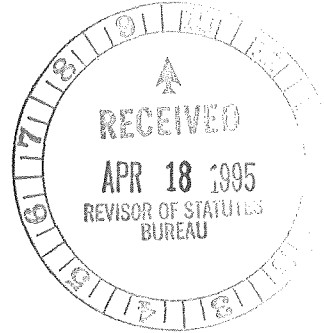


CR 92-195

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 18, 1995.

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 **18th** day of **April**, 1995.

Charles H. Thompson
CHARLES H. THOMPSON
Secretary

7-1-95

The Wisconsin Department of Transportation adopts an order to create Chapter TRANS 31, 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 establishes the Department's policies and procedures relating to the operation of excursion trains on state-owned railroad lines.

The rule establishes 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.

The rule provides financial protection for ticket holders and passengers by requiring sponsors of excursion trains to guarantee that there are sufficient funds to refund advance ticket sales if the excursion is cancelled. Advertising for an excursion train prior to receiving a permit from the Department must include a notice stating that the excursion is subject to receipt of a permit.

The 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.

The rule provides the Department authority to audit and inspect an operator or sponsor's business records to ensure compliance with the requirements of this rule, and authorizes the Department to cancel a permit for violation of the requirements of this rule.

Fiscal Impact. The rule will increase revenues for application and inspection fees by about \$2,000.00 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 may increase the fee for a permit, depending upon the number of trips applied for. However, calculation of the fee is simplified.

Copies of Rule. Copies of this rule may be obtained, free of charge, upon request to the Division of Transportation Assistance, 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, Division of Transportation Assistance, 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.

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 creates a rule interpreting ss. 85.08(2)(k) and 85.15, Stats., relating to rail passenger excursions on state-owned rail lines.

SECTION 1. Chapter Trans 31 is created to read:

CHAPTER TRANS 31

RAIL PASSENGER EXCURSIONS ON STATE-OWNED RAIL LINES

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 authority or direction nor to the operation of customer specials by an operator.

Trans 31.02 DEFINITIONS. In this chapter:

(1) "Applicant" means a person applying for a permit to operate a rail passenger excursion train on state-owned railroad lines under this chapter.

(2) "BR&H" means the bureau of railroads and harbors within the department.

(3) "Commission" means the municipal body which has received a grant from the department for the preservation of freight rail service and provides itself, or has contracted with an operator to provide, freight rail service on the line proposed to be used for operation of a rail passenger excursion train.

(4) "Commuter train" means a short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographic boundaries of a state, usually characterized by reduced fare, multiple rides and commutation tickets and by morning and evening peak period operations.

(5) "Customer special" means a train carrying persons, without a fee paid by any person, for the purpose of earning the goodwill of current and potential customers of the operator, for showing all or a portion of the state-owned railroad property to members of the commission or other government officials or for showing all or a portion of the state-owned railroad property to employees of the operator or members of their families.

(6) "Department" means the Wisconsin department of transportation or any successor to that department charged by law with administering Wisconsin's railroad programs.

(7) "Dinner train" means a train which is operated for the purpose of passenger recreation, including serving a meal for which a fee is paid by the passengers or any other person.

(8) "Excursion train" means a train which carries passengers for a fee, paid by the passengers or any other person; except customer specials, trains operated by the national railroad passenger corporation, and commuter trains; and includes a dinner train.

(9) "FRA" means the federal railroad administration of the United States department of transportation.

(10) "ICC" means the interstate commerce commission of the United States of America, or any other government agency that assumes its authority and responsibilities.

(11) "Improved property" means the rails, joint bars, ties, ballast, bridges, culverts, drainage structures, and buildings acquired by the department, or by a commission with a grant from the department.

(12) "Municipality" means a county, city, town, village or organization established under s. 66.30, Stats.

(13) "Operator" means the person under contract to a commission to provide freight rail service on state-owned railroad property.

(14) "Permittee" means the person who submits an application and who receives a permit.

(15) "Person" means an individual, a partnership, an association, and bodies politic or corporate.

(16) "Sponsor" means the person who shall earn any profit made by the excursion train or who shall suffer any loss incurred by the excursion train.

(17) "State-owned railroad property" means improved property acquired by the department either on its own under authority of ss. 85.08 and 85.09, Stats., or in conjunction with a municipality under authority of s. 85.08, Stats.

Trans 31.03 PERMIT REQUIREMENT AND APPLICATION. (1) WHEN REQUIRED. No person may operate an excursion train on state-owned railroad lines without a permit issued by the department. An application for a permit shall be

submitted to the department not less than 30 calendar days prior to the date of the first planned operation.

Note: Applications may be sent to BR&H, P. O. Box 7914, Madison, Wisconsin 53707-7914.

(2) WHO MAY SUBMIT. An application to operate an excursion train which uses state-owned railroad property shall only be submitted by the operator of the state-owned railroad property to be used for the proposed operation. If there is not an operator of the state-owned railroad property, the application shall be submitted by the sponsor of the excursion train to the department.

(3) FEES. (a) Application fee. Each application for a permit to operate an excursion train on state-owned railroad property shall be accompanied by an application fee of \$300.

(b) Inspection fee. 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:

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

(c) Refunds of fees. The application fee is not refundable, even if a permit application is denied. The inspection fee shall be returned only if a permit is denied.

