

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

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2006 JUL 20 A 9:40

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-15A

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6A

TITLE OF RULE BEING AMENDED: West Virginia Agricultural Liming Materials Law
Regulations

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 20, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Department of Agriculture
1900 Kanawha Blvd., East
Charleston, WV 25305

(304) 558-2227 Herma Johnson

LEGISLATIVE RULE TITLE: ~~West Virginia Agricultural Liming Materials Law Regulations~~

1. Authorizing statute(s) citation 19-15A

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 16, 2006

b. What other notice, including advertising, did you give of the hearing?
Mailed copies of proposed rule to all companies registering and distributing lime. Copy was also mailed to Bob Williams, Farm Bureau and the West Virginia Conservation Agency

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 19, 2006

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 20, 2006

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Herma Johnson, Director

Regulatory and Environmental Affairs Division

West Virginia Department of Agriculture

1900 Kanawha Blvd., East

Charleston, WV 25305

Office: 558-2227

Fax: 558-3594

E-Mail: HJohnson@ag.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'F'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

N/A

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

SUMMARY OF PROPOSED RULE

**WEST VIRGINIA AGRICULTURAL LIMING MATERIALS
TITLE 61-6A**

1. Change the name of the rule from West Virginia Agricultural Liming Materials Law Regulations to West Virginia Agricultural Liming Materials.
2. Change the minimum calcium carbonate equivalent standards for the following types of agricultural liming materials:
 - Limestone from not less than 85% to 80%
 - Slag from not less than 85% to 80%
3. Change the title of 61-6A-3 from Fineness Classification Standards to Fineness Standards.
4. See page 2

SUMMARY OF PROPOSED RULE

WEST VIRGINIA AGRICULTURAL LIMING MATERIALS

TITLE 61-6A

Page 2

4. Increase fees per the appendix listed below:

APPENDIX NUMBER 1 FEES OF THIS RULE

Type of Fee	Section Reference	Fee	Description
Agricultural Liming Material	<u>7.2</u>	<u>From \$25 to \$50</u>	Per Product Registered
Distributor's Permit	<u>7.3</u>	<u>From \$10 to \$25</u>	Per Distributor
Inspection Fee	<u>8.1</u>	<u>From \$0.05 to \$0.25</u>	Per ton Distributed
Minimum Semi-Annual Payment	<u>8.1.a</u>	\$10 No Change	Waived if total is less than \$2
Late Tonnage Report Collection Fee	<u>8.2</u>	\$100 or 10% of fees whichever is greater Added \$100	In addition to Inspection Fee
CCE Greater than 5% Deficiency Penalty	<u>9.1</u>	\$10 or twice the cash value of deficiency whichever is greater Added \$10	Retail Price per ton, twice value of shortage or minimum of \$0.50 per ton
Fineness Standards greater than 5% in one or more standards	<u>9.2</u>	\$10 or \$1 per ton which ever is greater Added \$10	Per ton in lot sampled
Over 10% deficient in one or more of CaO, CaCO ₃ , MgO, MgCO ₃	<u>9.3</u>	\$10 or \$1 per ton whichever is greater Added \$10	Per ton in lot sampled
Late Deficiency Payment	<u>9.4</u>	\$100 or 10% of original deficiency whichever is greater Added \$100	Each 180 days unpaid



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

STATEMENT OF CIRCUMSTANCES

**WEST VIRGINIA AGRICULTURAL LIMING MATERIALS
TITLE 61-6A**

This represents a proposal to update the West Virginia Agricultural Liming Materials Rule to bring them in line with current industry standards. The 2006 Official Publication of the Association of American Plant Food Control Officials Model Bill was used as a guide. This Association is recognized as a leading organization throughout the United States and their model bills are adopted to allow better movement of product from state to state with minimum or no changes to their labeling.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Agricultural Liming Materials Law Regulations

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd, East, Charleston, WV 25305

Phone Number: 558-2227 Herma Johnson Email: hjohnson@ag.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

