

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) AMENDED NOTICE OF PROPOSED
ARM 32.2.102 pertaining to board) AMENDMENT
oversight of agency actions)

TO: All Concerned Persons

1. On February 23, 2018, the Department of Livestock published MAR Notice No. 32-18-289 pertaining to the proposed amendment of the above-stated rule at page 391 of the 2018 Montana Administrative Register, Issue Number 4.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on April 6, 2018 to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. Mistakenly, the original proposal notice stated the number of days that a person must appeal the action of the employee in writing to the employee's immediate supervisor was from 30 days of the action. The correct number of days should have been from 60 days of the action. The reasonable necessity statement and the authorization and implementation citations remain as proposed. The following correction for (1) is shown below:

32.2.102 BOARD OVERSIGHT OF AGENCY EMPLOYEE ACTIONS

~~(1) When a private citizen feels~~ person can demonstrate that a decision an action of an agent employee of the Department of Livestock is unfair and if carried to completion will result in unnecessary inconvenience or harm to him, he may seek the reversal of the decision by requesting the board of livestock in writing to stop the implementation of the decision, or to otherwise modify its impact. Upon receipt of the letter, the matter must be placed upon the agenda of the next regular meeting of the board them, that person must appeal the action of the employee in writing to the employee's immediate supervisor within 60 days of the action. Any subsequent appeal must be made to each successive immediate supervisor, up to an appeal to the board.

~~(2) If the action complained of must be halted immediately in order to prevent irreparable harm, the person seeking relief must so state in his letter. In the event the board is not in session at the time the letter is received, the administrator of the division at which the complaint is directed must immediately contact the chairman of the board, or in his absence the vice chairman, who must appoint a member of the board to investigate the act upon the matter as follows:~~

~~(a) He must meet as soon as possible with the person seeking relief and the division administrator at a time and place convenient to the parties involved. At the board member's option the meeting may be by conference telephone call.~~

~~(b) To the extent that the action taken is discretionary and not required by law, the board member may, if satisfied the action is unfair and will cause unnecessary inconvenience or harm, suspend implementation of the action until the next regular meeting of the board, at which time the full board must consider the matter. In the event the administrator wishes to challenge the decision at the next regular board meeting, he must immediately notify the person seeking relief so he may be present if he desires.~~

~~(c) When an administrator whose decision has been reversed by the board member feels the reversal will result in an immediate and serious peril to the public health, welfare or safety he may request an immediate meeting of the board to consider the action. The person seeking relief may also request a meeting with the board if he is dissatisfied with the board member's decision. Such a meeting may be conducted by conference telephone call, provided the person seeking relief is given the opportunity to participate.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 2-15-3101, MCA

REASON: The department proposes to amend the rule to ensure that the department employees most familiar with the circumstances of an appeal will evaluate the appeal first. The amendment would provide that an appeal proceed up the chain of command prior to reaching the board, creating a record for the board to review. Providing an appeal up the chain of command is anticipated to reduce the department's initial response time to an appeal. Providing a timeline for filing the appeal is anticipated to ensure that appeals are presented timely. The requirement that appeals be in writing is retained from the current rule.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Department of Livestock, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., April 13, 2018.

/s/ Michael S. Honeycutt

Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Donna Wilham

Donna Wilham
Rule Reviewer

Certified to the Secretary of State March 6, 2018.