

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 649

An Act to amend and reenact §§ 3.1-22.5, 3.1-126.3 through 3.1-126.11, and 9-6.14:4.1 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 11.1 of Title 3.1 sections numbered 3.1-126.2:1, 3.1-126.2:2, 3.1-126.12:1, 3.1-126.12:2, and 3.1-126.12:3, and to repeal §§ 3.1-126.2, 3.1-126.12, and 3.1-126.13 of the Code of Virginia, relating to labeling, registration and licensing of liming materials; disposition of funds collected by the Department of Agriculture and Consumer Services; fees; penalties.

[H 705]

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-22.5, 3.1-126.3 through 3.1-126.11, and 9-6.14:4.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 11.1 of Title 3.1 sections numbered 3.1-126.2:1, 3.1-126.2:2, 3.1-126.12:1, 3.1-126.12:2, and 3.1-126.12:3 as follows:

§ 3.1-22.5. Virginia Agricultural Foundation Fund.

There is hereby established in the state treasury a special fund to be designated as the "Virginia Agricultural Foundation Fund" which shall consist of transfers made to it under §§ 3.1-81.1, ~~3.1-126.5~~ 3.1-126.12:3, 3.1-814, 58.1-2111 and 58.1-2146 of the Code of Virginia, of other moneys appropriated thereto, gifts and grants, and interest accruing thereon. The fund shall be expended in accordance with the directions of the Virginia Agricultural ~~Foundation~~ Council and drawn from the state treasury in the manner provided by law. No part of such fund shall revert to the general fund of the state treasury.

§ 3.1-126.2:1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural liming material" means any limestone with calcium and magnesium compounds that has the capacity, and whose intended purpose is, to neutralize soil acidity.

"Applicant" means the person who applies for, or requests, a license, or applies for registration of any liming material; or applies to become a contractor.

"Board of Agriculture" or "Board" means the Board of Agriculture and Consumer Services.

"Brand" means the term, designation, trademark, product name or other specific designation under which any liming material is offered for sale.

"Bulk" means materials in nonpackaged form.

"Calcium carbonate equivalent" means the acid neutralizing capacity of any liming material, expressed as weight percentage of calcium carbonate.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Contractor" means any person except the registrant or licensee who sells any bulk liming material to the consumer.

"Department" means the Department of Agriculture and Consumer Services.

"Distributor" means any person who imports or consigns, manufactures, produces, compounds, mixes, or blends any liming material, or who offers for sale, sells, barter or otherwise supplies any liming material.

"Effective Neutralizing Value" or "ENV" means a relative value using the calcium oxide content, magnesium oxide content and fineness to express the effectiveness of an agricultural liming material in neutralizing soil acidity. This term is synonymous with Effective Neutralizing Power (ENP).

"Fineness" means the percentage by weight of the material which will pass through United States Standards sieves of specified sizes.

"Industrial co-product used to neutralize soil acid" means a waste or by-product of an industrial process that contains any compound not normally found in limestone as defined in this chapter that has the capacity, and whose intended purpose is, to neutralize soil acidity.

"Kind" means one of the two classes of liming material as defined in this chapter.

"Label" means any written or printed matter on, or attached to, the package, or on the delivery ticket which accompanies bulk shipments, of any liming material.

"Licensed" or "licensee" means the person issued a license to distribute any liming material in the Commonwealth.

"Limestone" means a material consisting essentially of calcium carbonate, or a combination of calcium carbonate and magnesium carbonate, capable of neutralizing soil acidity.

"Liming material" means any agricultural liming material and any industrial co-product used to neutralize soil acid as defined in this chapter.

"Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, imports or consigns liming material, or who offers for sale, sells, barter or otherwise supplies liming material.

"Percent" or "percentage" means by weight.

"Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of measurement of a commodity.

"Registrant" means the person registering any liming material pursuant to the provisions of this chapter.

