

§ 1910.7

29 CFR Ch. XVII (7–1–05 Edition)

(1) Standard M-1 (1953, 1955, 1957, 1960, 1961, 1963, 1965, 1966, 1967, 1968), Superseded by ANSI K61.1-1972, IBR approved for § 1910.111(b)(1) (i) and (iii).

(2) [Reserved]

(w) The following material is available for purchase from Underwriters Laboratories (UL), 207 East Ohio Street, Chicago, IL 60611:

(1) UL 58-61 Steel Underground Tanks for Flammable and Combustible Liquids, 5th Ed., IBR approved for § 1910.106(b)(1)(iii)(a)(I).

(2) UL 80-63 Steel Inside Tanks for Oil-Burner Fuel, IBR approved for § 1910.106(b)(1)(iii)(a)(I).

(3) UL 142-68 Steel Above Ground Tanks for Flammable and Combustible Liquids, IBR approved for § 1910.106(b)(1)(iii)(a)(I).

[39 FR 23502, June 27, 1974, as amended at 49 FR 5321, Feb. 10, 1984; 61 FR 9231, Mar. 7, 1996; 64 FR 13908, Mar. 23, 1999; 69 FR 18803, Apr. 9, 2004]

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

(a) *Application.* This section shall apply only when the term *nationally recognized testing laboratory* is used in other sections of this part.

(b) *Laboratory requirements.* The term *nationally recognized testing laboratory* (NRTL) means an organization which is recognized by OSHA in accordance with appendix A of this section and which tests for safety, and lists or labels or accepts, equipment or materials and which meets all of the following criteria:

(1) For each specified item of equipment or material to be listed, labeled or accepted, the NRTL has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform:

(i) Testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards; or

(ii) Experimental testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards or performance in a specified manner.

(2) The NRTL shall provide, to the extent needed for the particular equipment or materials listed, labeled, or accepted, the following controls or services:

(i) Implements control procedures for identifying the listed and labeled equipment or materials;

(ii) Inspects the run of production of such items at factories for product evaluation purposes to assure conformance with the test standards; and

(iii) Conducts field inspections to monitor and to assure the proper use of its identifying mark or labels on products;

(3) The NRTL is completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes; and,

(4) The NRTL maintains effective procedures for:

(i) Producing creditable findings or reports that are objective and without bias; and

(ii) Handling complaints and disputes under a fair and reasonable system.

(c) *Test standards.* An *appropriate test standard* referred to in § 1910.7(b)(1) (i) and (ii) is a document which specifies the safety requirements for specific equipment or class of equipment and is:

(1) Recognized in the United States as a safety standard providing an adequate level of safety, and

(2) Compatible with and maintained current with periodic revisions of applicable national codes and installation standards, and

(3) Developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved, or

(4) In lieu of paragraphs (c) (1), (2), and (3), the standard is currently designated as an American National Standards Institute (ANSI) safety-designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials.

(d) *Alternative test standard.* If a testing laboratory desires to use a test standard other than one allowed under

paragraph (c) of this section, then the Assistant Secretary of Labor shall evaluate the proposed standard to determine that it provides an adequate level of safety before it is used.

(e) *Implementation.* A testing organization desiring recognition by OSHA as an NRTL shall request that OSHA evaluate its testing and control programs against the requirements in this section for any equipment or material it may specify. The recognition procedure shall be conducted in accordance with appendix A to this section.

(f) *Fees.* (1) Each applicant for NRTL recognition and each NRTL must pay fees for services provided by OSHA. OSHA will assess fees for the following services:

(i) Processing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and FEDERAL REGISTER notices; and

(ii) Audits of sites.

(2) The fee schedule established by OSHA reflects the cost of performing the activities for each service listed in paragraph (f)(1) of this section. OSHA calculates the fees based on either the average or actual time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other

than travel for personnel that perform or administer the activities covered by the fees); and the average or actual costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

$$\text{Activity Fee} = [\text{Average (or Actual) Hours to Complete the Activity} \times \text{Staff Costs per Hour}] + \text{Average (or Actual) Travel Costs}$$

(3) (i) OSHA will review costs annually and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated costs for the NRTL Program. If a change is warranted, OSHA will follow the implementation table in paragraph (f)(4) of this section.

(ii) OSHA will publish all fee schedules in the FEDERAL REGISTER. Once published, a fee schedule remains in effect until it is superseded by a new fee schedule. Any member of the public may request a change to the fees included in the current fee schedule. Such a request must include appropriate documentation in support of the suggested change. OSHA will consider such requests during its annual review of the fee schedule.

