

partnerships, and (3) expediting the development and promulgation of OSHA standards.

#### Committee Members

MACOSH is composed of approximately 15 members who have been selected to represent the divergent interests of the maritime community. The makeup of the membership complies with Section 7 (b) of the OSH Act which requires the following: at least one member who is a designee of the Secretary of Health and Human Services; at least one designee of a state safety and health agency; and equal numbers of representatives of employees and employers, respectively. Other members have been selected based on their knowledge and experience and include representatives from professional and other governmental organizations with specific maritime responsibilities. MACOSH is a comprehensive representation of the maritime community.

Appointees to the Committee include these representatives from labor, industry, public interests and government agencies. The appointees represent groups interested in or affected by the outcome of rulemaking. The 15 members are:

#### Labor Representatives

Charles Brasford—Director of Occupational Safety and Health, International Association of Machinists and Aerospace Workers.  
Al Cernados—Executive Vice President, International Longshoremen's Association.  
Chico McGill—Chairman, Safety and Health Committee, Local 733, International Brotherhood of Electrical Workers, Ingalls Shipyard  
Richard Olsen—Coastal Committee, International Longshoremen's and Warehousemen's Union

#### Industry Representatives

Katherine Chumley—Chair, Environmental Safety and Health Committee, Shipbuilders Council of America, Atlantic Marine.  
John Faulk—Safety and Health Director, Ryan Walsh Stevedoring.  
Chet Mathews—Safety and Health Director, Bath Iron Works  
Frank Scanlan—General Counsel and Secretary, National Maritime Safety Association.

#### Government and Professional Organizations

Lieutenant Julie Gahn—Hazardous Materials Division, U.S. Coast Guard.

Alexander Landsburg—Systems Safety and Human Factors Division, Maritime Administration.

Fran Lavelle—American Association of Port Administrators.

Elsie Munsel—Safety and Environmental Programs, U.S. Navy.

Larry Reed—Assistant Director for

Policy, National Institute for Occupational Safety and Health.

Pete Schmidt—Specialty Compliance Programs, State of Washington.

James Thornton—American Industrial Hygiene Association.

Signed at Washington, DC this 3rd day of March 1995.

**Joseph A. Dear,**

*Assistant Secretary of Labor.*

[FR Doc. 95-5894 Filed 3-8-95; 8:45 am]

BILLING CODE 4510-26-M

#### Maritime Advisory Committee for Occupational Safety and Health, Notice of Meeting

**AGENCY:** Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

**ACTION:** Maritime Advisory Committee for Occupational Safety and Health (MACOSH); notice of meeting.

**SUMMARY:** Notice is hereby given that the Maritime Advisory Committee for Occupational Safety and Health, established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor on matters relating to occupational safety and health programs, policies, and standards in the maritime industries of the United States will meet March 22 and 23, 1995 in Room C-5320, Seminar Room No. 6, of the Department of Labor, 200 Constitution Avenue NW., Washington, DC.

**ADDRESSES:** Any written comments in response to this notice should be sent to the following address: OSHA, Office of Maritime Standards, Room N-3621, 200 Constitution Avenue NW., Washington, DC 20210. Phone (202) 219-7234, fax (202) 219-7477.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Liberatore, Office of Maritime Standards, OSHA, (202) 219-7234.

**SUPPLEMENTARY INFORMATION:** The first meeting of the Marine Advisory Committee on Occupational Safety and Health will be held March 22 from 1 to 5, and March 23 from 9 to 5 in Room C-5320, Seminar Room 6, of the Department of Labor, 200 Constitution Avenue NW., Washington, DC. At this first meeting the newly appointed members will be introduced and then

the Committee will establish committee goals, plan for future meetings, discuss OSHA's compliance programs, outreach and training initiatives, and standards setting process, and hear about the current agenda and direction of OSHA.

All interested persons are invited to attend the public meetings of MACOSH, including the first one at the time and place indicated above. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Theda Kenney at 202-219-8061, no later than March 17, 1995, to obtain appropriate accommodations.