"Standard liming ton" means a ton of agricultural liming material with a calcium carbonate equivalent of ninety percent.

"Stop sale, use, removal or seizure order" means an order which prohibits the distributor from selling, relocating, using, or disposing of a lot of liming material, or portion thereof, in any manner, until the Commissioner, or his agent, or a court gives written permission to sell, relocate, use or dispose of the lot of liming material or portion thereof.

"Ton" means a net weight of 2,000 pounds avoirdupois.

"Type" means the identification of the agricultural liming material as follows:

1. "Burnt" means any agricultural liming material with calcium and magnesium compounds capable of neutralizing soil acidity, and that consists essentially of calcium oxide, or a combination of calcium oxide and magnesium oxide.

2. "Calcitic" means any agricultural liming material in which eighty-five percent or more of the total neutralizing value, expressed as calcium carbonate equivalent, is derived from calcium.

3. "Dolomitic" means any agricultural liming material in which fifteen percent or more of the total carbonate content is magnesium carbonate.

4. "Hydrated" means any agricultural liming material, made from burnt lime, which consists essentially of: (i) calcium hydroxide; (ii) a combination of calcium hydroxide, magnesium oxide and magnesium hydroxide; or (iii) a combination of calcium hydroxide, and either magnesium oxide or magnesium hydroxide.

5. "Marl" means a granular or loosely consolidated earthy agricultural liming material composed largely of calcium carbonate.

§ 3.1-126.2:2. Appointment of agents.

The Commissioner may appoint agents to assist in carrying out the provisions of this chapter and the regulations adopted and established pursuant thereto.

§ 3.1-126.3. Labeling.

(a) ~~A. Agricultural liming materials~~ Any liming material sold, offered or exposed for sale in this the Commonwealth shall have affixed to each package in a conspicuous manner on the outside thereof, a plainly printed, stamped or otherwise marked label, tag or statement, or in the case of bulk sales, a statement on the delivery slip, setting forth in the English language at least the following information:

(1) 1. The ~~net weight~~ quantity statement of the ~~agricultural~~ liming material;

(2) 2. The brand or trade name of the liming material;

(3) 3. In the case of agricultural liming material, the identification of the product as to type of the agricultural liming material as defined under § ~~3.1-126.2 (e)~~ through (i) 3.1-126.2:1, including the chemical analysis corresponding to the type definition;

(4) 4. The minimum percentage of available potash, if the liming material contains potash has been added to the liming material;

(5) 5. The calcium carbonate equivalent of the liming material as determined by methods prescribed by procedures of the Association of Official Analytical Chemists (AOAC) in its most recent publication. Minimum calcium carbonate equivalents as prescribed by regulation;

6. The Effective Neutralizing Value (ENV) of the liming material as calculated using the following formula:

(percent by weight passing twenty mesh sieves - percent by weight passing sixty mesh sieves) x 0.4 = (a)

(percent by weight passing sixty mesh sieves - percent by weight passing 100 mesh sieves) x 0.8 = (b)

(percent by weight passing 100 mesh sieves) x 1.0 = (c)

[(a+b+c) x Calcium Carbonate Equivalent (CCE)] divided by 100 = ENV;

(6) 7. The minimum ~~percentage~~ percent by weight passing through United States Standard sieves as prescribed by regulations; and

(7) 8. The name and principal office address of the manufacturer or distributor of the liming material.

B. For any fluid liming material or any packaged liming material-fertilizer mixture, the label shall also include the following information:

(i) The kind of liming material used in the manufacture of the product,

(ii) The type of agricultural liming material used in the manufacture of the product, if applicable,

(iii) The guaranteed analysis of the final product, and

(iv) A statement setting forth the equivalency of the calcium carbonate equivalent of the fluid liming material or liming material-fertilizer mixture to the calcium carbonate equivalent of a standard liming ton.

