

FINAL MINUTES
BOARD OF AGRICULTURE AND CONSUMER SERVICES
Room 204, Washington Building
Capitol Square, Richmond, Virginia
May 15, 2003

The meeting convened at 9:00 a.m. on Thursday, May 15, 2003 in Room 204, Washington Building, Capitol Square, Richmond, Virginia. President Holland called the meeting to order. The Acting Board Secretary called the roll:

PRESENT

Steve Wolfe
L. Bruce Holland
Gatewood Stoneman
T. M. Hardison
Andrea Lohr
Jennifer P. Nolen
Mark D. Sickles
Gary B. Brown
Mary Campbell
Warren H. McConnell
Dr. Winfrey Clarke

Dr. Steven H. Umberger

DISTRICT

1st
2nd
3rd
4th
6th
7th
8th
9th
10th
11th
Representing Virginia State
University
Representing Virginia Tech

ABSENT

Clarence Bryant, III

5th

STAFF PRESENT

J. Carlton Courter, III, Commissioner
Donald G. Blankenship, Deputy Commissioner and Acting Secretary

APPROVAL OF MINUTES

The minutes of the March 13, 2003 meeting were approved as distributed.

REPORT FROM BOARD MEMBERS

In his report on the university-wide activities at Virginia State University, Dr. Clarke advised that the University has hired a new Provost and Vice President for Academic Affairs, Dr. W. Eric Thomas. He noted that more than 600 undergraduate and graduate students are expected to graduate from Virginia State this spring. In his comments on the activities of the Agricultural Research and Cooperative Extension Department, Dr. Clarke reported on the three financial management and crop insurance training workshops Extension conducted and the "High Tunnel" project through which Extension is exploring the feasibility of farmers extending the growth season for vegetables to maximize profits.

Dr. Umberger reported that Virginia Tech had its graduation the previous weekend. He noted that, thanks to budget amendments, his University will receive additional funding for 21 Extension agents and four Extension specialist positions. He added that the 21 Extension agent positions were currently being funded with 100 percent of local funds. He explained that typically the Extension agent positions are funded one-third

(Board of Agriculture & Consumer Services - Draft Minutes, May 15, 2003)

Page 2

local and two-thirds state. Dr. Umberger pointed out that under recent budget reductions Virginia Tech lost 85 agent positions and 20 specialist positions and that the budget amendment will help the University fill those Extension positions that are needed the most. He advised that Virginia Cooperative Extension is doing a strategic staffing analysis to determine how VCE can best position itself to meet the needs of agriculture and forestal industries, families, youth and rural development in the state.

Ms. Nolen indicated that her district currently does not have any major issues or concerns to report.

Ms. Campbell reported that rain is a concern for her district. She noted that she has talked to farmers in her area about the survey, "Virginia's Agriculture Task Force," which was sent to each of the Board members. She added that she continues to enjoy learning more about agricultural issues in the state and her area.

Mr. McConnell reported that agriculture in Fairfax County is now limited to a few horse farms in the area. He noted that Prince William County farmers are looking forward to a week of sunny days to cut and bale hay after receiving so much rainfall.

Mr. Wolfe reported that most of the weather stations in his congressional district are reporting rain one to two inches above normal precipitation. He added that in the Middle Peninsula and the Northern Neck many of the farmers are reporting some difficulty with getting heavy equipment in and out of the fields.

Mr. Sickles thanked the staff and management for the orientation session. He noted that there are no farms in the 8th district but that his area does have many farmers' markets and that a new one is opening this summer.

Mr. Brown reported that Southwest Virginia has had more rain than any other part of the state. He indicated that farmers are ready to set burley tobacco but cannot put fertilizer in the ground. He noted that the excessive rain is beginning to affect the hay crop. He noted that his area has the best hay he has seen in 4 or 5 years, but farmers need a week of sunshine to cut and bale it.

Mr. Hardison thanked the staff for the informative orientation meeting. He noted that the Board members have very valuable resources at their disposal in addressing the issues that come before them. He noted that local Extension agents and other local persons can provide a very valuable resource of information. He encouraged the Board members to consider having an Extension Leadership Conference in their districts. He reported that the counties of Isle of Wight and Southampton have been wet. He noted that farmers are still faced with a major dilemma on whether or not to plant peanuts.

