

CHAPTER 195

RAILROAD AND WATER CARRIER REGULATION

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Cross-reference: See also *RR*, Wis. adm. code.

195.001 Definitions. In this chapter:

(1m) “Department” means the department of transportation.

(2) “Office” means the office of the commissioner of railroads.

(2m) “Railroad historical society” means a nonprofit historical society that operates railroad locomotives and rolling stock on railroad tracks for the purpose of historic preservation and is not a common carrier.

(3) “Railroad track equipment” means a device that is operated on rails and used primarily for the maintenance of railroads.

History: 1977 c. 29; 1981 c. 347; 1983 a. 189; 1991 a. 269; 1993 a. 16, 123; 2011 a. 101.

195.02 Definitions, scope of chapter, application of statute. (1) In this chapter, unless a different meaning is manifest: “Railroad” means and embraces all corporations, companies, individuals, associations, their lessees, trustees or receivers that own, operate, manage or control any railroad or part of a railroad as a common carrier in this state, or cars, or other equipment used thereon, or bridges, terminals or sidetracks, used in connection therewith, whether owned by such railroad or otherwise.

(3) This chapter applies to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all water carrier charges connected therewith, and applies to all common carriers engaged in the transportation of passengers or property wholly by rail or partly by rail and partly by water, and to all common carriers of property wholly by water which operate between fixed end points, but shall not apply to transportation of property by water under contract as a private carrier.

(4) This chapter shall not apply to private railroads that are not common carriers.

(4m) Each provision of this chapter applies only to the extent that it is not contrary to or inconsistent with federal law or the constitution of the United States.

(5) “Water carrier” means a common or contract carrier of property by water that operates between fixed end points, but does not include a water carrier under common control with a railroad

when transporting freight for continuous carriage or shipment. In this chapter, “common carrier,” with respect to a water carrier, includes a contract carrier other than a private contract carrier.

History: 1977 c. 29; 1979 c. 110; 1985 a. 187; 2005 a. 179.

Cross-reference: See also *RR*, Wis. adm. code.

195.03 Office; powers and duties, general enumeration. (1) **PRACTICE RULES.** The office may take testimony and administer oaths and may promulgate rules to govern its proceedings and to regulate the mode and manner of all hearings. All hearings shall be open to the public.

(2) **OFFICE INITIATIVE.** In any matter within its jurisdiction under ch. 192 or this chapter, the office may initiate, investigate and order a hearing at its discretion upon such notice as it considers proper.

(7) **STUDY RAILROAD AND WATER CARRIER BUSINESS, DEMAND INFORMATION.** The office may inquire into the management of the business of all railroads and water carriers, and shall keep itself informed as to the manner in which the same is conducted, and may obtain from any railroad or water carrier all necessary information to enable the office to perform the duties and carry out the objects for which it is responsible.

(8) **QUESTIONNAIRES, ANSWERS COMPULSORY.** The office shall prepare forms for the purpose of obtaining the information which it may deem necessary or useful to the proper exercise of its functions, which shall conform as nearly as practicable to the forms prescribed by the federal railroad administration, federal surface transportation board, or other applicable federal agency or authority, and shall furnish the forms to railroads and water carriers, and every railroad and water carrier receiving the forms shall cause the forms to be properly completed and verified under oath by its proper officer and returned to the office within the time fixed by the office.

(9) **EXAMINE BOOKS AND FILES OF RAILROADS AND WATER CARRIERS.** The commissioner of railroads or any person employed by the office for that purpose shall, upon demand, have the right to inspect the books and papers of any railroad or water carrier and to examine under oath any officer, agent or employee of such railroad or water carrier in relation to its business and affairs; provided that any person other than the commissioner of railroads who makes such demand shall produce his or her authority under the hand and seal of the office.

(10) PRODUCTION OF RECORDS AND FILES KEPT OUT OF STATE. The office may, by an order or subpoena to be served in the manner that a circuit court summons is served, require the production within this state, at such time and place as it may designate, of any books, papers or accounts kept by any railroad or water carrier without the state, or verified copies in lieu thereof, if the office shall so order.

(11) UNIFORM SYSTEM OF ACCOUNTING. The office may prescribe a uniform system of keeping and rendering accounts of all railroad and water carrier business transacted in this state, and the time within which railroads and water carriers shall adopt such system; provided that all forms of accounts which may be prescribed by the office shall conform to any applicable requirement under 49 USC 11141 to 11164 or 49 CFR 1201 and, as nearly as practicable, to similar forms prescribed by federal authority.

(12) TIME FOR FILING WATER CARRIER RATE TARIFFS. The office shall fix the time for filing water carrier schedules relative to the transportation of passengers and property and of any service in connection therewith.

(13) SCHEDULE FORMS. The office may prescribe the forms for water carrier schedules.

(14) PASSES TO SHIPPERS. The office may prescribe regulations for free transportation of attendants upon shipments of livestock.

(15) ELEVATORS AND WAREHOUSES. The office may prescribe rules and regulations covering the charges and manner of conducting the business of public elevators and warehouses upon railroad ground.

(16) CAR SERVICE. The office may make reasonable regulations for furnishing cars to shippers, and for moving, loading and unloading cars and for weighing cars and freight, and to test railroad weights and scales used in weighing freight or cars.

(17) PRIVATE TRACKS. The office shall have control of private railroad tracks insofar as the same are used by common carriers for the transportation of freight, in all respects the same as though such tracks were part of a public railroad.

(18) SAFETY DEVICES. The office may make reasonable rules, regulations, specifications and standards for the installation, operation and maintenance of all safety devices and measures.

(19) RAILROAD AND WATER CARRIER STRUCTURES. The office may order the repair or reconstruction of any inadequate or unsafe railroad track or water carrier structure.

(25) DISTRIBUTION OF ORDERS. The office shall upon application furnish certified copies, under its seal, of any order made by it, which shall be prima facie evidence of the facts stated therein.

(28) TITLE. The office may sue and be sued in that name, and may confer with or participate in any proceedings before any regulatory agency of any other state or of the federal government.

(29) TRAIN PRIVILEGES. The employees authorized by the office to perform railroad inspection duties may, in the performance of such duties, ride in and upon any engine, car or train of any class, of any railroad, upon payment of the lawful passenger fare, but such railroad shall not thereby be deemed to become a common carrier of passengers other than on passenger cars.

(30) HEARINGS. (a) The office shall give testimony at the hearing under s. 350.138 (4) (b), or shall submit a written report for introduction into the hearing record, on the factors stated in s. 350.138 (4) (d) 1., 2., 3., and 4.

(b) The office shall give the department of natural resources the office's opinion on whether the snowmobile crossing should be closed or removed in testimony at the hearing under s. 350.1395 (2) (b) 2. or in a written report for introduction into the hearing record.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

195.04 Complaints, investigation, hearings, notice.

(1) Upon complaint of any person, including any state agency,

water carrier, or railroad, either relating to a railroad as provided under s. 192.324, 192.34, 195.20, 195.28 (1), 195.285 (1), 195.29 (1), (5), or (6), 195.31, or 195.32 or that any water carrier rate, fare, charge, or classification or any regulation or practice whatever affecting the transportation of persons or property, or any service in connection therewith, is in any respect unreasonable or unjustly discriminatory or that any service is inadequate, the office may investigate the complaint and shall set the complaint for hearing. No order may be entered by the office without a public hearing, except as otherwise provided in this chapter.

