



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Agriculture TITLE-SERIES: 61-41

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: 61-41 Raw Milk

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §19-1-7

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

CHAPTER 19. AGRICULTURE.

All Articles Article 1A

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-7. Sale of raw milk.

(a) For purposes of this section, raw milk means milk that has not been pasteurized as specified in 21 C.F.R. §1240.61.

(b) Notwithstanding any other provision of this code to the contrary, raw milk may be sold by a seller in West Virginia to a consumer in West Virginia: Provided, That any container of raw milk sold pursuant to this article shall be clearly labeled as unpasteurized raw milk, and shall include the name and physical address of the seller, the date of production, and the following warning: Consuming unpasteurized raw milk may increase your risk of foodborne illness, especially for children, elderly, immunocompromised individuals, and persons with certain medical conditions.

(c) The Commissioner of Agriculture, in consultation with the Department of Health, may propose rules for promulgation in accordance with the provisions of §29A-3-1 et seq. of this code in compliance with raw milk dairy industry standards.

Previous §19-1-6. Duty of assessor to gather statistics.

§19-1-7. Sale of raw milk.

Next §19-1-8. Penalty for failure of assessor to perform duties.

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IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/2/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/2/2024

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

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

n/a

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule implements the provisions set for in West Virginia Code §19-1-7 regarding the sale of raw milk in the State of West Virginia.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

HB4911 which passed during the regular legislative session of 2024 making the sale of raw milk legal in the State of West Virginia, and also allowing the West Virginia Department of Agriculture to promulgate legislative rules.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

| Effect of Proposal | Fiscal Year | | |
|------------------------------------|--|--|--|
| | 2024 Increase/Decrease (use "-") | 2025 Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
| 1. Estimated Total Cost | 0 | 0 | 0 |
| Personal Services | 0 | 0 | 0 |
| Current Expenses | 0 | 0 | 0 |
| Repairs and Alterations | 0 | 0 | 0 |
| Assets | 0 | 0 | 0 |
| Other | 0 | 0 | 0 |
| 2. Estimated Total Revenues | 0 | 0 | 0 |

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Norman Bailey -- 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 61
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 41
RAW MILK

§61-41-1. General.

1.1. Scope. -- This rule implements the provisions set forth in W. Va. Code §19-1-7 regarding the sale of raw milk in the State of West Virginia.

1.2. Authority. -- W. Va. Code §19-1-7

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2034.

§61-41-2. Definitions.

2.1. "Commissioner" means the Commissioner of Agriculture or his or her designee.

2.2. "Date of production" means the date on which the raw milk was secreted from the mammal or date on which the raw milk product(s) were made.

2.3. "Department" means the West Virginia Department of Agriculture and its employees.

2.4. "Raw milk" or "unpasteurized milk" means milk that has not been pasteurized in accordance with 21 C.F.R. §1240.61.

2.5. "Raw Milk Product(s)" means any product(s) derived directly by raw milk or is part of what is secreted from the mammal, including, but not limited to: raw milk, skimmed milk, cream, and such product(s) that otherwise come from the raw milk or mammal itself and do not require further processing.

2.6. "Seller" means a person or entity offering for sale raw milk to a consumer.

2.7. "Sale" means any method of transaction used by a Seller, including, but not limited to, the following means: allotting shares, bartering, exchanging, exposing for the purposes of sale, giving, offering for sale, parceling out, or dispensing raw milk.

§61-41-3. Authority.

3.1. Pursuant to W.Va. Code §19-1-7, the Department is authorized, as well as the Department of Health, by rulemaking authority, to regulate the intrastate sales of raw milk as to certain requirements for the purposes of consumer protection and public safety.

§61-41-4. Labeling.

4.1. All container(s) of raw milk and raw milk product(s) shall have a label affixed, and such label shall clearly indicate the following: "unpasteurized raw milk."

4.2. The label shall be in English, with legible print, with the size of such print being easily readable and without smudging or potential for smudging (e.g., by use of a waterproof ink, label, or by other impermeable means of printing the label).

4.3. The label shall include the following warning: "consuming unpasteurized raw milk may increase your risk of foodborne illness, especially for children, elderly, immunocompromised individuals, and persons with certain medical conditions."

4.4. The label shall contain the following information:

4.4.a. The name and physical address of the seller;

4.4.b. The date of production; and

4.4.c. The content(s) of the container and quantity of such content(s).

§61-41-5. Handling and transport.

5.1. It is lawful to transport, sell, and possess raw milk and/or raw milk products within the State of West Virginia (intrastate).

5.2. Raw milk and/or any raw milk product(s) intended for sale shall be stored in a device or system that maintains a temperature of 35 to 40 degrees Fahrenheit until the exchange of sale.

§61-41-6. Adulteration.

6.1. Any raw milk and/or any raw milk product(s) shall be considered adulterated if:

6.1.a. It contains or otherwise exhibits any poisonous, infectious, deleterious substance, or compound in a quantity which may render it injurious to health; or

6.1.b. It contains or otherwise exhibits any added poisonous or deleterious substance for which no safe tolerance has been established by federal law or regulation, or which is found to exist in the product at levels which are more than a legally established tolerance; or

6.1.c. It contains any substance which is added thereto to make it appear better or of greater value than it is.

6.2. Any complaints or illnesses relating to the adulteration of raw milk and/or any raw milk product(s), if received by the Department, will be referred to the appropriate contact or division of the West Virginia Department of Health ("WVDH") for evaluation as to health concerns, outcomes, or necessary action by health officials, and/or for further action otherwise necessary.

6.3. Notwithstanding the provisions above, flavored raw milk and/or any flavored raw milk product(s) shall not be considered adulterated so long as food-grade flavoring is used as the method for flavoring the raw milk or raw milk product(s).