



**WEST VIRGINIA  
SECRETARY OF STATE**

**NATALIE E. TENNANT**

**ADMINISTRATIVE LAW DIVISION**

eFILED

8/26/2016 10:11:30 AM

OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY **Agriculture**

RULE TYPE **Legislative**

RULE NAME **Herd Sharing**

AMENDMENT TO EXISTING RULE **No** TITLE-SERIES **61-36**

CITE AUTHORITY **§19-1-7**

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**

**Chris T Ferro -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



Title-Series: 61-36



Rule Id: 10176



Document: 28875



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)**

AGENCY **Agriculture**

RULE TYPE **Legislative**

RULE NAME **Herd Sharing**

**AMENDMENT TO EXISTING RULE No TITLE-SERIES 61-36**

CITE AUTHORITY **§19-1-7**

**PRIMARY CONTACT**

Chris Ferro

1900 Kanawha Boulevard, East

Charleston, STATE ZIP

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CITE AUTHORITY **§19-1-7**

AUTHORIZING STATUTE(S) CITATION

**§19-1-7**

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD

**Monday, June 27, 2016**

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

**A list of interested or affected parties were provided to the Secretary of States office**

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED

**Wednesday, July 27, 2016**

**Chris T Ferro -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 2)**

AGENCY **Agriculture**

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CITE AUTHORITY **§19-1-7**

ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,  
AMENDMENTS, REASONS FOR AMENDMENTS.

**Attached**

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE  
FOLLOWING PUBLIC HEARING: (BE EXACT)

**Friday, August 26, 2016**

**Chris T Ferro -- By my signature, I certify that I am the person authorized to file legislative rules, in  
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



Title-Series: 61-36



Rule Id: 10176



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 3)**

AGENCY **Agriculture**

RULE TYPE **Legislative**

RULE NAME **Herd Sharing**

AMENDMENT TO EXISTING RULE **No** TITLE-SERIES **61-36**

CITE AUTHORITY **§19-1-7**

IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. GIVE THE DATE UPON WHICH YOU FILED IN THE STATE REGISTER A NOTICE OF THE TIME AND PLACE OF A HEARING FOR THE TAKING OF EVIDENCE AND A GENERAL DESCRIPTION OF THE ISSUES TO BE DECIDED.

**Monday, June 27, 2016**

**Chris T Ferro -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



Title-Series: 61-36



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 4)**

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RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **No** TITLE-SERIES **61-36**  
RULE NAME **Herd Sharing**

CITE AUTHORITY **§19-1-7**

DATE OF HEARING OR COMMENT PERIOD

**Monday, June 27, 2016**

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS  
REQUIRED TOGETHER WITH THE REASONS THEREFOR?

**Friday, August 26, 2016**

ATTACH FINDINGS AND DETERMINATIONS AND REASONS

**Attached**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**  
**Chris T Ferro -- By my signature, I certify that I am the person authorized to file legislative rules, in  
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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)**

AGENCY **Agriculture**  
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RULE NAME **Herd Sharing**

CITE AUTHORITY **§19-1-7**

**PRIMARY CONTACT**

Chris Ferro  
1900 Kanawha Boulevard, East

Charleston, STATE ZIP

**SECONDARY CONTACT**

Jodee Martin  
1900 Kanawha Boulevard, East

Charleston, STATE SECONDARY ZIP SECONDARY

Chris T Ferro -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

**Under Legislative Rule §61-36-1, the WVDA has the responsibility for overseeing the shared animal ownership agreement and inspection process in order to facilitate the consumption of raw milk. With the Exception of the amount in the "Other" category below, all values represent the anticipated per-test expense for the required inspection process. Total annual anticipated cost cannot be reasonably estimated, as it is dependent on the number of participants.**

**Chris T Ferro -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)**

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CITE AUTHORITY **§19-1-7**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
<b>ESTIMATED TOTAL COST</b>			
PERSONAL SERVICES	309.00	309.00	309.00
CURRENT EXPENSES	102.00	102.00	102.00
REPAIRS AND ALTERATIONS	0.00	0.00	0.00
ASSETS	0.00	0.00	0.00
OTHER	1000.00	0.00	0.00

**ESTIMATED  
TOTAL REVENUES**

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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)**

