

## Chapter RR 1

### PROCEDURE AND PRACTICE

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**Note:** Chapter TC 1 was renumbered ch. OCT 1 effective September 1, 1986. Chapter OCT 1 was renumbered chapter RR 1, Register, May, 1996, No. 485, eff. 6-1-96.

**RR 1.001 Definitions.** (1) "Crossing" means the intersection of a highway with a track or tracks of a railroad, including the area directly affecting or affected by said intersection.

(2) "Highway" includes all public ways and thoroughfares and all bridges on the same, whether used by motorized vehicles or not, but does not include snowmobile trails.

(3) "Mail" means first class, certified or regular mail, or inter-departmental mail.

(4) "Office" means the office of the commissioner of railroads.

(5) "Party" means any person who requests admission as a party and whose substantial interest may be affected by a decision. "Party" includes the railroad and maintaining highway authority and the department of transportation when a highway project which encompasses a crossing involves the expenditure of federal funds, whether on a state highway or not.

**History:** Cr. Register, August, 1986, No. 368, eff. 9-1-86; corrections made under s. 13.93 (2m) (b) 1. and 6., Stats., Register, May, 1996, No. 485, eff. 6-1-96; r. and recr., Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.01 Communications and documents addressed to office.** (1) All written communications and documents shall be filed with the office by deposit in the mail, by facsimile transmission, or in person.

**Note:** The office can be contacted at the Office of the Commissioner of Railroads, 610 Whitney Way, Suite 110, P.O. Box 8968, Madison, WI 53708-8968, (608) 266-7607, Fax (608) 261-8220.

(2) Documents shall be served upon the office by deposit in the mail, by facsimile transmission, or by delivery in person. When service is made upon the office the date of service shall be the day when the office receives the document.

(3) Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays and Sundays, and on holidays listed in s. 230.35 (4) (a), Stats.

(4) The time within which an action is to be taken as provided in any rule or order promulgated by the office, when expressed in days, shall be computed by excluding the first day and including the last, except if the last day falls on a day the office is closed, the action may be taken on the next day it is open. When an action is to be taken in less than 10 days and the period contains both a Sunday and a legal holiday, the period shall be increased to 12 days. Legal holidays are those listed in sub. (3).

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. Register, August, 1986, No. 368, eff. 9-1-86; am. (1), Register, May, 1996, No. 485, eff. 6-1-96; am. (1) to (3), Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.02 Parties.** (1) (a) Parties who seek office approval for permits, exemptions or other relief are applicants. Those opposing applicants are objectors.

(b) Parties who file complaints are complainants.

(c) Parties of interest other than complainants, applicants, petitioners, objectors and complainants are intervenors.

(d) Parties who file petitions are petitioners.

(e) Those opposing complainants and petitioners and parties investigated or ordered to show cause are respondents.

(2) **CERTIFICATION.** The commissioner or hearing examiner shall certify parties. The certified parties shall be listed in the proposed decision and the final decision. For purposes of certifying parties, the commissioner or hearing examiner shall consider the nature, duration and degree of the effect of the final decision upon a person's interest.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. (1), Register, August, 1986, No. 368, eff. 9-1-86; renum. (1) to (5) to be (1) (a) to (e), cr. (2), Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.025 Petitions, complaints and applications.** **PETITIONS, COMPLAINTS AND APPLICATIONS.** (1) **FORM.** Each petition, complaint or application filed with the office shall be in writing and signed by the petitioner, complainant, or applicant, or a person authorized to file the petition, complaint or application.

(2) **CONTENT.** Each petition filed with the office for the alteration, establishment, or relocation of a crossing shall include all of the following:

(a) Concept plans or preliminary engineering design plans showing the proposed changes.

(b) The proposed construction completion date.

(c) The proposed apportionment of cost for the construction.

(3) **COPIES.** At the time of filing, a petitioning highway authority shall provide a copy of the petition to the affected railroad or a petitioning railroad shall provide a copy of the petition to the affected highway authority.

(4) **SANCTIONS.** Failure to comply with sub. 2 or sub. 3 may result in an order by the examiner that the matter not be heard until those requirements are met.

**Note:** Addresses for railroads and highway authorities may be obtained by contacting the office at Office of the Commissioner of Railroads, 610 N. Whitney Way, Room 110, PO Box 8968, Madison, WI 53708-8968, Voice (608) 266-7607, Fax (608) 261-8220 or TTY (608) 267-1479.

