



# Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised May 2018

## 1. General Information

a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison	f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address		
h. Date of Public Notice	i. Comment Period End Date	
j. Public Comment URL or Email Address:		
k. Program		

\*  By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

## 2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No.  Yes. Please provide the Chapter Numbers and Years Enacted  
(eg: 2015 Session Laws Chapter 154):

## 3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.

Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.

Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed

**4. Public Comments and Hearing Information**

a. A public hearing on the proposed rules has been scheduled.  No.  Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

**5. Federal Law Requirements**

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements.  No.  Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

**6. State Statutory Requirements**

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

Not Applicable.

**7. Additional APA Provisions**

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

\_\_\_\_\_ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

\_\_\_\_\_ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

**8. Authorization**

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	



# State of Wyoming Department of Workforce Services



**Matthew H. Mead**  
Governor

Labor Standards  
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**John Cox**  
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## STATEMENT OF PRINCIPAL REASONS

### Overview

Statutory authority for Labor Standards to promulgate rules regarding certification of resident contractors and suppliers is established by Wyoming Statute § 16-6-120(a). Statutory authority for Labor Standards to promulgate rules regarding preference for state laborers on public works projects is established by Wyoming Statute § 16-6-205(a) of the Wyoming Preference Act of 1971, as amended. Labor Standards' rules establish procedures for certifying resident contractors and suppliers, ensuring qualified Wyoming resident laborers are provided with adequate opportunities to be employed on public works projects, set forth contested case hearing procedures, and establish investigation and enforcement procedures in accordance with the applicable statutes.

The following administrative rule changes are necessary for a few reasons. Presently, rules for resident contractor certification and resident laborer preference are contained within the same chapter of Labor Standards' rules. To reduce confusion and better facilitate public access, the rules will be divided into two chapters. Other changes to these rules simply correct grammar and punctuation, clarify definitions, as well as better establish and explain agency procedures within the administrative rules. For many years, Labor Standards has had procedures for determining compliance with the Wyoming Preference Act, but these were never reduced to rule. Labor Standards believes it in the best interest of the agency and the public to increase transparency by articulating Labor Standards' expectations in administrative rules plainly. Additionally, because these chapters have not been amended since 2013, other changes have been made in order to conform these rules to the Secretary of State's required format and to reduce the Rules in number and in length consistent with the Governor's previous mandate.

Significantly, as it pertains to certification of resident contractors and suppliers, provisions for payment of an application fee and annual renewal fee have been created in Chapter 4. Specifically, the applicable fees for contractors seeking residency under Wyoming Statute §16-6-101(a)(i)(J) are \$100.00 per year, and \$40.00 per year for all others. The payment of certification fees has been deemed necessary for several reasons. First, Labor Standards operates solely by appropriation from the Wyoming General Fund. In an attempt to keep operating costs as low as possible, expenditures for everyday supplies have been minimized, and staff travel and training have been restricted. A recent assessment of office functions revealed that these restrictions may have a negative impact on the quality and timeliness of certification services provided to the more than 1,600 Wyoming contractors and suppliers Labor Standards certifies annually. Labor Standards staff are frequently required to travel statewide in order to verify an entity's residency status. Those travel costs are borne exclusively by the General Fund appropriation, and are of no cost to the contractor. Additionally, Labor Standards must employ one full-time administrative support specialist and allocate funds to four agency business consultants to manage the constant requests for on-site residency checks. When a contractor disagrees with a residency determination, Labor Standards bears the expense of providing for an administrative hearing. In contrast,



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any contractor who is awarded residency status receives a financial incentive in the form of a five percent “preference” on any public works bid it submits. There is a great benefit to the resident contractor, and great cost to Labor Standards’ operating budget. Labor Standards endeavors to be a good steward of the General Fund appropriation it receives; however, due to increased efforts by Labor Standards to complete its duties assigned by statute, increased industry demand, and overall economic conditions, the proposed certification and renewal fees are essential in order for Labor Standards to continue providing certification and regulation services on behalf of the State of Wyoming.

Other specific changes by chapter are as follows:

#### **Chapter 4 – Certification of Resident Contractors, Suppliers and Enforcement of Preference Laws**

- The title of this chapter has been renamed to “Certification of Resident Contractors and Suppliers” and, accordingly, references to the Wyoming Preference Act have been removed.
- Requirements for resident certification, including payment of fees, have been clarified.
- Procedures by which the Department investigates and enforces compliance with the certified resident statutes have been added.
- Procedures for objecting to or contesting the Department’s determinations through administrative hearing have been added and clarified.

#### **Chapter 12 – Preference for Wyoming Resident Labor**

- This chapter has been created, and contains the significant regulations pertaining to the Wyoming Preference Act that were previously contained within Chapter 4.
- Procedures establishing employers’ rights and responsibilities regarding employing Wyoming resident labor, or non-resident labor, on public works projects have been created.
- Procedures by which the Department investigates and enforces compliance with the Wyoming Preference Act have been added.
- Procedures for objecting to or contesting the Department’s determinations through administrative hearing have been added and clarified.

