

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION**

PROPOSED ORDER CREATING PERMANENT RULE

The Wisconsin Department of Transportation proposes an order to create ss. Trans 58.01, 58.02, 58.03, 58.04, 58.05, 58.06, 58.07 and 58.08.

INTRODUCTION

The Statement of Scope for this Permanent Rule, SS 013-14, was approved by the Governor on January 24, 2014, published in Wisconsin Administrative Register No. 698B on February 28, 2014, and approved by the Secretary of the State of Wisconsin Department of Transportation Mark Gottlieb, P.E., as required by s. 227.135 (2), Stats., on December 5, 2013.

The State of Wisconsin Department of Transportation proposes an order to create permanent rule Wisconsin Administrative Code ch. Trans 58 Relating to Surveying Reference Station System user fee and affecting small businesses. The analysis below was prepared by the State of Wisconsin Department of Transportation (department).

ANALYSIS

Statutes Interpreted: Section 85.63, Stats.

Statutory Authority: Sections 85.63 (2) and 227.11 (2) (a), Stats.

Explanation of Statutory Authority:

2013 Act 20, the 2013-15 Biennial Budget Act, created s. 85.63, Stats., which directs the department to administer a Surveying Reference Station System program.

Section 85.63 (1), Stats., directs the department to administer a Surveying Reference Station System consisting of the following:

- (a) A passive system consisting of a network of monuments located throughout the state

that are used to generate latitude, longitude, and elevation data; and

(b) An active system consisting of reference stations statewide that continuously transmit global navigation satellite system (GNSS) data to a system server, and the server that receives and processes the data received from the reference stations.

Section 85.63 (2) , Stats., allows the department to charge a fee for providing access to the system under sub. (1) in an amount to be established by rule. All fees received under this subsection shall be deposited in the general fund and credited to the appropriation account under s. 20.395 (3) (jg), Stats.

Section 20.395 (3) (jg), Stats., in turn creates an appropriation for fees collected under the proposed rules thusly: s. 20.395 (3) (jg), Stats., *Surveying Reference Station System*. From the general fund, all moneys received under s. 85.63 (2), Stats., for maintenance and operation costs of the Surveying Reference Station System under s. 85.63 (1), Stats.

Related Statutes and Rule:

None other than those granting statutory authority as previously discussed above.

Plain Language Analysis:

This rulemaking is intended to promulgate an administrative rule to establish the active system user fee, as authorized in Wisconsin 2013 Act 20's creation of s. 85.63 (2), Stats.

The purpose of the Surveying Reference Station System is to make elevation data available to governments, businesses, agricultural users and members of the public in the design, construction and maintenance of highways and related infrastructure, in tracking groundwater and surface water movement, for precise agricultural positioning, and in mapping. Use of the system improves the accuracy of surveying by establishing “heights” using GNSS technology and modern remote sensing methods. The name ‘active system’ is used to describe a Continuously

Operating Reference Station (CORS) network known in Wisconsin as the WISCORS Network. The WISCORS Network currently consists of 89 stations.

Section 85.63 (2), Stats., authorizes the department to charge a fee for providing access to this system and directs that the fee be established by rule. It provides no direction as to how the fee should be structured. The department proposes in ch. Trans 58, Wis. Adm. Code, to set this fee to generate sufficient revenue to service, update and replace active system equipment, hardware, and software on an ongoing basis.

The following entities shall be exempt from paying a user fee: higher education institutions; federal agencies; Wisconsin state agencies; counties, cities, villages and towns, other units of government created by state law; Wisconsin Indian tribes; and the department.

The department may provide active system access to other entities in lieu of user fee payment through memorandum of agreements or cooperative partner agreements.

Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations:

There are no existing or proposed federal regulations that specify a fee for access to a surveying reference system. These systems operate at the state, local or private sector level.

Comparison with rules in adjacent states:

Illinois:

The Illinois State Geological Survey at the University of Illinois Champagne Urbana operates the state's Height Modernization program in collaboration with the Illinois department of transportation. Recent funding has come from Illinois' share of Federal Highway Administration's (FHWA) State Planning and Research Funding as well as from other Illinois Department of Transportation funds. A vendor operates, supports and maintains

a private sector CORS Network throughout Illinois. The subscription costs vary based on industry and service type selected during registration.

Iowa:

Iowa Department of Transportation maintains a CORS Network of 98 stations; number of users unknown. Iowa Department of Transportation does not charge a user fee.

Michigan:

Michigan Department of Transportation maintains a CORS Network of 85 stations; number of users unknown. Michigan Department of Transportation does not charge a user fee. Annualized maintenance cost of the system is \$400,000.00. This amount is funded by the state.

Minnesota:

Minnesota Department of Transportation maintains a CORS Network of 131 stations; number of users unknown. Minnesota Department of Transportation does not charge a user fee. Annualized maintenance cost of the system is \$275,000.00.