(2) The office shall, prior to any hearing, notify the water carrier or railroad complained of that a complaint has been made, and 20 days after such notice has been given the office may proceed to set a time and place for a hearing.

(3) The office shall give the water carrier or railroad and the complainant 20 days' notice of the hearing and the matters to be considered and determined. Both the water carrier or railroad and the complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses.

(4) The notice provided for in subs. (2) and (3) may be combined but if combined the notice shall not be less than 20 days.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

Cross-reference: See also ch. RR 1, Wis. adm. code.

195.041 Separate rate hearings; absence of direct damage. The office may, when complaint is made of more than one water carrier rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.042 Summary investigations. Whenever the office believes that any water carrier rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any water carrier or, if a matter arising under s. 192.324, 192.34, 195.20, 195.28 (1), 195.285 (1), 195.29 (1), (5), or (6), 195.31, or 195.32, to any railroad should for any reason be made, it may investigate the same with or without notice.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.043 Procedure after summary investigation.

(1) If, after summary investigation, the office becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters investigated, it shall set a time and place for a hearing. The office shall publish notice of any such investigation in its weekly calendar and any report and all matters considered by the office with respect thereto shall be available for public inspection upon request.

(2) Notice of the time and place for such hearing shall be given to the water carrier or railroad, and to such other interested persons as the office deems necessary, as provided in s. 195.04, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the office relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.044 Witness fees and mileage. (1) Each witness who appears before the office or its agent, by its order, shall receive for attendance the fees and mileage now provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the office. Said fees and mileage shall be charged to the appropriation for the office.

(2) No witness subpoenaed at the instance of parties other than the office is entitled to compensation from the state for attendance

or travel unless the office certifies that the witness' testimony was material to the matter investigated.

History: 1977 c. 29, 273; 1981 c. 347 ss. 71, 80 (1); 1993 a. 16, 123.

195.045 Depositions. The office or any party may in any hearing cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts. Any expense incurred or authorized by the office in taking such depositions shall be charged to the appropriation for the office.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

Cross-reference: See also s. RR 1.09, Wis. adm. code.

195.046 Record. A full and complete record shall be kept of all proceedings before the office or its hearing examiners.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

Cross-reference: See also s. RR 1.07, Wis. adm. code.

195.047 Transcripts as evidence. A transcribed copy of the evidence and proceedings or any specific part thereof, on any hearing under this chapter taken by the stenographer, being certified by such stenographer to be a true and correct transcript of all the testimony or of a particular witness, or of other specific part thereof, carefully compared with the original notes, and to be a correct statement of the evidence and proceedings had on such hearing so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall be furnished on demand free of cost to any party to such hearing.

History: 1977 c. 29.

195.048 Incriminating evidence. (1) No person may be excused from testifying or from producing books, accounts and papers in any proceeding based upon or growing out of any violation of this chapter on the ground or for the reason that the testimony or evidence may tend to incriminate or subject the person to penalty or forfeiture, but no person having so testified may be prosecuted or subjected to any penalty or forfeiture for or on account of any such testimony. No person so testifying may be exempted from prosecution or punishment for perjury in testifying.

(2) The immunity provided under sub. (1) is subject to the restrictions under s. 972.085.

History: 1977 c. 29, 273; 1989 a. 122.

195.05 Office; water carrier rates, regulations, service, procedure. (1) ORDERS FOR RATES AND SERVICE. Whenever the office shall find that any existing water carrier rate, fare, charge, or classification, or any joint rate, or any regulation or practice affecting the transportation of persons or property, or any service in connection therewith is unreasonable or unjustly discriminatory or that any service is inadequate, it shall determine and by order fix a reasonable rate, fare, charge, classification, joint rate, regulation, practice or service to be imposed, observed and followed in the future, in lieu of that found to be unreasonable or unjustly discriminatory or inadequate.

(2) TIME TO COMPLY WITH ORDERS. Where the order made relates to service, and the same cannot, in the judgment of the office, be complied with within 20 days, the office may prescribe such additional time as in its judgment is reasonably necessary to comply with the order and may on application and for good cause shown further extend the time.

(3) RATES NOT CHANGED BY WATER CARRIER. All water carriers to which the order applies shall make such changes in their schedule on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any water carrier in any such rates, fares or charges, or in any joint rates except as provided in s. 195.08.

(4) MODIFICATION OF ORDERS. The office may by order at any time, upon notice to the water carrier and after opportunity to be heard, rescind, alter or amend any order fixing any rate or rates,

fares, charges or classification, or any other order made by the office.

History: 1981 c. 347 s. 80 (1); 1985 a. 187; 1993 a. 16, 123; 2005 a. 179.

Res judicata is inapplicable to commission orders since no time limitation is imposed for petitioning to reopen and the commission can rescind the previous executory order at any time. Village of Prentice v. Wisconsin Transportation Commission, 123 Wis. 2d 113, 365 N.W.2d 899 (Ct. App. 1985).

195.055 Judicial review. All orders and determinations of the office are subject to judicial review under ch. 227.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

195.06 Office orders prima facie lawful. All orders, determinations and decisions made by the office shall be in force and effective 20 days after the same has been served as required by s. 227.48 unless the office shall specify a different date upon which the same shall be effective, and shall be prima facie lawful, and all regulations, practices and service prescribed by the office shall be in force and shall be prima facie lawful and reasonable, until finally found otherwise upon judicial review thereof instituted pursuant to ch. 227.

History: 1975 c. 414 s. 28; 1981 c. 347 s. 80 (1); 1985 a. 182 s. 57; 1993 a. 16, 123.

195.07 Law enforcement. (1) POWERS. The office shall inquire into the neglect or violation of the laws of this state by water carriers and railroads, or by the officers, agents or employees thereof, or by persons operating water carriers and railroads, and shall report violations to the attorney general.

(2) ATTORNEY GENERAL AND DISTRICT ATTORNEY TO PROSECUTE. Upon request of the office, the attorney general or the district attorney of the proper county shall aid in any investigation, hearing or trial had under, and shall institute and prosecute all necessary actions or proceedings for the enforcement of, laws relating to water carriers and railroads.

(3) ACTIONS, CHARACTER, VENUE. Any forfeiture, fine or other penalty provided in chs. 192 to 195 may be recovered as a forfeiture in a civil action brought in the name of the state in the circuit court of Dane County, or in the county that would be the proper place of trial under s. 801.50.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1985 a. 29; 1993 a. 16, 123; 2005 a. 179.

195.08 Water carrier rates, schedules, service.

(1g) DEFINITION. In this section "schedules" does not include "timetables".

