STATE OF MSCONSIN DEPARTMENT OF ADMINISTRATION DOA-2050 (C04/2012) DIVISION OF EXECUTIVE BUDGET AND FINANCE 101 EAST WLSON STREET, 10TH FLOOR P.O. BOX 7864 MADISON, WI 53707-7864 FAX: (608) 267-0372

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Type of Estimate and Analysis Repeal	
Administrative Rule Chapter, Title and Number	
DWD 293 Payment and Performance Assurance Requirements	S
3. Date Rule promulgated and/or revised; Date of most recent Evalua	ation
Most recent revision - February 1, 2011	
4. Plain Language Analysis of the Rule, its Impact on the Policy Prob Economic Conditions or Other Factors Since Promulgation that all	
DWD is required to adjust the minimum contract prices that d requirements that apply to contracts with state and local gover materials for a public improvement or public work on a bienni adjustment is required if the adjustment is lower than 5%. Th construction cost index as published by the Engineering news-	nments for the performance of labor or furnishing al basis if the adjustment to be made is 5% or greater. No e contract prices are adjusted based on the change in the
The proposed rule adjusts the contract price thresholds to reflect 2009 to December 2011 and a 5.4% increase in construction coadjustment in 2016 because increases in construction costs from the contract price thresholds to reflect 2009 to December 2011 and a 5.4% increase in construction costs from the contract price thresholds to reflect 2009 to December 2011 and a 5.4% increase in construction costs from the contract price thresholds to reflect 2009 to December 2011 and a 5.4% increase in construction costs from the contract price thresholds to reflect 2009 to December 2011 and a 5.4% increase in construction costs from the contract price thresholds to reflect 2009 to December 2011 and a 5.4% increase in construction costs from the contract price thresholds to reflect 2009 to December 2016 because increases in construction costs from the contract price thresholds to reflect 2009 to December 2016 because increases in construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction costs from the contract price thresholds are constructed as a construction contract price thresholds are constructed as a con	osts from December 2011 to December 2013. There is no
In addition, the proposed rule will create s. DWD 293.03 relat January 1 in an even calendared year, DWD will calculate the for December of the preceding year, and the construction cost and adjust those amounts by that percentage difference. Any published, and become effective upon publication, in the Wisc	percentage difference between the construction cost index index for December two years before the preceding year, calculated adjustment equal to 5% or greater will be
5. Describe the Rule's Enforcement Provisions and Mechanisms	
The rule does not have enforcement provisions. It sets require	ements that DWD biennially adjust contract thresholds to
which payment and performance assurance requirements wou	ld apply.
 6. Repealing or Modifying the Rule Will Impact the Following (Check All That Apply) State's Economy Local Government Units 	☑ Specific Businesses/Sectors☐ Public Utility Rate Payers☐ Small Businesses
 Summary of the Impacts, including Compliance Costs, identifying Business to conduct their Affairs. 	any Unnecessary Burdens the Rule places on the ability of Small
The proposed rule will have a positive impact on small busine and by raising the thresholds in line with increases in construc preventing the bond requirement from applying to small proje	tion costs, the proposed rule helps businesses by
List of Small Businesses, Organizations and Members of the Publi Summary of their Comments.	c that commented on the Rule and its Enforcement and a
The Surety & Fidelity Association of America, Washington I increases in the bonding thresholds as determined by the statu	e v

highest thresholds in the nation. Moreover, small businesses depend upon this assurance of payment even on smaller contracts. "By increasing the threshold, there will be a larger number of projects where payment protection is not available to subcontractors." Additionally, SFAA opposes the proposal that future increases be published rather than

going through full formal rulemaking procedures.

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work."

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 9. Did the Agency consider any of the following Rule Modifications to repeal? \(\subseteq \text{Less Stringent Compliance or Reporting Requirements} \) \(\subseteq \text{Less Stringent Schedules or Deadlines for Compliance or Reporting Consolidation or Simplification of Reporting Requirements \(\subseteq \text{Establishment of performance standards in lieu of Design or Open Exemption of Small Businesses from some or all requirements \(\subseteq \text{Other, describe:} \) 	ting	
10. Fund Sources Affected ☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S	11. Chapter 20, Stats. Appropriations Affected None	
12. Fiscal Effect of Repealing or Modifying the Rule ☑ No Fiscal Effect ☐ Increase Existing Revenues ☐ Indeterminate ☐ Decrease Existing Revenues	☐ Increase Costs ☐ Could Absorb Within Agency's Budget ☐ Decrease Cost	
13. Summary of Costs and Benefits of Repealing or Modifying the Rule Many construction companies are small businesses and the adjustment of the thresholds for application of the payment and performance bond requirements prevent these provisions from affecting small public works projects over time solely due to the effects of inflation.		
14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to \square Yes \square No	o form)	
15. Long Range Implications of Repealing or Modifying the Rule None		
16. Compare With Approaches Being Used by Federal Government The Miller Act (40 USC 3131 – 3134) applies to contracts awarded for the construction, alteration, or repair of any public building or public work of the Federal Government. While the Act provides that these bonds must be posted on contracts exceeding \$100,000 in cost, the Federal Acquisition Regulation (CFR 48 Part 28) requires the bonds only on contracts that exceed \$150,000.00.		
17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota) Iowa: Contracts for the construction of a public improvement shall, when the contract price equals or exceeds \$25,000, be accompanied by a bond, with a surety, conditioned for the faithful performance of the contract, and for the fulfillment of other requirements as provided by law.		
Illinois: Any contractor entering into a contract for public work of any kind costing over \$50,000 with any state officials, boards, commissions or agents, or any political subdivisions, is required to supply and deliver a bond to the state or political subdivision, with good and sufficient sureties.		
Michigan: Before any contract exceeding \$50,000 is awarded for the construction, alteration, or repair of any public building or public work or improvement, the proposed contractor is required to furnish a performance bond and a payment bond which will become binding upon the award of the contract to the principal contractor.		
Minnesota: Public entities entering into contracts greater than \$100,000 must obtain a performance bond and a payment		

bond from the contractor. This requirement, with a few exceptions, applies to contracts for "the doing of any public

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