

# **THE FEDERAL RAILROAD ADMINISTRATION'S PLANT RAILROAD EXEMPTION: A PRACTICAL GUIDE UNDERSTANDING FRA'S JURISDICTION & THE “TWO RULES”**

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# PLANT RAILROAD STATUS DETERMINATIONS

- **Status Is Determined, Not Applied For**
  - **There is no formal application process to become a “plant railroad.”**
  - **It is a classification based on scope of operation.**
  - **A formal determination is typically made during an FRA-initiated investigation or in response to a specific legal inquiry.**



# THE FRA'S SWEEPING MANDATE/JURISDICTION

- **Federal Railroad Safety Act**

- **The FRA's jurisdiction is exceptionally broad, coming from the Federal Railroad Safety Act (49 U.S.C. § 20103). The default assumption is that all railroads fall under FRA jurisdiction.**



# THE “GENERAL RAILROAD SYSTEM”

- **The General Railroad System of Transportation**
  - **Key concept: The “general system” is the interconnected railroad network.**
  - **If you are part of it, you’re likely under FRA jurisdiction.**



# WHAT IS A PLANT RAILROAD?

- **The “Plant Railroad” Exemption**
  - **A plant railroad is a rail operation exempt from FRA safety regulations. The exemption as conceived of by the FRA is very narrow, applying only if two strict criteria are met, as outlined in 49 CFR Part 209, Appendix A.**



# A “PLANT RAILROAD” ACCORDING TO GOOGLE



# THE TWO BINARY TESTS

- **Confinement & Service**

- **Confinement:** The entire operation must be contained within the premises of an industrial installation. No shared track with the general system.
- **Service:** The railroad must move goods solely for the facility's own industrial processes. It cannot serve multiple entities.

*As long as we adhere to both rules, the operation will be exempted from the scope of FRA jurisdiction.*



# THE PHYSICAL CONNECTION - A GIVEN

- **The Physical Connection is Why We're Here**
  - **Unlike an isolated operation (like a tourist railroad), a plant railroad physically connects to the general system.**
  - **This connection triggers the FRA jurisdictional premise.**
  - **The exemption turns on the unique nature of the plant operation despite the connection.**



# CASE STUDY: PORT OF SHREVEPORT-BOSSIER

***Port of Shreveport-Bossier v. Federal Railroad Administration*, 420 Fed.Appx. 438 (5th Cir. 2011) (not reported)**

- **The rail operation was entirely confined within a port facility.**
- **The Port was moving cars for multiple tenants, placing the Port trackage and its contract switching operations within the scope of the general system, and outside of plant railroad status.**
- **“As the FRA noted in its briefing . . . , the Port remains free to apply for a waiver of FRA regulations. The FRA may grant a waiver ‘if the waiver is in the public interest and consistent with railroad safety.’ 49 U.S.C. § 20103(d).”**

**Key Takeaway: Physical confinement alone is not enough.**



# THE FORMAL DEFINITION

## The Rules Have Been Codified

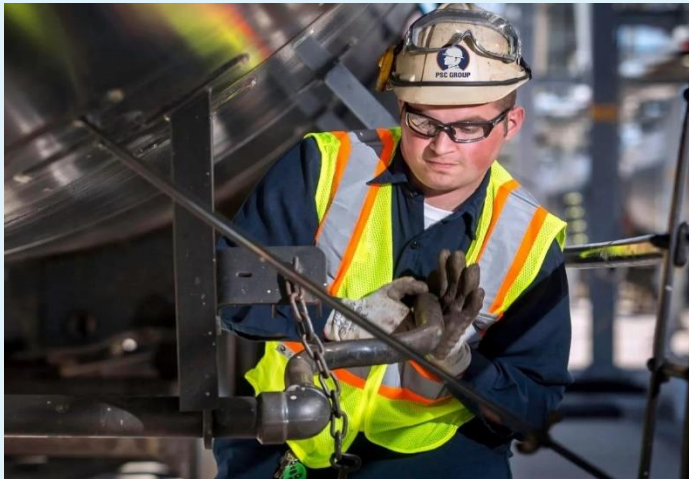
- **The FRA formally codified its definition of a “plant railroad” in 49 CFR Part 270 in 2016. The definition restates and clarifies the two key rules:**
  - **The operation must be contained within the facility.**
  - **It must move goods solely for the facility’s own processes.**
- **The two rules are the regulatory standard, not just a matter of policy.**



# THE CONTRACTOR QUESTION

*Who operates your insular plant railroad matters.*

- **Scenario A: Non-Carrier Contractor:** The contractor is an extension of the plant's operations. **Result:** The exemption is maintained.
- **Scenario B: Common Carrier:** The contractor is part of the General Railroad System. **Result:** The exemption is unavailable.



