

STATE OF MINNESOTA  
DEPARTMENT OF AGRICULTURE

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

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**INTRODUCTION**

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of a rule governing the distribution of agricultural liming materials (ALM). This rule includes the license and inspection fee qualifications, label information requirements, official or certified sample and analysis requirements, producer certification to conduct sampling or sampling and analysis, and distribution of ALM by the cubic yard.

The implementation of the proposed rule would afford maximum consumer protection while providing distributors and producers with high quality control services. Less stringent compliance with the proposed rule would jeopardize consumer protection.

This rule will not result in cost to local units of government exceeding \$100,000 per year for the next two years.

**SMALL BUSINESS IMPACT**

Most agricultural liming materials (ALM) distributors or producers that must comply with the proposed rule are small businesses. These small businesses have been consulted in developing the proposed rule governing ALM. Consultations consisted of meetings where comments were presented by small businesses concerning the development of the proposed ALM rule. Time was spent communicating details of the ALM law and proposed rule to

distributors and producers being governed by this statute. The proposed rules were closely examined to minimize any negative impact on small businesses.

Examining the proposed rule via Minnesota Statute, Section 14.115, subdivision 2. (a) through (e) the department did not lessen requirements for small businesses. Requirements could not be lessened for (a) through (c) because the department has certain information needs that correspond to the full compliance with Minnesota Statute, Section 18C.531 to 18C.575. Requirements pertaining to (d) and (e) could not be lessened for small businesses because lessening requirements would compromise consumer protection as specified in the statute. By standardizing (a) through (e) the department's goal is to aid the whole industry in the full understanding and compliance with requirements, schedules or deadlines, consolidations or simplifications, standards and exemptions.

Since most firms 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, reporting, standards, and exemptions-allowances requirements.

## **NEED FOR AND REASONABLENESS OF THE PROPOSED RULE**

**Section 1509.0015: DEFINITIONS** Subparts 1 through 9. The definitions are necessary so that the proposed rule 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: ALM LICENSE AND INSPECTION FEE**

Subparts 1. Need exists to clearly communicate what qualifies and requires a firm to obtain a ALM license. It is reasonable since it references Minnesota Statutes, section 18C.541, subdivision 1., as the foundation for requiring licensing.

Subpart 2. 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 3. 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 4 and 5. It is necessary to determine what constitutes a fair and reasonable transportation charge to fairly administer Minnesota Statute, section 18C.541, subdivision 6. The information and data collected by the department is reasonable because it allows the department to obtain the twin cities metropolitan area and greater Minnesota transportation charge averages. These averages will aid in interpreting which industrial and municipal by-product ALM distributors and producers will or will not need to pay fees for licensing and inspection.

Subpart 6. 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 1509.0025: LABEL INFORMATION REQUIREMENTS**

Subparts 1 and 2. The label information required is necessary to provide 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 minimize the cost for producers and distributors to label bags or containers while providing adequate consumer information, the department has proposed a label format that meets both cost effectiveness and adequate consumer information. 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 the information as required in subpart 1, items C to F.

### **Section 1509.0030. OFFICIAL OR CERTIFIED SAMPLE AND ANALYSIS**

Subpart 1. It is necessary to clarify that the department will sample and analyze or certify producers to sample or sample and analyze ALM for determining the minimum pounds of Effective Neutralizing Power (ENP) per ton quality rating for label information. 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 or certify producers to sample or certify producers 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 to establish a standardized method to analyze and sample 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 minimum 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 and sampling methods. It is reasonable to utilize the standard analysis and sampling methods prescribed by 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 and sampling methods are

adopted from the most accepted and current analytical method available. The analytical and sampling methods used are available upon request from the department and through the Minnesota State Law Library.

Subpart 3. It is necessary for the department to effectively respond to consumer concerns about the label information accuracy. It is also reasonable that the accuracy of the label information determines who pays the sampling fee referenced in Minnesota Statutes, section 18C.551, subdivision 4. This is reasonable because it allows the department to respond in an effective and fair manner to consumers, distributors, or producers product quality concerns.

Subpart 4. It is necessary for the department to sample ALM blended by distributors in order to maintain accurate label information. In many cases ALM is not weighed in the blending process. This creates ALM with unknown 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 distributors and the department is of consideration to the reasonableness of this section.

#### **Section 1509.0035: CERTIFICATION OF PRODUCERS TO CONDUCT SAMPLING OR SAMPLING AND ANALYSIS OF ALM**

Subparts 1. It is necessary for the department of certify producers to sample their ALM because 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. It is reasonable because producers must abide by standard sampling methods set forth in part 1509.0030, subpart 2. This provides a mechanism for controlling sample quality and reliability.

It is necessary for the department to certify producers to sample and analysis their ALM because it enables both the producer and the department to gather required label information in the most efficient and effective manner. It is reasonable because qualified producers possess the equipment, facilities, and personnel to accurately sample and analyze ALM. This would reduce and eliminate effort and expense associated with obtaining creditable analytical

results. Qualified producers must abide standard sampling and analytical methods set forth in part 1509.0030, subpart 2. This provides a mechanism for controlling sample and analytical quality and reliability.

Subpart 2. It is necessary for the department to clearly communicate what is required for producers to become certified to sample ALM. Requirements are reasonable because steps to gain certification are as simplified as possible without jeopardizing the objective of collecting accurate ALM samples.

Subpart 3. It is necessary for the department to clearly communicate what is required for producers to become certified to sample and analyze ALM. Producers must adhere to standardized sampling and analysis methods and specifications in order to correlate analytical data during the certification process. Steps and processes required to obtain certification are reasonable because this allows the department to determine if producers are capable of properly adhering to widely recognized sampling and analytical methods set forth by the department. Steps to obtain certification are as simplified as possible without jeopardizing the objective of accurately collecting sampling and analytical data.

Subpart 4. Once producers are certified to conduct ALM sampling or sampling and analysis it is necessary for the department to set up scheduling requirements for collecting samples and performing analysis. This scheduling structure ensures that accurate and timely analytical data is maintained for updating the label. It is reasonable because it provides flexibility and uniformity for the various distribution levels and production processes which exist, ensuring an accurate base of analytical data for updating the label.

Subpart 5. It is necessary to require reporting of up-to-date label and analytical information in order to maintain credible and reliable information to distributors, consumers, and the department. It is essential for distributors and consumers to have this information available for determining application rates. It is essential for the department to maintain up-to-date analytical information for informational and regulatory purposes. The reporting requirements are reasonable because it simplified the process by which producers must report label and analytical data. The reporting of analytical data to the department coincides with tonnage reporting referenced in Minnesota Statutes, section 18C.555, subdivision 1.

Subpart 6. It is necessary to clearly communicate the consequences for failure to meeting the requirements of this part. The denial or revocation conditions may provide an adequate deterrent for false or misleading statements from being communicated to distributors and consumers. It is reasonable because it does not adversely hinder producers from providing accurate label and analytical data to distributors, consumers, and the department on a timely basis.

**Section 1509.0040: DISTRIBUTION OF ALM BY CUBIC YARD**

Subparts 1 and 2. It is necessary to report the vehicles, and devices used to distribute ALM by the cubic yard because it ensures accurate weight per cubic yard for consumers purchasing ALM. This proposed rule provides the necessary checks and balances (subpart 2) 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.

4-13-93

Date

Elton Redalen

Elton Redalen, Commissioner