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LOG OF MEETING

SUBJECT: Occupational Safety and Health Administration's
(OSHA's) Nationally Recognized Testing Laboratory Program,
Stakeholders Meeting

DATE: September 24, 1996 **PLACE:** Dept. of Labor
Room C 5320
3rd St. & Constitution
Ave., N.W.
Washington, D.C.

DATE OF LOG ENTRY: October 2, 1996

SOURCE OF LOG ENTRY: William H. King, Jr., ESEE *WMC*

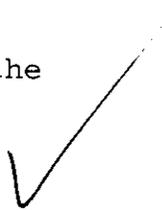
CPSC PARTICIPANT: William H. King, Jr., ESEE

NON-CPSC PARTICIPANTS:

Al Abadir, OSHA
Ken Klouse, OSHA
John Linkletter, OSHA
Ken Hunt, OSHA
Jim Estep, OSHA
Jerry Goldstein, The Harbinger Group
Joan Sterling, Inchcape Testing Services
Paul Moliski, Inchcape Testing Services
Milton Bush, The 'M Companies
Robert Levine, Underwriters Laboratories, Inc.
Robert Harris, Underwriters Laboratories, Inc.
Keith Maury, Underwriters Laboratories, Inc.
Dave Haataja, Underwriters Laboratories, Inc.
Len Frier, MET Testing Laboratories
Robert Gladhill, National Inst. of Standards & Technology
William McGinnis, National Technical Systems
Lawrence Jolliff, Jr., Applied Research Laboratories
Doug Geralde, Canadian Standards Association
Arthur Michael, Product Safety International
and other attendees at this annual meeting between OSHA,
nationally recognized testing laboratories, and other
interested parties.

SUMMARY:

Mr. King attended the OSHA - NRTL Annual Meeting at the invitation of OSHA staff. Attached is an agenda for the meeting. Mr. King was an observer and made no presentation or substantive remarks at the meeting. Draft proposals for Nationally Recognized Testing Laboratories (NRTLs) Fees and the NRTL Certification Mark Program were distributed and discussed at the meeting by OSHA staff (copy of each attached).



OSHA - NRTL ANNUAL MEETING

Directorate of Technical Support

FACILITATOR:
Dr. Jerry M. Goldstein

9:00 - 9:15 Opening Comments

Gregory J. Baxter, Acting Director
Directorate of Technical Support

9:15 - 9:30 Introductions

Al Abadir, Acting Director, Office of
Science and Technology Assessment,
Variance Determination, and NRTL
Programs

9:30 - 10:15 SOP Review and Discussion

Ken Klouse, Senior Lead Assessor

10:15 - 10:30 Break

10:30 - 11:00 Small Group Reports on
Suggested Changes to the SOP Manual

11:00 - 11:30 Updates: "NRTL" mark; NRTL
Fees; NRTL mark registration requirement;
Cooperation with ANSI, NIST, and A2LA;
testing for zone classification; and OSHA/
Standards Council of Canada MOU.

Roy Resnick, NRTL Program
Coordinator; Jim Estep, NRTL
Solicitor; and Ken Klouse

11:30 - 12:00 Overview of Issues at OSHA

Joseph Dear, Assistant Secretary for
OSHA, and Emily Sheketoff, Deputy
Assistant Secretary

12:00 - 1:15 Lunch

1:15 - 2:30 Quarterly Audits : NRTLs'
recommendations to OSHA- suggestions for
alternatives.

John Linkletter, Lead Auditor, and
Dave Loebach, Lead Assessor

2:30 - 2:45 Break

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Section 8
THE NRTL CERTIFICATION MARK PROGRAM

1.0 SCOPE

This Standard Operating Procedure (SOP) presents a mechanism for the control of OSHA's registered NRTL certification marks (Marks).

2.0 OBJECTIVE

To enable the use of the Marks by an NRTL.

3.0 REFERENCE

3.1 Generic Appendices.

3.2 Glossary.

4.0 DEFINITIONS

4.1 Definitions contained within the Glossary are applicable.

4.2 *Client.* An entity that contracts with an NRTL to provide independent assurance that the product meets the requirements of a specific standard.

4.3 *Marks.* The two OSHA-registered certification marks that are issued to an NRTL for placement upon products meeting the pertinent requirements of the NRTL recognition program.