#### **Contact Information**

Questions regarding this Statement of Reasons and Labor Standards’ request to promulgate rules can be directed to the agency by phone at 307-777-7261 or sent in writing to [dws-wyolabor@wyo.gov](mailto:dws-wyolabor@wyo.gov)



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Development for Wyoming’s Future.



## CHAPTER 4

### CERTIFICATION OF RESIDENT CONTRACTORS AND SUPPLIERS

**Section 1. Authority.** This Chapter is promulgated by the authority of Wyoming Statute § 16-6-120(a).

**Section 2. Purpose.** This Chapter is adopted to aid and ensure compliance with the residency requirements for Wyoming Public Works and Contracts as specified in Wyoming Statute §§ 16-6-101 through -121.

**Section 3. Definitions.**

(a) “Contractor” means an individual or business entity engaged in construction, major maintenance, renovation, or improvement of any public work.

(b) “Labor Standards” means a program within the Department of Workforce Services.

(c) “Residency Preference” means the five percent bid preference awarded pursuant to Wyoming Statute § 16-6-203(a) of the Wyoming Preference Act of 1971.

(d) “Supplier” means an individual or business entity engaged in supplying products, goods, materials, or services to the state, any department thereof, or any county, city, town, school district, community college district, or other public corporation of the state.

**Section 4. Application and Eligibility.**

(a) A contractor or supplier may apply to Labor Standards to be certified as a resident at any time. A contractor or supplier shall not be certified as a resident until a certificate of residency has been issued by Labor Standards.

(b) All contractors and suppliers seeking to be certified as a resident shall complete and submit all documents and affidavit(s) required by Labor Standards. Upon request by Labor Standards, applicants and certified residents shall submit any additional information or documentation that Labor Standards may deem necessary to determine residency status.

(c) All applications for resident certification shall be accompanied by an application fee, payable to Labor Standards.

(i) The application fee for resident certification filed under Wyoming Statute § 16-6-101(a)(i)(J) shall be one-hundred dollars (\$100.00).

(ii) The application fee for all other resident certifications shall be forty dollars (\$40.00).

(d) Prior to issuing a certificate of residency, Labor Standards may conduct an on-site inspection of the Employer's principal office and principal place of business to verify eligibility.

(e) No residency preference shall be granted to any contractor or supplier who has not been certified as a resident by Labor Standards.

(f) No certificate of residency shall be issued to any contractor who has not participated in the prevailing wage survey as required by Wyoming Statute § 27-4-405(a). Prevailing wage survey participation is not required to qualify as a resident supplier.

(g) No certificate of residency shall be issued to any contractor or supplier required to register with the Wyoming Secretary of State's office who has not so registered or whose standing is delinquent.

(h) No certificate of residency shall be issued to any contractor or supplier who is delinquent with premium payments or employment wage contributions to Wyoming Workers' Compensation Division or Wyoming Unemployment Insurance Program as required by Wyoming Statute §§ 27-14-202 and 27-3-503, as applicable.

**Section 5. Annual Renewal.**

(a) A certified resident's certificate of residency shall be valid for a period of one (1) year from the date issued.

(b) Prior to the expiration date noted on the certificate of residency, a certified resident may apply to Labor Standards for an annual renewal of its certified resident status. Labor Standards shall issue a new certificate of residency upon the certified resident's submission of the following to Labor Standards:

(i) The current certificate of residency;

(ii) Any documents required by Labor Standards to verify the certified resident's continued resident status; and

(iii) A renewal fee, payable to Labor Standards.

(A) The renewal fee for resident certification filed under Wyoming Statute § 16-6-101(a)(i)(J) shall be one-hundred dollars (\$100.00).

(B) The renewal fee for all other resident certifications shall be forty dollars (\$40.00).

**Section 6. Notification of Changes.** A certified resident shall notify Labor Standards in writing and complete new affidavits, as required, within thirty (30) calendar days of any of the following changes:

(a) For a Sole Proprietorship: any change in the name or mailing address or street address of the owner of the sole proprietorship; any change of ownership of the sole proprietorship; and any change in the business address of the sole proprietorship.

(b) For a Partnership or Association: any change in the name or mailing address or street address of any partner of the partnership or member of the association; any change of partners of the partnership or members of the association; and any change in the business address of the partnership or the association.

(c) For a Limited Partnership: any change in the name or mailing address or street address of any of the general partners of the limited partnership; any change of the general partners of the limited partnership; and any change in the business address of the limited partnership.

(d) For a Registered Limited Liability Partnership: any change in the name or mailing address or street address of any of the members of the registered limited liability partnership; any change in the membership of the registered limited liability partnership; and any change in the business address of the registered limited liability partnership.

(e) For a Limited Liability Company: any change in the name or mailing address or street address of any of the managing members or appointed managers of the limited liability company; any change in the managing members or appointed managers of the limited liability company; and any change in the business address of the limited liability company.

(f) For a Corporation: any change in the name or mailing address or street address of the president of the corporation; any change of the president of the corporation; and any change of the business address of the corporation.

**Section 7. Principal Office and Principal Place of Business.** The principal office and principal place of business of any certified resident shall be permanently and physically located within the State of Wyoming.

