

Minutes

July 9, 2014

N. C. Board of Agriculture

Casey M. Armstrong

Kirk Mathis

Maurice K. Berry, Jr.

Mark Peters

Doug Boyd

Bert Pitt

Tommy Burleson

Robert Sutter

John William Carter, III

Jeffrey Turner

William Johnston

Steve Troxler, Chairman

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N.C. Board of Agriculture

The July 9, 2014 Board of Agriculture meeting was held in Raleigh, NC at the Martin Building on the N.C. State Fairgrounds. Commissioner of Agriculture Steve Troxler called the meeting to order at 2:00 p.m. and read the Ethics Reminder. After going around the room for introductions, Dr. Richard Reich opened the meeting with prayer. The following Board members were present: Casey Armstrong, Maurice Berry, Doug Boyd, Billy Carter, Billy Johnston, Kirk Mathis, Mark Peters, Bert Pitt, Bob Sutter, and Jeff Turner.



The first item on the agenda was the approval of the minutes of the April 9, 2014 meeting. Jeff Turner made the MOTION to adopt the minutes as presented. The motion was seconded by Billy Johnston and there was no discussion on the item. The motion passed unanimously.



Commissioner Troxler called on Joy Hicks, the Department's Legislative Liaison, to update the Board on the current legislative session. Ms. Hicks discussed both the House and Senate versions of the budget bill and noted that Medicaid, teacher pay and lottery revenue were the contentious items.

Ms. Hicks explained that the Department is hopeful that the final bill will be closer to the House version that includes a 1.2% flex cut overall. In addition, Ms. Hicks indicated that it is likely that the Department will be required to start collecting fees for Forestry Management Plans. The Board will be responsible for adopting and setting the fee, but will be exempt from the rulemaking process for at least a year so that the fees can be collected without further delay once the bill is passed. The Board will be receiving more information and will need to conduct an emergency phone meeting as soon as the bill is passed so that they can approve the fee structure.

Other NCDA&CS-related items included a possible transfer of the Animal Welfare Division to another agency and a possible transfer of the Captive Cervid program from NC Wildlife Resources to the Department. In addition, there was a provision exempting the Board of Agriculture from the rulemaking process to set State Fair admission prices. Funding for capital projects and military buffers was also discussed.



Karen Beck, with the Emergency Programs Division, presented the Board with proposed amendments to three Aidan's Law rules. The amendments make changes to fencing

requirements for animal exhibits to maintain the separation of patrons from manure and bedding while allowing managed interaction with animals; addresses the types of dispensers that may be placed at the entrances of milking booths to reduce the potential for introduction of disease from people to animals; and broadens the list of people who may be at increased risk of illness when visiting animal exhibits. These rules are consistent with CDC guidelines.

These rules are under the authority of the Commissioner of Agriculture, but statute requires approval from the Board of Agriculture and consultation with public health. Dr. Beck has consulted with public health, the rules have gone through the public comment period and now need to be approved by the Board.

A MOTION was made by Maurice Berry, and seconded by Billy Johnston, to approve the amendments as presented. There was no further discussion. The amendments passed by unanimous vote.



Chrissy Waggett, the Department's Rulemaking Coordinator, gave an overview of the Periodic Review and Expiration of Existing Rules as mandated by House Bill 74. Passed last session, this law requires all rules passed under the Administrative Procedure Act to be reviewed every 10 years. This first review is taking place within the next five years and the Department's rules are spread out over that time frame. The process requires each rulemaking body to classify each rule as "unnecessary," "necessary with substantive public interest," or "necessary without substantive public interest."

Rules that are "unnecessary" are either obsolete, redundant, or otherwise not necessary. Rules that are classified as "necessary with substantive public interest" are any rules for which the agency has received public comments within the past two years; or rules that affect the property interest of the regulated public or for which the agency suspects any person may object. Once the classifications have been made, the Board of Agriculture will approve the report, which will then be posted on the Office of Administrative Hearings website, as well as the Department website for a 60 day comment period.

At the end of the 60 day comment period, the agency must respond to every comment it receives. Any comments received, and final determinations will be put on the final report and must be adopted again by the Board. Upon agency adoption of the final report, it will be submitted to the Rules Review Commission for review and finalization. Rules determined to be "unnecessary" will be automatically removed from the code. Rules that are "necessary with substantive public interest" will have to be readopted through the regular rulemaking process, and rules that are "necessary without public interest" will remain in the code.

The Board of Agriculture's first set of rules will be going before the Rules Review Commission at its January 2015 meeting. This means the final report must be submitted by December 15th, 2014. Today, the Board will go through its first set of rules and classifications and approve the initial report. For today's meeting, each division with responsibility for the rules will come before the Board, give an overview of the subchapter, and then explain the

classifications. The Board will vote on the set of rules and subchapters presented by each division.



Dr. Karen Beck, with the Emergency Programs Division, presented 02 NCAC 52K: Animal Exhibits. All of these rules are classified as “necessary without substantive public interest.” Upon MOTION by Bert Pitt, seconded by Jeff Turner, the report for 02 NCAC 52K: Animal Exhibits were approved unanimously with no further discussion.



The Food and Drug Division rules, represented by several employees, were presented next. Audrey Pilkington presented the report for 02 NCAC 09B: Rules Adopted by Reference. This subchapter has one rule identified as “unnecessary” and two that are “necessary without substantive public interest,” one of which conforms to federal regulations. Ms. Pilkington also presented 02 NCAC 09C: Current Good Manufacturing Practices for Food Industries. The majority of these rules are classified as “necessary with substantive public interest” since they have received some inquiries and comments in the past. There was no discussion or questions.

