# WEST VIRGINIA CODE CHAPTER 19 ARTICLE 15A

WV Legislature

## §19-15A-1. Definitions of words and terms.

As used in this article:

(a) "Agricultural liming material" means a product that contains calcium and magnesium carbonate, hydroxide or oxide which are capable of neutralizing soil acidity.

(b) "Brand" means the term, designation, trademark, product name or other specific designation under which individual agricultural liming materials are offered for sale.

(c) "Bulk" means materials in nonpackaged form.

(d) "Burnt lime" means a calcined material comprised chiefly of calcium oxide in natural association with lesser amounts of magnesium, and which is capable of slaking with water.

(e) "Calcium carbonate equivalent" (CCE) is an expression of the acid-neutralizing capacity of an agricultural liming material relative to that of a pure calcium carbonate, expressed as a percentage.

(f) "Commissioner" means the Commissioner of Agriculture of the State of West Virginia or his or her duly authorized agent.

(g) "Distributor" means any person who sells or offers for sale agricultural liming products that are registered pursuant to this article, but does not include persons who retail registered products in nonbulk form to the ultimate consumer.

(h) "Dolomite" means an agricultural liming material composed chiefly of carbonates of magnesium and calcium in substantially equimolar (1-1.19) proportions.

(i) "Embargo" means an order prohibiting the sale, processing, mixing, transporting and use of any product.

(j) "Fineness" means the percentage by weight of the material which will pass U.S. standard sieves of specific sizes.

(k) "Ground shells" means a material obtained by grinding the shells of mollusks.

(l) "High calcic liming material" means an agricultural liming material containing at least twenty-five percent calcium and at least ninety-one percent of the total calcium and magnesium is calcium.

(m) "High magnesic liming material" means an agricultural liming material containing at least six percent magnesium.

(n) "Hydrated lime" means a material made from burnt lime.

(o) "Industrial coproduct" means any industrial waste or by-product containing calcium or

WV Legislature

calcium and magnesium in forms that will neutralize soil acidity which may be designated by prefixing the name of the industry or process by which it is produced, including, but not limited to: Gas-house lime, tanners' lime, acetylene lime-waste, lime-kin ashes and calcium silicate.

(p) "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

(q) "Limestone" means a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

(r) "Marl" means a granular or loosely consolidated earthy material composed largely of shell fragments and calcium carbonate precipitated in ponds.

(s) "Percent or percentage" means a part of a whole expressed in hundredths by weight.

(t) "Person" means any individual, partnership, association, fiduciary, firm, corporation or any organized group of persons whether incorporated or not.

(u) "Registrant" is a person who registers agricultural liming materials by product and is responsible for the guarantee of the product.

(v) "Type" means the designation given to the product from its source material.

(w) "Ton" means a weight of two thousand pounds avoirdupois.

(x) "Weight" means the weight of undried liming material as offered for sale.

WV Legislature

## §19-15A-2. Registration of brands; registration fees.

(a) Agricultural liming material may not be used, sold or offered for sale in the state unless it has been registered with the commissioner.

(b) Application for registration shall be made to the commissioner on forms approved or supplied by the commissioner. Each separately identified agricultural liming material shall be registered before being distributed or used in the state.

(c) The commissioner shall collect a registration fee for each brand of the agricultural liming material registered and a registration fee from all distributors of agricultural liming materials. The commissioner shall set the registration fees by legislative rule.

(d) All registrations shall expire at the end of the calendar year of issue unless sooner revoked by the commissioner as provided in section six of this article.

(e) Valid registrants of agricultural liming materials are exempt from obtaining a distributors permit, unless distributing another registrants product.

WV Legislature

## §19-15A-3. Required labeling; toxic materials prohibited.

(a) A person may not sell, offer to sell or expose for sale in the state any agricultural liming materials which do not have affixed to the outside of each package in a conspicuous manner a plainly printed, stamped or otherwise marked label, tag or statement or, in the case of bulk sales, a delivery invoice including at least the following:

(1) The name and principal business address of the manufacturer or distributor.

(2) The brand name of the agricultural liming material.

(3) The identification of the product as to the type of liming material.

(4) The net weight of the agricultural liming material.

(5) The minimum percentage of calcium oxide and magnesium oxide or calcium carbonate and magnesium carbonate.

(6) The calcium carbonate equivalent as determined by methods prescribed by the Association of Official Analytical Chemists International (AOAC).

(7) The minimum percent by weight passing through United States standard sieves.

(8) The fineness classification of the material.

(b) A copy of the statement provided for in subsection (a) of this section shall be posted for each brand sold in bulk at each site where purchase orders are accepted or from which deliveries for such liming materials are made.

(c) No information or statement may appear on any package, label, delivery invoice or advertisement which gives a false or misleading impression to the purchaser as to the quality, analysis, type or composition of the liming material.

