

Concern/Issue	Option
<p>1. The use of an order (rather than a rule or emergency rule) decreases opportunity for legislative oversight.</p>	<p>A - Remove references to orders within Title 81 and replace with rule or emergency rule.</p> <p>B - Define order under Title 81 and require compliance with MAPA for orders other than cease/desist, ceremonial orders, or orders unrelated to program creation/implementation. Provide option similar to emergency rule, with eventual compliance with MAPA similar to emergency rule.</p> <p>C - Define order narrowly in Title 81 and require a Montana Environmental Policy Act review for any order that involves multiple jurisdictions (federal or state agency) for full implementation.</p>
<p>2. Board of Livestock has no attorney on the board or regularly at board meetings. The Department of Livestock uses a contract attorney and is, as far as can be determined, the only department that does not have a chief legal counsel for the department.</p>	<p>A - Revise board statute to require an attorney (as is required for all quasi-judicial boards, which the Board of Livestock is not considered, based on 2-15-3102). The only reference in 2-15-3102 to quasi-judicial boards relates to payment of board members: <i>2-15-3102(6) Members of the board must be reimbursed and compensated as are members of quasi-judicial boards in 2-15-124(7).</i> <i>2-15-124(7): (7) Unless otherwise provided by law, each member is entitled to be paid \$50 for each day in which the member is actually and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their board duties outside their regular working hours or during time charged against their leave, but those members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Ex officio board members may not receive compensation but must receive travel expenses.</i></p> <p>B - Support funding for a full-time or part-time attorney. Funding was cut out in 2003 (during a severe budget time, but apparently based on department choice of how to trim).</p>

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<p>3. The delegation of responsibility between the Board of Livestock and the Department of Livestock appears problematic because it's hard to tell where "the buck stops". The Board of Livestock is a holdover of pre-cabinet reorganization days when boards typically ran departments. The Department of Livestock is the only department whose department head is -- by statute -- a board. Board members are appointed for 6 years, which means that boards do not necessarily serve concurrently with the governor who appointed them. Four states have a separate department of livestock or board of animal health equivalent (Kansas, Minnesota, Montana, and Texas). In the rest, livestock apparently is subsumed within agriculture or another agency.</p>	<p>A - Certain cost-efficiencies may be gained from merging the Department of Livestock into the Department of Agriculture (the Department of Agriculture is constitutionally required and the constitution mentions livestock within the reference to the Department of Agriculture). The Department of Agriculture has a chief legal counsel. Idaho has livestock within its Dept. of Agriculture. WY has a Board of Livestock. Article XII, Section 1. Agriculture. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture. (2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.</p> <p>B - An advisory council or administratively attached commission (similar to the Wheat and Barley Commission) could accomplish the input of producers, with a clearer line of command and authority, perhaps including distribution of grants, fees per head, etc.</p> <p>Background: Apparently there have been previous attempts prior to the 1990s at a merger. Since 1999, the only bill attempting to move duties was in 2007. In that legislature, SB 359 sought to move the Board of Horseracing from the Dept. of Livestock to the Dept. of Agriculture. SB 359 died in House Appropriations (regulator/ benefactor issue) after an 86-11 House 2nd reading favorable vote and a 42-7 Senate 3rd reading favorable vote.</p>

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<p>4. (a) Brand or stock inspectors apparently are being asked to handle duties beyond those explicitly outlined in statute. Broad authority to write rules to implement programs is not sufficient to expand a duty that has been specified. The board may be authorizing more than they are allowed, by law, to authorize.</p> <p>(b) The department has roughly 600 stock inspectors. Some of these are state employees, some county, some do the job voluntarily. The Department of Labor and Industry is checking to see how many of 157 of the 600 stock inspectors would need to have an independent contractor exemption certificate to clarify that they are not an employee (required to have work comp insurance), a volunteer or some other person listed under 39-71-401, MCA, as exempt from having to have workers' compensation insurance.</p>	<p>A - Expand the duties of brand inspectors or stock inspectors (both terms have been used) in 81-3-203 to encompass certain enforcement of State Veterinarian orders/emergency rules. Currently 81-3-203, MCA, describes the duties of state stock inspectors and deputy stock inspectors and says a state stock inspector or deputy stock inspector "shall inspect livestock... and issue a certificate of inspection for the livestock if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to possess the livestock". Under 81-1-201, MCA, the department may appoint stock inspectors and detectives "necessary for the protection of the livestock interests of this state". The language might be changed to require certain inspectors and detectives to be law enforcement officers, with full workers' compensation coverage, etc.</p> <p>B - Clarify that brand or stock inspectors must provide proof of work comp insurance or an independent contractor exemption certificate before being assigned stock inspector duties (whether as a volunteer or not) so that the rancher being visited by the brand or stock inspector on the rancher's property will be aware of the inspector's work comp status. The work comp portion of the statute and employment/contract nature of stock inspectors may need to be examined to make sure that liability of ranchers, the department, and the inspector is clear. This is important regardless of whether duties are expanded beyond brand inspection to provide authority beyond brand determination/certification.</p>
<p>5. There are concerns that funding will become unavailable to help those in the Designated Surveillance Area do testing for brucellosis.</p>	<p>A. - Support statewide funding from all producers to make sure the assistance is available.</p> <p>B. - Continue to try to determine if funding for "marketing" is feasible under the Beef Checkoff Program. Including issuing a subpoena for some from the Montana Beef Council to attend an interim committee meeting on this issue.</p>