Ms. Lohr thanked the staff and management for the orientation and sharing information about the agency. She reported that the rains have slowed down their planting of corn and that is an issue for most farmers. She noted that all of the farmers who suffered losses from avian influenza are behind schedule in their operations. She indicated that a task force is working to decide how to disburse the state AI monies. Ms. Lohr commented that her district appreciated Governor Warner and the Commissioner declaring May Agriculture Month. She noted that it has sparked a lot of interest in the

Education Agriculture Program and efforts to communicate the importance of agriculture and those who work in the industry.

Ms. Stoneman reported that her district has a really good hay crop but that farmers are having difficulties planting corn and soybeans. She noted that small grain is looking exceptionally well.

Mr. Holland reported that Accomack and Northampton counties had a wet winter like most areas of the state. He noted that the excessive precipitation impacted small grains but the crop may turn out better than was expected. He added that his area had a lot of rain in the latter part of March. He indicated that the heavy rains have affected the potato crop and have delayed corn planting. He reported that early string beans are up and looking good and he hoped to start planting soybeans soon.

COMMISSIONER'S REPORT

The Commissioner announced the appointment of Dr. Marvin Lawson as Director of the Division of Consumer Protection. He also introduced Rebecca Askew as the recently hired Policy Analyst in the Office of Policy, Planning and Research.

The Commissioner also reported on the following matters:

- *Merger of Virginia Milk Commission
- *Capitol Square Renovation
- *Avian Influenza Indemnity Payments
- *Exotic Newcastle Disease Outbreak
- *Status of Ralstonia Outbreak
- *Reimbursement for Organic Producers and Handlers
- *International Trade Activities
- *Peanut Planting
- *Virginia Agriculture Month
- *Virginia Agricultural Survey

ENDANGERED PLANT AND INSECT SPECIES REGULATION

Dr. Donald W. Butts, Director of the Division of Animal, Plant and Food Industry Services, presented the recommendation that the Board defer final action on the proposed "Regulations for the Enforcement of the Endangered Plant and Insect Species Act" to allow the Department to extend the public comment period and to notify additional landowners who would be affected by the listing in the final regulation of additional species not identified in the proposed regulation. Dr. Butts noted that, in response to the proposed regulation, the public recommended that the status of two currently listed species be changed and that four additional species be added. He noted that the agency thinks that these changes should be incorporated in the final regulation. Dr. Butts explained that during its review of the original proposal the Board directed staff to notify all landowners affected by proposed species listings. Following the Board's earlier directive, staff will now need to make additional notifications to make sure affected landowners are made aware of the recommended changes.

Mr. Hardison moved that the Board accept the staff's recommendation to defer action on the final regulation to allow staff the opportunity to notify any additional landowners

and to extend the public comment period. Ms. Stoneman seconded the motion and it was carried by a unanimous vote.

COOLING, STORING, SAMPLING AND TRANSPORTING MILK REGULATION

Dr. Butts provided a presentation on the proposed regulatory actions to repeal the existing regulation 2 VAC 5-500, "Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory" and to adopt the proposed regulation 2 VAC 5-501, "Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk". He noted that the proposed final regulation would include milk of cows, goats, sheep, water buffalo and other mammals if the milk or dairy products are intended to be sold for human consumption. He explained that the final regulation would establish requirements for the cooling, storing, sampling, transporting and testing of all milk offered for human consumption in Virginia. Dr. Butts recommended that the text of the proposal regulation published in The Virginia Register of Regulations be changed in response to recommendations from the public. He then reviewed with the Board three changes to the proposed regulation recommended in public comments. Dr. Butts indicated that staff felt that these changes should be included in the final regulation.

After the staff presentation, Mr. Wolfe moved that the Board adopt the amendments to proposed regulation, 2 VAC 5-501, Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk presented by Dr. Butts. Ms. Stoneman seconded the motion. During discussion, Messrs. McConnell and Hardison expressed their concerns about the need for new requirements that would be established by the proposed regulation. Mr. Wolfe called for an end of discussion. The Board voted 10-2 to adopt the amendments.

