



Ohio Administrative Code Rule 3701-21-26 Appeal procedures.

Effective: September 1, 2024

(A) This rule prescribes procedures for appealing the proposed denial, suspension or revocation of a food service operation license and appealing the suspension of a license for a violation presenting an immediate danger to the public health. An appeal of a proposed denial, suspension or revocation of an endorsement on a food service operation license and appeal of the suspension of an endorsement on a license for a violation presenting an immediate danger to the public health will be conducted in the same manner.

(B) In the case of a proposal to deny, suspend, or revoke a food service operation license, the licenser will provide the license holder with written notice of the proposed action and the cause for the action. The notice is to describe the procedure for appealing the proposed denial, suspension, or revocation.

(1) The licenser will provide written notice by certified mail, return receipt requested, or by hand delivery. If the notice is returned because of failure of delivery, the licenser is to send the notice by regular mail to the food service operation location listed on the license or conspicuously post the notice at an entrance of the operation, and posting or mailing constitutes notice.

(2) After receiving the notice, to obtain a hearing, the license holder will submit a written request that the licenser receives within fifteen days.

(3) The licenser will schedule a hearing before the licenser or a hearing officer designated by the licenser. If the licenser provides a hearing officer, he or she will be licensed to practice law in Ohio and cannot have participated in any manner in the decision to take the action against the license holder.

(4) The licenser will mail or hand-deliver notice of the date, time, and place of the hearing to the license holder no less than ten days before the scheduled date.



(5) At the hearing, the license holder will be provided an opportunity to present its case orally or in writing and to confront and cross-examine witnesses. The license holder may be represented by legal counsel and may review the case record before the hearing. If the licensor is a board of health of a city or general health district or the authority having the duties of the board of health under section 3709.05 of the Revised Code, and a hearing officer has been designated, a member of that board does not have to be present at the hearing.

(6) If the hearing is before a hearing officer, he or she will prepare a written recommendation as to the validity of the licensor's action, which will rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the licensor's action. The hearing officer will describe the basis for his or her recommendation, but need not prepare a full opinion or formal findings of fact and conclusions of law. The hearing officer will mail by certified mail, return receipt requested, or hand-deliver the recommendation to the licensor and the license holder. Either party may file objections to the recommendation provided that the objections are received by the licensor within five days of receiving a copy of the recommendation from the hearing officer.

(7) After reviewing any timely objections, the licensor may by motion take additional evidence or approve, modify, or disapprove the hearing officer's recommendation and will enter an order in the record of its proceedings.

(8) If the licensor does not receive a timely request for a hearing, the licensor may immediately enter an order as proposed in the notice.

(C) In the case of a suspension of a license issued for a violation presenting an immediate danger to the public health, the licensor will provide the license holder with written notice of the action, the cause for the action, and the effective date of the action. The written notice will specify the procedure for appealing the suspension and list the address to which a hearing request is to be sent or delivered. The license holder may appeal the suspension by mailing or hand-delivering a written request for a hearing to the address specified in the notice. If a hearing is requested, it will be heard not later than two business days after the request is received by the licensor. At the hearing, the license holder may have the opportunity to present its case orally or in writing and to confront and cross-examine witnesses. The license holder may be represented by counsel and may review the case record before the hearing. At the hearing, the licensor will determine whether the immediate danger



to the public health continues to exist.

(D) Any determination made or order entered by the licensor pursuant to this rule will be made as follows:

(1) If the licensor is a board of health of a city or general health district or the authority having the duties of the board of health under section 3709.05 of the Revised Code, by majority vote of the members of the board or authority present at a meeting at which there is a quorum;

(2) If the director of health is acting as the licensor pursuant to section 3717.11 of the Revised Code, by decision of the director.

(E) If the licensor conducts the hearing, the licensor may immediately render a decision denying, suspending, or revoking a license, or render a decision removing or continuing a license suspension. If the licensor is a board of health of a city or general health district or the authority having the duties of the board of health under section 3709.05 of the Revised Code, the determination or order may be considered and made at a meeting without publication or advertisement, and may become effective without such publication or advertisement, recording or certifying. An order is not effective until it is recorded in the licensor's record of its proceedings.