

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box
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2010 JUN 25 PM 2:26

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Board of Veterinary Medicine TITLE NUMBER: 26

RULE TYPE: Legislative CITE AUTHORITY: §30-10-5

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 5

TITLE OF RULE BEING AMENDED: Certified Animal Euthanasia Technicians

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 26, 2010 AT 4:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Board of Veterinary Medicine

5509 Big Tyler Road, Suite 3

Cross Lanes, WV 25313

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Certified Animal Euthanasia Technicians

Type of Rule: Legislative Interpretive Procedural

Agency: WV Board of Veterinary Medicine

Address: 5509 Big Tyler Road, Suite 3
Cross Lanes, WV 25313

Phone Number: 304-776-8032 Email: wgoodwin@wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Costs are unknown at present. There is presently no record of the number of gas chambers in operation for animal euthanasia in West Virginia. We are unaware of any organization that commercially inspects gas chambers, so we must set up guidelines, inspection forms, etc. to accomplish the inspections. We believe there are less than ten commercial gas chambers in operation. To initiate an emergency rule for the inspections without a reference to anyone authorized to inspect is not possible. Once we establish the emergency rule (to be followed by a legislative rule) for such gas chamber inspections, we will proceed with establishing a qualified inspector and a reasonable fee. We intend to have the cost of the inspection to be paid directly to the contracted inspector by the animal control facility. The Board will charge a \$100.00 annual fee for administrative duties involved with recordkeeping, administration, implementation of inspection forms, determining necessary steps to assure compliance, etc.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	1,000.00	1,000.00	1,000.00
Personal Services			
Current Expenses	1,000.00	1,000.00	1,000.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	1,000.00	1,000.00	1,000.00

Certified Animal Euthanasia Technicians

Rule Title: _____

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

We anticipate 10 commercial gas chambers in operation for animal euthanasia. Facilities that do not have a commercially manufactured and installed gas chamber in operation as of the effective date of August 27, 2009 may not obtain one for use. We plan to have the facilities with gas chambers pay for the inspection directly to the authorized inspector sent out by the Board, as the costs at present are unknown. We anticipate revenue of \$100. per such facility for administration of the inspection process with costs equal to income.

MEMORANDUM

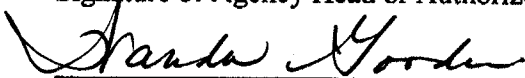
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

We would prefer to establish by legislative rule in our schedule of fees an appropriate fee for gas chamber inspections. However, we have heard some gas chambers are being eliminated and there are no new ones due to the language of the law as passed in 2009.

It will be difficult to acquire a qualified person to inspect gas chambers when they are in many states being eliminated, and in our research, the few manufacturers of gas chambers for animal euthanasia are not training inspectors or installers but sending instructions for installation to the purchaser.

Date: June 25, 2010

Signature of Agency Head or Authorized Representative



QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 25, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Board of Veterinary medicine

5509 Big Tyler Road, Suite 3
Cross Lanes, WV 25313

Phone: (304) 776-8032

LEGISLATIVE RULE TITLE: ~~Certified Animal Euthanasia Technicians~~

1. Authorizing statute(s) citation 30-10-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 25, 2010

b. What other notice, including advertising, did you give of the hearing?
Notice and copy of rule to WV Veterinary Medical Association

Posting on our website

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 26, 2010

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Wanda Goodwin: Executive Director

WV Board of Veterinary Medicine

5509 Big Tyler Road, Suite 3

Cross Lanes, WV 25313

Ph. 304-776-8032 Fax 304-776-8256 email wgoodwin@wvnet.edu

g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

Statement of Circumstances

West Virginia Code of State Regulations

Title 26, Series 5

The Board of Veterinary Medicine has determined that changes are needed to the Certified Animal Euthanasia Technicians, Title 26, Series 5 Rule of the West Virginia Board of Veterinary Medicine.

We also ask that this rule be instituted as an emergency rule pending the 2011 legislative session.

Changes made in the 2009 legislative session with Senate Bill 501 addressed language for gas chambers which may be used to administer animal euthanasia. In the language of the bill, the Board of Veterinary Medicine was tasked with promulgating emergency rules regarding the inspection of gas chambers. However, this bill was delayed in being signed by Governor Manchin and did not pass until May 29, 2009, with an effective date of August 27, 2009.