**Section 8. Investigation.**

(a) Labor Standards shall investigate an applicant or certified resident to determine compliance with Wyoming Statute §§ 16-6-101 through -121 if there is reason to suspect noncompliance or upon receipt of a complaint. Investigation may include, but is not limited to, conducting an on-site inspection of the Employer's principal office and principal place of business.



(b) In determining whether an Employer's key business functions are performed in Wyoming, Labor Standards may consider evidence concerning the Employer's operation, marketing, finance, and human resources functions, including but not limited to, manufacturing, provision of services, sales, advertising, product design, business administration, financial management, contracting, recruiting, and training.

(c) Upon completion of its investigation, Labor Standards shall make a determination as to whether the applicant or certified resident is in compliance with the provisions of Wyoming Statute §§ 16-6-101 through -121.

**Section 9. Notice of Determination.**

(a) Labor Standards shall notify the subject applicant or certified resident in writing of its determination.

(b) Where the investigation was initiated by a complaint, Labor Standards shall notify the complainant of its determination if the complainant is known to Labor Standards.

(c) Where Labor Standards makes a determination that the applicant or certified resident is not in compliance with either Wyoming Statute §§ 16-6-101 or 16-6-108, Labor Standards shall include in its determination a notification of its intent to deny or revoke the certificate of residency. Labor Standards shall also inform the applicant or certified resident of the opportunity to request a hearing regarding the determination.

**Section 10. Request for Hearing.**

(a) A request for a hearing shall be in writing and received by Labor Standards within thirty (30) days of the applicant's or certified resident's receipt of Labor Standards' determination.

(b) Where the applicant or certified resident does not request a hearing within thirty (30) days, Labor Standards shall either deny or revoke the certificate of residency.

**Section 11. Independent Hearing Officer.** Upon receipt of a timely submitted written request for hearing, Labor Standards shall contract with an independent hearing officer to conduct a hearing on the matter.

**Section 12. Hearing Procedure.** The hearing officer shall conduct the hearing in accordance with the Wyoming Administrative Procedures Act, Wyoming Statute §§ 16-3-107 through -115, and the Wyoming Office of Administrative Hearings' rules for Contested Case Proceedings, which are hereby incorporated by reference and can be found at: <https://rules.wyo.gov/>

(a) The rules for Contested Case Proceedings were adopted by the Wyoming Office of Administrative Hearings and in effect on July 20, 2017.

(b) No later amendments to the rules for Contested Case Proceedings are incorporated by reference.

**Section 13. Recommended Decision.**

(a) Within thirty (30) days of the close of the hearing, the hearing officer shall issue a recommended decision and send a copy to each party and to Labor Standards.

(b) Any party to the hearing may file, either together or separately, an exception to the hearing officer's recommended decision and a brief in support thereof, with Labor Standards within thirty (30) days of the issue date of the recommended decision. Exceptions and supportive briefs not timely received shall not be reviewed or considered.

**Section 14. Final Agency Decision.**

(a) Labor Standards shall issue its final agency decision within thirty (30) days from the end of the exception filing period.

(b) In its final agency decision, Labor Standards may accept, reject, or modify the hearing officer's recommended decision. The final agency decision shall constitute Labor Standards' final agency action.

(c) Labor Standards shall notify all parties by certified mail of its final agency decision.

~~DEPARTMENT OF WORKFORCE SERVICES LABOR STANDARDS DIVISION~~

CHAPTER 4

~~CERTIFICATION OF RESIDENT CONTRACTORS, AND SUPPLIERS AND ENFORCEMENT OF PREFERENCE LAWS~~

**Section 1. Authority.** ~~The Department of Workforce Services is authorized under the Department of Workforce Services Act, W.S. 9-2-2602(b)(vi), Wyoming Administrative Procedures Act, W.S. 16-3-101, et seq., Public Works and Contracts Act, W.S. 16-6-120(a), Wyoming Preference Act of 1971, W.S. 16-6-205(a), and Wyoming Labor and Statistics Act, W.S. 27-2-104(a)(v). This Chapter is promulgated by the authority of Wyoming Statute § 16-6-120(a).~~

**Section 2. Purpose.** ~~Certification of Resident Contractors, Suppliers and Enforcement of Preference Laws rules are adopted by the Department of Workforce Services to ensure compliance with Wyoming Public Works and Contracts Act, W.S. 16-6-101 through 16-6-121 and Wyoming Preference Act of 1971, W.S. 16-6-201 through 16-6-206. This Chapter is adopted to aid and ensure compliance with the residency requirements for Wyoming Public Works and Contracts as specified in Wyoming Statute §§ 16-6-101 through -121.~~

**Section 3. Definitions** ~~(see also W.S. 16-6-101).~~

~~(a) “Department” means the Department of Workforce Services, State of Wyoming.~~  
(a) “Contractor” means an individual or business entity engaged in construction, major maintenance, renovation, or improvement of any public work.

(b) “Labor Standards” means a program within the Department of Workforce Services.

~~(c) “Public Works Project” means any project for the construction, erection, alteration or repair of a public building, public structure, public property or any addition or improvement thereto let by the state, any department thereof, or any county, city, town, school district, community college district or other public corporation or government agency.~~

(c) “Residency Preference” means the five percent bid preference awarded pursuant to Wyoming Statute § 16-6-203(a) of the Wyoming Preference Act of 1971.

