

Minutes

March 1, 2018

N. C. Board of Agriculture

Ray Allen

Ben Shelton

Doug Boyd

Bob Sutter

Jose Calderon

Jeffrey Turner

John William Carter, III

Scott Tyson

Anne Faircloth

Faylene Whitaker

Jim Lambeth

Steve Troxler, Chairman

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N.C. Board of Agriculture

The March 1, 2018 Board of Agriculture meeting was held at the Stan Adams Training Center in Chapel Hill, NC. Commissioner Troxler called the meeting to order at 1:30 pm and Zane Hedgecock gave the invocation. The following Board members were in attendance: Ray Allen, Doug Boyd, Jose Calderon, Billy Carter, Jim Lambeth, Scott Tyson, and Bob Sutter. Jeff Turner participated via phone.

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To begin the meeting, Commissioner Troxler introduced new member Ray Allen, President of Uwharrie Lumber Company and the Board's forestry industry representative. Commissioner Troxler called on Judge Richard Dietz with the North Carolina Court of Appeals to officially swear-in Mr. Allen.

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Commissioner Troxler read the Ethics Reminder and Chrissy Waggett established the presence of a quorum by calling the roll.

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Tina Hlabse reminded everyone that their Statements of Economic Interest were due by April 16<sup>th</sup>. She then read into the minutes two letters to Governor Cooper regarding members Scott Tyson and Jose Calderon.

The letters, from Beth Carpenter with the State Ethics Commission, were read in their entirety and are included at the end of the minutes.

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The first order of business was the approval of the minutes from the August 23rd, November 16th, and December 19th meetings.

Doug Boyd made the MOTION to approve the minutes as presented. The motion was seconded by Jim Lambeth and carried by unanimous vote.

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Phil Wilson, Plant Industry Division Director, presented a request to revise the Imported Fire Ant Quarantine. With a news release in November, the Plant Pest Section detailed revisions to the imported fire ant quarantine. The revision, to include all of Warren County, went into effect January 1, 2018. According to the Imported Fire Ant Regulations, the Board must be presented with any new revisions at least once annually. The Board can either confirm or

rescind the changes. All Board members received a map showing the regulated areas and highlighting the proposed new regulated area.

Mr. Wilson, responding to a question from Bob Sutter, informed the Board that there was nothing currently on the horizon that would help slow the fire ants.

The MOTION to accept the revised imported fire ant quarantine as presented by Phil Wilson was made by Bob Sutter. Scott Tyson seconded the motion, which then passed unanimously.



Commissioner Troxler then called on Tien Cheng, an attorney with the Department, to go over the three Food and Drug Protection Division rules up for final adoption. Mr. Cheng explained that the rules were initially approved by the Board in August and have been through the 60-day comment period in the North Carolina Register. One comment, from Roland McReynolds with the Carolina Farm Stewardship Association, was received during the comment period. A copy of the letter was sent to all Board members and a hard copy was included in their notebooks.

The rules incorporate by reference the “Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption,” also known as the Produce Safety Rule, promulgated under the Food Safety Modernization Act. The Department of Agriculture notified FDA of the intent to adopt the rule in its entirety in support of their application for funding opportunity PAR-16-137: State and Territory Cooperative Agreement to Enhance Produce Safety in Preparation of Implementation of FDA’s Rule: Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption.

The proposed rule also incorporates by reference the Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food, also known as the Human PC Rule. Adoption of this rule by reference would allow the Department to work under state authority and credential rather than relying on FDA.

The proposals also define the term “establishment” and adopt other relevant definitions by reference.

Commissioner Troxler asked Joe Reardon to address the comments received from Roland McReynolds. After thanking Mr. McReynolds for his comments and work on behalf of his constituents, Mr. Reardon explained the importance of adopting the rules by reference and having state inspectors on the farm rather than federal inspectors. He explained the On-Farm Readiness Review process that Commissioner Troxler and North Carolina were instrumental in getting implemented. This process will educate regulators and farmers on the rule and what to expect before enforcement.

There was some discussion about the handling of products after “clean” produce has been delivered, the difference in small and large farms, and the delay of inspections until 2019 and 2020.

Commissioner Troxler then asked Roland McReynolds to address the Board with his concerns. Mr. McReynolds commended the Commissioner, Joe Reardon, and Anita MacMullan for their work on this issue and for bringing FDA to the table and getting them to make changes. He also agreed that state agents need to be on the farm instead of FDA agents. However, he believes FSMA is a bad law with a bad set of rules. He encouraged the Board to monitor how the rules are implemented. In addition, he noted that FDA had not yet published that they are extending the water rule, even though they have announced it. The differences in enforcement from state to state could also create disadvantages. He believes that push back on FDA's excessive approach to food safety on the farm is necessary, since this is the first time there has been this level of scrutiny. Mr. McReynolds also pointed out that a farmer is still criminally liable if he/she has a foodborne illness problem even without this rule. Engagement from industry is critical to making sure this works, and FDA has not done a good job of interacting with industry, even if they've gotten better at dialogue with the state.

