

Document: AROC Notice, **Register Page Number:** 25 IR 1734
Source: February 1, 2002, Indiana Register, Volume 25, Number 5
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**TITLE 410 INDIANA STATE DEPARTMENT OF
HEALTH**

LSA Document #01-7

December 20, 2001

Chairman
c/o George Angelone
Administrative Rules Oversight Committee
302 Statehouse
Indianapolis, Indiana 46204

Re: 410 IAC 7-21 [*LSA Document #01-7(F) may be found at 25 IR 1615.*]

Dear Mr. Chairman:

In 2000, the Indiana State Department of Health, pursuant to Ind. Code 16-42-5-5, which allowed, but did not require adoption of rules, adopted retail food establishment rules to replace the outdated food establishment rules that were in place. The new rules were based in large part on the FDA's newly issued Model Food Code. With current retail food rules in place the agency turned its attention to rules for the wholesale side of the food industry. After considerable consultation with the wholesale food industry, 410 IAC 7-21, a rule establishing a minimum sanitary standard for the wholesale food industry is being promulgated.

Under Ind. Code 4-22-2-19 an agency that adopts a rule must begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule unless it meets an exception found in Ind. Code 4-22-2-19(a). This rulemaking action does not meet any of the exceptions listed under section 19(a) because pursuant to Ind. Code 16-42-5-5, which was originally adopted in 1949, the Department "may" adopt rules, but is not required to. Therefore, the Department cannot comply with the sixty (60) day requirement of Ind. Code 4-22-2-19(a)(1). Even in 1995 when Ind. Code 4-22-2-19 became law it would have been impossible to have adopted a rule based upon a 1949 law within 60 days of that 1949 law.

The Department has taken the necessary action to timely adopt a rule to protect the public health in the wholesale food industry. Since the Department cannot comply with Ind. Code 4-22-2-19(c)(1) this written notification is provided.

If you need additional information please contact Burton Garten at (317) 233-7874.

Sincerely,

Veronica Hibbler, Director
Office of Legal Affairs