

Chapter Trans 31

RAIL PASSENGER EXCURSIONS ON STATE-OWNED RAIL LINES

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

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. Register, May, 1999, No. 521, eff. 6-1-99.

Trans 31.02 Definitions. In this chapter:

(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.

(1m) "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.

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

(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 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.

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

(10) "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.

(11) "Municipality" means a county, city, town, village or organization established under s. 66.0301, Stats.

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

(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.

(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.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; renum. (1), (10) and (11) to be (1m), (11) and (12), cr. (1), (5m), (12) and (18), r. and recr. (8), r. (10), Register, May, 1999, No. 521, eff. 6-1-99; **correction in (11) made under s. 13.93 (2m) (b) 7., Stats.**

Trans 31.03 Permit requirement and application.

(1) **WHEN REQUIRED.** No person may operate an excursion train on state-owned railroad property without first obtaining a permit issued by the department. An application for a permit shall be submitted to the department not less than 45 days prior to the date of the first planned operation.

Note: Applications may be submitted to BR&H, 4802 Sheboygan Avenue, 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) **FEEES.** (a) *Application fee.* 1. Each application for a permit to operate an excursion train on state-owned railroad property shall be accompanied by an application fee of \$300.

2. An application may request multiple dates and locations during a calendar year.

(b) *Inspection fee.* In addition to the application fee in par. (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:

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

(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) **ADDITIONAL APPLICATIONS.** An additional application for extended operations during the same calendar year by the same operator or sponsor shall be accompanied by an additional application fee of \$200 and an additional inspection fee for the additional days requested in the additional permit application.

(5) **PERIOD FOR REVIEW.** (a) BR&H shall review an application and notify the applicant of approval or denial of the application within 21 days following receipt of a complete application.

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

1. Submittal less than 21 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. 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.

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

(6) **RESUBMITTAL.** (a) An application which has been denied by BR&H in accordance with sub. (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. (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. (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.

(8) **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.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. (1), (3) (b) and (4), renum. (3) (a) to be (3) (a) 1 and (9) to be (8), cr. (3) (a) 2., r. (5), renum. (6) to be (5) and am. (5) (a), (b) 1. and (c) and renum. and am. (7) and (8) to be (6) and (7), Register, May, 1999, No. 521, eff. 6-1-99.

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 and facsimile 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 type of motive power for railroad equipment to be used, for example, steam, diesel or gas.

(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 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.

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

5. Other powered or non-powered vehicles operating as excursion trains are in compliance with the North American rail-car operators association latest book of rules, and motorcar inspection reports for each vehicle are available.

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

(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.

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.

(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.

(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.

(2) (a) The first application submitted by 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.
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.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. (1) (a), (e) (intro.), (h) 1. to 3., (2) (a) (intro.), and 1., r. (1) (e) 1. to 5., r. and recr. (1) (h) 5., cr. (1) (h) 6., (j) 4. to 8. and (n), Register, May, 1999, No. 521, eff. 6-1-99.

Trans 31.05 Sponsorship. (1) BY A SPONSOR. Any person 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.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. (1), Register, May, 1999, No. 521, eff. 6-1-99.

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.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

Trans 31.07 Sanctions. (1) The department may deny or 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 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.

(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.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. (1) (intro.) and (2), Register, May, 1999, No. 521, eff. 6-1-99.

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.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.