

3701-52-07 Designation of authority.

- (A) As used in this rule, "board of health" means the board of health of a city or general health district, or the authority having the duties of a board of health in any city as authorized by section 3709.05 of the Revised Code.
- (B) Pursuant to section 3794.07 of the Revised Code, the director of health designates the boards of health to enforce the provisions of Chapter 3794. of the Revised Code and this chapter.
- (C) Pursuant to section 3794.07 of the Revised Code, the director of health may alternatively designate an agency or instrumentality of the state, county, or municipal or township authority, not otherwise designated in paragraph (B) of this rule, as the department of health's designee to enforce the provisions of Chapter 3794. of the Revised Code and this chapter if the agency or instrumentality meets the following criteria:
 - (1) Submits a letter to the director of health requesting it be designated as an enforcement agent of the Ohio department of health in a specific locality or jurisdiction;
 - (2) The letter shall indicate a commitment and capacity to do all of the enforcement duties set forth in Chapter 3794. of the Revised Code, this chapter, and as assigned by the director; and,
 - (3) The letter shall indicate a commitment to provide the necessary resources and personnel to fulfill its designation.
- (D) All designees of the Ohio department of health shall do all of the following:
 - (1) Maintain and make available to the director of health all records relating to work performed pursuant to this designation and supporting documentation for a minimum of three years. If an audit, litigation, or other action related to the delegation of authority is initiated during this time period the designee shall retain such records until the action is concluded and all issues are resolved. Upon termination of designation, a jurisdiction shall transfer all original Smoke Free Workplace Law documentation to the Ohio Department of Health;
 - (2) Fulfill the requirements of divisions (A) and (B) of section 3794.09 of the Revised Code.
 - (3) Cooperate with the Ohio department of health through the provision of documents and assistance during any appeal of a violation or civil fine issued by the designee.
 - (4) Participate with the Ohio department of health in fulfilling the requirements of divisions (E) and (F) of section 3794.07 of the Revised Code including providing current contact information and areas served on the Ohio department of health's education website.
- (E) The director of health shall not designate more than one designee to enforce the provisions of Chapter 3794. of the Revised Code and this chapter in any specifically defined jurisdiction. The Ohio department of health shall maintain a list of all current

designees and the jurisdiction served by those designees on its website.

- (F) Subject to the approval of the director of health, a designee may enter into an agreement with a third party to perform specified duties in support of the designee's enforcement of Chapter 3794. of the Revised Code and this chapter. All agreements entered into pursuant to this paragraph shall provide compensation based on a negotiated hourly rate and compensation shall not be based on the number of violations found by the third party performing the work. Notwithstanding this paragraph, a designee shall remain responsible for the investigation and enforcement of all complaints of alleged violations within its defined jurisdiction.
- (G) All penalties assessed and invoiced by the department pursuant to this rule shall be deposited in the fund in the state treasury created pursuant to section 3794.08 of the Revised Code within thirty days of collecting such penalties in the manner prescribed by the director. Within forty-five days of the close of each quarter, ninety per cent of any penalties received by the Ohio department of health in that quarter shall be paid to the designee who brought the enforcement action and shall be used for the purposes of Chapter 3794. of the Revised Code and the rules adopted under it.
- (H) Either the director of health or a designee may terminate the designation with thirty days written notice served upon the other party or immediately, if mutually agreed. In the event a designee fails to fulfill the obligations set forth in this rule, the director may, at the director's option, immediately terminate the designation.

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CERTIFIED ELECTRONICALLY

Certification

07/15/2013

Date

Promulgated Under: 119.03
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