



Ohio Administrative Code

Rule 3701:1-38-02 Fees for inspection, application, amendment, and renewal of radioactive material sources of radiation.

Effective: April 15, 2013

(A) As used in this rule, "facility" has the meaning defined in division (H) of section 3748.01 of the Revised Code and the following:

(1) All buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are operated by the same person and have common corporate or business interests; and

(2) Portions of a building or structure which are operated by the same person and have common corporate or business interests.

(B) Notwithstanding the definition of "facility," the director may consider sites that are not contiguous or adjacent as one facility provided that:

(1) The sites are operated by the same person;

(2) The sites are in the same license category or categories;

(3) The applicant for a license provides for one radiation safety officer, and if applicable, one radiation safety committee, as responsible for all sites; and

(4) The director is reasonably satisfied from the information provided in the application that the applicant will adequately control radioactive material at all sites listed in the application.

(a) Unless the director has information of violations of Chapter 3748. of the Revised Code or the rules adopted thereunder at one or more sites, the director shall presume the applicant will adequately control radioactive material at all sites if the sites are located not more than twenty miles driving distance apart as documented by the licensee, and if all sites are within a twenty mile radius from the main site as designated on the license.



(b) The director shall continue to renew a license issued under this paragraph that contains all the sites listed thereon provided the licensee demonstrates continued compliance with this paragraph, Chapter 3748. of the Revised Code, and the rules adopted thereunder.

(C) Every facility that handles radioactive material in any license category as specified in appendix A to this rule for which licensure is required shall apply for a license, license amendment, or license renewal in accordance with this rule. Application for a license, license amendment, or license renewal shall be made on any format prescribed and provided by the director. Licenses shall be issued in accordance with the requirements of Chapter 3748. of the Revised Code, and the rules adopted thereunder. Except as otherwise provided in this rule, a license shall expire five years from the date of issuance.

(1) As used in this paragraph, site means an address of use listed on the license. Temporary job sites are exempted.

(a) Any individual applying for a new license with one or more additional sites or a current licensee amending a license to add one or more additional sites that are located more than twenty miles from the main site shall pay an additional site fee for each such site as follows:

(i) The additional site fee(s) shall be seventy-five percent of the applicable annual fee, as those fees are set forth in paragraphs (D), (F), and (J) of this rule.

(ii) Additional site fees will be invoiced annually with the annual fee.

(b) Broad scope licensees are exempt from paragraph (C)(1)(a) of this rule.

(2) As used in this paragraph, "service" means activities performed by a person, other than a worker as defined in rule 3701:1-38-01 of the Administrative Code, pursuant to an agreement with the facility to perform activities that deal with sources of radiation for the facility.

(a) These activities include, but are not limited to the following:



- (i) Conduct leak tests;
 - (ii) Calibrate survey instruments;
 - (iii) Provide quality control tests;
 - (iv) Conduct surveys, characterization, and/or remediation activities;
 - (v) Manage the disposal of radioactive waste for other persons; or
 - (vi) Install sources or devices or change sources within a device.
- (b) License categories affected are:
- (i) 3219 - decontamination services;
 - (ii) 3220 - leak test service;
 - (iii) 3221 - instrument calibration service only - source less than 3.7 terabecquerels (one hundred curies);
 - (iv) 3222 - instrument calibration service only - source equal to or greater than 3.7 terabecquerels (one hundred curies);
 - (v) 3223 - leak test and instrument calibration - source less than 3.7 terabecquerels (one hundred curies);
 - (vi) 3224 - leak test and instrument calibration - source equal to or greater than 3.7 terabecquerels (one hundred curies);
 - (vii) 3225 - other services - including teletherapy, irradiator, and gauge service;
 - (viii) 3232 - waste disposal service prepackaged only;



(ix) 3233 - waste disposal service - incineration; and

(x) 3234 - waste disposal service processing and/or repackaging.

(D) A radioactive materials license issued by the department may, at the discretion of the director, have more than one license category on any one specific license. A licensee may have more than one radioactive materials license. Except as otherwise provided in paragraph (J) of this rule, the annual fee for a radioactive material license shall be in an amount in accordance with appendix A to this rule.

(1) Upon receipt of an application for a new radioactive material license, the department will issue an invoice for the appropriate fee specified in appendix A to this rule or paragraph (J) of this rule. Annual fees will be invoiced based on the month of the license expiration date and the invoice will state that the fee is due thirty days after the date of the invoice. License fees are not refundable.

(2) An applicant for a new or a renewal or amendment of a radioactive material license must submit a complete application before the director will finalize the review of the application. A complete application is one in which the applicant has provided all the information requested by the director, including any additional information requested after receipt of the application package.