Ms. Campbell moved that the Board adopt the proposed regulation 2 VAC 5-501, Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk to include any amendments made by the Board today to the text; and concomitantly repeal regulation 2 VAC 5-500, Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory; and that the staff be directed to take any and all steps needed to make these final regulations of the Board. Mr. Sickles seconded the motion.

Mr. McConnell moved that the proposed regulation be amended to include a subsection "D" in 2 VAC 5-501-20 that would provide exemptions to the new regulation as proposed by dairy goat farmers in their comments to the Board. Mr. Hardison seconded the motion. Ms. Campbell called for an end to discussion. Mr. McConnell's motion to include an exemption subsection failed by a vote of 2 to 10.

At President Holland's request, Mr. Blankenship re-read Ms. Campbell's motion:

That the Board adopt the proposed regulation 2 VAC 5-501, Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk to include any amendments made by the Board today to the text; and concomitantly repeal regulation 2 VAC 5-500, Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the

Processing Plant or Laboratory; and that the staff be directed to take any and all steps needed to make these final regulations of the Board.

President Holland called for a vote and the Board passed the motion 10 to 2.

After a brief recess, the Board resumed its meeting. At this time President Holland advised the Board of errors in parliamentary procedure that needed to be corrected. He explained that when Mr. Wolfe made a motion to end debate on the three proposed amendments to 2 VAC 5-501 presented by Dr. Butts, Mr. Holland failed to call for a second to this motion or a vote on the motion. After his statement, Mr. Wolfe again called for the question on the three amendments to 2 VAC 5-501, Ms. Campbell seconded his motion, and the Board voted unanimously to end debate on the amendments.

At the request of the President, Mr. Blankenship read the following motion which had been made earlier by Mr. Wolfe and seconded by Ms. Stoneman:

That the Board adopt the amendments to proposed regulation, 2 VAC 5-501, Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk presented by Dr. Butts.

President Holland called for a vote and the motion was passed 10 to 2.

President Holland then stated that he now needed to go back to another point in the meeting when Ms. Campbell called for the question during the discussion of the motion to adopt the proposed regulation 2 VAC 5-501 and the repeal of the existing regulation 2 VAC 5-500. He noted that he failed to call for a second to her motion or for a vote on that motion. Mr. Sickles then seconded Ms. Campbell's motion to end discussion and the motion was passed by a unanimous vote.

President Holland asked for a re-reading of the following motion on the adoption of the proposed regulation made earlier by Ms. Campbell and seconded by Mr. Sickles:

That the Board adopt the proposed regulation 2 VAC 5-501, Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk to include any amendments made by the Board today to the text; and concomitantly repeal regulation 2 VAC 5-500, Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory; and that the staff be directed to take any and all steps needed to make these final regulations of the Board.

Mr. Sickles moved that the proposed regulation be adopted without a re-reading of the motion made earlier by Ms. Campbell. Mr. Brown seconded the motion and the motion was passed by a unanimous vote.

President Holland then called for a vote on Ms. Campbell's earlier motion and it was carried by a vote of 10 to 2.

MANUFACTURING MILK REGULATION

Dr. Butts provided a presentation on the proposed regulatory actions to repeal the existing regulation "Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy Products to be Used for Human Food" and the adoption of the proposed "Regulations Governing Milk for Manufacturing Purposes."

Reviewing the revised proposed regulation included in the Board folders, Dr. Butts briefed the Board on several changes to the proposed regulation published in The Virginia Register of Regulations. He indicated that these changes were suggested in public comment and that staff recommends that the Board approve these changes for inclusion in the regulation that the Board adopts.

During the review of the proposed changes, John Beers of the Office of Dairy and Foods explained that the Registrar of Regulations recommended that a specific effective date be included in the final regulation. In comments to the Board Christine Solem of Charlottesville expressed concern about the proposed July 1, 2003 effective date.

At the request of President Holland, Mr. Blankenship read the recommended motion:

That the Board adopt the amendments to proposed regulation, 2 VAC 5-531, Regulations Governing Milk for Manufacturing Purposes presented by Dr. Butts.

