International Education and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The Office of Private Sector Programs will assist in supporting an exchange that will focus on the United States and Africa: Petroleum Issues in the 1990s. USIA representatives abroad will select the participants from developing countries in sub-Saharan Africa. The project scheduled for fall 1988 will be conceived and executed by a U.S. not-for-profit institution with expertise in the field of foreign affairs or energy issues. The project design will include discussion of U.S. trade in petroleum with Africa, the relationship between the petroleum sector and economic development, financing energy and mineral projects, and petroleum investment and contract negotiations. US national oil policy and energy prospects in the 1990s for Africa and the United States will also be covered.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency, 301 4th Street S.W., Washington, DC 20547.

Robert Francis Smith,

Director, Office of Private Sector Programs.

Date: April 1, 1988.

[FR Doc. 88-7928 Filed 4-11-88 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 70
Tuesday, April 12, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

April 6, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 p.m., April 13, 1988.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 875th Meeting—April 13, 1988, Regulator Meeting (10:00 p.m.)

CAP–1.
Project No. 2543–006, The Montana Power Company
CAP–2.
Project No. 5776–004, Dr. Daniel C. Merrill
CAP–3.
Docket No. EL87–5–001, Island Power Company, Inc.
CAP–4.
Project No. 8142–006, Henwood Associates, Inc.
CAP–5.
Project No. 8863–002, Northeast Hydrodevelopment Corporation
CAP–6.
Project No. 8924–002, Northeast Hydrodevelopment Corporation
CAP–7.
Project Nos. 6727–003 and 008, Northwest Power Company, Inc.
CAP–8.
Project Nos. 4940–003 and 7612–003, Eastern States Energy and Resources, Inc.
CAP–9.
Omitted
CAP–10.
Project No. 2205–007, Central Vermont Public Service Corporation
CAP–11.
Project No. 4437–008, Glacier Energy Company
CAP–12.
Project No. 9086–000, Northwest Power Company, Inc.
CAP–13.
Project No. 1389–001, Southern California Edison Company
CAP–14.
Docket No. ER88–261–000, Centel Electric-Kansas
CAP–15.
Docket No. ER88–237–000, Utah Power & Light Company
CAP–16.
Docket No. EC87–25–001, Northern Indiana Public Service Company
CAP–17.
Docket No. EC88–5–001, Public Service Company of Indiana, Inc.
CAP–18.
Docket Nos. ER82–774–004, ER83–209–000 and ER83–227–000, Tapoco, Inc.
Docket Nos. ER82–829–000 and ER83–219–000, Natahala Power and Light Company
Docket No. EL83–6–000, Lacey H. Thornburg, Attorney General of the State of North Carolina v. Aluminum Company of America, Tapoco, Inc., and Nantahala Power and Light Company
Docket No. EL84–29–000, Town of Highlands, North Carolina, *et al.* v. Nantahala Power and Light Company
CAP–19.
Docket Nos. EL87–65–000 and ER87–653–000, Minnesota Power & Light Company and Northern States Power Company (Minnesota)
CAP–20.
Docket No. EC87–24–000, Minnesota Power & Light Company and Northern States Power Company (Minnesota)
CAP–21.
Docket No. ER81–177–006, Southern California Edison Company
CAP–22.
Docket Nos. E–7777–000 (Phase II), Project No. 2735–001, Project No. 1988–003 and Project No. 233–006, Pacific Gas and Electric Company
CAP–23.
Docket Nos. ER84–571–004 (Phase II) and ER86–300–002, Utah Power & Light Company
CAP–24.
Docket No. ER87–418–000, Niagara Mohawk Power Corporation
CAP–25.
Docket Nos. ER87–435–000, ER87–554–000, 002 and 003, Wisconsin Power & Light Company
CAP–26.
Docket No. ER86–558–016, Gulf States Utilities Company
CAP–27.
Docket No. QF88–33–000, Luz Solar Partners VI, Ltd.
Docket No. QF–88–34–000, Luz Solar Partners VII, Ltd.
CAP–28.
Docket No. EL–88–11–000, Dominion Resources, Inc.

