



OFFICE OF THE
COMMISSIONER OF RAILROADS
STATE OF WISCONSIN

YASH P. WADHWA, COMMISSIONER

610 N. Whitney Way
P.O. Box 7854
Madison, WI 53707-7854
Tel: (608) 266-0276
Fax: (608) 261-8220
<http://ocr.wi.gov>

Guidelines for Seeking Office of the Commissioner of Railroads
Approval of New Railroad Crossings and Alterations of Existing
Railroad Crossings of Streets and Highways
(Revised November 26, 2012)

The Office of the Commissioner of Railroads (OCR) is the state agency with jurisdiction to approve the establishment and alteration of public highway crossings with railroads (section 195.29, Wis. Stats.). Any highway authority or railroad wishing to establish a new crossing or change an existing crossing must first obtain the approval of the OCR.

Wisconsin law requires OCR approval to establish a new rail/highway crossing, to relocate, close, alter or substantially change an existing crossing (See, especially s. 195.29 Stats.). The OCR also determines what warning devices are needed (See, s. 195.28 Stats.). The OCR can also require railroads to repair rough crossings (See, s. 86.12 Stats.). The review process is initiated by filing a petition with the OCR. The OCR then schedules a hearing to take evidence on the proposal. The hearing is typically held at a local site. After the hearing, the hearing examiner issues a proposed decision. A 15-day comment period follows and then the Commissioner issues the final decision. The OCR's decision is legally binding.

The OCR administrative rules govern our practice and procedure. Wis. Admin. Code Chapter RR 1. **The rules require that the petitioner submit preliminary engineering plans or concept plans, state a proposed completion date for the project, and a proposed apportionment of costs.** Please see Wis. Admin. Code § RR 1.025 (2). These rules also require that the petitioner send a copy of the plans, proposed completion date, and proposed cost apportionment to the railroad.

The OCR process normally takes about 4 months from the initial filing to a final decision. Petitioners can avoid delays in their projects by filing a petition as early as possible. The notice is typically issued within 2 weeks from when we receive the petition. The hearing is held about 30 to 45 days from the date of the hearing notice. The minimum notice period is 20 days. The proposed decision is generally issued within 30 to 60 days of the hearing and the final decision is usually issued about 30 days later. In uncontested cases, the OCR can skip the proposed decision and go directly to a final decision. This time frame can be compressed if a legitimate need exists. Complex cases may take longer.

While the OCR makes all final decisions, a municipality can increase the likelihood that the railroad will not actively oppose a new crossing by simultaneously proposing the closure of an existing crossing.

The OCR also apportions costs for crossing work. Typically, the petitioning road authority pays the cost for new crossings and relocated crossings. If a crossing is widened, the cost is

typically split with the railroad based on the ratio of the existing crossing width to the new width. The railroad pays for the existing width and the highway authority pays for the added width. Cost-apportionment is, however, determined on a case-by-case basis and may vary from these rules of thumb.

The OCR also determines what warning devices are required at the crossing. State and federal funds are sometimes available to pay the cost for new railroad crossing signals. These funds, however, are quite limited and there is often a 3 to 4 year waiting list for this money, which is often beyond the proposed construction schedule. If a crossing can not be safely opened without automatic signals, the OCR will give highway authorities the option of paying for the crossing signals in order to keep the highway project on schedule. These costs can *not* be recouped from state or federal funds at a later date. Railroad crossing signals with gates usually cost *at least* \$180,000 and can be substantially more than that depending on the specific conditions (such as proximity of other signalized crossings, number of tracks, railroad switches, and so forth).

The OCR's administrative rules require certain information to be submitted to the OCR at the time that the petition is filed. The rules also require that the petition be sent to the railroad. Failure to provide these materials and/or provide a copy to the railroad may delay scheduling a hearing. The following information must be furnished to the OCR and to the railroad:

1. Governing body (City Council, Village or Town Board) resolution supporting the project.
2. Proposed timing of the project.
3. Concept plans or preliminary engineering design plans showing the proposed changes.
4. The proposed cost apportionment for the project.

Please furnish copies of all correspondence and other information to the railroad. The OCR can provide addresses for railroads upon request. **The municipality should contact the railroad as soon as possible to discuss the project. While the OCR decides whether to approve a new crossing or a crossing change, the railroad often has useful information or legitimate concerns that can be addressed in the design process.**

Hearing process

The petitioning party (usually the road authority) presents their case first. After the road authority is done with presenting all of their witnesses, the railroad will put on their witnesses. Witnesses will be sworn. Witnesses are subject to cross-examination by the other party. The hearing examiner will also ask questions.

The petitioner will generally carry the burden of proof. In general, this means that the petitioner needs to show what is being proposed and why it is justified.

The petitioner will need to present sworn testimony at the hearing on the overall project purpose, the engineering design plans, discuss alternatives considered, and introduce the resolution and provide a map of the community or area involved. The engineering information should include alignments of the roadway and the track, profiles of the approaches to the intersection, distance and travel time to an alternate crossing, distance to adjacent crossings, volumes and speeds of highway and rail traffic, types of warning devices proposed, property lines involved, and sight distances. Other information may also be relevant in any given situation. It is very helpful if this testimony is provided at the hearing in a written narrative form. Please furnish **at least three copies of any exhibits** at the time of the hearing.

Useful resource material:

1. Wisconsin DOT Facilities Development Manual (FDM) (Chapter 17 covers railroads)
 - a. <https://trust.dot.state.wi.us/static/standards/fdm/index.htm>
2. *Manual on Uniform Traffic Control Devices (Federal Highway Administration)*
 - a. <http://mutcd.fhwa.dot.gov/index.htm>
3. Wisconsin DOT Supplement to the MUTCD
 - a. <http://www.dot.wisconsin.gov/business/engrserv/wmutcd.htm>
4. *Guidance on Traffic Control Devices at Highway-Rail Grade Crossings*, USDOT, FHWA, Highway/Rail Grade Crossing Technical Working Group (November 2002)
 - a. <http://safety.fhwa.dot.gov/xings/collision/twgreport/#a71>
5. *Railroad-Highway Grade Crossing Handbook - Revised Second Edition August 2007* (FHWA-SA-07-010)
 - a. http://safety.fhwa.dot.gov/xings/com_roaduser/07010/
6. *A Policy on Geometric Design of Highways and Streets*, 6th edition, 2011, AASHTO (American Association of State Highway & Transportation Officials)
 - a. https://bookstore.transportation.org/collection_detail.aspx?ID=110
7. Federal Railroad Administration Crossing Inventory Data Sheets
 - a. <http://safetydata.fra.dot.gov/OfficeofSafety/publicsite/crossing/crossing.aspx>
8. Federal Railroad Administration Crossing Accident History Data Sheets
 - a. <http://safetydata.fra.dot.gov/OfficeofSafety/publicsite/crossing/crossing.aspx>
9. Federal Railroad Administration rail-highway crossing statistics
 - a. <http://safetydata.fra.dot.gov/OfficeofSafety/Default.aspx>
10. Wisconsin Department of Transportation RCIS crossing inventory

Please call 608/266-0276 if you have any questions or visit <http://ocr.wi.gov>