MACOSH will meet as a whole and also in small focus groups. Written data, views or comments for consideration by the Committee may be submitted, preferably with 20 copies, to Larry Liberatore at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. Members of the general public may request an opportunity to make oral presentations at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless these questions have been specifically approved by the chairperson. Anyone wishing to make an oral presentation should notify Larry Liberatore before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory Committee.

Signed at Washington, DC this 3rd day of March 1995.

**Joseph A. Dear,**

*Assistant Secretary of Labor.*

[FR Doc. 95-5895 Filed 3-8-95; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. NRTL-1-95]

#### Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Notice of interpretation.

**SUMMARY:** This notice announces the Occupational Safety and Health Administration's (OSHA) clarification of the types of programs and procedures

that Nationally Recognized Testing Laboratories (NRTL) may engage in under the OSHA/NRTL recognition program, 29 CFR 1910.7. This notice addresses in particular those programs under which the NRTL controls and audits, but does not itself generate, the data relied upon for product certification. OSHA invites currently recognized NRTLs as well as new applicants to request approval for any of these acceptable procedures.

**EFFECTIVE DATE:** March 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 6, 1984, (49 FR 8326), the Occupational Safety and Health Administration proposed a comprehensive overhaul of its regulatory procedures related to OSHA's requirements for safety testing or certification of certain workplace equipment and materials. The goals of the proposal were:

(1) To assure that products required to be tested and certified would be reliably tested and certified;

(2) To implement testing and certification requirements and procedures which would be administratively workable; and

(3) To take advantage of developments by others in organizing and evaluating product certification systems and in accrediting laboratories for testing.

In the proposal, OSHA stated that it was attempting to build upon the self regulatory efforts of the private sector, particularly in the fields of electrical and fire safety. OSHA intended to take full advantage of the mechanisms which existed in the private sector or in government, and to keep its long-term involvement in these activities to a minimum (see 53 FR 12103 second column, first paragraph). A three day informal public hearing was held on September 25, 26, and October 1, 1984. Based on the comments received and a review of the testimony in the record, the Agency modified its original proposal and, on April 12, 1988, (53 FR 12102), promulgated a new section, 1910.7—Definition and requirements for a nationally recognized testing laboratory, and a new Appendix A to section 1910.7—OSHA Recognition Process for Nationally Recognized Testing Laboratories.

The cornerstone of this regulation is the definition of the regulatory term "NRTL", with respect to specific elements. There are four elements that are identified as NRTL requirements: capability to test and evaluate equipment; control of certified products; independence; and procedures to produce creditable findings. These four elements that define an NRTL are incorporated into the criteria for the various types of procedures which OSHA approves and, when followed, provide OSHA with a reasonable degree of assurance that the products may be used safely in the workplace.

As noted above, capability to test and evaluate equipment, and independence are two of the elements required of an NRTL. These elements are discussed in the preamble to the final rule.

Capability to test does not mean that all testing will be done by the NRTL. OSHA stated in the preamble that while it expected generally that most applicants would do the testing in-house this was not a requirement of the standard. OSHA recognized that, in some cases, laboratories would subcontract out the testing of a certain product or aspect thereof due to unique or special testing needs. Anticipating this occurrence, OSHA stated that the laboratory actually doing the work must have the necessary capability to conduct the tests, and the laboratory applying for recognition would retain primary responsibility for fulfilling the requirements of the standard and complying with the procedures set out in Appendix A.

Independence also does not mean that an NRTL has to carry out all of its functions totally separate from other entities, including the manufacturer. Simply put, the independence requirement means that the analytical and decision making processes, which are the critical functions that must be performed, are accomplished by an organization which is financially independent of manufacturers, vendors, and users of certified products. As long as the NRTL retains these functions, the credibility of the testing and approval process will be maintained.

