



ADMINISTRATIVE RULES OF MONTANA

18.3.106 SUSPENSION

- (1) Pending debarment proceedings or an investigation, which initial information or indications indicate may lead to discovery of facts for which debarment proceedings may be initiated, the department may suspend a person from contracting with the department or participating in department projects. Suspension may be used when there exists evidence of any of the debarment causes set forth in ARM 18.3.104, and immediate action is considered necessary or prudent to protect the department or the public contracting process or safety.
- (2) The scope of a suspension is the same as the scope of a debarment (see ARM 18.3.103, above) .
- (3) Suspensions may last for a reasonable period pending the completion of an investigation and any debarment proceedings, but in no case more than six months. If legal or debarment proceedings are not initiated within six months after the date of the suspension notice, the suspension shall be terminated.
- (4) Suspension will be imposed by written notice from the director, either at the director's discretion or on the written recommendation of the administrator of an affected division or the department's legal counsel.
- (5) The suspended person will be immediately provided a copy of the director's letter imposing its suspension, the reasons therefor, that the suspension is temporary pending investigation of the reasons stated, and the suspension's effect, and the procedures available to the person under (6) , below.
- (6) In the absence of a department determination that public safety could be jeopardized if the suspension is not immediately imposed, the suspension will be effective five calendar days after the date of notice. Before the effective date of the suspension or within five calendar days thereafter, the suspended person may request a hearing to contest the suspension. If a hearing is timely requested, the director shall appoint a hearing officer, who will schedule a hearing. The hearing will be held not more than 10 calendar days after the request for hearing is received by the director. The hearing officer shall set a date, time, and place for the hearing, at which the department will present its reasons for seeking suspension of the person. The person shall be given the opportunity to respond to the department's reasons. Within five working days after the hearing, the hearing officer shall submit to the director:
 - (a) findings and conclusions as to whether or not a suspension is warranted; and
 - (b) a proposed order for the director's consideration;
 - (c) The director will issue the department's decision on the issues raised by the person within five workdays of receipt of the findings, conclusions, and proposed order.

- (7) However, no opportunity to contest the suspension will be provided if:
- (a) the suspension is based upon the filing of a felony information or indictment, or conviction or civil judgment, involving actions applicable under ARM 18.3.104; or,
 - (b) a determination is made in writing by the director, based on the advice of department = s legal counsel, that the substantial interests of the state in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by the above (e.g., interfering with a state or federal criminal investigation, having to identify a confidential informant, etc.) .
- (8) If the person wishes to appeal the director = s decision, the sole appeal will be to the Montana transportation commission, which will review the written record of the appeal either at a regular or special meeting, consistent with the commission = s policies for public notice of meetings. The commission will not receive new evidence, but will only review the documentation that was available to the director, together with the transcript of the person = s appearance before the director. The commission may, upon majority vote of its members, hear oral argument on the issues involved. The commission will issue its written decision within 10 working days of its meeting.
- (9) The decision of the commission will be final. It is a discretionary decision made in the commission = s status as a quasi-judicial board.
- (10) The time of suspension may, but need not, be included in any eventual period of debarment, at the discretion of the director or commission.

Authorizing statute(s): 60-2-201 and 60-3-101, MCA

Implementing statute(s): 60-2-111, 60-2-112, and 60-3-101, MCA

History: NEW, 1996 MAR p. 3133, Eff. 12/6/96; AMD, 2001 MAR p. 978, Eff. 6/8/01.