C. For any bulk liming material-fertilizer mixture, except when the ingredients are billed separately, the label shall also include the following information:

- (i) The kind of liming material used in the manufacture of the product,
- (ii) The type of agricultural liming material used in the manufacture of the product, if applicable,
- (iii) The guaranteed analysis of the final product, and
- (iv) A statement setting forth the equivalency of the calcium carbonate equivalent of the fluid liming material or liming material-fertilizer mixture to the calcium carbonate equivalent of a standard liming ton.

If the ingredients of the bulk liming material-fertilizer mixture are billed separately, the label shall also include the following information:

- 1. The kind of liming material used in the manufacture of the product;
- 2. The type of agricultural liming material used in the manufacture of the product, if applicable;
- 3. The dry weight of the liming material used in the manufacture of the product before mixing;
- 4. The guaranteed analysis of the liming material used in the manufacture of the product before mixing; and
- 5. The guaranteed analysis of the fertilizer used in the manufacture of the product before mixing.

D. For any industrial co-product used to neutralize soil acid, the product label shall include the statement "Industrial co-product used to neutralize soil acid." If the product is below the Virginia minimum standard requirements for an agricultural liming material as defined in the regulations, the statement "Substandard liming material" shall also be on the label.

(b) E. Such label may also set forth the minimum percentage of calcium oxide and magnesium oxide and/or calcium carbonate and magnesium carbonate. All liming material shall be labeled as registered with the Commissioner.

(c) F. No information or statement shall appear on any package, label, delivery slip or advertising matter which is false or misleading to the purchaser as to the quality, analysis, kind, type or composition of the agricultural liming material.

(d) G. In the case of any liming material which has been adulterated subsequent to packaging, labeling or loading thereof, and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by the vendor to the package or delivery slip to identify the kind and degree of such adulteration therein.

(e) Any person desiring to become a contractor as defined in this chapter shall, before engaging in such business, make application to the Commissioner on application forms furnished by the Commissioner for a permit to do business in this Commonwealth. Each application should be accompanied by a remittance of two dollars for each contractor as a fee for issue of permit, unless a permit has been obtained under the Virginia Fertilizer Law. The applicant shall guarantee compliance with all provisions of this chapter which apply to the sale of bulk liming materials, which shall include delivery to the consumer of the bulk liming materials purchased. Upon approval by the Commissioner, a copy of the permit shall be furnished the applicant and when furnished, shall authorize the person receiving same to do business as a contractor. All permits shall expire on June 30 of each year.

(f) H. If the Board finds, after public hearing following due notice, that the requirement for expressing the calcium and magnesium in elemental form would not impose an economic hardship on distributors and users of agricultural liming materials by reason of conflicting labeling requirements among the states, the Commissioner The Board may require by regulation thereafter that the minimum percentage of calcium oxide and , magnesium oxide and/or , calcium carbonate, and magnesium carbonate shall be expressed in the following form:

Total Calcium (Ca) percent
Total Magnesium (Mg) percent

Provided, however, that the effective date of such regulation shall not be less than six months following the issuance thereof, and provided, further, that However, for a period of two years following the effective date of such regulation the equivalent of calcium and magnesium may also be shown in the form of calcium oxide and, magnesium oxide and/or , calcium carbonate, and magnesium carbonate.

I. Registrants shall be allowed not more than one year from July 1, 1994, to use existing inventories of labeling materials.

§ 3.1-126.4. Registration, permitting, and licensing.

