

NEBRASKA ADMINISTRATIVE CODE

TITLE 84- DRY BEAN RESOURCES COMMISSION – CHAPTER 1

DRY BEAN RESOURCES COMMISSION RULES

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NEBRASKA ADMINISTRATIVE CODE

TITLE 84

DRY BEAN RESOURCES COMMISSION

CHAPTER 1

DRY BEAN RESOURCES COMMISSION RULES

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TITLE 84 – DRY BEAN RESOURCES COMMISSION

Chapter 1 – DRY BEAN RESOURCES COMMISSION RULES

001 Administration of the Commission.

001.01 Officers. The offices of the commission shall be: chairperson, vice-chairperson, secretary/treasurer. Officers shall be elected annually at the first regular meeting after June 1st or whenever a vacancy occurs. The secretary/treasurer shall be bonded in accordance with the Office of Risk Management policy.

001.02 Quorum. No action may be taken by the commission unless a quorum is present. A quorum shall consist of five members. Five affirmative votes shall be necessary to adopt, amend, or repeal any rule and regulation of the commission; terminate appointment of an at-large member; and to change the assessment rate. On any other motion before the commission, the concurrence of a majority of those present shall be sufficient.

001.03 Commission Members. The commission shall meet at the call of the chairperson in accordance with Neb. Rev. Stat. §2-3751. The chairperson shall cause due notice to be transmitted to each member not less than five days prior to the meeting. Members shall simultaneously be provided with copies of a tentative agenda and any other relevant material. Notice in accordance with the Nebraska Open Meeting Law, Neb. Rev. Stat. §§84-14012-84-1414 (Reissue 1977 2014). The commission shall conduct its business in accordance with Robert's Rules of Order, Revised, insofar as they are consistent with this rule.

001.04 Public Participation. The chairperson may at his or her discretion allow persons attending meetings, other than commission members, to speak to the extent that the chairperson determines such participation will not materially impede the progress of the meeting. Any person violating this subsection shall be declared out of order.

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001.05 Assessment Rate.

001.05A The assessment rate may be changed by the commission as provided by Neb. Rev. Stat. §2-3755. Before any action thereon may be taken, the commission shall conduct a public hearing for such purpose pursuant to 37 NAC 1-001.11. Formal action shall then be taken at the first regular or special meeting following the close of the hearing, which meeting may be held in conjunction with the hearing. Whenever the rate is changed, the commission shall cause reasonable advance notice to be given to each first purchaser of current record with the commission.

001.05B Pursuant to the provision of Neb. Rev. Stat. §2-3755, ~~effective with the 2004 crop year harvest (2004 crop year is defined as beans planted and harvested in 2004), the assessment rate shall be 10 cents per hundredweight upon all dry beans grown in the state and sold through commercial channels. The assessment fee shall be 6.67 cents per hundredweight for grower and 3.33 per hundredweight for processor. The assessment rate shall be 7 ½ cents per hundredweight upon all dry beans grown in the state after July 1, 1994 through the 2003 crop year and sold through commercial channels. The assessment rate shall be six cents per hundredweight upon all dry beans grown in the state between August 1, 1987 and June 30, 1994, and sold through commercial channels.~~ Pursuant to the provision of Neb. Rev. Stat. §2-3755, beginning August 1, 2015, the fee imposed by this section shall be fifteen cents per hundredweight. Beginning January 1, 2017, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the act, reduce or increase such fees for a period as it shall deem justifiable, but not less than one year and not to exceed twenty-four cents per hundredweight. Two-thirds of the fee levied under this section shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. The first purchaser shall pay the remaining one-third of the fee. No dry beans shall be subject to the fee more than once.

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001.06 Refunds for Overpayment of Fees. Any first purchaser who wishes to receive a refund for overpayment of fees must submit a written application for the same to the commission no later than 60 days after the date of the alleged overpayment. Said application shall state the following:

- 001.06A The name and address of the grower.
- 001.06B The name and address of the first purchaser,
- 001.06C The date and the payment of the overpaid fee,
- 001.06D The amount of fee paid,
- 001.06E The actual number of hundredweight of dry beans subject to the fee,
- 006.06G Signature of person requesting the refund, and proof of the assessment must be attached thereto.

