

Licensing Reform Task Force Construction Subcommittee

ICEC DENIALS AND TRENDS

Executive Summary

This memorandum summarizes recent denial data and operational trends for Montana **Independent Contractor Exemption Certificate (ICEC)** applications. The data show that ICEC denials are overwhelmingly driven by routine application-completion issues, not by substantive determinations that the applicant is an employee. Across calendar years 2023 through 2025, routine application issues accounted for approximately **98% to 99%** of all denials each year. The partial CY 2026 data reflect the same pattern.

The denial process is generally remedial. Most applicants who are denied failed to provide requested information or sufficient documentation of an independently established business within the allotted time. Applicants receive two notices before denial and may later obtain approval if they satisfy the requirements within six months. Outright denials are comparatively rare and generally fall into two categories: **questionable occupations** that do not appear to involve an independently established business, and **strong evidence of control** suggesting an employer-employee relationship.

The governing legal framework requires an ICEC applicant to show both that the applicant is and will remain free from control or direction over the performance of services and that the applicant is engaged in an independently established trade, occupation, profession, or business. The applicant may contest a denial through the statutory dispute process, beginning with a timely request for mediation within 15 days of the decision.

Legal Framework

Montana law requires certain persons who regularly and customarily perform services away from their own fixed business location to apply to the Department for an ICEC unless they have elected personal workers' compensation coverage. The ICEC statute applies to specified business forms, including sole proprietors and certain working members or managers of partnerships and limited liability companies engaged in construction-industry work.¹

To obtain an ICEC, the applicant must swear to and acknowledge two core elements:

- The applicant has been and will continue to be **free from control or direction** over the performance of the applicant's own services, both under contract and in fact; and
- The applicant is engaged in an **independently established trade, occupation, profession, or business** and will provide sufficient documentation of that fact to the Department.²

¹ 39-71-417, MCA

² 39-71-417(4), MCA

Department rules apply the same two-part test when determining whether an individual is an independent contractor or employee: freedom from control or direction, and engagement in an independently established trade, occupation, profession, or business.³

The Department's rules identify nonexclusive factors relevant to whether an independently established business exists, including whether the individual has a separate place of business, supplies tools and equipment, pays business expenses, serves multiple hiring agents, invoices for work, advertises, files business tax forms, holds required licenses or registrations, has profit-or-loss risk, is not restricted from working for others, and other facts showing a separate trade or business.⁴

If the Department denies an ICEC application, the applicant may contest that decision under the dispute process in 39-71-415(2) and 39-71-417(9), MCA. Under that process, a Department decision is final unless a dissatisfied party requests mediation within 15 days of mailing of the decision; if mediation does not resolve the dispute, a party may file a petition with the Workers' Compensation Court within 30 days after mailing of the mediator's report.⁵ Department rule similarly provides that a party receiving an adverse decision may request mediation within 15 days of the date the decision was sent, effective upon Department receipt.⁶

Denial Data

The following table summarizes denial reasons reported for calendar years 2023 through 2026. CY 2026 appears to be year-to-date or otherwise partial data based on the lower volume reported.

Reason Denied	CY 2023	CY 2024	CY 2025	CY 2026
Routine application issues	734	661	647	113
Control	4	5	6	1
Lack of business	10	2	1	1
Total denials	748	668	654	115

Percentage Share by Denial Reason

Reason Denied	CY 2023	CY 2024	CY 2025	CY 2026
Routine application issues	98.13%	98.95%	98.93%	98.26%
Control	0.53%	0.75%	0.92%	0.87%
Lack of business	1.34%	0.30%	0.15%	0.87%

For completed calendar years 2023 through 2025, the Department reported **2,070 total denials** in the three categories listed above. Of those, **2,042 denials**, or approximately **98.65%**, were for routine application issues. Only **15 denials**, or approximately **0.72%**, were based on control, and **13 denials**, or approximately **0.63%**, were based on lack of business.

Operational Trends and Denial Categories

1. Routine Application Issues

The vast majority of ICEC denials occur because the applicant does not provide requested information needed to complete the application process within the allotted time. This includes failure to submit sufficient evidence that the applicant has an independently established business. These denials generally do not reflect a final substantive determination that the applicant cannot qualify as an independent contractor; instead, they usually reflect an incomplete evidentiary record.

³ ARM 24.35.202

⁴ ARM 24.35.303

⁵ 39-71-415(2), MCA

⁶ ARM 24.35.206

Applicants receive **two notices** before denial and are given time to remedy the deficiency. If the applicant satisfies the requirements within **six months**, the application may be subsequently approved. This process supports the conclusion that the Department's approach is primarily remedial and compliance-oriented, rather than punitive.

2. Lack of Business / Questionable Occupations

A small number of applications are denied because the occupation identified in the application is questionable for independent-contractor certification or does not appear to involve an independently established business. Examples identified in the program materials include **office personnel, foreman, and camp instructor**. These applicants are usually unable to provide evidence of a business independent from the hiring agent.