5.0 GRANTING AUTHORIZATION FOR THE USE OF THE MARKS

5.1 An NRTL shall apply in writing to the NRTL Program Director (PD) for authorization to place either of the Marks on products that it tests and certifies.

5.1.1 The application need not contain a list of the programs/procedures and standards that are to be included under the NRTL Certification Mark Program, unless the NRTL desires to exclude certain standards or programs/procedures.

5.1.2 If an NRTL authorizes the use of the Marks to a client, it shall assure that the Marks are applied only to the appropriate product(s).

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- 5.2 The Program Coordinator (PC) shall maintain a list of the specific programs/procedures and standards for which each NRTL is authorized to use the Marks.
- 5.3 The PC shall transmitt a Memorandum of Understanding (MOU) to the applicant for signature. (See Appendix 8A).
- 5.4 Upon acceptance of the MOU, the PD will issue a letter authorizing the use of the Marks.

6.0 MONITORING AND CONTROLLING THE USE OF THE MARKS

- 6.1 An NRTL that is authorized the use of the Marks by OSHA will issue those Marks only in conjunction with the issuance of the NRTL's own registered certification mark.
- 6.2 An NRTL that is authorized the use of the Marks by OSHA is responsible for the Marks' control.
- 6.3 Each NRTL will maintain a list of the clients and the specific products upon which the Marks may be placed. This may be accomplished by notations in the NRTL's listing directory.
- 6.4 An NRTL will permit the use of the Marks by its clients only for those products tested and certified, using standards for which it has been recognized.
- 6.5 NRTLs shall take imediate remedial action to restrict or rescind the use of the Marks when a client is in violation of the NRTL Program requirements.
 - 6.5.1 Each NRTL shall maintain a record of such instances and resolutions and shall apprise OSHA, in writing, of each step taken in relation to the rectification of the violation.
- 6.6 OSHA will oversee the use of the Marks by monitoring the NRTLs' control of each of its client's use of the Marks.
 - 6.6.1 Each NRTL's controls and records will be monitored as part of each assessment and audit. The results will be included in the final audit or assessment reports, as described in Sections 2 and 4.
- 6.7 OSHA will also independently monitor use of the Marks to resolve complaints or to assist it in taking any further action.

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6.7.1 OSHA may utilize data from other federal agencies or private organizations in controlling the use of the Marks.

7.0 RESTRICTING OR RESCINDING THE USE OF THE MARKS BY AN NRTL

7.1 The PD will evaluate any report of inappropriate use or misuse of the Marks and assemble a Program Maintenance and Complaint Investigation Team (PMCIT) to recommend a course of action. (See Section 6 for details on the PMCIT and complaint procedures.

7.2 The PD will evaluate the recommendation and either accept it as is or document modifications to it.

8. EFFECTIVE DATES

8.1 At such time that an NRTL signs an MOU with OSHA for authorization to use the Marks, it may allow a participating client a reasonable time (up to 3 years) to use up its supply of original labels or replace its original dies to comply.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. NRTL 95-F-1]

Nationally Recognized Testing Laboratories (NRTLs); Fees

AGENCY: Occupational Safety and Health Administration (OSHA), Labor

ACTION: Proposed Rule

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to revise 29 CFR 1910.7 to allow OSHA to charge fees to Nationally Recognized Testing Laboratories (NRTLs) for services that are provided to the NRTLs. The NRTL Program and the services it provides benefit small businesses by recognizing their qualifications to test and certify products used in the workplace. The fees will be computed on the basis of the cost of these services to the Government. In determining the amount of such fees, OSHA will follow the guidelines established by the Office of Management and Budget (OMB) as stated in Circular Number A-25. Comments on this proposal are requested with respect to the imposition of fees, the method of computing the fees, and any other relevant issues.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER PUBLICATION].

ADDRESS: Comments may be sent to OSHA Docket Office, Docket Number NRTL 95-F-1, Room N2625, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Telephone: (202) 219-7894.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, D.C., 20210.

Telephone: (202) 219-8148, or Mr. Alphonse Abadir, Acting Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW, Washington, D.C., 20210.

Telephone: (202) 219-7056.

SUPPLEMENTARY INFORMATION: A number of OSHA standards require that certain products and equipment used in the workplace be tested and certified by a laboratory that has been recognized and accredited by OSHA. Through the NRTL Program to date, OSHA has recognized 14 laboratories operating approximately 25 sites in the U.S. and Canada as Nationally Recognized Testing Laboratories (NRTLs).

