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DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2026-180.1

Summary

Implementation of House Bill 261, creating procedural rulemaking authority for the Department of Labor and Industry

Hearing Date and Time

Thursday, August 13, 2026, at 2:00 p.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/82728742548>

Meeting ID: 827 2874 2548; Password: 9257587515

Dial by Telephone: +1 646 558 8656

Meeting ID: 827 2874 2548; Password: 9257587515

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, August 21, 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 Thursday, August 6, 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

House Bill 261 (2025) authorizes the Department of Labor and Industry (department) to adopt procedural rules governing how licensing board adjudication panels consider hearing officer proposed decisions in contested cases. The department is proposing these rules to implement that authority and to establish a uniform procedure for adjudication panel review across licensing boards.

The proposed rules are reasonably necessary to provide clear expectations for board members, adjudication panel members, department staff, department prosecutors, licensees, license applicants, attorneys, and members of the public regarding the process that applies after a hearing officer issues a proposed decision. The rules address adjudication panel meeting procedures, decision-making authority, exceptions to proposed decisions, filing and service requirements, oral argument, the contents of the record before the panel, and the timeframe for issuance of final agency decisions.

A uniform rule structure is reasonably necessary because licensing contested cases may involve different boards, parties, counsel, and procedural postures, but the department needs a consistent process for submitting proposed decisions to adjudication panels for final agency decision-making. Establishing these procedures in rule will promote fair notice to the parties, consistent administration across licensing boards, efficient resolution of procedural requests, orderly preparation of the record and briefing, and timely issuance of final agency decisions. More specific reasonable necessity statements follow each proposed rule.

Rulemaking Actions

ADOPT

The rules proposed to be adopted are as follows:

NEW RULE 1 ADJUDICATION PANEL MEETINGS -- DECISION MAKING AUTHORITY

- (1) A board's adjudication panel will meet as needed to enter final agency decisions in disciplinary cases.
- (2) The department will provide a staff person to act as secretary of a board's adjudication panel. The secretary will record all adjudication panel meetings and maintain the recordings as a public record.
- (3) A single adjudication panel member may issue an order of a purely procedural nature. For example, one panel member may sign an order on the panel's behalf to a party's request to file hard copies or to change a scheduling order issued under [NEW RULE 2].
- (4) The adjudication panel shall address all other requests prior to the consideration of the hearing officer's proposed decision.

Authorizing statute(s): 37-1-101, MCA

Implementing statute(s): 37-1-101, MCA

Reasonable Necessity Statement

The department is adopting this rule to establish a uniform process for adjudication panel meetings and decision-making in licensing contested cases. The rule is reasonably necessary to clarify the adjudication panel's role in entering final agency decisions after contested-case hearings and to provide consistent expectations for board members, department staff, parties, and counsel. The rule identifies the department staff support responsible for recording and maintaining adjudication panel meetings, which is necessary to support orderly meeting administration and preservation of the official record of panel proceedings.

The rule is also reasonably necessary to distinguish between procedural matters that may be addressed by a single adjudication panel member and substantive matters that must be considered by the adjudication panel. Allowing a single panel member to resolve purely procedural requests, such as scheduling or filing-method issues, promotes efficient case management and helps avoid unnecessary delay before the panel considers the hearing officer's proposed decision. Requiring the adjudication panel to consider substantive requests preserves collective panel review for matters affecting the parties' rights and the final agency

decision. These procedures will promote consistency across licensing boards and provide clearer notice of how adjudication panels will conduct their review of proposed decisions.

