

Ohio Administrative Code 3701-52-01 Definitions.

As used in this chapter:

(A) "Ashtray" means any receptacle that is used for disposing of smoking materials including but not limited to ash and filters.

(B) "Club" as set forth in division (B)(13) of section 4301.01 of the Revised Code means a corporation or association of individuals organized in good faith for social, recreational, benevolent, charitable, fraternal, political, patriotic, or athletic purposes, which is the owner, lessor, or occupant of a permanent building or part of a permanent building operated solely for the purposes, membership in which entails the prepayment of regular dues, and includes the place so operated.

(C) "Department" means the Ohio department of health or its authorized designee, unless otherwise specified.

(D) "Directly or indirectly under the control" means the ability to exercise authority over an area based upon property rights set forth under a real estate lease, title, or deed.

(E) "Director" means the director of health or the director's authorized representative.

(F) "Employee" means a person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer for compensation or for no compensation.

(G) "Employer" means the state or any individual, business, association, political subdivision, or other public or private entity, including a nonprofit entity, that employs or contracts for or accepts the provision of services from one or more employees.

(H) "Enclosed area" means an area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.

(I) "Enter" as used in division (B) of section 3794.02 of the Revised Code and paragraph (B) of rule 3701-52-02 of the Administrative Code means any physical movement of tobacco smoke into any area in which smoking is prohibited under Chapter 3794. of the Revised Code through entrances, windows, ventilation systems, or other means.

(J) "Entrance" means a doorway through which pedestrians, including the public or employees, enter a public place or place of employment. Entrance does not mean doorways through which vehicles pass or through which the loading or unloading of materials including but not limited to cargo or goods takes place.

(K) "Hotel or motel" for the purposes of the exemption in division (B) of section 3794.03 of the Revised Code shall have the same meaning as set forth in section 3731.01 of the Revised Code.

(L) "Migrate" or "migration" means the transit or movement of tobacco smoke from one place to another, regardless of cause, including but not limited to, movement of tobacco smoke induced or caused by changes in air flow.

(M) "Outdoor patio" means an area that is either: enclosed by a roof or other overhead covering and walls or side coverings on not more than two sides; or has no roof or other overhead covering regardless of the number of walls or other side coverings.

(N) "Place of employment" means an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and vehicles. An enclosed area as described herein is a place of employment without regard to the time of day or the presence of employees.

(O) "Private residence" means, except as otherwise provided by division (A) of section 3794.03 of the Revised Code, a dwelling or area of a dwelling where there is a reasonable expectation of privacy and used as an individual's residence, including employer-provided housing.

(P) "Proprietor" means an employer, owner, manager, operator, liquor permit holder, or person in charge or control of a public place or place of employment.

(Q) "Public place" means an enclosed area to which the public is invited or in which the public is permitted and that is not a private residence.

(R) "Retail tobacco store" means a retail establishment that derives more than eighty percent of its gross revenue from the sale of cigars, cigarettes, pipes, or other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or of any establishment with a liquor permit or any restaurant.

(S) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant. "Smoking" does not include the burning of incense in a religious ceremony.

(T) "Smoking device" means any lighted cigar, cigarette, pipe or other device designed for burning tobacco or any plant for the purposes of inhaling smoke. Smoking device does not mean devices designed and primarily used for the burning of any plant for cooking, heating, or illumination purposes and specifically excludes wood-fired ovens, smokers, grills, fireplaces, wood-burning stoves and candles.

(U) "Vehicle" means the following: an enclosed motor vehicle registered by the Ohio bureau of motor vehicles when it is occupied by one or more non-smoking persons at the same time and while used for business purposes; a motor vehicle registered by the Ohio bureau of motor vehicles that is part of a motor pool and shared by non-smoking employees; a motor vehicle registered by the Ohio bureau of motor vehicles that is used for public mass transit; or, tourist or scenic railcars operated exclusively in Ohio.

Effective: 05/03/2007

3701-52-02 Responsibilities of proprietor.

(A) No proprietor, except as permitted in section 3794.03 of the Revised Code, shall permit smoking in the public place or place of employment or in the areas directly or indirectly under the control of the proprietor immediately adjacent to locations of ingress or egress to the public place or place of employment.

(B) In addition to the requirements of paragraph (A) of this rule, a proprietor shall take reasonable steps including, but not limited to, requesting individuals to cease smoking, to ensure that tobacco smoke, in an area directly or indirectly under the control of the proprietor, does not enter any area in which smoking is prohibited under Chapter 3794. of the Revised Code and this chapter through entrances, windows, ventilation systems, or other means.

(C) A proprietor shall not be deemed in violation of Chapter 3794. of the Revised Code and this chapter if any smoke inadvertently enters the public place or place of employment, including entry through entrances, windows, ventilation systems, or other means, from an area otherwise exempted by division (A) of section 3794.03 of the Revised Code and this chapter as a private residence.