(1r) SERVICE RATES TO BE ADEQUATE AND JUST. Every water carrier shall furnish reasonably adequate service and facilities, and the charges made for the transportation of passengers or property or for any service in connection therewith, or for the receiving, delivering, storing or handling of property shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

(2) SCHEDULES; PUBLICATION. Every water carrier shall print in plain type and file with the office schedules which shall be open to public inspection showing all rates, fares and charges for the transportation of passengers and property and any service in connection therewith which it has established and which are in force at the time between all points in this state upon its line or any line controlled or operated by it. The schedules shall plainly state the places upon its line or any line controlled or operated by it in this state between which passengers and property will be carried, and there shall be filed therewith the classification of freight in force.

(3) SCHEDULES, RULES AND REGULATIONS. Every water carrier shall publish with and as a part of such schedules all rules and regulations that in any manner affect the rates charged or to be charged for the transportation of passengers or property and its charges for delay in loading or unloading property or for rendering any other service in connection with the transportation of persons or property.

(4) SCHEDULES, COPIES IN TERMINALS. Two copies of said schedules for the use of the public shall be kept in every terminal

and office of such water carrier in such form and place as to be easily accessible to the public.

(7) **CHANGES IN SCHEDULE.** No change shall be made in any schedule, or in any classification, unless the change shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof, 30 days prior to the time the same are to take effect. Copies of all new schedules shall be filed as required in this section in every terminal and office of such water carrier at places to or from which the rates in such schedules apply, 30 days prior to the time the same are to take effect, unless the office shall prescribe a less time.

(9) **COMPLAINT AGAINST CHANGE IN SCHEDULES.** Whenever a complaint is filed with the office before any change in any water carrier schedule, or in any classification, rule, regulation or practice becomes effective to the effect that the change is unreasonable or unjustly discriminatory, the office shall give notice to the water carrier that a complaint has been made, may investigate the complaint and shall set the complaint for hearing. The office may, in its discretion, by order, stay the change pending the determination of the matters investigated at any time before the change shall take effect. If the change complained of is found unreasonable or unjustly discriminatory, the change shall not take effect and, if the change has become effective, the office shall order the discontinuance thereof. The office may fix and order substituted for any such change such rates, joint rates, fares, charges, classification, rule, regulation, practice or service as it shall have determined to be just and reasonable and which shall be charged, imposed or followed in the future, and shall make such order respecting such rule, regulation, practice or service as it shall determine to be reasonable and which shall be observed and followed in the future. Procedure and notice shall be as provided in s. 195.04 (2) to (4).

(11) **FREIGHT CLASSIFICATION.** There shall be but one classification of freight which shall be uniform on all water carriers.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1999 a. 83; 2005 a. 179.

195.09 Commodity rates. Concentration, commodity, transit and other special contract rates are permitted, but all such rates shall be open to all shippers for a like kind of traffic under similar circumstances and conditions, and shall be subject to the provisions of this chapter.

195.10 Emergency rates. The office shall have power, when deemed by it necessary to prevent injury to the business or interests of the people or water carriers of this state in consequence of any emergency to be judged of by the office, to temporarily alter, amend, or, with the consent of the water carrier company concerned, suspend any existing passenger rates, freight rates, schedules and orders on any water carrier in this state. Such rates so made by the office shall apply on one or more of the water carriers in this state or any portion thereof as may be directed by the office, and shall take effect at such time and remain in force for such length of time as may be prescribed by the office.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.11 Discriminations prohibited. (1) If any water carrier, or any agent or officer thereof, shall directly or indirectly, or by any device whatsoever, charge, demand, collect or receive a greater, less or different compensation for the transportation of persons or property or of any service in connection therewith than that prescribed in the tariffs then in force, or than it charges, demands, collects or receives from any other person, firm or corporation for a like and contemporaneous service, such water carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited.

(2) It shall be unlawful for any water carrier to demand, charge, collect or receive from any shipper a less compensation for the transportation of property or for any service rendered or to be rendered by said water carrier, in consideration of said shipper furnishing any part of the facilities incident thereto; but any water carrier may rent any facilities incident to transportation and pay

a reasonable rental therefor, but no payment shall be made by any carrier to an industry for performing any part of the service incident to the origination or determination of shipments which the carriers have assumed to perform under the provisions of the bill of lading.

History: 2005 a. 179.

195.12 Preference by water carriers prohibited. If any water carrier shall make or give any undue or unreasonable preference or advantage to any person, firm or corporation, or shall subject any person, firm or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such water carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited.

History: 2005 a. 179.

195.13 Rebates and concessions, unlawful to accept. It shall be unlawful for any person, firm or corporation knowingly to accept or receive any rebate, concession or discrimination in respect to water carrier transportation of property wholly within this state, or for any service in connection therewith, whereby any such property shall, by any device whatsoever, be transported at a less rate than that named in the tariffs in force, or whereby any service or advantage is received other than is therein specified. Any person, firm or corporation violating the provisions of this section shall forfeit not less than \$100 nor more than \$1,000 for each offense.

History: 1997 a. 254; 2005 a. 179.

195.14 Free transportation; reduced rates, passes, limitations. (1) This chapter does not prohibit the carriage, storage or handling by water carriers of freight free or at reduced rates for the United States, the state, or any municipality thereof, or for charitable purposes, or to and from fairs and expositions for exhibition thereat, or household goods the property of water carrier employees, or commodities shipped by employees for their exclusive use or consumption; or the issuance of mileage, commutation, party or excursion passengers' tickets; or the sale of such tickets as were usually and customarily sold at reduced rates prior to June 15, 1905; provided the same are issued and sold without discrimination to all persons applying therefor under like circumstances and conditions.

(2) (a) Water carriers may give transportation free or at reduced rates to any minister of the gospel, officers or agent of incorporated colleges, inmates of soldiers' homes, regular agents of charitable societies when traveling upon the business of the society only, destitute and homeless persons, water carrier officers, attorneys, physicians, directors, employees or members of their families, or to former water carrier employees or members of their families where the employees have become disabled in the water carrier service, or are unable from physical disqualification to continue in the service, or to members of families of deceased water carrier employees.

(b) Water carriers may exchange passes with officers, attorneys, physicians or employees of other water carriers and members of their families. No person holding any public office or position under the laws of this state shall be given transportation free or at reduced rates that are not open to the public, except that notaries public and regular employees of a water carrier or other public utility who are candidates for or hold public office for which the annual compensation is not more than \$300 to whom no passes or privileges are extended beyond those that are extended to other regular employees of such corporations may be granted free transportation or reduced rates for the transmission of any message or communication.

(3) Upon any shipment of livestock or other property of such nature as to require the care of an attendant, the water carrier may furnish to the shipper or persons designated by the shipper, free transportation for such attendant, including return passage to the point at which the shipment originated; provided, there shall be no discrimination in reference thereto.

(4) Except as provided in this section, no free transportation for intrastate traffic shall be given by any water carrier.

History: 1993 a. 213, 482; 1997 a. 254; 1999 a. 32; 2005 a. 179.

