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Department : Agriculture

STATE OF MINNESOTA
Office Memorandum

Date : May 14, 1992

To : Maryanne Hruby, Director
LCRAR

From : Carol Milligan 
Agriculture Planning Division

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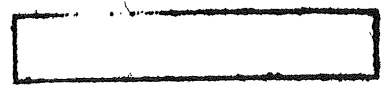
Subject : **Rule Governing Agricultural Liming Material**

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

**The Legislative Commission to
Review Administrative Rules**

MAY 15 1992



The National Commission on
Expenditures

MAY 19 1954



STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rule)
of the Department of Agriculture)
Pertaining to the Regulation of)
Agricultural Liming Materials)

STATEMENT OF NEED AND
REASONABLENESS

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 simplifications, 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 credible 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.