(d) “Supplier” means an individual or business entity engaged in supplying products, goods, materials, or services to the state, any department thereof, or any county, city, town, school district, community college district, or other public corporation of the state.

**Section 4. Resident Documentation and Affidavits** **Application and Eligibility.**

(a) A contractor or supplier may apply to Labor Standards to be certified as for a resident certificate at any time. A contractor or supplier shall not be certified as a resident until a certificate of residency has been issued by Labor Standards.

(b) All contractors and suppliers ~~wishing~~ seeking to be certified as a resident ~~for purposes of receiving preference on public works construction projects~~ shall complete and submit ~~the all~~ the all documents and affidavit(s) required by Labor Standards, ~~a program within the Department of Workforce Services. No residency preference shall be granted to any contractor or supplier who has not been certified as a resident by Labor Standards. No residency preference shall be granted to any contractor who has not participated in the prevailing wage survey as required by W.S. 27-4-405(a). Prevailing wage survey participation is not required to qualify as a resident supplier.~~ Upon request by Labor Standards, applicants and certified residents shall submit any additional information or documentation that Labor Standards may deem necessary to determine residency status.

(c) ~~Upon request by Labor Standards, applicants and certificate holders shall submit any additional information or documentation that Labor Standards may deem necessary to determine residency eligibility. All applications for resident certification shall be accompanied by an application fee, payable to Labor Standards.~~

(i) The application fee for resident certification filed under Wyoming Statute § 16-6-101(a)(i)(J) shall be one hundred dollars (\$100.00).

(ii) The application fee for all other resident certifications shall be forty dollars (\$40.00).

(d) ~~A contractor or supplier shall not be certified as a resident until the certificate of residency has been issued by Labor Standards. Prior to issuing a certificate of residency, Labor Standards may conduct an on-site inspection of the Employer's principal office and principal place of business to verify eligibility.~~

(e) No residency preference shall be granted to any contractor or supplier who has not been certified as a resident by Labor Standards.

(f) No certificate of residency shall be issued to any contractor who has not participated in the prevailing wage survey as required by Wyoming Statute § 27-4-405(a). Prevailing wage survey participation is not required to qualify as a resident supplier.

(g) No certificate of residency shall be issued to any contractor or supplier required to register with the Wyoming Secretary of State's office who has not so registered or whose standing is delinquent.

(h) No certificate of residency shall be issued to any contractor or supplier who is delinquent with premium payments or employment wage contributions to Wyoming Workers' Compensation Division or Wyoming Unemployment Insurance Program as required by Wyoming Statute §§ 27-14-202 and 27-3-503, as applicable.

**Section 5.** Notification of Changes: **Annual Renewal.**

~~(a) Resident certificate holders are required to notify Labor Standards in writing within thirty (30) calendar days of any of the following changes:~~

~~(i) Sole Proprietorships~~

~~(A) Any change in the mailing address or street address of the owner of the sole proprietorship.~~

~~(B) Any change of ownership of the sole proprietorship.~~

~~(C) Any change in the business address of the sole proprietorship.~~

~~(ii) Partnerships or Associations~~

~~(A) Any change in the mailing address or street address of any partner of the partnership or member of the association.~~

~~(B) Any change of partners of the partnership or members of the association.~~

~~(C) Any change in the business address of the partnership or the association.~~

~~(iii) Limited Partnerships~~

~~(A) Any change in the mailing address or street address of any of the general partners of the limited partnership.~~

~~(B) Any change of the general partners of the limited partnership.~~

~~(C) Any change in the business address of the limited partnership.~~

~~(iv) Registered Limited Liability Partnership~~

~~(A) Any change in the mailing address or street address of any of the members of the registered limited liability partnership.~~

~~(B) Any change in the membership of the registered limited liability partnership.~~

~~(C) — Any change in the business address of the registered limited liability partnership.~~

~~(v) — Limited Liability Company~~

~~(A) — Any change in the mailing address or street address of any of the managing members or appointed managers of the limited liability company.~~

~~(B) — Any changes in the managing members or appointed managers of the limited liability company.~~

~~(C) — Any changes in the business address of the limited liability company.~~

~~(vi) — Corporations~~

~~(A) — Any change in the mailing address or street address of the president of the corporation.~~

~~(B) — Any change of the president of the corporation.~~

~~(C) — Any change of the business address of the corporation.~~

(a) A certified resident's certificate of residency shall be valid for a period of one (1) year from the date issued.

(b) Prior to the expiration date noted on the certificate of residency, a certified resident may apply to Labor Standards for an annual renewal of its certified resident status. Labor Standards shall issue a new certificate of residency upon the certified resident's submission of the following to Labor Standards:

(i) The current certificate of residency;

(ii) Any documents required by Labor Standards to verify the certified resident's continued resident status; and

(iii) A renewal fee, payable to Labor Standards.

(A) The renewal fee for resident certification filed under Wyoming Statute § 16-6-101(a)(i)(J) shall be one-hundred dollars (\$100.00).