(D) A proprietor shall post signs pursuant to the requirements of Chapter 3794. of the Revised Code and rule 3701-52-06 of the Administrative Code.

(E) A proprietor shall identify himself or herself upon the request of the department.

(F) A proprietor shall remove ashtrays and other receptacles used for disposing of smoking materials pursuant to Chapter 3794. of the Revised Code and this chapter. If ashtrays and other receptacles used for disposing of smoking materials are of historic or architectural value and were affixed to real property prior to December 7, 2006, such ashtrays and other receptacles may remain if they are not used for disposal of smoking materials. Division (B) of section 3794.06 of the Revised Code and this rule shall not apply to ashtrays and other receptacles within vehicles if they are not used for the disposal of smoking materials.

(1) A proprietor may provide ashtrays and other receptacles used for disposing of smoking materials in areas where smoking is not prohibited under Chapter 3794. of the Revised Code and this chapter.

(2) A proprietor may provide ashtrays and other receptacles used for disposing of smoking materials solely for the purpose of disposing smoking materials prior to entering a place of employment or public place.

(3) A proprietor may store ashtrays and other receptacles used for disposing of smoking materials in a location within an area where smoking is prohibited if the location has no public access, the location is used primarily for storage purposes, and the ashtrays or other receptacles are used solely in accordance with paragraph (F)(1) of this rule.

(G) No person shall discharge, refuse to hire, or in any manner retaliate against any individual for exercising any right, including reporting a violation, or performing any obligation under Chapter 3794. of the Revised Code or this chapter.

Effective: 05/03/2007

3701-52-03 Responsibilities of individual.

(A) No person shall refuse to immediately discontinue smoking in a public place, place of employment, or the areas directly or indirectly under the control of the proprietor or in an establishment, facility, or outdoor area declared nonsmoking under section 3794.05 of the Revised Code when requested to do so by the proprietor or any employee of an employer of the public place, place of employment or establishment, facility, or outdoor area.

(B) No person shall retaliate in any manner against any individual for exercising any right, including reporting a violation, or performing any obligation under Chapter 3794. of the Revised Code or this chapter.

Effective: 05/03/2007

3701-52-04 Areas where smoking is not regulated.

(A) All areas set forth in section 3794.03 of the Revised Code shall be exempt from the provisions of Chapter 3794. of the Revised Code and this chapter.

(B) In accordance with division (A) of section 3794.03 of the Revised Code, a private residence in which an individual is employed only on an intermittent basis is not subject to Chapter 3794. of the Revised Code or this chapter. This includes, but is not limited to, situations where individuals perform services for the owner of the residence or individuals residing in the residence such as those services performed by plumbers, electricians, remodelers, and housekeepers.

(C) In accordance with division (C) of section 3794.03 of the Revised Code, a family owned place of employment, in which contractors or third parties not under the direction and control of the family owned place of employment are intermittently present, is not subject to Chapter 3794. of the Revised Code or this chapter.

(D) A private residence or portion of a private residence that is licensed or certified by the state or federal government to provide overnight accommodations and supervision or personal care services to unrelated individuals is not subject to Chapter 3794. of the Revised Code or this chapter. Notwithstanding this paragraph, smoking may be prohibited by other applicable laws or rules.

(E) An institution, residence or facility that provides for a period of more than twenty-four hours, whether for profit or not, accommodations to three or more unrelated individuals who are dependent upon the services of others, including a nursing home, residential care facility, the Ohio Veteran's Home, any facility or part of a facility that is defined as a skilled nursing facility under Title XVIII of the "Social Security Act" 79 Stat. 286 (1965). 42 U.S.C.A. 1395 and 1396, or as a nursing facility as defined in section 5111.20 of the Revised Code, and a county home or district home operated pursuant to Chapter 5155. of the Revised Code are not subject to Chapter 3794. of the Revised Code and this chapter, only to the extent necessary to comply with division (A) (18) of section 3721.13 of the Revised Code.

(1) A designated indoor smoking area, that is separately enclosed and separately ventilated, may be provided for the exclusive use of residents during specific times when the indoor area may be used for smoking. No employees shall be required to accompany a resident into a designated indoor smoking area or perform services in such an area when being used for smoking, unless they have volunteered to do so.

(2) If portions of an institution, residence, or facility are private residences, such as apartments, those private residential portions are governed by rules in this chapter applicable to private residences, unless otherwise prohibited by applicable laws or rules.

(3) Outdoor smoking by residents of institutions, residences or facilities specified in paragraph (D) of this rule is permitted to the extent necessary to comply with division (A) (18) of section 3721.13 of the Revised Code.