(a) A. Each separately identified product Any distributor of agricultural liming material in the Commonwealth shall be registered before being distributed in this register by July 1 of each year for the registration year of July 1 to June 30 each brand of agricultural liming material before distributing any agricultural liming material in the Commonwealth. The application for registration shall be submitted to the Commissioner on forms furnished or approved by the Commissioner and shall be accompanied by a fee of ten dollars per product. Each distributor shall submit an application for registration to the Commissioner on forms furnished or approved by the Commissioner and shall pay to the Commissioner a registration fee of fifty dollars per brand of agricultural liming material per registration year. Upon approval by the Commissioner, a copy of the registration shall be furnished the Commissioner or his agent shall furnish a copy of the registration to the applicant. All registration shall expire on December

31 of the year for which approval of application is granted. Each registration shall expire on June 30 of the registration year for which the Commissioner or his agent issued the registration. Every such registration shall be valid through July 31 of the next registration year or until issuance of the renewal registration, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the registration year for which the Commissioner or his agent issued the registration; however, any registration the Commissioner or his agent issued on or after January 1, 1994, and on or before July 1, 1994, shall be issued to expire on June 30, 1995.

B. Any distributor of any brand of industrial co-product used to neutralize soil acid in the Commonwealth shall register by July 1 of each year for the registration year of July 1 to June 30 each brand of industrial co-product used to neutralize soil acid before distributing any industrial co-product used to neutralize soil acid in the Commonwealth. Each distributor shall submit an application for registration to the Commissioner on forms furnished or approved by the Commissioner and shall pay to the Commissioner a registration fee of \$100 per brand of industrial co-product used to neutralize soil acid per registration year. Upon approval by the Commissioner, the Commissioner or his agent shall furnish a copy of the registration to the applicant. Each registration shall expire on June 30 of the registration year for which the Commissioner or his agent issued the registration. Every such registration shall be valid through July 31 of the next registration year or until issuance of the renewal registration, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the registration year for which the Commissioner or his agent issued the registration; however, any registration the Commissioner or his agent issued on or after January 1, 1994, and on or before June 30, 1994, shall expire on June 30, 1995.

Any distributor making application to register any brand of industrial co-product used to neutralize soil acid shall submit to the Commissioner test data indicating the product's neutralizing value, and its safety to plants and animals.

C. If the Commissioner or his agent identifies any unregistered liming material in commerce in the Commonwealth during the registration year, the Commissioner or his agent shall grant a grace period of fifteen working days from issuance of notification to the distributor of the liming material within which to register the liming material without penalty. Any distributor who fails to register each brand of liming material being distributed by him in the Commonwealth by the fifteenth day of the grace period, shall pay to the Commissioner a fifty dollar late fee per brand of liming material in addition to the registration fee, as well as cause a stop sale, use, removal or seizure order to be issued upon said liming material until its registration is complete.

(b) D. A distributor shall not be required to register any brand of ~~agricultural~~ liming material or ~~agricultural~~ liming material with added potash, if it has been duly registered under this chapter by another person, ~~providing~~ provided the label on the liming material the other person registered does not differ in any respect from the label on the liming material the distributor seeks to register.

E. Each person who manufactures or whose name appears on the label of any liming material to be distributed in the Commonwealth shall by July 1 of each year, or prior to distribution of such liming material, obtain a license for the licensing year of July 1 to June 30. Each person shall make application on forms furnished or approved by the Commissioner and shall pay a license fee of fifty dollars per licensing year per distributor. Each license shall expire on June 30 of the license year for which the Commissioner or his agent issued the license. Every such license shall be valid through July 31 of the next licensing year or until issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the licensing year for which the Commissioner or his agent issued the license.

F. The Commissioner or his agent shall grant a grace period of fifteen working days from issuance of notification, within which to obtain a license without penalty, to any person who fails to obtain a license during the licensing year as required by subsection E. Any person who fails to obtain a license by the fifteenth day of the grace period shall pay to the Commissioner a fifty dollar late fee in addition to the license fee, as well as cause a stop sale, use, removal or seizure order to be issued on any liming material the person distributes until the person obtains the required license.

