



## Ohio Administrative Code Rule 901:3-4-08 Appeal procedures.

Effective: June 16, 2003

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

(B) In the case of a proposal to deny, suspend, or revoke a retail food establishment license, the licensor shall provide the license holder with written notice of the proposed action and the cause for the action. The notice shall describe the procedure for appealing the proposed denial, suspension, or revocation.

(1) The licensor shall provide written notice by certified mail, return receipt requested, or by hand delivery. If the notice is returned because of failure of delivery, the licensor shall send the notice by regular mail to the retail food establishment 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 must submit a written request that the licensor receives within fifteen days.

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

(4) The licensor shall 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 shall 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. 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 shall prepare a written recommendation as to the validity of the licensor's action, which shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the licensor's action. The hearing officer shall 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 shall 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 shall 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 clear and present danger to the public health, the licensor shall 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 shall specify the procedure for appealing the suspension and shall list the address to which a hearing request shall 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 shall be heard not later than two business days after the request is received by the licensor. At the hearing, the license holder shall 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 shall determine whether the clear and



present danger to the public health continues to exist.

(D) Any determination made or order entered by the licensor pursuant to this rule shall 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 agriculture is acting as the licensor pursuant to section 3717.11 or 3717.111 of the Revised Code, by decision of the director.

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.