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HOUSE BILL NO. 705

House Amendments in [] — February 13, 1994

A BILL to amend and reenact §§ 3.1-22.5, 3.1-126.1, 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 lime; disposition of funds collected by the Department of Agriculture Services; fees; penalties.

Patrons—Councill, Bloxom, Dickinson, Hull and Moore

Referred to Committee on Agriculture

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-22.5, 3.1-126.1, 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, 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 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.

§ 3.1-126.1. Short title.

This chapter shall be known and may be cited as "The Virginia Agricultural Liming Materials Lime Act."

§ 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 lime; 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 lime is offered for sale.

"Bulk" means materials in nonpackaged form.

"Calcium carbonate equivalent" means the acid neutralizing capacity of any lime, 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 lime to the consumer.

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

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

"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 lime 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 lime.

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

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

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

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

66 "Percent" or "percentage" means by weight.

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

69 "Registrant" means the person registering any lime pursuant to the provisions of this chapter.

70 "Standard [~~agricultural liming material~~ liming ton] " means an agricultural liming material with a
71 calcium carbonate equivalent of ninety percent.

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

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

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

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

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

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

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

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

91 § 3.1-126.2:2. Appointment of agents.

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

94 § 3.1-126.3. Labeling.

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

99 (1) 1. The ~~net weight~~ quantity statement of the ~~agricultural liming material~~ lime;

100 (2) 2. The brand or trade name of the ~~material~~ lime;

101 (3) 3. In the case of agricultural liming material, the identification of the ~~product~~ as to type of the
102 agricultural liming material as defined under § 3.1-126.2 (e) through (i) 3.1-126.2:1;

103 (4) 4. The minimum percentage of available potash, if the ~~liming material contains~~ potash has been
104 added to the lime;

105 (5) 5. Calcium carbonate equivalent of the lime as determined by ~~methods prescribed by procedures~~
106 of the Association of Official Analytical Chemists (AOAC) in its most recent publication. Minimum
107 calcium carbonate equivalents as prescribed by regulation;

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

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

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

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

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

115 (6) 7. The minimum percentum by weight passing through United States Standard sieves as
116 prescribed by regulations; and

117 8. The maximum percentage by weight of the moisture content of the lime; and

118 (7) 9. The name and principal office address of the manufacturer or distributor of the lime.

119 B. For any fluid lime or any packaged lime-fertilizer mixture, the label shall also include the
120 following information:

121 (i) The kind of lime 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 lime or lime-fertilizer mixture to the calcium carbonate equivalent of a standard [~~agricultural liming material~~ liming ton] .

C. For any bulk lime-fertilizer mixture, the label shall also include the following information:

(i) The kind of lime 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 lime or lime-fertilizer mixture to the calcium carbonate equivalent of a standard agricultural liming material.

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

1. The kind of lime 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 lime used in the manufacture of the product before mixing;
 4. The guaranteed analysis of the lime 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 "Sub-standard agricultural 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 lime 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 lime.

(d) G. In the case of any material lime 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.

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

(a) Each separately identified product A. 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

183 a registration fee of fifty dollars per brand of agricultural liming material per registration year. Upon
184 approval by the Commissioner, a copy of the registration shall be furnished to the applicant. All
185 registration shall expire on December 31 of the year for which approval of application is granted the
186 Commissioner or his agent shall furnish a copy of the registration to the applicant. Each registration
187 shall expire on June 30 of the registration year for which the Commissioner or his agent issued the
188 registration. Every such registration shall be valid through July 31 of the next registration year or until
189 issuance of the renewal registration, whichever event first occurs, if the holder thereof shall have filed a
190 renewal application with the Commissioner on or before June 30 of the registration year for which the
191 Commissioner or his agent issued the registration; however, any registration the Commissioner or his
192 agent issued on or after January 1, 1994, and on or before July 1, 1994, shall be issued to expire on
193 June 30, 1995.