195.15 Transportation contracts, filed. Every water carrier shall, when required and within the time fixed by the office, deliver to the office for its use copies of all contracts which relate to the transportation of persons or property, or any service in connection therewith, made or entered into by it with any other water carrier or any shipper or other person doing business with it.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.16 Pass lists. Every water carrier shall keep and for 2 years preserve a record of every ticket, pass or mileage book issued to a resident of this state free or for a money consideration less than that charged the general public. Such record shall consist of the name of the recipient, the amount received, and the reason for issuance, and shall be open to inspection by the office upon reasonable notice during such period of 2 years.

History: 1977 c. 29 s. 1654 (9) (e); 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.19 Relocation of facilities. (2) WATER CARRIER FREIGHT. All water carriers shall keep and maintain adequate and suitable buildings and facilities for the receiving, handling and delivering of freight transported or to be transported by such water carriers.

(4) RELOCATION OF RAILROAD FACILITIES. Any city, village or town may cooperate with a railroad in grade crossing elimination or relocation, elimination or relocation of switchyards, roundhouses or terminals and may appropriate or borrow money therefor.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123, 246; 1995 a. 225; 2005 a. 179.

195.20 Joint use of railroad property. Whenever, upon complaint and after hearing had, the office finds that public convenience and necessity require the use by one or more railroads of the tracks, wires, poles, rights-of-way, switches, bridges or other property belonging to another railroad over or on any street, railroad, railway, right-of-way, bridge or viaduct, upon or over which said railroads have a right to operate, and that such use will not prevent the owners or other users thereof from performing their public duties, nor result in irreparable injury to such owners or other users thereof, the office may, by order, direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for such joint use.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

195.21 Warehouses. Any person proposing to erect or maintain a public elevator or public warehouse for the purchase, sale, storage, receiving or shipping of grain, or other personal property, to be received from or transported upon any water carrier, shall be furnished by such water carrier at a reasonable rental, a site upon its property or terminal; and any private elevator or warehouse situated upon such grounds may be converted into a public elevator or warehouse at the option of the owner, upon notice in writing to the water carrier and thereby be permitted to remain thereon under the same conditions as provided herein for a public elevator or warehouse; and the office shall, upon application by such owner, if the public interest so requires, by order, direct the water carrier to furnish such site and the office shall make reasonable regulations therefor and in case of disagreement, the office shall determine the rental therefor. Elevators and warehouses erected or maintained under the foregoing provisions of this section shall be subject to such rules and regulations as to charges and the manner of conducting business as the office shall prescribe.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123, 490; 2005 a. 179.

195.25 Medical supplies on trains. (1) No railroad company shall operate any train that is not equipped with at least one medical emergency case with suitable equipment which shall be at all times kept in a definitely fixed, convenient and accessible place on such trains.

(2) Any railroad company violating this section shall forfeit not less than \$25 nor more than \$100. Any person who shall remove or destroy or cause the removal or destruction of the medical supplies required under sub. (1) after the railroad company has supplied them shall be subject to the same penalty.

History: 1985 a. 187; 1997 a. 254.

195.26 Safety devices; block system. Every railroad and water carrier shall adopt reasonably adequate safety measures and install, operate and maintain reasonably adequate safety devices for the protection of life and property to the extent consistent with federal law. If after investigation the office shall determine that public safety requires it, the office may, if permitted under federal law, order a railroad to install, operate and maintain a block system or order a railroad or water carrier to install, operate, and maintain any other safety device or measure as may be necessary to render the operation of the railroad or water carrier reasonably safe.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.27 Safe tracks and bridges. Every railroad shall construct and maintain its tracks, bridges and line structures in a reasonably adequate and safe manner consistent with federal law.

History: 1977 c. 418; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.28 Protecting grade crossings. (1) PETITION; HEARING; ORDER. Upon petition of the department, city council, village board, town board, superintendent of highways or by 5 or more electors in any town, village or city, or of any railroad corporation or railroad historical society, to determine whether a public highway and railroad grade crossing protects and promotes public safety, the office may investigate and issue an appropriate order without a public hearing. If the petitioner, railroad, railroad historical society or any interested party objects to the order and requests a hearing within 20 days after the date that the order is issued, the office shall proceed under s. 195.04. Notice of an investigation or hearing shall be served upon the department, which shall be an interested party, and any recommendation it may file with the office at or prior to a hearing, if there is one, regarding crossing protection shall be considered as evidence in the proceeding. The office shall determine whether the existing warning devices at such crossing are adequate to protect and promote public safety. If the office determines, either without or after a hearing, that protection is not adequate, it may order the railroad company or railroad historical society to keep a flagman at the crossing or to install automatic signals or other suitable safety device at specific locations at such crossing. The office may order the relocation of existing signals and devices to improve protection at a crossing. Any crossing protection installed or maintained as approved by the office, whether by order or otherwise, shall be deemed adequate and appropriate protection for the crossing.

(1m) ARTERIAL STOP SIGNS. In any proceeding under sub. (1), the office may by order require that the state or municipality install at any crossing involved in such proceeding an official stop sign.

(2) INSTALLATION COSTS. The cost of any signal or other crossing protection device which is ordered installed under sub. (1) and the cost of installing any such device shall be paid by the department from the appropriations under s. 20.395 (2) (gj), (gr) and (gx).

(3) MAINTENANCE COSTS. Except as otherwise provided in this subsection, the cost of maintaining crossing protection devices ordered under sub. (1) shall be the responsibility of the railroad or railroad historical society. Any railroad company or railroad historical society that incurs expenses for maintenance of signals or other safety devices may file a claim for reimbursement with the department regardless of the date of installation of the signals or devices. At the close of each fiscal year the department shall reimburse claimants under this subsection for 50 percent of the costs, as determined by the office, incurred for maintenance of railroad crossing protection devices from the appropriations under s. 20.395 (2) (gj) and (gq). If the amount in the appropriations under s. 20.395 (2) (gj) and (gq) is not adequate to fund maintenance

reimbursement under this subsection, the amount shall be pro-rated in the manner determined by the office.

(4) PREVIOUS OFFICE ORDERS. Subsection (3) applies to maintenance costs for all crossing protection devices regardless of any prior order of the office apportioning maintenance costs.

History: 1973 c. 155; 1973 c. 243 s. 82; 1975 c. 135; 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1979 c. 34; 1981 c. 20 ss. 1504, 2202 (51) (c); 1981 c. 347 s. 80 (1); 1985 a. 29 s. 3202 (51); 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16, 123; 1997 a. 135; 2005 a. 179, s. 24.

Cross-reference: See also ss. RR 2.07, 2.08, 2.09, 2.10, and 2.11, Wis. adm. code.

195.285 Exempt railroad crossings. (1) Upon the petition of a railroad corporation, the department, or the governing body of any city, village, town or county asserting that the stopping of vehicles under s. 346.45 at a railroad crossing is hazardous to human life, the office shall hold a hearing on the matter as provided under s. 195.04. Notice of petition shall be served upon the department, which shall be an interested party, and any recommendations it may file with the office regarding the hazardous effect of vehicles stopping at such crossings shall be considered as evidence in the proceedings. Upon the recommendation of the department and concurrence by the office, the petition may be dismissed without holding a hearing. If, upon the public hearing, the office determines that it would be in the public interest to exempt vehicles specified in s. 346.45 from stopping at such grade crossing, it may order the public body having jurisdiction over the highway to erect signs, signals, markings or other devices exempting such vehicles from stopping at the crossing.

