

NEBRASKA ADMINISTRATIVE CODE

TITLE 91, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1

BEGINNING FARMER BOARD

BEGINNING FARMER TAX CREDIT ACT REGULATIONS

December, 2016

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Chapter 1 - BEGINNING FARMER TAX CREDIT ACT REGULATIONS

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TITLE 91 - BEGINNING FARMER BOARD

Chapter 1 - BEGINNING FARMER TAX CREDIT ACT REGULATIONS

001 Statement of Purpose. The purpose of these regulations is to aid in the administration of the Beginning Farmer Tax Credit Act, Neb. Rev. Stat. §§77-5201 to 77-5215.

002 Administration. These regulations will be administered by the Beginning Farmer Board. For administrative and budgetary purposes only, the Board will be housed within the Nebraska Department of Agriculture located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94947, Lincoln, Nebraska 68509-4947. The telephone number is 800-446-4071.

003 Definitions. The definition of terms found in the Beginning Farmer Tax Credit Act and those listed below will apply to such terms when found in these regulations.

003.01 ACT means the Beginning Farmer Tax Credit Act, Neb. Rev. Stat. §§77-5201 to 77-5215.

003.02 RELATIVE means an individual related by consanguinity (blood) within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree as defined in Neb. Rev. Stat. §36-702.

003.02A The term RELATIVE shall apply to third degree relatives which include great grandparents, aunts and uncles, nieces and nephews, and great grandchildren.

003.02B The term RELATIVE shall not apply to fourth degree relatives which include great, great grandparents, great aunts and uncles, first cousins, grand nieces and nephews and great, great grandchildren.

003.03 RESIDENT OF THE STATE OF NEBRASKA means an individual(s) who is (are) domiciled in Nebraska or who maintains a permanent place of abode in this state and spends in the aggregate more than six months of the taxable year in this state as established in Neb. Rev. Stat. §77-2714.01(7).

003.04 TOTAL FAMILY means the beginning farmer or livestock producer and his or her spouse and dependents.

003.05 VIABLY SIZED FARM means a farm or livestock production facility that has the potential to provide an adequate source of income to support the beginning farmer or livestock producer.

003.06 CASH RENT AGREEMENT means a rental agreement in which the principal consideration given to the owner of agricultural assets is a predetermined amount of money for the crop year. (This includes agreements that provide a base payment plus a variance in payment for abundant crops or high prices.)

003.07 THE SUCCESSION PLAN is a written plan that legally binds the parties to a process and timetable for transfer of agricultural assets to the beginning farmer.

004 Beginning Farmer or Livestock Producer Qualifications.

004.01 Demonstrates a need for assistance by having a total family net worth at the time of application of not more than the amount established by §77-5209 of the Act.

004.01A The beginning farmer's or livestock producer's total family assets, valued at their fair market value, less the beginning farmer's or livestock producer's total family indebtedness, will constitute as the net worth;

004.01B The current net worth statement, supported by a list of all assets and liabilities such as a detailed balance sheet, must be signed and dated (within twelve months of the application date) by the beginning farmer and a professional such as a lawyer, banker, loan officer, or an accountant, who gives his or her title and states in writing that the information appears to be accurate;

004.01C The Board has the authority to request an updated net worth statement.

004.02 Prior to the date of application, has operated a farm or produced livestock for less than ten years out of the past fifteen years;

004.03 Is a resident of Nebraska as defined in Neb. Rev. Stat. §77-2714.01, who intends to rent or lease agricultural assets eligible for the Beginning Farmer Tax Credit located within the state borders of Nebraska;

004.04 Provides the majority of the day-to-day physical labor and management of the farm or livestock production;

004.05 Demonstrates, by the judgment of the Board, an adequate farming or livestock production experience, knowledge, or education, including, but not limited to one or more of the following:

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004.05A Experience in the day-to-day operation of a farm or ranch; or

004.05B Receiving an educational certificate or degree from a two or four year agriculture based program; or

004.05C Having been employed by a farm or livestock business; or

004.05D Possessing other agricultural experience as explained on the application.

004.06 Demonstrates a profit potential shown by:

004.06A A cash flow analysis with a positive outcome which includes all farm and off farm income and expenses including any rented ground, facilities, livestock, equipment, or other assets, and family living expenses of the beginning farmer, spouse, and dependent(s).

004.06A(1) The cash flow analysis must be signed and dated (within twelve months of the application date) by the beginning farmer and a professional such as a lawyer, banker, loan officer, or an accountant, who gives his or her title and states in writing that the information appears to be accurate; and

004.06A(2) The Board has the authority to request an updated cash flow analysis.

004.07 Participates in a financial management program approved by the Board as defined in §77-5203(6) of the Act;

004.07A The beginning farmer or livestock producer will provide proof of completion of an approved financial management program.

004.08 Submits nutrient management plan and a soil conservation plan.

004.09 Intends to make farming or livestock production their principal source of income.

004.10 The beginning farmer will not be a relative, as defined in 91 NAC 1-003.02, of the owner of agricultural assets or the owner's partner, member, shareholder, or trustee in which the beginning farmer or livestock producer is seeking to enter into a rental agreement unless the assets included in the rental agreement are included in a written succession plan that meets the qualifications in 91 NAC 1-004.10A.

004.10A The succession plan is a written plan that legally binds the parties to a process and timetable for transfer of agricultural assets to the beginning farmer. Such process and timetable may include conditions, benchmarks, and performance measures and must provide for a reasonable manner and probability of successful transfer;

004.10A(1) Succession plans may include but are not limited to purchase contracts, buy-sell agreements and trusts;

004.10A(2) A will in itself cannot be considered as a legally binding succession plan for certification of the transfer of an agricultural asset, however, it may be part of the succession plan;

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004.10A(3) The succession plan shall provide for the transfer of assets to be completed within a period of no longer than thirty years, except when the asset to be transferred is land owned by an individual, the period of transfer may be for a period up to the date of death of the owner.