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

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

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

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

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

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

238 G. Any person desiring to become a contractor as defined in this chapter shall make application to
239 the Commissioner by July 1 of each year for the permitting year July 1 to June 30 on forms furnished
240 or approved by the Commissioner for a permit to do business in the Commonwealth and obtain said
241 permit before engaging in such business. Each applicant shall pay a permit fee to the Commissioner of
242 fifty dollars per permitting year unless a permit has been obtained under the Virginia Fertilizer Law
243 (§ 3.1-74 et seq.). The contractor shall guarantee compliance with all provisions of this chapter which
244 apply to the sale and delivery of bulk lime. 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 lime the person shells until the person obtain the required permit.

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

(a) Within thirty days following the expiration of registration, which ends on December 31 A. By August 1 of each year, each registrant person who distributes lime 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 lime 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 lime to a nonlicensed person shall submit to the Commissioner by August 1, 1995, a tonnage statement setting forth the number of tons of lime sold for use in each county or city of the Commonwealth by the for the period January 1, 1995, through June 30, 1995. Each person distributing lime 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 lime 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 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, 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 lime 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 lime 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 lime was purchased. The report shall be made

306 *on a form furnished or approved by the Commissioner.*

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

311 § 3.1-126.6. Inspection, sampling, analysis.

312 (a) A. It shall be the duty of the Commissioner, ~~who may act through his authorized~~ *or his* agent, to
313 sample, inspect, make analyses of, and test agricultural liming ~~materials lime~~ distributed within the
314 Commonwealth as he may deem necessary to determine whether such agricultural liming materials are
315 *lime* in compliance with the provisions of this chapter. The Commissioner, ~~individually or through his~~
316 agent, is authorized to enter upon any public or private premises, or ~~earriers any carrier~~ during regular
317 *business operating* hours, in order to have access to agricultural liming ~~material lime~~ subject to the
318 provisions of this chapter and regulations pertaining thereto, and to the records relating to ~~their~~ *its*
319 distribution.

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

322 (e) ~~The B.~~ *The Commissioner or his agent shall distribute the results of official analysis analyses of*
323 *agricultural liming materials lime* and portions of official samples shall be distributed by the
324 *Commissioner of lime* as provided in the regulations at least annually.

325 § 3.1-126.7. Stop sale, use, removal or seizure order; review.

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

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

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

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

344 § 3.1-126.8. Assessments for violations of chapter.

345 (a) A. Any person convicted of violating any provision of this chapter or the rules and regulations
346 promulgated ~~thereunder hereunder~~ shall be [subject to a penalty of not less than \$25 nor more than
347 \$200 to be enforced by a summary proceeding in a court of competent jurisdiction *guilty of a Class 1*
348 *misdemeanor.*] Nothing in this chapter shall be construed as requiring the Commissioner or his
349 authorized agent to report for prosecution, or for the institution of seizure proceedings as a result of
350 minor violations of this chapter when he believes that the public interest will best be served by a
351 suitable written warning , *where the Commissioner considers the violations of the act to be minor. In*
352 *such cases, the Commissioner may serve a suitable notice of warning in writing, when he believes that*
353 *the public interest will be best served by so doing.*

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

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

362 (1) All penalties or assessments levied by the Commissioner shall within three months from date of
363 notice to manufacturer, dealer or agent, be paid to the purchasers of such penalized lots of agricultural
364 liming material; receipts taken therefor and promptly forwarded to the Commissioner. 1. The person
365 whose name appears on the label of the violative lot of lime shall pay the assessment for variance from
366 guarantee levied by the Commissioner. The person assessed shall obtain a receipt signed by the
367 purchaser for each payment, and promptly forward same to the Commissioner. The person whose name

appears on the label of the violative lot of lime shall pay the assessment for variance from guarantee within sixty days from date of notice to the person assessed. If the 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 lime 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 Lime Fund, which Fund is hereby created. The Fund shall be a special nonreverting fund in the state treasury, to be disbursed on warrant of the Commissioner 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 lime on which the penalties were assessed assessments for variance from guaranty were made shall be paid from the fund Sale of Substandard Lime Fund on order of the Commissioner. Any 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 Virginia Agricultural Council Fund.

§ 3.1-126.9. Seizure of lime when assessments not paid.

The Commissioner or his agent may seize any commercial liming material lime belonging to such manufacturer, dealer or agent, if the any person whose name appears on the label of the violative lot of lime, 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 lime 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 lime 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 [4 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 lime.