001.07 Refund of Fee Paid by Grower.

~~001.07A The commission shall refund to a grower any fee amount collected for dry beans as provided by Neb. Stat. §2-3760, upon notice and application made to the commission within thirty days of the date of sale.~~

~~001.07B The application for refund shall have attached thereto a proof of assessment, and the refund form shall state:~~

- ~~001.07B1 The date of sale,~~
- ~~001.07B2 The number of hundredweight sold,~~
- ~~001.07B3 The variety sold,~~
- ~~001.07B4 The total amount of the fee paid by the grower,~~
- ~~001.07B5 The amount of the refund being requested,~~
- ~~001.07B6 The name and address of the grower,~~
- ~~001.07B7 The name and address of the first purchaser,~~
- ~~001.07B8 The signature of the grower,~~
- ~~001.07B9 The Federal ID or Social Security Number of the grower.~~

001.08 Refund of Fee Paid by First Purchaser.

~~001.08A The commission shall refund to a first purchaser any fee amount collected for dry beans as provided by Neb. Stat. §2-3760, upon notice and application made to the commission within 30 days of the date of the notification of the amount of grower refunds. Such notification shall be provided to the first purchaser at the end of each quarter. The refund shall be payable by the commission within ninety days of receipt of the refund request.~~

~~001.08B The application for refund shall state:~~

- ~~001.08B1 The date of the request,~~
- ~~001.08B2 The Name and Address of the first purchaser,~~
- ~~001.08B3 The Federal ID or Social Security number of the first purchaser,~~
- ~~001.08B4 The quarter covered by the application,~~
- ~~001.08B5 The amount of the refund,~~
- ~~001.08B6 A signature and the title of the signatory.~~

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~~001.08C~~ It is commission policy that the names and address of growers requesting refunds are confidential and will not be release to the first purchaser.

~~001.09~~ 001.07 Quarterly Purchase Statements. As provided by Neb. Rev. Stat. §2-3759, the first purchaser shall file his or her statement of the number of hundredweight of dry beans purchased by him or her during each quarter on forms prescribed by the commission. Such forms shall be submitted to the commission's independent fee collection agency, along with the fee collected.

~~001.10~~ 001.08 Fiscal Year. The fiscal year shall be July 1 to, and including, June 30, of the succeeding year.

~~001.11~~ 001.09 Budget. Prior to the end of each fiscal year, the commission shall establish and adopt a budget consistent with limited receipts and the scope of the program for the subsequent fiscal year. Such budget shall be adopted at a regular or special meeting and shall be available for inspection by the public.

~~001.12~~ 001.10 Hearings.

~~001.12A~~ 001.10A General Provision. The commission may conduct public hearings for any purpose consistent with its responsibilities, including but not limited to the adoption, amendment or repeal of rules and regulations and providing growers of dry beans the opportunity to offer ideas and suggestions relative to commission policy, as provided by Neb. Rev. Stat. §2-3753.

~~001.12B~~ 001.10B Notice. Notice shall be given of all public hearings held by the commission. The notice shall be published at least once either in a newspaper of general circulation in the area affected by the business of the hearing or in a newspaper of general circulation in the state, and the publication shall be made at least 30 days prior to the date of the hearing. Such notice shall contain information as to the date, time, place and purpose of the hearing.

~~001.12C~~ 001.10C Procedure. The chairperson, vice-chairperson or a designated member shall serve as hearing officer. The hearing officer may appoint a hearing examiner to assist in the conduct of the hearing. The hearing officer or examiner shall among other things, open the proceedings enter into the record the notice of hearing, take appearances, receive exhibits, answer questions or call upon other persons present to answer questions, and close the proceedings. No person shall be required to be sworn in prior to presenting any evidence, which may consist of oral or written comments and any documents. All persons presenting evidence shall state their name, address, and organization they represent, if any. All evidence is to be directed at the business of the hearing and may be excluded by the hearing officer or examiner if cumulative, repetitive, or irrelevant.

~~001.12D~~ 001.10D Record. A record shall be made of the hearing, with the evidence presented being a part thereof. It may consist of written statements and any other documents, along with tape recordings or oral evidence. The record may be held open for a designated period of time at the discretion of the hearing officer for submission of any evidence not available at the time of hearing.

002 Grower Appointment to the Commission by the Governor.

002.01 General Provisions. All candidates for appointment to the commission may place their names on a candidacy list for the respective district by filing a petition signed by at least ~~twenty-five~~ **ten** resident dry bean growers of such district with the existing commission. Qualified individuals residing within their district shall be eligible for nomination as candidates from such district and only resident growers of such district may sign petitions for such candidates. Qualified candidates shall be those meeting the requirements of Neb. Rev. Stat. §2-3745.

002.02 Candidacy Petitions.

002.02A Notice of Opening; Publication by Commission. Not less than ninety days prior to the expiration of the term of commission members, notice shall be placed by the commission in at least one newspaper of general circulation in the districts from which such members have been appointed. Such notice shall advise prospective candidates of:

- 002.02A1 The commission openings;
- 002.02A2 Where petitions may be obtained, and
- 002.02A3 The deadline for submitting petitions.

002.02B Obtaining Petitions. Candidacy petitions may be obtained from the commission office.

002.02C Petition Requirements. Only candidacy petitions meeting the following requirements shall be deemed to be in compliance with the Nebraska Dry Bean Resources Act and the commission shall reject any petitions not meeting those requirements, after notifying the candidate of such action.

002.02C1 Petitions must be in the form prescribed by 84 NAC 1-002.

002.02C2 Petitions must be received by the commission not later than the second Thursday of April.

002.02C3 Petitions must be signed by at least ~~twenty-five~~ **ten** resident dry bean growers of the district in which the candidate resides.

002.02C4 Petitions must be accurate and fully executed.

002.02C5 No petition submitted by any candidate for appointment to a prior commission shall be used to fulfill the requirements of this subsection.

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002.03 Candidacy List. The commission shall prepare a candidacy list for submission to the Governor. Such list shall include the names of all candidates who have filed candidacy petitions with the commission, which petitions have been found by the commission to meet the requirements of the Nebraska Dry Bean Resources Act and this rule. The commission shall submit the candidacy list to the Governor thirty days prior to the termination date of the terms of the particular commission members.

002.04 Filling of Vacancy. When a vacancy occurs during the term of a governor-appointed member, either due to resignation or failure to meet the requirements of Neb. Rev. Stat. §2-3745, the procedures for filling this vacancy will be the same as those specified in Sections 002.01 through 002.03, with the exceptions that the notice of opening shall be placed as soon as possible, and the candidacy list shall be submitted to the governor for appointment following the next available commission meeting or special session.

003 Grower At-Large Appointment to the Commission by the Commission.

003.01 General Provisions. All candidates for at-large grower member appointment to the commission may place their names on a candidacy list for the respective districts by filing a petition signed by at least ~~twenty-five~~ **ten** resident dry bean growers of such districts with the existing commission. Qualified individuals residing within either district shall be eligible for nomination as candidates from such districts, and only resident growers of either of such districts may sign petitions for such candidates. Qualified candidates shall be those meeting the requirements of Neb. Rev. Stat. §2-3745.

003.02 Candidacy Petitions.

003.02A Notice of Opening; Publication by Commission. Not less than ninety days prior to the expiration of the term of commission members, notice shall be placed by the commission in at least one newspaper of general circulation in the districts from which such members have been appointed. Such notice shall advise prospective candidates of:

- 003.02A1 The commission openings;
- 003.02A2 Where petitions may be obtained; and
- 003.02A3 The deadline for submitting petitions.

003.02B Obtaining Petitions. Candidacy petitions may be obtained from the commission office.

003.02C Petition Requirements. Only candidacy petitions meeting the following requirements shall be deemed to be in compliance with the Nebraska Dry Bean Resources Act, and the commission shall reject any petitions not meeting those requirements, after notifying the candidate of such actions.

003.02C1 Petitions must be in the form prescribed by 84 NAC 1-003.

003.02C2 Petitions must be received by the commission not later than the second Thursday of April.

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003.02C3 Petitions must be signed by at least ~~twenty-five~~ **ten** dry bean growers residing in either of the districts for which the at-large appointment is being made.

003.02C4 Petitions must be accurate and fully executed.

003.02C5 No petition submitted by any candidate for appointment to a prior commission shall be used to fulfill the requirements of this subsection.

003.03 Candidacy List. The commission shall prepare a candidacy list for its review. Such list shall include the names of all candidates who have filed candidacy petitions, which petitions have been found by the commission to meet the requirements of the Nebraska Dry Bean Resources Act and this rule. The commission shall prepare the candidacy list thirty days prior to the termination date of the terms of the particular commission members.

003.04 Appointment by Commission. At its next regular meeting, or in special session, the commission shall, by majority vote, appoint an at-large grower member from the candidacy list.

003.05 Removal From Commission. In addition to the provisions of Neb. Rev. Stat. §2-3750, an at-large grower member may be removed from membership prior to the expiration of the term of appointment when such representative demonstrates a lack of interest in membership by failing to attend three consecutive commission meetings without providing justification for such absences.

003.05A Action to be Taken. After the third consecutive meeting is missed, the at-large grower member will be:

003.05A1 Notified in writing of missed meetings.

003.05A2 Requested to reply in writing within thirty days of the date of the letter to indicate a desire in continued membership.

003.05A3 No written response from the at-large member will be interpreted as an intent to resign.

003.05A4 Termination of appointment will require quorum vote at the next regular commission meeting.

003.06 Filling of Vacancy. When a vacancy occurs during the term of an at-large member, whether due to resignation, termination, or failure to meet the requirements of Neb. Rev. Stat. §2-3745, the procedures for filling this vacancy will be the same as those specified in Sections 003.01 through 003.04, with the exceptions that the notice of opening shall be placed as soon as possible, and the vacancy will be filled at the next available commission meeting or special session.

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004 Processor Appointment to the Commission.

004.01 General Provisions. All candidates for appointment to the commission may place their names on the candidacy list by filing a written application with the existing commission. qualified individuals residing within the State of Nebraska shall be eligible from nomination as candidates. Qualified candidates shall be those meeting the requirements of Neb. Rev. Stat. §2-3746.

004.02 Candidacy Applications. Not less than ninety days prior to the expiration of the term of the commission member, written notice shall be sent to all first purchasers of Nebraska dry beans. Such notice shall advise prospective candidates of:

- 004.02A The commission openings;
- 004.02B Where applications may be obtained; and
- 004.02C The deadline for submitting applications.

004.02D Obtaining Applications. Candidacy applications may be obtained from the commission office.

004.02E Application Requirements. Only candidacy applications meeting the following requirements shall be deemed to be in compliance with the Nebraska Dry Bean Resources Act, and the commission shall reject any application not meeting these requirements, after notifying the candidate of such action.

004.02E1 Applications must be in the form prescribed by 84 NAC 1-004.

004.02E2 Applications must be received by the commission not later than the second Thursday of April.

004.02E3 Applications must be accurate and fully executed.

004.02E4 No applications submitted by any candidate for appointment to a prior commission shall be sued to fulfill the requirements of this subsection.

004.03 Candidacy List. The commission shall prepare a candidacy list for submission to the Governor. Such list shall include the names of all candidates who have filed candidacy applications with the commission, which applications have been found by the commission to meet the requirements of the Nebraska Dry Bean Resources Act and this rule. The commission shall submit the candidacy list to the Governor thirty days prior to the termination date of the term of the particular commission member.

004.04 Filling of Vacancy. When a vacancy occurs during the term of a processor member, whether due to resignation or failure to meet the requirements of Neb. Rev. Stat. §2-3745, the procedure for filling this vacancy will be the same as those specified in Sections 004.01 through 004.03, with the exceptions that the notice of opening shall be placed as soon as possible, and the candidacy list shall be submitted to the Governor for appointment following the next available commission meeting or special session.

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005 Financial Reports Available for Public Inspection. As provided in Neb. Rev. Stat. §2-3753, the fiscal reports shall be available for public inspection during regular office hours. As described in Neb. Rev. Stat. §84-712.05(3), the release of other report would not be made if it would lead to a proprietary advantage.

006 Effective Date. This rule shall become effective five days after it has been filed with the Revisor of Regulations as provided by the Administrative Procedures Act.

012 Form. See following pages.

013 Annotation. Neb. Rev. Stat. §§2-3735 to 2-3765 and §§84-1408 to 84-1414 (Reissue 1997 2012, Supp. 2015) (Supp. 2002 Cum. and laws of 2004).

