

Clearinghouse Rule 19-006

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

The State of Wisconsin Department of Transportation Proposes an Order to Create Permanent Rule ch. Trans 58 Relating to Surveying Reference Station System User Fee, and affecting small businesses.

**PROPOSED ORDER CREATING
PERMANENT RULE**

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 Secretary of the State of Wisconsin Department of Transportation Mark Gottlieb, P.E., as required by Wis. Stat. s. 227.135(2), on December 5, 2013.

The State of Wisconsin Department of Transportation proposes an order to create permanent rule 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: Wis. Stat. s. 85.63.

Statutory Authority: Wis. Stat. s. 85.63 and 227.11.

Explanation of Statutory Authority:

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

Wis. Stat. s. 85.63(1) directs the Department to administer a Surveying Reference Station

System consisting of all 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 Surveying Reference Station 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.

Wis. Stat. s. 85.63 (2) 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 Wis. Stat. s. 20.395 (3) (jg).

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

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 Surveying Reference Station System 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 Surveying Reference Station 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 84 stations.

Wis. Stats. s. 85.63 (2) 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 to set this fee to generate sufficient revenue to service, update and replace Active Surveying Reference Station System equipment, hardware, and software on an ongoing basis.

The following entities will be exempt from paying a user fee: Minnesota Department of Transportation, Iowa Department of Transportation and Michigan Department of Transportation (through Memorandum of Agreements), higher education institutions, WISCORS Cooperative Partners and the Department.

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’s) 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 subscribers 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 subscribers 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 subscribers 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 Surveying Reference Station 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 will be assessed only to non-exempt registered users and the funds generated will be specifically for maintenance of the Active Surveying Reference Station System. Since this is specified in law, the Department will 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 Surveying Reference Station 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 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 vast majority of respondents stated that expectations will 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 will be deposited in the General Fund or diverted to other political interests and will 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 Surveying Reference Station 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 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 will not be used to maintain the WISCORS Network. The overall largest concern was the increased user expectation that will come in conjunction with user fee implementation.

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

Economic Impact Analysis

This rule establishes subscription fees for individuals or businesses wishing to obtain access to use the Active Surveying Reference Station System. The rule has no mandatory effect on small businesses unless they are users of the Active Surveying Reference Station 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 Surveying Reference Station 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 subscribers to the Active Surveying Reference Station System.

Effect on Small Business:

The proposed costs are \$300 per user per year (Individual Yearly Rate); \$300 per user per year for the first 5 users in the organization plus \$150 per user per year thereafter (Organizational Yearly Rate); and \$50 per user per month (Individual Monthly Rate). 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 Surveying Reference Station System, it would either no longer function or it would be replaced by a privately-run surveying

reference system. Either alternative would be much more costly to providers of surveying services than the current system.

Agency Contact Person:

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Place Where Comments are to be Submitted and Deadline:

Comments may be submitted to the agency contact person listed above or through the Legislature's Administrative Rules website <http://docs.legis.wisconsin.gov/code> until the deadline given in the forthcoming notice of public hearing.

TEXT OF PERMANENT RULE

SECTION 1. Ch. 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 Surveying Reference Station 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) The “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) “The Department” means the Wisconsin Department of Transportation.
- (3) “Fee” means the amount the subscriber pays to use the active system for a period of time selected by the subscriber from among the options offered by the Department. The fee paid by a subscriber may vary based on how many subscribers from an organization register to access the active system.
- (4) The “passive system” consists of a network of survey monuments located throughout the state that are used to generate latitude, longitude, and elevation data.
- (5) “Subscriber” means an individual, agency, educational institution, non-profit 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.
- (8) “User” means subscriber as defined in sub. (5) above.
- (9) “WISCORS Cooperative Partner” means an entity that owns land on which WISCORS Network physical infrastructure is located.

Trans 58.03 Surveying Reference Station System Components. The Surveying Reference Station System includes the passive system and the active system which are used together to generate the geographic positioning information needed by system users. Both components are necessary to produce the information.

Note: The maintenance costs of the active system only are included in the base calculated to generate the fees. Budget for the maintenance of the passive system are derived from other sources.

Trans 58.04 Active Surveying Reference Station System Operation. The Active Surveying Reference Station 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.

- (1) The Department will monitor the system during regular work hours of 8:00 a.m. to 4:30 p.m. Monday through Friday. The system will 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 will be reported by the Department or the system vendor or both as deemed necessary and service will be restored as soon as practicable. There will be no subscriber refund or credit for outages or time that the Active Surveying Reference Station System is not available.

Trans 58.05 Active Surveying Reference Station System Maintenance. The Department will carry out system maintenance for the Active Surveying Reference Station System.

- (1) Maintenance and upgrade costs will be funded from subscriber fees.
- (2) The Department will endeavor to provide continuous service through timely maintenance but will not provide a credit or refund to the subscriber due to system down times due to maintenance.
- (3) The Department will provide notice by email to system subscribers as soon as practicable when down-time for maintenance is planned.

Trans 58.06 Active Surveying Reference Station System Fee Structure.

- (1) The Individual Yearly Rate is \$300 per subscriber per year. The Department will not pro-rate the Individual Yearly Rate for a period of less than 12 months.
- (2) The Organizational Yearly Rate is \$300 per subscriber per year for the first five users in the organization plus \$150 per subscriber per year thereafter. The Department will not pro-rate the Organizational Yearly Rate for a period of less than 12 months.
- (3) The Individual Monthly Rate is \$50 per month. No Organizational Monthly Rate will be offered.
- (4) The following entities will be exempt from paying a user fee: Minnesota Department of Transportation, Iowa Department of Transportation and Michigan Department of Transportation through Memorandum of Agreements; higher education institutions; WISCORS Cooperative Partners and the Department.

Trans 58.07 Active Surveying Reference Station System Registration and Fee Collection

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

Trans 58.08 Active Surveying Reference Station System Registration Renewal

- (1) Registration renewal information will be provided to subscribers 30 days prior to the end

- of the 12 consecutive month registration period.
- (2) Subscribers must 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 will result in subscription termination. Once termination occurs, the subscriber must 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 _____ 2019.

Craig Thompson
Secretary
State of Wisconsin Department of Transportation