(2) Signs placed upon the order of the office under this section shall exempt vehicles from stopping as required under s. 346.45, unless a train, an engine, or railroad track equipment is occupying or approaching the crossing.

(3) The department shall establish standards for the type of signs, signals, markings or other devices for exempting vehicles from stopping as required under s. 346.45 and their location in relation to the highway and railroad track. The office may upon petition or its own motion, with or without a hearing, order the removal of a sign exempting vehicles from stopping at a crossing.

History: 1975 c. 63; 1977 c. 29 ss. 1654 (8) (a), (9) (f), 1656 (43); 1981 c. 347 s. 80 (1), (2); 1985 a. 29; 1993 a. 16, 123; 2011 a. 101.

195.286 Highway crossings, advance warning signs.

(1) RAILROADS TO FURNISH; PLACEMENT. Each railroad company shall furnish to each county in which it operates, upon request of the county highway commissioner, a sufficient quantity of advance warning signs to enable the county and town to comply with this section. The county highway commissioner on roads maintained by the county and the town board on roads maintained by the town shall immediately install and thereafter maintain such signs in good condition, near each grade crossing (other than state trunk highway crossings and crossings within the limits of cities and incorporated villages). The town board shall requisition its needs for advance warning signs from the county highway commissioner. The cost of such installation and maintenance shall be paid out of moneys received by the county or town, as the case may be, for highway maintenance. The department shall provide, install and maintain advance warning signs at all railroad grade crossings on the state trunk highway system outside of cities and incorporated villages. The department, upon petition and upon investigation and finding that such signs are impracticable or unnecessary on any highway, may release the town, county or state from the provisions of this section as to such highway.

(2) SIGNS DESCRIBED. Such signs shall be round and of a size, color and message as specified by the department and approved by the office. Any change in these signs shall not be retroactive.

(3) LOCATION. Such signs shall be placed in conspicuous locations beside every highway which crosses a railroad at grade (outside of cities and incorporated villages) as near as practicable to the traveled portion of the highway on each side of such crossing, at a location and in a manner to be prescribed by the department, the county highway commissioner or the town board, or, if the crossing is so near city or village limits that the sign will be within

such limits, by the city council or the village board, as the case may be.

(4) DUPLICATES. In case any sign installed as provided in this section, other than that on the state trunk highway system, is destroyed or becomes illegible by any cause whatsoever, the railroad company, upon request from the county highway commissioner, shall forthwith deliver another such sign at the crossing near which it is to be installed; neither the installation of said signs nor the failure to install or maintain the same shall render the town, county or state liable for any accident that may occur by reason of such installation or neglect.

(5) OTHER SIGNS PROHIBITED. No other sign of the general size or appearance of the signs provided for in this section shall be placed or permitted upon any highway, nor any sign between such advance signs except signs or signals required by law or permitted by the office for protection at railway crossings.

(6) PENALTIES RELATING TO INTERFERENCE WITH SIGNS. Any person who removes, throws down, injures or defaces any sign required by this section shall, upon conviction, be fined not more than \$25.

(7) PENALTIES GENERALLY. Any person or corporation upon conviction for the violation of any of the provisions of this section, except sub. (6), shall forfeit not less than \$100 nor more than \$200 for each violation.

(8) PROSECUTIONS. The district attorney shall prosecute any person violating this section, or begin and maintain any civil action necessary for its enforcement upon the demand of any county highway commissioner, the department, or the office.

History: 1977 c. 29 ss. 1301, 1654 (8) (b), (9) (e); 1977 c. 272; Stats. 1977 s. 195.286; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 95, 179.

195.29 Railroad highway crossings. (1) PETITION, HEARING, ORDER.

Upon petition by the common council or board of any city, village, town or county within or bordering upon which a highway or street crosses a railroad, or a highway or street is proposed to be laid out across a railroad, or a public highway bridge across a railroad is required to connect existing streets or highways, or upon petition by any railroad whose track crosses or is about to cross, or is crossed or about to be crossed by a street or highway, or upon petition by the department, in cases where provision has been made for the improvement of the highway adjacent to such crossing under any state aid or federal aid law, that public safety requires an alteration in such crossing, its approaches, the method of crossing, the location of the highway or crossing, or the closing of the crossing, and the substitution of another therefor at grade or not at grade, or the removal of obstructions to the view at such crossing, the relocation of the highway, or requires the determination of the manner of making such new crossing, or of making the proposed improvement or promoting the public safety or public convenience through any other reasonable method, and praying that the same may be ordered, the office shall give notice to the parties in interest and proceed to investigate the same and to order a hearing thereon in the manner provided by s. 195.04. The office shall determine what, if anything, shall be done to promote the public safety and the means by which it shall be accomplished, whether by the relocation of the highway, the alteration in such crossing, approaches, mode of crossing, location of highway crossing, closing of highway crossing, with or without the substitution of another therefor, the construction of a public highway bridge, the removal of obstructions to sight at crossing, or by the use of other reasonable methods, and by whom the same shall be made, and in case of new crossings the advisability of allowing such crossings to be established and manner of making them.

(2) APPORTIONMENT OF EXPENSE. The office shall fix the proportion of the cost and expense of alterations, removals and new crossings, or any other work ordered, including the damages to any person whose land is taken, and the special damages which the owner of any land adjoining the public street or highway shall sustain by reason of a change in the grade of such street or highway,

or by reason of the removal of obstructions to view at such crossings, to be paid or borne by the railroad companies and the municipalities in interest. In fixing such proportion, the office may order such cost and expense so apportioned to be paid by the parties against which the apportionment shall be made.

(3) **RESTORATION OF SPUR TRACKS.** Whenever the office shall have ordered a separation of the grade of a railway from the grade of a street or highway, it may, if safe and practicable and if a necessity exists therefor, order the alteration, restoration and connection of any track serving an industry. Demand for such restoration shall be in writing and filed with the office within 90 days after the date of the order for the separation of grades, and any such track for which no such demand shall have been made shall be deemed abandoned. If the office shall order the alteration, restoration and connection of any such track, it shall by its order apportion the cost thereof between the owner of the industry served and the railway company, in such proportion as to the office may seem just and equitable; and the office shall in its order prescribe the terms and conditions for securing the payment of such cost.

