

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

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

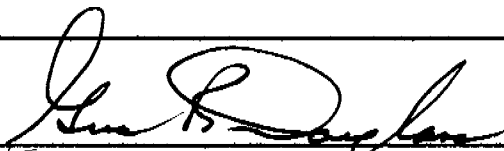
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB319

SECTION 64-9-1(b), PASSED ON March 9, 2007

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2007


Authorized Signature



State of West Virginia

DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

PROMULGATION HISTORY OF RULE

WEST VIRGINIA DEPARTMENT OF AGRICULTURE
TITLE 61 – SERIES 6A

WEST VIRGINIA AGRICULTURAL LIMING MATERIALS

1. Notice of Comment Period On A Proposed Rule, with supporting documents, was filed June 16, 2006, with the Secretary of State's Office and the Legislative Rule Making Review Committee. The comment period ended on July 19, 2006.
2. Notice of Agency Approval Of A Proposed Rule and Filing With The Legislative Rule-Making Review Committee, with supporting documents, was filed July 20, 2006 with the Secretary of State's Office and the Legislative Rule Making Review Committee.
3. Notice of Rule Modification Of A Proposed Rule, with supporting documents, was filed September 15, 2006 with the Secretary of State's Office and the Legislative Rule Making Review Committee.
4. This rule passed the Legislature on March 9, 2007. Authorization for this legislative rule is cited in SB319, Section 64-9-1(b).

**TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE**

**SERIES 6A
WEST VIRGINIA AGRICULTURAL
LIMING MATERIALS**

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SECRETARY OF STATE**

§61-6A-1. General.

1.1. Scope. -- This legislative rule establishes values for neutralizing qualities and fineness, define deficiencies and establish tolerances, set standards for neutralizing qualities and fineness and establish methods for assessing penalties.

1.2. Authority. -- W. Va. Code §19-15A-1 et seq.

1.3. Filing Date. -- April 9, 2007.

1.4. Effective Date. -- July 1, 2007.

§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 80%.

2.1.5. Slag: Not less than 80%.

2.1.6. Shells: Not less than 80%.

§61-6A-3. Fineness 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 shall 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 rules.

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 Subsections 3.1 and 4.1 of this rule 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 this rule. 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" where applicable; and

5.3.3. The words "Does not meet the minimum standard for fineness classification" where applicable.

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 The commissioner may not accept a registration 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 the tonnage, or portion thereof, has been paid by another person; documentation by invoice must accompany the report.

8.2 The commissioner shall assess a penalty 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 is 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 the 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	7.2	\$50	Per Product Registered
Distributor's Permit	7.3	\$25	Per Distributor
Inspection Fee	8.1	\$0.25	Per ton Distributed
Minimum Semi-Annual Payment	8.1	\$10	Waived if total is less than \$2
Late Tonnage Report Collection Fee	8.2	\$100 or 10% of fees whichever is greater	In addition to Inspection Fee
CCE Greater than 5% Deficiency Penalty	9.1	Twice the cash value of deficiency	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	9.2	\$1 per ton	Per ton in lot sampled
Over 10% deficient in one or more of CaO, CaCO ₃ , MgO, MgCO ₃	9.3	\$1 per ton	Per ton in lot sampled
Late Deficiency Payment	9.4	10% of original deficiency	Each 180 days unpaid