**History:** Cr. Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.03 Notice of hearings.** (1) Written notice of hearing shall be deposited in the first class mail to all parties and to any other interested person requesting notice in accordance with s. 227.44, Stats.

(2) When the general public may be injured by the office's action, written notice of hearing shall be mailed to the clerk of each incorporated city, town or village in the area affected.

(3) The notice of hearing shall be in writing, with a title identifying the matter and the docket number and contain all of the following information:

(a) The date, time and location of the hearing.

(b) The statutory authority for the hearing.

(c) A short summary of the matter to be considered.

(d) A statement of the issues.

(e) A notice of assessment of costs against the railroad under s. 195.60, Stats., where applicable.

(f) Such other information as the commissioner or hearing examiner may deem appropriate.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. (2), Register, August, 1986, No. 368, eff. 9-1-86; cr. (3), Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.04 Hearings. (1)** At any hearing an examiner may preside. Personal interest in or knowledge of the matter to be heard disqualifies the examiner if it prevents the examiner from acting fairly or impartially. No person who has directly participated in the investigation of the matter to be heard shall be designated or serve as examiner.

(2) The examiner, at any time prior to the commencement of a hearing, may require the parties or their counsel to appear at a pre-hearing conference for the purpose of simplification and clarification of issues or consideration of other matters which may expedite or aid in the disposition of the proceeding, and issue orders as necessary to carry out the purposes of this chapter. All stipulations made at a pre-hearing conference shall be made a matter of record and control subsequent proceedings.

(3) If any original document in a proceeding is lost or withheld by any person, or is otherwise unavailable, the examiner may authorize the filing or use of a copy in place of the original. The examiner may authorize the substitution of a copy of any original document received in evidence as an exhibit and return the original to the owner.

(4) Parties may be off the record only when the examiner permits. If a discussion off the record is pertinent, the examiner will summarize it on the record. Any argument before the examiner on objections to receipt of evidence or on motions to strike will not be recorded. The legal reasons for the objections or motion will be recorded.

(5) Members of the office staff appear neither in support of nor opposition to any cause, but solely to discover and present facts pertinent to the issues.

(6) No smoking is permitted during hearings.

(7) Failure to comply with any order issued under sub. (2) or s. RR 1.09 by any of the parties without good cause shown for the failure to comply shall result in sanctions being imposed by the examiner. Sanctions which shall be imposed include any of the following:

(a) An order that the matters for which the initial order was made or any other designated facts shall be taken to be established for the purposes of the hearing in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence; or

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgement by default against the disobedient party.

(8) At the request of any of the parties or on the examiner's own motion, the examiner may order the sequestering of witnesses.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. (2) and (5), cr. (7) and (8), Register, August, 1986, No. 368, eff. 9-1-86; correction in (7) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1996, No. 485; am. (1) and (7) (intro.), Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.05 Nonappearance at hearing. (1)** When the complainant, petitioner or applicant fails to appear at the hearing without good cause shown, the complaint, petition or application, as the case may be, may be dismissed by the examiner.

(2) When the respondent or objector fails to appear at the hearing without good cause shown, the allegations of the complaint, petition, application or order to show cause, as the case may be, may be taken as true, and a final order may be issued without further notice of hearing.

(3) If a party, having failed to appear at a hearing, shows good cause for the failure to the commissioner within 10 days after the final order is issued, the commissioner may set aside the order and afford further opportunity to be heard.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. (3), Register, August, 1986, No. 368, eff. 9-1-86.

**RR 1.06 Rules of evidence. (1)** Rules of evidence are governed by s. 227.45, Stats.

(2) The presiding examiner shall rule on all objections and motions made prior to the issuance of the proposed decision.

(3) Failure of a party to object on the record to admission of any evidence shall be deemed a waiver of that objection.

(4) Any party who is dissatisfied with an examiner's ruling may submit comments explaining their position to the commissioner during the period set for receiving comments on the proposed order. If there is no proposed order, comments shall be filed within 15 days after the close of the period for receiving evidence. The commissioner shall review those comments prior to issuing a final order.

(5) Petitions or written communications addressed to the commissioner not admissible as evidence may be filed, but will not be considered evidence.

(6) The party introducing a document as an exhibit shall furnish a copy to all other parties in attendance.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. (4) and (5), Register, August, 1986, No. 368, eff. 9-1-86.