OSHA believes that this understanding of the concept of independence was implicit in the rule from the time of its adoption. Thus the OSHA rule was intended to build upon the system of testing and certification already in existence, not to supplant it. The existing system did not require a rigid barrier between NRTL and manufacturer, for example, which would completely prevent the NRTL from utilizing the manufacturer's testing or other information sources. As long as

the NRTL, which was not economically affiliated with the manufacturer, had ultimate authority and responsibility for the approval of the product and use of the certification mark, the needs of independence would be satisfied. The current clarification is consistent with and fleshes out the past practice.

OSHA intended a pragmatic application of the elements of independence and capability to perform testing, as well as the other elements that go into defining an NRTL. This can be seen from the general discussion in the preamble to the final rule, and specifically from the decision to grandfather the operations of UL and FMRC for a five-year period.

Thus, in the final rule, OSHA grandfathered some of the procedures that were in existence at the time of the rule. "It seems reasonable that product testing systems already in place should be able to continue their operations without Agency rulemaking on the testing standards, methods and procedures they are using now and have successfully used in the past. The operation of already existing product testing systems, such as UL and FMRC, could be seriously disrupted if the Agency attempted to undertake rulemaking on the testing standards, methods and procedures they are using." (See 53 FR 12108, second column, last paragraph). The initial assessment for renewal of UL and FMRC in 1993 and 1994, identified mature and functioning procedures, some over thirty years old, which included the acceptance of test data from other sources and use of contract organizations for other services.

In addition, OSHA's intent in the 1988 rule was to allow a level of flexibility in meeting the mandatory requirements. OSHA recognized that procedures may operationally vary from laboratory to laboratory, and still be acceptable. For example, the preamble to the final rule stated that, ". . . while the record indicates that current safety testing standards and practices may vary slightly among the third party safety testing organizations, the testing laboratories themselves indicate that they have compensating mechanisms and controls built into their particular systems which are intended to assure that the ultimate result will fall within an acceptable range" (TR 534,550). "The laboratories claim that they use those testing standards, methods and procedures which adequately address all necessary safety concerns and thereby justify their decision to "pass" the item in question and to allow the use of the laboratory's listing or identifying mark" (Ex 38, p 3; TR 552,

553). (53 FR 12108, third column, first paragraph).

Thus, OSHA recognized that there were testing practices that might vary and differ among laboratories. OSHA also recognized that the compensating mechanisms and controls for each system and laboratory depends upon the confidence the laboratory has in the final result leading to use of the mark.

OSHA's review of the applications for renewal of recognition submitted by UL and FMRC have lead to the conclusion that it is appropriate to provide further clarification of acceptable NRTL procedures. In order for other NRTLs and future applicants to utilize these types of procedures, OSHA has provided specific criteria that will identify the critical elements of the various procedures. These criteria, as discussed earlier, were derived from the four elements that define an NRTL. By providing such criteria, an NRTL may tailor its methods and testing techniques to any procedure the NRTL would like to include.

The identification of criteria discussed in this document will provide guidance to applicants utilizing the various procedures, while still allowing the flexibility that was identified in the discussion of the regulation.

#### Clarification

The Occupational Safety and Health Administration is clarifying the types of testing and certification procedures which may meet the requirements for acceptance under section 1910.7.

The Agency has previously determined that an NRTL may, but is not obligated to, accept test data, component or product approvals, or other information or data from another NRTL, as long as it is satisfied with their appropriateness. The NRTL has the prerogative to retest or reapprove, as it deems necessary.

OSHA is aware that in addition to the procedures which were previously clearly understood to be acceptable, NRTLs also utilize procedures involving entities such as contractors, manufacturers, and other laboratories, for the performance of many of their functions. These other procedures are acceptable with certain controls in place. OSHA recognizes that to maintain credibility of these procedures, a higher level of expertise and controls by the NRTL will be required. Therefore, applicants for these will be assessed and audited by OSHA to more stringent guidelines. Generally, all acceptable procedures fall within one or more of the following.