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA85–58–000, Arkansas Power & Light Company
CAM–2.
Docket No. FA85–65–000, Mississippi Power & Light Company
CAM–3.
Docket No. FA86–63–000, Louisiana Power & Light Company
CAM–4.
Docket No. FA85–49–001, Public Service Company of New Mexico
CAM–5.
Omitted
CAM–6.
Docket No. RM87–7–000, Information to be Made Available by Hydroelectric Licensees Under Section 4(a) of the Electric Consumers Protection Act of 1986
CAM–7.
Docket No. RM88–16–000, Regulations Amending Commission Review of Contested DOE Remedial Orders
CAM–8.
Docket No. GP88–14–000, State of Kentucky, Public Service Commission, Blacklog #5 Well, *et al.*, JD81–43949, *et al.*
CAM–9.
Docket No. GP87–71–000 Railroad Commission of Texas, Brown No. 1 Well, NGPA Section 102(c)(1)(C), JD No. 83–45067 and H.E. Wilcox No. 1 Well, NGPA Section 108, JD No. 80–44765
CAM–10.
Docket No. GP84–15–000, Railroad Commission of Texas, El Paso Natural Gas Company, Section 103 NGPA Determination, Patterson No. 2 Well, FERC No. JD81–15154
CAM–11.
Docket No. GP84–20–003, City of Farmington v. Amoco Gas Company and Amoco Production Company

Consent Gas Agenda

CAG–1.
Docket No. RP88–62–000, Equitable Gas Company
CAG–2.
Docket No. RP88–78–000, Transwestern Pipeline Company
CAG–3.
Docket No. ST88–677–000, Hill Transportation Company, Inc.
CAG–4.
Docket No. RP88–29–003, Tarpon Transmission Company
CAG–5.
Docket No. TA88–1–22–001, CNG Transmission Corporation