NEW RULE 2 EXCEPTIONS TO HEARING OFFICER PROPOSED DECISIONS

- (1) After a hearing officer issues a proposed decision, one or both parties to the contested case may file exceptions to the proposed decision. Exceptions, for purposes of the rules in ARM Title 24, chapter 101, subchapter 5, are disagreements with the hearing officer's proposed findings of fact, conclusions of law, and sanctions.
- (2) Upon receipt of a proposed decision, the panel secretary will transmit the administrative record to the parties and issue a scheduling order, with deadlines for:
 - (a) filing objections to the content of the administrative record;
 - (b) filing opening, response, and reply briefs on exceptions; and
 - (c) filing a request for oral argument before the adjudication panel.
- (3) A party may file a written procedural request to change the scheduling order.
- (4) Parties shall have no less than 28 days from the time of transmittal to file objections to the content of the administrative record. The opening exceptions brief shall be due no less than 35 days from transmittal of the administrative record. Response briefs shall be due 21 days after an opening brief is filed, and reply briefs must be filed within 14 days of the response.
- (5) A party's exceptions to the proposed decision must be filed in writing and identify each finding of fact, conclusion of law, and sanction with which the party disagrees and will argue should be changed by the adjudication panel.
 - (a) Failure to identify specific exceptions in writing may result in a determination for purposes of administrative exhaustion that a party waived the opportunity to file exceptions.
 - (b) Failure to timely file exceptions waives a party's right to file an opening brief on exceptions, or a reply brief, and to request oral argument before the adjudication panel.
- (6) A party seeking oral argument must request it in writing at the time the party files exceptions. The parties may by agreement withdraw a request for oral argument by filing a joint request at any time prior to the adjudication panel exceptions hearing. If no oral argument is requested, the panel may require arguments in its discretion.

- (7) All exceptions must comply with this rule, [NEW RULE 3], and [NEW RULE 4].
Exceptions may not exceed 20 pages in length or 6500 words, excluding the caption, signature block, certificates of service, any tables of contents or authorities, and any exhibits, unless approved by the panel.
- (8) The standards of review of proposed decisions are as follows:
 - (a) An adjudication panel reviews conclusions of law and interpretations of statutes and administrative rules for correctness. An adjudication panel may reject or modify a conclusion of law if it determines that the hearing officer misapplied fact to law or incorrectly interpreted or applied the law.
 - (b) An adjudication panel reviews findings of fact to determine whether substantial evidence exists to support a particular finding. The review must be based upon review of the complete record. While the hearing officer is entitled to some deference in findings of fact, weighing of evidence, and credibility determinations, an adjudication panel may reject or modify a finding of fact if it determines that such finding is not based upon competent substantial evidence. An adjudication panel may additionally reject or modify findings of fact if it determines that the proceedings on which the findings were based did not comply with essential requirements of law.
- (9) The complete record, under 2-4-621(3), MCA, for the purposes of this rule, is the administrative record as provided by the office of administrative hearings, a transcript of the hearing, and any filings from the parties.
 - (a) The panel secretary will provide the administrative record from the office of administrative hearings to the parties. Parties may object to the content of the administrative record as provided by the scheduling order.
 - (b) The parties' briefs on exceptions may not reference or rely on exhibits which were not admitted into the administrative record unless failure to admit the exhibit is the reason for filing an exception. On timely motion by any party or at the discretion of the adjudication panel, any exhibit improperly filed may be stricken.
- (10) If oral argument is requested, each party has 15 minutes of argument before the adjudication panel. If both parties file exceptions, the licensee or applicant will present first and may reserve time for rebuttal argument.

Authorizing statute(s): 37-1-101, MCA

Implementing statute(s): 37-1-101, MCA

Reasonable Necessity Statement

The department is adopting this rule to establish a uniform procedure for filing and considering exceptions to a hearing officer's proposed decision in licensing contested cases. The rule is reasonably necessary to provide clear notice to licensees, license applicants, department prosecutors, board members, and counsel regarding the process that applies after a proposed decision is issued and before an adjudication panel enters a final agency decision.

The rule defines exceptions and requires parties to identify the specific findings of fact, conclusions of law, or sanctions with which they disagree. These requirements are reasonably necessary to focus adjudication panel review on the disputed issues, to ensure that opposing parties have fair notice of the matters being challenged, and to create a clear record of the issues presented to the panel. Establishing a scheduling process for objections to the administrative record, briefing, and requests for oral argument is reasonably necessary to promote consistent case management, orderly submission of materials, and timely panel review.

The rule also identifies the standards the adjudication panel will apply when reviewing proposed findings of fact, conclusions of law, interpretations of statutes and rules, and proposed sanctions. Stating these standards in rule is reasonably necessary to provide consistent guidance to adjudication panels and parties, to distinguish the panel's review of legal issues from its review of factual findings, and to ensure that panel decisions are based on the complete administrative record. The rule's provisions regarding the complete record and objections to the contents of the record are reasonably necessary to ensure that the panel reviews the materials properly before it and to reduce disputes regarding materials that were not admitted or considered during the contested-case hearing.