(B) The renewal fee for all other resident certifications shall be forty dollars (\$40.00).

**Section 6. ~~Principal Office and Principal Place of Business.~~ Notification of Changes.** A certified resident shall notify Labor Standards in writing and complete new affidavits, as required, within thirty (30) calendar days of any of the following changes:

(a) ~~The principal office and principal place of business shall be permanently and physically located within the State of Wyoming.~~

(b) ~~The principal office and principal place of business of a sole proprietorship, partnership, limited partnership, registered limited liability partnership, limited liability company or corporation means the headquarters or administrative center where the business activities are conducted and controlled.~~

(a) For a Sole Proprietorship: any change in the name or mailing address or street address of the owner of the sole proprietorship; any change in ownership of the sole proprietorship; and any change in the business address of the sole proprietorship.

(b) For a Partnership or Association: any change in the name or mailing address or street address of any partner of the partnership or member of the association; any change of partners of the partnership or members of the association; and any change in the business address of the partnership or the association.

(c) For a Limited Partnership: any change in the name or mailing address or street address of any of the general partners of the limited partnership; any change of the general partners of the limited partnership; and any change in the business address of the limited partnership.

(d) For a Registered Limited Liability Partnership: any change in the name or mailing address or street address of any of the members of the registered limited liability partnership; any change in the membership of the registered limited liability partnership; and any change in the business address of the registered limited liability partnership.

(e) For a Limited Liability Company: any change in the name or mailing address or street address of any of the managing members or appointed managers of the limited liability company; any change in the managing members or appointed managers of the limited liability company; and any change in the business address of the limited liability company.

(f) For a Corporation: any change in the name or mailing address or street address of the president of the corporation; any change of the president of the corporation; and any change of the business address of the corporation.

**Section 7. ~~Investigations.~~ Principal Office and Principal Place of Business.** The principal office and principal place of business of any certified resident shall be permanently

and physically located within the State of Wyoming.

~~(a) — Labor Standards shall investigate an applicant or certificate holder to determine compliance with W.S. 16-6-101 through W.S. 16-6-121 if there is reason to suspect noncompliance or it has received a written complaint.~~

~~(b) — Upon completion of its investigation, Labor Standards shall make a determination as to whether the applicant or certificate holder is in compliance with the provisions of W.S. 16-6-101 through W.S. 16-6-121.~~

**Section 8. Notice of Determination: Investigation.**

~~(a) — Labor Standards shall notify the subject applicant or certificate holder in writing of its determination.~~

~~(b) — Where the investigation was initiated by a complaint, Labor Standards shall notify the complainant of its determination when the complaint is known to Labor Standards.~~

~~(c) — Where Labor Standards makes a determination that the applicant or certificate holder is not in compliance with either W.S. 16-6-101 or 16-6-108, Labor Standards shall include in its determination a notification of its intent to deny or revoke the certificate of residency. Labor Standards shall also inform the applicant or certificate holder of the opportunity to request a fair hearing regarding the determination.~~

(a) — Labor Standards shall investigate an applicant or certified resident to determine compliance with Wyoming Statute §§ 16-6-101 through -121 if there is reason to suspect noncompliance or upon receipt of a complaint. Investigation may include, but is not limited to, conducting an on-site inspection of the Employer's principal office and principal place of business.

(b) — In determining whether an Employer's key business functions are performed in Wyoming, Labor Standards may consider evidence concerning the Employer's operation, marketing, finance, and human resources functions, including but not limited to, manufacturing, provision of services, sales, advertising, product design, business administration, financial management, contracting, recruiting, and training.

(c) — Upon completion of its investigation, Labor Standards shall make a determination as to whether the applicant or certified resident is in compliance with the provisions of Wyoming Statute §§ 16-6-101 through -121.

**Section 9. Request for Fair Hearing: Notice of Determination.**

~~(a) — A request for a hearing must be in writing and received by Labor Standards within thirty (30) calendar days of the applicant or certificate holder's receipt of the Labor Standards' Notice of Determination.~~



~~(b) — Where the applicant or certificate holder does not request a hearing within the thirty (30) calendar days, Labor Standards either shall deny or revoke the certificate of residency. Labor Standards denial or revocation of the certificate of residency shall constitute the final agency action subject to judicial review.~~

(a) Labor Standards shall notify the subject applicant or certified resident in writing of its determination.

(b) Where the investigation was initiated by a complaint, Labor Standards shall notify the complainant of its determination if the complainant is known to Labor Standards.

(c) Where Labor Standards makes a determination that the applicant or certified resident is not in compliance with either Wyoming Statute §§ 16-6-101 or 16-6-108, Labor Standards shall include in its determination a notification of its intent to deny or revoke the certificate of residency. Labor Standards shall also inform the applicant or certified resident of the opportunity to request a hearing regarding the determination.

**Section 10. Independent Hearing Officer. Request for Hearing.** ~~Upon receipt of a timely submitted written request for hearing, Labor Standards shall contract with an independent hearing officer to conduct a fair hearing in accordance with the Wyoming Administrative Procedures Act, W.S. 16-3-107 through 16-3-115.~~

(a) A request for a hearing shall be in writing and received Labor Standards within thirty (30) days of the applicant's or certified resident's receipt of Labor Standards' determination.