(4) **GRADE SEPARATION IN MILWAUKEE COUNTY.** The office may upon petition of any town, city or village, or upon its own motion, when the interests of the public demand it and it is found practicable so to do, establish the grade of the tracks of any railroad, or of all the railroads throughout any county having a population of 500,000 or more, or any part thereof, and the grades of the streets or highways, or any of them, where they cross such railroad track or tracks, in anticipation of the future separation of grades of the railroad tracks from the grades of such streets or highways. The office, before making any such order, shall mail notice to the railroad company or companies affected, the owners or occupants of any building abutting on that part of the railroad the grade of which is to be established, all 1st class cities in the county, and if the grades to be established are outside the 1st class city, the towns, cities or villages in which such grades are to be established, of the filing of such petition or that the office contemplates establishing such grades, and fixing a time at which the 1st class cities and such other towns, cities or villages and the railroad company or companies affected thereby and any other person or corporation interested therein may be heard. The grades so established under this subsection shall be described by reference to a base or datum line to be established by the office, from which all elevations and the height of all grades shall be measured, and the grades so established shall be such that when brought to the established grade the railroad tracks will cross the streets and highways above or below the same. Such order shall not necessarily require a present change in grade but the office may at any time order the railroad track or tracks and the street and highways brought to the grade established or any street or highways closed by the order, in accordance with sub. (1), and may, at the time of making the order, apportion the cost of separating the grades as provided in sub. (2).

(5) **ELIMINATION OF GRADE CROSSINGS, COSTS.** Upon petition of the department, or of the common council or board of any city, village, town, or county, alleging that one or more of them have undertaken or propose to undertake to relocate or improve an existing highway or to construct a new highway in such manner as to eliminate a highway grade crossing with any railroad or so as to permanently divert a material portion of the highway traffic from a highway grade crossing with any railroad, the office shall issue notice of investigation and hearing, as provided in s. 195.04. If upon such hearing the office finds that the public safety will be promoted by the highway relocation, improvement, or new construction, the office shall order the old crossings closed and new crossings opened as are deemed necessary for public safety. The order shall require the railroad company or companies to pay to the interested municipality or municipalities such sum as the office finds to be an equitable portion of the cost of the highway relocation, improvement, or new construction, if the work is performed by the municipalities; or to the secretary of administration if the work is performed by the state; or to the proper county treasurer if the work is performed by the county. The sum shall be

added to the joint fund available for the improvement and may be expended in like manner as the other portions of the fund.

(6) **VIEW AT CROSSINGS; TREES AND BRUSH NEAR CROSSINGS; FORFEITURE.** Every railroad shall keep its right-of-way clear of brush or trees for a distance of not less than 330 feet in each direction from the center of its intersection at grade with any public highway to provide an adequate view of approaching trains or railroad track equipment from the highway. Every municipality shall keep the public highways within its jurisdiction clear of brush and shall adequately trim all trees within 330 feet of the center of any railroad highway grade crossing. Every person or corporation owning or occupying any land adjacent to any railroad highway grade crossing shall keep all brush cut and adequately trim all trees on the land within the triangles bounded on 2 sides by the railway and the highway, and on the 3rd side by a line connecting points on the center lines of the railway and the highway, 330 feet from the intersection of the center lines. The office, upon its own motion, or upon any complaint to the effect that any work required by this subsection has not been performed, after due notice and hearing, may order the corporation, municipality or person at fault to perform the work; provided, however, that if the physical conditions at any crossing are such that the performance of the required work will not materially improve the view for highway traffic, or, if unreasonable loss would be caused thereby, the office may excuse the party in interest from performing the same. The office may also order the cutting of brush and the trimming of trees at private farm crossings as may be necessary and reasonable. If any person shall violate any provision of this section, or shall fail, neglect or refuse to obey any order made by the office under this section, or any judgment or decree made by any court upon such an order, for every such violation, failure or refusal such person shall forfeit not less than \$25 nor more than \$150.

(7) **STRUCTURE REQUIREMENTS.** Whenever the office shall order the construction or reconstruction of a crossing not at grade, it may direct that the structure required shall be of such character and constructed of such materials as it shall deem appropriate to the situation and necessary for the public interest.

(8) **ACQUISITION OF LANDS.** Any lands needed to carry out the provisions of this section may be acquired.

History: 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2003 a. 33; 2011 a. 101.

A landowner incurs no liability to highway users who are injured as result of the landowner's violation of sub. (6). *Wells v. Chicago & North Western Transportation Co.* 98 Wis. 2d 328, 296 N.W.2d 559 (1980).

195.30 Railroad crossings; grade separation, safety devices.

(1) Upon a petition by the common council of any city, or the board of any village, town or county within which a railroad crosses another railroad at grade, or by any such railroad, that public safety requires an alteration in the crossing or the installation of protective appliances, the office shall give notice to the parties in interest, and proceed to investigate the same and may order a hearing on the matter. The office shall determine what alteration in such crossing, if any, shall be made, and by whom made and maintained, or what protective appliances shall be installed, operated and maintained at the crossing and by whom installed, operated and maintained. The office shall fix the proportion of the cost and expense of such change in grade and maintenance of the crossing or of the installation, operation and maintenance of the safety appliance which shall be paid by the railroad companies, respectively.

(2) The provisions of this section shall apply to drawbridges, junctions and other fouling points on railroads.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

195.307 Snowmobile rail crossings. Sections 195.28, 195.285, 195.286, and 195.29 do not apply to snowmobile rail crossings for which a permit is issued under s. 350.138.

History: 2001 a. 14.

195.31 Bridges made safe. Whenever a complaint is lodged with the office by the common council of any city, the vil-

lage board of any village, a member of a town board, or a supervisor of highways, or by 5 or more electors and taxpayers in any town, or 5 or more electors of the county in which such bridge is located, and who are users of such bridge or railway, to the effect that a bridge erected over a stream intersecting a public highway or highways upon which a railway is constructed and operated, is unsafe and dangerous to travelers over such highway or highways or bridge or railroad, and that public safety requires the alteration, the repair or reconstruction of such bridge, or the substitution of another bridge therefor, it shall be the duty of the office to give notice to the party or parties in interest, other than the petitioners, of the filing of such complaint, and to furnish a copy of the complaint to the party or parties in interest other than the petitioners, and to order a hearing thereon, in the manner provided for hearings in ss. 195.04 to 195.043. The office may proceed in a similar manner in the absence of a petition when, in the opinion of the office, public safety requires the alteration, repair or reconstruction of a bridge or the substitution of another bridge for the bridge in question. After the hearing, the office shall determine what alteration or repair or reconstruction of such bridge, and the approaches thereto, shall be made, or if it shall determine that public safety requires the substitution of a new bridge, it shall determine the character, manner of construction and location of such bridge and the approaches thereto. The office shall fix the proportion of the cost and expense of such alteration, repair, reconstruction or substitution of a new bridge, including the damage to any person whose land is taken, and the special damage which the owner of any land adjoining the approaches to said bridge shall sustain by reason of the alteration, repair, reconstruction or substitution of a new bridge, to be paid by the railroad company and the city, village or town in interest.

History: 1977 c. 29 ss. 1654 (9) (e), 1656 (43); 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

195.32 Safety gates on drawbridges. Whenever a complaint is filed with the office to the effect that any drawbridge is not equipped with gates or other safety devices, the office may notify the proper party or parties in interest of the complaint, and may proceed to investigate the complaint and to hold a hearing on the matter in the manner provided for hearings in ss. 195.04 to 195.043. If after the investigation the office determines that public safety requires the erection and maintenance of gates or other safety devices at the points mentioned in the complaint, it may order the county, city, village, town, corporation or person whose duty it is to maintain such bridge to erect and maintain at such points such gates or other safety devices as the office prescribes. The office may conduct the investigations, hold the hearings and make the orders provided for in this section upon its own motion in the same manner and with the same effect as though a complaint were filed.