The purpose of the NRTL Program is to protect workers and give employers and employees confidence that the equipment they purchase and use is safe and will meet the required safety standards. Regulations for the NRTL Program are set forth at 29 CFR 1910.7, Definition and Requirements for a Nationally Recognized Testing Laboratory, which outlines the requirements for recognizing qualified U.S. and foreign laboratories. Laboratories seeking recognition are evaluated by OSHA. The laboratories must demonstrate that they are independent and have the capability to test, evaluate, and approve equipment for use in the workplace.

Since 1987, OSHA has been providing services to NRTLs without cost. Such services include processing and evaluating NRTL application documents, auditing facilities, monitoring and conducting follow-up activities, responding to complaints, processing applications for expansion of scope, and related administrative activities. The NRTL Program and the services provided by OSHA benefit the NRTLs by recognizing their qualifications to test and certify products used in the workplace. In order to make these services self-sustaining, a fee collection program is being proposed.

It is OSHA's intention to seek permission from Congress to allow the Department to retain collected fees. Fees would be used to maintain the NRTL Program and improve the level of services provided to the laboratories by OSHA. To reduce the administrative burden of the Program on OSHA, NRTLs, and new applicants, OSHA may utilize assessment reports generated by independent national or international accreditation organizations that are capable of assessing the ability of laboratories to test or certify products for safety. OSHA will retain all authority with respect to final evaluations and the granting of final recognition to a laboratory as a NRTL.

OSHA's decision to propose a NRTL fee program is consistent with the policies and criteria set forth in 31 U.S.C. §9701 and OMB Circular Number A-25. The pertinent sections of 31 U.S.C. §9701 are set forth below.

- (a) It is the sense of Congress that each service or thing of value provided by an

agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practical. Each charge shall be -

- (1) fair; and,
- (2) based on -
 - (A) the costs to the Government;
 - (B) the value of the service or thing to the recipient;
 - (C) public policy or interest served; and,
 - (D) other relevant facts.

The pertinent section of OMB Circular Number A-25 is set forth below.

Proposals that allow agency retention of collections may be appropriate when a fee is levied in order to finance a service that is intended to be provided on a substantially self-sustaining basis and thus is dependent upon adequate collections.

OSHA solicited input from the NRTLs on its intention to establish a fee program and received eleven responses. Eight responses were conditionally in favor of establishing fees. All of the favorable responses included the condition that OSHA retain the funds generated from the fees to maintain and improve the services that are provided to the NRTLs. Of the three NRTLs that expressed opposition to fees, one indicated that fees would be satisfactory provided that OSHA retain the fees, that the NRTL Program fully comply with internationally accepted criteria, and that OSHA establish an oversight group to monitor activities related to compliance.

OSHA's proposed revision includes a new paragraph, 29 CFR §1910.7(f), that will allow the Agency to charge fees for services provided to the NRTLs. The service fees are based on an estimated cost to the Government that was derived from data on NRTL activities collected by OSHA over the past several years. The proposed fees are intended to be fair and take into consideration factors such as the expected time and expense involved in providing the various services.

The principles that govern the fee schedule are consistent with applicable regulations in that they are fair to NRTLs and the Government, i.e. they are comparable to customary and ordinary charges levied by similar programs and adjusted to the required tasks, and are based on the NRTL Program's cost to the Government. Further, fee collection and bookkeeping activities will be kept to a minimum to control costs. Fees would cover the activities that are necessary to maintain the NRTL Program within the boundaries set by OMB Circular Number A-25 and 31 U.S.C. §9701, and fees would be adjusted periodically up or down based on changes in costs.

A new paragraph is proposed as 29 CFR 1910.7(f)(1) requiring that a Fee Schedule be used to cover the Government's costs associated with services provided. A number of methods for charging fees were considered in the process of developing the proposed fee schedule. These are as follows:

Method 1: Fixed Fees for Services. The fixed fees refer to either a fixed rate, charge

per unit of work (e.g. review of a standard), or average cost per activity (e.g. processing of an application). The fixed fee can be used as a substitute for fees based on actual costs if the actual costs vary little or if costs are demonstrated to be relatively uniform for the same services.

Method 2: Real time, actual cost-based fees. This method requires establishing a mechanism for each staff to accurately track expenses by project and type of activity or service, and to bill accordingly.

