


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA

# Office of the Attorney General

TO : CAROL MILLIGAN
Department of Agriculture
90 West Plato Blvd.
St. Paul, MN 55107

DATE : October 7, 1992

FROM : AMY V. KVALSETH
Special Assistant
Attorney General

PHONE : 296-9422

SUBJECT : **Agricultural Liming Material Rules**

Carol, upon withdrawal of these rules you asked me to write you a memo with some of my thoughts regarding problems I saw with the rules. This memo is in response to that request. Be forewarned, however, that upon redoing the rules and submitting those new rules to the Attorney General's Office for review, we will need to evaluate those rules at that time on their own.

In reading the adopted permanent rules that were dated August 19, 1992, I had the following concerns:

1. **1509.0025, subp. 1.** This seems to conflict with the new definition of "label."

2. **1509.0025E.** Does the use of the word "blended" there mean the same thing as the kind of blending that occurs to form a stockpile under the statutory definition of producer? See Minnesota statutes section 18C.531, subd. 22 and 25. When redoing these, you may want to include a definition of "blended" or "blending."

3. **1509.0030, subp. 3.** This subpart appears to contain additional information on sampling methods that is all new material. Since you are renoticing the rule, that will not cause a problem.

4. **1509.0030, subp. 5.** This subpart seems to incorporate a new standard that had not been in the rule previously, that is the "minimum pounds of ENP per ton on the label is greater than three percent above the verification analysis results." Again, renoticing the rule cures any problem the new standard presented during the present review.

5. **1509.0035, subp. 2, ¶2.** The last sentence of paragraph 2 that appears to be new material raised a question in my mind as to how it fit with the Department doing the tests under 1509.0030, subp. 5.

6. **1509.0035, subp. 2, ¶3.** The middle of the paragraph refers to a laboratory facility that performed the analysis. Reference to a laboratory facility appears new. Does the certified producer perform his own analytical results or does he have to send things to a laboratory? If he sends them to a laboratory, is the laboratory certified in some way?

7. **1509.0035, subp. 2, ¶3.** The last sentence appears new. Since you are redoing the rule, you should not have a problem with it. In the resubmitted rule it appeared to be new material that might constitute a substantial change, although arguably it was implied in the previous rule.

8. **1509.0035, subp. 3.** The last sentence appears to be new material from your original adopted rule. Again, in renoticed rules this will not cause a problem.

9. **1509.0035, subp. 4.** Regarding the sentence "analytical results or samples furnished by a producer must not be greater than three percent above the analytical results obtained by the Department in accordance with part 1509.0030, subp. 4," does not seem to make sense. The phrase "in accordance with" refers to 1509.0030, subp. 4, but that subpart only gives the standard.

10. **1509.0040, subp. 3.** This subpart is confusing regarding listing the cubic yards on the label and the approximate weight per cubic yard when you compare it to 1509.0025F, which requires "the weight or cubic yards of ALM distributed." Subpart F seems to use an "or," whereas, subpart 3 of 1509.0040 seems to use an "and," that is under subpart 3, one has to give cubic yards and weight. I know we discussed this on the phone and you explained the difference to me, but maybe since you are redoing the rule, you will want to make this clearer.

Other concerns regarding notice to different groups will no doubt be taken care of because you are redoing the whole rule and redoing your notice.

If you have questions regarding this memo, please contact me.

AVK:cr.kval.ag7

1509.0015 – subp. 4 – clarification chng.

1509.0020 – subp. 2 – –"–

–"– –"– 4 – –"–

1509.0025 – subp. 1 – seems to conflict w/ new defin. of "label"

–"– E. – clarify. b/c blended ALM = ALM defin under stat. – e.g. M.S. § 18C.531, subds 22 & 25.

1509.0030 – subp. 1 – clarification

–"– – subp. 3 – add'tnl info re sampl'g methods – NEW

–"– subp. 5 – clarification of s.th. implied.

1509.0035 – subp. 1 – ¶ 1 – clarification

¶ 2 – new

subp. 4 – new verif. stmt.

1509.0040, subp. 1 – clarify.

~~subpt 3 – new~~

subpt. 4 – clarify.

removed certif. segment & yrly renewal.

Department of Agriculture

Adopted Permanent Rules Relating to Agricultural Liming Material

Rules as Adopted

1509.0010 AUTHORITY AND PURPOSE.

Parts 1509.0010 to 1509.0040 are adopted by the commissioner under Minnesota Statutes, section 18C.575, to prescribe conditions for label information, analytical and sampling methods, license and inspection fee qualifications, analysis results and sample content certification, and distribution of agricultural liming material by the cubic yard.

1509.0015 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and the definitions of "agricultural liming materials," "bulk," "burnt lime," "commissioner," "distributor," "ENP," "hydrated lime," "label," "marl," "official sample," "percent; percentage," "person," "producer," "source of production," "stockpile," "ton," and "weight," in Minnesota Statutes, section 18C.531, apply to parts 1509.0010 to 1509.0040.

Subp. 2. **ALM.** "ALM" means agricultural liming materials.

Subp. 3. **Delivery.** "Delivery" means the complete transfer of an ALM order to a specific site as indicated to the purchaser on a billing, delivery, invoice ticket, or label.

Subp. 4. **Department.** "Department" means the Minnesota Department of Agriculture.

Subp. 5. **Exempt.** "Exempt" means distributors or producers of industrial or municipal by-product ALM who are exempt from fees for licensing and inspection under Minnesota Statutes, section 18C.541, subdivision 6.

Subp. 6. **Label.** "Label" means the display of all written, printed, or graphic matter on the immediate container or the statement accompanying or following a ~~shipment~~ delivery of ALM. A billing, delivery, or invoice ticket is a label.

Subp. 7. **Limestone.** "Limestone" means a material



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consisting of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity. Limestone also refers to all carbonate minerals and rock-forming carbonate minerals unless otherwise specified in Minnesota Statutes, section 18C.531.

Subp. 8. **Pounds of ENP per ton.** "Pounds of ENP per ton" means the pounds of effective neutralizing power in one ton of ALM corrected for moisture. [(2,000 pounds ALM per ton) (percentage of ENP ÷ 100) (percentage of dry matter ALM ÷ 100)] = pounds of ENP per ton.

Subp. 9. **Transportation charges.** "Transportation charges" means charges associated with distribution and transport of ALM, including charges relating to application and over-the-road transport.

1509.0020 ALM LICENSE AND INSPECTION FEE.

Subpart 1. **Licensing requirements.** A distributor or producer of ALM shall obtain a license in accordance with Minnesota Statutes, section 18C.541, subdivision 1.

Subp. 2. **Free distribution.** If a producer distributes ALM to another person free of charge under Minnesota Statutes, section 18C.541, subdivision 6, the producer is not liable for any license and inspection fees incurred by any subsequent distributor of that product.

Subp. 3. **Custom application.** A person who custom applies and does not distribute ALM is not liable for license and inspection fees.

Subp. 4. **Reporting transportation charges to department.** Distributors or producers applying for license and inspection fee exemption under Minnesota Statutes, section 18C.541, subdivision 6, must disclose transportation charges assessed in the distribution of industrial or municipal by-product ALM. Transportation charges must be itemized to show fees assessed for application and over-the-road transport.

Subp. 5. **Determining fair and reasonable transportation charges.** To determine fair and reasonable transportation



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charges, the department shall collect transportation charges data from ALM distributors and producers via information required on the annual license application required by Minnesota Statutes, section 18C.541, subdivision 1, or other application forms provided by the department. Transportation charges data collected must be separated into two geographical areas:

A. the metropolitan area, as defined in Minnesota Statutes, section 473.121, subdivision 2; and

B. all of Minnesota outside the metropolitan area.

These geographical areas designate where industrial or municipal by-product ALM is produced or initially transported from. Data collected must be averaged for each respective area. Distributors or producers except those exempt under Minnesota Statutes, section 18C.541, subdivision 6, must pay license and inspection fees if their transportation charges exceed the average area transportation charge.

Subp. 6. **Inspection fee assessment limitation.** Inspection fees assessed under Minnesota Statutes, section 18C.551, subdivision 3, are limited to one assessment during distribution in Minnesota. Verification of prior inspection fee payment is required.

~~1509.0020~~ 1509.0025 LABEL INFORMATION REQUIREMENTS.

Subpart 1. **Label information requirements for bulk delivery.** ALM offered for sale, sold, or distributed in this state in bulk must have a written label accompanying a delivery and supplied to any purchaser or end user at the time of delivery. The label must contain the following information:

A. the distributor's or producer's name, address, telephone number, and source of production or stockpile location;

B. the purchaser's name and address;

C. the date of sale or transfer;

D. the type of ALM listed as one of the following:

(1) "calcium oxide," which is the chemical compound composed of calcium and oxygen. It is formed from



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calcium carbonate by heating limestone to drive off the carbon dioxide. Also known as quick lime, unslated lime, burnt lime, and caustic lime, it does not occur in nature;

(2) "fluid grade ALM," which is ALM that is applied in a suspended formulation;

(3) "hydrated lime," which is a material made from burnt lime that consists of calcium hydroxide or a combination of calcium hydroxide with either magnesium oxide, magnesium hydroxide, or both;

(4) "industrial or municipal by-product ALM," which is industrial waste or by-product, or the by-product of an industrial production process or municipal water or waste treatment process containing calcium or magnesium compounds, or both, in a form that neutralizes soil acidity;

(5) "marl," which is a granular or loosely consolidated earthy material composed largely of shell fragments and calcium or magnesium carbonate, or both;

(6) "pelleted ALM," which is ALM of any type that is manufactured and marketed in a pelleted formulation;

(7) "quarry ALM," which is ALM that results from the grinding or sieving of limestone at a quarry or other production site and that is applied on agricultural land without further processing or alteration;

(8) "slag," which is a by-product ALM made of calcium-magnesium aluminosilicate (Ca-MgSi03) resulting from the manufacturing of pig-iron; or

(9) "woodash," which is a by-product ALM resulting from wood burning processes;

E. the minimum pounds of ENP per ton<u>, or, if fertilizer or soil amendment is blended with ALM, the minimum pounds of ENP contained per ton of blended material</u>;

F. the weight or cubic yards of ALM distributed;

G. the conversion factor for tons per cubic yard if ALM is being sold by cubic yard units; and

H. for exempt ALM distributors and producers, a list of any charges for ALM, transportation, or application fees.



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Subp. 2. **Label information requirements for bags and other container types.** ALM packaged in bags and other container types that are distributed, offered for sale, sold, or disposed of in this state for agricultural use must have a label on either the face, display, or back side of the bag or container or printed on tags affixed to the upper end of the container, stating in a clear, legible, and conspicuous form the following required information:

A. the distributor's or producer's name and address;

B. the minimum pounds of ENP per ton; and

C. the net weight.

~~1509.0025~~ 1509.0030 OFFICIAL OR CERTIFIED SAMPLE AND ~~ANALYSES~~ ANALYSIS TO DETERMINE REQUIRED LABEL INFORMATION ~~ACCURACY~~.