Finally, the rule is reasonably necessary to establish predictable procedures for oral argument and the consequences of failing to timely identify exceptions. Requiring timely and specific exceptions promotes administrative efficiency, preserves orderly review by the adjudication panel, and gives the parties notice of the issues that may be considered for purposes of final agency decision-making. Establishing a standard oral argument time limit allows the panel to hear from the parties while maintaining a fair and efficient process for resolving contested cases.

NEW RULE 3 DOCUMENT FORM AND SERVICE

- (1) All hard copy filings must be written on paper which is eight and one-half inches by eleven inches (8 1/2" x 11") in size, standard quality and in 12-point font or larger, double spaced, and clearly legible type or print.
- (2) Copies of all filings must be served on all parties of record and must contain a certificate of service showing proof of the method of service and the date when

service occurred. Service shall be made in compliance with Rule 5 of the Montana Rules of Civil Procedure.

Authorizing statute(s): 37-1-101, MCA

Implementing statute(s): 37-1-101, MCA

Reasonable Necessity Statement

The department is adopting this rule to establish uniform form and service requirements for documents filed with an adjudication panel. Standardized formatting requirements are reasonably necessary to ensure that filings are legible, complete, and capable of being efficiently reviewed by adjudication panel members, department staff, and the parties, including self-represented parties. Requiring service on all parties of record and a certificate of service is reasonably necessary to ensure fair notice of filings submitted for panel consideration, to create a clear record of when and how service occurred, and to reduce disputes regarding notice, timing, and the contents of the record before the panel. These requirements promote consistent administration of contested-case review procedures and help ensure that parties have a meaningful opportunity to respond to materials considered by the adjudication panel.

NEW RULE 4 FILING WITH THE ADJUDICATION PANEL

- (1) All documents required or permitted to be filed with an adjudication panel shall be filed electronically unless the panel grants a party's written request to file by hard copy. The email address for document filing is dliadjudication@mt.gov.
- (2) A party shall serve on the opposing party, at the time of filing, all procedural requests, exceptions, and briefs on exceptions filed with the adjudication panel. Failure to timely serve the opposing party may result in rejection by the secretary or the adjudication panel of the late or un-served filing.
- (3) Documents filed electronically must be:
 - (a) in Portable Document Format (.pdf). Filings may be submitted in multiple attachments if necessary, and attachments totaling over ten MB may be sent to the panel secretary over the State's File Transfer Service. Inquiries about how to file by File Transfer Service may be directed to the secretary; or
 - (b) on a portable electronic storage device containing the documents.

- (4) Hard copy filings or portable electronic storage devices may be mailed to: Office of Legal Services, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728.
- (5) Documents must be filed before 11:59 p.m. on the due date. A document is filed on the date it is received by the department. The filing party is responsible for ensuring documents are timely filed and served on the opposing party.

Authorizing statute(s): 37-1-101, MCA

Implementing statute(s): 37-1-101, MCA

Reasonable Necessity Statement

The department is adopting this rule to establish a uniform process for filing documents with an adjudication panel in licensing contested cases. The rule is reasonably necessary to provide parties, counsel, department staff, and adjudication panel members clear direction regarding where filings must be submitted, what filing methods are permitted, when a document is considered filed, and how parties must serve documents submitted for panel consideration.

Requiring electronic filing as the standard filing method is reasonably necessary to promote timely receipt of filings, efficient distribution of materials to the adjudication panel and parties, and orderly maintenance of the panel record. The rule also allows hard-copy filing upon written request for good cause, which is reasonably necessary to preserve access for parties who cannot reasonably file electronically while still maintaining a consistent filing process.

The rule's requirements for service on the opposing party, acceptable electronic formats, use of the State's File Transfer Service for large filings, and filing by portable electronic storage device or hard copy are reasonably necessary to ensure that documents are received in a usable format and that all parties have fair notice of materials submitted to the adjudication panel. Establishing that a document is filed when received by the panel secretary is reasonably necessary to create a clear and administrable filing date, reduce disputes regarding timeliness, and support consistent enforcement of scheduling orders and filing deadlines.