G. Any person desiring to become a contractor as defined in this chapter shall make application to the Commissioner by July 1 of each year for the permitting year July 1 to June 30 on forms furnished or approved by the Commissioner for a permit to do business in the Commonwealth and obtain said permit before engaging in such business. Each applicant shall pay a permit fee to the Commissioner of fifty dollars per permitting year unless a permit has been obtained under the Virginia Fertilizer Law (§ 3.1-74 et seq.). The contractor shall guarantee compliance with all provisions of this chapter which apply to the sale and delivery of bulk liming material. Upon approval by the Commissioner, the Commissioner or his agent shall furnish a copy of the permit to the contractor and shall authorize the person receiving the permit to do business. Each permit to do business shall expire on June 30 of the permitting year for which the Commissioner or his agent issued the permit. Every such permit shall be valid through July 31 of the next permitting year or until issuance of the renewal permit, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the permitting year for which the Commissioner or his agent issued the permit.

H. The Commissioner or his agent shall grant a grace period of fifteen working days from issuance of notification to any person who fails to obtain a contractor's permit to do business during the permitting year as required by subsection G within which to obtain the permit without penalty. Any person who fails to obtain a permit by the fifteenth day of the grace period shall pay to the Commissioner a fifty dollar late fee in addition to the permit fee, as well as cause a stop sale, use, removal or seizure order to be issued on any liming material the person sells until the person obtains the required permit.

§ 3.1-126.5. Report of tonnage; inspection fee; fee for late payment.

(a) A. Within thirty days following the expiration of registration, which ends on December 31 By August 1 of each year, each registrant person who distributes liming material to a nonlicensed person shall submit on a form furnished or approved by the Commissioner an annual a tonnage statement for the reporting year July 1 through June 30 of each year setting forth by counties; the number of net tons of each agricultural liming material sold by him the distributor for use in this each county or city in the Commonwealth during the previous twelve-month period. Such statements shall be filed with the Virginia Department of Agriculture and Consumer Services and shall be accompanied by payment of five cents per short ton. The Commissioner shall pay the revenue derived from this section into the state treasury to the credit of the Virginia Agricultural Foundation Fund. If the tonnage fee is not paid by the due date; however, each person distributing liming material to a nonlicensed person shall submit to the Commissioner by August 1, 1995, a tonnage statement setting forth the number of tons of liming material sold for use in each county or city in the Commonwealth by the distributor for the period January 1, 1995, through June 30, 1995. Each person distributing liming material in the Commonwealth to a nonlicensed person shall file a statement with the Commissioner and shall pay to the Commissioner an inspection fee of five cents per ton of liming material sold per reporting year. The minimum inspection fee shall be thirty-five dollars per distributor per reporting year; provided that for the period January 1, 1995, through June 30, 1995, the minimum inspection fee shall be seventeen dollars and fifty cents per distributor. If the distributor fails to submit the tonnage statement and pay the inspection fee by August 1 of each year, the Commissioner or his agent shall notify the registrant distributor and grant an additional a grace period of fifteen working days for the registrant from issuance of notification for the distributor to submit the tonnage statement and to pay the tonnage inspection fee without penalty. After the fifteenth day has expired, there shall be a penalty of ten per centum of the tonnage fee which shall be added to the tonnage fee due plus interest at the rate of eight per centum per annum until the full amount due is paid. Nothing in this section shall prevent registrants from voluntarily filing the required statement and paying the tonnage fees on a quarterly calendar basis. If the distributor fails to submit the tonnage statement and pay the inspection fee by the time the fifteenth day of the grace period has expired, the distributor shall pay to the Commissioner a late fee of ten percent of the inspection fee, or fifty dollars, whichever is greater, per reporting year in addition to the inspection fee due.

(b) The registrant shall use a system of keeping books that is satisfactory to the Commissioner, indicate accurately in his records the tonnage of agricultural liming material sold in the Commonwealth, and agree to allow the Commissioner or his duly authorized representative to examine such records and verify the tonnage statement.

B. Any distributor required to pay an inspection fee under subsection A shall use generally accepted accounting principles that indicate accurately in the distributor's records the tonnage of liming materials sold by the distributor in the Commonwealth. The Commissioner or his agent may inspect the distributor's records which the distributor shall maintain for a period of three years.