Subpart 1. **Required samples and analysis.** The department shall take ~~official~~ samples and perform ~~analyses~~ analysis or certify producers to take samples and perform analysis in accordance with part 1509.0035 of ALM sources of production, storage sites, or blending sites to determine required label information. ~~An official~~ A sample and analysis must be ~~taken~~ performed by the department or submitted by a certified producer at least once a year at each production, storage, or blending site.

Subp. 2. **Sampling and analysis of blended ALM products.** The department shall take official samples and perform analyses of ALM that is blended, even though an official analysis exists for the separate ALM components of the blend. The person blending ALM must pay the sampling fee required by Minnesota Statutes, section 18C.551, subdivision 4.

Subp. 3. **Official ALM analysis method and sampling methods.** The most recent edition of "Quality Determination of Liming Materials," from the Soil Testing Laboratories of the University of Minnesota, Saint Paul, Minnesota 55108, is the official ALM analysis method. ~~This document is~~ The most recent edition of "Association of American Plant Food Control Officials Inspectors



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Manual," from the Association of American Plant Food Control Officials, Inc., West LaFayette, IN 47907, is the official ALM sampling method. These documents are incorporated by reference, ~~is~~ are not frequently amended, and ~~is~~ are available at the Minnesota State Law Library.

Subp. 4. **Label pounds of ENP per ton tolerance.** Current label pounds of ENP per ton must be changed if the revised pounds of ENP per ton resulting from an official sample and analysis is more than three percent below current label pounds of ENP per ton.

Subp. 5. **Verifying label accuracy information.** If a distributor or other person believes ALM is mislabeled, the department shall take ALM samples and perform analyses to verify ~~content~~ label information. If the ALM label is found to be correct, the requesting party must pay the sampling fee required by Minnesota Statutes, section 18C.551, subdivision 4. If the ~~ALM label is found to be incorrect~~ minimum pounds of ENP per ton on the label is greater than three percent above the verification analysis results, the supplying distributor or producer must pay the fee required by Minnesota Statutes, section 18C.551, subdivision 4. The supplying distributor or producer must also change information on the label to reflect verified analysis results.

~~1509.0030 ALM LICENSE AND INSPECTION FEE.~~

~~Subpart 1. Free distribution. If a producer distributes ALM to another person free of charge under Minnesota Statutes, section 18C.541, subdivision 6, the producer is not liable for any license and inspection fees that may be required later if the product is sold.~~

~~Subp. 2. Custom application. A person who custom applies and does not distribute ALM is not liable for license and inspection fees.~~

~~Subp. 3. Reporting transportation charges to department. Distributors or producers applying for license and inspection fee exemption under Minnesota Statutes, section 18C.541,~~



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~~subdivision-6,-must-disclose-transportation-charges-assessed-in the-distribution-of-industrial-or-municipal-by-product-ALM. Transportation-charges-must-be-itemized-to-show-fees-assessed for-application-and-over-the-road-transport.~~

~~Subp.-4.--Determining-fair-and-reasonable-transportation charges.--To-determine-fair-and-reasonable-transportation charges,-the-department-shall-collect-transportation-charges data-via-information-required-on-annual-license-or-other applications-provided-by-the-department.--Transportation-charges data-collected-must-be-separated-into-two-geographical-areas:~~

~~A.--the-metropolitan-area,-as-defined-in-Minnesota Statutes,-section-473.121,-subdivision-2,-and~~

~~B.--all-of-Minnesota-outside-the-metropolitan-area. These-geographical-areas-designate-where-industrial-or-municipal by-product-ALM-is-produced-or-initially-transported-from.--Data collected-must-be-averaged-for-each-respective-area. Distributors-or-producers-except-those-exempt-under-Minnesota Statutes,-section-18C.541,-subdivision-6,-must-pay-license-and inspection-fees-if-their-transportation-charges-exceed-the average-area-transportation-charge.~~

~~Subp.-5.--Inspection-fee-assessment-limitation.--Inspection fees-assessed-under-Minnesota-Statutes,-section-18C.551, subdivision-3,-are-limited-to-one-assessment-during-distribution in-Minnesota.--Verification-of-prior-inspection-fee-payment-is required.~~

1509.0035 CERTIFICATION ~~OF-ALM~~ TO CONDUCT ANALYSIS ~~RESULTS~~ AND ~~SAMPLE-CONTENT~~ SAMPLING OF ALM.

Subpart 1. **Certification and purpose.** The ~~commissioner~~ department may certify ~~an-ALM-analysis-result,-methods,-or sample-content-as-submitted-to-the-department-by-an-ALM~~ a producer to conduct sampling and analysis of the producer's ALM. Certified producers need not have official samples and analysis taken by the department as required by part 1509.0030.

Subp. 2. **Analysis certification.** ALM producers may be certified to sample and analyze ALM content if they agree to



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abide by ~~department~~ the official methods for sampling and analysis referenced in part 1509.0030, subpart 3. Producers wishing to be certified must complete an application and affidavit form ~~and file a notarized affidavit with the department~~ on forms provided by the ~~commissioner~~ department.

A certified producer that distributes ALM during the production process must sample weekly and analyze the composite of the weekly samples on a monthly basis. A certified producer that does not distribute ALM during the production process must collect representative samples and analyze ALM prior to or during distribution ~~for analysis~~. Certified producers must provide distributors or subsequent consumers with updated required label information in accordance with parts 1509.0025 and 1509.0030, subpart 5.

Certified producers must compile reports to be submitted to the department semiannually on January ~~1~~ 31 and July ~~1~~ 31 on forms provided by the ~~commissioner~~ department that ~~detail~~ identify the ~~number of~~ samples ~~taken for the analysis and the results of~~ collected, the analytical results, and the laboratory facility that performed the analysis. Certification may be denied or revoked for failure to abide by ~~department~~ the methods for sampling and analysis referenced in part 1509.0030, subpart 3, or for failure to file reports. Certification may also be denied or revoked if analytical results are found to be inaccurate in accordance with subpart 4.

Subp. 3. **Sample certification.** An ALM sample must be considered for certification if a producer notifies the department of such a request in sufficient time for the department to send information concerning sampling methods, an application and affidavit form, and sample collection report form~~, and ALM sampling containers~~ to the producer. A producer shall submit to the department an ALM sample with no less than ten pounds of ALM, a completed, notarized application and affidavit form, and a completed sample collection report. Certification may be denied or revoked for failure to abide by sampling methods referenced in part 1509.0030, subpart 3, or if



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sample content is found to be inaccurate, in accordance with subpart 4.

Subp. 4. **Departmental sample collection and analysis results verification.** The department may collect and analyze ALM to verify analysis results, methods, or sample content if a certification request is being made to meet requirements of Minnesota Statutes, section 18C.551, subdivision 4. Analytical results or samples furnished by a producer must not be greater than three percent above the analytical results obtained by the department in accordance with part 1509.0030, subpart 4. The producer must bear the cost of sample collection and analysis made to produce sufficient verification for certification as specified in Minnesota Statutes, section 18C.551, subdivision 4.

1509.0040 DISTRIBUTION OF ALM BY CUBIC YARD.

Subpart 1. **ALM distribution ~~vehicle~~ cubic yard capacity reporting requirements.** Each distributor or producer distributing ALM on a cubic yard basis or without the use of a Department of Public Service, Weights and Measures Division, approved scale is responsible for determining and reporting the cubic yard capacity of each vehicle ~~and~~, measuring device, or loading device used for this purpose.

Subp. 2. **~~Application for certification to~~ distribute Distribution of ALM on a cubic yard basis.** Distributors or producers distributing ALM by the cubic yard shall submit ~~an annual~~ a written report by December 31 of each year to the department on forms furnished by the ~~commissioner~~ department. ~~Certification to distribute ALM by the cubic yard must be indicated on the distributor's or producer's license.~~

~~Subp. 3. Listing cubic yards distributed on label. Distributors or producers distributing ALM on a cubic yard basis must identify on the label cubic yards distributed. Distributors or producers shall list approximate weight per cubic yard.~~

~~Subp. 4. Renewal of certification to distribute ALM on a cubic yard basis. Unless otherwise specified in the report,~~



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~~certification to distribute ALM on a cubic yard basis must be renewed annually by December 31.~~ If a change in the vehicle or loading or measuring device usage or other data occurs during the period for which distribution by the cubic yard is done, the department must be notified of change, via forms furnished by the commissioner, within 15 business days after the change.

Subp. 3. **Listing cubic yards distributed on label.** Distributors or producers distributing ALM on a cubic yard basis must identify on the label cubic yards distributed. Distributors or producers shall list approximate weight per cubic yard.