CAG–6.
Docket no. RP87–15–021, Trunkline Gas Company
CAG–7.
Docket No. RP87–26–026, Tennessee Gas Pipeline Company
CAG–8.
Docket Nos. RP88–5–006 and RP88–37–003, Transcontinental Gas Pipe Line Corporation
CAG–9.
Docket Nos. RP85–177–044 through 046 and CP88–136–000, Texas Eastern Transmission Corporation
CAG–10.
Docket No. RP85–177–009, Texas Eastern Transmission Corporation
CAG–11.
Docket Nos. RP88–45–002 and RP88–46–001, Arkla Energy Resources, a division of Arkia, Inc.
CAG–12.
Docket No. RP86–144–000 and 002, Sea Robin Pipeline Company
CAG–13.
Docket No. RP85–122–004, Colorado Interstate Gas Company
CAG–14.
Docket Nos. RP86–100–002 and RP86–119–001, Tennessee Gas Pipeline Company
CAG–15.
Docket Nos. RP86–111–001 and 002, Transcontinental Gas Pipe Line Corporation
CAG–16.
Docket No. RP88–47–001, Northwest Pipeline Corporation
CAG–17.
Docket Nos. CP86–401–007, CP87–354–002 and CP87–393–002, Southern Natural Gas Company
CAG–18.
Docket No. TA88–1–52–001, Western Gas Interstate Company
CAG–19.
Docket No. TA88–2–39–000, Pacific Interstate Transmission Company
CAG–20.
Docket Nos. RP85–177–008 and RP85–176–001 (Minimum Bill), Texas Eastern Transmission Corporation
CAG–21.
Docket No. RP87–61–000, Eastern Shore Natural Gas Company
CAG–22.
Docket No. RI87–553–000, Cities Service Oil and Gas Corporation
CAG–23.
Docket Nos. CI86–138–002 and CI86–295–002, Chevron U.S.A. Inc. and Tenneco Oil Company
CAG–24.
Docket No. G–13299–006, ARCO Oil and Gas Company, Division of Atlantic Richfield Company
Docket No. CI67–851–001, Amoco Production Company
Docket No. CI86–745–000, Harry Allen Chapman
Docket No. CI86–745–001, Harry Allen Chapman
Docket No. CI87–231–000, Gordon Oil Company
Docket No. CI88–166–000, Vintage Petroleum, Inc.
Docket No. CI88–182–000, Amoco Production Company
Docket No. CI88–209–000, Midland Resources, Inc.
Docket No. CI88–210–000, Kerr-McGee Corporation and Perkins Energy Company
Docket No. CI88–299–000, Gibson, *et al.*
Docket No. CI88–309–000, Arlington Exploration Company
Docket No. CI88–354–999, Lone Wolf Producing Company
Docket No. CI88–202–000, Kirkpatrick Oil and Gas Company
Docket No. CI88–371–000, Exxon Corporation
Docket No. CI86–282–000, Fina Oil and Chemical Company, *et al.*
Docket No. CI86–282–002, Fina Oil and Chemical Company, *et al.*
Docket No. CI87–126–000, Republic Mineral Corporation
Docket No. CI87–170–000, Hutton Gas Company
Docket No. CI87–420–000, Amerada Hess Corporation
Docket No. CI87–611–000, Amerada Hess Corporation
Docket No. CI87–618–000, Amerada Hess Corporation
Docket No. CI87–801–000, Amoco Production Company
Docket No. CI87–877–000, Pennzoil Company and Pennzoil Gas Marketing Company
Docket No. CI87–890–000, Pennzoil Company
Docket No. CI88–114–000, Pauley Petroleum, Inc.
Docket No. CI88–115–000, Pauley Petroleum, Inc.
Docket No. CI88–186–000, Mitchell Energy Corporation.
Docket No. CI88–220–000, John A. Newman and Foy Tomlinson
Docket No. CI88–227–000, Wilshire Oil Company of Texas
Docket No. CI88–265–000, Hill Trusts
Docket No. CI88–268–000, Mesa Operating Limited Partnership
Docket No. CI88–319–000, Mesa Operating Limited Partnership
Docket No. CI88–368–000, Louis J. Hector, *et al.*
Docket No. CI87–373–000, WTG Exploration, Inc.
Docket No. CI88–347–000, Edinger Inc., *et al.*
Docket No. CI86–293–000, Transcontinental Gas Pipe Line Corporation
Docket No. CI86–297–000, Transcontinental Gas Pipe Line Corporation
Docket No. CI86–637–004, ANR Pipeline company
Docket No. CI87–239–000, Northwest Central Pipeline Corporation (now Williams Natural Gas Company)
Docket No. CI87–115–002, Colorado Interstate Gas Company
Docket No. CI87–121–002, Colorado Intrestate Gas Company
Docket No. CI87–684–000, Natural Gas Pipeline Company of America
Docket No. CI88–290–000, J.M. Huber Corporation
Docket No. CI88–364–000, Ultramar Oil and Gas Limited
CAG–25.
Docket No. CI87–533–000, Mesa Operating Limited Partnership (Successor to Pioneer Production Corporation)
Docket Nos. CI69–491–001 and 002, Amoco Production Company
CAG–26.
Docket No. CP88–231–000, Oklahoma Gas Pipeline Company, Enron Gas Gathering, Inc., Odeco Gas Gathering Inc., Tabasco Gas Pipe Line Company, Sonat Gas Gathering Inc., and Murphy Gas Gathering Inc.
CAG–27.
Docket No. CI88–59–000, Conoco, Inc., Cities Service Oil and Gas Corporation, Texaco Producing, Inc. and ACIP Petroleum Company, Inc.
CAG–28.
Docket No. CP83–335–212, Williston Basin Interstate Pipeline Company
CAG–29.
Docket No. RP88–13–001, James River Corporation of Nevada v. Northwest Pipeline Corporation
Docket No. CP88–111–001, Northwest Pipeline Corporation
Docket No. CP87–328–002, Northwest Pipeline Corporation
CAG–30.
Docket No. CP86–232–028, Panhandle Eastern Pipe Line Company
CAG–31.
Docket Nos. CP86–407–001 and RP86–136–004, National Fuel Gas Supply Corporation
CAG–32.
Docket No. CP86–376–001, Panhandle Eastern Pipe Line Company
CAG–33.
Docket No. CP86–676–001, Equitable Gas Company, a Division of Equitable Resources, Inc. and Equitable Transmission Company
CAG–34.
Docket No. CP86–337–003, Algonquin Gas Transmission Company
CAG–35.
Docket Nos. CP84–209–010, 011 and 012, Lawrenceburg Gas Transmission Corporation and Texas Gas Transmission Corporation
CAG–36.
Docket Nos. CP87–332–001, CP87–333–001, CP87–334–001, CP87–457–001 and 002, Trunkline Gas Company
CAG–37.
Docket No. CP86–489–001, Transcontinental Gas Pipe Line Corporation
CAG–38.
Docket No. CP87–261–000, K N Energy, Inc.
CAG–39.
Iowa Public Service Company