Summary of Factual Data and Analytical Methodologies:

To develop this rule, the department reviewed state laws and existing policies related to charging users of systems it develops and maintains. For example, most of the dollars that come into the transportation fund are directly or indirectly user fees and the policy of charging a fee for use is well established.

The proposed active system user fee and its creation is consistent from a policy perspective with existing practice. Unlike most fees assessed by the department to transportation users, the law creating this fee specified it be program revenue – it shall be assessed only to non-exempt registered users and the funds generated shall be specifically for maintenance of the

active system. Since this is specified in law, the department shall not be considering other alternatives.

The department has estimated the cost to maintain the WISCORS Network annually is approximately \$355,000 including an annual bill system resource (\$49,500 per year). The proposed active system user fee is intended to provide adequate funding for WISCORS Network continuous operation and shall be utilized to maintain and replace CORS equipment and software. The following WISCORS Network components are included in the annual maintenance cost estimation: GNSS receiver and antenna replacements and firmware updates (\$173,500 per year), disruption or destruction of WISCORS infrastructure (\$40,000 per year), WISCORS server and software upgrades (\$59,000 per year), replacement of CORS telecommunication equipment (\$17,500 per year) and repair of CORS equipment (\$15,000 per year).

A WISCORS Stakeholder Questionnaire was sent via email to all WISCORS registered users on February 2, 2016. The goal and objective of the questionnaire was to gain stakeholder feedback to help the department decide how to administer a user fee. The questionnaire listed a deadline of February 26, 2016 for stakeholder feedback to be considered and that stakeholder views and opinions were strictly informational. Over 350 completed questionnaires were submitted to the department before the deadline.

In general, state and federal government respondents indicated that they should receive an exemption as well as higher education institution respondents. Conversely, it was the opinion of private entities that everyone including state and federal government should pay a user fee. Most respondents did not agree on a flat annual fee as the department had initially proposed. A high percentage of respondents preferred an organizational rate for companies with multiple

users. Most respondents were concerned regarding the department's inability to readily accept credit card payments. The majority of respondents stated that expectations shall change once the user fee is implemented. Overall, respondents averaged a WISCORS Network satisfaction rating of 8.74 where 10 was 'very satisfied' and 1 was 'not satisfied.'

A recurring concern was that the user fee shall be deposited in the General Fund or diverted to other political interests and shall not be used to maintain the WISCORS Network. However, due to the provisions of 2013 Act 20 that creates an appropriation in s. 20.395 (3) (jg), Stats., for all moneys received under s. 85.63 (2), Stats., to be used for operation costs of the active system, this concern has already been addressed by the Legislature.

A WISCORS Stakeholder Meeting was held on December 8, 2015 at the department Truax Materials Lab in Madison and on January 27, 2017 at the Kalahari Convention Center in Wisconsin Dells. Thirty attendees were present at the meeting held in Madison and 220 attendees were present including 40 participating via teleconference at the meeting in Wisconsin Dells.

In general, stakeholders agreed with the proposed subscription rates. Stakeholders were concerned about the proposed active system monitoring hours of 8:00 am to 4:30 pm, Monday through Friday excluding state holidays because many of them work early in the morning, late at night and on the weekends. Stakeholders were also concerned that the user fee shall not be used to maintain the WISCORS Network. The overall largest concern was the increased user expectation that shall come in conjunction with user fee implementation.

A notice of public hearing was filed on March 11, 2019 and interested persons were invited to submit written comments to the Agency Contact Person or through the Legislature's Administrative Rules website. Written comments were accepted until April 18, 2019. A public

hearing was held on April 11, 2019 at the Hill Farms State Office Building and oral presentations were made. After review of the oral presentations and written comments received, the rule was revised to amend the definition of WISCORS cooperative partner, clarify activities supported by the user fee, establish a maximum organizational yearly rate and modify entities that shall be exempt from paying a user fee.

Analysis and Supporting Documents used to Determine Effect on Small Business:

Economic Impact Analysis

This rule establishes user fees for individuals or businesses wishing to obtain access to use the active system. The rule has no mandatory effect on small businesses unless they are users of the active system. The department anticipates no significant effect on specific businesses, business sectors, public utility ratepayers, local governmental units, or the state's economy as a whole.

The department conveyed information about the proposed rule to those individuals and businesses that are active system users and solicited information from two stakeholder meetings representing a cross section of those users. All registered users were invited via email to attend or call-in to the second stakeholder meeting. The department also solicited information about the proposed rule from a stakeholder questionnaire sent via email to all registered users. From this outreach, the department determined the proposed rule would have negligible or no direct financial effect on individuals or businesses unless they are users to the active system.

Effect on Small Business:

The proposed cost is the individual yearly rate of \$300 per user per year, organizational

yearly rate is \$300 per user per year for each of the first five individuals employed by the organization plus \$150 per year for each additional individual employed by the organization thereafter with a \$10,000 maximum fee per organization per year, and the individual monthly rate is \$50 per month. For even a very small business, such as a self-employed individual, these costs are not a significant economic impact. If the department did not support the active system, it would either no longer function or it would be replaced by a privately-run surveying reference system. Either alternative would be much costlier to providers of surveying services than the current system.