(4) OSHA will implement fee assessment, collection, and payment as follows:

| Approximate dates | Action required |
|---|---|
| I. Annual Review of Fee Schedule | |
| November 1 | OSHA will publish any proposed new Fee Schedule in the Federal Register , if OSHA determines changes in the schedule are warranted. |
| November 16 | Comments due on the proposed new Fee Schedule. |
| December 15 | OSHA will publish the final Fee Schedule in the Federal Register , making it effective. |
| II. Application Processing Fees | |
| Time of application | Applicant must pay the applicable fees shown in the Fee Schedule when submitting the application; OSHA will not begin processing until fees are received. |
| Publication of preliminary notice | Applicant must pay remainder of fees; OSHA cancels application if fees are not paid when due. |
| III. Audit Fees | |
| After audit performed | OSHA will bill each existing NRTL for the audit fees in effect at the time of audit, but will reflect actual travel costs and staff time in the bill. |
| 30 days after bill date | NRTLs must pay audit fees; OSHA will assess late fee if audit fees are not paid. |
| 45 days after bill date | OSHA will send a letter to the NRTL requesting immediate payment of the audit fees and late fee |
| 60 days after bill date | OSHA will publish a notice in the Federal Register announcing its intent to revoke recognition for NRTLs that have not paid these audit fees. |

(5) OSHA will provide details about how to pay the fees through appropriate OSHA Program Directives, which will be available on the OSHA web site.

APPENDIX A TO §1910.7—OSHA RECOGNITION PROCESS FOR NATIONALLY RECOGNIZED TESTING LABORATORIES

INTRODUCTION

This appendix provides requirements and criteria which OSHA will use to evaluate and recognize a Nationally Recognized Testing Laboratory (NRTL). This process will include the evaluation of the product evaluation and control programs being operated by the NRTL, as well as the NRTL's testing facilities being used in its program. In the evaluation of the NRTLs, OSHA will use either consensus-based standards currently in use nationally, or other standards or criteria which may be considered appropriate. This appendix implements the definition of NRTL in 29 CFR 1910.7 which sets out the criteria that a laboratory must meet to be recognized by OSHA (initially and on a continuing basis). The appendix is broader in scope, providing procedures for renewal, expansion and revocation of OSHA recognition. Except as otherwise provided, the burden is on the applicant to establish by a preponderance of the evidence that it is entitled to recognition as an NRTL. If further detailing of these requirements and criteria will assist the NRTLs or OSHA in this activity, this detailing will be done through appropriate OSHA Program Directives.

I. Procedures for Initial OSHA Recognition

A. Applications.

1. *Eligibility.* a. Any testing agency or organization considering itself to meet the definition of nationally recognized testing laboratory as specified in §1910.7 may apply for OSHA recognition as an NRTL.

b. However, in determining eligibility for a foreign-based testing agency or organization, OSHA shall take into consideration the policy of the foreign government regarding both the acceptance in that country of testing data, equipment acceptances, and listings, and labeling, which are provided through nationally recognized testing laboratories recognized by the Assistant Secretary, and the accessibility to government recognition or a similar system in that country by U.S.-based safety-related testing agencies, whether recognized by the Assistant Secretary or not, if such recognition or a similar system is required by that country.

2. *Content of application.* a. The applicant shall provide sufficient information and detail demonstrating that it meets the requirements set forth in §1910.7, in order for an in-

formed decision concerning recognition to be made by the Assistant Secretary.

b. The applicant also shall identify the scope of the NRTL-related activity for which the applicant wishes to be recognized. This will include identifying the testing methods it will use to test or judge the specific equipment and materials for which recognition is being requested, unless such test methods are already specified in the test standard. If requested to do so by OSHA, the applicant shall provide documentation of the efficacy of these testing methods.

c. The applicant may include whatever enclosures, attachments, or exhibits the applicant deems appropriate. The application need not be submitted on a Federal form.

3. *Filing office location.* The application shall be filed with: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Amendments and withdrawals.* a. An application may be revised by an applicant at any time prior to the completion of activity under paragraph I.B.4. of this appendix.

b. An application may be withdrawn by an applicant, without prejudice, at any time prior to the final decision by the Assistant Secretary in paragraph I.B.7.c. of this appendix.