# WHY THE CONTRACTOR'S STATUS MATTERS

- **The Regulatory Difference**

- **The Non-Carrier Contractor is operating on your behalf and for your sole benefit. The fundamental nature of your rail service does not change.**
- **Common Carrier: A common carrier is already regulated and must serve the public. It brings its public, regulated status with it. The FRA views the private operation as now being part of the general system.**

**Key Takeaway:** The plant railroad exemption is determined by the regulatory status of the entity performing the work, not just the physical location of the tracks.



# 209 DETERMINATION ITEMS TO CONSIDER

## PLEASE REFER TO 49 CFR PART 209 – APPENDIX A

- **Are the Operations completely contained within the premises of the plant?**
  - **Do the Operations go beyond the boundaries of the plant?**
    - **If YES – Explain in detail. (Keep in mind “C” Below)**
  - **Do the Operations have direct access to the general railroad system – other than “C” below?**
    - **If YES – where and how?**
    - **If NO – explain restrictions in place.**
  - **Do the Operations have access to any leased track currently a part of the general system?**
    - **If YES – detail the location, nature of lease, and purpose.**
    - **If YES – detail who else has access to the leased track and for what purpose.**
  - **Do the railroad operations serve more than one entity within the confines of the “plant”?**
    - **If YES – are the other entities served for other than the primary’s own purpose?**
    - **If YES – Identify entities – and purpose(s)?**
- **General Information Required on Operations:**
  - **Approximate Mileage of Track within Plant / Complex?**
  - **Number of Employees.**
  - **Number of Cars moved daily or monthly?**
  - **Safety Record.**
  - **Type (s) of commodities transported. (Include Hazardous or TIH/PIH)**
  - **Hours of Railroad (Switching Service) Operations.**
  - **Type (s) of commodities transported. (Include Hazardous or TIH/PIH)**
  - **Hours of Railroad (Switching Service) Operations.**
  - **Communications between the general system railroad(s) and the plant railroad**



# THE FORM MAY NOT BE FUNDAMENTALLY INCONSISTENT WITH A BINARY TEST

The Forms **POSSIBLY COULD** be squared with a binary test

- **The FRAs policy is binary on its face: two rules, no exceptions.**
  - **The form you've may not suggest loopholes.**
  - **It may actually be fact-finding tool to gather a complete picture of the facility and its operation.**



# WHAT A “YES” MAY MEAN

- **A “Yes” Answer Puts You on the Spot**
  - **It may trigger a deeper investigation.**
  - **Follow-up questions may suggest that the rules are not entirely rigid.**

**Example: A train accidentally moving a few feet past the property line is very different from a train that regularly operates on a shared siding.**



# THE CONCLUSION OF THE CONUNDRUM

- **The Form vs. The Policy**
  - **The Policy is rigid and unwavering.**
  - **The Form is the mechanism for applying that rigid policy to real-world situations.**

**The form doesn't necessarily change the rules; it may ensure the FRA's determination is based on a complete and accurate set of facts.**



# THE CONSEQUENCES

## The Cost of Non-Compliance

- **If the facility and its operation do not qualify for the plant railroad exemption, railroad operations at the facility must adhere to all FRA regulations.**
- **This includes track safety, equipment standards, and drug and alcohol testing.**
- **Failure to comply can result in significant civil penalties.**



# SUMMARY and Q&A

## Key Takeaways:

- **The plant railroad exemption is narrowly defined.**
- **Confinement and service are the two non-negotiable rules.**
- **The opportunities potentially arising from such a narrowly-defined exemption**

**QUESTIONS???**



**THANK YOU!**

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