

60 Day Requirement (IC 4-22-2-19)

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16-42-5-5, which allowed, but did not require adoption of rules, adopted retail food establishment rules to replace the outdated food establishment rules that were in place.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 become 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

TITLE 762 INDIANA POLITICAL SUBDIVISION RISK MANAGEMENT COMMISSION

LSA Document #01-401

November 14, 2001

Chairperson, Administrative Oversight Committee
c/o George Angelone
Legislative Services Agency

Re: Rule pursuant to IC 27-1-29-16

Dear Chairperson:

Pursuant to IC 27-1-29-16, the Indiana Political Subdivision Risk Management Commission shall adopt rules for implementation of IC 27-1-29. The Commission did adopt a rule in 1993. This administrative rule will expire on December 31, 2001.

In accordance with IC 4-22-2-19, this letter is to notify you that the Indiana Political Subdivision Risk Management Commission intends to adopt a rule to replace the one set to expire at the end of this year. A notice of intent has been submitted for publication in the December 2001 volume of the Indiana Register.

If you have any questions I can be reached at 232-0143.

Very truly yours,

Amy E. Strati
Chief Counsel

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #01-298

December 11, 2001

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

Re: LSA Doc #01-298: 856 IAC 1-28.1, Institutional Pharmacies and Pharmacy Services [*LSA Document #01-298(F) may be found at 25 IR 1676.*]

Dear Mr. Chairman:

The Indiana Board of Pharmacy recently rewrote the Institutional Pharmacies and Pharmacy Services rules. Rules for such pharmacies exist, but there was deemed a need to update these rules. The Board's intention was to amend the current rules.

The Attorney General's office, upon review of the rules has indicated that under IC 4-22-2-19, these rules would technically be new rules that would require adoption within 60 days of the legislature giving statutory authority to the Board to adopt such rules. Amendments of rules are excepted from the requirements of the statute.

IC 4-22-2-19 does seem to limit the options for agencies in how they go about amending a rule. Traditionally, when amending a rule that required significant changes in the existing rule, the Board used the method of repealing the current rule with a new rule rather than striking massive amounts of the current rule and adding large amounts of new text. Apparently, the current IC 4-22-2-19 does not allow for this option because the agency would be adopting a new rule and thus come up against the 60 day requirement.

While the Board believes that the circumstances of the adoption of this rule do not fall within the intent of IC 4-22-2-19, the Board is providing this written notification to the committee explaining why this rule could not be adopted within the timeframe specified in IC 4-22-2-19 under the "amendment" method we traditionally use.

If I can provide any further information, please contact me at mbina@hpb.state.in.us or at 233-4403.

Sincerely,

Mark W. Bina
Director
Indiana Board of Pharmacy
