



Clearinghouse Rule 10-029

**State of Wisconsin
Department of Workforce Development
Equal Rights Division**

NOTICE OF PUBLIC HEARING

**Adjustment of Thresholds for the Application of
Payment and Performance Assurance Requirements**

DWD 293.02 (1) and (2), Wis. Adm. Code

NOTICE IS HEREBY GIVEN that pursuant to Sections 779.14(1s) and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the amendment of rules relating to the adjustment of thresholds for the application of payment and performance assurance requirements and affecting small businesses.

Hearing Information

**Wednesday
March 31, 2010
1:30 p.m.**

**MADISON
G.E.F. 1 Building, B103
201 E. Washington Avenue**

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 779.14(1s) and 227.11, Stats.

Statutes interpreted: Section 779.14, Stats.

Explanation of agency authority. Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or public work. Section 779.14 (1s), Stats., requires the Department to biennially adjust the thresholds for various requirements in proportion to any change in construction costs since the last adjustment if the adjustment to be made would not be less than 5%.

Summary of the proposed rule. Chapter DWD 293 provides adjusted thresholds for various payment and performance assurance requirements that apply to contracts with state or local governments for the performance of labor or furnishing of materials for a public improvement or public work. In accordance with the requirement of the statute, this rule adjusts the thresholds to reflect a 6.82% increase in construction costs from December 2007 to December 2009. These adjusted thresholds have been adopted in an emergency rule which became effective on January 1, 2010; this rule would adopt the same thresholds on a permanent basis.

Summary of analytical methodology. Section DWD 293.01, Wis. Adm. Code, provides that the Department will adjust the required bond thresholds on the basis of the change in the construction cost index as published in the *Engineering News-Record*, a national construction trade publication. The thresholds are rounded to the nearest thousand.

Comparison to federal law. The threshold for application of the federal contractor payment and performance bond requirements is \$100,000. This threshold is in the statute and is rarely adjusted.

Comparison of payment and performance bond thresholds in adjacent states. Minnesota has a public contractors' performance and payment bond requirement that applies to a contract that exceeds \$75,000. Illinois requires a bond if a contract for a public work exceeds \$5,000. Neither state appears to have a mechanism for adjustment of the thresholds, other than statutory amendment. Michigan has a performance bond requirement without a clear statutory threshold. The Department did not find a performance bond requirement for public works contracts in Iowa.

Effect on small business. The rule affects construction companies, many of whom are small businesses. No reporting, bookkeeping, or other professional skills are required for compliance with the rule.

Analysis used to determine effect on small business. There does not appear to be any adverse impact on small businesses, because the adjustment of the thresholds for the application of the payment and performance bond requirements prevents these provisions from affecting more and more public works projects over time due solely to the effects of inflation.

Fiscal impact. For the same reason as in the paragraph above, this proposed rule does not appear to create any adverse fiscal impact on state or local government or on those businesses that are subject to the rule.

Contact information. The proposed rules are available at the web site <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

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Written comments. Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than April 2, 2010, will be given the same consideration as testimony presented at the hearing.

Secretary or designee

Date