004.10B The owner of agricultural assets and/or beginning farmer must provide a completed Succession Plan Certification Form attesting that a written succession plan including the agricultural assets in their rental agreement exists and that the succession plan meets the requirements under §77-5211(5) of the Act;

004.10B(1) The Succession Plan Certification Form must be signed by the owner of agricultural assets, beginning farmer, and an attorney at law, with signatures notarized. The parties may return the certification form without an attorney's signature if they provide a copy of the succession plan for review and consideration by the Board.

004.11 The Board agrees not to discriminate against any applicant on the basis of race, color, religion, national origin, sex or disability.

005 Owner of Agricultural Assets Qualifications.

005.01 An individual or a trustee who has an ownership interest in an agricultural asset located within the State of Nebraska.

005.02 A trust, partnership, corporation, limited liability company, or other business entity having an ownership interest in an agricultural asset located within the State of Nebraska.

005.03 The Board agrees not to discriminate against any applicant on the basis of race, color, religion, national origin, sex or disability.

006 Rental Agreement.

006.01 An owner of agricultural assets and/or beginning farmer must provide a copy of the rental agreement of at least three years signed and dated by the beginning farmer and the owner of agricultural assets which includes:

006.01A The names of the beginning farmer and owner of agricultural assets;

006.01B Time frame of the rental agreement;

006.01C The legal description of the rented land and/or the identifying information on all other rented assets;

006.01D The method of rent payment and payment schedule;

006.01D(1) For cash rent, a statement of the cash rents to be paid and payment schedule each year of the rental agreement; or

006.01D(2) For share rent agreements, utilize a method determined by the Board to establish a fair and reasonable cash equivalent of the dollar amounts of the owner's predetermined portion of the share rent agreement to be paid each year of the rental agreement.

007 Tax Credits.

007.01 A tax credit may be granted to the owner of agricultural assets each year for a period of up to three years;

007.01A Each agricultural asset will not be eligible as part of the Act more than three years, except as allowed in 91 NAC 1-007.02;

007.01B An owner of agricultural assets may receive a tax credit on more than one lease with different parties or with the same party during the same three-year period;

007.01C An agricultural asset may receive tax credits from one to three years while being owned by one owner except as allowed in 91 NAC 1-007.02; and

007.01D A qualified beginning farmer or livestock producer may be eligible to rent or lease more than one agricultural asset from one or more qualified owners of agricultural assets.

007.02 An owner of agricultural assets or qualified beginning farmer or livestock producer may terminate such agreement according to the terms of said contractual agreement or for reasonable cause. The agricultural owner's tax credit shall be affected as follows:

007.02A The owner of the agricultural asset shall not be eligible for further credits on that particular asset unless the rental agreement is terminated prior to the end of the three year period through no fault of the owner of agricultural assets;

007.02B If the Board finds that such a termination was not the fault of the owner of agricultural assets, they may approve the owner for credits arising from a subsequent qualifying rental agreement with a different qualified beginning farmer or livestock producer;

007.02C If an agreement is terminated without fault on the part of the owner of agricultural assets as determined by the Board, the tax credit shall not be retroactively disallowed;

007.02D If an agreement is terminated with fault on the part of the owner of agricultural assets as determined by the Board, any prior tax credits claimed by such owner shall be disallowed and recaptured and shall be immediately due and payable to the State of Nebraska;

007.02E If an agreement is terminated without fault on the part of the beginning farmer as determined by the Board, the beginning farmer who is eligible may rent or lease additional agricultural assets from the same or other eligible owners of agricultural assets as part of the tax credit program; or

007.02F Should an agricultural asset be sold during the 3 year term or thereafter, the new owner and the rental agreement must qualify under the act in order for the tax credit to apply.

007.03 Allowable tax credits shall be distributed in the same manner as income is distributed to the partners, members, shareholders, or beneficiaries of a partnership, a corporation, an estate, or trust.

008 Financial Management Program Certification. The qualified beginning farmer or livestock producer shall be allowed a one-time credit to be applied against the state income tax liability of such individual for the cost of participation in an approved financial management program required for eligibility under §77-5209 of the Act. The amount of the credit shall be the actual cost of participation in an approved program incurred during the tax year for which the credit is claimed, up to a maximum of five-hundred dollars.

009 Beginning Farmer Personal Property Tax Exemption Certification.

009.01 The qualified beginning farmer as defined in 91 NAC 1-004 that is eligible for the Personal Property Tax Exception will apply for a Certificate of Eligibility on or before November 1st of the year preceding the year for which the exemption is to begin.

009.01A The beginning farmer's Certificate of Eligibility may be presented to their county assessor within three years of Board approval should they apply for the Personal Property Tax Exemption without an owner and a three-year rental agreement.

009.01B The beginning farmer's Certificate of Eligibility may be presented to the county assessor in year 1, year 2, or year 3 of their three year rental agreement when applying with an owner and a three-year rental agreement.

009.01C The Personal Property Tax Exemption shall be in effect for a period of three-years.

010 Tax Credit or Personal Property Tax Exemption Denial. If the application of any beginning farmer, livestock producer, or owner of agricultural assets is denied by the Board, a notice that includes the reason for denial will be sent to the applicant. The applicant may appeal the decision in accordance with the Administrative Procedure Act.

011 Annotation. Neb. Rev. Stat. §§77-5201 to 77-5215.