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CITE AUTHORITY **§19-1-7**

**3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.**

The estimates provided above for Personal Services and Current Expenses reflect the anticipated cost for staff from the WVDA Animal Health and Regulatory and Environmental Affairs Divisions to perform single inspection to ensure the health of milk-producing animals and operational safety. This includes time required to travel to and perform on-site inspection activities, as well as clerical time for documentation review and recordkeeping. As the rule is written, there is no offsetting revenue or reimbursement required from the producers for the inspections. The amounts listed are PER TEST ONLY; since the number of participants cannot be estimated, an annualized cost cannot be determined. The \$1,000 first year expense is for upgrades to the agency's regulatory tracking software and databases to enable the tracking of raw milk operations, inspections and follow-up testing. Sec. 5.3. of the rule requires monthly test of raw milk in order to maintain ongoing production. The producers may submit samples to the WVDA laboratory to fulfill this testing requirement, but other non-agency authorized laboratories may be utilized as well. Should a producer utilize the WVDA for testing, the estimated per-test charge is \$82 for E.coli, \$48 for Listeria, \$60 for Salmonella, and \$130 for Campylobacter. Any positive results will require a confirmation test for an additional fee. However, total annual revenue cannot be reasonably estimated due to an unknown number of producers who will submit samples.

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CITE AUTHORITY **§19-1-7**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

**N/A**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

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**FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)**

AGENCY **Agriculture**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE No TITLE-SERIES **61-36**  
RULE NAME **Herd Sharing**

CITE AUTHORITY **§19-1-7**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

The WVDA has modified its rule after careful consideration of the comments received in the following sections: 61-36-2,61-36-4,61-36-5,61-36-6. Comments regarding a change in the testing procedure would require a change to the law and not the rule, such as for TB and Brucellosis, as they are requirement of §19-1-7 (4) (c),§19-1-7 (4) (c) (1. Additionally the requirement to have an Official ID is a federal requirement and can be referenced in the Code of Federal Regulations Parts 77 & 78 Title 9.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**  
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Title-Series: 61-36



Rule Id: 10176



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**Title 61  
Legislative Rule  
Department of Agriculture  
Series 36  
Herd Sharing**

**§61-36-1. General.**

- 1.1 Scope. – This rule establishes guidelines for shared animal ownership agreements to consume raw milk.
- 1.2 Authority. – W. Va. Code §19-1-7
- 1.3 Filing Date. -
- 1.4 Effective Date. –
- 1.5 Sunset Date. – (Five years from effective date)

**§61-36-2. Definitions and Terms.**

2.1 “Adulterated” means the addition or inclusion of unclean, unwholesome, inferior, impure or foreign materials into food product; the production, distribution or sale of raw milk or raw milk products from a facility that does not possess a valid permit from the Department or is not registered with the Department as a Herd Share program or any raw milk producer or facility that fails to meet any of the requirements of these rules.

2.2. “Animal health requirements” means the requirements for milk-producing animals established by the state veterinarian, in accordance with state and national standards.

2.3. “Brucella” means a type of aerobic bacteria that causes brucellosis, also known as Malta fever, a disease that causes fever, weakness and bodily pain. The bacterium is transmissible to humans through contact with infected dairy products or animals.

2.4. “Campylobacter” means a rod-shaped bacterium that causes infections in cattle and humans. Unpasteurized milk infected with campylobacter is a common cause of gastroenteritis.

2.5. “Code of federal regulations (CFR)” means the codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the federal government of the United States.

2.6. “Commissioner” mean the Commissioner of Agriculture for the State of West Virginia or his or her duly authorized agent.

2.7. “Department” means the Department of Agriculture of the State of West Virginia.

~~2.7. “Distributor” means any person who sells, exposes for sale, offers for sale, exchanges, barter, gives, parcels out, allots, shares or dispenses raw milk under West Virginia Code §19-1-7.~~

2.8. “E.coli” (Escherichia coli) means one of several types of bacteria that normally inhabit the testine of huns and animals.

2.9. “Herd Seller” means any person over the age of eighteen (18), who owns milk producing animals and enters into a Shared Animal Ownership Agreement with a Responsible Party to obtain a share or shares of the milk producing animal for the purpose of obtaining raw milk from the milk-producing animal for consumption.

2.10. “Herd Share Owner” means any person who has purchased share(s) of a milk producing animal.

2.11. “Herd Health Plan” means a written document between the Herd Seller and their primary veterinarian showing how they will manage the milk-producing animals regarding housing, nutrition and medical care to ensure the animals are healthy and well cared for.