Subp. ~~5.~~ 4. **Verification of cubic yard data.** The department may verify cubic yard data for each vehicle ~~or loading or~~, measuring device, or loading device reported by requesting the Department of Public Service, Weights and Measures Division, to determine the cubic yard capacity of the vehicle ~~or loading or~~, measuring device ~~under~~, or loading device in accordance with Minnesota Statutes, chapter 239. Minnesota Statutes, section 239.10, requires the Weights and Measures Division to charge a fee for inspections made to verify cubic yard capacity of a vehicle or loading or measuring device. The distributor or producer must pay the verification fee in accordance with Minnesota Statutes, section 239.10.



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# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Adopted Permanent Rules Relating to Agricultural Liming Material

**AGENCY:** Department of Agriculture

**MINNESOTA RULES:** Chapter 1509

**INCORPORATION BY REFERENCE:**

Part 1509.0030, subpart 3, Quality Determination of Liming Materials, Soil Testing Laboratories of the University of Minnesota; and Association of American Plant Food Control Officials Inspectors Manual are available at the State Law Library

The attached rules are approved for filing with the Secretary of State

Craig E. Lindeke
Senior Assistant Revisor

RULE REVIEW CHECKLIST
RESUBMITTED RULE

File No. 1927

Docket No. 05 0009 0986

RESUBMISSION DATE 9-16-92
DATE DUE 9-30-92

APPROVED
DISAPPROVED
WITHDRAWM

ADOPTED W/O HEARING
EMERGENCY RULE
To Revisor 9/17/92
REVISOR APPROVED 9/21/92
REVISOR DISAPPROVED
FILED W/SEC. STATE
RETURNED TO AGENCY

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____ Does the revision raise significant new legal issues?

____ Review date

✓ Rule as adopted (4 copies)

✓ Supplemental Findings of Fact, Conclusions & Order Adopting

____ Board's Supplemental Resolution Adopting

____ Notice of submission to Attorney General

____ Affidavit of Mailing Notice to Attorney General

# Office of the Revisor of Statutes

## Administrative Rules

Craig E. Lindeke
Senior Assistant Revisor
296-0946 Fax: 296-0569




700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

September 17, 1992

Carol Milligan
Department of Agriculture
90 West Plato Blvd.
St. Paul, MN 55107

RE: File No. 1977

Dear Ms. Milligan:

I have approved your rules adopted without a public hearing, and am enclosing a copy of these rules for your records.

I have also delivered two copies of these rules to the Attorney General for approval. If they are approved, the Attorney General will file two copies of the approved rules with the Secretary of State. The Secretary of State will then notify me of that fact.

After I am notified that the rules are filed with the Secretary of State, I will prepare three copies of a notice of adoption for you.

If you have any questions, please call me.

Very truly yours,

Craig E. Lindeke

RECEIVED

SEP 16 1992

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
Saint Paul MN 5510

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Agricultural Liming Material

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

The above-entitled rule was withdrawn from rule review by the attorney general on July 22, 1992.

The rule was modified, and based on the comments and evidence in the record before the department, I find the following:

Rearrangement of parts 1509.0020, 1509.0025, and 1509.0030.

These parts of the rule were rearranged to make the rule easier to follow.

M.R. 1509.0015

This definition was changed to reflect actual delivery and shipping practices since an invoice is an acceptable label and invoices are often received after a shipment is received. This amendment does not change the application of the rule.

M.R. 1509.0020 (previously 1509.0030)

Subpart 1 is new and was added to assure that those subject to the rule who must be licensed are aware of the requirement and the statutory justification.

Subpart 2 (previously subpart 1). This subpart was reworded to make it more clear, but it makes no change in the requirement of the rule.

Subpart 3 (previously subpart 2). Unchanged.

Subpart 4 (previously subpart 3). Unchanged.

Subpart 5 (previously subpart 4). Language was added to this part to clarify who provides the data collected and exactly which license application the rule is referring to for data collection. Most of the

subpart remains unchanged, and the changes do not alter the requirements of the rule.

Subpart 6 (previously subpart 5). Unchanged.

M.R. 1509.0025 (previously 1509.0020).

Subpart 1E. This subpart was amended to clarify that blended ALM must meet the same labeling requirements as pure ALM. This change is not substantial but was meant to avoid any confusion over how to treat blended ALM.

M.R. 1509.0030 (previously 1509.0025).

Title and subpart 1. The title and subpart 1 were changed to correct an inconsistency. Originally the rule stated that the department would sample and analyze ALM on an annual basis. However that conflicted with part 1509.0035 which allowed producers and distributors to be certified to do their own sampling and analysis. This inconsistency was an oversight. The changes clarify that either the the department will do an annual sample and analysis or the producer or distributor must be certified to do so. The change is not substantial because it only clarifies the rule.

Also in subpart 1, storage sites were also included in the list of locations that must be sampled and analyzed on a yearly basis. This was done to ensure that all ALM being held by a production facility, not just that currently being produced or blended, is sampled and analyzed. This change is not substantial because ALM is stored by producers and blenders already covered by the requirements of this subpart.

Subpart 3. This subpart was changed to note that there is an official method for sampling as well as analysis. The official sampling method was incorporated by reference.

Subpart 5. Changes were made to this subpart to emphasize that the purpose is label accuracy. The tolerance levels were added to clarify the standards for accuracy. The addition of the tolerance language is not substantial because the consumer is still adequately assured of the content of the product being purchased while the expectations for the producer are more clear. The last line of this subpart was added to ensure that labels are corrected on mislabeled products. This change explicitly states something that was previously implied and, therefore, simply clarifies the rule.

M.R. 1509.0035

Throughout this part the term "commissioner" was changed to "department" because "commissioner" was not defined.

Title and subparts 1 & 2. In general, this part had been confusing because it referred to samples and analyses being certified when actually the producer is being certified to do sampling and analysis. The rule was also inconsistent because it includes the process of sampling and analysis but, at times, it referred to sampling only or analysis only. The changes and additions should clarify the certification process. The changes are not substantial because they clarify and make the rule easier to read but do not alter the procedures set in rule.

Subpart 2 also changes the deadline for submitting reports from January and July 1st to January and July 31st. These changes were made to conform to current deadlines for license and tonnage reporting. This makes no change in the effect of the rule but makes it more convenient for ALM producers.

Additional changes in the last paragraph of subpart 2 make this subpart conform with the rest of the rule by referring to the incorporation by reference added in 1509.0030 subpart 3 and analytical standards of 1509.0035, subpart 4. The term "denied" was added to make it clear that certification would be denied as well as revoked for failure to follow sampling and analysis methods. Denial was previously implied because it follows that actions that would cause revocation would also preclude initial certification. Other changes are a reworking of current language to make the rule easier to understand. These changes do not change the effect or requirements of the rule but make it easier to follow and comply with the requirements.

Subpart 3. It had been intended for the department to supply producers with the form for the affidavit mentioned in this subpart, but it had not been stated specifically. The terms "application" and "form" were added to clarify how this was to be done. The parameters for denying or revoking certification were added to assure that this process would be handled in a consistent manner. The changes do not alter the application of the rule but help assure fairness.

Subpart 4. The margin for error was added to the rule to ensure objective standards for handling the verification process. The change is

not substantial because three percent variance still assures that the consumer is protected while allowing for reasonable fluctuations that often occur in sampling.

1509.0040

Subpart 1. "Device" was added to to clarify the term "measuring."

2, 3 and 4. It was not the intent of the department to require another certification procedure for ALM distributors but to ensure that consumers buying ALM by the cubic yard received the proper quantity. The rule as modified will continue to do this, but it is easier to understand. The changes in these subparts are not substantial because they don't lessen consumer protection or impose additional requirements or procedures on distributors.

Subpart 5. The term "device" was added to the term "loading" to assure clarity. The citation of the statute governing fees charged by the Department of Public Service was added to inform distributors and producers of the statutory requirement for this fee. These are minor technical changes to the rule.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule governing agricultural liming material as modified is adopted this 14th day of September, 1992, pursuant to authority vested in me by Minnesota Statutes, section 18C.575.

Elton Redalen

Elton Redalen
Commissioner

Changes

1509.0015 - I don't think was mentioned previously

1509.0020 - was not mentioned previously

1509.0030 - think that was a change you (subpart 1) requested

subpart 5 - ~~Substantial~~ Substantial change

1509.0035

subpart 2 - and affidavit = requiring more substantial change

subpart 3 - "Certification may be denied or revoked for failure to check by sampling methods - substantial change

subpart 4 - substantial change

State of Minnesota
Department of Agriculture

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Agricultural Liming Material

ORDER OF WITHDRAWAL OF A RULE FROM REVIEW BY THE ATTORNEY GENERAL

The above captioned rule is hereby withdrawn from review by the Attorney General this 30th day of September, 1992.

Merlyn Valan
Assistant Commissioner

Department of Agriculture

Adopted Permanent Rules Relating to Agricultural Liming Material

Rules as Adopted

1509.0010 AUTHORITY AND PURPOSE.

Parts 1509.0010 to 1509.0040 are adopted by the commissioner under Minnesota Statutes, section 18C.575, to prescribe conditions for label information, analytical and sampling methods, license and inspection fee qualifications, analysis results and sample content certification, and distribution of agricultural liming material by the cubic yard.

1509.0015 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and the definitions of "agricultural liming materials," "bulk," "burnt lime," "commissioner," "distributor," "ENP," "hydrated lime," "label," "marl," "official sample," "percent; percentage," "person," "producer," "source of production," "stockpile," "ton," and "weight," in Minnesota Statutes, section 18C.531, apply to parts 1509.0010 to 1509.0040.

Subp. 2. **ALM.** "ALM" means agricultural liming materials.

Subp. 3. **Delivery.** "Delivery" means the complete transfer of an ALM order to a specific site as indicated to the purchaser on a billing, delivery, invoice ticket, or label.

Subp. 4. **Department.** "Department" means the Minnesota Department of Agriculture.

Subp. 5. **Exempt.** "Exempt" means distributors or producers of industrial or municipal by-product ALM who are exempt from fees for licensing and inspection under Minnesota Statutes, section 18C.541, subdivision 6.

