

EMERGENCY ORDER
No. 12

[4910-06]

DEPARTMENT OF TRANSPORTATION
Federal Railroad Administration
[FRA Emergency Order No. 12]

BOSTON AND MAINE CORPORATION
BERKSHIRE SCENIC RAILWAY MUSEUM, INC.

Emergency Order Prohibiting Passenger Service

The Federal Railroad Administration (FRA), Department of Transportation, has determined that considerations of public safety necessitate the issuance of this Emergency Order prohibiting passenger service on a line of track between Lee and Lennox, Massachusetts (milepost 7.0 to milepost 10.5) (a segment of the "Canaan Branch") owned by the Boston and Maine Corporation.

FRA has reason to believe that the Berkshire Scenic Railway Museum, Inc., a "railroad" subject to its safety jurisdiction pursuant to the Federal Railroad Safety Act of 1970, 45 U.S.C. §§ 421, 431(e), 438, as amended, intends to provide passenger service over a portion of the Canaan Branch as early as today.

On the basis of detailed inspections of this track by FRA's regional director and track safety specialist yesterday and today, FRA is convinced that operation of passenger trains over this line would pose an unacceptable threat to the safety of such passengers.

Under the FRA track safety regulations (49 CFR Part 213), it is the responsibility of the track owner to maintain its track so as to meet the maintenance standards prescribed in the regulation (see subparts B, C, D, and E) for one of six classes of track and to operate trains in accordance with the speed limitations applicable to the class of track to which a given line of track is maintained (see section 213.9). For example, the maximum allowable operating speed for freight trains on class 1 track is 10 miles per hour, and on class 6 track it is 110 miles per hour. However, under section 213.4, a track owner may designate a segment of track as "excepted" track (i.e., track not maintained to meet the standards set for class 1 track in subparts B, C, D, and E) so long as, among other things, no "revenue passenger train" is operated over that segment (section 213.4(e)(2)).

Of course, whether passengers are transported for hire or not is irrelevant to FRA's larger responsibility for the safety of operations by any railroad subject to FRA's emergency order authority under the 1970 Safety Act. That is, while FRA believes the intended operations will be "revenue" passenger operations, their character as such is not relevant to FRA's exercise of its emergency authority over all railroad operations. Indeed, as FRA stated when it issued the excepted track provision: "the adoption of this section or any section in this part is not construed by FRA as precluding the use of FRA's statutory authority to abate a particular hazard." 47 Fed. Reg. 39398, 39399 (1982).

This segment of track clearly fails to meet class 1 standards, the lowest class of track over which passenger service is permitted by FRA regulation. However, the Boston and Maine Corporation has designated this track as excepted track. Accordingly, no maintenance requirements apply to this track with respect to roadbed, track geometry, or track structures. For example, there are no requirements relating to track gage, alinement, crossties, rail joints, track surface, ballast, rail end mismatch, rail fastenings, or tie plates.

On July 27, 1988, FRA carefully inspected the portion of the segment of track in question between mileposts 7.2 and 8.5. In that 1.3 mile segment, FRA found 171 defective conditions representing 171 individual failures to meet the standards of class 1 track. Inspection today of the two miles between mileposts 8.5 and 10.5 revealed an additional 304 defective conditions. Thus, on 3.3 of the 3.5 miles of track in question, FRA has found a total of 475 defects keeping this track from qualifying for classification at FRA's lowest class of track.

Many of these defects pose particularly serious threats to safety. For example, at four different locations, FRA found track gage to be between 58 and 1/4 inches and 58 and 1/2 inches, presenting the distinct possibility of derailment at those points. Five center-cracked joint bars were found, any one of which could fail under the next train to pass over it. In one 39-foot segment of track, only three nondefective ties were found. Four significant crosslevel defects were noted. Many loose joint bars were recorded; these can lead to gage-side mismatch that can cause derailment.

FRA concludes that the transportation of passengers on this line would pose a significant and unacceptable threat to their safety. Accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 delegated to me by the Secretary of Transportation (49 CFR § 1.49(m)), it is ordered:

1. That the Boston and Maine Corporation shall not conduct or permit the operation of any passenger service of any

kind over the line of track between Lee and Lennox, Massachusetts, (milepost 7.0 to milepost 10.5) unless and until that track is maintained to FRA class 1 standards as set forth in 49 CFR Part 213.

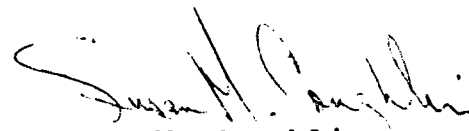
2. That the Berkshire Scenic Railway Museum, Inc., shall not conduct any passenger service of any kind over the line of track between Lee and Lennox, Massachusetts, (milepost 7.0 to milepost 10.5) unless and until that track is maintained to FRA class 1 standards as set forth in 49 CFR Part 213.

This Order shall remain in effect until this line of track is maintained to FRA class 1 standards.

Each violation of this Order, i.e., each train movement in violation of this Order, shall subject the respondent committing such violation to a civil penalty of up to \$20,000. 45 U.S.C. §§ 432, 438, as amended.

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. § 432(b), and section 554 of Title 5 of the United States Code.

Issued in Washington, D.C., on July 28, 1988.


Susan M. Coughlin
Acting Administrator