I. Licensed Project Matters

P–1.
Project No. 9391–002, Pan Pacific Hydro, Inc. Order on preliminary permit.

II. Electric Rate Matters

ER–1.
Docket No. EL87–53–000, Orange and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company. Order on petition for declaratory order concerning rates for purchases from qualifying facilities.

Miscellaneous

M–1.
Reserved

M–2.
Reserved

I. Pipeline Rate Matters

RP–1.
Docket Nos. CP88–291–000 and 001, Natural Gas Pipeline Company of America. Order concerning a proposal to implement a gas supply charge.

RP–2.
Omitted

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Docket No. CP86–492–001, Moraine Pipeline Company
Docket No. CP86–494–001, Moraine Pipeline Company
Docket No. CP86–493–001, Natural Gas Pipeline Company of America. Order on request for rehearing of optional procedures certificate to construct and operate facilities.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–7989 Filed 4–7–88; 4:42 pm]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, April 18, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21th Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 8, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–8079 Filed 4–8–88; 3:47 am]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 11, 18, 25, and May 2, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED: .

Week of April 11

Wednesday, April 13

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 18—Tentative

Thursday, April 21

10:00 a.m.
Briefing on Status of Program for Performance Indicators (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed-Ex. 2 and 6)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 25—Tentative

Thursday, April 28

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 2—Tentative

Wednesday, May 4

10:00 a.m.
Annual Briefing on the State of the Nuclear Industry (Public Meeting)
2:00 p.m.
Briefing on NRC Point Papers for Consultation Draft of the Site Characterization Plan for Yucca Mountain (Public Meeting)

Thursday, May 5

2:00 p.m.
Briefing on Status of Operator Requalification Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on the time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

April 7, 1988.

[FR Doc. 88–7998 Filed 4–8–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 11001 April 4, 1988).

STATUS: Closed meetings.

PLACE: 450 5th Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, March 30, 1988.

CHANGES IN THE MEETING: Additional meeting/item.

The following item was considered at a closed meeting on Monday, April 4, 1988, at 2:30 p.m.

Formal order of investigation.

The following additional item was considered at a closed meeting scheduled on Tuesday, April 5, 1988, at 2:30 a.m.

Chapter 11 proceeding.

Commissioner Peters, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272–2468.

Jonathan G. Katz,

Secretary.

April 6, 1988.

[FR Doc. 88–8086 Filed 4–8–88; 3:58 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 70
Tuesday, April 12, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF STATE

22 CFR Parts 120, 121, 122, 123, 124, 125, 126, 127 and 128

[Departmental Regulations 108.866]

The International Traffic in Arms Regulations (ITAR) and Implementation of the Foreign Relations Authorization Act

Correction

In rule document 88-7709 beginning on page 11494 in the issue of Thursday, April 7, 1988, make the following correction:

On page 11495, in the first column, in the 16th line, "ineligible" should read "eligible".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

28 CFR Part 66

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government

Correction

In rule document 88-5251 beginning on page 8034 in the issue of Friday, March 11, 1988, make the following correction:

§ 66.32 [Corrected]

On page 8069, in § 66.32(a), in the first column, in the 11th line, insert "justice" after "criminal".

BILLING CODE 1505-01-D

federal register

Tuesday,
April 12, 1988

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1907 and 1910

Safety Testing or Certification of Certain Workplace Equipment and Materials; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1907 and 1910

[Docket No. S-110]

Safety Testing or Certification of Certain Workplace Equipment and Materials: Deletion of Specific Testing Laboratory Names; Definition of Nationally Recognized Testing Laboratory; Determination of Eligible Testing Organizations

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

ACTION: Final Rule.