Subp. 6. **Label.** "Label" means the display of all written, printed, or graphic matter on the immediate container or the statement accompanying a shipment of ALM. A billing, delivery, or invoice ticket is a label.

Subp. 7. **Limestone.** "Limestone" means a material

consisting of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity. Limestone also refers to all carbonate minerals and rock-forming carbonate minerals unless otherwise specified in Minnesota Statutes, section 18C.531.

Subp. 8. **Pounds of ENP per ton.** "Pounds of ENP per ton" means the pounds of effective neutralizing power in one ton of ALM corrected for moisture. [(2,000 pounds ALM per ton) (percentage of ENP ÷ 100) (percentage of dry matter ALM ÷ 100)] = pounds of ENP per ton.

Subp. 9. **Transportation charges.** "Transportation charges" means charges associated with distribution and transport of ALM, including charges relating to application and over-the-road transport.

1509.0020 LABEL INFORMATION REQUIREMENTS.

Subpart 1. **Label information requirements for bulk delivery.** ALM offered for sale, sold, or distributed in this state in bulk must have a written label accompanying a delivery and supplied to any purchaser or end user at the time of delivery. The label must contain the following information:

A. the distributor's or producer's name, address, telephone number, and source of production or stockpile location;

B. the purchaser's name and address;

C. the date of sale or transfer;

D. the type of ALM listed as one of the following:

(1) "calcium oxide," which is the chemical compound composed of calcium and oxygen. It is formed from calcium carbonate by heating limestone to drive off the carbon dioxide. Also known as quick lime, unslated lime, burnt lime, and caustic lime, it does not occur in nature;

(2) "fluid grade ALM," which is ALM that is applied in a suspended formulation;

(3) "hydrated lime," which is a material made from burnt lime that consists of calcium hydroxide or a

combination of calcium hydroxide with either magnesium oxide, magnesium hydroxide, or both;

(4) "industrial or municipal by-product ALM," which is industrial waste or by-product, or the by-product of an industrial production process or municipal water or waste treatment process containing calcium or magnesium compounds, or both, in a form that neutralizes soil acidity;

(5) "marl," which is a granular or loosely consolidated earthy material composed largely of shell fragments and calcium or magnesium carbonate, or both;

(6) "pelleted ALM," which is ALM of any type that is manufactured and marketed in a pelleted formulation;

(7) "quarry ALM," which is ALM that results from the grinding or sieving of limestone at a quarry or other production site and that is applied on agricultural land without further processing or alteration;

(8) "slag," which is a by-product ALM made of calcium-magnesium aluminosilicate (Ca-MgSi03) resulting from the manufacturing of pig-iron; or

(9) "woodash," which is a by-product ALM resulting from wood burning processes;

E. the minimum pounds of ENP per ton;

F. the weight or cubic yards of ALM distributed;

G. the conversion factor for tons per cubic yard if ALM is being sold by cubic yard units; and

H. for exempt ALM distributors and producers, a list of any charges for ALM, transportation, or application fees.

Subp. 2. **Label information requirements for bags and other container types.** ALM packaged in bags and other container types that are distributed, offered for sale, sold, or disposed of in this state for agricultural use must have a label on either the face, display, or back side of the bag or container or printed on tags affixed to the upper end of the container, stating in a clear, legible, and conspicuous form the following required information:

A. the distributor's or producer's name and address;

B. the minimum pounds of ENP per ton; and

C. the net weight.

1509.0025 OFFICIAL SAMPLE AND ANALYSES TO DETERMINE LABEL INFORMATION ACCURACY.

Subpart 1. **Required samples and analysis.** The department shall take official samples and perform analyses of ALM sources of production or blending sites to determine required label information. An official sample and analysis must be taken at least once a year at each production or blending site.

Subp. 2. **Sampling and analysis of blended ALM products.** The department shall take official samples and perform analyses of ALM that is blended, even though an official analysis exists for the separate ALM components of the blend. The person blending ALM must pay the sampling fee required by Minnesota Statutes, section 18C.551, subdivision 4.

Subp. 3. **Official ALM analysis method.** The most recent edition of "Quality Determination of Liming Materials," from the Soil Testing Laboratories of the University of Minnesota, Saint Paul, Minnesota 55108, is the official ALM analysis method. This document is incorporated by reference, is not frequently amended, and is available at the Minnesota State Law Library.

Subp. 4. **Label pounds of ENP per ton tolerance.** Current label pounds of ENP per ton must be changed if the revised pounds of ENP per ton resulting from an official sample and analysis is more than three percent below current label pounds of ENP per ton.

Subp. 5. **Label accuracy.** If a distributor or other person believes ALM is mislabeled, the department shall take ALM samples and perform analyses to verify content. If the ALM label is found to be correct, the requesting party must pay the sampling fee required by Minnesota Statutes, section 18C.551, subdivision 4. If the ALM label is found to be incorrect, the supplying distributor or producer must pay the fee required by Minnesota Statutes, section 18C.551, subdivision 4.

1509.0030 ALM LICENSE AND INSPECTION FEE.

Subpart 1. **Free distribution.** If a producer distributes ALM to another person free of charge under Minnesota Statutes, section 18C.541, subdivision 6, the producer is not liable for any license and inspection fees that may be required later if the product is sold.

Subp. 2. **Custom application.** A person who custom applies and does not distribute ALM is not liable for license and inspection fees.

Subp. 3. **Reporting transportation charges to department.** Distributors or producers applying for license and inspection fee exemption under Minnesota Statutes, section 18C.541, subdivision 6, must disclose transportation charges assessed in the distribution of industrial or municipal by-product ALM. Transportation charges must be itemized to show fees assessed for application and over-the-road transport.

Subp. 4. **Determining fair and reasonable transportation charges.** To determine fair and reasonable transportation charges, the department shall collect transportation charges data via information required on annual license or other applications provided by the department. Transportation charges data collected must be separated into two geographical areas:

A. the metropolitan area, as defined in Minnesota Statutes, section 473.121, subdivision 2; and

B. all of Minnesota outside the metropolitan area.

These geographical areas designate where industrial or municipal by-product ALM is produced or initially transported from. Data collected must be averaged for each respective area. Distributors or producers except those exempt under Minnesota Statutes, section 18C.541, subdivision 6, must pay license and inspection fees if their transportation charges exceed the average area transportation charge.

Subp. 5. **Inspection fee assessment limitation.** Inspection fees assessed under Minnesota Statutes, section 18C.551, subdivision 3, are limited to one assessment during distribution in Minnesota. Verification of prior inspection fee payment is required.

1509.0035 CERTIFICATION OF ALM ANALYSIS RESULTS AND SAMPLE CONTENT.

Subpart 1. **Certification.** The commissioner may certify an ALM analysis result, methods, or sample content as submitted to the department by an ALM producer.

Subp. 2. **Analysis certification.** ALM producers may be certified to analyze ALM content if they agree to abide by department methods for sampling and analysis. Producers wishing to be certified must complete an application form and file a notarized affidavit with the department on forms provided by the commissioner.

A certified producer that distributes ALM during the production process must sample weekly and analyze the composite of the weekly samples on a monthly basis. A certified producer that does not distribute ALM during the production process must collect representative samples prior to or during distribution for analysis.

Certified producers must compile reports to be submitted to the department semiannually on January 1 and July 1 on forms provided by the commissioner that detail the number of samples taken for the analysis and the results of the analysis. Certification may be revoked for failure to abide by department methods for sampling and analysis or for failure to file reports.

Subp. 3. **Sample certification.** An ALM sample must be considered for certification if a producer notifies the department of such a request in sufficient time for the department to send information concerning sampling methods, affidavit, sample collection report form, and ALM sampling containers to the producer. A producer shall submit to the department an ALM sample with no less than ten pounds of ALM, a completed, notarized affidavit, and a completed sample collection report.

Subp. 4. **Departmental sample collection.** The department may collect and analyze ALM to verify analysis results, methods, or sample content if a certification request is being made to

meet requirements of Minnesota Statutes, section 18C.551, subdivision 4. The producer must bear the cost of sample collection and analysis made to produce sufficient verification for certification as specified in Minnesota Statutes, section 18C.551, subdivision 4.

1509.0040 DISTRIBUTION OF ALM BY CUBIC YARD.

Subpart 1. **ALM distribution vehicle cubic yard capacity reporting requirements.** Each distributor or producer distributing ALM on a cubic yard basis or without the use of a Department of Public Service, Weights and Measures Division, approved scale is responsible for determining and reporting the cubic yard capacity of each vehicle and measuring or loading device used for this purpose.

Subp. 2. **Application for certification to distribute ALM on a cubic yard basis.** Distributors or producers distributing ALM by the cubic yard shall submit an annual written report to the department on forms furnished by the commissioner. Certification to distribute ALM by the cubic yard must be indicated on the distributor's or producer's license.

Subp. 3. **Listing cubic yards distributed on label.** Distributors or producers distributing ALM on a cubic yard basis must identify on the label cubic yards distributed. Distributors or producers shall list approximate weight per cubic yard.

Subp. 4. **Renewal of certification to distribute ALM on a cubic yard basis.** Unless otherwise specified in the report, certification to distribute ALM on a cubic yard basis must be renewed annually by December 31. If a change in the vehicle or loading or measuring device usage or other data occurs during the period for which distribution by the cubic yard is done, the department must be notified of change, via forms furnished by the commissioner, within 15 business days after the change.

Subp. 5. **Verification of cubic yard data.** The department may verify cubic yard data for each vehicle or loading or measuring device reported by requesting the Department of Public

Service, Weights and Measures Division, to determine the cubic yard capacity of the vehicle or loading or measuring device under Minnesota Statutes, chapter 239. Minnesota Statutes, section 239.10, requires the Weights and Measures Division to charge a fee for inspections made to verify cubic yard capacity of a vehicle or loading or measuring device. The distributor or producer must pay the verification fee.

# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Adopted Permanent Rules Relating to Agricultural Liming Material

**AGENCY:** Department of Agriculture

**MINNESOTA RULES:** Chapter 1509

**INCORPORATION BY REFERENCE:**

Part 1509.0025, subpart 3, Quality Determination of Liming Materials, Soil Testing Laboratories of the University of Minnesota, available at the State Law Library

The attached rules are approved for filing with the Secretary of State

Craig E. Lindeke
Senior Assistant Revisor

STATE OF MINNESOTA

# Office of the Attorney General

TO : AMY KVALSETH
Special Assistant
Attorney General

DATE : July 23, 1992

FROM : JOHN K. LAMPE
Special Assistant
Attorney General

PHONE : 296-2299

SUBJECT : **Rules Relating to Agricultural Liming Material**

Thank you for providing your comments on the proposed agricultural liming material rules. I think the Department recognizes the lack of clarity and specificity in the rules and welcomes the opportunity to improve them.

Thanks again for your comments. If you have any questions about the rules, please do not hesitate to call me.

LAMP:CR8

ATTY GENERAL→

27 JUL 93 10: 27

.5 time

7-30-92 O.K.

(1) Mention concern re. blending / source of production –
can they interp. fee provision
to cover blend –

call atty Strandberg 1st
Carol Mulligan – rules contact person – Ag.

(2) don't know what methods are;
what agree to abide means
the stnd not clear
~~use~~ cross-reference –
Would need new f.f. & new rules;
this would be clarification,
not substnt change –

certify e.o.? all samples?
" need to ask what dept methods are

incorp by reference – has to be in libraries ??
APA has § on incorp by ref.
Paul Merinac's Guide may help.
Ruby on LCRAR

Call Strandberg. or check Ag inhouse atty
& Carol both
withdrawal – Order for w/drawal – can accept by FAX
will work on changes

(3) how get certif under 1509.0040, subp. 2

(4) may "to ensure compliance w/the stnd"
b/c can do random for enforcement
1509.0040, subp 5

AVK ~~1/10/92~~ 1/10/83

RULE REVIEW CHECKLIST

File No. 1927
DATE RECEIVED ~~1-28-92~~ 7-8-92
REVIEW DATE ~~7-8-92~~ 7-17-92
DUE DATE 1-22-92
(DIS)APPROVED
WITHDRAWN 7-22-92

Docket No. 05 0009 0986
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 7-10-92
REVISOR (DIS)APPROVED 7-13-92
FILED W/SEC. OF STATE
RETURNED TO AGENCY

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✓ Rule as adopted (4 copies)

Notice to Solicit Outside Information/Opinion (if applicable)
Date published in State Register
Comments

~~Petition for Adoption of~~ a Rule

Board's ~~Authorizing Resolution~~
Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
18C. 575 Statutory Authority
✓ Small Business Statement
N/A Expenditure of public money statement
18C.575 Signature May 7, 1992

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
May 27, 1992 Dated 30/25 days before adoption
Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
June 1, 1992 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply not mandatory
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

Resolution Adopting
Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
July 2, 1992 Date

Written Requests, Submissions or Comments

✓ Declaration of Attorney
Paul Strandberg Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

# Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

# Department of Agriculture

## Proposed Permanent Rules Relating to Agricultural Liming Material

### Notice of Intent to Adopt a Rule Without a Public Hearing

**NOTICE IS HEREBY GIVEN** that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22-14.28. The statutory authority to adopt this rule is *Minnesota Statutes*, section 18C.575.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906. The comment period ends on July 1, 1992. All comments must be received by the department by 4:30 p.m. on that day.

The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

Many of the businesses that distribute agricultural liming material and are governed by this rule are small business as defined by *Minnesota Statutes*, section 14.115. The rules have been drafted to keep administrative and reporting requirements to a minimum while assuring consumer protection. Therefore, no special provisions for small business have been incorporated into the rule.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

Dated: 7 May 1992

STATE OF MINNESOTA

Elton Redalen, Commissioner
Department of Agriculture

## Rules as Proposed (all new material)

### 1509.0010 AUTHORITY AND PURPOSE.

Parts 1509.0010 to 1509.0040 are adopted by the commissioner under *Minnesota Statutes*, section 18C.575, to prescribe conditions for label information, analytical and sampling methods, license and inspection fee qualifications, analysis results and sample content certification, and distribution of agricultural liming material by the cubic yard.

### 1509.0015 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and the definitions of "agricultural liming materials," "bulk," "burnt lime," "commissioner," "distributor," "ENP," "hydrated lime," "label," "marl," "official sample," "percent; percentage," "person," "producer," "source of production," "stockpile," "ton," and "weight," in *Minnesota Statutes*, section 18C.531, apply to parts 1509.0010 to 1509.0040.

Subp. 2. **ALM.** "ALM" means agricultural liming materials.

Subp. 3. **Delivery.** "Delivery" means the complete transfer of an ALM order to a specific site as indicated to the purchaser on a billing, delivery, invoice ticket, or label.

Subp. 4. **Department.** "Department" means the Minnesota Department of Agriculture.

Subp. 5. **Exempt.** "Exempt" means distributors or producers of industrial or municipal by-product ALM who are exempt from fees for licensing and inspection under *Minnesota Statutes*, section 18C.541, subdivision 6.

Subp. 6. **Label.** "Label" means the display of all written, printed, or graphic matter on the immediate container or the statement accompanying a shipment of ALM. A billing, delivery, or invoice ticket is a label.

Subp. 7. **Limestone.** "Limestone" means a material consisting of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity. Limestone also refers to all carbonate minerals and rock-forming carbonate minerals unless otherwise specified in *Minnesota Statutes*, section 18C.531.

Subp. 8. **Pounds of ENP per ton.** "Pounds of ENP per ton" means the pounds of effective neutralizing power in one ton of ALM corrected for moisture. [(2,000 pounds ALM per ton) (percentage of ENP ÷ 100) (percentage of dry matter ALM ÷ 100)] = pounds of ENP per ton.

Subp. 9. **Transportation charges.** "Transportation charges" means charges associated with distribution and transport of ALM, including charges relating to application and over-the-road transport.

### 1509.0020 LABEL INFORMATION REQUIREMENTS.

Subpart 1. **Label information requirements for bulk delivery.** ALM offered for sale, sold, or distributed in this state in bulk must have a written label accompanying a delivery and supplied to any purchaser or end user at the time of delivery. The label must contain the following information:

A. the distributor's or producer's name, address, telephone number, and source of production or stockpile location;

B. the purchaser's name and address;

C. the date of sale or transfer;

D. the type of ALM listed as one of the following:

(1) "calcium oxide," which is the chemical compound composed of calcium and oxygen. It is formed from calcium carbonate by heating limestone to drive off the carbon dioxide. Also known as quick lime, unslated lime, burnt lime, and caustic lime, it does not occur in nature;

(2) "fluid grade ALM," which is ALM that is applied in a suspended formulation;

(3) "hydrated lime," which is a material made from burnt lime that consists of calcium hydroxide or a combination of calcium hydroxide with either magnesium oxide, magnesium hydroxide, or both;

(4) "industrial or municipal by-product ALM," which is industrial waste or by-product, or the by-product of an industrial production process or municipal water or waste treatment process containing calcium or magnesium compounds, or both, in a form that neutralizes soil acidity;

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(5) "marl," which is a granular or loosely consolidated earthy material composed largely of shell fragments and calcium or magnesium carbonate, or both;

(6) "pelleted ALM," which is ALM of any type that is manufactured and marketed in a pelleted formulation;

(7) "quarry ALM," which is ALM that results from the grinding or sieving of limestone at a quarry or other production site and that is applied on agricultural land without further processing or alteration;

(8) "slag," which is a by-product ALM made of calcium-magnesium aluminosilicate (Ca-MgSi03) resulting from the manufacturing of pig-iron; or

(9) "woodash," which is a by-product ALM resulting from wood burning processes;

E. the minimum pounds of ENP per ton;

F. the weight or cubic yards of ALM distributed;

G. the conversion factor for tons per cubic yard if ALM is being sold by cubic yard units; and

H. for exempt ALM distributors and producers, a list of any charges for ALM, transportation, or application fees.

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A. the distributor's or producer's name and address;

B. the minimum pounds of ENP per ton; and

C. the net weight.

**1509.0025 OFFICIAL SAMPLE AND ANALYSES TO DETERMINE LABEL INFORMATION ACCURACY.**

Subpart 1. **Required samples and analysis.** The department shall take official samples and perform analyses of ALM sources of production or blending sites to determine required label information. An official sample and analysis must be taken at least once a year at each production or blending site.

Subp. 2. **Sampling and analysis of blended ALM products.** The department shall take official samples and perform analyses of ALM that is blended, even though an official analysis exists for the separate ALM components of the blend. The person blending ALM must pay the sampling fee required by *Minnesota Statutes*, section 18C.551, subdivision 4.

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Subp. 5. **Label accuracy.** If a distributor or other person believes ALM is mislabeled, the department shall take ALM samples and perform analyses to verify content. If the ALM label is found to be correct, the requesting party must pay the sampling fee required by *Minnesota Statutes*, section 18C.551, subdivision 4. If the ALM label is found to be incorrect, the supplying distributor or producer must pay the fee required by *Minnesota Statutes*, section 18C.551, subdivision 4.

**1509.0030 ALM LICENSE AND INSPECTION FEE.**

Subpart 1. **Free distribution.** If a producer distributes ALM to another person free of charge under *Minnesota Statutes*, section 18C.541, subdivision 6, the producer is not liable for any license and inspection fees that may be required later if the product is sold.

Subp. 2. **Custom application.** A person who custom applies and does not distribute ALM is not liable for license and inspection fees.

Subp. 3. **Reporting transportation charges to department.** Distributors or producers applying for license and inspection fee exemption under *Minnesota Statutes*, section 18C.541, subdivision 6, must disclose transportation charges assessed in the distribution of industrial or municipal by-product ALM. Transportation charges must be itemized to show fees assessed for application and over-the-road transport.