C. 1. Except as provided in subdivision 2 of this subsection, any person who distributes to a nonlicensed person shall file the tonnage statement with the Commissioner and pay to the Commissioner the inspection fee.

2. The Commissioner or his agent shall not require the person specified in subdivision 1 of this subsection who distributes liming materials to file the tonnage statement or pay the inspection fee, if another person agrees in a written statement, filed with the Commissioner, to pay the inspection fee and file the tonnage statement by August 1 of each year.

3. Any person not required to file the tonnage statement or pay the inspection fee pursuant to the exception specified in subdivision 2 of this subsection, shall file with the Commissioner by August 1 of each year a purchasing report stating the number of tons the person specified in this subdivision purchased during the reporting year and from whom the liming material was purchased. The report shall be made on a form furnished or approved by the Commissioner.

(c) D. The Commissioner shall may publish and distribute annually, to each agricultural liming material registrant and other interested persons, a composite report showing the tons of agricultural liming material sold in each county of this the Commonwealth. This report shall in no way divulge the operation of any registrant or licensee.

§ 3.1-126.6. Inspection, sampling, analysis.

(a) A. It shall be the duty of the Commissioner; who may act through his authorized or his agent, to sample, inspect, make analyses of, and test agricultural liming materials material distributed within the Commonwealth as he may deem necessary to determine whether such agricultural liming materials are

material is in compliance with the provisions of this chapter. The Commissioner, individually or through his agent, is authorized to enter upon any public or private premises, or ~~earlier~~ any carrier during regular business operating hours, in order to have access to agricultural liming material subject to the provisions of this chapter and regulations pertaining thereto, and to the records relating to their its distribution.

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

(c) B. The Commissioner or his agent shall distribute the results of official analysis analyses of agricultural liming materials material and portions of official samples shall be distributed by the Commissioner of liming material as provided in the regulations at least annually.

§ 3.1-126.7. Stop sale, use, removal or seizure order; review.

(a) A. The Commissioner or his agent may issue and enforce a written or printed stop sale, use or, removal or seizure order to the owner or custodian of any lot of agricultural liming materials material and to hold at a designated place. The Commissioner or his agent shall issue such order when the Commissioner or his agent finds such agricultural liming material is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and such agricultural liming material is . Such order may provide that such liming material be held at a designated place until the owner or custodian of such lot of liming material has complied with this chapter and the Commissioner or his agent has released the liming material in writing by the Commissioner, or such violation has been otherwise legally disposed of by written authority.

(b) B. The owner or custodian of such agricultural liming material shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

(c) C. The Commissioner or his agent shall release the agricultural liming material which has been subjected to an a stop sale, use, removal or seizure order under subsection (a) A of this section when the owner or custodian of such liming material has complied with the requirements of this chapter have been complied with.

(d) D. The provisions of this section shall not be construed (i) as limiting the right of the enforcement officer Commissioner or his agent to proceed as authorized by other provisions of this chapter, or (ii) as limiting or prohibiting the operation of § 9-6.14:18 of the Administrative Process Act.

§ 3.1-126.8. Assessments for violations of chapter.

(a) A. Any person convicted of violating any provision of this chapter or the rules and regulations promulgated thereunder hereunder shall be subject to a penalty of not less than \$25 nor more than \$200 to be enforced by a summary proceeding in a court of competent jurisdiction. Nothing in this chapter shall be construed as requiring the Commissioner or his authorized agent to report for prosecution, or for the institution of seizure proceedings as a result of minor violations of this chapter when he believes that the public interest will best be served by a suitable written warning , where the Commissioner considers the violations of the act to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing, when he believes that the public interest will be best served by so doing.