(b) Where the applicant or certified resident does not request a hearing within thirty (30) days, Labor Standards shall either deny or revoke the certificate of residency.

**Section 11. Recommended Decision. Independent Hearing Officer.** Upon receipt of a timely submitted written request for hearing, Labor Standards shall contract with an independent hearing officer to conduct a hearing on the matter.

~~(a) — Within thirty (30) days of the fair hearing, the hearing officer shall issue a recommended decision and send a copy to each party.~~

~~(b) — Any party to the fair hearing may file an exception to the hearing officer's recommended decision with Labor Standards. Exceptions must be received by Labor Standards within thirty (30) calendar days of the issue date of the recommended decision. Exceptions not timely received will not be reviewed or considered.~~

~~(c) — A party may file a brief in support of its timely filed exception. The brief in support of the exception may be filed with the exception or separately. A separately filed brief must be received by Labor Standards within thirty (30) calendar days of the issue date of the~~

~~recommended decision. Briefs not timely received will not be reviewed or considered.~~

~~(d) — A party, in either its exception or brief in support of the exception, may request that Labor Standards conduct oral arguments regarding its exception to the recommended decision. Oral arguments may be held at the sole discretion of Labor Standards.~~

~~(e) — Labor Standards shall notify all parties by certified mail of its decision whether or not to conduct oral arguments.~~

~~(f) — Where a request for oral arguments is granted, Labor Standards shall conduct oral arguments within twenty (20) calendar days of the notification to the parties.~~

**Section 12.** ~~Final Agency Decision:~~ **Hearing Procedure.** The hearing officer shall conduct the hearing in accordance with the Wyoming Administrative Procedures Act, Wyoming Statute §§ 16-3-107 through -115, and the Wyoming Office of Administrative Hearings' rules for Contested Case Proceedings, which are hereby incorporated by reference and can be found at: <https://rules.wyo.gov/>

(a) — The rules for Contested Case Proceedings were adopted by the Wyoming Office of Administrative Hearings and in effect on July 20, 2017.

(b) — No later amendments to the rules for Contested Case Proceedings are incorporated by reference.

~~(a) — Where no exception to the recommended decision is timely filed, Labor Standards shall issue its final agency decision within thirty (30) calendar days from the end of the exception filing period.~~

~~(b) — Where an exception to the recommended decision is timely filed but no request for oral arguments is filed, the director shall issue a final agency decision within thirty (30) calendar days from the end of the exception filing period.~~

~~(c) — Where an exception to the recommended decision and a request for oral arguments is timely filed, the director may either grant or deny the request for oral arguments.~~

~~(i) — Granted: Where the request for oral arguments is granted, the director shall issue a final agency decision within thirty (30) calendar days after the conclusion of the oral arguments.~~

~~(ii) — Denied: Where the request for oral arguments is denied, the director shall issue a final agency decision within thirty (30) calendar days from the end of the exception filing period.~~

~~(d) — In his/her final agency decision the director may accept, reject, or modify the hearing officer's recommended decision. The final agency decision shall constitute Labor Standards final action.~~

**Section 13.** ~~Notification of Final Agency **Recommended Decision.** The director shall notify all parties by certified mail of his/her decision to deny or revoke the certificate of residency.~~

(a) Within thirty (30) days of the close of the hearing, the hearing officer shall issue a recommended decision and send a copy to each party and to Labor Standards.

(b) Any party to the hearing may file, either together or separately, an exception to the hearing officer's recommended decision and a brief in support thereof, with Labor Standards within thirty (30) days of the issue date of the recommended decision. Exceptions and supportive briefs not timely received shall not be reviewed or considered.

~~**Section 14. — Preference for Wyoming Subcontractors.** Upon request from Labor Standards, the successful resident bidder upon a public works project shall submit the list of intended subcontractors for use on the project, including dollar amount of each sub-bid, to determine compliance with the requirements of W.S. 16-6-103.~~

**Section 14. Final Agency Decision.**

(a) Labor Standards shall issue its final agency decision within thirty (30) days from the end of the exception filing period.

(b) In its final agency decision, Labor Standards may accept, reject, or modify the hearing officer's recommended decision. The final agency decision shall constitute Labor Standards' final agency action.

(c) Labor Standards shall notify all parties by certified mail of its final agency decision.

~~**Section 15. — Preference for Wyoming Materials & Suppliers.**~~

~~(a) Upon request from Labor Standards, the successful resident bidder shall provide proof of materials purchased in Wyoming to include documentation of price and quantity.~~

~~(b) Upon receipt of complaint of failure to utilize Wyoming materials or suppliers, Labor Standards shall investigate to determine compliance with the Act.~~

~~**Section 16. — Preference for Wyoming Laborers.**~~

~~(a) Upon request from Labor Standards a contractor or subcontractor shall provide the position description and proof of any listed "necessary qualifications" for the position for which labor is being sought.~~

~~(b) — Upon request from Labor Standards a contractor or subcontractor shall provide certification from the local Workforce Services Center that resident labor was sought but not found on any public works project.~~