The Board was unaware of the final language of the bill until it was too late for the Board to address suitable language and file an emergency rule that would be appropriate and effective until the next legislative session.

During this process, our veterinary practice act was before the 2009 legislature and after passing in the House failed to pass the Senate. It was to be taken up again in 2010, so we found it necessary to await the results of the practice act final language to have Series 5 work with the veterinary code.

This rule has been reviewed by the Board of Veterinary Medicine.

Brief Summary

Rule 26CSR5 Certified Animal Euthanasia Technicians

Modifications to the rule are necessary due to changes to the veterinary practice act, which went into effect June 11, 2010.

Changes are made to comply with and complement the code. In some instances, language is stuck as it was moved from the rule and placed in code.

There are considerable changes to this rule.

We added a section on chemical restraint drugs, as CAETs may now sedate or tranquilize animals prior to euthanasia (SB 501 2009).

In SB 501 2009, it was also specified that carbon monoxide gas chambers which were commercially manufactured and installed by the effective date of SB 501, (which was August 2009) could continue to operate. In this language, responsibility for inspection of requirements for gas chambers was placed upon the Board. It took considerable time and effort to find any language on these requirements. As such, we also added a section on requirements for animal euthanasia by carbon monoxide.

A section was added for inspection requirements for animal euthanasia gas chambers.

All the references to gas chamber requirements apply to the very few gas chambers currently in operation in West Virginia.

To implement these requirements as soon as possible, as per SB501, this rule is being filed as an emergency rule as well as a legislative rule for 2011.

TITLE 26
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF VETERINARY MEDICINE

FILED

SERIES 5
CERTIFIED ANIMAL EUTHANASIA TECHNICIANS

2010 JUN 25 PM 2:27

OFFICE WEST VIRGINIA
SECRETARY OF STATE

26-5-1. General

1.1. Scope. -- This rule establishes guidelines for the training, examination and procedures by which Animal Euthanasia Technicians may be certified by the West Virginia Board of Veterinary Medicine. Further, it establishes approved methods of animal euthanasia ~~it implements WV Code §30-10A-1 et. seq.~~ and expands as well as defines qualifications for Certified Animal Euthanasia Technicians.

1.2. Authority. -- W.Va. Code ~~§30-10A-9~~ §30-10

1.3. Filing Date. - April 20, 2006

1.4. Effective Date. - April 20, 2006

26-5-2. Application and Exam Fees

2.1. Payment. An applicant shall pay the application, examination and certification fee, as well as the fees for the training program, background check and printed copy of the practice act and rules as set forth in the Board's rule, Schedule of Fees, 26CSR6 prior to the training program.

2.2. Refunds. Fees are non-refundable.

26-5-3. Certified Animal Euthanasia Technicians program

3.1. The Board may formulate and administer a program to teach applicants the legal, safety and practical information necessary to perform the duties of a Certified Animal Euthanasia Technician. The Board may also approve programs sponsored by professional training organizations to provide the training for Certified Animal Euthanasia Technician's.

3.2. The administration of the program sponsored by a professional training organization shall be in accordance with the laws, rules, practices, policies, or procedures prescribed by the Board or its designees.

3.3. Applicants for certification as animal euthanasia technicians shall complete the required training program within ~~twelve~~ six months preceding the written and practical examinations.

26-5-4. Written examination

4.1. The written examination shall test the applicants knowledge on the subjects set forth in WV Code ~~§ 30-10A-3 (b) 1, §30-10-13~~ as well as the provisions of West Virginia Code ~~§ 30-10A-4~~ §30-10-1 et. seq. pertaining to Certified Animal Euthanasia Technicians.

- 4.2. The minimum passing score on the written examinations for Certified Animal Euthanasia Technician's is seventy percent.

26-5-5. Practical skills examination

- 5.1. The Board shall annually appoint from its membership a minimum of one or a maximum of two board members who are veterinarians for the purpose of administering the practical skills examination to applicants for certification as an Animal Euthanasia Technician, or may assign administration of the exam to a veterinarian or veterinarians licensed to practice in this state.
- 5.2. The Board member or members, or authorized veterinarian shall conduct the practical skills examination to determine the applicants' ability in meeting the requirements in WV Code ~~§30-10A-3 (e)~~ §30-10-1 et seq.
- 5.3. The Board member or members who administer the practical examination shall determine failure or passing of the practical examination following report of scores by the test administrator or administrators.

