. No operator may operate, or allow the operation of, any equipment by or on behalf of a sponsor after receipt of notice from the department that a permit is denied or canceled.

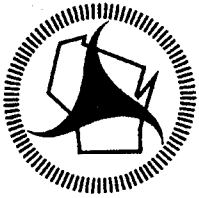
**END OF RULE TEXT**

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**Effective Date.** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 7 day of April, 1999.

  
\_\_\_\_\_  
CHARLES H. THOMPSON  
Secretary  
Wisconsin Department of Transportation



# Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

Office of General Counsel  
4802 Sheboygan Ave., Rm. 115B  
P.O. Box 7910  
Madison, WI 53707-7910

Telephone: 608-266-8810  
FAX: 608-267-6734  
E-Mail: ogc.exec@dot.state.wi.us

April 9, 1999

Mr. Gary Poulson  
Deputy Revisor of Statutes  
131 West Wilson Street, Suite 800  
Madison, Wisconsin 53703

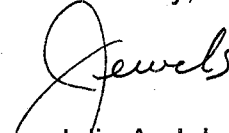
RE: **CLEARINGHOUSE RULE 98-145**

In the Matter of the Adoption of **TRANS 31**, Wisconsin Administrative Code,  
relating to **Excursion Permits on State-Owned Rail Lines**

Dear Mr. Poulson:

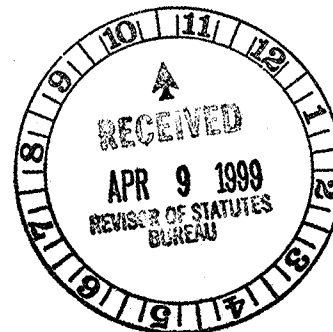
Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 98-145**, an administrative rule relating to the above-mentioned matter.

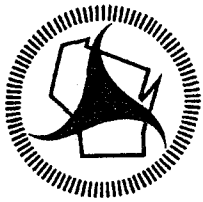
Sincerely,

  
Julie A. Johnson  
Paralegal

Enclosures

cc: Jim Gruendler  
Mike Goetzman  
Sandy Beaupre  
Ron Adams





# Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

Office of General Counsel  
4802 Sheboygan Ave., Rm. 115B  
P.O. Box 7910  
Madison, WI 53707-7910

Telephone: 608-266-8810  
FAX: 608-267-6734  
E-Mail: ogc\_exec@dot.state.wi.us

March 15, 1999

The Honorable Representative David Brandemuehl  
Chairman, Assembly Transportation Committee  
Room 317 North, State Capitol  
Madison, Wisconsin 53702

**RE: Proposed Administrative Rule  
Chapter Trans 31, Wisconsin Administrative Code  
Clearinghouse Rule No. 98-145**

Dear Representative Brandemuehl:

On January 28, 1999, you met with Department of Transportation representatives, Ron Adams and Mike Kernats, other legislators, and constituents from Monticello regarding the above-mentioned rule, relating to excursion permits on state-owned rail lines, asking to reach a compromise about the amount of application and inspection fees.

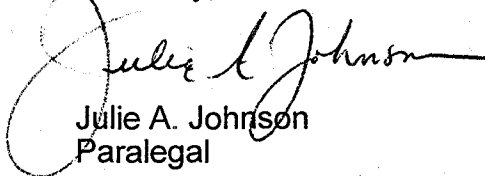
On February 17, 1999, the Department received your letter requesting an extension of the committee's review period. Under s. 227.19(4)(b)1.a., Stats., this request extends the review period for both the Senate and Assembly Transportation Committees by an additional 30 days, thereby expiring on March 18, 1999.

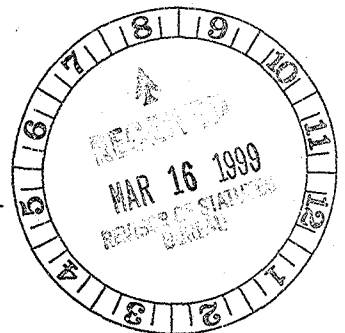
After discussions with Department staff and concerned citizens, the Department has reached a compromise relating to the application and inspection fees and hereby submits its germane amendment for this rule, pursuant to § 227.19(4)(b)2, Stats., as shown on the attached redlined version. The preparation feature used shows the changes made by shading the new language and ~~deleting~~ the old language. Please replace page 5 originally submitted with the attached replacement page.

Submittal of this amendment within the last 10 working days of the review period hereby extends the review period for both committees another 10 working days, expiring on March 29, 1999.

Thank you for your consideration of this proposal.

Sincerely,

  
Julie A. Johnson  
Paralegal



cc: Senator Roger Breske/Senator Judy Robson/Representative Glenn Grothman/  
Gary Poulson/Charles H. Thompson/Mike Kernats/Jim Gruendler/Ron Adams

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|--|-----------------------|
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| <del>4-10</del>                              | <del>\$ 500</del>     |
| <del>11-50</del>                             | <del>\$ 750</del>     |
| <del>51-150</del>                            | <del>\$1,000</del>    |
| <del>151-365</del>                           | <del>\$1,500</del>    |

| <u>Number of Days of Requested Operation</u> | <u>Inspection Fee (with Commission)</u> | <u>Inspection Fee (without Commission)</u> |
|--|---|--|
| <del>1-3</del> <u>7</u>                      | <u>\$100</u>                            | <u>\$200</u>                               |
| <del>4-10</del> <u>8-10</u>                  | <del>\$500</del> <u>300</u>             | <u>\$1,000</u>                             |
| <u>11-50</u>                                 | <u>\$750</u>                            | <u>\$1,500</u>                             |
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**SECTION 12.** Trans 31.03(5) is repealed.

**SECTION 13.** Trans 31.03(6) is renumbered Trans 31.03(5) and, as renumbered, Trans 31.03(5)(a), (b)1. and (c) are amended to read:

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