Method 3: Charge per mark. In this method, the initial recognition by OSHA, as well as subsequent audits, are completed at no cost to the establishment. After recognition by OSHA, the NRTL would be charged a minimal fee for every certified product that bears the OSHA NRTL mark. (OSHA has not to date mandated the use of a NRTL mark.)

It is OSHA's opinion that a fee schedule based on fixed rates and charges is the most efficient way for the Agency and the laboratories to track the charges and the most cost-effective method to implement the fee program. OSHA also considered two additional factors, based on experience with the NRTL Program, to ensure fairness in the Fees Schedule:

- (A) Required time for on-site assessments and audits is generally proportional to the number of standards and programs being examined. Therefore, OSHA

proposes fees for such activities that are based on a fixed charge per standard or program, an approach that allows for automatic self-adjustment for the size of the task; and,

(B) Expenses for evaluating an application vary, depending on the volume of material submitted to be reviewed and the extent to which such material is complete. An incomplete application for a few standards may require as much time to evaluate as a completed application that deals with a large number of standards and sites.

OSHA is therefore proposing a fixed charge based on the average time required to evaluate an application as experienced by the Agency's staff in the last seven years.

Explanation of Proposed Fee Schedule

OSHA is proposing to charge a non-refundable \$3,000 fee for processing a new application. This proposal is based on an estimation of the average number of hours required to process a new application, as experienced by OSHA staff in the past seven years. This fee covers tasks such as evaluating the application in light of the requirements of the standard, advising the applicant regarding any legal or technical deficiencies in the application, preparing a site assessment cost estimate report for the applicant, and coordinating with the applicant on any additional information needed to minimize subsequent on-site activities. OSHA is proposing that such fees be paid before

the service is performed.

OSHA is also proposing to charge a non-refundable \$2,500 fee for processing an application to expand or renew recognition. In addition to the activities listed above for new applications, OSHA will advise the applicant for expansion or renewal regarding any unresolved issues that may delay action and will provide guidance on the resolution of such issues. In addition, OSHA is proposing to charge \$300 per standard per site, plus \$600 per program per site for performing site assessments in connection with new applications or expansions. (For information regarding NRTL Programs acceptable to OSHA, see the Federal Register, Volume 60, Number 46, March 9, 1995 Notice, Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures.)

OSHA's standard operating procedure for implementing 29 CFR 1910.7 requires the Agency to conduct annual audits for each site to ensure continued conformity with the recognition requirements. A complete audit or limited audit may be scheduled based on the performance history of the site and other factors such as any verified complaints against the NRTL. An audit may be scheduled prior to making a decision on applications for renewal. OSHA is proposing to charge a non-refundable \$200.00 fee per standard and \$400.00 fee per program per site when an audit is scheduled. The NRTL will be charged for any audit-related tasks that are performed. Examples include on-site audits, report preparations, technical support, preparation of draft reports, coordination with the

NRTLs, and final reports.

In addition to the direct services provided to the NRTLs, the OSHA Program covers a broad spectrum of other activities that are necessary to support the NRTL Program. Such activities include complaint investigations, standard interpretations, litigation, interagency NRTL Program activities, and publications, as well as administrative and overhead costs. To cover these kinds of expenses, OSHA is proposing to charge a nonrefundable and mandatory annual business license fee based on \$100.00 per standard per site per year, plus \$200.00 per program per site per year.

Also, OSHA is proposing to charge the laboratory the actual cost to the Government for any travel to the laboratory. Other applicable Government regulations for travel will be observed. When more than one site is covered in one trip, the cost will be divided in proportion to the time allocated for each site (pro-rated). Travel costs of trainees accompanying assessors and auditors will not be charged to the NRTL.

Upon receiving an application and the required fees, OSHA will provide the applicant with an itemized initial estimate of the site assessment cost, based on the submitted information and the latest fee schedule. Unless the applicant withdraws the application prior to scheduling the on-site assessment or the application is modified in a way that warrants reassessing the cost, the initial estimate will also serve as a notification for payment. Proposed section 1910.7(f)(3) requires that the applicant submit a check

payable to the "U.S. Department of Labor" in the amount indicated in the notification.

Public Participation

Interested persons are requested to submit written comments on the issues raised in this proposal. Responses to the questions raised in the proposal are also encouraged.