By implimenting the new rules we will be in line with current industry standards and the increase in fees will help to cover costs of administering the program.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	4,400.00	5,834.00	16,000.00

Rule Title: _____

Rule Title: West Virginia Agricultural Liming Materials Law Regulations

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

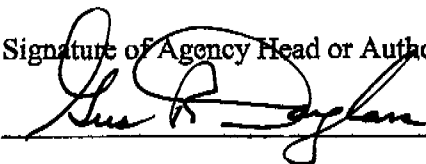
The above fees include registration and tonnage fees, Lime Distributors Registration Fee and monies collected from penalties. The increase in fees will help cover cost of sample collection, laboratory analysis, label review and computer data programs.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: June 16, 2006

Signature of Agency Head or Authorized Representative



FILED

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

2006 JUL 20 A 9:40

SERIES 6A
WEST VIRGINIA AGRICULTURAL
LIMING MATERIALS LAW-REGULATIONS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§61-6A-1. General.

1.1. Scope. -- These regulations establish values for neutralizing qualities and fineness, define deficiencies and establish tolerances, set standards for neutralizing qualities and fineness and establish methods for assessing penalties. These are Legislative regulations.

1.2. Authority. -- W. Va. Code §19-15A.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule. -- This legislative rule repeals and replaces W. Va. §61-6A "Agricultural Liming Materials" filed June 2, 1975 and effective July 1, 1976.

§61-6A-2. Calcium Carbonate Equivalent Standards.

2.1. The minimum calcium carbonate equivalent standards for the following types of agricultural liming materials shall be for:

2.1.1. Burnt Lime: Not less than 140%.

2.1.2. Hydrated Lime: Not less than 110%.

2.1.3. Marl: Not less than 80%.

2.1.4. Limestone: Not less than ~~85%~~ 80%

2.1.5. Slag: Not less than ~~85%~~ 80%

2.1.6. Shells: Not less than 80%.

§61-6A-3. Fineness Classification Standards.

3.1. The minimum sieve size standards for agricultural liming materials shall be:

3.1.1. Pulverized.

3.1.1.a. 100% passing a US Standard 20 Mesh Sieve.

3.1.1.b. 70% passing a US Standard 100 Mesh Sieve.

3.1.2. Ground.

3.1.2.a. 90% passing a US Standard 20 Mesh Sieve.

3.1.2.b. 50% passing a US Standard 60 Mesh Sieve.

3.1.2.c. 35% passing a US Standard 100 Mesh Sieve.

3.1.3. Coarse Ground.

3.1.3.a. 90% passing a US Standard 10 Mesh Sieve.

3.1.3.b. 40% passing a US Standard 60 Mesh Sieve.

§61-6A-4. Blends.

4.1. Blends are products containing a mixture of different agricultural liming materials or containing a component of agricultural liming material and fertilizer, seed, and/or inert material.

4.2. Blends of agricultural liming materials will be considered as products requiring separate registration under their own brand name.

4.3. Any blend claiming to have a component of agricultural liming material shall comply with the law and regulations.

4.3.1. Any blend shall be labeled as to the total percentage of agricultural liming materials in addition to the labeling requirements of the law set forth in W. Va. Code §19-15A-3.

§61-6A-5. Low-grade Agricultural Liming Materials.

5.1. Low-grade liming materials are agricultural liming materials that do not meet the standards set in Sections 3.1 and/or 4.1 of these regulations but still have value as a product to neutralize soil acidity.

5.2. The Commissioner may accept registration of agricultural liming materials that do not meet the minimum calcium carbonate equivalent and/or minimum fineness classification standards set by Sections 3 and 4 of these regulations. The Commissioner shall consider the chemical and fineness components of the low-grade agricultural liming material when reviewing the application for registration.

5.3. Labels of low-grade agricultural liming materials shall meet all the requirements of the W. Va. Code §19-15A-1 et. seq. and shall include the following additional statement:

5.3.1. The words "Low-grade Liming Material" placed prominently at the top of the label.

5.3.2. The words "Does not meet the minimum standard for calcium carbonate equivalent" if this is true.

5.3.3. The words "Does not meet the minimum standard for fineness classification" if this is true.

5.4. If the low-grade agricultural liming material does not meet the minimum fineness classification for coarse ground, then the fineness classification shall be designated as "Very coarse ground".