History: 1977 c. 29 ss. 1654 (9) (e), 1656 (43); 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

195.34 Reports of accidents, investigation. Every water carrier shall report to the office all accidents resulting in injury to persons arising from its operation. The office may issue rules concerning the reporting of accidents by water carriers and may also, if public interests require, cause an investigation of any accident. Every railroad shall submit to the office a copy of any accident or injury report provided by the railroad to the applicable federal authority for all collisions, derailments or other accidents resulting in injury to persons, equipment, or roadway arising from its operation. The office may issue rules concerning the submission of copies of federal reports under this section and may also, to the extent permitted by federal law, participate in any accident investigation.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

Cross-reference: See also ss. RR 2.12 and 2.13, Wis. adm. code.

195.35 Treble damages. (1) If any director, officer, employee or agent of a railroad or water carrier, in the course of the discharge of his or her duties, willfully, wantonly or recklessly

causes to be done or permits to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or willfully, wantonly or recklessly fails to do any act, matter or thing required to be done by this chapter, the railroad or water carrier shall be liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation. No recovery as in this section provided shall affect a recovery by the state of the penalty prescribed for such violation.

(2) The burden of proof in an action under sub. (1) rests with the person injured to prove the case by clear and convincing evidence.

History: 1979 c. 89; 1991 a. 39; 2005 a. 179.

A treble damage claim is no longer a separate cause of action because gross negligence is to be compared like all other negligence. *Kania v. Chicago & North Western Railway Co.* 57 Wis. 2d 761, 204 N.W.2d 681 (1973).

195.36 General penalty upon railroads and water carriers. If any railroad or water carrier shall violate any provision of this chapter, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, for which a penalty has not been provided, or shall fail, neglect or refuse to obey any lawful requirement or order made by the office, or any judgment or decree made by any court upon its application, for every such violation, failure or refusal in respect to any matter prescribed by this chapter such railroad or water carrier shall forfeit not less than \$100 nor more than \$10,000. The act, omission or failure of any officer, agent or other person employed by any railroad or water carrier, acting within the scope of his or her employment, shall be deemed to be the act, omission or failure of such railroad or water carrier.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.37 Water carrier freight charges; collection, refund. (1) COMPLAINTS, INVESTIGATIONS, HEARINGS, FINDINGS, REFUND. The office may investigate the complaint of any person aggrieved that the charge exacted by a water carrier for the transportation of property between points in this state, or for any service in connection with transportation of property, or that the charge exacted by a water carrier for the storage of such property, or that any charge exacted by a water carrier is erroneous, illegal, unusual or exorbitant and shall set the complaint for hearing as provided in s. 195.04 (2) to (4). If the office finds that the rate or charge exacted by a water carrier is erroneous, illegal, unusual or exorbitant, it shall find what would have been a reasonable rate or charge for such service. If the rate or charge so found is less than the charge exacted, the carrier shall refund the excess.

(2) ACTIONS; FINDINGS AS EVIDENCE, DEFENSES. In an action to recover the amount of such excess charge, the findings of the office shall be prima facie evidence of the truth of the facts found by it, and no carrier shall be permitted to avail itself of the defense that the shipment involved was in fact made on the published tariff rate in force at the time such shipment was made, but no carrier making a refund upon the order of the office or the judgment of a court shall be liable for any penalty or subject to any prosecution on account of making such refund.

(3) LIMITATION FOR FILING CLAIM. All complaints provided for in sub. (1), except those for straight overcharges, shall be filed with the office within 2 years after delivery of the shipment of property at destination, subject to sub. (6).

(4) STRAIGHT OVERCHARGES, LIMITATION OF ACTIONS, EXCEPTION. (a) In this subsection, "straight overcharge" means a charge in excess of those applicable under the lawful tariffs on file with the office.

(b) For recovery of a straight overcharge, neither this section nor s. 195.38 shall be considered exclusive remedies. Complaints for the recovery of a straight overcharge may be filed or actions begun within 3 years from the delivery of the shipment of property at destination, and not after, except that if a claim for the overcharge has been presented in writing to the carrier within the 3-year period, the period shall be extended to include 6 months

from the time that notice in writing is given by the carrier to the claimant of disallowance of the claim or any part of the claim.

(5) **ACTIONS BY CARRIERS, LIMITATION.** Actions by carriers for the recovery of charges for the transportation of property between points in Wisconsin, or for any service in connection therewith, or for the storage of such property, or for any car service or demurrage charge, or any part thereof, shall be begun within 3 years after the delivery of the shipment of property at destination with respect to which the charge is made and not after.

(6) **LIMITATION ACTION, EXTENDED BY CARRIER.** If, on or before the expiration of the 2–year period of limitation under sub. (3) or of the 3–year period of limitation under sub. (4), a carrier commences an action for the recovery of charges in respect to the same transportation service, or without bringing action collects charges in respect of that service, the periods of limitation under subs. (3) and (4) shall be extended to include 90 days from the time that the carrier’s action is commenced or the charges are collected by the carrier.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 179.

195.38 Water carrier freight bills; examination; refunds. Within 3 years after the delivery of any shipment of property at destination by a water carrier, any person, firm or corporation may submit to the office, by mail or in person, any water carrier expense bill or receipt showing charges paid for transportation of such property by freight for the purpose of having the expense bill or receipt examined with respect to the correctness of weights, rates and charges indicated thereon. Upon receipt of any such expense bill or receipt, the office may make such examination as is necessary, and if it is found that any such weights, rates or charges are incorrect, the office shall order the water carrier in error to refund to the person, firm or corporation which submitted such expense bills or receipts, any over or excessive charges paid by such person, firm or corporation.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.45 Common carriers of passengers or property by water; certificate required. (1) No person shall operate as a common carrier of passengers or property by water except in accordance with the terms and conditions of a certificate of public convenience and necessity issued by the office. The office shall issue any certificate upon a finding that the service proposed to be performed is in the public interest and required by public convenience and necessity.

(2) Application for the certificate shall be made on forms furnished by the office and shall contain such information as the office requires.

(3) Every application for a certificate under this section shall be accompanied by a filing fee of \$40.

(4) The office may promulgate rules for the operation of this section.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

Cross-reference: See also ch. RR 4, Wis. adm. code.

195.50 Information, papers and accounting. (1) Any officer, agent or employee of any railroad or water carrier who fails to fill out and return any forms required by this chapter, or fails to answer any question therein, or knowingly gives a false answer to any such question, or evades the answer to any such question where the fact inquired of is within his or her knowledge, or who, upon proper demand, fails to exhibit to the office or department or any person authorized to examine the same, any book, paper, account, record or memoranda of such railroad or water carrier which is in the possession or under control of the officer, agent or employee, or who fails to properly use and keep the system of accounting prescribed by the office, or who refuses to do any act or thing in connection with such system of accounting when so directed by the office or its authorized representatives, shall forfeit not less than \$100 nor more than \$1,000 for each offense.

