



FDM 17-1-1 General

December 11, 2014

1.1 Originator

The Chief, Railroads and Harbors Section (RHS) is the originator of this chapter. Direct any questions or recommendations concerning this chapter to Supervisor, Railroad Engineering & Safety Unit (608) 267-7349 or Railroad Grade Crossing Safety Engineer (608) 266-2941, in the RHS.

1.2 Introduction

This chapter describes WisDOT activities relative to highway improvements affecting railroad property. It also describes WisDOT's relations with railroad companies regarding projects; railroad regulatory agencies, the Federal Highway Administration; counties, cities, villages and towns, and municipal area highway authorities; engineering consultants; and the public. Railroad-highway improvements include projects on both state and local roads and streets for the installation and adjustment of railroad crossing warning devices and surfaces; the elimination of hazards at railroad crossings by the relocation of railroad tracks and highways and closures of crossings; the construction of grade separation structures; and the acquisition of land rights from railroad companies.

Project required adjustments to, or construction of railroad facilities will be accomplished either by railroad company forces, by a contractor who has a continuing contractual relationship with the railroad, by a competitive bid let by the railroad, or by the WisDOT contractor with concurrence of the railroad. In order for any work to be eligible for public funding reimbursement, it must be covered by an approved agreement (contract). All continuing contracts must be approved by WisDOT for the work to be eligible for public funding reimbursement.

When federal or state highway funds are to be used to fund a project, WisDOT, through the RHS is mandated to negotiate necessary agreements with railroads.

Railroad coordination is part of the overall communication plan for a project. Refer to [FDM 2-20-5.8](#) - Communication Management (and other references in FDM 2-20) for a discussion of communication from a project management perspective.

1.3 Policy Interpretation

WisDOT recognizes that the efficient movement of freight and passengers by rail is important to Wisconsin's economy. All policies of WisDOT are to be interpreted so as not to create or cause a negative impact on a railroad company's ability to carry out its business.

1.4 Goal of Railroad Coordination

WisDOT's goal is to obtain railroad acceptance of highway construction projects and railroad crossing safety improvements. Railroad cooperation is necessary to implement changes in or adjustments to railroad facilities in a timely manner to accommodate highway projects. This includes needed or identified warning devices at highway grade crossings as determined by the Office of the Commissioner or Railroads (OCR).

To help the reader, a list of terms and abbreviations used throughout this chapter or by railroad engineering professionals is included as [Attachment 1.1](#).

LIST OF ATTACHMENTS

[Attachment 1.1](#) Terms And Abbreviations

FDM 17-1-5 The WisDOT/Railroad Partnership

June 19, 2013

Railroad grade crossings of public highways create the potential for conflict and are thus very dangerous intersections. A unique partnership is required to provide appropriate warning devices and other treatments for the safety of the public at these intersections. That partnership is a 3-way one involving WisDOT, the Office of the Commissioner of Railroads (OCR), and the railroad company.

WisDOT is the agency responsible for the planning, design and construction of highway improvements, and for the administration of all federal transportation funds that are allocated to Wisconsin.

The OCR is the state agency that regulates railroads. The OCR is almost exclusively concerned with rail-

highway crossings. The OCR issues orders that are legally binding on railroads, municipalities, and WisDOT. Within its areas of responsibility, the OCR has broad discretionary powers. The OCR determines whether to allow physical changes to crossings (after a public hearing process) and what warning devices are required at crossings. The OCR can act upon petition or on its own motion. The OCR also has jurisdiction over rough riding crossings, clearance exemptions, drainage, exemptions from the 346.45 requirement to stop, and certain labor issues. The OCR does not do economic regulation of railroads and does not have jurisdiction over construction or removal of tracks.

The railroad companies are “for profit” businesses subject to regulation, primarily at the federal government level, but to some extent by the OCR at the state level.

Over the years, though legislation, court rulings and cooperative efforts, the general responsibilities of the partners for improving and maintaining the facilities at railroad crossings have become established. These include responsibilities for the maintenance of the crossing surface; the installation and maintenance of warning devices; building separations (bridges) at crossings; the closure of old crossings; and the creation of new crossings. These responsibilities are addressed in detail in specific subjects dealing with each type of project later in this chapter.

Initiating a safety project or a highway improvement at a rail-highway crossing immediately involves the railroad company in some manner. While legislation and public railroad regulatory agencies have established rules and regulations for rail-highway crossing improvements, WisDOT attempts to obtain the concurrence of the railroad for the proposed improvement at the highway crossing the railroad. This is accomplished through negotiations with the railroad company, culminating in an agreement; a formal document signed by all involved interests specifying the work to be accomplished and the reimbursement to be paid.