B. Review and Decision Process; Issuance or Renewal.

1. *Acceptance and on-site review.* a. Applications submitted by eligible testing agencies will be accepted by OSHA, and their receipt acknowledged in writing. After receipt of an application, OSHA may request additional information if it believes information relevant to the requirements for recognition has been omitted.

b. OSHA shall, as necessary, conduct an on-site review of the testing facilities of the applicant, as well as the applicant's administrative and technical practices, and, if necessary, review any additional documentation underlying the application.

c. These on-site reviews will be conducted by qualified individuals technically expert in these matters, including, as appropriate, non-Federal consultants/contractors acceptable to OSHA. The protocol for each review will be based on appropriate national consensus standards or international guides, with such additions, changes, or deletions as may be considered necessary and appropriate in each case by OSHA. A written report shall be made of each on-site review and a copy shall be provided to the applicant.

2. *Positive finding by staff.* If, after review of the application, and additional information, and the on-site review report, the applicant appears to have met the requirements for recognition, a written recommendation shall

be submitted by the responsible OSHA personnel to the Assistant Secretary that the application be approved, accompanied by a supporting explanation.

3. *Negative finding by staff.*—a. *Notification to applicant.* If, after review of the application, any additional information and the on-site review report, the applicant does not appear to have met the requirements for recognition, the responsible OSHA personnel shall notify the applicant in writing, listing the specific requirements of § 1910.7 and this appendix which the applicant has not met, and allow a reasonable period for response.

b. *Revision of application.* (i) After receipt of a notification of negative finding (i.e., for intended disapproval of the application), and within the response period provided, the applicant may:

(a) Submit a revised application for further review, which could result in a positive finding by the responsible OSHA personnel pursuant to subsection I.B.2. of this appendix; or

(b) Request that the original application be submitted to the Assistant Secretary with an attached statement of reasons, supplied by the applicant of why the application should be approved.

(ii) This procedure for applicant notification and potential revision shall be used only once during each recognition process.

4. *Preliminary finding by Assistant Secretary.*

a. The Assistant Secretary, or a special designee for this purpose, will make a preliminary finding as to whether the applicant has or has not met the requirements for recognition, based on the completed application file, the written staff recommendation, and the statement of reasons supplied by the applicant if there remains a staff recommendation of disapproval.

b. Notification of this preliminary finding will be sent to the applicant and subsequently published in the FEDERAL REGISTER.

c. This preliminary finding shall not be considered an official decision by the Assistant Secretary or OSHA, and does not confer any change in status or any interim or temporary recognition for the applicant.

5. *Public review and comment period.*—a. The FEDERAL REGISTER notice of preliminary finding will provide a period of not less than 30 calendar days for written comments on the applicant's fulfillment of the requirements for recognition. The application, supporting documents, staff recommendation, statement of applicant's reasons, and any comments received, will be available for public inspection in the OSHA Docket Office.

b. Any member of the public, including the applicant, may supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements of the definition in 29 CFR § 1910.7 and this appendix. Submission of pertinent documents and exhibits shall be made

in writing by the close of the comment period.

6. *Action after public comment.*—a. *Final decision by Assistant Secretary.* Where the public review and comment record supports the Assistant Secretary's preliminary finding concerning the application, i.e., absent any serious objections or substantive claims contrary to the preliminary finding having been received in writing from the public during the comment period, the Assistant Secretary will proceed to final written decision on the application. The reasons supporting this decision shall be derived from the evidence available as a result of the full application, the supporting documentation, the staff finding, and the written comments and evidence presented during the public review and comment period.

b. *Public announcement.* A copy of the Assistant Secretary's final decision will be provided to the applicant. Subsequently, a notification of the final decision shall be published in the FEDERAL REGISTER. The publication date will be the effective date of the recognition.

c. *Review of final decision.* There will be no further review activity available within the Department of Labor from the final decision of the Assistant Secretary.