(F) Outdoor patios may be located immediately adjacent to locations of ingress or egress to the public place or place of employment, but shall be physically separated from any enclosed area. Notwithstanding this rule, a proprietor shall comply with divisions (A) and (B) of section 3794.02 of the Revised Code and paragraphs (A) and (B) of rule 3701-52-02 of the Administrative Code.

(1) When smoking is permitted, the outdoor patio shall be open to the air. "Open to the air" shall mean the patio has thorough, unobstructed circulation of outside air to all parts of the outdoor patio.

(2) Any outdoor patio that has a structure capable of being enclosed, regardless of the materials or removable nature of the walls or side coverings, shall be regarded as an enclosed area when the walls or coverings are in place. An outdoor patio shall be presumed to be open to the air when not more than fifty per cent of the combined surface area of an outdoor patio's sides is covered by walls or side coverings.

(3) For purposes of division (F) of section 3794.03 of the Revised Code and this paragraph, a "roof or other overhead covering" shall include any structure or arrangement above the outdoor patio, including substantial coverage by umbrellas or awnings, that may impede the flow of air into the patio, regardless of the type or nature of roof or other overhead covering. For the purposes of division (F) of section 3794.03 and this rule, roof or other overhead covering does not include materials provided by a proprietor to ensure security in a confined residential setting when the outdoor patio is otherwise open to the air.

(G) Private clubs shall be exempt from the provisions of Chapter 3794. of the Revised Code and Chapter 3701-52 of the Administrative Code provided all of the following apply: the club has no employees; the club is organized as a not for profit entity; only members of the club are present in the club's building; no persons under the age of eighteen are present in the club's building; the club is located in a freestanding structure occupied solely by the club; smoke from the club does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter; and, if the club serves alcohol, it holds a valid D4 liquor permit. For purposes of this exemption, the term employees does not include members of the private club who provide services to the private club.

Effective 05/03/07

3701-52-05 Exemption of retail tobacco stores.

(A) Retail tobacco stores as defined in section 3794.01 of the Revised Code and in operation prior to December 7, 2006, may be exempt from regulation under Chapter 3794. of the Revised Code and this chapter provided that each retail tobacco store claiming the exemption meets the following:

(1) The retail tobacco store shall annually file with the Ohio department of health an affidavit stating the percentage of its gross income during the prior calendar year that was derived from the sale of cigars, cigarettes, pipes, or other smoking devices for smoking tobacco and related accessories;

(2) The affidavit shall be in the form approved by the director and attached as appendix A to this rule;

(3) Upon request of the Ohio department of health, the retail tobacco store shall provide additional information to assist the department in the determination of whether the exemption is properly applicable to a retail tobacco store; and,

(4) The affidavit shall be postmarked by January thirty-first of each year and shall be mailed to the following address:

Chief
Bureau of Environmental Health
Ohio Department of Health
246 North High Street

(B) Retail tobacco stores that begin operation after December 7, 2006, or any existing retail tobacco store that relocates to another location after December 7, 2006, may only be exempt from regulation under Chapter 3794. of the Revised Code and this chapter provided that each retail tobacco store claiming the exemption meets the requirements set forth in paragraphs (A)(1) to (A)(4) of this rule and the following:

- (1) The retail tobacco store shall be located in a freestanding structure occupied solely by the retail tobacco store; and
- (2) Smoke from the retail tobacco store shall not migrate into any enclosed area where smoking is prohibited under the provisions of Chapter 3794. of the Revised Code.

(C) Within sixty days after receiving an affidavit and, if requested, any additional information, the Ohio department of health shall provide each retail tobacco store that meets the requirements of this rule with written documentation that the retail tobacco store is exempt from regulation under Chapter 3794. of the Revised Code.

Effective: 05/03/2007

3701-52-06 Posting of signs; designation as nonsmoking place.

(A) In accordance with section 3794.06 of the Revised Code, "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be conspicuously posted, by either affixing to real property or posting by other means, in every public place and place of employment where smoking is prohibited by Chapter 3794. of the Revised Code and this chapter, including at each entrance to the public place or place of employment. All signs required by section 3794.06 of the Revised Code and this rule shall contain the telephone number 1-866-559-OHIO (6446) for reporting violations and may also contain a designee's telephone number for reporting violations.

- (1) Signs shall be of sufficient size to be clearly legible to a person of normal vision throughout the areas they are intended to mark.
- (2) Signs posted in public places and places of employment shall be posted at a height and location easily seen by a person entering the public place or place of employment.
- (3) Signs posted in vehicles shall be firmly affixed to the vehicle dashboard, or firmly affixed to each passenger door window, or firmly affixed to other areas visible to all passengers.

(B) Unless otherwise specified in this chapter, signs shall be posted at all pedestrian points of transition from areas where smoking is not regulated by Chapter 3794. of the Revised Code or this chapter to all areas that are regulated. Nothing in this rule shall prohibit public places and places of employment from posting signs in addition to those required to comply with Chapter 3794. of the Revised Code and this rule.