**RR 1.07 Transcripts. (1)** A stenographic, electronic or other record of oral proceedings shall be made by the office. A written transcript of the record shall be prepared only as deemed necessary by the office, and unless otherwise prepared by the office for its own use, shall not be prepared at the specific request of any person unless needed by that person for appeal or court review purposes, or other valid reasons.

(2) Except as otherwise provided by statute, if a transcript has been prepared by the office for its own use, copies may be furnished to all interested parties upon payment of a fee of 15 cents for each page. If no transcript of the record has been prepared by the office and a specific request for a transcript is made, the party making the request shall be responsible for all reasonable costs incurred by the office in transcribing the record and in preparation of the transcript. Any party who on the basis of a verified petition can establish to the satisfaction of the office the need for a transcript and financial inability to pay for a copy may be furnished a copy free of cost. No fee shall be assessed against government bodies.

(3) If a proceeding has been recorded, the office may substitute a copy of the tapes for a transcript request if no petition for judicial review has been filed. The cost per tape shall be an amount set by the office based on the actual total cost and paid in advance, unless otherwise provided by statute.

**Note:** The cost per tape is \$12.00. This amount is subject to change.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. Register, August, 1986, No. 368, eff. 9-1-86; am. (3), Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.08 Briefs and answers. (1)** The examiner may require briefs in any matter before the office and answers to complaints.

(2) Whenever briefs and answers are filed, the examiner shall indicate the date on or before which they shall be submitted.

(3) Briefs shall be no more than 10 pages, typed in double space on 8½ x 11 inch paper, unless the examiner provides other-

wise. An original and one copy of the brief shall be filed with the office and one copy mailed, transmitted by facsimile or delivered in person to each of the other parties.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. (3), Register, August, 1986, No. 368, eff. 9-1-86; am. (1) and (3), Register, February, 1999, No. 518, eff. 3-1-99.

#### **RR 1.09 Witnesses, subpoenas and depositions.**

(1) Any party may request the examiner to issue subpoenas to compel the attendance of witnesses.

(2) Any party may request the examiner to issue subpoenas duces tecum to compel a witness to bring specific documents.

(3) The examiner may limit the scope of the subpoena or deny it if it appears to be unreasonable, oppressive, excessive in scope or unduly burdensome.

(4) Depositions and written interrogatories may be taken and used as evidence as provided in ch. 804, Stats.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82.

#### **RR 1.10 Close of hearing and evidence. (1)**

Evidence in any proceeding will be declared closed when due opportunity to furnish relevant evidence, including proper cross-examination of witnesses and rebuttal, has been afforded all parties. If by stipulation of the parties or by direction of the examiner documentary evidence is permitted or directed to be introduced subsequent to the close of testimony, the evidence will be declared closed when such documentary evidence is received or when the specified time for furnishing it has elapsed without its being furnished. The examiner may extend the time as originally prescribed for filing such evidence.

(2) When the evidence is closed, but before a proposed decision is issued, the examiner may reopen the hearing for the taking of further evidence.

(3) A hearing is closed when evidence is closed and when after the proposed decision is issued any period fixed for filing of briefs, comments or presentation of oral argument has expired. If the time for filing briefs or comments has expired and the briefs or comments of one or more parties are not filed within that time, the commissioner may proceed to final determination of the proceeding.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. (3), Register, August, 1986, No. 368, eff. 9-1-86.

#### **RR 1.11 Comments on proposed decisions.**

(1) Where a proposed decision is prepared and circulated, comments shall be filed within 15 days of the date of the proposed decision unless a different date is specified by the examiner or commissioner. An original and one copy of the comments shall be filed with the office and one copy mailed, transmitted by facsimile, or delivered in person to each of the other parties listed in the proposed decision.

(2) Oral argument shall be held only where directed by the commissioner.

(a) Requests for oral argument made by parties admitted to the proceeding prior to preparation and circulation of the proposed decision shall be included with the comments on the proposed decision.