7. *Action after public objection.*—a. *Review of negative information.* At the discretion of the Assistant Secretary or his designee, OSHA may authorize Federal or contract personnel to initiate a special review of any information provided in the public comment record which appears to require resolution, before a final decision can be made.

b. *Supplementation of record.* The contents and results of special reviews will be made part of this record by the Assistant Secretary by either:

(i) Reopening the written comment period for public comments on these reviews; or

(ii) Convening an informal hearing to accept public comments on these reviews, conducted under applicable OSHA procedures for similar hearings.

c. *Final decision by the Assistant Secretary.* The Assistant Secretary shall issue a decision as to whether it has been demonstrated, based on a preponderance of the evidence, that the applicant meets the requirements for recognition. The reasons supporting this decision shall be derived from the evidence available as a result of the full application, the supporting documentation, the staff finding, the comments and evidence presented during the public review and comment period, and written to transcribed evidence received during any subsequent reopening of the written comment period or informal public hearing held.

d. *Public announcement.* A copy of the Assistant Secretary's final decision will be provided to the applicant, and a notification

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will be published in the FEDERAL REGISTER subsequently announcing the decision.

e. *Review of final decision.* There will be no further review activity available within the Department of Labor from the final decision of the Assistant Secretary.

c. *Terms and conditions of recognition.* The following terms and conditions shall be part of every recognition:

1. *Letter of recognition.* The recognition by OSHA of any NRTL will be evidenced by a letter of recognition from OSHA. The letter will provide the specific details of the scope of the OSHA recognition, including the specific equipment or materials for which OSHA recognition has been granted, as well as any specific conditions imposed by OSHA.

2. *Period of recognition.* The recognition by OSHA of each NRTL will be valid for five years, unless terminated before the expiration of the period. The dates of the period of recognition will be stated in the recognition letter.

3. *Constancy in operations.* The recognized NRTL shall continue to satisfy all the requirements or limitations in the letter of recognition during the period of recognition.

4. *Accurate publicity.* The OSHA-recognized NRTL shall not engage in or permit others to engage in misrepresentation of the scope or conditions of its recognition.

5. *Temporary Recognition of Certain NRTLs.* a. Notwithstanding all other requirements and provisions of §1910.7 and this appendix, the following two organizations are recognized temporarily as nationally recognized testing laboratories by the Assistant Secretary for a period of five years beginning June 13, 1988 and ending on July 13, 1993:

(i) Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(ii) Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062.

b. At the end of the five-year period, the two temporarily recognized laboratories shall apply for renewal of OSHA recognition utilizing the following procedures established for renewal of OSHA recognition.

II. Supplementary Procedures.

A. Test standard changes.

A recognized NRTL may change a testing standard or elements incorporated in the standard such as testing methods or pass-fail criteria by notifying the Assistant Secretary of the change, certifying that the revised standard will be at least as effective as the prior standard, and providing the supporting data upon which its conclusions are based. The NRTL need not inform the Assistant Secretary of minor deviations from a test standard such as the use of new instrumentation that is more accurate or sensitive than originally called for in the standard. The NRTL also need not inform the Assistant

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Secretary of its adoption of revisions to third-party testing standards meeting the requirements of §1910.7(c)(4), if such revisions have been developed by the standards developing organization, or of its adoption of revisions to other third-party test standards which the developing organization has submitted to OSHA. If, upon review, the Assistant Secretary or his designee determines that the proposed revised standard is not "substantially equivalent" to the previous version with regard to the level of safety obtained, OSHA will not accept the proposed testing standard by the recognized NRTL, and will initiate discontinuance of that aspect of OSHA-recognized activity by the NRTL by modification of the official letter of recognition. OSHA will publicly announce this action and the NRTL will be required to communicate this OSHA decision directly to affected manufacturers.

B. Expansion of current recognition

1. *Eligibility.* A recognized NRTL may apply to OSHA for an expansion of its current recognition to cover other categories of NRTL testing in addition to those included in the current recognition.

2. *Procedure.* a. OSHA will act upon and process the application for expansion in accordance with subsection I.B. of this appendix, except that the period for written comments, specified in paragraph 5.a of subsection I.B. of this appendix, will be not less than 15 calendar days.

b. In that process, OSHA may decide not to conduct an on-site review, where the substantive scope of the request to expand recognition is closely related to the current area of recognition.

c. The expiration date for each expansion of recognition shall coincide with the expiration date of the current basic recognition period.

C. Renewal of OSHA recognition

1. *Eligibility.* A recognized NRTL may renew its recognition by filing a renewal request at the address in paragraph I.A.3. of this appendix not less than nine months, nor more than one year, before the expiration date of its current recognition.