SUMMARY: The Occupational Safety and Health Administration is deleting the names of Underwriters Laboratories Inc. (UL) and Factory Mutual Research Corporation (FMRC) from 23 testing-related standards provisions in the OSHA "general industry" standards (29 CFR Part 1910). Generally, the Agency is substituting the term "nationally recognized testing laboratory" (NRTL) and is providing a new definition for this previously undefined term. Additional minor terminology changes are also being made.

This rule also provides a mandatory procedure for a testing organization to be recognized as a nationally recognized testing laboratory (NRTL) by OSHA. This procedure will replace 29 CFR Part 1907 which has remained unimplemented since its promulgation in 1973. This new mandatory procedure includes public review of an applicant's operations against the NRTL definitional criteria.

OSHA will closely monitor progress under these new provisions and will evaluate the effectiveness of the program on an ongoing basis. Further rulemaking will be undertaken as appropriate if necessary to make the recognition process work more effectively.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151. This final rule was written by William J. Higgins, Directorate of Safety Standards Programs.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Summary of Rule

The Agency is deleting the names of Underwriters Laboratories, Inc. (UL) and Factory Mutual Research Corporation (FMRC) from 23 testing-related standards provisions in 29 CFR Part 1910.

Under these standards, third-party (or independent) testing for safety is necessary in order that certain equipment and materials be acceptable for workplace use. The safety standards being revised either had explicitly required or had implied that this safety testing be performed only by UL or FMRC. Over the past decade, certain testing laboratories other than UL and FMRC have claimed to have suffered economic losses due to this situation.[1] They repeatedly have sought regulatory relief of a type being afforded here by OSHA.

As a result of this UL/FMRC name deletion, the 23 identified OSHA safety standards now will provide that certain types of workplace equipment and materials be third-party tested for safety by "nationally recognized testing laboratories." The Agency is adding a definition of NRTL since heretofore there has been no definition of this term in OSHA's safety standards. Those testing certain workplace equipment and materials required to be approved by OSHA standards will need to be recognized by OSHA as a nationally recognized testing laboratory.

This new definition of NRTL includes the following requirements:

(1) Capability to examine specific equipment for workplace safety;

(2) Provision of controls and services necessary for assuring and demonstrating original conformity of equipment to appropriate test standards;

(3) Independence from manufacturers, suppliers and vendors of products, and from other employers; and

(4) Procedures for producing creditable findings and reports and for handling complaints and disputes.

This final rule includes a requirement that testing laboratories listing or approving products or equipment required to be approved under Part 1910 be recognized as Nationally Recognized Testing Laboratories (NRTL) by OSHA. Under this rule OSHA will evaluate applicant testing and control programs against the NRTL definitional requirements, and issue a written "recognition" letter. This will be done in accordance with a new Appendix A which is being issued under this rule and described in greater detail later. OSHA contemplates continuing surveillance over OSHA-recognized NRTLs to assure conformance with the requirements of this rule. OSHA may, in the future, also engage in post approval audits of products listed or approved by laboratories recognized under this program by OSHA as nationally recognized testing laboratories. Such postmarketing surveys would be designed to evaluate the effectiveness of the OSHA recognition program being established in this final rule and the effectiveness of individual laboratories in assuring that products they have approved do indeed meet the required standards.

This final rule is issued as a result of OSHA's proposal entitled "Safety Testing and Certification of Certain Workplace Equipment and Materials" (49 FR 8326). The remaining proposed requirements and related questions arising from the Agency's March 6, 1984 proposal are unaffected by this action. These issues will undergo further study by the Agency.

B. Proposal History

On March 6, 1984, the Occupational Safety and Health Administration (OSHA) proposed to initiate a comprehensive overhaul of its regulatory procedures related to OSHA's requirements for safety testing or certification of certain workplace equipment and materials (49 FR 8326).[2]

