

Reports of violations; investigation; findings of violations; appeals.

(A) Reports of violations of the provisions of Chapter 3794. of the Revised Code and this chapter may be submitted to the department by any member of the public by mail, electronic mail, and telephone. A person shall not be required to disclose his or her identity in order to report a violation. An anonymous complaint, alone, shall not be sufficient evidence to support a finding of violation of Chapter 3794. of the Revised Code or this chapter.

(1) If by mail, reports of violations may be directed to the Ohio department of health at the following address:

"Attn: Smoking Complaints

Bureau of Environmental Health

Ohio Department of Health

246 North High Street

Columbus, OH 43215"

(2) If by electronic mail, reports of violations may be sent to the Ohio department of health at: nosmoke@odh.ohio.gov

(3) If by telephone, reports of violations may be reported to 1-866-559-OHIO (6446) or the telephone number of a designee.

(4) A designee may receive reports of violation by mail, electronic mail, or telephone.

(B) The report of violation shall contain at least the following information:

(1) Nature of the violation including date and approximate time;

(2) Name of the business or individual alleged to be in violation;

(3) Complete address with zip code, if known; and

(4) County in which the business or individual is located.

(C) Reports of violations alleging facts that, when construed broadly and accepted as true, would not support a finding of violation shall be dismissed without any investigation. The department may decline to investigate and may dismiss any report of violation if it determines the report of violation is:

(1) Frivolous;

(2) Not made in good faith; or

(3) Too old to be reasonably investigated.

- (D) Except as provided in paragraph (C) of this rule, upon receipt of a complete report of violation, the department shall provide a proprietor or individual with written notice of the report of violation, a copy of the report of violation, and the opportunity to present in writing any statement or evidence to contest the report.
- (1) If a proprietor or individual submits a written statement or presents evidence to contest a report of violation, such submittal shall be postmarked within thirty days after receipt of the report of violation by the proprietor or individual and shall be sent to the return address provided on the notice of report of violation.
 - (2) The Ohio department of health may, in its discretion, investigate a complete report of violation or promptly transmit the report of violation to a designee in the jurisdiction where the reported violation allegedly occurred for investigation and enforcement. If the report of violation is transmitted to a designee, the designee shall investigate all complete reports of violation. For the purposes of this chapter, an investigation may include but is not limited to:
 - (a) A review of report of violation;
 - (b) A review of any written statement or evidence contesting the report of violation;
 - (c) Telephone or on-site interviews; and,
 - (d) On-site investigations.
 - (3) Prior to issuing a proposed civil fine for a violation of Chapter 3794. of the Revised Code and this chapter, the department's investigation shall include all investigation activities set forth in paragraphs (D)(2)(a) to (D)(2)(d) of this rule.
- (E) All findings of violation by the department, including continuing violations, shall be supported by a preponderance of the evidence.
- (F) Upon the investigation's conclusion, the department shall determine whether the proprietor or individual violated a provision or provisions of Chapter 3794. of the Revised Code or of this chapter and shall specify the nature and number of violations. Upon request, proprietors or individuals shall have the opportunity to review the evidence forming the basis for the proposed violations.
- (1) If the department determines that a proprietor or individual violated a provision of Chapter 3794. of the Revised Code or of this chapter, and the proprietor or individual does not have a finding of violation within the previous two years, the proprietor or individual will be notified of the proposed finding of violation and afforded an opportunity to provide additional evidence. Proprietors and individuals shall submit such additional evidence to the department within thirty days of the proprietor or individual receiving notice of the proposed findings.

- (a) After reviewing any additional and timely evidence, the department may affirm, amend, or rescind the proposed findings. The department shall notify, in writing, the proprietor or individual of the department's final decision and if the final decision is to affirm or amend the proposed findings, the written notice shall constitute the department's warning letter.
 - (b) If no additional and timely evidence is received, the findings are final and constitute the department's warning letter pursuant to division (A) of section 3794.09 of the Revised Code.
- (2) If the department determines that a proprietor or individual violated a provision of Chapter 3794. of the Revised Code or of this chapter, and the proprietor or individual has one or more findings of violation within the previous two years, the proprietor or individual will be notified via certified mail, return receipt requested, or by hand delivery, of the proposed finding of violation and proposed civil fine, in accordance with rule 3701-52-09 of the Administrative Code, as well as afforded an opportunity to request an administrative review of the proposed findings and civil fines. If the notice is returned because of failure of delivery, the department shall send the notice by regular mail to the address listed on the report. In such case, the notice shall be deemed to have been received three days from the date it was mailed.
- (a) Proprietors and individuals shall submit to the department such request for an administrative review within thirty days of receiving notice of the proposed findings and civil fines. Upon receiving a timely request for an administrative review, the department shall schedule the administrative review to be held before a board of health or its designee pursuant to section 3709.20 of the Revised Code or an impartial decision maker selected by the Ohio department of health.
 - (i) The impartial decision maker shall be licensed to practice law in Ohio.
 - (ii) The department shall mail or deliver notice of the date, time, and place of the administrative review to the proprietor or individual not less than ten days before the scheduled date. At the discretion of the department or impartial decision maker, the administrative review may be conducted via telephone.
 - (iii) Any postponements shall be by agreement of the proprietor or individual and the department and, if applicable, the impartial decision maker.
 - (iv) At an administrative review, the proprietor or individual shall have the opportunity to present its case and to confront and cross-examine adverse witnesses. The proprietor or individual shall have the opportunity to be represented by counsel at their own expense. At an administrative review, if the proprietor is a corporation or a limited liability company, it must be represented by an attorney licensed to practice law in Ohio.

- (v) The department or impartial decision maker shall prepare a report and recommendation including findings of fact and conclusions of law. The department or impartial decision maker shall mail by certified mail, return receipt requested, or hand deliver the report and recommendation to the proprietor or individual and the department.
- (vi) A proprietor or individual may, within ten days of receipt of such copy of such written report and recommendation, file with the department written objections to the report and recommendation, which objections shall be considered by the department before approving, modifying, or disapproving the recommendation.
- (b) The recommendation of the impartial decision maker may be approved, modified, or disapproved by the department, and the final decision of the department based on such report, recommendation, and evidence, or objections of the proprietor or individual, shall have the same effect as if such hearing had been conducted by the department. The decision of the department shall be final and not subject to further administrative proceedings.
- (G) Upon a final decision of the department, the department shall serve by certified mail, return receipt requested, upon the proprietor or individual affected thereby, a copy of the final decision and a statement of the time and method by which an appeal may be perfected. A copy of such final decision shall, as applicable, be mailed to the attorneys or other representatives of record representing the proprietor or individual. As set forth in division (C) of section 3794.09 of the Revised Code, any proprietor or individual against whom a finding of violation is made pursuant to paragraph (F) of this rule may, within fifteen days, appeal the finding to the Franklin county court of common pleas in accordance with section 119.12 of the Revised Code.

R.C. 119.032 review dates: 05/09/2013 and 05/01/2018

CERTIFIED ELECTRONICALLY

Certification

05/09/2013

Date

Promulgated Under: 119.03
 Statutory Authority: 3794.07
 Rule Amplifies: 3794.07, 3794.08, 3794.09
 Prior Effective Dates: 5/03/2007