



Notice of Intent to Adopt Rules

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

Revised June 2020

<u>1. General Information</u>			
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			
Amended Program Name (if applicable):			
* <input type="checkbox"/> 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.			
<u>2. Legislative Enactment</u> For purposes of this Section 2, "new" only applies to regular non-emergency 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 non-emergency regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?			
<input type="checkbox"/> No. <input type="checkbox"/> Yes. If the rules are new, please provide the Legislative Chapter Numbers and Years Enacted (e.g. 2015 Session Laws Chapter 154):			
<u>3. Rule Type and Information</u> For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.			
a. Provide the Chapter Number, Title and Proposed Action for Each Chapter. Please use the "Additional Rule Information" form to identify additional rule chapters.			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			

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. The Agency has completed a takings assessment as required by 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: _____

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>	

Statement of Reasons
Labor Standards
Chapter 12 – Preference for Wyoming Resident Labor

The Wyoming Department of Workforce Services (DWS), Labor Standards Division proposes updates on Chapter 12 – Preference for Wyoming Resident Labor. On April 5, 2021, Wyoming Governor Mark Gordon signed the House Enrolled Act (HEA) 0059, Wyoming Preference Act of 1971 - Amendments as passed by the 66th Legislature. HEA 0059 focuses on resident and nonresident laborers employed on public works projects.

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.

Prior to the changes in Wyoming Statutes §§ 16-6-202, 16-6-203, and 16-6-206, all laborers employed on public works projects must be Wyoming residents. If Wyoming resident laborers are not available, a state workforce center may certify nonresident laborers for employment on a specific project.

This act (as taken from LSO website):

Amends the residency requirement for Wyoming laborers from one year to ninety (90) days;

Revises the process for certifying nonresident laborers as eligible for employment on public works. The act allows for certification of a specific number of nonresident laborers on multiple public works for a nine (9) month period;

Allows for emergency certification of nonresident laborers if Wyoming laborers are readily available to respond to a situation that endangers the health, welfare or safety of the public; and,

Requires reporting by persons responsible for public works on the number on nonresident laborers employed.

The following are specific changes to Labor Standards Chapter 12 – Preference for Wyoming Resident Labor rules:

Section 3 – Definitions – added (d) “Emergency” definition and reformatted the remainder of the section;

Section 4 – Business Consultant Unit – added (i) “assist in the confirmation of an emergency project by coordinating with the Workforce Center in contacting the project owner as necessary”;

Section 5 – Employer Responsibilities – added (d) “an employer shall provide a list of all subcontractors on a Public Work project to the Business Consultant Unit upon request from the Department”;

Section 6 – Resident Labor – (a)(i) and (a)(iv) – deleted one year and added ninety (90) days; (a)(ii) – added “resident hunting or fishing license” deleted one year and added ninety (90) days; (a)(iii) – added “military form DD214, which indicates Wyoming as the applicant’s domicile and home or record for at least ninety (90) days; added (d): “an employer who anticipates employing an individual on a public work project who does not meet residency requirements as outlined in W.S. § 16-6-201(a)(ii), but whom the employer believes should be considered a resident for the purposes of the Wyoming Preference Act, may submit a request in writing to approve the person as a resident to the Business Consultant Unit prior to the individual starting employment on a public work project” and added (d)(i) – “the Business Consultant Unit shall issue a written document within ten (10) days of receiving the written request from the employer. The determination will approve or deny residency status for the individual;

Section 8 – Investigation and Notice of Determination – deleted (c); and,

Section 9 – Final Agency Decision – reformatted (a)-(c).

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) “Emergency” means an unexpected situation that threatens the health, welfare or safety of the public.

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

(f) “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.

(g) “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.

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

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

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

(k) "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.

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

(m) "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;
- (h) Investigate reports of suspected noncompliance reported by the Workforce Center or general public; and
- (i) Assist in the confirmation of an emergency project by coordinating with the Workforce Center in contacting the project owner as necessary.

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.
- (d) An Employer shall provide a list of all subcontractors on a Public Work project to the Business Consultant Unit upon request from the Department.

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 ninety (90) days prior; or

(ii) A utility bill, rent receipt, insurance policy, mortgage document, vehicle registration, pay stub, tax document, voter registration, doctor's bill, resident hunting or fishing license, school records or bank statement showing the resident's Wyoming address for a period of at least ninety (90) days; or

(iii) Military form DD214, which indicates Wyoming as the applicant's domicile and home of record for at least ninety (90) days; or

(iv) Any other documentary evidence establishing ninety (90) days 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.

(d) An employer who anticipates employing an individual on a public work project who does not meet residency requirements as outlined in W.S. § 16-6-201(a)(ii), but whom the employer believes should be considered a resident for the purposes of the Wyoming Preference Act, may submit a request in writing to approve the person as a resident to the Business Consultant Unit prior to the individual starting employment on a public work project.

(i) The Business Consultant Unit shall issue a written document within ten (10) days of receiving the written request from the employer. The determination will either approve or deny residency status for the individual.

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) 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.

(a) 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.

(b) 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.

(c) 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.

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(iii) Military form DD214, which indicates Wyoming as the applicant's domicile and home of record for at least ninety (90) days; or

(~~iii~~ iv) Any other documentary evidence establishing ~~one year~~ ninety (90) days of Wyoming residency acceptable to the Department, Workforce Center, or Business Consultant Unit.

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(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.

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(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.

(a) 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.

(b) 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.

(c) In its final agency decision, the Department may accept, reject, or modify the hearing officer’s recommended decision.