26-5-6. Testing date

- 6.1. The Board shall offer the Certified Animal Euthanasia Technician training program at least once a year.
- 6.2. The Certified Animal Euthanasia Technician written and practical skills examinations shall be conducted at least once a year. The examinations shall consist of written examinations, followed by a practical examination.
- 6.3. An applicant who fails any portion or portions of the Certified Animal Euthanasia Technician examination is ineligible to be certified as a Certified Animal Euthanasia Technician.

26-5-7. Chemical Restraint Drugs

- 7.1. Chemical Restraint Drugs are those drugs approved by the Board for administration prior to lethal injection of an animal to reduce aggressiveness and/or mobility of the animal being euthanized.
 - (a) The approved chemical restraint drugs for use in animal euthanasia are:
 - (1) Injectable acetylpromazine (acepromazine)
 - (2) Oral acetylpromazine (acepromazine)
 - (b) The Board shall review the approved chemical restraint drugs and modify the approved drugs by legislative rule, as needed.
- 7.2. Recordkeeping requirements for approved chemical restraint drugs shall be identical to the recordkeeping requirements for animal euthanasia drugs.

26-5-8. Requirements for Animal Euthanasia by Carbon Monoxide

- 8.1 Any county which has a gas chamber manufactured and installed by August 27, 2010, may continue to use such method for animal euthanasia, if desired.
- 8.2 Animal control facilities that euthanize animals with a gas chamber must be inspected annually by a Board approved health and safety organization, with knowledge of safety requirements for a carbon monoxide gas chamber. This inspection must provide proof that the chamber is properly sealed with no leaks or cracked seals, and is capable of rapidly achieving a uniform carbon monoxide

concentration of at least 6%, after the animals are placed in the chamber. A copy of the inspection form and certification must be submitted to the Board of Veterinary Medicine by the Certified Animal Euthanasia Technician responsible for the chamber within thirty (30) days of the inspection.

8.3 Euthanasia of animals by use of a gas chamber must meet the following requirements:

- (a) The person administering the euthanasia by use of the gas chamber must be a Certified Animal Euthanasia Technician in this state;**
- (b) All such gas chambers in operation for animal euthanasia shall be registered with the Board of Veterinary Medicine;**
- (c) The gas chamber must be in compliance with all the following requirements in order to be in operation, and shall at a minimum;**
 - 1. Be properly constructed and maintained;**
 - 2. Be a commercially manufactured and installed, purpose built chamber;**
 - 3. Be constructed of durable and easily cleanable material;**
 - 4. Have sufficient external and internal lighting in conjunction with at least one clean and transparent viewing port or window for use by the Certified Animal Euthanasia Technician to directly observe and monitor the animals during euthanasia to ensure that the euthanasia is occurring properly and humanely;**
 - 5. Be properly sealed, with such seals being properly maintained to enable at least a 6% concentration of the gas to be attained in the chamber within 20 seconds, and to maintain this chamber concentration of the gas until death has occurred;**
 - 6. Be located in a well ventilated area, preferably out of doors where the toxic hazards of gas exposure to the Certified Animal Euthanasia Technician, the animal control facility personnel and animals will be avoided. If the chamber is located inside the animal control facility, OSHA approved monitors, with an alarm system are required to warn personnel of hazardous concentrations. The alarm system must sound both in the room where the chamber is located and elsewhere in the facility where other staff may be.**
 - 7. Be operated outside the open business hours of the animal control facility.**
 - 8. Any electrical equipment such as lights and fans that may be exposed to the CO gas shall be explosion proof.**
 - 9. Utilize only commercial grade carbon monoxide gas, dispensed from a cylinder.**
 - 10. Have the commercial grade carbon monoxide gas dispensed from a cylinder into an appropriately constructed, sealed and maintained carbon monoxide chamber at a pressure and rate that achieves a 6% concentration of gas within the chamber within 20 seconds.**
 - 11. Have the carbon monoxide gas stored in a well ventilated area, where the toxic hazards of gas exposure to the Certified Animal Euthanasia Technician operating the chamber, the other animal control facility staff and animals will be avoided.**
 - 12. Utilize pre-anesthesia sedation approved for this use by the Board for use as deemed necessary or appropriate.**

13. Must allow for the separation of individual animals by partitions or by placing individual animals in separate cages or carriers within the chamber. All partitions, cages or carriers used shall have solid bottoms, with the sides of the partitions, cages or carriers being solid or a small mesh to minimize contact and stress.
14. Have all partitions, cages and carriers used in the chamber thoroughly cleaned after each use before placing another animal into them, to minimize the animal's fear and stress.