1. The basic procedure where all product testing and evaluation is

performed in-house by the NRTL that will certify the product

2. Acceptance of testing data from independent organizations, other than NRTLs
3. Acceptance of product evaluations from independent organizations, other than NRTLs
4. Acceptance of witnessed testing data
5. Acceptance of testing data from non-independent organizations
6. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing)
7. Acceptance of continued certification following minor product modifications by the client
8. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme
9. Acceptance of services other than testing or evaluation performed by subcontractors or agents

Certain procedures are unacceptable. Included among these are manufacturer self-declaration, client self-certification, and other similar procedures that permit non-NRTLs to determine conformance with the product standard, i.e., certify the product.

A number of procedures encountered during on-site investigations by OSHA assessors have existed in one form or another prior to the existence of the NRTL program in 1988. Most of these procedures appear to have matured to a degree necessary to maintain product safety in the workplace and included controls necessary for conformity with NRTL program requirements.

This Notice discussed procedures and criteria to be utilized by OSHA assessors and auditors in evaluating each of them. OSHA will continue to closely monitor progress under these criteria and evaluate the effectiveness of the procedures.

The specific criteria utilized for evaluating the procedures of an applicant for recognition as a nationally recognized testing laboratory are based upon "national consensus standards and international guides".

Three basic principles, to assure that product certifications would provide necessary levels of safety, were derived from the rule.

These principles are as follows:

- (1) The NRTL shall be capable of performing all aspects of a product certification scheme on its own.
  - The NRTL shall be recognized to perform the tests, evaluations, and other services before it can accept such services from other organizations.

(2) Where the services of other organizations are used, the NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall have procedures consistent with the appropriate national standards and international guides for granting, maintaining, and extending its qualification of an organization or service.

- The NRTL shall use assessors who met the competence requirements of the appropriate national standards and international guides to evaluate the organization.

- The NRTL shall ensure that all aspects of certification work performed by others—including participants, locations of testing, witnessing, and evaluations—are identified in the NRTL and client records and reports.

(3) The NRTL shall ensure that each organization providing data, product evaluations, or other services to the NRTL is capable of doing so, and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall be able to demonstrate that each organization it employs is capable of providing data, product evaluations, or other services that meet, or exceed, the quality of those provided by the NRTL.

- The NRTL shall maintain reports of its assessments of such organizations; these assessments shall conform to appropriate national standards and international guides.

- The NRTL shall have a documented surveillance program to ensure continued compliance with the NRTL's qualification procedures; this surveillance program shall be consistent with the appropriate national standards and international guides.

- The NRTL shall not be economically affiliated with any of these outside organization.

Procedures and specific criteria for each, were then developed from the basic principles. These principles, wherever they are applicable, shall be an integral requirement of the following procedures.

#### *1. The Basic Procedure—All Product Testing and Evaluation is Performed In-House by NRTL That Will Certify the Product*

This is the basic procedure utilized by an NRTL under conditions where it is feasible. The first and second basic principles are applicable to this procedure.

## 2. Acceptance of Testing Data From Independent Organizations, Other Than NRTLs

As was noted previously in reference to the preamble to the final rule, OSHA anticipated that most testing by an NRTL would be done in-house, but did not make this a requirement of the standard. Subcontracting out of some of the tests was anticipated by OSHA, when it noted that the laboratory actually doing the work must have the necessary capability to conduct the tests, and the laboratory applying for recognition would retain primary responsibility for fulfilling the requirements of the standard and complying with the procedures set out in Appendix A.

An NRTL may accept testing conducted by an independent organization provided the following criteria are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall review each test package and complete the product evaluations required by the test standards.

- The NRTL shall ensure that all data in the test data package originated with an organization that the NRTL qualified.

The NRTL shall ensure that each organization providing testing data is capable of conducting the test and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall have a written program for assessing the qualification of the organization to perform testing for each product type it may be required to test.

- This qualification program shall include procedures for evaluating the organization's independence, facilities, utilities, environmental controls, personnel, testing and calibration equipment, written testing procedures, calibration procedures, quality assurance program, and other elements as outlined in the appropriate national consensus standards and international guides.