Jennifer Godwin then presented 02 NCAC 09D: Canned Cat and Dog Food, and 02 NCAC 09E: Feed. While all rules in Subchapter 09D are all “necessary without substantive public interest,” there are some in Subchapter 09E that may illicit some feedback from the public and are therefore classified as “necessary with substantive public interest.” There is also a rule that has been classified as unnecessary, but they will continue to do research to make sure that is the best option. There was no discussion or questions from the Board.

02 NCAC 09F: Internal Combustion Engine Antifreezes was presented by Ron Willet. These rules follow ASTM standards and the regulated public have not commented on them in the past. Therefore, these rules have been classified as “necessary without substantive public interest.” The Board did not provide any comments or questions.

Audrey Pilkington presented 02 NCAC 09G: Milk and Milk Products. These rules were transferred from the Department of Health and Human Services in 2012. From that transfer, there are revisions that need to be made, which will take place at the end of the review. They have all been classified as “necessary with substantive public interest” due to the nature of the rules. There were no questions from the Board.

Ms. Pilkington also presented 02 NCAC 09H: Disposition of Damaged or Unclean Foods, 02 NCAC 09J: Testing for Aflatoxin in Cornmeal, and 02 NCAC 09K: Sampling and Testing of Milk and Cream: Frozen Desserts. Each of the rules in these subchapters have been classified as “necessary with substantive public interest” as the division feels the public would be interested in the rules. There were no questions or discussion from the Board.

02 NCAC 09M: Drugs was also presented by Ms. Pilkington. There is one rule that is “unnecessary” since a new federal regulation was passed regarding the traceability of drugs. The

rest have been determined to be “necessary without substantive public interest.” The Board did not have questions on this subchapter.

Ms. Pilkington presented the rest of Food and Drug’s subchapters for review; 02 NCAC 09N: Infant Formula, 02 NCAC 090: Marketing of Shell Eggs, and 02 NCAC 43F: Marketing and Branding of Apples and Peaches. All rules in 02 NCAC 09N and 43F have been determined to be “necessary without substantive public interest.” All of the rules in 02 NCAC 09O have been determined to be “necessary with substantive public interest.”

After the reports were presented, Billy Johnston made a MOTION to adopt the reports. The motion, seconded by Jeff Turner, had no further discussion and was carried by unanimous vote.



Steve Benjamin, with the Standards Division, presented the report for 02 NCAC 38: Consumer Standards. Mr. Benjamin gave some background on what the standards division does, and how it carries out the rules in this chapter, which has eight sections. Six rules have been determined to be “necessary with substantive public interest” as there may be some questions on the handbooks they use. All other rules are “necessary without substantive public interest.” There was some discussion on mechanical pumps being used in North Carolina.

Bob Sutter made the MOTION to adopt the report as presented. The motion was seconded by Bert Pitt. There was no further discussion and the motion passed by a unanimous vote.



02 NCAC 51: State Farm Operations and Food Distribution was presented by Gary Gay with the Food Distribution Division. In this short chapter, one rule has been classified as “unnecessary” as the forms, subject of the rule, are no longer used. The other two rules were classified as “necessary without substantive public interest” as they adopt federal regulations.

A MOTION was made by Jeff Turner, and seconded by Bob Sutter, to approve the report as presented. There was no discussion on the motion and it carried by unanimous vote.



Dr. David Marshall, from the Veterinary Division, and Alan Wade, from the Meat and Poultry Inspection Division, both presented 02 NCAC 52A: Rules and Regulations Adopted by Reference. These rules have been classified as “necessary without substantive public interest.” The majority of these rules adopt federal regulations. Some of these rules were amended in 2005 and no comments were received then.

Doug Boyd made the MOTION to adopt the report as presented. Casey Armstrong seconded the motion. There was no further discussion and the motion passed unanimously.

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02 NCAC 54: Grant Programs was presented by Chrissy Waggett with the General Administration Division. These rules are all classified as “unnecessary” as they deal with a non-existent program.

The MOTION to adopt the report was made by Jeff Turner and seconded by Billy Johnston. The motion passed by unanimous vote.

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At the conclusion of the rules review, Commissioner Troxler reminded everyone that the rules show just how much the Department does. He then asked for other Department employees who were in attendance to introduce themselves.

Other Department employees present were: Tina Hlabse, General Counsel; David Smith, Deputy Commissioner; Jon Lanier, Assistant General Counsel; Dr. Richard Reich, Assistant Commissioner; Scott Bissette, Assistant Commissioner, and Joe Reardon, Assistant Commissioner.

There was some discussion surrounding “Got to be NC Month,” agronomic services fee, FSMA rules, the tobacco referendum, and the Forestry Management Plan fees. Commissioner Troxler then recognized Deputy Commissioner David Smith since it was his birthday and recognized Dr. David Marshall who will be retiring at the end of August.

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There was no further business to discuss. A MOTION was made by Jeff Turner to adjourn. The motion, seconded by Maurice Berry, passed unanimously. The meeting adjourned at 3:34 pm.

Recorded and Prepared by:  
Christina L. Waggett

Adopted by the Board this 8<sup>th</sup> day  
of October, 2014.

  
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Steven W. Troxler  
Commissioner of Agriculture  
Chairman

  
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Tina Hlabse  
Secretary