2. *Procedure.* a. OSHA will process the renewal request in accordance with subsection I.B. of this appendix, except that the period for written comments, specified in paragraph 5.a of subsection I.B. of this appendix, will be not less than 15 calendar days.

b. In that process, OSHA may determine not to conduct the on-site reviews in I.B.1.a. where appropriate.

c. When a recognized NRTL has filed a timely and sufficient renewal request, its current recognition will not expire until a final decision has been made by OSHA on the request.

d. After the first renewal has been granted to the NRTL, the NRTL shall apply for a continuation of its recognition status every five years by submitting a renewal request. In lieu of submitting a renewal request after the initial renewal, the NRTL may certify its continuing compliance with the terms of its letter of recognition and 29 CFR 1910.7.

3. *Alternative procedure.* After the initial recognition and before the expiration thereof, OSHA may (for good cause) determine that there is a sufficient basis to dispense with the renewal requirement for a given laboratory and will so notify the laboratory of such a determination in writing. In lieu of submitting a renewal request, any laboratory so notified shall certify its continuing compliance with the terms of its letter of recognition and 29 CFR 1910.7.

D. Voluntary termination of recognition.

At any time, a recognized NRTL may voluntarily terminate its recognition, either in its entirety or with respect to any area covered in its recognition, by giving written notice to OSHA. The written notice shall state the date as of which the termination is to take effect. The Assistant Secretary shall inform the public of any voluntary termination by FEDERAL REGISTER notice.

E. Revocation of recognition by OSHA.

1. *Potential causes.* If an NRTL either has failed to continue to substantially satisfy the requirements of § 1910.7 or this appendix, or has not been reasonably performing the NRTL testing requirements encompassed within its letter of recognition, or has materially misrepresented itself in its applications or misrepresented the scope or conditions of its recognition, the Assistant Secretary may revoke the recognition of a recognized NRTL, in whole or in part. OSHA may initiate revocation procedures on the basis of information provided by any interested person.

2. *Procedure.* a. Before proposing to revoke recognition, the Agency will notify the recognized NRTL in writing, giving it the opportunity to rebut or correct the alleged deficiencies which would form the basis of the proposed revocation, within a reasonable period.

b. If the alleged deficiencies are not corrected or reconciled within a reasonable period, OSHA will propose, in writing to the recognized NRTL, to revoke recognition. If deemed appropriate, no other announcement need be made by OSHA.

c. The revocation shall be effective in 60 days unless within that period the recognized NRTL corrects the deficiencies or requests a hearing in writing.

d. If a hearing is requested, it shall be held before an administrative law judge of the De-

partment of Labor pursuant to the rules specified in 29 CFR part 1905, subpart C.

e. The parties shall be OSHA and the recognized NRTL. The Assistant Secretary may allow other interested persons to participate in these hearings if such participation would contribute to the resolution of issues germane to the proceeding and not cause undue delay.

f. The burden of proof shall be on OSHA to demonstrate by a preponderance of the evidence that the recognition should be revoked because the NRTL is not meeting the requirements for recognition, has not been reasonably performing the product testing functions as required by § 1910.7, this appendix A, or the letter of recognition, or has materially misrepresented itself in its applications or publicity.

3. *Final decision.* a. After the hearing, the Administrative Law Judge shall issue a decision stating the reasons based on the record as to whether it has been demonstrated, based on a preponderance of evidence, that the applicant does not continue to meet the requirements for its current recognition.

b. Upon issuance of the decision, any party to the hearing may file exceptions within 20 days pursuant to 29 CFR 1905.28. If no exceptions are filed, this decision is the final decision of the Assistant Secretary. If objections are filed, the Administrative Law Judge shall forward the decision, exceptions and record to the Assistant Secretary for the final decision on the proposed revocation.

c. The Assistant Secretary will review the record, the decision by the Administrative Law Judge, and the exceptions filed. Based on this, the Assistant Secretary shall issue the final decision as to whether it has been demonstrated, by a preponderance of evidence, that the recognized NRTL has not continued to meet the requirements for OSHA recognition. If the Assistant Secretary finds that the NRTL does not meet the NRTL recognition requirements, the recognition will be revoked.

4. *Public announcement.* A copy of the Assistant Secretary's final decision will be provided to the applicant, and a notification will be published in the FEDERAL REGISTER announcing the decision, and the availability of the complete record of this proceeding at OSHA. The effective date of any revocation will be the date the final decision copy is sent to the NRTL.

5. *Review of final decision.* There will be no further review activity available within the Department of Labor from the final decision of the Assistant Secretary.

[53 FR 12120, Apr. 12, 1988; 53 FR 16838, May 11, 1988, as amended at 54 FR 24333, June 7, 1989; 65 FR 46818, 46819, July 31, 2000]