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 lime adopted by the Association of Official Analytical Chemists; and (iii) any method of sampling and analysis for lime 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.

C. 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 subsections A and B of this section.

[D. The Board is authorized to promulgate regulations increasing the amounts of charges and fees established in this chapter, excluding any assessments provided in § 3.1-126.8, if the Board finds that the charges and fees established in this chapter collectively are not sufficient to defray the costs of administering and enforcing the program established by this chapter. The charges and fees established by regulations of the Board, together with any assessments collected pursuant to § 3.1-126.8, shall approximate the direct and indirect cost of administering and enforcing the program established by this

429 ~~chapter.~~]

430 § 3.1-126.12:2. *Duty of Commonwealths' attorneys.*

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

434 § 3.1-126.12:3. *Disposition of funds.*

435 *All fees, penalties, funds, including those transferred as specified in subdivision 2 of subsection B of*
436 *§ 3.1-126.8, and except as provided in subdivision 1 of subsection B of § 3.1-126.8, and assessments*
437 *under this chapter that the Commissioner receives shall be paid into a dedicated special fund in the*
438 *state treasury to be used in carrying out the purpose and provisions of this chapter, to include*
439 *inspection, sampling and other expenses; except that the Commissioner shall deposit, to the credit of the*
440 *Virginia Agricultural Council Fund, five cents per ton of lime sold per reporting year of the inspection*
441 *fee.*

442 9-6.14:4.1. Exemptions and exclusions.

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

446 1. The General Assembly.

447 2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly
448 granted any of the powers of a court of record.

449 3. The Department of Game and Inland Fisheries in promulgating regulations regarding the
450 management of wildlife.

451 4. The Virginia Housing Development Authority.

452 5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created
453 under this Code, including those with federal authorities, except for those created under Chapter 27
454 (§ 15.1-1228 et seq.) of Title 15.1.

455 6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22,
456 such educational institutions shall be exempt from the publication requirements only with respect to
457 regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and
458 disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and
459 disciplining of students.

460 7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii)
461 classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for
462 producers' milk, time and method of payment, butterfat testing and differential.

463 8. The Virginia Resources Authority.

464 9. Agencies expressly exempted by any other provision of this Code.

465 10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments
466 to the Formulary pursuant to § 32.1-81.

467 11. The Council on Information Management.

468 12. The Department of General Services in promulgating standards for the inspection of buildings for
469 asbestos pursuant to § 2.1-526.14.

470 13. [Repealed.]

471 14. [Repealed.]

472 15. The State Council of Higher Education for Virginia, in developing, issuing, and revising
473 guidelines pursuant to § 23-9.6:2.

474 16. The Commissioner of the Department of Agriculture and Consumer Services in adopting
475 regulations pursuant to subsection B of § 3.1-726.

476 17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and
477 Consumer Services in promulgating regulations pursuant to subsection A of § 3.1-884.21:1 *and*
478 *§ 3.1-126.12:1.*

479 18. The Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of
480 certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.

481 19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating
482 amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

483 20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner
484 Formulary established pursuant to § 54.1-2957.01.

485 21. The Virginia War Memorial Foundation.

486 22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to
487 the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage
488 pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

489 B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

490 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 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

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

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

- 558 1. The assessment of taxes or penalties under the tax laws.
- 559 2. The award or denial of claims for workers' compensation.
- 560 3. The grant or denial of public assistance.
- 561 4. Temporary injunctive or summary orders authorized by law.
- 562 5. The determination of claims for unemployment compensation or special unemployment.
- 563 6. The award or denial of individual student loans by the Virginia Education Loan Authority.
- 564 7. The determination of applications for guaranty of individual student loans or the determination of
565 default claims by the State Education Assistance Authority.

566 E. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia
567 Register Act, is excluded from the operation of subsection C of this section and of Article 2
568 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for
569 activity undertaken pursuant to Title 62.1 by the Marine Resources Commission shall be in accordance
570 with the provisions of this chapter.

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

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

578 H. Minor changes to regulations being published in the Virginia Administrative Code under the
579 Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code
580 Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

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

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