(d) When agricultural liming material has been adulterated subsequent to packaging, labeling or loading thereof and before delivery has been made to the consumer, conspicuous, plainly worded notice to that effect shall be affixed by the vendor to the package or delivery invoice to identify the kind and degree of adulteration therein: Provided, That agricultural liming material may not be sold or offered for sale in the state which contains toxic materials in quantities injurious to plants or animals when applied according to directions.

WV Legislature

## §19-15A-4. Inspection fee; report of tonnage; annual report.

(a) Each sales invoice prepared in normal course of business by either a registrant or distributor shall reflect the amount of the inspection fee and the name of the payor.

(b) Within 30 days following June 30 and December 31, of each year, each registrant and distributor shall submit on a form furnished by the commissioner a summary of tons of each agricultural liming material sold or distributed by each registrant and distributor in the state during the previous six months' period. The report of tonnage shall be accompanied by payment of an inspection fee as established by legislative rule. If the tonnage, or portion thereof, has been paid by another person, documentation by invoice must accompany such report. The semiannual payment and late fee shall be established by legislative rule.

WV Legislature

## §19-15A-5. Inspection; sampling; analysis.

(a) The commissioner shall audit, inspect, sample, analyze and test agricultural liming materials used, sold or offered for sale within the state as he or she considers necessary to determine whether the agricultural liming materials are in compliance with the provisions of this article. For this purpose the commissioner may enter upon any public or private premises or carriers during reasonable times to inspect and sample liming materials and to inspect records related to their distribution.

(b) The methods of analysis and sampling shall be those approved by the commissioner and guided by the AOAC procedures.

(c) The results of official analyses of agricultural liming materials and portions of official samples shall be distributed by the commissioner as he or she considers necessary to carry out the enforcement of this article.

(d) The commissioner shall, on request, provide the registrant with a portion of the official sample: Provided, That the request is made within thirty days of the assessment of a violation.

(e) In determining whether any agricultural liming material is deficient in guarantee, the commissioner shall be guided solely by the official sample.

WV Legislature

## §19-15A-6. Embargo; suspension or cancellation of registration; seizure of materials.

(a) The commissioner may suspend or cancel the registration of any brand of agricultural liming material and may refuse the application for registration of any brand of agricultural liming material upon being presented satisfactory evidence that the registrant has used false, fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of this article or any related rule: Provided, That no registration shall be suspended, revoked or refused until the registrant has been given an opportunity to appear for a hearing before the commissioner.

(b) The commissioner may issue an embargo order to the owner or custodian of any lot of agricultural liming material when he or she finds said agricultural liming material is being offered or exposed for sale in violation of any of the provisions of this article or related rule. The order shall remain in effect until it has been rescinded in writing by the commissioner: Provided, That the commissioner may not rescind any embargo order until the requirements of this article have been complied with and all related costs and expenses have been paid.

(c) Any agricultural liming material found to be in violation of the provisions of this article is subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the county in which such agricultural liming material is located. If the court orders the condemnation of such material it shall be disposed of in a manner consistent with the quality of the agricultural liming material and the laws of the state. The court may not order the disposition of agricultural liming material without first giving the owner or custodian an opportunity to apply to the court for release of the agricultural liming material or for permission to process or relabel the agricultural liming material to bring it in compliance with this article.

WV Legislature

## §19-15A-7. Deficiency assessment, tolerances and payment.

(a) A registrant shall pay a deficiency assessment in accordance with the provisions of this section for each lot of agricultural liming material found to be deficient in its guaranteed analysis. Deficiencies existing in more than one component shall be considered additional violations.

(b) A registrant shall pay the deficiency assessment to the ultimate consumer of the product and deliver receipts for the payment to the commissioner. If the ultimate consumer is not known, the penalty assessed shall be paid to the commissioner and deposited as set forth in section nine of this article.

(c) If a deficiency assessment has not been paid within sixty days of the notice of the assessment, then a late payment penalty, as established by legislative rule, will be added for each one hundred eighty days that the assessment remains unpaid.

WV Legislature

## §19-15A-8. Rule-making authority.

The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to establish, implement and enforce the provisions of this article, which rules shall include, but not be limited to:

(1) The minimum acceptable fineness classifications;

(2) The minimum acceptable calcium carbonate equivalents for agricultural liming materials; and

(3) The establishment of fees required by this article.

WV Legislature

## §19-15A-9. Disposition of fees.

Any fees and penalties collected under the provisions of this article shall be deposited with the state Treasurer in a special revenue account known as the Agricultural Fee Fund as established in article one, chapter nineteen of this code.

WV Legislature

## §19-15A-10. Penalties.

Any person violating any of the provisions of this article or related rule shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $200 nor more than $300 for the first offense and not less than $300 nor more than $1,000 for each subsequent offense.

WV Legislature