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[1] In 1983, the Agency entered into a settlement agreement with a Baltimore, Maryland testing laboratory (*MET Electrical Testing Company, Inc.* v. *Raymond J. Donovan, Secretary of Labor*, No. Y-82-1133, D. Md.), and the suit was dismissed without prejudice. Under that agreement, it was mutually agreed that OSHA would "continue development of a rule looking toward (1) deletion of references to UL and FM wherever these terms appear in 29 CFR Part 1910 and (2) amendment of Part 1907 to create a workable procedure for designation of enterprises whose approval of products will be accepted by OSHA." MET recently filed suit to "compel compliance with the settlement agreement" and the Secretary moved to dismiss for lack of subject matter jurisdiction and alternatively moved to transfer the case to the U.S. Court of Appeals. The Judge denied the Secretary's motion to dismiss and ordered the Secretary to complete the rulemaking process within 120 days (*MET Electrical Testing Co., Inc.* v. *Secretary of Labor*, No. Y-87-1480, D. Md., 12/8/87).

[2] The Agency's NPRM included four related components:

1. Proposed revisions to nine Subparts of Part 1910 (General Industry Safety and Health Standards);

2. Proposed Part 1936, replacing current Part 1907,

3. Proposed Part 1935, covering OSHA test methods and procedures; and,

4. Proposed addition to Part 1910, Subpart A, concerning valid testing and certification for OSHA purposes.

The goals of the proposal were:

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

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

(3) To take advantage of recent developments by others in organizing and evaluating product certification systems and in accrediting laboratories for testing (49 FR 8327, col. 2).

In proposed revisions to Part 1910, the names of Underwriters Laboratories Inc. (UL) and Factory Mutual Research Corporation (FMRC) were to be deleted from OSHA's general industry standards. This removal would end any perceived preference on the part of the Agency for the product safety testing activity of these two enterprises.

The proposal also included significant changes to several key testing-related definitions contained in OSHA's general industry standards. These changes would update and provide uniformity to the testing and certification terminology used in Part 1910.

The Agency also proposed to revise completely OSHA's unimplemented regulation at 29 CFR Part 1907, "Accreditation of Testing Laboratories." Major portions of Part 1907 were to be revised and redesignated as part of a proposed new Part 1936; other provisions of questionable utility were to be revoked.

New 29 CFR Part 1936—entitled "OSHA Recognition of Testing-Related Agencies and Certification Programs"—proposed a new procedure by which OSHA would recognize enterprises it considered competent to perform activities related to the testing or certification requirements contained in the Part 1910 safety standards. It would include requirements related to (1) laboratory accreditation agencies and accredited laboratories, and (2) product certification systems, including both manufactuer self-certification and third-party certification programs.

As a related matter, OSHA also proposed to establish a new Part 1935 of Title 29, "Occupational Safety and Health Test Methods and Procedures." Specific test methods and procedures intended for use in complying with OSHA's safety standards would be set forth in Part 1935 after promulgation by OSHA.

The proposal also included a new section for Part 1910, § *1910.7 Valid testing data and certifications for safety.* This section included provisions concerning the validity of testing data and the use of standard test methods and procedures. It also included a requirement that laboratory-based testing—other than testing conducted directly by employers—be conducted only in duly accredited laboratories. These requirements were intended to apply only to the safety standards in Part 1910; health standards in Subpart Z of Part 1910 were specifically excluded.

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 stated its intention to take full advantage of the mechanisms which now exist in the private sector or in government, and to keep its long-term involvement in these activities to a minimum (49 FR 8329).

As noted, the proposal was issued on March 6, 1984. A three-day informal public hearing was held on September 25 and 26, and October 1, 1984, and additional written submissions concerning this proposal were received until December 31, 1984. The record on the proposal closed December 31, 1984.

(References in this text to written public comments, post-hearing submissions, etc., will be marked by "EX" or "EXs" in parentheses, and to the transcript of the informal public hearing by "TR" in parentheses.)

II. Major Issues and Questions

A. General

Based on a thorough review of the public comments and testimony in the record, the Agency now believes that the "comprehensive overhaul" which it originally proposed cannot be accomplished on the present record. However, OSHA has identified certain important elements of its original proposal—including the deletion of the specific name references to UL and FMRC throughout Part 1910—which should be finalized.

OSHA believes it is appropriate to complete the deletion of the references to UL and FMRC at this time. The following facts support this action:

1. The record contains sufficient documentation to support this action;

2. Proper implementation of these changes, in close cooperation with the private sector, including operators of independent testing laboratories, should maintain current levels of worker safety protection.