2.12. “Listeria” means a genus of small gram-positive flagellated rod-shaped bacteria that do not form spores, are aerobic or facultatively anaerobic, have a tendency to grow in chains and that include one *L. monocytogenes* causing listeriosis.

2.13. “Local health department” means the executive office of the local board of health or his or her duly authorized representatives.

2.14. “Milk Producing Animal” means any animal that is capable of producing milk for human consumption. These include but are not limited to cattle, buffalo, goat, sheep, camel, donkey, horse, reindeer and yak.

2.15. “Official Sample” means any sample taken in accordance with the provision of this article.

2.16. “Person” means any individual, partnership, association, fiduciary, firm, company, corporation or any organized group of people whether incorporated or not. The term person extends to the agents, servants, officers and employees of the person.

2.17. “Potable Water” means free of coliform and fit for human consumption.

~~2.18 “RAMP” (Risk Analysis and Management Program) means an individual farm’s written food safety plan that identifies potential risks, hazards, critical limits and corrective actions associated with that farm.~~

~~2.19.~~ 2.18. “Responsible Party” means an individual that is legally able to exercise control over a decision or action and are therefore liable for the outcome. All Responsible Parties who wish to enter into a legally binding contractual Shared Animal Ownership Agreement must be at least eighteen (18) years old.

~~2.20.~~ 2.19. “Salmonella” means any of a genus *Salmonella* of usually motile enterobacteria that are pathogenic for humans and other warm-blooded animals that cause food poisoning, gastrointestinal inflammation, typhoid fever or septicemia.

~~2.21.~~ 2.20. “Shared Animal Ownership Agreement” means a written agreement between a Herd Seller of a milk-producing animal and a Responsible Party in order to consume raw milk.

~~2.22.~~ 2.21. “State Veterinarian” means the state animal health official, employed by the Commissioner of Agriculture.

### **§61-36-3. Shared Animal Ownership Agreement.**

3.1. Each Herd Seller shall complete, sign and date a Shared Animal Ownership Agreement on a form distributed by the Commissioner with the following information:

3.1.a. Name, physical and mailing addresses and telephone numbers of the Herd Seller and Herd Share Owner and Responsible Party(ies);

3.1.b. The percentage ownership interest of each Herd Share Owner in a milk-producing animal;

3.1.c. Language evidencing the agreement of each Herd Share Owner to pay the Herd Seller for the percentage ownership interest for the care and boarding of the milk-producing animal;

3.1.d. An acknowledgement by all parties of the inherent dangers of consuming raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella and E. coli, that has not been pasteurized to remove bacteria and that is particularly dangerous to children, pregnant women and those with compromised immunity;

3.1.e. An acknowledgement by the Herd Share Owner agreeing to release the Herd Seller of liability for the inherent dangers of consuming raw milk. This release of liability does not release the Herd Seller for deliberate or negligent acts unrelated to consuming raw milk; and

3.1.f. An acknowledgement that no party to the Shared Animal Ownership Agreement may distribute raw milk, even if no financial gain is realized. Raw milk cannot be given away. Sale or resale or the offer of sale of raw milk obtained from a share is strictly prohibited.

3.2. The signed and executed Shared Animal Ownership Agreement shall be filed by the Herd Seller with the Commissioner of Agriculture. The Commissioner of Agriculture will provide written acknowledgement of the receipt of the Shared Animal Ownership Agreement to the Herd Seller within fifteen (15) business days. Herd Sellers must still comply with the Animal Health Report Requirements including having both a Herd Health Plan ~~and a RAMP~~ in place before raw milk can be distributed to any Herd Share Owners or other Responsible Party(ies).

3.3. The Commissioner of Agriculture will maintain all records submitted by Herd Sellers, ~~including the RAMP~~, testing results and Shared Animal Ownership Agreements as public records.