(b) When, upon analysis by the Department of Agriculture and Consumer Services, any shipment of agricultural liming materials that are sampled that fail to meet the guarantee for chemicals, neutralizing value or screen size, a penalty shall be assessed in accordance with the rules and regulations as established by the Board.

B. The Commissioner or his agent shall make an assessment for variance from guarantee in accordance with the regulations as established by the Board, not to exceed \$5,000 per occurrence, when any shipment of liming material that the Commissioner or his agent samples and upon analysis, fails to meet the guarantee for chemicals, neutralizing value, or screen size.

(1) 1. All penalties or assessments levied by the Commissioner shall within three months from date of notice to manufacturer, dealer or agent, be paid to the purchasers of such penalized lots of agricultural liming material, receipts taken therefor and promptly forwarded to the Commissioner. The person whose name appears on the label of the violative lot of liming material shall pay the assessment for variance from guarantee levied by the Commissioner. The person assessed shall obtain a receipt signed by the purchaser for each payment, and promptly forward the same to the Commissioner. The person whose name appears on the label of the violative lot of liming material shall pay the assessment for variance from guarantee within sixty days from date of notice to the person assessed. If the purchasers purchaser cannot be found, or if the amount due any one purchaser from the lot of agricultural liming material, on which an assessment has been levied, is less than one dollar, the amount of penalty assessed shall be paid person whose name appears on the label of the violative lot of liming material shall pay the assessment for variance from guaranty to the Commissioner, who shall deposit the same in the state treasury, and report to the State Comptroller, who shall credit the same to a special fund the Sale of Substandard Liming Material Fund, which Fund is hereby created. The Fund shall be a special nonreverting fund in the state treasury, to be disbursed as provided in subdivision 2 of this subsection.

(2) 2. Such funds as shall thereafter be found to be payable to the purchasers of lots of agricultural liming material on which the penalties were assessed assessments for variance from guaranty were made

shall be paid from the ~~fund~~ *Sale of Substandard Liming Material Fund* on order of the Commissioner. *The State Comptroller shall transfer any balance remaining in such Fund for a period of two years shall be transferred thereafter by the State Comptroller ninety days to the credit of the General Fund of the Commonwealth fund specified in § 3.1-126.12:3.*

§ 3.1-126.9. Seizure of liming material when assessments not paid.

The Commissioner or his agent may seize any commercial liming material belonging to such manufacturer, dealer or agent, if the any person whose name appears on the label of the violative lot of liming material, if such person fails to pay the assessment be not paid for variance from guarantee within three months sixty days after such the Commissioner has given notice to such manufacturer, dealer or agent has been given by the Commissioner person.

§ 3.1-126.10. Appeal from assessment, seizure and sale.

Any person feeling himself aggrieved by any action of the Commissioner under provisions of this chapter shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 3.1-126.11. Prohibited acts.

(a) A. No agricultural liming material shall be sold or offered for sale in ~~this~~ *the* Commonwealth unless it complies with provisions of this chapter.

(b) B. No agricultural liming material shall be sold or offered for sale in ~~this~~ *the* Commonwealth which contains toxic materials in quantities injurious to plants or animals.

C. Any person who shall hinder or obstruct in any way the Commissioner or his agent in the performance of his official duties shall be guilty of a Class 3 misdemeanor.

§ 3.1-126.12:1. Authority of Board and Commissioner to promulgate regulations.

A. The Board is authorized to promulgate such regulations as may be necessary to give effect to the full intent and meaning of this chapter. Such regulations may relate, by way of example, but not by way of limitation, to investigational allowances, definitions, records, manufacturing practices and to the distribution and storage of liming material.

B. The Commissioner may adopt, as a regulation, (i) the Official Fertilizer Terms and Definitions adopted by the Association of American Plant Food Control Officials; (ii) the methods of sampling and analysis for liming material adopted by the Association of Official Analytical Chemists; and (iii) any method of sampling and analysis for liming material developed by the Department or adopted by agencies of the federal government, agencies of other states, the Division of Consolidated Laboratories or other commercial laboratories accredited by the Food and Drug Administration, U.S. Department of Agriculture or Association of Official Analytical Chemists. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. The regulation shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration or revision of any regulation adopted pursuant to this subsection.