(2) A forfeiture of not less than \$500 nor more than \$1,000 shall be recovered from the railroad or water carrier for each such offense when such officer, agent or employee acted in obedience to the direction, instruction or request of such railroad or water carrier or any general officer thereof.

History: 1977 c. 29, 273; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

195.60 Payment of office expenses by railroads and water carriers. (1) Whenever the office in a proceeding upon its own motion, on complaint, or upon an application to it deems it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make appraisals of the property of any railroad or water carrier or to render any engineering or accounting services to any railroad or water carrier, the railroad or water carrier shall pay the expenses attributable to such investigation, appraisal or service. The office shall ascertain such expenses, and shall render a bill therefor, by mail, to the railroad or water carrier, either at the conclusion of the investigation, appraisal or services, or during its progress. The bill shall constitute notice of assessment and demand of payment thereof. The railroad or water carrier shall, within 30 days after the mailing thereof, pay to the office the amount of the special expense for which it is billed. Ninety percent of the payment shall be credited to the appropriation account under s. 20.155 (2) (g). The total amount, in any one calendar year, for which any railroad or water carrier becomes liable, by reason of costs incurred by the office within such calendar year, shall not exceed four-fifths of one percent of its gross operating revenues derived from intrastate operations in the last preceding calendar year. Where, under this subsection, costs are incurred within any calendar year, which are in excess of four-fifths of one percent of such gross operating revenues, the excess costs shall not be chargeable as part of the remainder under sub. (2) but shall be paid out of the general appropriation to the office. Nothing in this subsection shall prevent the office from rendering bills in one calendar year for costs incurred within a previous year. For the purpose of calculating the costs of investigations, appraisals and other services under this subsection, 90 percent of the costs determined shall be costs of the office and 10 percent of the costs determined shall be costs of state government operations.

(2) The office shall annually, within 90 days after the close of each fiscal year, ascertain the total of its expenditures during such year which are reasonably attributable to the performance of its duties relating to railroads and water carriers. For purposes of such calculation, 90 percent of the expenditures so determined shall be expenditures of the office and 10 percent of the expenditures so determined shall be expenditures for state government operations. The office shall deduct therefrom all amounts chargeable to railroads and water carriers under sub. (1) and s. 201.10 (3). A sum equal to the remainder plus 10 percent of the remainder shall be assessed by the office to the several railroads and water carriers in proportion to their respective gross operating revenues during the last calendar year, derived from intrastate operations. Such assessment shall be paid within 30 days after the bill has been mailed to the several railroads and water carriers, which bill shall constitute notice of assessment and demand of payment thereof. The total amount which may be assessed to the railroads and water carriers under authority of this subsection shall not exceed 1.85 percent of the total gross operating revenues of such railroads and water carriers, during such calendar year, derived from intrastate operations. Ninety percent of the payment shall be credited to the appropriation account under s. 20.155 (2) (g). The railroads and water carriers shall furnish such financial information as the office requires for purposes of this section.

(3) If any railroad or water carrier against which a bill has been rendered under sub. (1) or (2) within 30 days after the rendering of such bill neglects or refuses to pay the same or fails to file objections to the bill with the office, the office shall transmit to the secretary of administration a certified copy of the bill, together with notice of neglect or refusal to pay the bill, and on the same day the office shall mail to the railroad or water carrier against which the

bill has been rendered a copy of the notice which it has transmitted to the secretary of administration. Within 10 days after the receipt of such notice and certified copy of such bill, the secretary of administration shall levy the amount stated on such bill to be due, with interest, by distress and sale of any goods and chattels, including stocks, securities, bank accounts, evidences of debt, and accounts receivable belonging to such delinquent railroad or water carrier. Such levy by distress and sale shall be governed by the provisions of s. 74.10, 1985 stats., except that it shall be made by the secretary of administration and that said goods and chattels anywhere within the state may be levied upon.

(4) (a) Within 30 days after the date of the mailing of any bill as provided by subs. (1) and (2), the railroad or water carrier against which such bill has been rendered may file with the office objections setting out in detail the grounds upon which the objector regards the bill to be excessive, erroneous, unlawful or invalid. The office, after notice to the objector, shall hold a hearing upon such objections, not less than 5 nor more than 10 days after such notice. If after such hearing the office finds any part of the bill to be excessive, erroneous, unlawful or invalid it shall record its findings upon its minutes and transmit to the objector an amended bill, in accordance with such findings. The amended bill shall have in all ways the same force and effect under this section as an original bill rendered under subs. (1) and (2).

(b) If after the hearing the office finds the entire bill unlawful or invalid, it shall notify the objector of such determination, in which case the original bill shall be deemed void.

(c) If after the hearing the office finds that the bill as rendered is neither excessive, erroneous, unlawful or invalid, either in whole or in part, it shall record such findings upon its minutes, and transmit to the objector notice of such finding.

(d) If any bill against which objections have been filed is not paid within 10 days after notice of a finding that such objections have been overruled and disallowed by the office has been mailed to the objector, the office shall give notice of such delinquency to the secretary of administration and to the objector, in the manner provided in sub. (3). The secretary of administration shall then proceed to collect the amount of the bill as provided in sub. (3). If an amended bill is not paid within 10 days after a copy thereof

is mailed to the objector by registered mail, the office shall notify the secretary of administration and the objector as in the case of delinquency in the payment of an original bill. The secretary of administration shall then proceed to collect the amount of the bill as provided in the case of an original bill.

(5) No suit or proceeding shall be maintained in any court for the purpose of restraining or in any way delaying the collection or payment of any bill rendered under subs. (1) and (2). Every railroad or water carrier against which a bill is rendered shall pay the amount thereof, and after such payment may in the manner herein provided, at any time within 2 years from the date the payment was made, sue the state in an action at law to recover the amount paid with legal interest thereon from the date of payment, upon the ground that the assessment was excessive, erroneous, unlawful, or invalid in whole or in part. If it is finally determined in such action that any part of the bill for which payment was made was excessive, erroneous, unlawful, or invalid, the secretary of administration shall make a refund to the claimant as directed by the court, which shall be charged to the appropriations to the office.

(6) No action for recovery of any amount paid under this section shall be maintained in any court unless objections have been filed with the office as provided in this section. In any action for recovery of any payments made under this section the claimant shall be entitled to raise every relevant issue of law, but the office's findings of fact made pursuant to this section shall be prima facie evidence of the facts therein stated.

(7) The following shall be deemed to be findings of fact of the office, within the meaning of this section:

(a) Determinations of fact expressed in bills rendered under this section; and

(b) Determinations of fact set out in those minutes of the office which record the action of the office in passing upon said bills, and in passing upon objections thereto.

(8) The procedure by this section providing for determining the lawfulness of bills and the recovery back of payments made pursuant to such bills shall be exclusive of all other remedies and procedures.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1981 c. 391; 1987 a. 378; 1993 a. 16, 123, 491; 1995 a. 27; 1997 a. 140; 1999 a. 150; 2001 a. 16; 2003 a. 33; 2005 a. 179.
Cross-reference: See also ss. RR 2.01, 2.02, 2.03, and 2.04, Wis. adm. code.