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A. the metropolitan area, as defined in *Minnesota Statutes*, section 473.121, subdivision 2; and

B. all of Minnesota outside the metropolitan area. These geographical areas designate where industrial or municipal by-product ALM is produced or initially transported from. Data collected must be averaged for each respective area. Distributors or producers except those exempt under *Minnesota Statutes*, section 18C.541, subdivision 6, must pay license and inspection fees if their transportation charges exceed the average area transportation charge.

Subp. 5. **Inspection fee assessment limitation.** Inspection fees assessed under *Minnesota Statutes*, section 18C.551, subdivision 3, are limited to one assessment during distribution in Minnesota. Verification of prior inspection fee payment is required.

**1509.0035 CERTIFICATION OF ALM ANALYSIS RESULTS AND SAMPLE CONTENT.**

Subpart 1. **Certification.** The commissioner may certify an ALM analysis result, methods, or sample content as submitted to the department by an ALM producer.

Subp. 2. **Analysis certification.** ALM producers may be certified to analyze ALM content if they agree to abide by department methods for sampling and analysis. Producers wishing to be certified must complete an application form and file a notarized affidavit with the department on forms provided by the commissioner.

A certified producer that distributes ALM during the production process must sample weekly and analyze the composite of the weekly samples on a monthly basis. A certified producer that does not distribute ALM during the production process must collect representative samples prior to or during distribution for analysis.

Certified producers must compile reports to be submitted to the department semiannually on January 1 and July 1 on forms provided by the commissioner that detail the number of samples taken for the analysis and the results of the analysis. Certification may be revoked for failure to abide by department methods for sampling and analysis or for failure to file reports.

Subp. 3. **Sample certification.** An ALM sample must be considered for certification if a producer notifies the department of such a request in sufficient time for the department to send information concerning sampling methods, affidavit, sample collection report form, and ALM sampling containers to the producer. A producer shall submit to the department an ALM sample with no less than ten pounds of ALM, a completed, notarized affidavit, and a completed sample collection report.

Subp. 4. **Departmental sample collection.** The department may collect and analyze ALM to verify analysis results, methods, or sample content if a certification request is being made to meet requirements of *Minnesota Statutes*, section 18C.551, subdivision 4. The producer must bear the cost of sample collection and analysis made to produce sufficient verification for certification as specified in *Minnesota Statutes*, section 18C.551, subdivision 4.

**1509.0040 DISTRIBUTION OF ALM BY CUBIC YARD.**

Subpart 1. **ALM distribution vehicle cubic yard capacity reporting requirements.** Each distributor or producer distributing ALM on a cubic yard basis or without the use of a Department of Public Service, Weights and Measures Division, approved scale is responsible for determining and reporting the cubic yard capacity of each vehicle and measuring or loading device used for this purpose.

Subp. 2. **Application for certification to distribute ALM on a cubic yard basis.** Distributors or producers distributing ALM by the cubic yard shall submit an annual written report to the department on forms furnished by the commissioner. Certification to distribute ALM by the cubic yard must be indicated on the distributor's or producer's license.

Subp. 3. **Listing cubic yards distributed on label.** Distributors or producers distributing ALM on a cubic yard basis must identify on the label cubic yards distributed. Distributors or producers shall list approximate weight per cubic yard.

Subp. 4. **Renewal of certification to distribute ALM on a cubic yard basis.** Unless otherwise specified in the report, certification to distribute ALM on a cubic yard basis must be renewed annually by December 31. If a change in the vehicle or loading or measuring device usage or other data occurs during the period for which distribution by the cubic yard is done, the department must be notified of change, via forms furnished by the commissioner, within 15 business days after the change.

Subp. 5. **Verification of cubic yard data.** The department may verify cubic yard data for each vehicle or loading or measuring device reported by requesting the Department of Public Service, Weights and Measures Division, to determine the cubic yard capacity of the vehicle or loading or measuring device under *Minnesota Statutes*, chapter 239. *Minnesota Statutes*, section 239.10, requires the Weights and Measures Division to charge a fee for inspections made to verify cubic yard capacity of a vehicle or loading or measuring device. The distributor or producer must pay the verification fee.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

| | | |
|---|---|---|
| In the Matter of the Proposed Rule | ) | |
| of the Department of Agriculture | ) | STATEMENT OF NEED AND REASONABLENESS |
| Pertaining to the Regulation of | ) | |
| Agricultural Liming Materials | ) | |

## INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agricultural (MDA) of a rule governing the distribution of agricultural liming materials. This rule includes the development of label information requirements, official analysis and sampling requirements, license and inspection fee qualifications, certification requirements for ALM analyses results and sample content not performed by the department, and distribution of ALM by the cubic yard.

The implementation of the proposed rules would afford maximum consumer protection while providing distributors and producers with a high level of quality control service. Less stringent compliance with the proposed rule (lower quality services) would jeopardize consumer protection via lower quality control.

Application and reporting requirements have been simplified to aid in compliance. Only information necessary for MDA follow-up is included.

## SMALL BUSINESS IMPACT

Most agricultural liming materials (ALM) distributors or producers that must comply with the proposed rules are small businesses. These small businesses have been consulted in developing proposed rules governing ALM. Consultations consisted of meetings where

comments were presented by small businesses concerning the development of the proposed ALM rules. Time was spent communicating details of the ALM law and proposed rules to distributors and producers being governed by this statute. Sufficient time was given for distributors and producers to understand and meet requirements of the ALM law. The proposed rules were closely examined to minimize any negative impact on small businesses.

Examining the purpose rule via Minnesota Statute, Section 14.115, subdivision 2. (a) through (e) it can be stated that regardless of business size the department has; (a) the same compliance and reporting requirements. (b) The same schedules or deadlines for compliance or reporting requirements. (c) Consolidated and simplified compliance or reporting requirement (license application, tonnage reporting, fair and reasonable transportation charge surveys, etc.) to the extent of meeting statutory requirements while minimizing forms and paperwork. (d) Establish the same standards. (e) Determining the exemptions and allowances. By standardizing (a) through (e) the department's goal was to aid the whole industry to clearly understand and comply with requirements, schedules or deadlines, consolidations or simplications, standards and exemptions. Since most forms distributing or producing ALM are considered small businesses, consideration to small businesses was made in formulating the proposed rule. In many situations, statutory requirements did not allow for variations in compliance or reporting requirements.

## NEED FOR REASONABLENESS OF THE PROPOSED RULE

**Section 1509.0015: DEFINITIONS** Subparts 1 through 8. The definitions are necessary so that gathered information is clearly understood. The inclusion of definitions is reasonable so that MDA may consistently apply the rule to those who must comply with it.

## Section 1509.0020: LABEL INFORMATION REQUIREMENTS

Subparts 1 and 2. The label information required is necessary in providing information to consumers of agricultural liming materials. It also provides a basic document for distributors and producers to reference volume (cubic yards) or tonnage for reporting purposes to MDA. The label information is reasonable because it is the minimum information necessary to inform customers and MDA of agricultural liming material type, content, and amount.

Producers distribute bagged ALM over a multi-state area. It would be burdensome for the department to require producers to have separate bags for distribution in Minnesota. In order to remedy this, only the most essential label information is required. To reasonably minimize bag or container inventories, ALM type and the source of production or stockpile location requirements have been deleted. The producer would still be required to issue a label via delivery, invoice, or billing ticket specifying all the information required as listed in subpart 1.

## Section 1509.0025: OFFICIAL SAMPLE AND ANALYSES TO DETERMINE LABEL INFORMATION ACCURACY.

Subpart 1. It is necessary to clarify that the department will sample and analyze ALM for determining the pounds of Effective Neutralizing Power (ENP) per ton quality rating for label information accuracy. Consumers of ALM need to know what they are getting for their money. Consumers are also entitled to know this information in order to minimize over or under applications. It is reasonable for the department to sample and analyze ALM in order to provide objectivity to the label information provided to consumers. Reasonableness is also based on minimizing sampling in order to obtain creditable data, and in minimizing the sampling fees ALM producers will pay to obtain necessary label

information.

Subpart 2. It is necessary for the department to sample ALM blending sites in order to maintain accurate label information. In many cases ALM is not weighed in the blending process. This creates ALM with no known pounds of ENP per ton quality rating. From this standpoint, re-sampling of the ALM is necessary. Reasonableness is based on adequate sampling to ensure consumer protection. Minimizing sample collection cost for both producers and department is of key consideration to the reasonableness of this section.

Subpart 3. It is necessary to establish a standardized method to analyze ALM. It is necessary to have a standardized method to analyze ALM. Fair and consistent comparisons of all ALM types can now be made. This enables distributors, producers, consumers, and the department to objectively compare one ALM from another based on the quality rating as expressed as the pound of Effective Neutralizing Power (ENP) per ton. Reasonableness is based on the fairness and consistency by which quality ratings are determined via standardized analytical methods. It is reasonable to utilize the standard analysis methods prescribed in the Association of Official Analytical Chemists (AOAC) and American Society of Testing Materials (ASTM) to ensure consistency and fairness in evaluating and rating all ALM types. Reasonableness is also based on the fact that the analytical method is adopted from the most accepted and current analytical method available. The analytical method used is available upon request from the department and through the Minnesota State Law Library.

Subpart 4. It is necessary to establish a quality rating tolerance to take into account analytical variations that may occur in an ALM sample or between two separate sample taken at different times. Three percent is reasonable because many ALM types are not homogenous in nature, and inherit variations, both chemical and physical may occur in the

product collected in a sample. A three percent tolerance also takes into account variations in sampling and handling of different samples collected from the same stockpile or production source. Finally, the three percent tolerance would reasonably reduce the possibility that a new label would need to be formulated to reflect a different quality rating. In essence, paperwork would be reduced for distributors and producers while providing consumers with accurate product label information.

Subpart 5. It is necessary for the department to effectively respond to consumer concerns about the label information accuracy. Reasonableness is based on whether the label information provided is accurate or inaccurate, which will determine who pays the sampling fee. This part is reasonableness because it allows the department to respond in an effective and fair manner to consumer, distributor, or producers product quality concerns.