Mr. Sickles made the motion and it was seconded by Ms. Campbell.

Mr. Hardison moved that the recommended effective date of the proposed regulation included in the amendments presented by Dr. Butts be extended from July 1, 2003 to January 1, 2004. This motion was seconded by Mr. McConnell and carried by a unanimous vote.

At President Holland's request, Mr. Blankenship read the following motion concerning the adoption of amendments to the proposed regulation:

That the Board adopt the amendments to the proposed regulation, 2 VAC 5-531, Regulations Governing Milk for Manufacturing Purposes including the amendments made by the Board today.

President Holland called for a vote and the motion was passed unanimously.

At President Holland's request, Mr. Blankenship read the following proposed motion concerning the adoption of a final regulation:

That the Board adopt proposed regulation 2 VAC 5-531, Regulations Governing Milk for Manufacturing Purposes to include any amendments made by the Board today to the text; and concomitantly repeal regulation 2 VAC 5-530, Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy

Products to be Used for Human Food; and that the staff be directed to take any and all steps needed to make these final regulations of the Board.

Ms. Stoneman made this motion and it was seconded by Mr. Sickles. The motion was carried by a unanimous vote.

REGULATION OF SCRAPIE IN SHEEP AND GOATS

Commissioner Courter called on Dr. Butts to brief the Board regarding the need to initiate regulatory action to eradicate a disease in sheep and goats called scrapie. Dr. Butts presented a request that the Board approve the filing of a notice of intended regulatory action in The Virginia Register of Regulations regarding the development of a regulation for scrapie eradication. He explained that scrapie is a debilitating disease of sheep and goats which is estimated to cost U.S. producers \$20 to 25 million a year. He noted that the United States Department of Agriculture has made a commitment to the sheep industry to eradicate scrapie in the U.S. by 2010. Dr. Butts pointed out that the goals of the new regulation would be to eradicate scrapie in Virginia sheep and goats. He added the regulation is expected to provide program standards and procedures for Virginia to participate in the Cooperative State-Federal-Industry Scrapie Program.

At the request of President Holland, Mr. Blankenship read the following suggested motion:

That the Board adopt the notice of intended regulatory action to begin the development of a regulation entitled Regulation for Scrapie Eradication, and that staff be directed to take any and all steps needed to give effect to this notice of intended regulatory action.

Ms. Stoneman made this motion, it was seconded by Mr. Brown and carried by a unanimous vote.

REPORT FROM DIVISION OF CONSUMER PROTECTION

Dr. Marvin Lawson, Director, Division of Consumer Protection, provided the Board a brief overview of the Weights and Measures Fees Implementation Plan. Dr. Lawson noted that, in accordance with actions of the Governor and the General Assembly, the Department will begin charging fees for Weights and Measures inspections July 1, 2003. He advised that the first bills will go out in August and that he and his staff are working with industry representatives to communicate with the affected parties regarding these new fees.

REPORT FROM DIVISION OF MARKETING

Thomas N. Sleight, Director, Division of Marketing, introduced Susan Simpson of his Domestic Marketing staff who shared with the Board a report on Virginia's network of four wholesale shipping point farmers markets. He also introduced Susan Giannasi of the Office of International Marketing who provided a report on the FSMIP Video Conferencing Project.

PLANS FOR FUTURE MEETINGS

The Board was advised that the next two Board meetings are scheduled for September 26, 2003 and December 4, 2003. Both meetings will be held in Richmond.

PUBLIC COMMENT PERIOD

Sue Garvin spoke to the Board expressing her concern that goats' milk products were deemed guilty by association despite the lack of specific evidence about these products. She expressed concern that the goat industry is going to suffer another blow under the proposed scrapie regulation. She advised the Board that there is no indication that scrapie is transmitted to goats.

Christine Solem advised the Board that the issue of the milk regulation is not over.

ADJOURNMENT

The meeting adjourned at 12:50 p.m. The next scheduled Board meeting is September 26, 2003.

Respectfully submitted,

L. Bruce Holland, President

Donald Blankenship, Acting Board
Secretary