(3) Upon receipt of an application for a license amendment, the department will issue an invoice for the appropriate fee for the proposed amendment as specified in appendix A to this rule. If the amendment is to change the license from operational phase to storage of sealed sources only incident to disposal of the sources, after the amendment the annual fee for the license shall be reduced to fifty per cent of the fee for the operational phase of the license, provided that the sources continue to be in safe storage and leak tested as provided by license condition for the specific sources in storage. The inspection frequency will remain the same as that for the operational phase of the license until after source disposal.

(4) The applicant for a new, or renewal or amendment of a radioactive materials license shall provide to the director all additional information requested within sixty days from the date of the information request. If the director does not receive the requested information within the stated time period, the



director may consider the application abandoned. Any further consideration of a new license, or a renewal or amendment of a license shall be pursuant to another application.

(5) The director shall grant a new license, license amendment, or license renewal to any applicant who has submitted a complete application and is in compliance with Chapter 3748. of the Revised Code and the rules adopted thereunder.

(6) When an amendment to a license results in a change to a license category with a higher fee, the licensee will be charged the higher of the two amendment fees for that category. The annual fee for the licensee will escalate to the new category fee on the date of the next annual invoice.

(7) The director shall charge a fee for minor license amendments that do not require review by members of the technical staff at a rate of one hundred dollars per amendment provided that no licensee shall be required to pay more than one thousand dollars for minor amendments in any calendar year. Minor amendments include, but are not limited to, adding a new gauge of the same type already licensed unless that additional gauge increases the license or inspection fee, a corporate name change if the corporate ownership does not change, adding a user name that does not require review of education and experience, and corporate address change if the location of the use of the radioactive material does not change. Amendments to change the radiation safety officer or the chair or members of the radiation safety committee that require review of education or experience are not minor amendments.

(8) License terminations shall be handled as follows:

(a) Except as provided in paragraph (D)(8)(c) of this rule, a termination fee of five hundred dollars or fifty per cent of the annual fee, whichever is less, will be invoiced upon written request from the licensee for termination of the license. This fee is not refundable.

(b) Except as provided in paragraph (D)(8)(c) of this rule, if the termination cost, as determined by paragraph (M) of this rule, exceeds the termination fee in paragraph (D)(8)(a) of this rule, the remainder of the termination expense will be assessed at full cost.

(c) If the license termination would be covered under paragraph (D)(9) of this rule, that paragraph



will be used for the termination process.

(d) The license termination process will not be completed until the licensee is in compliance with all rules, including payment of fees.

(9) Licenses, and other approvals related to the licensed activity requiring decommissioning, decontamination, reclamation, site restoration, or long-term care due to the continued presence of radioactive materials shall be charged an annual fee based on the approved decommissioning funding plan as specified in appendix B to this rule.

(a) A decommissioning plan must be approved by the department. Prior to approval of the decommissioning plan the licensee must submit an amendment requesting decommissioning. Until the amendment is approved the licensee's annualized license fee will be reduced by fifty per cent. After approval of the amendment containing the decommissioning plan, the licensee will be invoiced at the annual fee specified in appendix B to this rule.

(b) The annual fee specified in appendix B to this rule is based on the cost of decommissioning. The fee is payable within thirty days of mailing of an invoice by the department.

(c) Routine decommissioning oversight by the department will be charged against the annual amount received and additional invoices will not be issued unless the cost of activities exceeds the annual amount in any given year.

(d) The facility shall receive a monthly statement of items and amounts charged against the annual fee.

(e) If the cost of additional activities arise that require use of additional staff, including any consulting service that exceeds the amount of the annual fee paid by the licensee, these additional costs will be included in any invoice as separate items invoiced for the full cost of the oversight by additional staff or consultants. Oversight activities will be performed at a frequency which adequately monitors health, safety, and the environment.

(f) When the approved decommissioning plan is less than one hundred thousand dollars, the licensee



will remain in the current license category and continue to pay the required annual fee specified in appendix A to this rule during decommissioning. Inspections of these licensees will be done as non-routine inspections. Non-routine inspection fees will not be applied until the number of decommissioning inspections performed exceed the inspections that would have been performed if the licensee had not chosen the decommissioning option.

(g) When the licensee has completed the decommissioning, and the director has determined that the licensee cannot terminate the license as provided by the Administrative Code, Chapter 3748. of the Revised Code or the rules adopted thereunder, but the licensee has successfully completed the decommissioning of the operation as required by the approved decommissioning plan, the director will amend the license to a decommissioning/possession only license. The annual fee for a decommissioning/possession only license is provided in appendix B to this rule.

(E) Licenses shall be renewed in accordance with the standard renewal procedure established in Chapter 4745. of the Revised Code, except that a licensee, other than a broad scope licensee, shall apply for renewal of the license ninety days prior to the expiration date of the current license and broad scope licensees shall apply for renewal of their license one hundred eighty days prior to expiration.

