



**MONTANA
ADMINISTRATIVE
REGISTER**



DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-508.1

Summary

Independent Contractor Exemption Certificate Application Requirements

Hearing Date and Time

Thursday, January 8, 2026, at 9:00 a.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/83526418075>

Meeting ID: 835 2641 8075; Password: 1189434270

Dial by Telephone: +1 646 558 8656

Meeting ID: 835 2641 8075; Password: 1189434270

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, January 16, 2026, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, January 2, 2026, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

General Reasonable Necessity Statement

There is reasonable necessity to amend the rules pertaining to independent contractor exemption certificates (ICEC) to reduce application requirements of notarization. Section 39-71-417, MCA, requires that applications be “under oath.” While notarization is one means to satisfy that requirement, a declaration signed under the laws of the state of Montana is another way. The Department of Labor and Industry has made the policy determination that a reduction in ICEC application requirements is in the best interest of Montanans, and therefore proposes to eliminate notarization requirements.

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.35.111 APPLICATION FOR INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE

- (1) The applicant for an ICEC shall submit:
 - (a) a completed ICEC application on a department-approved form bearing the applicant's ~~notarized signature, as required by ARM 24.35.112;~~
 - (b) a fee, as required by ARM 24.35.121; and
 - (c) an executed, ~~notarized~~ waiver conforming to the requirements of ARM 24.35.113.

- (2) The department shall approve or deny an ICEC application within 30 days of receipt and notify the applicant in writing.
- (3) The department shall retain an incomplete or denied application for a period of six months from the date of receipt and allow the applicant the opportunity to supplement supporting documentation or submit missing components. Upon the written request of applicant, the department shall re-evaluate an application, taking into consideration the supplemental information submitted by applicant. Incomplete applications that have not been approved within six months of receipt by the department will remain denied.

Authorizing statute(s): 39-71-417, MCA

Implementing statute(s): 39-71-417, MCA

Reasonable Necessity Statement

There is reasonable necessity to amend this rule to eliminate the requirement for notarization, for the reasons set forth in the general statement of reasonable necessity.

24.35.112 INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE APPLICATION AFFIDAVIT

- (1) On the form provided by the department, the applicant shall provide all information designated as required. ~~The form must be notarized, and the~~ applicant must state, under oath, the veracity of all information on and attached to the form.
- (2) The applicant shall also submit supporting documentation to prove applicant's qualification for an ICEC. The department has the discretion to assess the reliability of the documentation and award points for each item of proof as outlined by this rule. Each item of documentation submitted may count toward points in more than one category. No more than two items of proof may be submitted under each category. To qualify for an ICEC, an applicant's documentation must be awarded a minimum of 15 points by the department for each independently established trade, occupation, profession, or business listed on the ICEC application.
 - (a) The department may award up to ten points for proof that the applicant has current workers' compensation, unemployment insurance, and Department of Revenue accounts for employees in each independently established trade, occupation, profession, or business. The department may award up to six points for proof of two insurance policies or accounts and may award up to three points for proof of one insurance policy or account.

- (b) The department may award up to six points for each of the following proofs for each independently established trade, occupation, profession, or business:
 - (i) contract or memo of understanding that demonstrates applicant's independent contractor status. If the applicant can end a contract at any time without incurring any liability for failing to complete the project that is the subject of the contract, the department cannot award points for the contract under this rule. Separate contracts with different hiring agents may qualify for a maximum of six points. Each contract must include:
 - (A) payment based on a completed project;
 - (B) beginning and ending dates of the contract;
 - (C) liability for failure to complete the project;
 - (D) identification of who provides the materials and supplies;
 - (E) signatures by both parties; and
 - (F) defined body of work, complete project, or end result;
 - (ii) signed and dated list of equipment and tools owned or controlled by the applicant with approximate values. The equipment or tool list may be documented by a rental or lease agreement, county documents verifying the business equipment tax paid, or other means;
 - (iii) commercial general liability insurance policy or bonding;
 - (iv) most recent business tax forms filed within the past three years;
 - (v) IRS Form 1099s (miscellaneous income) from multiple hiring agents or two quarterly self-employment tax payments (IRS form 1040ES) within the past three years;
 - (vi) trucking company lease agreement; or
 - (vii) certification for Indian Preference by a federally recognized Indian tribe under the laws of that tribe.
- (c) The department may award up to three points for each of the following proofs for each independently established trade, occupation, profession, or business:
 - (i) partnership or limited liability partnership agreement signed and dated by all partners that demonstrates:
 - (A) intent to form the partnership;
 - (B) contribution by all partners;

- (C) a proprietary interest and right of control by the application; and
 - (D) the sharing of profit/loss;
- (ii) current business license or building permit;
- (iii) certificate of registration for the business entity issued by the Montana Secretary of State;
- (iv) articles of incorporation, annual report, articles of organization, or other documentation that verifies the applicant is an officer in a corporation, a manager in a manager-managed limited liability company, or a member of a member-managed limited liability company;
- (v) proof of ownership, home occupation license, rental or lease agreement with a statement that the property may be used for business or commercial use, or proof of IRS filing for use of home as a business;
- (vi) educational certification for unlicensed occupations relevant to the trade, occupation, or profession for which the applicant seeks the ICEC;
- (vii) current professional license relevant to the trade, occupation, or profession for which the applicant seeks the ICEC;
- (viii) membership in a relevant professional association or affiliation;
- (ix) current motor carrier (MC) authority number in applicant's personal or business name;
- (x) business bank account; or
- (xi) copies of advertising in a newspaper, phone book, web site on the internet, or other venue.
- (d) The department may award up to one-and-one-half points for each of the following proofs for each independently established trade, occupation, profession, or business:
 - (i) federal employer identification number (EIN);
 - (ii) Dunn and Bradstreet number;
 - (iii) telephone or utility bill(s) in the business name;
 - (iv) credit card(s) or purchase account(s) in the business name;
 - (v) preprinted business invoices, business cards, or brochures;
 - (vi) proof of order(s) for printed hats, shirts, or other promotional items for the business;

