



ADMINISTRATIVE RULES OF MONTANA



24.26.254 BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER

- (1) A party may request review of the hearing officer's recommended order by filing exceptions with the board within 20 days of service of the hearing officer's recommended order. Any exception must include all the party's specific exceptions and reasons for the exceptions. The exceptions serve as the party's opening brief. A party requesting review of the transcript must so state in the party's objection.
 - (a) If review of the transcript is not requested, briefs shall be due as follows:
 - (i) A party who wishes to file a response brief to an opposing party's exceptions must file and serve the response brief within 34 days of service of the hearing officer's recommended order.
 - (ii) A party who wishes to file a reply brief to an opposing party's response brief must file and serve the reply brief within 14 days of service of the response brief.
 - (b) If one or both parties request review of the transcripts, the requesting party shall file an original and an electronic version of the transcript with the board within 28 days service of the hearing officer's recommended order, and briefs shall be due as follows:
 - (i) A party who wishes to file a response brief to an opposing party's exceptions must file and serve the response brief within 14 days of the board's receipt of the transcript.
 - (ii) A party who wishes to file a reply brief to an opposing party's response brief must file and serve the reply brief within 14 days of service of the response brief.
- (2) The following requirements apply to the preparation of the transcript:
 - (a) A transcript must be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript must be a verbatim and complete account of all proceedings on the record of the hearing and must be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.
 - (b) Preparation of the transcript is the responsibility of the party requesting review of the transcript. If more than one party requests review of the transcript, all parties requesting the review shall share equally in the cost of the transcript and copies.
- (3) A brief and any exhibits must comply with the formatting standards in ARM 24.26.242 and 24.26.244. A brief may not exceed 20 pages in length.

- (4) The board's review of the hearing officer's recommended order shall be confined to the complete record. The complete record for the purposes of this rule is comprised of all documents cited or referred to in the briefing before the board. If a party intends to challenge any finding of fact of the hearing officer, the complete record additionally includes the transcript of the hearing.
 - (a) The party citing or referring to a document in its briefing is required to attach as an exhibit to its brief the entirety of such document. If a party fails to attach required documents to its briefing, the board may deny the appeal.
 - (b) Documents which may be included in the complete record are those enumerated at 2-4-614, MCA. Failure of a party to submit documents enumerated in that statute constitutes a stipulation by that party that the board need not review those documents.
 - (c) Exhibits not admitted at hearing may not be attached to briefs on appeal, unless the failure to admit such exhibit is a reason for appeal. On timely motion by any party, any exhibit improperly attached may be stricken from the appeal.
- (5) Exceptions will be considered at the next board meeting after conclusion of the briefing schedule.
- (6) Each objecting party will be granted 20 minutes for oral argument before the board. Each objecting party may reserve a portion of the 20 minutes for rebuttal. Oral argument may be waived by the parties, except where it is requested by the board. The board may allow additional time for oral argument upon request of an objecting party.
- (7) The board shall review the recommended order to determine if the recommended order's findings of fact are supported by competent substantial evidence and whether the conclusions of law are correct.
- (8) The board shall issue a written decision which affirms, rejects, modifies, or remands the hearing officer decision as follows:
 - (a) For a matter arising under ARM Title 24, chapter 26, subchapter 10, the written decision shall be issued within 14 days of the hearing of the appeal.
 - (b) For a ULP complaint arising under ARM Title 24, chapter 26, subchapter 12, the written decision shall be issued within five months of the hearing on the appeal.
 - (c) For all other matters, the written decision shall be issued within 90 days of the hearing of the appeal.
- (9) The final decision of the board is a final agency decision.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 2-18-1011, 2-18-1012, 39-31-406, 39-32-112, 39-32-113, MCA

History: NEW, 2020 MAR p. 2422, Eff. 12/25/20; AMD, 2021 MAR p. 1551, Eff. 11/6/21.