

3701:1-38-09 Inspection and investigation.

- (A) Each licensee or registrant shall afford to the department at all reasonable times, the opportunity to inspect materials, machines, activities, facilities, premises, and records and any other matters relative to the handling of radioactive material or radiation-generating equipment.
 - (1) During an inspection, department inspectors may consult privately with workers as specified in paragraph (B) of this rule. The licensee or registrant may accompany department inspectors at any other time during the inspection.
 - (2) If, at the time of inspection, an individual has been authorized by the workers to represent them during department inspections, the licensee or registrant shall notify the inspector of such authorization and shall give the worker's representative an opportunity to accompany the inspector during the inspection of physical working conditions. Each worker's representative shall be routinely engaged in licensed or registered activity under control of the licensee or registrant and shall have received instructions as to the provisions specified in paragraph (B) of rule 3701:1-38-10 of the Administrative Code. Different representatives of licensees or registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one worker's representative at a time may accompany an inspector.
 - (3) With the approval of the licensee or registrant and the worker's representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the worker's representative, shall be afforded the opportunity to accompany the department inspector during the inspection of physical working conditions.
 - (4) Notwithstanding any other provision in paragraph (A) of this rule, a department inspector may refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to areas containing information classified by an agency of the United States government in the interest of national security, an individual who accompanies an inspector may have access to such information only if properly authorized. With regard to any area containing proprietary information or trade secrets, the worker's representative for that area shall be an individual previously authorized by the licensee or registrant to enter that area.
- (B) Private consultation between a department inspector and a worker during inspections shall be subject to the following:
 - (1) A department inspector may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of a license condition, order, or rules adopted pursuant to Chapter 3748. of the Revised Code.
 - (2) During the course of an inspection, any worker privately may bring to the attention of a department inspector, either orally or in writing, any past or present condition which the worker has reason to believe may have contributed to or caused any violation of rules adopted pursuant to Chapter 3748. of the

Revised Code, license condition, order, or any unnecessary exposure of an individual to sources of radiation under the licensee's or registrant's control. Any such notice in writing shall comply with the requirements specified in paragraph (C) of this rule. The provisions of this paragraph shall not be interpreted as authorization to disregard instructions pursuant to paragraph (B) of rule 3701:1-38-10 of the Administrative Code.

- (C) Requests by workers for a department inspection shall be in accordance with the following:
- (1) Any worker or representative of workers believing that a violation of Chapter 3748. of the Revised Code or rules adopted thereunder, license condition or order, or any unnecessary exposure of an individual to sources of radioactive material or radiation-generating equipment under the licensee's or registrant's control has occurred in the handling of radioactive material or radiation-generating equipment relative to working conditions may request an inspection by giving notice of the alleged violation to the director. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the department no later than at the time of inspection except that, upon the request of the worker giving such notice, such worker's name and the name of individuals referred to therein shall not appear in such copy or on any record published, released, or made available by the department, except for good cause shown.
 - (2) If, upon receipt of such notice, the director determines that the written complaint meets the requirements specified in paragraph (C)(1) of this rule and that the director determines that there are reasonable grounds to believe that the alleged violation exists or has occurred or that further investigation is necessary, the department shall inspect the facility as soon as practicable to determine if such alleged violation exists or has occurred. Any such inspection is not limited to matters referred to in the written complaint.
 - (3) The department shall notify the complainant in writing of the results of the investigation. The complainant may resubmit the written complaint without prejudice.
- (D) If the department determines under paragraph (C) of this rule that an inspection is not warranted by a written complaint, such determination shall be in accordance with the following:
- (1) If the department determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the department shall notify the complainant in writing of such determination. The complainant may obtain review of such determination by submitting a written statement of position with the department. The department will provide the licensee or registrant with a copy of such statement, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the department. The department will provide any opposing statement to the complainant.
 - (2) Upon the request of the complainant, the director may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of

the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. The director shall consider all written and oral views presented and shall notify the parties in writing of his or her decision on whether an inspection is warranted and the reason therefore.

- (E) No licensee or registrant, or contractor or subcontractor of a licensee or registrant shall instruct any employee to withhold information from a department inspector or retaliate or discriminate against any employee or former employee for exercising rights or engaging in activities protected under rules adopted pursuant to Chapter 3748. of the Revised Code.

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