- (vii) proof of business advertising using a vehicle sign, yard sign, bulletin boards, or posted flyers;
 - (viii) invoices billed to the business name or a bid proposal or estimate, either of which must include the address and phone number of the recipient;
 - (ix) vehicle registration(s) in the business name; or
 - (x) international fuel tax account number (IFTA) in the applicant's personal or business name.
- (e) The applicant may submit any other supporting documentation. The department has discretion to assess the reliability of and determine the point value of any documentation not listed in this rule.

Authorizing statute(s): 39-3-202, 39-3-403, 39-51-301, 39-71-203, 39-71-417, MCA

Implementing statute(s): 39-3-201, 39-3-402, 39-51-201, 39-51-204, 39-71-417, 39-71-418, 39-71-419, MCA

Reasonable Necessity Statement

There is reasonable necessity to amend this rule to strike notarization requirements, for the reasons set forth in the general statement of reasonable necessity.

24.35.113 INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE WAIVER

- (1) To execute a waiver, the applicant shall complete the department-approved waiver form. The waiver form must be signed by the applicant and ~~notarized~~ under oath. The applicant shall represent on the waiver form that:
- (a) the applicant is engaged in each independently established trade, occupation, profession, or business that is specifically identified on the application form;
 - (b) the applicant is responsible for all taxes related to the applicant's work as an independent contractor;
 - (c) the applicant controls the details of how services are performed, both under contract and in fact, and the hiring agent retains only the control necessary to ensure the bargained for end result; and
 - (d) the applicant understands and agrees that if the ICEC is granted, the applicant is not eligible for and waives the right to workers' compensation or

occupational disease benefits for an injury or occupational disease related to work performed as an independent contractor in each independently established trade, occupation, profession, or business for which the ICEC is granted.

Authorizing statute(s): 39-3-202, 39-3-403, 39-51-301, 39-71-203, 39-71-417, MCA

Implementing statute(s): 39-3-201, 39-3-402, 39-51-201, 39-51-204, 39-71-417, 39-71-418, 39-71-419, MCA

Reasonable Necessity Statement

There is reasonable necessity to amend this rule to strike the notarization requirement, for the reasons set forth in the general statement of reasonable necessity.

24.35.117 ICEC RENEWAL, DECLARATION, AND WAIVER

- (1) About two months prior to its expiration, the department will remind an ICEC holder of the expiration date of their ICEC.
- (2) To renew an ICEC, the ICEC holder shall submit the following:
 - (a) signed ICEC renewal application on the department-approved form that indicates any changes in independent contractor status;
 - (b) certification that previously submitted documentation remains valid;
 - (c) additional documentation supporting independent contractor status, as needed;
 - (d) a fee, as required by ARM 24.35.121; and
 - (e) an executed waiver on the department-approved form.
- (3) The department will verify documentation on file and evaluate all new documentation submitted by the ICEC holder. The department will assign point values to documentation, in accordance with ARM 24.35.112.
- (4) The department has discretion to assess the reliability of and determine the point value of any documentation not listed in ARM 24.35.112.
- (5) If the department is unable to verify any documentation needed to support independent contractor status, the department will notify the ICEC holder in writing within 30 days of receipt of the renewal application.

- (6) To qualify for an ICEC renewal, the ICEC holder's documentation must be awarded a minimum of 15 points by the department for each independently established trade, occupation, profession, or business listed on the ICEC renewal application.
- (7) An ICEC renewal issued by the department remains in effect for a two-year period unless the department revokes or suspends the ICEC or the ICEC holder requests in writing that the department cancel the ICEC.
- (8) An ICEC holder may update the information on file with the department at any time during a current independent contractor exemption certificate period by requesting in person, over the phone, by e-mail, or in writing the revision of business name(s), business structure, phone number(s), or mailing address.
- (9) An ICEC holder may add or change trade(s), occupation(s), profession(s), or business(es) to an ICEC, by ~~executing an affidavit and waiver and submitting sufficient, relevant documentation to qualify for a minimum of 15 points, in accordance with the requirements of ARM 24.35.112~~ submitting a complete application and meeting the requirements of statute and rule. When an addition is made pursuant to this section (9), the expiration date of the ICEC is not changed.

Authorizing statute(s): 39-51-301, 39-51-302, 39-71-203, 39-71-409, 39-71-417, MCA

Implementing statute(s): 39-51-201, 39-51-204, 39-71-105, 39-71-409, 39-71-417, 39-71-418, MCA

Reasonable Necessity Statement

There is reasonable necessity to amend this rule to strike the notarization requirements for the reasons set forth in the general statement of reasonable necessity. As a result, this rule is amended to clarify that the addition of trades to an ICEC are completed by application.

Small Business Impact

This rulemaking is expected to impact the class of individuals who work as independent contractors not from a fixed business location. These individuals are required to obtain an independent contractor exemption certificate to be exempted from workers' compensation, wage and hour, unemployment insurance, human rights, and individual income tax requirements relating to worker status. This rulemaking is not expected to have a significant or direct impact on these individuals, though the time required to complete an application may be reduced due to the lack of need for notarization.

Bill Sponsor Notification

The bill sponsor contact requirements do not apply.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner