



Georgia Department of Agriculture

Capitol Square • Atlanta, Georgia 30334-4201

Gary W. Black
Commissioner

DATE: September 27, 2013

ACTION: Notice of Intent to Consider the Adoption of New Rules pertaining to the Dealers in Agricultural Products, Chapters 40-30-1 through 40-30-3

TO ALL INTERESTED PERSONS AND PARTIES:

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. § 50-13-4, notice is hereby given that the Georgia Department of Agriculture will be accepting written comments regarding the adoption of Chapters 40-30-1 through 40-30-3, relating to Dealers in Agricultural Products. Rules contained within these chapters will define necessary terminology, describe to whom the rules apply and delineate the records keeping requirement; describe licensing eligibility, requirements and fees; and describe the surety bond requirements as well as the amount of bond required for each dealer in agricultural products. The Department will be accepting written comments from September 27, 2013, to close of business (4:30 p.m. EDT) on October 28, 2013.

SYNOPSIS, MAIN FEATURES, AND DIFFERENCES:

Proposed adoption of Chapter 40-30-1 "General Provisions"

The Department is proposing to adopt Departmental Rule 40-29-1-.01 entitled "Definitions," which defines certain language used throughout the Chapter, including Act, Commissioner, Director, Agricultural Products, Dealer in Agricultural Products, and Producer.

The Department is also proposing to adopt Departmental Rule 40-29-1-.02 entitled "Applicability of Rules," which clarifies that these rules apply to any dealer in agricultural products who comes within the terms of the Act to engage in such business in the State of Georgia. The rules do not apply to farmers or groups of farmers in the sale of agricultural products grown by themselves; persons who buy for cash, paying at the time of purchases in United States currency, certified check, cashier's check, electronic transfer of funds, wire transfer of fund, or the equivalent; or holders of food sales establishment licenses issues pursuant to Article 2 of Chapter 2 of Title 26 of the Official Code of Georgia, "Georgia Food Act," who conduct no business at the wholesale level and who have fewer than ten (10) employees.

The Department is proposing to adopt Departmental Rule 40-30-1-.03 entitled "Record Keeping" which will require that any and all ledgers, books of accounts, memoranda, and other documents which relate to dealer in agricultural products transactions be kept and made available for examination by the Commissioner at the place or places of business of the dealer in agricultural products applicant or licensee.

Proposed adoption of Chapter 40-30-2 "Licensing"

The Department is proposing to adopt Departmental Rule 40-30-2-.01 entitled "Eligibility" which shall state that every dealer in agricultural products as defined in the Rules, prior to transacting business within the State of Georgia, shall come under the provisions of the Act by complying with the provisions of the Act and the rules and regulations thereunder. Upon such compliance, any person may be issued a license to operate as Dealer in Agricultural Products, as provided in such license, unless such license is refused by the Commissioner as provided in O.C.G.A. §2-9-7.

The Department is also proposing to adopt Department Rule 40-30-2-.02 entitled "Requirements" which will describe Dealer in Agricultural Products licensing and annual renewal of licensing requirements. To qualify for a Dealer in Agricultural Products license, each applicant must submit or provide the complete application on a form furnished by the Commissioner, a dealer in agricultural products bond, an affidavit certifying under penalties of perjury that the bond accurately reflects the amount equal to the maximum amount of products purchased from or sold for Georgia producers or estimated to be purchased or sold in any month by the applicant or licensee, and an annual licensing fee. The proposed Rule will also provide that all Dealer in Agricultural Products licenses must be renewed annually. Applications for the annual renewal of license and annual licensing fees must be submitted to the Director at least thirty (30) days prior to the license's expiration each year. For license renewal, proof of existence and amount of the surety bond held by the licensee must be submitted annually to the Director at least thirty (30) days prior to the license's expiration each year.

The Department is proposing to adopt Departmental Rule 40-30-2-.03 entitled "Fees" which would require an annual fee be paid before a Dealer in Agricultural Products license is issued or renewed. The license fee for a dealer in agricultural products will be based upon the amount of the agricultural dealer's surety bond furnished pursuant to the requirements of the Act and rules and regulations thereunder as follows: For bonds in the amount of \$10,000.00 to \$90,000.00, the license fee is \$50; For bonds in the amount of \$90,000.01 to \$230,000.00, the license fee is \$75; and For bonds in the amount of \$230,000.01 to \$500,000.00, the license fee is \$100.

Proposed adoption of Chapter 40-30-3 "Bonding"

The Department is proposing to adopt Department Rule 40-30-3-.01 entitled "Dealer Bond" which will state that before any Dealer in Agricultural Products license is issued, the applicant must make and deliver to the Commissioner a surety bond executed by a surety corporation authorized to transact business in this state and approved by the Commissioner. The surety bond shall be upon a form prescribed or approved by the Commissioner and shall be conditioned to secure the faithful accounting for and payment to producers or their agents or representatives of the proceeds of all agricultural products handled or sold by such dealer. Furthermore, the Rule will provide that whenever the Commissioner determines that a previously approved bond has for any cause become insufficient, the Commissioner may require an additional bond or bonds to be given. Unless the additional bond or bonds are given within the time fixed by written demand therefor, or if the bond of a dealer is canceled, the license of such person shall be immediately revoked by operation of law without notice or hearing and such person shall be ineligible to

reapply for such license for a period of four years after such revocation. However, in lieu of a surety bond, the Commissioner may accept a cash bond, which shall in all respects be subject to the same claims and actions as would exist against a surety bond.

The Department is also proposing to adopt Departmental Rule 40-30-3-.02 entitled “Amount of Bond” which will clarify that the required surety bond shall be in an amount equal to the maximum amount of products purchased from or sold for Georgia producers or estimated to be purchased or sold in any month by the dealer in agricultural products. However, the minimum amount of such bond shall be \$10,000.00 and the maximum amount of such bond shall be \$230,000.00, except in the case of pecans for which the maximum amount of such bond shall be \$500,000.00. In the event the maximum amount of products purchased from or sold for Georgia producers or estimated to be purchased or sold in any month by the dealer in agricultural products is less than \$10,000.00, the required bond shall be in the amount of \$10,000.00. Likewise, in the event the maximum amount of products purchased from or sold for Georgia producers or estimated to be purchased or sold in any month by the dealer in agricultural products is greater than \$230,000.00, the required bond shall be in the amount of \$230,000.00. In the case of pecans only, in the event the maximum amount of products purchased from or sold for Georgia producers or estimated to be purchased or sold in any month by the dealer in agricultural products is greater than \$500,000.00, said dealer shall provide a bond in the amount of \$500,000.00.

COMMENT PERIOD AND ADDITIONAL INFORMATION:

The Department will be accepting written comments from September 27, 2013, to close of business (4:30 p.m. EDT) on October 28, 2013. Written comments shall be considered on October 29, 2013. Please submit written comments to:

Jack Spruill
Division Director
Marketing Division
Georgia Department of Agriculture
19 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334
Telephone Number: 404-656-3368
FAX Number: 404-463-6428

You may download a copy of the synopsis and the proposed rules from the Georgia Department of Agriculture website at www.agr.georgia.gov.

This notice is given in compliance with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-4.