To assure no diminution of worker safety, the Agency is also providing a definition of "nationally recognized testing laboratory," the term which is being substituted for references to UL and FMRC in the standards, and is including a requirement that firms doing product and equipment approval or listing required by OSHA, be recognized by OSHA as a NRTL. The new definition will foster compliance with OSHA standards in a manner consistent with worker safety and assist in the enforcement of these standards. The procedure prescribed in the standard for obtaining OSHA recognition would also assure that there is no diminution of worker safety.

The Agency believes that this NRTL definition is supported by substantial evidence as to the necessary elements of an appropriate substitute for the UL and FMRC designation. This definition will assist in maintaining current worker protection levels.

Further rulemaking on this definition is not necessary; adequate notice was given that substantive elements, such as those contained in the NRTL definition, were being considered as part of the regulatory scheme contemplated in the proposed overhaul. The full regulatory scheme contemplated in the proposal is not being implemented at this time for reasons discussed more specifically below. Briefly, the scheme was cumbersome and administratively awkward (see also EX 8–26, pp. 2, 12).

OSHA believes that the regulatory action taken today provides a better resolution to the problem of removing the UL/FM references in the standard and providing objective criteria and procedures for competent laboratories to be able to obtain OSHA recognition to list or approve certain workplace equipment or materials (EX 2–30). It should be noted that this rule in no way extends the requirements for approval to any additional equipment or material not already required by the OSHA standards to be approved. It merely provides a vehicle to allow OSHA as well as employers who have the responsibility for using approved equipment or material under certain OSHA standards to be able to ascertain that the above described equipment or material has been approved and is therefore acceptable.

This rule provides a method for a testing organization to be considered a nationally recognized testing laboratory (NRTL) as defined in this rule. The method requires a testing laboratory to request OSHA recognition as an NRTL. This procedure includes public review of an applicant's operations against the NRTL definitional criteria. The elements of such a mandatory process were discussed in the proposal.

These changes will become effective 60 days after their publication as a final rule. This time period is reasonable in this case, since the definitional requirements of a nationally recognized testing laboratory being promulgated

herein should be readily achievable without an extended period for familiarization.

B. Deletion of UL and FMRC Names

1. Proposal for Deletion

One of the principal changes proposed in the March 6, 1984, Notice of Proposed Rulemaking, was the deletion of the names of Underwriters Laboratories Inc. (UL) and Factory Mutual Research Corporation (FMRC) from the safety standards in 29 CFR Part 1910. The Agency stated that it intended to eliminate references to specific third-party testing/inspection organizations, and provide uniformity and consistency in terminology (49 FR 8329, col. 1).

The proposed UL/FMRC deletion was supported by a number of participants in the rulemaking proceeding, including the National Electrical Manufacturers Association and the National Electrical Contractors Association (EX 39; TR 470, 497, 529, 565 and 597). Moreover, no substantial objection has been raised concerning the proposed deletion.

The sole negative comment appears to opt for the status quo, claiming that the proposed change is neither necessary nor desirable. Associated Specialty Contractors, Inc., said:

> The self-regulatory efforts of the private sector have been entirely adequate, and the success of these efforts and the results of the high standards of the testing laboratories which have been performing these services for many years have been remarkable achievements. Almost everyone responsible for preparing products to be tested, for meeting testing standards in design and production, and for using certification of accepted laboratories as a measure of safety is completely familiar with the present arrangements. In fact, the general public widely relies on labels by known laboratories and could be greatly confused by a change in procedures. (EX 8–47)

The Agency believes that this comment does not establish that the references to UL and FMRC must be retained. This is based on the following reasons:

a. The deletion of the names of UL and FMRC is not based on a judgment as to the performance or capabilities of these two testing laboratories (49 FR 8330, col. 3, and 8346, col. 2);

b. No evidence was presented to demonstrate that the private sector system in place today would be incapable of adjusting to these changes easily; and,

c. There is no evidence that the deletion would in any way diminish worker safety and health or that there would be any confusion created by the deletion.

In fact, the evidence in the record indicates that several additional testing laboratories can be expected to provide these services in a reliable and efficient manner (See, for example, TR 529).