**Section 1509.0030. ALM LICENSE AND INSPECTION FEE.**

Subpart 1. Need exists for establishing conditions under which industrial or municipal by-product ALM distributors or producers would be liable for license and inspection fees. Need is based on consistently and fairly carrying out Minnesota Statute, Section 18C.541, Subdivision 6. Once another person receives by-product ALM at no cost, that person is fully liable for license and inspection fees in the event that they distribute product for a price above what is considered a fair and reasonable transportation charge. This subpart is reasonable since it places the liability for license and inspection fees on person(s) who distribute the product for above a fair and reasonable transportation charge.

Subpart 2. It is necessary to clarify in the rule that a person who custom applies, but does not distribute, sell or transport (over-the-road) ALM per se is not liable for

license and inspection fees. Such a person would not be considered a distributor and thus is not part of the ALM law or its requirements.

Subparts 3 and 4. It is necessary to determine what constitutes a fair and reasonable transportation charge to fairly administrative Minnesota Statute 18C.541 , subdivision 6. The information and data collected by the department is reasonable because it will be limited to what is necessary to obtain the twin cities metropolitan area and greater Minnesota transportation averages. These averages will aid in interpreting which by-product ALM distributors and producers will or will not need to pay fees for licensing and inspection.

Subpart 5. It is necessary and reasonable for the consistent and fair administration of Minnesota Statute, Section 18C.551, Subdivision 3, to clearly communicate the number of times the department may collect the inspection fee on ALM distributed in Minnesota. This part protects distributors or producers from being assessed more than once for the inspection fee.

**Section 1509.0035: CERTIFICATION OF ALM ANALYSIS RESULTS AND SAMPLE CONTENT**

Subparts 1. It is necessary for the department to certify analytical results because it enables producers and the department to gather required label information in the most efficient and effective manner. It is reasonable to certify analytical results since qualifying producers already perform large numbers of analysis on ALM. These analysis includes results required on the label. This would reduce or eliminate effort and expense associated with obtaining creditable analytical results.

It is necessary for the department to certify sample content because; (1) the

department, in certain situations, does not have the capabilities to collect samples. Examples would include out-of-state firms where the costs of collecting a sample would be prohibitive, and (2) those firms who are seeking analytical results certification. Controlling the way samples are collected is an essential factor to achieving creditable analytical results. It is reasonable because it enables producers and the department to coordinate the efficient and effective collection of samples that will accurately characterize ALM being produced.

Subpart 2. It is necessary for the department to clearly communicate what is required to perform certifiable analyses. Producers must adhere to standardized sampling and analysis methods in order to correlate analytical data based on specific, defined parameters. Reporting requirements are essential in order to communicate the quality rating of the ALM. It is reasonable because analytical, sampling, and reporting methods required adhere to those which are widely recognized and approved.

Subpart 3. It is necessary for the department to clearly communicate what is required to certify sample content. It is reasonable because the department provides the needed information and materials (requirements/forms for certification and sampling methods) to collect accurate samples. Paper work has been minimized to efficiently and effectively meet the objective of obtaining accurate analytical data for label information.

Subpart 4. It is necessary for the department to verify analysis results or sample content in order to maintain label data integrity and consumer protection. This verification process will be used to better correlate producer analysis results with department analysis results. It is reasonable since this rule provides for maximum consumer protection with minimal costs and effort by the producer and department.

## Section 1509.0040: DISTRIBUTION OF ALM BY CUBIC YARD

Subparts 1 - 5. The application to distribute ALM by the cubic yard is necessary because it ensures accurate weight per cubic yard for consumers purchasing ALM. This proposed rule provides a check and balance clause (Subpart 5) to maximize integrity in the label information provided consumers. It is reasonable because it allows distributors or producers to distribute or sell ALM without the great expense of an approved scale. Reasonableness is also based on minimizing effort and expense necessary for MDA to effectively carry out this rule.

Stat Authority 18C. 575

The commissioner may adopt emergency or permanent rules necessary to administer sections 18C. 531 to 18C. 595.

end of comment period July 1, 1992

abstract

Department : AGRICULTURE

STATE OF MINNESOTA
**Office Memorandum**

Date : July 7, 1992

To : Patty Nolte
Attorney General's Office

From : Carol Milligan CM
Agriculture Planning Division

rec 7-8-92

Phone : 296-6906

Subject : **Review of Proposed Rule Governing Agricultural Liming Material**

The Department of Agriculture adopted the above-mentioned rule pursuant to Minnesota Statutes, sections 14.22-14.28. Enclosed with this memo are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

Please contact me if you have any questions.

cc: Newell Searle, Deputy Commissioner
Paul Strandberg, Special Assistant Attorney General
Bill Bulger, Agronomy Services
Ed Kaiser, Agronomy Services

## LIST OF ATTACHED DOCUMENTS

A. Rule as Proposed

B. Notice of Intent

C. Memo to LCRAR that accompanied the Statement of Need

D. Statement of Need

E. Affidavit of Mailing

F. Mailing List Certificate

G. *State Register* Photocopy of Notice of Intent

H. Rule as Adopted (four copies)

I. Findings of Fact

J. Declaration of Counsel

Department of Agriculture

Agronomy Services Division

| | |
|---|---|
| In the Matter of the Proposed Rule of the | NOTICE OF INTENT TO ADOPT |
| State Department of Agriculture Governing | A RULE WITHOUT A PUBLIC |
| Agricultural Liming Material | HEARING |

(1) Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22-14.28. The statutory authority to adopt this rule is Minnesota Statutes, section 18C.575.

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. (7) If a public hearing is required, the department will proceed according to Minnesota Statutes, sections 14.131-14.20.

(5) Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906. The comment period ends on July 1, 1992. All comments must be received by the department by 4:30pm on that day.

(8) The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice.

(13) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

(14) Many of the businesses that distribute agricultural liming material and are governed by this rule are small business as defined by Minnesota Statutes, section 14.115. The rules have been drafted to keep administrative and reporting requirements to a minimum while assuring consumer protection. Therefore, no special provisions for small business have been incorporated into the rule.

(9) If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

May 7 - 1991
Date

STATE OF MINNESOTA

Elton Redalen
Elton Redalen, Commissioner
Department of Agriculture

Department : Agriculture

STATE OF MINNESOTA
**Office Memorandum**

Date : May 14, 1992

To : Maryanne Hruby, Director
LCRAR

From : Carol Milligan
Agriculture Planning Division

Phone : 296-6906

Subject : **Rule Governing Agricultural Liming Material**

As required by Minnesota Statutes, sections 14.131 and 14.23, attached is the Statement of Need and Reasonableness for the above-captioned rule. The Notice of Intent to Adopt and the rule will be published in the *State Register* on 6/1/92.

Attachment

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Agricultural Liming Material

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Marie Skerbitz, being sworn, says:

That on the 27th day of May, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

DIANE M. WINDHAM
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 11-1-96

Marie Skerbitz
Mail Room Manager

Subscribed and sworn to before me
this 27th day of May, 1992.

Diane M. Windham

In the Matter of the Proposed Rule
of the State Department of Agriculture
Governing Agricultural Liming Material

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 27th day of May, 1992.

Carol Milligan
Management Analyst

DIANE M. WINDHAM
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 11-1-96

Subscribed and sworn to before me
this 27th day of May, 1992.

Diane M. Windham

Department of Agriculture

Proposed Permanent Rules Relating to Agricultural Liming Material

Rules as Proposed (all new material)

1509.0010 AUTHORITY AND PURPOSE.

Parts 1509.0010 to 1509.0040 are adopted by the commissioner under Minnesota Statutes, section 18C.575, to prescribe conditions for label information, analytical and sampling methods, license and inspection fee qualifications, analysis results and sample content certification, and distribution of agricultural liming material by the cubic yard.

1509.0015 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and the definitions of "agricultural liming materials," "bulk," "burnt lime," "commissioner," "distributor," "ENP," "hydrated lime," "label," "marl," "official sample," "percent; percentage," "person," "producer," "source of production," "stockpile," "ton," and "weight," in Minnesota Statutes, section 18C.531, apply to parts 1509.0010 to 1509.0040.

Subp. 2. **ALM.** "ALM" means agricultural liming materials.

Subp. 3. **Delivery.** "Delivery" means the complete transfer of an ALM order to a specific site as indicated to the purchaser on a billing, delivery, invoice ticket, or label.

Subp. 4. **Department.** "Department" means the Minnesota Department of Agriculture.

Subp. 5. **Exempt.** "Exempt" means distributors or producers of industrial or municipal by-product ALM who are exempt from fees for licensing and inspection under Minnesota Statutes, section 18C.541, subdivision 6.

Subp. 6. **Label.** "Label" means the display of all written, printed, or graphic matter on the immediate container or the statement accompanying a shipment of ALM. A billing, delivery, or invoice ticket is a label.



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Subp. 7. **Limestone.** "Limestone" means a material consisting of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity. Limestone also refers to all carbonate minerals and rock-forming carbonate minerals unless otherwise specified in Minnesota Statutes, section 18C.531.

Subp. 8. **Pounds of ENP per ton.** "Pounds of ENP per ton" means the pounds of effective neutralizing power in one ton of ALM corrected for moisture. [(2,000 pounds ALM per ton) (percentage of ENP ÷ 100) (percentage of dry matter ALM ÷ 100)] = pounds of ENP per ton.

Subp. 9. **Transportation charges.** "Transportation charges" means charges associated with distribution and transport of ALM, including charges relating to application and over-the-road transport.