While concurrence and acceptance of WisDOT proposals by all involved parties is the goal, WisDOT will typically place the matter before the OCR for investigation hearing if necessary, and resolution. See [FDM 17-1-10](#) for a more complete explanation of OCR powers.

Railroad negotiations with WisDOT have historically been conducted by the Railroad and Harbors Section (RHS) with the railroad's main office. The reasons for this are to provide consistency across the state with the many railroads that operate in the state, and because these negotiations require the specialized expertise. However, to support the negotiations, it is necessary for the DCR's to develop and maintain liaison with staff in the Division offices of the railroads operating within their boundaries for the status of track work and train operations, and for liaison on construction, maintenance, and operating matters.

Railroad companies usually designate one person to coordinate project negotiations. Other railroad personnel are involved however. These may include engineering (track, bridge and signal), train traffic operations, real estate, finance, legal and planning. In addition to the railroad's main office reviews, plans are usually sent to the railroad's regional or division engineer for comment.

In addition to obtaining project agreements with the railroad companies, other approvals may be required from agencies outside of the WisDOT such as local governments, the OCR and the FHWA. Within WisDOT, railroad projects involve both central office and region personnel, particularly in project selection, design, and construction. Other functional areas in WisDOT involved for special purposes include traffic, maintenance, real estate, program administration, accounting and audit.

FDM 17-1-10 The WisDOT/OCR Partnership

June 19, 2013

10.1 Introduction

WisDOT has long sought to incrementally improve the processes that identify and evaluate candidate railroad projects as the basis for developing longer range fiscal year programs of projects. To achieve this, and the efficiencies and coordination that result from longer- range programs, WisDOT has initiated and encouraged monthly coordination meetings between agency staffs, and have invited OCR staff to actively participate in decisions regarding the WisDOT Safety Program.

Today, both agencies are primarily concerned with the efficient investment of transportation dollars in facilities at railroad crossings in order to maximize the public benefits of these investments. While OCR interest in the investment area is limited to warning devices, WisDOT has responsibility for a broad program of investments, including crossing surfaces, crossing closures, and separations (bridges) at crossings, in addition to a wide variety of highway improvements.

10.2 OCR Powers

The Office of the Commissioner of Railroads (OCR) has broad statutory authority and powers as noted in [FDM 17-1-5](#) and [FDM 17-5-5](#).

- The OCR is the final authority on the appropriate treatment at a crossing – passive warning, active warning, or separation.
- The OCR must resolve issues placed before it via petition under Section 195.28 W.S., but may also act on its own motion (that is initiate action on its own, pro-actively).
- The OCR has the ability to resolve certain disputes between the railroad and WisDOT. If agreement between the parties cannot be reached and the OCR has jurisdiction, the matter may be placed before the OCR for hearing and order. Two railroads operating in Wisconsin have historically required an order from the OCR for all signal work – Canadian National (WCL/FVW/SSAM,) and the Union Pacific. It is expected that more railroads will require OCR Orders in the future. Allow an additional 120 days for a new or altered crossing when the OCR is involved. If the signal installation is a part of an OCR order following a public hearing, the required additional time is 240 days. (See Sections 195.28 and 195.29 Wisconsin Statutes)
- An OCR Order has the force of law.

On major projects (with potential for crossing consolidation), early OCR involvement is highly desirable. Such early involvement is also helpful on highway projects that parallel railroad tracks.

For controversial or contested projects on the State Trunk Highway System, the assistance of an attorney may be advisable. The BRH will make such recommendation to the DTSD Administrator, who, in turn, will determine the need and request such assistance from the Office of General Counsel. The RHS will assist the legal counsel on project matters and may provide direct testimony at the hearing as deemed necessary. A local government would decide when its corporate counsel is needed.

On crossing projects which have unresolved differences with the railroad, it is necessary to provide plans and testimony to fully support the highway project, not just any unresolved matters. The requirements and reasons for the project are to be clearly stated. This includes general highway and railroad information, method of crossing, clearances, who is to undertake the work, how the project is to be financed and responsibility for future maintenance. The signature page of the environmental impact statement, the screening work sheet, or the Design Study Report for the project are to be available and a copy may be submitted for the hearing record.

More information on the responsibilities of the OCR and guidance in DOT's involvement in OCR hearings is provided in [FDM 17-10-15](#).