## 3. Acceptance of Product Evaluations From Independent Organizations, Other Than NRTLs

Although no clear distinction between testing and evaluation is made in the final rule (29 CFR 1910.7), such distinction exists.

Many NRTLs utilize outside organizations for specific or unique tests. In these instances, the NRTL stipulates the tests and defines the testing procedures to be utilized and,

finally, evaluates the test results to determine conformance of the product to the product standard and certifies the product where it does conform.

In this type procedure, the outside organization both tests and evaluates the results of the tests to determine conformance of a product to a standard, and then issues a test and evaluation report to the NRTL. The NRTL, in return, weighs the report for validity and conformance of the product to the product standard in order to decide whether the product is certifiable.

Authorization for an NRTL to accept product evaluations significantly expands the scope of the services which may be provided to the NRTL from an outside source. Acceptance of product evaluations will require the NRTL to establish a more formalized, long-term relationship with the independent organization to acquire confidence in its evaluation procedures.

An NRTL may accept product evaluations prepared by an independent organization provided the following criteria, in addition to the requirements in Procedure 1, are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall review each evaluation package, and complete the product evaluations required by the test standards before the product certification is issued.

- The NRTL shall ensure that evaluations are obtained from an organization which it has qualified.

- The NRTL shall ensure that data relied upon have been developed under the program established by the NRTL.

- The NRTL shall require the organization to establish and maintain a system to document technical correspondence and test standard interpretations.

- The NRTL shall assure that the organization, in preparing the evaluation package, follows the written procedures established by the NRTL.

The NRTL shall ensure that each organization providing product evaluations is capable of conducting the tests and performing the evaluations, and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL's qualification program shall be used to assess the organization's procedures and personnel to determine its qualifications relative to each product type it may be asked to evaluate.

- The qualification program shall establish a minimum period and level of mutual effort between the NRTL and the organization for confidence-building.

During this period the NRTL will witness evaluations, verify the evaluations through inter-organizational comparisons, and validate the competence of personnel to perform product evaluations.

## 4. Acceptance of Witnessed Testing Data

This procedure involves technical personnel from the NRTL witnessing product testing generally carried out at a location other than that of the NRTL. The organization carrying out the tests may or may not be independent.

The majority of testing witnessed by representatives of the NRTL is consistent with the statement in the preamble to the final rule that \* \* \* in some cases, laboratories may wish to subcontract out the testing of a certain product or aspect thereof due to unique or special testing needs.

Representatives of an NRTL may witness testing provided the following criteria are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall train its own personnel to take an active role in witnessing each phase of the tests.

- This training shall include specific testing procedures for each product type the trainees may witness.

The NRTL shall assure that the organization providing the testing data is capable of conducting the tests and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall have a written program for assessing the qualification of the organization to perform testing for each product type it may be required to test.

- This qualification program shall include procedures for evaluating the outside organization's facilities, utilities, personnel, testing and calibration equipment, written testing procedures, calibration procedures, environmental controls, and other elements as outlined in the appropriate national consensus standards and international guides.

- The NRTL shall qualify the outside organization using the NRTL's own staff.

## 5. Acceptance of Testing Data From Non-Independent Organizations

This program involves test data generated by an organization that has a vested interest in the outcome of the test results.

Data submitted under this program shall not include products intended for use in hazardous (classified) locations

(see 29 CFR 1910.307). A substantial number of tests of products intended for use in hazardous locations involves subjective analysis and have levels of complexity well beyond that required for tests of products meant for use only in ordinary locations.

An NRTL may accept testing conducted by a non-independent organization provided the following criteria are complied with, in addition to the requirements in Procedure 1, with the exception for the need to document the independence of the organization:

The NRTL shall establish procedures and maintain records which will demonstrate that the test data are unbiased.

The NRTL shall ensure that the organization providing the data is capable of conducting the tests and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL's qualification procedures shall establish a minimum time period for confidence-building. During this period the NRTL will witness tests and verify them by duplicate testing at the NRTL's facility.