## §61-36-4. Animal Health Reporting

4.1. The Herd Seller shall meet the animal health requirements for milk-producing animals established by the State Veterinarian in accordance with state and national standards including the following:

4.1.a. Raw milk from milk-producing animals intended for human consumption shall be from a herd that tested negative within the previous twelve (12) months for brucellosis, tuberculosis and other diseases as required by the State Veterinarian;

4.1.b. Shall submit a Herd Health Plan to the State Veterinarian. The Herd Health Plan shall include expected testing dates for tuberculosis and brucellosis ~~and rabies vaccination information;~~

4.1.c. Shall have an initial inspection from the State Veterinarian, ~~or his/her designee;~~ or a licensed and accredited veterinarian; and

~~4.1.d. Shall provide a copy of the ownership agreement to the State Veterinarian or his/her designee;~~

~~4.1.e. Shall produce and provide a copy of the Risk Analysis and Management Program (RAMP) to the State Veterinarian. The RAMP shall be the Herd Seller's documentation of risks associated with their individual herd share unit and a plan to minimize risk. The information contained within each RAMP shall include, but not be limited to, the following:~~

~~4.1.e.1. Introduction of animals to the milk sharing herd, or other animals which may come into contact or close proximity thereto;~~

~~4.1.e.2. Testing and care protocols for existing animals;~~

~~4.1.e.3. Sanitary conditions including cleaning protocols and documentation of cleaning procedures;~~

~~4.1.e.4. Animal husbandry practices;~~

~~4.1.e.5. Environmental concerns;~~

~~4.1.e.6. Training of milking team, milk handling protocols, milking protocols, milk temperatures, milk management and storage, protection and storage of milk after milking is complete and milk distribution protocols;~~

~~4.1.e.7. Maintenance and administration of microbial and other required tests;~~

~~and~~

~~4.1.e.8. 4.1.c.1. Any other info required by the State Veterinarian.~~

~~4.1.f. 4.1.d. Shall have negative test results for milk-producing animal(s) tested thirty (30) days prior to entering the herd sharing program;~~

~~4.1.g. Shall provide potable water test results to the State Veterinarian;~~

4.1.h. ~~4.1.e.~~ Shall apply for and m Maintain official identification of all animals involved in the herd share program; and as required in Parts 77 & 78, Title 9, CFR



~~4.1.j. Shall vaccinate herd share animals yearly against the rabies virus.~~

4.2. Any Party to a Shared Animal Ownership Agreement or any physician who becomes aware of an illness directly related to consuming raw milk shall report the illness to the Local Health Department and the Commissioner of Agriculture.

4.3. Upon notification of an illness directly related to consuming raw milk, the Commissioner or his/her designee shall contact and warn other parties consuming raw milk from the same Herd Seller, in addition to other reporting requirements.

#### §61-36-5. Raw Milk Dairy Industry Standards

~~5.1. The Herd Seller shall be responsible for any costs related to testing the raw milk associated with the Shared Animal Ownership Agreement milk producing animal.~~

~~5.2.~~ 5.1. Testing of raw milk ~~shall~~ will be completed ~~at a~~ by the Department laboratory ~~approved by the Department.~~ initially and yearly, at no expense to the Herd Seller. All results shall be reported by the laboratory to the Department within thirty (30) days.

5.1.a. Additional testing of raw milk conducted by the Department, or a Department approved laboratory shall be the responsibility of the Herd Seller.

~~5.3.~~ 5.2. The Herd Seller shall have raw milk tested ~~once a month~~ initially and yearly for the following:

~~5.3.a.~~ 5.2.a. Coliform testing is based on a rolling three-month average and should be less than ~~40~~ 25 coliforms per ml raw milk;

~~5.3.b.~~ 5.2.b. Standard Plate Count (SPC) testing ~~target is and should be less than 30,000 per ml raw milk and/or 750,000~~ Somatic Cell Count (SCC) per ml raw milk; and

~~5.3.c.~~ 5.2.c. Test negative for E. Coli 0157:H7, Listeria Monocytogenes, Salmonella Spp., and Campylobacter Species.

~~5.3. The Herd Seller shall have a potable water supply for the milk producing animal that is tested once every three (3) months. The Herd Share seller shall furnish a copy of potable water tests to the State Veterinarian.~~

~~5.5.~~ 5.3. Commingling of raw milk from other dairies is not permitted.

~~5.6.~~ 5.4. The milking team should be healthy and use good biosecurity techniques, ~~such as wearing mask if ill and wearing disposable gloves at all times.~~

~~5.7.~~ 5.5. Potable water ~~shall~~ should be used to clean raw milk handling equipment. All equipment used for milking must be cleaned and sanitized between milking to decrease bacterial

contamination. Only food grade cleaners and sanitizers shall be used in the cleaning and sanitizing of raw milk equipment and containers.

~~5.8.~~ 5.6. Protection and security of raw milk after milking is complete is accomplished by using only clean and sanitized containers for milk storage, handling and distribution of raw milk.

