

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0401

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

It is not clear what is meant by selecting and using the highest ethical standards.

RRC STAFF OPINION

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0402

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

There is no authority cited for the agency to certify persons who can euthanize animals. The authority cited is only to mandate training.

RRC STAFF OPINION

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0403

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

In (1), it is not clear what other skills are deemed necessary by the Animal Welfare Section.

In (3), there is no authority cited for the agency to determine who can provide training. The authority cited is authority to set training requirements, not requirements for trainers.

Robert A. Bryan, Jr.
Commission Counsel

RRC STAFF OPINION

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0404

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for the agency to certify persons who can euthanize animals. The authority cited is only to mandate training.

RRC STAFF OPINION

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0405

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

The authority cited for this rule is authority only to mandate training for any person who participates in the euthanasia process. There is no authority cited to set age or any other type requirements.

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0406

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for the agency to certify persons who can euthanize animals. The authority cited is only to mandate training.

The agency has also cited no authority for it to approve trainers as opposed to training.

RRC STAFF OPINION

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0407

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for the agency to certify persons who can euthanize animals. The authority cited is only to mandate training.

In (c) and (d), there is no authority cited for the agency to approve trainers.

In (d)(2), it is not clear what standards the Animal Welfare Section will use in granting prior approval for the practical examination to consist of simulation of the euthanasia technique. It is also not clear what the standards are for approving an animal simulation in (d)(2) and (e)(4).

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0408

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

There is no authority cited for setting requirements for who can provide training. The cited authority is for training not trainers.

In (2), it is not clear what is meant by "demonstrated a proficiency in euthanasia of animals".

In (6), it is not clear what is meant by "potential conflicts of interest".

RRC STAFF OPINION

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0411

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

There is no authority cited for the agency to certify persons who can euthanize animals. The authority cited is only to mandate training.

rrc staff OPINION

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0413

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for the Animal Welfare Section to revoke any certificate issued pursuant to the section. The only basis cited for preventing an individual from participating in the euthanasia process is failure to have the mandated training. The Section could take action against the certificate of registration holder.

RRC STAFF OPINION

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0414

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

There is no authority cited for the agency to cancel a person's right to participate in the euthanasia process upon termination of employment or volunteer status. If the person has the mandated training, he has it.

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0415

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for requiring certified facilities to notify the Animal Welfare Section upon the termination of a person's employment or volunteer status.

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0416

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for this rule. Either a person has the mandated training or he does not. If he has the mandated training, he can participate in the euthanasia process. If he does not, he cannot.

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0417

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for the agency to approve trainers.

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0419

RECOMMENDED ACTION:

APPROVE, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

There is no authority cited for the Department to take any type disciplinary action against a technician. The only authority cited is to mandate training. There is other authority for taking action against the certified facility but none cited for discipline of a technician.

In (15), it is not clear what actions or omissions the Commissioner believes is contrary to the best interest of the public.

Robert A. Bryan, Jr.
Commission Counsel

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0420

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - X Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

Because there is no authority cited for the rule where the defined term is used, there is no need to adopt a rule defining the term.

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0501

RECOMMENDED ACTION:

APPROVE, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

It is not clear what is meant by "listed as an exception to the certified Euthanasia Technician requirement".

It is also not clear if the rule prohibits veterinarians from administering euthanasia by injections. Rule .0402 authorizes veterinarians to euthanize animals.

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0602

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

It is not clear in (3) what constitutes "moderately to significantly, clinically ill"

In (4), it is not clear what would constitute "significantly injured".

In (6), it is not clear how to determine if an animal is geriatric.

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0701

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

It is not clear what would constitute a "significant" risk.

It is not clear if the rule means risk to a person, or animal, or either, or what.

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0702

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

It is not clear what would constitute an "extreme method of euthanasia".

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AGENCY: BOARD OF AGRICULTURE

RULE CITATION: 02 NCAC 52J .0803

RECOMMENDED ACTION:

- APPROVE, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

It is not clear what is required by (4). It appears that if the American Humane Association prints any kind of publication on euthanasia, it must be included in the manual. If the Association prints more than one publication, then any of them will suffice. It is not clear that is what is meant.