- The NRTL's surveillance program shall include annual site evaluations, review of test packages, random samples and retests by the NRTL, and other controls outlined in the appropriate national standards and international guides.

#### 6. *Acceptance of Evaluation Data From Non-Independent Organizations (Requiring NRTL Review Prior To Marketing)*

This type of procedure enables an organization to evaluate a product in which it has a vested interest. However, the product shall not be released to the market until the NRTL has reviewed and concurred with the evaluation.

An NRTL may accept product evaluations prepared by a nonindependent organization provided the following criteria are complied with:

Except for the requirement for independence, the specific program criteria in Procedures 1, 2, and 4 shall apply to product evaluations by non-independent organizations. The following additional program criteria shall also be required:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall establish and maintain records of procedure and product deficiencies identified, and the corrective actions taken by it and the organization.

- The NRTL shall establish and maintain a program to monitor and confirm the organization's evaluations.

- The NRTL shall assure that no product is released to the market until it has verified the organization's testing data and concurred with its evaluation of the product.

The NRTL shall assure that each organization providing data and evaluations is capable of performing these functions and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall establish and maintain records that demonstrate that the organization continues to be proficient in testing and evaluation.

- The NRTL shall demonstrate that the organization's laboratory has sustained the quality of its performance in testing before being considered for this program.

#### 7. *Acceptance of Continued Certification After Minor Product Modifications by the Manufacturer*

This type of procedure would allow a manufacturer to make minor changes to a certified product, test and evaluate the change or changes, and continue to use the certification mark on the modified product.

With all the controls in place and a clear understanding of what a "minor" product modification encompasses, there should be no reason to consider this procedure as not falling within the scope of the NRTL program. A minor product modification is one which involves the use of an interchangeable component in a previously accepted product. Examples are the substitution of an equivalent switch from a different manufacturer, or the replacement of a motor with a comparable one of different horsepower.

An NRTL may accept minor product modifications from a manufacturer without requiring recertification provided the following criteria, as well as the criteria in Procedures 1, 2, 4, and 5 (except for the requirements for independence), are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall clearly define what is meant by "minor" modifications.

- The NRTL shall review each test and evaluation report for each product modification.

The NRTL shall assure that each manufacturer providing the test data and evaluation is capable of conducting the tests and making the product evaluations, and that the relationship between the NRTL and the organization

does not compromise the NRTL's independence.

- The NRTL shall demonstrate that the client has sustained the quality of its performance in both testing and product evaluation before being considered for this program.

#### 8. *Acceptance of Product Evaluations From Organizations That Function As Part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme*

The IEC-CB scheme authorizes organizations accredited as certified bodies to exchange product test data and evaluation reports with each other.

An NRTL may accept product evaluations from organizations that are part of the IEC-CB scheme provided the following criteria are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall physically evaluate each product.

- The NRTL shall review each test and evaluation report and certificate of certification to determine that the correct nationally recognized standards has been used to test the product and, where applicable, that the US deviations have been properly applied.

- The NRTL shall have written procedures for the evaluation of products, and for the interpretation of any results.

- The NRTL shall establish records that demonstrate that the organizations furnishing test and evaluation reports continue to be competent. These records will include documentation to demonstrate that the organization understands the US deviations and has correctly applied them.

- The NRTL shall determine that the components used in the product are tested to a standard comparable to the appropriate nationally recognized standard.

- The NRTL shall determine that components used in the product have been certified through an appropriate regulatory authority's scheme, and that the scheme includes routine evaluation of the manufacturer's process.

#### 9. *Acceptance of Services (Other Than Testing or Evaluation) Performed by Subcontractors or Agents*

Services under this heading include follow-up activities, calibration activities, and equipment maintenance accomplished by subcontractors or agents.