~~(c) — The Letter of Certification issued by the Workforce Center shall have effect for the duration of the project upon which labor certification has been sought.~~

~~(d) — A contractor seeking to bring non-resident labor onto a public works project to fill openings from employee turnover, new openings or additional needs after receipt of the Letter of Certification must first post the opening with the local Workforce Center and make reasonable attempts to obtain qualified Wyoming resident labor.~~

~~(e) — Upon request from Labor Standards a contractor or subcontractor shall provide a payroll listing of all laborers utilized and hours worked on the project to include name, address, position worked, number of hours worked in each position, wage & benefit rate paid to each laborer and certified to be a true and correct copy by the company CFO or president.~~

~~(f) — Upon failure to obtain qualified resident labor, a contractor or subcontractor may then employ qualified non-resident labor on any public works project.~~

~~(g) — Employing non-resident labor on any public works project without proper certification shall subject the contractor or subcontractor to penalties in accordance with W.S. 16-6-206.~~

~~(h) — Any contractor or subcontractor aggrieved by a citation or debarment from Labor Standards has the right to appeal and request a fair hearing by an independent hearing officer.~~

~~(i) — Requests for hearing must be addressed to and received by the Director of the Department of Workforce Services, c/o Labor Standards, 1510 E. Pershing Boulevard, West Wing, Room 150, Cheyenne, Wyoming 82002, within seven (7) days of receipt of notice of the penalty and include the reasons the citation, penalty or debarment should not be imposed and/or reason the Act does not apply to the aggrieved contractor or subcontractor in the instance cited.~~

~~(ii) — The hearing will be held within fifteen (15) days of receipt of the request for hearing.~~

#### **Section 17. — Exclusions.**

~~(a) — Public Works projects involving federal funds restricting the application of state preference laws shall not be subject to the resident labor preference provisions.~~

~~(b) — Upon assertion by the contractor or subcontractor of the involvement of restrictive federal funding, any issued and outstanding citations will be placed in suspended status until funding streams have been determined.~~

~~(i) — Upon request from Labor Standards any contracting entity shall provide~~

~~proof of the funding stream(s) involved in the project and the specific work on the project supported by the federal funds within fifteen (15) days.~~

## CHAPTER 12

### PREFERENCE FOR WYOMING RESIDENT LABOR

**Section 1. Authority.** This Chapter is promulgated by the authority Wyoming Statute § 16-6-205(a) of the Wyoming Preference Act of 1971, as amended.

**Section 2. Purpose.** This Chapter prescribes procedures and practices to ensure the proper administration of, and to establish and implement measures to ensure compliance with, the Wyoming Preference Act.

**Section 3. Definitions.**

(a) “Business Consultant Unit” means a team within the Department primarily responsible for providing guidance and oversight of the Wyoming Preference Act.

(b) “Certification process” means the methods and procedures, established by the Workforce Center, implemented to validate a qualified Wyoming resident applicant laborer is provided with adequate opportunity to be employed on a public works project, and to ensure each Employer has exercised due diligence in hiring Wyoming resident labor prior to the issuance of a Certification Letter authorizing the Employer to hire nonresident labor.

(c) “Department” means the Wyoming Department of Workforce Services.

(d) “Employer” means a person or entity who hires or employs skilled or unskilled laborers for public works projects.

(e) “Independent contractor” means an individual who performs compensated services for another individual or entity, and who:

(i) Is free from control or direction over the details of the performance of services by contract and by fact;

(ii) Represents his/her services to the public as a self-employed individual or an independent contractor; and

(iii) May substitute another individual to perform his/her services.

(f) “Noncompliance indicator” means any action or inaction which tends to suggest an Employer’s noncompliance with the Wyoming Preference Act, and may include, but is not limited to, any of the following:

(i) Employer’s unwillingness to disclose a project name, location, or start date when opening a job order or upon request;

(ii) Employer's requiring of a certification, license, excessive experience, or other qualification criteria that is not related to the craft or project;

(iii) Employer's failure to respond to an applicant;

(iv) Employer's failure to hire a qualified resident applicant without acceptable cause;

(v) Employer's failure to respond to an inquiry from the Department;

(vi) Discovery of noncompliance found during a compliance check; or

(vii) A complaint or allegation of noncompliance.

(g) "Owner" means the State of Wyoming or any political subdivision, municipal corporation, special district, or other governmental unit, including any authorized agent thereof.

(h) "Skilled laborer" means any skilled laborer who performs work in a craft, trade, or specialty occupation requiring related experience, training, or specialized education.

(i) "Unskilled laborer" means any unskilled laborer who performs work which does not require any level of specialized training, experience, or education.

(j) "Willful or intentional noncompliance" means:

(i) A deliberate action used by an employer to negate or circumvent the provisions of the Wyoming Preference Act; or

(ii) A recurrence of, or failure to correct, an instance of noncompliance after an employer receives a pre-construction Notice or Advisory on the applicability of the Wyoming Preference Act.

(k) "Workforce Center" means any of the Department's Workforce Centers, statewide offices providing workforce programs and services.

(l) "Wyoming Preference Act" means the Wyoming Preference Act of 1971, as amended, Wyoming Statute §§ 16-6-201 through -206.