(d) All animals euthanized with a carbon monoxide gas chamber shall:

1. Be healthy and free of any major injury or disease which could interfere with the animals' ability to breathe and properly circulate oxygen and carbon monoxide.
2. Be at least 16 weeks of age.
3. Be placed in the chamber only with compatible animals of the same species.
4. Not be placed into the chamber with other animals that have already been euthanized.

(e) The Certified Animal Euthanasia Technician administering the carbon monoxide into the gas chamber shall:

1. Leave the animals in the chamber for at least 10 minutes after death has occurred before opening the chamber.
2. Open the door only in a well-ventilated area, and leave the animals in the chamber for another 10 minutes after the chamber is opened before trying to remove the animals.
3. Carefully examine the animals for cardiac standstill to ensure that death has indeed occurred prior to disposal of the carcass.

26-5-9. Inspection requirements for animal euthanasia gas chambers

- 9.1 All animal control facilities in this state which have a gas chamber in operation for euthanasia of animals shall have the gas chamber inspected annually by an inspector that is authorized by the board to conduct such inspections.
- 9.2 The report on the gas chamber inspection shall be submitted by the inspector to the board and shall be received no later than thirty days after the inspection.
- 9.3 The cost of the gas chamber inspection is to be paid directly to the inspector by the animal control facility within thirty days of the inspection. Failure to pay the required inspection fee may result in termination of authority to operate the gas chamber.
- 9.4 The board shall charge a fee as set forth in 26CSR6 Schedule of Fees to the animal control facility for the implementation, recordkeeping and administrative duties of the board in the processing of the gas chamber inspection. This fee shall be paid to the board no later than thirty days from the inspection.
- 9.5 If the gas chamber does not pass the inspection, the board shall immediately be notified by the inspector. The board shall proceed without delay to notify the animal control facility that use of the gas chamber shall cease at once.
- 9.6 The inspector shall file a written notice of the results of the inspection which shall be received by the board within four working days after the inspection.
- 9.7 The board shall notify any other entities of federal or state government which require such notification of the infractions and/or shutdown of an animal euthanasia gas chamber..

- 9.8 Upon the correction of any deficiencies in the gas chamber a reinspection shall be conducted on the orders of the board and the costs of the reinspection shall be paid to the inspector within thirty days of the reinspection.
- 9.9 A certified animal euthanasia technician who continues to euthanize animals in a gas chamber that has been ordered shut down either temporarily or permanently shall be suspended from certification as an animal euthanasia technician by the board. This emergency action is due to the potential hazards in the continued operation of the gas chamber that may result in extreme risks or death to humans and animals.

26-5-7 10. Revocations, suspensions

710.1. Removal of Certification - The Board has the power to deny, suspend or revoke a certification as an Animal Euthanasia Technician or to take other disciplinary action for a violation of the provisions of the law or this rule. It may also deny, suspend or revoke a certification if the person:

~~a. Has presented to the Board dishonest or fraudulent evidence of qualification or has been guilty of fraud or deception in the process of examination or for the purpose of securing a certificate of registration;~~

~~b~~a. Is chronically or habitually intoxicated, has a chemical dependency or is addicted to drugs;

~~e~~b. Has permitted or allowed another to use his or her certification to practice animal euthanasia in this or any other state;

~~d~~-c. Has committed fraud in the application or record keeping of any animal;

~~e~~d. Has failed to maintain records at the place of business of the Certified Animal Euthanasia Technician which shall include, but not be limited to those specified in Section 10 of this rule; or

~~f~~e. Has performed unauthorized treatment.

710.2. The Board shall afford a hearing to any applicant who is denied certification and who requests a hearing within thirty days of notification of the denial, or to any person against whom disciplinary action has been taken by the Board. The Board shall conduct the hearing in accordance with the provisions of Board Rule titled "Hearing Procedures of the West Virginia Board of Veterinary Medicine" 26 CSR 2.