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TEXT OF PERMANENT RULE

SECTION 1. Chapter Trans 58 is created to read:

CHAPTER TRANS 58

SURVEYING REFERENCE STATION SYSTEM USER FEE

Trans 58.01 Purpose and Scope. As authorized by s. 85.63, Stats., the purpose of this chapter is to define the Surveying Reference Station System and to create a fee for its use to provide for the ongoing active system maintenance and replacement costs.

Trans 58.02 Definitions. The words and phrases defined in s. 85.63, Stats. have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

- (1) “Active system” or “WISCORS Network” means the system of reference stations statewide that continuously transmit global navigation satellite system data to a system server, and the server that receives and processes the data received from the reference stations.
- (2) “Department” means the Wisconsin Department of Transportation.
- (3) “Fee” means the amount the user pays to use the active system for a period of time selected by the user from among the options offered by the department. The fee paid by a user may vary based on how many users employed by the organization register to access the active system.
- (4) “Passive system” means a network of survey monuments located throughout the state that are used to generate latitude, longitude, and elevation data.
- (5) “User” means an individual, agency, or business entity that applies to the department and pays the fees to access use of the active system.
- (6) “Surveying Reference Station System” means the network of survey monuments and reference stations in place across Wisconsin and includes the passive system and the active system.
- (7) “System vendor” means the company the department contracts with to support and maintain the equipment and software of the WISCORS Network.

Trans 58.03 Surveying Reference Station System Components. The Surveying Reference Station System includes the passive system and the active system. The active system equipment, hardware and software shall be serviced, updated and replaced by the department or its agents on an ongoing basis. The methodology used in determining the fee amount per user for the active system is based on the annual active system maintenance cost and the estimated annual user retention data. Budget for the maintenance of the passive system are derived from other sources.

Trans 58.04 Active System Operation. The active system is accessible 365 days a year, 24 hours a day, with the exception of monthly planned routine maintenance required to apply security patches and server updates as well as periodic unplanned and unscheduled system outages due to equipment or network failure. The following procedures shall apply to the active

system:

- (1) The department shall monitor the system during regular work hours of 8:00 a.m. to 4:30 p.m. Monday through Friday. The system may not be monitored during state holidays. Standby status may be used by department staff to monitor the system during non-work hours.
- (2) System outages shall be reported by the department or the system vendor or both as deemed necessary and service shall be restored as soon as practicable. The department may not provide a credit or refund for outages or time that the active system is not available.

Trans 58.05 Active System Maintenance.

- (1) The department shall do all of the following:
 - (a) Carry out system maintenance for the active system.
 - (b) Fund maintenance and upgrade costs of the active system from user fees.
 - (c) Provide notice by email to user as soon as practicable when down-time for maintenance to the active system is planned.
- (2) The department may not provide a credit or refund to a user for instances when the active system is inoperable due to maintenance.

Trans 58.06 Active System Fee Structure.

- (1) The department shall charge fees to use the active system at the following rates:
 - (a) The individual yearly rate is \$300 per user per year.
 - (b) When the user is an organization, the organizational yearly rate is \$300 per user per year for each of the first five individuals employed by the organization plus \$150 per year for each additional individual employed by the organization thereafter, with a \$10,000 maximum fee per organization per year.
 - (c) The individual monthly rate is \$50 per user per month.
- (2) The department may not prorate the individual yearly rate or the organizational yearly rate under sub. (1)(a) or (b).
- (3) The following entities shall be exempt from paying a fee to use the active system:
 - (a) The department.
 - (b) An institution of higher education.

- (c) Federal agencies.
 - (d) Wisconsin State Agencies.
 - (e) Counties, Cities, Villages and Towns.
 - (f) Other units of government created by state law.
 - (g) Wisconsin Indian Tribes.
- (4) The department may provide access to the active system in lieu of user fee payment through Memorandums of Agreement or Cooperative Partner Agreements.

Trans 58.07 Active System Registration and Fee Collection

- (1) Fees specified in s. Trans 58.06 may be paid by cash, check, money order or online payment methods when available and acceptable to the department.
- (2) To register for a subscription, each user shall complete a subscription level form using a form specified by the department.

Trans 58.08 Active System Registration Renewal

- (1) Registration renewal information shall be provided to users 30 days prior to the end of the 12-consecutive month registration period.
- (2) Users shall pay for renewal of their registration at least 3 days prior to the expiration of the respective registration period.
- (3) Failure to pay renewal registration fees may result in subscription termination. If termination occurs, the user shall re-register to regain the ability to access the system.

SECTION 2 EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register in compliance with s. 227.22 (2), Stats.

(END OF RULE TEXT)

Signed this ____ day of _____ 2020.

Craig Thompson
Secretary
State of Wisconsin Department of Transportation