§ 3.1-126.12:2. Duty of Commonwealth's attorneys.

It shall be the duty of each attorney for the Commonwealth with responsibility for the enforcement of this chapter, and to whom any violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

§ 3.1-126.12:3. Disposition of funds.

All fees, penalties, funds, including those transferred as specified in subdivision 2 of subsection B of § 3.1-126.8, and except as provided in subdivision 1 of subsection B of § 3.1-126.8, assessments under this chapter that the Commissioner receives shall be paid into a dedicated special fund in the state treasury to be used in carrying out the purpose and provisions of this chapter, to include inspection, sampling and other expenses; except that the Commissioner shall deposit, to the credit of the Virginia Agricultural Foundation Fund, five cents per ton of liming material sold per reporting year of the inspection fee.

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.
2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.
3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife.

4. The Virginia Housing Development Authority.
5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities, except for those created under Chapter 27 (§ 15.1-1228 et seq.) of Title 15.1.
6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.
7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.
8. The Virginia Resources Authority.
9. Agencies expressly exempted by any other provision of this Code.
10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.
11. The Council on Information Management.
12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.
13. [Repealed.]
14. [Repealed.]
15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.
16. The Commissioner of the Department of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.
17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to *subsection B of § 3.1-126.12:1 and subsection A of § 3.1-884.21:1*.
18. The Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.
19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.
20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.
21. The Virginia War Memorial Foundation.
22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
- B. Agency action relating to the following subjects is exempted from the provisions of this chapter:
 1. Money or damage claims against the Commonwealth or agencies thereof.
 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
 3. The location, design, specifications or construction of public buildings or other facilities.
 4. Grants of state or federal funds or property.
 5. The chartering of corporations.
 6. Customary military, naval or police functions.
 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
 8. The conduct of elections or eligibility to vote.
 9. Inmates of prisons or other such facilities or parolees therefrom.
 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
 11. Traffic signs, markers or control devices.
 12. Instructions for application or renewal of a license, certificate, or registration required by law.
 13. Content of, or rules for the conduct of, any examination required by law.
 14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter 14 of Title 2.1.
 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.
 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, Title 28.2.
- C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:
 1. Agency orders or regulations fixing rates or prices.

2. Regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations which consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations which:

(a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;

(b) Are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

(c) Are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing; notice of the proposed adoption of these regulations and the Registrar's above determination shall be published in the Virginia Register not less than thirty days prior to the effective date thereof.

5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law requires that a regulation shall be effective in 280 days or less from enactment of the law or the appropriation act, and the regulation is not exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt such regulations with the prior approval of the Governor. Such regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be published within sixty days of the effective date of the emergency regulation, and the proposed replacement regulation shall be published within 180 days after the effective date of the emergency regulation.

6. [Repealed.]

7. Preliminary program permit fees of the Department of Air Pollution Control assessed pursuant to subsection C of § 10.1-1322.2.

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in § 9-6.14:9 A.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties under the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The award or denial of individual student loans by the Virginia Education Loan Authority.

7. The determination of applications for guaranty of individual student loans or the determination of default claims by the State Education Assistance Authority.

E. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title 62.1 by the Marine Resources Commission shall be in accordance with the provisions of this chapter.

F. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

G. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

H. Minor changes to regulations being published in the Virginia Administrative Code under the

Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

2. That the regulations of the Board of Agriculture and Consumer Services in effect on the effective date of this act promulgated pursuant to the Virginia Agricultural Liming Materials Act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations promulgated by the Board under this act.

3. That §§ 3.1-126.2, 3.1-126.12, and 3.1-126.13 of the Code of Virginia are repealed.