Billy Carter thanked Mr. McReynolds for his comments, but noted that this is where the law is leading us. There was discussion among the members about jurisdiction on the farms without the adoption of these rules. Without adoption, FDA would have total control. There was also further discussion on a possible dispute resolution process and what crops are covered under the rules.

After no further discussion of the rules, Bob Sutter MOVED to amend rule 02 NCAC 09B .0116, and adopt rules 02 NCAC 09B .0134 and 02 NCAC 09B .0135 as presented. The motion was seconded by Doug Boyd and carried by a unanimous vote.



Kent Yelverton, the new State Fair Manager, was then called upon to present a request to initiate rulemaking for rule 02 NCAC 20B .0103. The State Fair is seeking to remove language that prohibits the use of stickers. As stickers are a primary component for a lot of vendors renting booth space at the fair, removing the language would help the Department be responsive to vendors and their needs at the fair.

After a question from Bob Sutter, David Smith, Chief Deputy Commissioner, explained that the language was originally put in the rule because it was a burden to remove the stickers off of state fair property.

A MOTION was made by Billy Carter, and seconded by Scott Tyson, to initiate the rulemaking process for 02 NCAC 20B .0103. After no further discussion, the motion passed unanimously.

Mr. Yelverton then provided an updated on the fairgrounds property, including the new pedestrian tunnel, and talked about the upcoming Got to be NC Festival that will be held May 18-20.



Chrissy Waggett then gave a brief summary of the Periodic Review and Expiration of Existing Rules process. The rule reports currently being considered are the last of the Board of Agriculture rule reports, and this last set is at the beginning of the process. After the Board approves the initial classifications, they will be posted on the NCDA&CS website, as well as the NC Office of Administrative Hearings website for a 60-day comment period.

Phil Wilson, Plant Industry Division Director, presented two reports, 02 NCAC 48A: Plant Protection and 02 NCAC 48B: Fertilizer. There were only a couple of rules that were classified as "necessary with substantive interest" since they had received comment on them in the past. The others were all classified as "necessary without substantive public interest." After the presentation, there was discussion about regulations on imported products like fertilizer.

Dr. Patricia Norris, Director of the Animal Welfare Section, presented the report for 02 NCAC 52J: Animal Welfare Section. All rules were classified as "necessary with substantive interest" outside of Section .0600. Section .0600 is classified as "unnecessary" and will be taken out of the code, as euthanasia by carbon monoxide is no longer practiced.

Kay Harris, Director of the Sleep Products Section, presented the report for 02 NCAC 61: Sanitation of Bedding. These rules are fairly new for the Board, as this section was transferred to the Department in 2011 from the Department of Environment and Natural Resources. The rules have been in effect since 1937. All rules in this section have been classified as "necessary with substantive public interest." There was some discussion between the Board members and Ms. Harris about second hand bedding, how bedding is sanitized, and how many licensed sanitizers are in the state.

Billy Carter made the MOTION, which was seconded by Doug Boyd, to approve the initial classifications as presented to 02 NCAC 48A, 48B, 52J, and 61. After no further discussion, the motion passed with a unanimous vote.

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Commissioner Troxler introduced the Department's new Legislative Liaison, Laura Kilian, and asked Laura to give a brief preview of the upcoming legislative session. Ms. Kilian noted that the Session will begin in May and that the Department is currently going over budget priorities including a request for farmland preservation and additional money for the Agricultural Sciences Center.

There was then discussion on the new Agricultural Sciences Center. The Board was shown pictures and renderings of the new lab building.

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After completing business, the Commissioner asked each member to report on the conditions in their area. The Commissioner, Doug Boyd, and Scott Tyson then discussed their recent trade mission to Brazil.

There being no further business to discuss, Doug Boyd made a MOTION to adjourn the meeting. The MOTION, seconded by Bob Sutter, passed unanimously. The meeting of the N.C. Board of Agriculture adjourned at 3:45 pm.

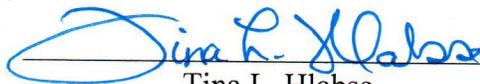
Recorded and Prepared by:

Christina L. Waggett

Adopted by the Board this 31<sup>st</sup> day  
of May 2018.



Steven W. Troxler  
Commissioner of Agriculture  
Chairman



Tina L. Hlabse  
Secretary