(F) The annual fee is listed in appendix A to this rule "column 5" for a new license or "column 6" for a renewal license. To recover the costs of oversight activities where radioactive material is found in the public domain and there is no evident individual that is determined to be responsible, a surcharge of 5.25 per cent has been included in the annual fee listed in "column 5" and "column 6" of appendix A to this rule.

(G) The department shall charge an inspection fee for all non-routine inspections. A non-routine inspection is defined as any inspection that the department conducts in addition to the scheduled routine inspections and one follow-up inspection if necessary. Non-routine inspections include, without limitation:

- (1) An inspection performed as a result of an incident;
- (2) Any pre-license inspections for a new license applicant when the director determines that an



inspection is necessary to assess the adequacy of the information provided in the application;

(3) Inspections prior to license amendment, category change, or termination;

(4) An inspection performed at a facility that results in the issuance of an adjudication order by the director; or

(5) Other enforcement or regulatory inspections, not specified above, that the director determines is necessary to assess compliance with Chapter 3748. of the Revised Code.

(H) The fee for a non-routine inspection shall be based on the actual cost for conducting the inspection which shall include:

(1) An hourly charge of seventy dollars per staff person assigned to the inspection, except staff participating as training will not be included in the charges;

(2) An administrative fee of three hundred thirty dollars;

(3) All necessary laboratory analysis costs for samples collected by department personnel; and

(4) Any staff travel costs which shall be calculated in accordance with rule 126-01-02 of the Administrative Code.

(I) All fees invoiced as provided within this rule, including full cost, routine, and non-routine inspection fees, shall be paid within thirty days of the invoice date specified on the invoice. In accordance with sections 3748.07 and 3748.13 of the Revised Code, any fee that remains unpaid on the ninety-first day after the original invoice date shall be assessed an additional amount equal to ten per cent of the original fee.

(1) The department shall mail invoices by ordinary U.S. mail to the most recent address provided by the licensee.

(2) The department shall maintain a list of the invoices issued and date mailed.



(J) Notwithstanding paragraph (D) of this rule, the department shall charge the following types of licensees reduced license fees in the following specified amounts:

(1) A private entity that provides services, does not engage in manufacturing, and that has three hundred fifty thousand to two million dollars in gross annual receipts, shall pay a total license fee of seventy-five per cent of the amount specified for that use of radioactive materials in appendix A to this rule.

(2) A private entity that provides services, does not engage in manufacturing, and that has less than three hundred fifty thousand dollars in gross annual receipts shall pay a total license fee of fifty per cent of the amount specified for that use of radioactive material in appendix A to this rule.

(3) A private entity that engages in manufacturing and that has thirty-five to two hundred employees, irrespective of gross annual receipts, shall pay a total license fee of seventy-five per cent of the amount specified for that use of radioactive material in appendix A to this rule.

(4) A private entity that engages in manufacturing and that has less than thirty-five employees, irrespective of gross annual receipts, shall pay a total license fee of fifty per cent of the amount specified for that use of radioactive material in appendix A to this rule.

(5) A nonprofit entity that has gross annual receipts of three hundred fifty thousand dollars to two million dollars shall pay a total license fee of seventy-five per cent of the amount specified for that use of radioactive material in appendix A to this rule.

(6) A nonprofit entity that has gross annual receipts of less than three hundred fifty thousand dollars shall pay a total license fee of fifty per cent of the amount specified for that use of radioactive material in appendix A to this rule.

(7) A government jurisdiction or district with a population of twenty thousand to fifty thousand shall pay a total license fee of seventy-five per cent of the amount specified for that use of radioactive material as specified in appendix A to this rule.



(8) A government jurisdiction or district with a population of less than twenty thousand shall pay a total license fee of fifty per cent of the amount specified for that use of radioactive materials as specified in appendix A to this rule.

(9) A health district as defined in section 3709.01 of the Revised Code shall pay a total license fee of twenty-five per cent of the amount specified in appendix A to this rule.

(10) An accredited private or public college or university possessing or using radioactive material in a sealed or unsealed source solely as a part of a college or university course supported by tuition and leading to an accredited degree, but excluding clinical training, shall pay a total license fee as set forth for category "1129" as that amount is specified in appendix A to this rule.

The reduced annual fees specified in this paragraph do not apply to any other fees that a licensee may be required to pay under Chapter 3748. of the Revised Code or rules adopted thereunder. Licensees shall provide certification of their compliance with the provisions of paragraphs (J)(1) to (J)(6) of this rule upon initial application and renewal.

(K) The director may modify the inspection frequency of licensed facilities based upon the performance of the facility.