(4) SUBSEQUENT APPLICATIONS. An applicant for a subsequent permit for operations during the same calendar year by the same sponsor is required to pay an

additional application fee and an additional inspection fee for additional days requested in the subsequent permit application.

(5) RESUBMITTAL. No additional application and inspection fee is required if a permit application is resubmitted under sub. (7), and no additional operating dates are requested.

(6) PERIOD FOR REVIEW. (a) BR&H shall review an application and notify the applicant of approval or denial of the application within 10 working days following receipt of a complete application.

(b) An application may be denied for any one of the following reasons:

1. Submittal less than 30 calendar days prior to the first planned operation of the excursion train.

2. Submittal of an incomplete application.

3. Failure to comply with any of the standards or requirements prescribed in this chapter.

4. Submittal of materially false information.

5. Proposing operation of an excursion train by a sponsor or operator with at least one prior violation of this chapter.

(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.

(d) BR&H shall notify an applicant in writing of all deficiencies in an application, and the reasons for a denial.

(7) RESUBMITTAL. (a) An application which has been denied by BR&H in accordance with sub. (6)(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 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 may not be resubmitted until after the sanctions imposed by s. Trans 31.07(3) have expired.

(8) 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.

(9) DURATION. Any permit issued by the department shall expire on the date specified by BR&H. In no event shall a permit expire later than December 31 of the year in which the application proposes operation to commence.

Trans 31.04 CONTENTS OF AN APPLICATION. (1) All applications for operation of an excursion train shall contain all of the following:

(a) The name and address of the sponsor and the name and daytime telephone number of a representative of the sponsor.

(b) The dates proposed for operation.

(c) All locations to be used for loading and unloading passengers.

(d) The number of trips to be conducted on each day proposed for operation from each loading point.

(e) The specific railroad equipment to be used including all of the following:

1. The number and name of each car.

2. The maximum number of passengers each car can carry by class of fare.

3. The number and name of each locomotive.

4. The type of each locomotive, that is, steam or diesel.

5. Any other equipment to be operated, including substitutes.

(f) The policy concerning advance sale of tickets, including cancellation and refund.

(g) The proposed maximum speed of operation.

(h) A certified statement from the operator, or from the sponsor if there is not an operator, that states all of the following:

1. The track to be used is in compliance with the FRA track safety standards for the proposed maximum speed of operation.

2. All active grade-crossing warning devices are functional and can be operated by the equipment proposed to be used.

3. All inspections will be performed as required.

4. The equipment and bridges to be used are in compliance with applicable FRA requirements, state laws and this chapter.

5. The equipment to be used in the excursion is designed, or shall be operated, such that no human waste is discharged or emitted from the equipment onto the track.

(i) A copy of the certificate of insurance evidencing general liability coverage in the minimum amount of \$5 million. The certificate shall name the department and commission, if any, as additional insureds.

Note: An operator may require additional insurance.

(j) A description of the sponsor's plans for handling all of the following:

1. Parking, including written authorization to use any publicly or privately-owned property.

2. Cleanup of parking, loading and unloading areas.

3. Medical emergencies which may arise during the excursion.

(k) Evidence of the ability to refund advance ticket sales by one of the following means:

1. An escrow account with a Wisconsin financial institution for the deposit of all advance ticket sales.

2. A financial instrument from a Wisconsin financial institution in an amount sufficient to refund the expected advance payments for service in the event that the excursion is not operated for any reason.

3. Sponsors who are municipalities may provide a written record of an official action of the municipality's governing body assuming the obligation to make refunds when necessary, in lieu of an escrow account or a financial instrument.

(l) The appropriate fee specified in s. Trans 31.03(3).

(m) An operator's statement that it concurs with the proposed operation, if the sponsor is not the operator.

(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.
2. Pro forma income statement.
3. Pro forma sources and uses statement.
4. Marketing plan.

(b) Applications for a permit for subsequent years may not be required to include a business plan, if the operations proposed are similar to the operations described in the initial permit application.

Trans 31.05 SPONSORSHIP. (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).

(2) BY AN OPERATOR. An operator may become a sponsor, but must comply with the requirements of this chapter relating to sponsors.

Trans 31.06 ADVERTISING PRIOR TO RECEIPT OF A PERMIT. An operator or sponsor may advertise the schedule of an excursion train prior to receiving a permit from the department only if the advertisement contains a written notice stating the following: Subject to receipt of a permit from the Wisconsin Department of Transportation.

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

(a) A sponsor does not conduct operations as specified in its application.

(b) Advertising is conducted prior to the issuance of a permit without the notice required in s. Trans 31.06.

(c) An operator, when not a sponsor, does not comply with applicable laws, rules or regulations or terms of the permit.

(d) An applicant provides materially false information in the application for a permit.

(2) Notice of 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 canceled.

(3) If a permit is canceled, no subsequent permit shall be issued to the permittee for a period of one calendar year from the date of permit cancellation.

Trans 31.08 AUDIT AND INSPECTION. (1) The department shall inspect the track, grade crossings, and signal devices; the FRA track inspection records; and the maintenance and FRA inspection records for all equipment used by an operator or sponsor, to verify compliance with the requirements in s. Trans 31.04(1)(h).

(2) The department may audit and inspect the records of an operator or a sponsor to verify compliance with the requirements of this chapter. Operators and sponsors shall retain all records related to an application for a permit under this chapter for at least 3 years from the date the permit was issued, and shall make these records available for inspection and copying by the department upon request.

(END OF RULE TEXT)