1509.0020 LABEL INFORMATION REQUIREMENTS.

Subpart 1. **Label information requirements for bulk delivery.** ALM offered for sale, sold, or distributed in this state in bulk must have a written label accompanying a delivery and supplied to any purchaser or end user at the time of delivery. The label must contain the following information:

A. the distributor's or producer's name, address, telephone number, and source of production or stockpile location;

B. the purchaser's name and address;

C. the date of sale or transfer;

D. the type of ALM listed as one of the following:

(1) "calcium oxide," which is the chemical compound composed of calcium and oxygen. It is formed from calcium carbonate by heating limestone to drive off the carbon dioxide. Also known as quick lime, unslated lime, burnt lime, and caustic lime, it does not occur in nature;

(2) "fluid grade ALM," which is ALM that is applied in a suspended formulation;

(3) "hydrated lime," which is a material made



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from burnt lime that consists of calcium hydroxide or a combination of calcium hydroxide with either magnesium oxide, magnesium hydroxide, or both;

(4) "industrial or municipal by-product ALM," which is industrial waste or by-product, or the by-product of an industrial production process or municipal water or waste treatment process containing calcium or magnesium compounds, or both, in a form that neutralizes soil acidity;

(5) "marl," which is a granular or loosely consolidated earthy material composed largely of shell fragments and calcium or magnesium carbonate, or both;

(6) "pelleted ALM," which is ALM of any type that is manufactured and marketed in a pelleted formulation;

(7) "quarry ALM," which is ALM that results from the grinding or sieving of limestone at a quarry or other production site and that is applied on agricultural land without further processing or alteration;

(8) "slag," which is a by-product ALM made of calcium-magnesium aluminosilicate (Ca-MgSi03) resulting from the manufacturing of pig-iron; or

(9) "woodash," which is a by-product ALM resulting from wood burning processes;

E. the minimum pounds of ENP per ton;

F. the weight or cubic yards of ALM distributed;

G. the conversion factor for tons per cubic yard if ALM is being sold by cubic yard units; and

H. for exempt ALM distributors and producers, a list of any charges for ALM, transportation, or application fees.

Subp. 2. **Label information requirements for bags and other container types.** ALM packaged in bags and other container types that are distributed, offered for sale, sold, or disposed of in this state for agricultural use must have a label on either the face, display, or back side of the bag or container or printed on tags affixed to the upper end of the container, stating in a clear, legible, and conspicuous form the following required information:



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A. the distributor's or producer's name and address;

B. the minimum pounds of ENP per ton; and

C. the net weight.

1509.0025 OFFICIAL SAMPLE AND ANALYSES TO DETERMINE LABEL INFORMATION ACCURACY.

Subpart 1. **Required samples and analysis.** The department shall take official samples and perform analyses of ALM sources of production or blending sites to determine required label information. An official sample and analysis must be taken at least once a year at each production or blending site.

Subp. 2. **Sampling and analysis of blended ALM products.** The department shall take official samples and perform analyses of ALM that is blended, even though an official analysis exists for the separate ALM components of the blend. The person blending ALM must pay the sampling fee required by Minnesota Statutes, section 18C.551, subdivision 4.

Subp. 3. **Official ALM analysis method.** The most recent edition of "Quality Determination of Liming Materials," from the Soil Testing Laboratories of the University of Minnesota, Saint Paul, Minnesota 55108, is the official ALM analysis method. This document is incorporated by reference, is not frequently amended, and is available at the Minnesota State Law Library.

Subp. 4. **Label pounds of ENP per ton tolerance.** Current label pounds of ENP per ton must be changed if the revised pounds of ENP per ton resulting from an official sample and analysis is more than three percent below current label pounds of ENP per ton.

Subp. 5. **Label accuracy.** If a distributor or other person believes ALM is mislabeled, the department shall take ALM samples and perform analyses to verify content. If the ALM label is found to be correct, the requesting party must pay the sampling fee required by Minnesota Statutes, section 18C.551, subdivision 4. If the ALM label is found to be incorrect, the supplying distributor or producer must pay the fee required by Minnesota Statutes, section 18C.551, subdivision 4.



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1509.0030 ALM LICENSE AND INSPECTION FEE.

Subpart 1. **Free distribution.** If a producer distributes ALM to another person free of charge under Minnesota Statutes, section 18C.541, subdivision 6, the producer is not liable for any license and inspection fees that may be required later if the product is sold.

Subp. 2. **Custom application.** A person who custom applies and does not distribute ALM is not liable for license and inspection fees.

Subp. 3. **Reporting transportation charges to department.** Distributors or producers applying for license and inspection fee exemption under Minnesota Statutes, section 18C.541, subdivision 6, must disclose transportation charges assessed in the distribution of industrial or municipal by-product ALM. Transportation charges must be itemized to show fees assessed for application and over-the-road transport.

Subp. 4. **Determining fair and reasonable transportation charges.** To determine fair and reasonable transportation charges, the department shall collect transportation charges data via information required on annual license or other applications provided by the department. Transportation charges data collected must be separated into two geographical areas:

A. the metropolitan area, as defined in Minnesota Statutes, section 473.121, subdivision 2; and

B. all of Minnesota outside the metropolitan area.

These geographical areas designate where industrial or municipal by-product ALM is produced or initially transported from. Data collected must be averaged for each respective area. Distributors or producers except those exempt under Minnesota Statutes, section 18C.541, subdivision 6, must pay license and inspection fees if their transportation charges exceed the average area transportation charge.

Subp. 5. **Inspection fee assessment limitation.** Inspection fees assessed under Minnesota Statutes, section 18C.551, subdivision 3, are limited to one assessment during distribution



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in Minnesota. Verification of prior inspection fee payment is required.

1509.0035 CERTIFICATION OF ALM ANALYSIS RESULTS AND SAMPLE CONTENT.

Subpart 1. **Certification.** The commissioner may certify an ALM analysis result, methods, or sample content as submitted to the department by an ALM producer.

Subp. 2. **Analysis certification.** ALM producers may be certified to analyze ALM content if they agree to abide by department methods for sampling and analysis. Producers wishing to be certified must complete an application form and file a notarized affidavit with the department on forms provided by the commissioner.

A certified producer that distributes ALM during the production process must sample weekly and analyze the composite of the weekly samples on a monthly basis. A certified producer that does not distribute ALM during the production process must collect representative samples prior to or during distribution for analysis.

Certified producers must compile reports to be submitted to the department semiannually on January 1 and July 1 on forms provided by the commissioner that detail the number of samples taken for the analysis and the results of the analysis. Certification may be revoked for failure to abide by department methods for sampling and analysis or for failure to file reports.

Subp. 3. **Sample certification.** An ALM sample must be considered for certification if a producer notifies the department of such a request in sufficient time for the department to send information concerning sampling methods, affidavit, sample collection report form, and ALM sampling containers to the producer. A producer shall submit to the department an ALM sample with no less than ten pounds of ALM, a completed, notarized affidavit, and a completed sample collection report.

Subp. 4. **Departmental sample collection.** The department



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may collect and analyze ALM to verify analysis results, methods, or sample content if a certification request is being made to meet requirements of Minnesota Statutes, section 18C.551, subdivision 4. The producer must bear the cost of sample collection and analysis made to produce sufficient verification for certification as specified in Minnesota Statutes, section 18C.551, subdivision 4.

1509.0040 DISTRIBUTION OF ALM BY CUBIC YARD.

Subpart 1. **ALM distribution vehicle cubic yard capacity reporting requirements.** Each distributor or producer distributing ALM on a cubic yard basis or without the use of a Department of Public Service, Weights and Measures Division, approved scale is responsible for determining and reporting the cubic yard capacity of each vehicle and measuring or loading device used for this purpose.

Subp. 2. **Application for certification to distribute ALM on a cubic yard basis.** Distributors or producers distributing ALM by the cubic yard shall submit an annual written report to the department on forms furnished by the commissioner. Certification to distribute ALM by the cubic yard must be indicated on the distributor's or producer's license.

Subp. 3. **Listing cubic yards distributed on label.** Distributors or producers distributing ALM on a cubic yard basis must identify on the label cubic yards distributed. Distributors or producers shall list approximate weight per cubic yard.

Subp. 4. **Renewal of certification to distribute ALM on a cubic yard basis.** Unless otherwise specified in the report, certification to distribute ALM on a cubic yard basis must be renewed annually by December 31. If a change in the vehicle or loading or measuring device usage or other data occurs during the period for which distribution by the cubic yard is done, the department must be notified of change, via forms furnished by the commissioner, within 15 business days after the change.

Subp. 5. **Verification of cubic yard data.** The department



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may verify cubic yard data for each vehicle or loading or measuring device reported by requesting the Department of Public Service, Weights and Measures Division, to determine the cubic yard capacity of the vehicle or loading or measuring device under Minnesota Statutes, chapter 239. Minnesota Statutes, section 239.10, requires the Weights and Measures Division to charge a fee for inspections made to verify cubic yard capacity of a vehicle or loading or measuring device. The distributor or producer must pay the verification fee.



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# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Proposed Permanent Rules Relating to Agricultural Liming Material

**AGENCY:** Department of Agriculture

**MINNESOTA RULES:** Chapter 1509

**INCORPORATION BY REFERENCE:**

Part 1509.0025, subpart 3, Quality Determination of Liming Materials, Soil Testing Laboratories of the University of Minnesota, available at the State Law Library

The attached rules are approved for publication in the State Register

Craig E. Lindeke

Craig E. Lindeke
Senior Assistant Revisor

In the Matter of the Adoption of the Rule of the State Department Agriculture Governing Agricultural Liming Material

DECLARATION OF COUNSEL

I, Paul Strandberg, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0986.

Paul Strandberg
Special Assistant Attorney General

Dated: 7/6/92

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Agricultural Liming Material

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the *State Register* on June 1, 1992, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on May 27, 1992. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the *State Register* and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after the notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the department.

No submissions or comments on the rule were received by the department. (7) No requests for notice of submission to the attorney general were received by the department.

(8) The above-captioned rule is needed and reasonable.

(9) NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule governing agricultural liming material is adopted this 2nd day of July, 1992, pursuant to authority vested in me by Minnesota Statutes, section 18C.575.

Elton R. Redalen

Elton Redalen
Commissioner