§61-6A-6. Labels.

6.1. Labels of all agricultural liming materials shall accompany the application for registration.

6.2. No registration shall be accepted if the label for the agricultural liming material conflicts with the information on the application for registration.

6.3. No agricultural liming materials shall be used, sold, or offered for sale if the label differs in any respect from the label submitted with the application for registration.

§61-6A-7. Registration.

7.1 Any changes permitted in the guaranteed analysis for calcium carbonate equivalent or fineness classification for a registered product requires a new registration.

7.2 The registrant of each agricultural liming material shall register each product before it is sold, offered for sale, or exposed for sale in the state. The application for registration shall be accompanied by the fee listed in Appendix Number 1- Fees of this Rule.

7.3 The commissioner shall collect a registration fee from all distributors of agricultural liming materials. The application for registration shall be accompanied by the fee listed in Appendix Number 1- Fees of this Rule.

§ 61-6A-8 Inspection Fee; Report Tonnage; Annual Report.

8.1 The registrant of agricultural liming materials shall pay to the commissioner the inspection fee listed in Appendix Number 1- Fees of this Rule. If such tonnage, or portion thereof, has been paid by another person; documentation by invoice must accompany such report.

8.1.a. The minimum semiannual payment is listed in Appendix Number 1- Fees of this Rule.

8.2 A penalty shall be assessed to a registrant or distributor whose report is not received by the fifteenth day of August and the Fifteenth day of February each calendar year as listed in Appendix Number 1- Fees of this Rule.

§ 61-6A-9 Deficiency assessment, Tolerances, and Payment.

9.1 When the calcium carbonate equivalent is found to be over five percent deficient from the stated guarantee, the registrant shall pay a deficiency assessment equal to two times the actual cash value of the deficiency based on the retail price per ton at the distribution point where the official sample was collected. The cash value of the deficiency is calculated by multiplying the actual percent deficiency, less the five percent taken, times the retail price per ton, times the tons in the lot sampled. The minimum assessed penalty shall be listed in Appendix Number 1- Fees of this Rule.

9.2 When the product is found to be over five percent deficient from the stated guarantee in one or

more of the guarantees for fineness, a penalty shall be paid as listed in Appendix Number 1- Fees of this Rule.

9.3 When the product is found to be over ten percent deficient from the stated guarantee for one or more of the following guarantees: Calcium oxide, magnesium oxide, calcium carbonate, magnesium carbonate, a penalty shall be paid as listed in Appendix Number 1- Fees of this Rule.

9.4 If any deficiency assessment has not been paid within sixty days of the notice of such assessment, then a late payment penalty shall be paid as listed in Appendix Number 1- Fees of this Rule.

APPENDIX NUMBER 1
FEES OF THIS RULE

Type of Fee	Section Reference	Fee	Description
Agricultural Liming Material	<u>7.2</u>	<u>\$50</u>	Per Product Registered
Distributor's Permit	<u>7.3</u>	<u>\$25</u>	Per Distributor
Inspection Fee	<u>8.1</u>	<u>\$0.25</u>	Per ton Distributed
Minimum Semi-Annual Payment	<u>8.1.a</u>	<u>\$10</u>	Waived if total is less than \$2
Late Filed Tonnage Report Collection Fee	<u>8.2</u>	<u>\$100</u> or 10% of fees whichever is greater	In addition to Inspection Fee
CCE Greater than 5% Deficiency Penalty	<u>9.1</u>	<u>\$10</u> or twice the cash value of deficiency whichever is greater	Retail Price per ton, twice value of shortage or minimum of \$0.50 per ton
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Late Deficiency Payment	<u>9.4</u>	<u>\$100</u> or 10% of original deficiency whichever is greater	Each 180 days unpaid