(b) Requests for oral argument made by an intervenor not admitted as a party to the proceeding prior to preparation and circulation of the proposed decision shall be directed to the commissioner and shall be filed within 5 days of deposit of the proposed decision in the first class mail or delivery in person to the parties to the proceeding. One copy of the request for oral argument by an intervenor under this paragraph shall be deposited in the first class mail or delivered in person to each of the other parties. Parties already admitted to the proceeding shall have until the end of the comment period provided in sub. (1) to file comments on the admission of the intervenor as a party to the proceeding. Comments on a request made under this paragraph may be included with the comments filed under sub. (1) or filed separately. Oral

argument directed by the commissioner to be held under this paragraph shall be limited to relevant questions of law and the application of policy by the office.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. (1), r. and recr. (2), Register, August, 1986, No. 368, eff. 9-1-86; am. (1), Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.12 Office records. (1)** Office records shall be open and available to the public as required by ch. 19, Stats.

(2) Written requests for copies of office records shall be addressed to the commissioner or to the legal custodian of records.

(3) The fee for reproduction, photocopying, photographing, transcription or other duplication of a public record in the custody of the office may not exceed the actual, direct and necessary cost.

**Note:** The office charges the following fees: simple photocopying - 15 cents per page, cassette tape of hearing \$12.00. When the cost of locating a record exceeds \$50, the office charges the actual, necessary and direct costs of location. These amounts are subject to change.

(4) With the agreement of the record requester, the custodian of records may elect to use a private company to produce copies of records in any form. The fee for such copies shall be the actual cost charged by the private company plus the cost of any office staff labor.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. Register, August, 1986, No. 368, eff. 9-1-86; renum. from OCT 1.13, Register, May, 1996, No. 485, eff. 6-1-96; am. (3), cr. (4), Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.13 Environmental review. (1)** Approval of construction of major railroad facilities shall be screened using a screening worksheet to determine whether an environmental impact statement is required.

(2) The following types of office actions shall not require an environmental impact statement:

- (a) Orders relating to railroad-highway crossings.
- (b) Approval of spur track abandonment.
- (c) Granting of applications by water carriers.
- (d) Granting exemptions for vertical and horizontal clearances.

(3) Any action not specifically categorized in subs. (1) and (2) is presumed not to be a major action which may significantly affect the human environment. The office shall consider on an individual basis, any such action brought to its attention, and may determine that a screening worksheet is required to determine whether an environmental impact statement is needed.

(4) The procedure for an environmental screening shall be that outlined in ch. PSC 4.

(5) If an environmental impact statement is required, it shall be prepared in the manner outlined in ch. PSC 4.

**History:** Cr. Register, October, 1982, No. 322, eff. 11-1-82; am. (2) (intro.) and (3), Register, August, 1986, No. 368, eff. 9-1-86; renum. from OCT 1.14, Register, May, 1996, No. 485, eff. 6-1-96; correction in (4) and (5) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1996, No. 485; r. (2) (a) to (d), (f) and (g), renum. (2) (e), (h) and (i) to be (2) (a) to (c), cr. (2) (d), Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.14 Proposed decision. (1) FORM.** Each proposed decision issued by a hearing examiner shall be in writing, with a title identifying the matter and the docket number.

(2) CONTENT. Each proposed decision shall include all of the following:

- (a) Specific proposed findings of fact.
- (b) Proposed ultimate conclusion on each material issue.
- (c) Proposed conclusions of law.
- (d) A proposed order setting out the duties of each party, including deadlines for work or installations required, and an apportionment of costs.

**History:** Cr. Register, February, 1999, No. 518, eff. 3-1-99.

**RR 1.15 Final decision. (1) FORM.** Each final decision issued by a hearing examiner shall be in writing, with a title identifying the matter and the docket number.

**(2) CONTENT.** Each final decision shall include all of the following:

- (a) Specific findings of fact.
- (b) Ultimate conclusion on each material issue.
- (c) Conclusions of law.

(d) An order setting out the duties of each party, including deadlines for work or installations required, and an apportionment of costs. The order is not limited simply to granting or denying a petition, but may order any reasonable method for the improvement of public safety or convenience.

**(3) FINAL DECISION BY EXAMINER.** (a) The commissioner may,

at any state of the proceedings, designate the examiner to render the final decision. The commissioner shall designate the examiner to render the final decision when the commissioner has recused himself or herself from participation in a proceeding. The designation shall be in writing and provided to all parties.

(b) During any prolonged disability or absence of the commissioner, the examiner shall render the final decision in any uncontested matter. During any period in which the position of commissioner is vacant, the examiner shall render the final decision in any uncontested matter.

**History:** Cr. Register, February, 1999, No. 518, eff. 3-1-99.