710.3 The Board may revoke or suspend the certification of any Certified Animal Euthanasia Technician if the Board determines that Sodium Pentobarbital, ~~and/or Sodium Pentobarbital compound, or any other euthanasia drug of choice as established by the Board is~~ or the Board approved sedatives or tranquilizers for pre-euthanasia administration are being used for any purpose other than humane animal euthanasia or that the permitted facility has failed to abide by the rules for the safe and efficient purchase, possession, or administration of Sodium Pentobarbital, ~~and/or Sodium Pentobarbital compound~~ or the Board approved sedatives or tranquilizers for pre-euthanasia administration.

710.4. The Board may inspect any animal control facility, animal shelter or humane society which employs a Certified Animal Euthanasia Technician to determine if it

complies with the rules requirements for possession, administration, ~~or purchase~~ or storage of Sodium Pentobarbital, ~~and/or Sodium Pentobarbital compound or the designated euthanasia drug of choice~~ the approved sedatives or tranquilizers for pre-euthanasia administration, as established by the Board.

26-5-811. Continuing education requirement

- 811.1. All Certified Animal Euthanasia Technician's shall complete at least six hours of continuing education in courses approved by the Board during each calendar year. No hours may be accumulated, carried forward, or held over past the calendar year in which the hours were completed.
- 811.2. Until the Board determines appropriate continuing education courses are available in the field of animal euthanasia, the Board may provide continuing education courses annually for Certified Animal Euthanasia Technicians in meeting the requirements of this section. The fee for such continuing education is set forth in the Board's Rule Schedule of Fees 26 CSR 6.
- 811.3. By December 31 of each year, each Certified Animal Euthanasia Technician shall certify to the Board on forms to be provided by the Board, that he or she has successfully completed the continuing education requirement for that calendar year.
- 811.4. The Board shall not issue a certification renewal to an animal euthanasia technician who does not present to the Board sufficient proof that he or she has successfully undertaken and completed the required hours of continuing education.

26-5-912. Certification annual renewal

- 912.1. The Board shall make every reasonable effort to notify Certified Animal Euthanasia Technician's of the renewal requirements as set forth in W. Va. Code ~~§30-10A-5~~ §30-10-15, but failure to receive notification does not exempt anyone from meeting the requirements of this rule.
- 912.2. Certified Animal Euthanasia Technician's shall notify the Board of any change of address, and to forward the notice to the Board no later than the effective date of the change of address.

26-5-4013. Record keeping

- 4013.1. Certified Animal Euthanasia Technicians shall maintain records at their place of business including, but not limited to;
- (a) Identification of the animal euthanized;
 - (b) The drug administered, and its dosage;
 - (c) The date of euthanasia;
 - (d) The method of sanitary disposal of the animal's remains; ~~and~~

(e) An inventory of all receipts, administrations and distributions of Sodium Pentobarbital and/or Sodium Pentobarbital compound or the approved replacement drug of choice; and

(f) The method utilized for the euthanasia of each animal.

4013.2. The Certified Animal Euthanasia Technician and the ~~municipal or county run~~ animal control facility, humane society or animal shelter shall maintain the records in a current status on the business premises for a period of three (3) years.

4013.3. In the case of the cancellation of certification of an animal euthanasia technician, the records shall be maintained by the facility's administrators.

26-5-414. Storage

414.1. The Certified Animal Euthanasia Technician shall maintain all controlled substances, sedatives and tranquilizers under his or her authority in a properly secure and locked storage container when the Certified Animal Euthanasia Technician is not in the same room with the drug.

414.2. Only the Certified Animal Euthanasia Technician shall have access to the drug storage container.

414.3. The manufacturer's instructions shall be followed in the preparation of all lethal injections or chemical restraint drugs.

414.4. Needles shall be of medical quality, and shall not be used if they are dirty, clogged, barbed, or might otherwise cause unnecessary discomfort for the animal. Needles may not be used more than five (5) times.

414.5. Syringes shall be of medical quality. They may be reused if they are properly cleaned.

414.6. Needles and syringes shall be kept in the same secure storage as the lethal drugs and chemical restraint drugs.

414.7. Needles and syringes shall be disposed of in a proper container, as required by state law.

26-5-4215. Minimum standards

4215.1. The Certified Animal Euthanasia Technician shall maintain all controlled substances, chemical restraint drugs, needles and syringes in compliance with state and federal laws.