Whenever possible, solutions should be included where the comments are of a critical nature. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken on each issue. These comments must be postmarked by [insert date 60 days after publication]. Comments are to be submitted in writing in quadruplicate, or 1 original (hard copy) and 1 disk (5 1/4" or 3 1/2") in WP 5.0, 5.1, 5.2, 6.0, 6.1 or ASCII. Note: Any information not contained on disk; e.g., studies, articles, etc. must be submitted in quadruplicate. Comments of 10 pages or less may be transmitted by facsimile to (202) 219-5046, provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. All comments shall be submitted to: Docket Officer, Docket No. NRTL 95-F-1, Occupational Safety and Health Administration, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C., 20210. Telephone (202) 219-7894. All written comments received within the specified comment period will be made a part of the record and will be available for inspection and copying at the above Docket Office address.

Regulatory Impact Assessment

Pursuant to Executive Order #12866 (58 FR 51735), the Assistant Secretary has

determined that the proposed rule will not impose adverse economic impacts on firms in the regulated community. Nor is any significant international effort expected.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. §601 et seq.), the Assistant Secretary certifies that the proposed rule will not have a significant adverse impact on a substantial number of small entities.

Environmental Impact Assessment

In accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. §4321 et seq.), Council on Environmental Quality NEPA regulations (40 CFR Part 1500 et seq.), and the Department of Labor's NEPA regulations (29 CFR Part 11), the Assistant Secretary has determined that this proposed rule will not have a significant impact on the external environment.

Federalism

This proposed rule has been reviewed in accordance with Executive Order 12612 (52 FR 41685), regarding Federalism. As this proposed rule would just set fees for services provided by the Federal Government to private entities, it has no impact on Federalism.

Paperwork Reduction Act of 1995

The proposed regulation contains no information collections which are subject to review

by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

LIST OF SUBJECTS

Laboratories; Occupational safety and health; Occupational Safety and Health Administration; Safety; Testing

AUTHORITY

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Washington, D.C., 20210.

Pursuant to section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. §657(g)(2)), Secretary of Labor's Order Number 1-90 (55 FR 9033), and 5 U.S.C. §553, it is proposed to revise 29 CFR 1910.7 as set forth below:

Signed in Washington, D.C. this day of 1996.

Joseph A. Dear

Assistant Secretary of Labor

PART 1910 [AMENDED]

1. The authority citation for subpart A of 29 CFR part 1910 is proposed to be revised to read as follows:

AUTHORITY: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. §653, §655, §657); Secretary of Labor's Order Numbers 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 1-90 (55 FR 9033), as applicable.

Section 1910.7 is also issued under 31 U.S.C. §9701.

2. Section 1910.7 is amended by adding a new paragraph (f) to read as follows:

PART 1910 - OCCUPATIONAL SAFETY AND HEALTH STANDARDS

§1910.7 Definition and requirements for a nationally recognized testing laboratory.

* * * * *

(f) Fees. (1) OSHA shall charge fees for services that are provided to the NRTLs. The service fees will be computed on the basis of the cost of these services to the Government.

(2) The Fees Schedule, set forth below, lists the various fees and is used to determine the appropriate charges for the services provided. The specific amount of charges for services will be adjusted periodically to allow for changes in costs to the Government. Notice of any changes will be published in the Federal Register.

Fees Schedule

SERVICE	CHARGE
Processing a new application	Non-refundable \$3000
Processing an application for expansion or for renewal	Non-refundable \$2500
Performing initial site assessments for new applications or for expansions	\$300 per standard per site, plus \$600 per program per site
Audit	\$200.00 per standard per site, plus \$400.00 per program per site
Annual business license	Non-refundable \$100.00 per standard per site per year, plus \$200.00 per program per site per year
Travel	Actual cost to the Government

(3) All NRTLs and applicants, when requesting a service or, upon notification from OSHA, shall submit a check payable to the "U.S. Department of Labor" in the amount indicated in the notification or the Fees Schedule, except that the annual fee for the business licence shall be due on the anniversary of the effective date of the first OSHA recognition.

(4) OSHA may use preliminary evaluation reports prepared by

independent and competent accreditation organizations when it is deemed to be expedient, cost-effective, and efficient for the recognition program. It will be the responsibility of the applicant to reimburse the service provider directly for the service provided, in accordance with the provider's usual and customary charges.