(L) In accordance with section 3748.22 of the Revised Code, the department shall charge fees sufficient to cover all costs of regulatory, administrative, and enforcement activities conducted pursuant to Chapter 3748. of the Revised Code. The director shall recommend to the radiation advisory council and the public health council changes in the radioactive materials fees if the director finds that fees do not meet the requirements of section 3748.22 of the Revised Code.

(M) Fees for those categories listed as "full cost" such as decommissioning activities, for either partial, building or selected area of a licensed site, or full decommissioning leading to license amendment, category change, or termination and for review of sources and/or devices shall be specified as "full cost" and shall be calculated as the sum of the seventy dollar hourly charge per staff member for the number of hours spent on document review and preparation, licensing, inspection, meetings, teleconferences, in travel, administrative time, the cost of any special contractors as determined necessary by the director, any environmental monitoring for radioactive



materials and laboratory analysis, any other associated activities. The administrative fee from paragraph (H)(2) of this rule shall be used for administrative time. Travel expenses shall also be invoiced and shall be calculated at the rate determined by rule 126-1-02 of the Administrative Code. These fees will be invoiced monthly.

(1) Reciprocity to engage in activities in the state of Ohio which involve radioactive materials may be authorized provided:

(a) The person requesting reciprocity possesses a valid radioactive materials license issued by another agreement state or the United States nuclear regulatory commission which authorizes the same activities proposed to be conducted in Ohio;

(b) The request for reciprocity is made by submission of a completed reciprocity application provided by the director, a copy of the person's radioactive materials license, and payment of the reciprocity fee specified in appendix A to this rule;

(c) The duration of activities to be performed in Ohio under reciprocity does not exceed one hundred eighty days in any one calendar year.

(2) A person who has been granted reciprocity in Ohio shall notify the director at least three business days in advance of each time the person proposes to begin a new use of radioactive materials in the state of Ohio, with the notification made on a form provided by the director.

(3) Activities conducted in Ohio under reciprocity are subject to inspection by the department at any time and the department shall invoice a reciprocity inspection fee of one thousand dollars for each inspection of a person's authorized reciprocity activities.

(4) Reciprocity is authorized for one calendar year, beginning on January first or later date when reciprocity is initially applied for, and ending on December thirty-first.

(5) A person who is authorized reciprocity shall apply for an Ohio radioactive materials license at least thirty days prior to exceeding one hundred eighty days of activities in Ohio.



(O) Requests for safety evaluation of devices, products, or sealed sources used for radioactive materials either for commercial distribution or manufactured in accordance with the unique specifications of, and for use by, a single applicant shall be submitted to the director on a form provided by the director for that review prior to manufacture or commercial distribution.

(1) The application shall specify a license amendment for one of the areas listed below:

(a) Safety evaluation of sealed sources or devices or products containing NARM, byproduct material, source material, or special nuclear material (less than critical mass) for commercial distribution.

(b) Safety evaluation of sealed sources or devices or products containing NARM, byproduct material, source material, or special nuclear material (less than critical mass) manufactured in accordance with the unique specifications of, and for use by, a single applicant.

(2) The amendment fee for a source or device review shall be "full cost" as outlined in paragraph ((M) of this rule.

(3) The amendment fee in appendix A to this rule for categories under manufacturing and distribution shall be for amendments other than source or device reviews.

(4) Licensees for categories 3211, 3212, 3213, 3214, and 22162 shall pay an annual surcharge of six hundred fifty dollars to cover administrative costs of overall maintenance activities associated with source or device data submitted to the United States nuclear regulatory commission. This surcharge is included in the annual fee for the above listed categories in "column 5" and "column 6" of appendix A to this rule.

(P) When considered necessary by the director, the director may conduct a review of shielding plans or the adequacy of shielding. The director may also conduct such a review upon the request of the licensee or the applicant for a license. The applicant or licensee shall pay a fee for review of shielding plans or adequacy of shielding as specified in paragraph (M) of this rule.

(Q) Individuals with implanted pacemakers that have a radioactive source will not be charged an annual fee as an individual because of the necessity of possessing the device. Unless the director



determines other provisions are required, the medical institution that implanted the device shall hold the license for the individual.

(R) If, because of the complexity of a review, such as that for a sealed source or device, decommissioning, license, or incident, it is necessary to obtain the services of a consultant to assist in a final determination, the licensee or applicant will be invoiced for the consulting services.

(S) Licensees with general licenses requiring an annual report to the director shall submit the report with a fee of four hundred twenty dollars within thirty days of mailing an invoice by the department and are subject to late penalties in paragraph (I) of this rule. If a facility has a specific license which is in a category that would include the generally licensed material, the facility may add the generally licensed material to the specific license and will not be charged the additional fee for that generally licensed material. Annual reports are required for devices under a general license containing radionuclides at or above activities listed in paragraph (C)(13) of rule 3701:1-46-05 of the Administrative Code.