Although there do not appear to be any references in 29 CFR 1910.7 or in the preamble to the final rule that specifically address this issue, testing

laboratories, including the larger organizations, have historically contracted for certain activities. Most common are activities such as repair and calibration of test and measurement instrumentation, security services, and quality system accreditation. Assuming proper controls for such activities by the NRTL, they should not affect the ability of the NRTL to produce credible findings. It was never OSHA's intent to discourage or limit activities such as the use of national or international standards for quality assurance qualification and registration of a manufacturer by organizations other than the NRTL. Such accreditation and services can be useful tools for an NRTL as long as the NRTL retains ultimate control and responsibility.

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall assure that subcontractors or agents performing service which may affect the certification of a product have been assessed and qualified by the NRTL.
- The NRTL shall assure that subcontractors agents use the follow-up procedures established by the NRTL.
- The NRTL shall maintain records of the results of the follow-up visits.

The NRTL shall assure that each agent or subcontractor providing a service is capable of performing that service and that the relationship between the agent or subcontractor does not compromise the NRTL's independence.

- The NRTL shall be able to demonstrate that all subcontractors and agents are capable of providing services equivalent to that provided by the NRTL.

The NRTL shall have written procedures to qualify subcontractors or agents, to monitor their performance, to communicate effectively with them, and to maintain manufacturer confidentiality.

- The NRTL's qualification procedures shall include: qualification requirements; the subcontractor's or agent's quality assurance and self-auditing programs; the NRTL's monitoring program; and the documentation requirements for both the NRTL and the subcontractor or agent.

The NRTL's records shall include documentation to demonstrate that the subcontractor or agent complies with the NRTL's program.

- The NRTL shall use its own staff to qualify the subcontractor or agent.
- The NRTL shall have the means to ensure that only follow-up inspectors who are qualified for the task are utilized.

- The NRTL's surveillance program shall include routine audits of the facilities, staff, and procedures involved in its follow-up program.

- The follow-up procedures in foreign countries shall be as stringent as those required in the US.

- The follow-up program shall include an initial assessment of the manufacturers' procedures, the quality control system, maintenance procedures, recordkeeping and other elements from the appropriate national standards and international guides.

- The follow-up program shall have the capability to identify variations in the manufacturers' ability to control the quality of production.

- The NRTL shall periodically inspect samples of products for compliance.

#### **The Use of An "NRTL" Certification Mark for Products Tested and Certified In Accordance With OSHA's Requirements**

OSHA has received requests from several NRTL participants to initiate action that would implement a requirement for the use of a unique mark for the NRTL certified products. As a result of these requests, OSHA will publish a separate document in the **Federal Register** explaining how such a program may be implemented, as well as describing the requirements which are considered to be part of such a program.

In this separate document, OSHA will request comments on the advantages and disadvantages of implementing such a program and invite suggestions as to the proper approach OSHA should take. The document will include the concerns of the Agency and will seek public information that will enable it to determine the appropriate action.

#### **Authority**

Section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed at Washington, DC, this 3rd day of March 1995.

**Joseph A. Dear,**

*Assistant Secretary.*

[FR Doc. 95-5780 Filed 3-8-95; 8:45 am]

BILLING CODE 4510-26-M

#### **Maryland State Standards; Notice of Approval**

##### **1. Background**

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational

Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart O to part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated September 9 and October 7, 1994, from Henry Koellein, Jr., Commissioner of the Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) Amendments, corrections, additions and revisions to 29 CFR 1910.132, 1910.133, 1910.136, and 1910.138, pertaining to the Personal Protective Equipment Standard for General Industry, as published in the **Federal Register** of April 6, 1994 (59 FR 16360); (2) amendments, corrections, and additions to 29 CFR 1910.146, pertaining to the Permit-Required Confined Spaces Standard for General Industry, as published in the **Federal Register** of May 19, 1994 (59 FR 26115); and (3) an amendment to 29 CFR 1926.62, pertaining to the Lead in Construction Standard for the Construction Industry, as published in the **Federal Register** of May 4, 1993 (58 FR 26627). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after public hearings on April 15 and July 22, 1994. These standards became effective on August 29 and September 26, 1994, respectively.

##### **2. Decision**

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.