

Report From Agency

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

**AGENCY REPORT TO LEGISLATURE
CLEARINGHOUSE RULE 19-006**

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.

I. THE PROPOSED RULE:

The proposed rule revisions and the analysis are attached.

II. REFERENCE TO APPLICABLE FORMS:

No forms are newly required by these rule revisions.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

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. There are no other related statutes to the proposed rule other than those granting statutory authority. Furthermore, 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.

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 s. 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.

V. SUMMARY OF PUBLIC COMMENTS AND THE DEPARTMENT’S RESPONSES, AND EXPLANATION OF ANY RESULTING MODIFICATIONS TO THE PROPOSED RULES:

The department held a public hearing on the proposed rule on April 11, 2019. Oral testimony was made, and written comments were received. A mix of private individuals, business entities, and government agencies provided the department with their comments.

Almost all the comments focused on one or more of the following topics:

- Requesting more information/clarification on the user fee structure;
- WISCORS user will expect continuous, uninterrupted service if they are required to pay a fee;

- Requiring government agencies/entities to pay the user fee will increase the cost of government projects;
- Entities requesting an exemption from paying the user fee for various reasons;
- Possible user fee cap for entities that have a multitude of users to establish a fair user-fee structure;
- Credit card payments for the user fee would streamline the process so users can have access to the WISCORS network immediately after submitting payment;
- Concern that the user fees collected by the department will be used for purposes other than maintaining the WISCORS network; and
- If a user fee is established, then there should be no exemptions from paying that user fee.

After review of the above oral testimony and written comments, the department agreed that the following revisions were important to further the purpose of Trans 58: the rule was revised to amend the definition of WISCORS cooperative partner; the rule was revised to clarify activities supported by the user fee; the rule was revised to include a maximum organizational yearly rate; and the rule was revised to adjust the scope of the entities that are exempt from paying a user fee.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF COMMENTS:

The department received the Clearinghouse Report on March 5, 2019, which reported 11 distinct comments related to: statutory authority; form, style and placement in the administrative code; and clarity, grammar, punctuation and use of plain language. The department made all recommended changes.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

The Department did not receive any statement, suggested changes, or other material from the Small Business Regulatory Review Board.