This category aligns with the statutory requirement that an applicant be engaged in an independently established trade, occupation, profession, or business.⁷ It also aligns with the Department's rule listing factors that may demonstrate an independently established business, such as separate business location, tools and equipment, multiple contracts, invoices, advertising, business tax filings, required licenses or registrations, and profit-or-loss risk.⁸

3. Control / Employer-Employee Relationship Indicators

Another small number of applications are denied when the applicant's submitted documents contain strong evidence of control indicating an employer-employee relationship. Examples include contracts, time sheets, W-2 forms, or other documentation showing that the hiring agent retains or exercises control inconsistent with independent-contractor status.

This category corresponds to the statutory requirement that the applicant be free from control or direction over the performance of services, both under contract and in fact.⁹ The Department may also suspend an ICEC for a specific business relationship if it determines that the employing unit exerts or retains a right of control to a degree that causes the certificate holder to violate the ICEC requirements.¹⁰ In addition, an employer may not exert control to a degree that causes an independent contractor to violate the requirements of 39-71-417(4), MCA or 39-71-419(2)(b), MCA.

In most control cases, examiners work to educate the applicant and, where appropriate, the hiring agent about the requirements for independent contractors to remain free from control and direction. The applicant may amend elements of the working relationship and pursue the ICEC; if the applicant can later show satisfactory evidence, the application may be approved.

Appeal and Post-Denial Review Process

All denied applicants are notified that they may appeal the denial. Program materials state that applicants may appeal within **15 days** of the notice. That timing is consistent with 39-71-415(2), MCA, which provides that a Department decision becomes final unless a dissatisfied party requests mediation within 15 days of mailing of the decision, and with ARM 24.35.206, which provides that a party receiving an adverse decision may request mediation within 15 days of the date the decision was sent.¹¹

After a denial, staff may re-evaluate the application and supporting documents. If the applicant submits sufficient documentation, staff may approve the application without further litigation. If the matter remains unresolved, it may proceed to mediation. Program staff has indicated that mediation in ICEC denial cases is very rare, approximately **one case per year**.

If mediation does not resolve the dispute, the statute permits a party to appeal the decision by filing a petition with the Workers' Compensation Court within 30 days after mailing of the mediator's report. The appeal is a new proceeding.¹²

⁷ 39-71-417(4)(a)(ii), MCA

⁸ ARM 24.35.303

⁹ 39-71-417(4)(a)(i), MCA

¹⁰ 39-71-418(1), MCA

¹¹ 39-71-415(2), MCA; ARM 24.35.206

¹² 39-71-415(2)(c)-(d), MCA

Key Takeaways for the Construction Subcommittee

1. **Denials are overwhelmingly procedural.** The principal reason for denial is failure to provide requested information or sufficient documentation within the allotted time.
2. **The program provides notice and cure opportunities.** Applicants receive two notices before denial, and applications may be subsequently approved if requirements are satisfied within six months.
3. **Substantive denials are rare.** Control-based denials and lack-of-business denials together represent only a small fraction of total denials.
4. **Control remains the central substantive risk.** Contracts, time records, W-2 forms, or other documents showing direction and control can support denial because the applicant must be free from control or direction both under contract and in fact.
5. **Questionable occupations require careful review.** Occupations that resemble employee roles or do not ordinarily reflect a separate business may fail the independently established business requirement.
6. **The appeal pathway is available but seldom used.** Denied applicants are informed of the 15-day appeal/mediation request period, but mediation is rare, likely because many issues can be resolved through supplemental documentation or application reevaluation.

Recommended Framing for Subcommittee Discussion

The Department may wish to frame ICEC denial trends as follows:

- **Application support and education are the main operational need.** Because nearly all denials arise from incomplete applications or insufficient documentation, improvements should focus on clearer instructions, targeted reminders, and examples of acceptable business documentation.
- **The denial process already includes safeguards.** The two-notice process, post-denial cure opportunity, staff reevaluation, and statutory mediation/appeal rights reduce the likelihood that a qualified applicant is permanently excluded due to a correctable deficiency.
- **The Department should preserve examiner discretion for substantive red flags.** Although rare, outright denials remain important when documents show strong control or when the applicant cannot demonstrate an independently established business. Those determinations protect the integrity of the ICEC program and the workers' compensation system.
- **Education for hiring agents may reduce control-based issues.** In some cases, the applicant's eligibility turns on how the working relationship is structured. Outreach to hiring agents about control, contract terms, timekeeping, invoicing, and employee indicators may prevent avoidable denials and later disputes.

Conclusion

The available ICEC denial data show a stable and consistent trend: **routine application issues account for nearly all denials**, while denials based on control or lack of an independently established business are rare. The current process provides multiple opportunities to cure deficiencies and a statutory pathway for contesting adverse decisions. For the Construction Subcommittee, the principal policy question is therefore not whether denials are being issued too frequently for substantive reasons, but whether application guidance and industry education can further reduce routine, correctable denials while preserving the Department's ability to address genuine control and lack-of-business concerns.