(C) The owner, manager, operator, or other person in charge or control of an establishment, facility, or outdoor area which does not otherwise qualify as a public place or place of employment regulated by Chapter 3794. of the Revised Code, may voluntarily declare such establishment, facility, or outdoor area as a nonsmoking place by conspicuously posting "No Smoking" signs that conform with the requirements of section 3794.06 of the Revised Code and

this rule. Smoking shall be prohibited in any place declared nonsmoking under section 3794.05 of the Revised Code and this rule where a sign conforming to the requirements of division (A) of section 3794.06 of the Revised Code and this rule is posted.

Effective: 05/03/2007

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;

(2) Submit a quarterly report in a format prescribed by the director. The quarterly report must be received by the chief of the bureau of environmental health no more than thirty days after the end of the quarter and provide the following information:

(a) The nature and location of each report of violation received or referred;

(b) The number of investigations conducted;

(c) The number of enforcement actions; and,

(d) The nature and location of each finding of violation or violations:

(i) The findings shall be broken down into the number of first, second, or subsequent violations and analyzed in accordance with the manner set forth by the director.

(ii) A listing of repeat violators, including name, address, and other identifying information.

(3) Fulfill the requirements of divisions (A) and (B) of section 3794.09 of the Revised Code.

(4) 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.

(5) 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. 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.

Effective: 05/03/2007

3701-52-08 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.

Effective: 05/03/2007

3701-52-09 Civil fines and penalties.

(A) Pursuant to section 3794.07 of the Revised Code, as it pertains to proprietors, the amount of a fine for a violation of divisions (A) or (B) of section 3794.02 or section 3794.06 of the Revised Code or rules 3701-52-02 or 3701-52-06 of the Administrative Code shall be determined in accordance with the following schedule:

- (1) First violation - warning letter;
- (2) Second violation - one hundred dollars;
- (3) Third violation - five hundred dollars;
- (4) Fourth violation - one thousand dollars; and,
- (5) Fifth or subsequent violation - two thousand five hundred dollars.

(B) Pursuant to section 3794.07 of the Revised Code, as it pertains to individuals, who have violated division (D) of section 3794.02 of the Revised Code or rule 3701-52-03 of the Administrative Code shall be fined in accordance with the following schedule:

- (1) First violation - warning letter; and,
- (2) Second or subsequent violation - one hundred dollars.

(C) Pursuant to section 3794.07 of the Revised Code and as it pertains to retaliation, the amount of a fine for violation of division (C) of section 3794.02 of the Revised Code or rules 3701-52-02 or 3701-52-03 of the Administrative Code shall be determined in accordance with the following schedule:

- (1) First violation - warning letter;
- (2) Second violation - one thousand dollars; and,
- (3) Third or subsequent violation - two thousand five hundred dollars.

(D) In determining the amount of a fine for a violation as set forth in paragraphs (A) to (C) of this rule, violations which occurred more than two years prior to a subsequent violation shall not be considered if there has been no subsequent violation in the intervening time period. In determining the amount of a fine for a violation or violations, all complaints received during the pendency of an investigation shall be aggregated for purposes of issuing a finding of violation.

(E) The department may decrease or waive any fine imposed pursuant to paragraphs (A) to (C) of this rule upon consideration of any of the following factors:

- (1) Whether the proprietor made a good faith effort to prevent the violation from occurring, including efforts to comply with other applicable laws and rules such as division (A) (18) of section 3721.13 of the Revised Code;
- (2) Whether the proprietor has substantially complied with the requirements of Chapter 3794. of the Revised Code and this chapter;
- (3) Whether the proprietor or individual has a history of compliance;

(4) Whether the proprietor cooperated in good faith during the investigation of the reported violation; and,

(5) Whether a proprietor or individual has shown good cause to support decreasing or waiving the fine.

(F) Upon a final finding of violation, each day that specific violation continues shall constitute a separate violation. The total penalty assessment for the separate violation is calculated as the product of the number of days the proprietor or individual remained in violation after the final finding of a violation multiplied by the applicable penalty amount in paragraphs (A) to (C) of this rule. Fines imposed pursuant to this rule shall be doubled when the department finds the violation to be intentional. Violations that occurred more than two years prior to the current violation shall not be considered when determining the amount of fine pursuant to this rule for the current violation.

(G) Upon a final finding of violation, the Ohio department of health shall invoice the proprietor or individual for the assessed fines. All fines assessed on a proprietor or individual shall be paid within thirty days of the date the Ohio department of health's invoice. All fines shall be sent to the Ohio department of health in the manner prescribed by the director of health and in the form of a cashier's check or a postal money order, payable to the "Treasurer, State of Ohio."

Effective: 05/03/2007