~~5.9.~~ ~~A written recall and critical incident management plan shall be documented and ready for use in the case of an outbreak.~~

~~5.10.~~ 5.7. Milk ~~must~~ should be cooled to forty (40) degrees Fahrenheit within two (2) hours of completing milking to inhibit bacterial growth. Thereafter, the Herd Seller ~~must~~ should maintain raw milk at forty five (45) degrees Fahrenheit or lower, until distribution. ~~A Herd Seller must record and maintain raw milk temperature logs for two (2) years and allow the State Veterinarian access to all records, upon written request.~~

~~5.11.~~ ~~The Herd Seller shall share all test results and temperature logs with the Herd Share Owners and Responsible Party(ies) if so requested.~~

~~5.12.~~ ~~Herd Sellers shall maintain a RAMP as outlined in section 4.1.e herein.~~

~~5.13.~~ ~~All documents relating to raw milk shall be made available to the Commissioner or his/her designee.~~

~~5.14.~~ ~~Whenever three (3) of the last five (5) consecutive bacteria, coliform or somatic cell tests exceed any of the raw milk quality standards listed in this rule, the Herd Seller shall be notified in writing, by the issuance of a cease and desist order signed by the Commissioner, that no raw milk shall be offered for human consumption until such time as subsequent official samples are found to meet the standards set forth in these rules and the Commissioner lifts the cease and desist order.~~

~~5.15.~~ ~~Whenever a Herd Seller fails to comply with the reporting requirements or other terms and conditions contained in this rule, they are subject to a written cease and desist order, signed by the Commissioner, and no raw milk shall be offered for human consumption until such time as reporting requirements or other terms and conditions are met and the Department determines three (3) official samples in three (3) consecutive months are found to comply with each condition and standard set forth in this rule and the Commissioner lifts the cease and desist order.~~

## **§61-36-6. Prohibited Acts.**

6.1. Distribution of raw milk, in any quantity, by the Herd Seller to anyone other than Responsible Parties who have signed a Shared Animal Ownership Agreement with the Herd Seller is prohibited. This includes selling, reselling, donating or giving away raw milk.

6.1.a. In accordance with the provisions of Part 21, Title 1240, CFR (Code of Federal Regulations) No person shall deliver, sell or otherwise distribute any milk or milk product in final package form for direct human consumption unless the product has been pasteurized or is made from dairy ingredients (milk or milk products) that have all been pasteurized, except where alternative procedures to pasteurization are provided for curing of certain cheese varieties.

6.1.b. Deliveries of raw milk from the Herd Seller to the Share Owner shall take place within West Virginia.

6.2. Distribution of raw milk, by Responsible Parties, obtained under a Shared Animal Ownership Agreement to anyone, in any quantity whatsoever, is prohibited. This includes selling, reselling, advertising for sale, donating or giving away raw milk.

6.3. Raw milk shall not be offered for sale or distributed to any restaurant, food establishment, grocery store or farmers' market by anyone whosoever.

6.4. Distribution of any adulterated raw milk for human consumption is prohibited.

6.5. The use of any misleading marks, words or endorsements on the label of a container of raw milk is prohibited. Registered trade designs or similar terms on the bottle cap or label may be used if the Department determines that the designs or terms are not misleading. Any misleading labeling on the final container will cause the product to be considered misbranded.

#### **§61-36-7. Hearings, Appeals and Penalty**

7.1. Adulterated raw milk may be impounded and disposed of by the Department if the Department learns of, discovers or is made aware of adulterated raw milk distribution. The Herd Seller, or animal owner if not a Herd Seller, shall be issued a written cease and desist order, signed by the Commissioner, and no raw milk shall be offered for human consumption until such time as subsequent official samples are found to comply with each condition and standard set forth in this rule and the Commissioner lifts the cease and desist order.

7.2. The Commissioner of Agriculture may impose an administrative penalty not to exceed \$100.00 for a person who violates the provisions of this rule. Any penalty imposed under this subsection may be contested by the person against whom it is imposed pursuant to article five, chapter twenty-nine-a of the Code of the State of West Virginia and is afforded all relief available thereunder.

7.3. Any person aggrieved by any action taken under this article shall be afforded the opportunity for a hearing before the Commissioner pursuant to article five, chapter twenty-nine-a of the Code of the State of West Virginia and any other relief available thereunder.