**Section 4. Business Consultant Unit.** The Business Consultant Unit shall perform consultation and monitoring services on behalf of the Department for the purposes of enforcing the Wyoming Preference Act. In carrying out its functions, the Business Consultant Unit may:

- (a) Examine identification to establish residency status and certification compliance at public works project sites;
- (b) Notify the appropriate Workforce Center when performing an evaluation of, or inquiry into, a problematic job order;
- (c) Issue a letter of inquiry, pre-construction Notice, Advisory, Citation, and Debarment, as necessary;
- (d) Revoke a Certification Letter when evidence demonstrates an Employer willfully or intentionally failed to hire qualified Wyoming resident labor;
- (e) Support and assist the Workforce Center in obtaining information on a public works project or a prospective Employer during the certification process;
- (f) Initiate a customer outreach program that will provide training to Owners and Employers on applicable statutes and rules related to their legal obligations;
- (g) Examine payroll records to ensure that an Employer pays overtime in accordance with Wyoming Statute § 16-6-110, as applicable; and
- (h) Investigate reports of suspected noncompliance reported by the Workforce Center or general public.

**Section 5. Employer Responsibilities.**

- (a) Every Employer shall cooperate with the Department, Workforce Center, and Business Consultant Unit in carrying out its obligations.
- (b) No Employer shall open a job order or act as an advocate for another Employer.
- (c) Every Employer shall ensure that any applicable contract or subcontract contains the required provisions and acknowledgments required by Wyoming Statute § 16-6-203(a) of the Wyoming Preference Act.

**Section 6. Resident Labor.**

- (a) Every Employer shall ensure that each laborer claiming Wyoming resident status, including those laborers from temporary labor agencies, satisfies the requirements of Wyoming Statute § 16-6-202(a)(ii), and shall provide documentary evidence to establish Wyoming resident status upon request by the Department, Workforce Center, or Business Consultant Unit. Wyoming resident status may be established by:



(i) A Wyoming driver's license showing an original issue date no less than one year prior;

(ii) A utility bill, rent receipt, insurance policy, mortgage document, vehicle registration, pay stub, tax document, voter registration, doctor's bill, or bank statement showing the resident's Wyoming address for a period of at least one year; or

(iii) Any other documentary evidence establishing one year of Wyoming residency acceptable to the Department, Workforce Center, or Business Consultant Unit.

(b) An Employer shall not require any Wyoming resident to apply through a labor organization or union, or at any location outside of the assigned Workforce Center's area of responsibility.

(c) An Employer shall not require any Wyoming resident to apply through an outside source without a means of verifying each application is received and acknowledged.

**Section 7. Nonresident Labor.**

(a) Prior to employing any nonresident laborer on a covered public works project, an Employer shall apply for and obtain a Certification Letter from the assigned Workforce Center.

(b) An Employer shall comply with the Workforce Center's certification process to ensure qualified Wyoming resident laborers are provided opportunity to be employed on public works projects.

**Section 8. Investigation and Notice of Determination.**

(a) The Business Consultant Unit shall investigate an Employer when one or more noncompliance indicators are reported or discovered to determine compliance with the Wyoming Preference Act.

(b) Upon completion of its investigation, the Business Consultant Unit shall make an assessment as to whether the subject Employer is or is not compliant with the Wyoming Preference Act, and shall notify the Employer of its determination as follows:

(i) A "No Violation" notification shall be issued when there is no evidence of noncompliance.

(ii) An "Advisory" notification shall be issued when the Employer is deemed to be noncompliant on the first offence, or when a recurrence of noncompliance occurs one year or more after the previous noncompliance occurrence.

(iii) A "Citation" notification shall be issued if the recurrence date occurs within one year from the date of the previous occurrence of noncompliance, or upon discovery of willful or intentional noncompliance.

(iv) A "Citation and Debarment" notification shall be issued upon a recurrence of noncompliance within one year from date of a Citation being issued.

(c) The Business Consultant Unit shall notify all parties of its determination by certified mail.

(d) Where the investigation was initiated by a complaint, the Business Consultant Unit shall notify the complainant of its findings when the complainant's identification and contact information is known.

**Section 9. Final Agency Decision.** If no hearing is requested pursuant to Wyoming Statute § 16-6-206(d), the Department shall issue its final agency decision within thirty (30) days from the end of the hearing request filing period. If a hearing is held, the Department shall issue its final agency decision within thirty (30) days after the hearing officer's recommended decision is issued. In its final agency decision, the Department may accept, reject, or modify the hearing officer's recommended decision.

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(c) “Department” means the Wyoming Department of Workforce Services.

(d) “Employer” means a person or entity who hires or employs skilled or unskilled laborers for public works projects.

(e) “Independent contractor” means an individual who performs compensated services for another individual or entity, and who:

(i) Is free from control or direction over the details of the performance of services by contract and by fact;

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(f) “Noncompliance indicator” means any action or inaction which tends to suggest an Employer’s noncompliance with the Wyoming Preference Act, and may include, any of the following:

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(j) "Willful or intentional noncompliance" means:

(i) A deliberate action used by an employer to negate or circumvent the provisions of the Wyoming Preference Act; or

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