

G-92-16

Jurisdiction Over Tourist/Scenic/Excursion Railroads

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Regarding Technical Bulletin G-91-14, "Jurisdictional Policy Toward Tourist and Plant Railroads", attached herewith is a subsequent letter from Administrator Carmichael, dated October 28, 1992, which provides further guidance in the area of FRA's exercise of jurisdiction with regard to tourist, scenic and excursion railroads.

Please note that this letter contains several new principles that amplify those contained in TB G-91-14. Except as modified by this letter, the provisions of TB G-91-14 remain in effect. Combined, these two documents represent FRA's current enforcement rationale relative to tourist/scenic/excursion railroads.

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Attachment



U.S. Department
of Transportation
Federal Railroad
Administration

Office of the Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

OCT 28 1992

Thank you for your recent letters concerning the Federal Railroad Administration's (FRA) exercise of jurisdiction over tourist railroads, a term I will use to encompass the whole range of tourist, scenic, and excursion operations.

submitted a petition for rulemaking on the subject of tourist railroads, which FRA received on [redacted]. We wrote to [redacted] telling him that his petition had been docketed and suggesting that he may wish to provide additional information on the costs and benefits of his proposal. [redacted] has now submitted this additional information and his petition has been assigned to FRA's Office of Safety for review.

FRA's Exercise of Jurisdiction

You indicate that you have perceived some unevenness across FRA's regions in applying the Federal railroad safety laws to tourist operations. The fact is that there is a very wide range of operations that could be considered tourist railroads under the broadest reading of the term. Trying to determine where Congress intended for FRA to draw the line and where our exercise of jurisdiction makes sense has been a more difficult challenge than anyone unfamiliar with the varieties of rail operations could imagine.

In an effort to clarify the proper extent of the exercise of FRA's jurisdiction, we have recently settled on several principles that we will use as our current guidelines. We will exercise jurisdiction over all tourist operations, whether or not they operate over the general railroad system, except those that are (1) less than 24 inches in gage and/or (2) insular.

Operations with less than 24-inch gage have never been considered railroads under the Federal railroad safety laws and are generally considered miniature or imitation railroads.

We will consider a tourist operation insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public -- except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser -- would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

- o a public highway-rail crossing that is in use;
- o an at-grade rail crossing that is in use;
- o a bridge over a public road or waters used for commercial navigation; or
- o a common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

Thus, the mere fact that a tourist operation is not connected to the general railroad system would not make it insular under these criteria. While these criteria will tend to sort out the insular theme parks and museums, there will still be a need to do case-by-case analysis in some close situations.

Applicability of the Safety Laws and Regulations

You also have perceived a lack of uniformity as to which statutes and regulations apply to those operations considered by FRA to be tourist railroads. If the railroad operates on the general system, all statutes and regulations apply unless and until any appropriate waiver has been applied for and granted. Of course, FRA generally lacks authority to waive statutory requirements. If the railroad is insular, it is one over which FRA has decided not to exercise jurisdiction at this time (see discussion of exercise of jurisdiction, above).

However, if the railroad is not insular but does confine its operations to an installation that is not part of the general system (i.e., it is a stand-alone line with no freight traffic but has one or more features that preclude its being considered insular), all of FRA's procedural regulations (e.g., Parts 209, 211, and 216) and all general power and enforcement provisions of the rail safety statutes (e.g., subpoena authority, civil penalty authority, disqualification authority, and emergency order authority) apply. However, only these substantive laws and regulations apply to non-general system, non-insular tourist operations:

- o All substantive provisions of the rail safety statutes (e.g., the Hours of Service Act's restrictions on duty hours; the requirements of the Safety Appliance Acts found at 45 U.S.C. sections 1, 2, 4, 9, and 11; section 2 of the Locomotive Inspection Act, 45 U.S.C. 22; and the Signal Inspection Act, 49 App. U.S.C. 26);
- o Accident/incident reporting (Part 225);
- o Steam Locomotive Inspection (Part 230);
- o Noise Emission (Part 210): but note that the regulations do not apply to steam locomotives;
- o Freight Car Safety Standards (Part 215): not limited to general system, but applies only to standard gage lines; unlikely to be a factor except with respect to cabooses or cars originally designed to carry freight and since converted to carry passengers (which, because they were designed for freight, remain covered by these standards); and
- o Hazardous Materials Regulations (Parts 171-179): also unlikely to be a factor, except for hauling of a railroad's own materials and supplies that are hazmats (but note that torpedoes or fusees are not hazmats when carried in locomotives or rail cars -- see 49 C.F.R. § 174.5).

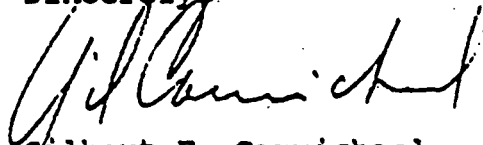
Thus, there are many FRA regulations that do not presently apply to tourist railroads that are not operated over the general system. However, FRA's emergency order authority permits it to address a true safety emergency arising from conditions (e.g., improper maintenance of air brakes or track) covered by those regulations that do not apply outside of the general system. Thus, even off-the-system tourist railroads should understand that FRA has jurisdiction to inspect their operations and to take emergency action if those operations pose an imminent hazard of death or injury.

Please note, of course, that FRA's regulatory authority permits it to amend the current applicability sections of its various regulations so as to expand or contract the population of railroads covered by a particular set of regulations. Thus, FRA could decide to make certain of its regulations (e.g., track safety standards) applicable to non-general system railroads with allowances, if appropriate, made for the unique nature and circumstances of those railroads.

Your Desire for a Meeting

I would be glad to meet with you and representatives of the tourist railroads. However, with rulemaking petition pending, a written summary of any such meeting would have to be placed in the docket to ensure that information on what occurred at such an ex parte meeting is available to all concerned. Of course, should FRA grant petition, FRA will hold an informal rulemaking hearing at which any interested party may provide an oral statement.

Sincerely,



Gilbert E. Carmichael
Administrator