NEW RULE 5 EXCEPTIONS HEARINGS

- (1) On the date set for an adjudication panel meeting, a quorum of the adjudication panel shall consider the parties' exceptions to a proposed decision. The panel may meet in person or virtually. A quorum is more than 50 percent of appointed panel members.

- (2) If oral argument is scheduled, each party will be allowed 15 minutes for argument before the adjudication panel. If both parties file exceptions, the licensee or applicant will argue first and may reserve time for rebuttal. The adjudication panel may extend the time in equal duration for both parties in its discretion.
- (3) The contested case is submitted for a final decision under 2-4-623(1)(a), MCA, at the conclusion of the adjudication panel's exceptions hearing. The adjudication panel shall render a decision which affirms, rejects, modifies, or remands the hearing officer's proposed decision within 90 days of the exceptions hearing. The panel may extend issuing the decision for another 30 days with good cause. The final decision of the adjudication panel is the final agency decision

Authorizing statute(s): 37-1-101, MCA

Implementing statute(s): 37-1-101, MCA

Reasonable Necessity Statement

The department is adopting this rule to establish a uniform process for adjudication panel consideration of exceptions to a hearing officer's proposed decision in licensing contested cases. The rule is reasonably necessary to clarify when a contested case is submitted to the adjudication panel for final decision, how the panel may conduct the exceptions hearing, and the timeframe within which the panel must issue its final agency decision.

Requiring a quorum of the adjudication panel to consider the parties' exceptions is reasonably necessary to ensure that final agency decision-making occurs through the adjudication panel rather than through individual members acting alone on substantive matters. Allowing the panel to meet either in person or virtually is reasonably necessary to provide flexibility in scheduling panel review, promote timely consideration of contested cases, and allow participation by panel members and parties when an in-person meeting is not practical.

The rule's oral argument provisions are reasonably necessary to provide a predictable and fair process for parties who request argument before the adjudication panel. Establishing a standard time limit promotes equal treatment of the parties and efficient administration of panel meetings, while allowing the panel to extend argument time in equal duration preserves flexibility when additional argument would assist the panel's review.

The rule is also reasonably necessary to identify when the contested case is submitted for final decision and to establish a clear deadline for issuance of the adjudication panel's decision. A defined decision deadline promotes timely resolution of licensing contested cases, provides clearer expectations to licensees, license applicants, department prosecutors, boards, and the public, and supports consistent administration across licensing boards. Allowing a limited

extension for good cause provides flexibility for complex cases while preserving the expectation that final agency decisions will be issued without unnecessary delay.

Small Business Impact

The proposed rules may affect small businesses whose owners, officers, employees, or associated licensed individuals are parties to professional or occupational licensing contested cases before a board or program administratively attached to the department. This group may include sole proprietors, small professional practices, and other small entities whose business operations depend on a department-administered professional or occupational license.

The rules do not directly regulate small businesses as businesses, impose new substantive licensing standards, or create new reporting obligations. Any effect is limited to the procedures used when a contested licensing case reaches adjudication panel review after a hearing officer issues a proposed decision.

The department does not anticipate significant and direct adverse economic effects on small businesses. The probable direct effects are procedural and include clearer requirements for filing exceptions, briefing, service, requests for oral argument, electronic filing, hard-copy filing requests for good cause, and adjudication panel review.

A party in a contested case may incur ordinary contested-case participation costs associated with preparing, filing, and serving documents or presenting oral argument. The rules do not impose a generally applicable compliance program, new licensure fee, inspection requirement, recordkeeping duty, or substantive operational restriction on small businesses.

The proposed rules do not adopt, increase, or decrease any fee, cost, benefit, penalty, or other monetary amount. Therefore, there is no known cumulative monetary amount for all persons and no estimated number of persons affected by a monetary increase, decrease, or new amount for purposes of 2-4-111(1)(b), MCA.

Bill Sponsor Notification

The primary bill sponsor was contacted on May 12, 2025, by email.

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

Jennifer Stallkamp

Approval

Sarah Swanson, Commissioner