A number of witnesses supported these findings. For example, Mr. Gmoser, representing ETL Testing Laboratories, stated that:

> * * * [UL and FMRC] have served a positive and necessary role, but, now, so can many other laboratories. (EX 8–43, pg. 7)

In addition, Mr. O'Neill, representing the American Council of Independent Laboratories, stated that:

> There are certainly a handful of qualified laboratories at this moment who, without any impairment to safety in the workplace, could offer their services in this market. (TR 353)

Mr. Miller, representing Factory Mutual Research Corporation, stated in the record:

> While we are most appreciative of the expression of confidence implicitly rendered by OSHA, we are at the same time cognizant that other organizations are capable of providing similar services . . . There are, in fact, many qualified laboratories who, should they choose, could contribute to maintaining safety in the workplace. (TR 529)

Neither UL nor FMRC opposed OSHA's plan to delete their names from the safety standards at issue (TR 497, 565). In fact, Mr. Collins, representing UL at the hearing, concurred in the proposed deletion, saying:

> We don't want to be singled out, named. Take it out. (TR 470)

Acceptance of this change by manufacturers, who are the principal users of the testing services under consideration in this rulemaking, is evidenced by the post hearing comment of the National Electrical Manufacturers Association, a major organization which participated heavily in this rulemaking:

> NEMA urges OSHA to * * * delete all references to named testing laboratories (*e.g.*, 'Underwriters Laboratories, Inc.,' 'UL,' 'Factory Mutual Research Corp.,' 'Factory Mutual Engineering Corp.,' 'FM', and the like) * * * (EX 39)

Similarly, another participant, the National Electrical Contractors Association, suggested "maybe going a little bit further * * * in deleting the references to the two laboratories, and delete the words, 'Such as, but not limited to, Underwriters Laboratories, Incorporated [sic], and Factory Mutual Engineering Corporation" (TR 597).

Therefore, based on the rulemaking record, OSHA finds that there is general and widespread acceptance of the appropriateness of deleting the names of Underwriters Laboratories Inc. (UL) and Factory Mutual Research Corporation (FMRC) from the safety standards in 29 CFR Part 1910.

2. Additional Standards Being Included

In its proposal, the Agency attempted to identify those texts in Part 1910 wherein the UL/FMRC name deletions were to be made. Revisions were proposed for each of nine subparts in the general industry standards (49 FR 8350 through 8353).[3]

OSHA stated its intent to eliminate all references in its standards to specific third-party testing/inspection organizations (49 FR 8329, col. 1) and the public was invited "to identify any provisions in Part 1910 where such requirements are now in effect, but which the Agency may have inadvertently failed to include in this proposed change" (49 FR 8329, col. 1). No additional instances of UL and FMRC references requiring name deletion were submitted to the record by the public.

After the proposal was published, the Agency again conducted a thorough review of the Part 1910 safety standards. As a result of this review, the Agency identified some additional standards where the UL/FMRC names should be deleted. Therefore, the number of standards provisions in Part 1910 subject to this deletion activity have been almost doubled, from the 12 which had been identified at the time of the proposal to 23 identified in this document. (These additional provisions are identified with an asterisk in the listing below.[4]

3. Standards Provisions Affected

The names of Underwriters Laboratories Inc. (UL) and Factory Mutual Research Corporation (FMRC) appear in 23 testing-related provisions in OSHA's general industry safety standards. These specific-name references which appear in Part 1910 can be organized into three categories:

"Acceptable" Definitions—In this category, UL and FMRC have been used as illustrative examples of an undefined "nationally recognized testing

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[3] The deletions of the UL/FMRC names were also among the specific actions described in the "Summary and Explanation of the Proposed Regulation" (49 FR 8332, col. 2, through 8334, col. 2).

[4] Other UL citations which merely reference UL Standards will remain unchanged. For example, 29 CFR 1910.252(b) (2) (i) reads: "Assurance of consideration of safety in design is obtainable by choosing apparatus complying with the Requirements for Electric Arc-Welding Apparatus, NEMA EW–1–1962, National Electrical Manufacturers Association or the Safety Standard for Transformer-Type Arc-Welding Machines ANSI C33.2–1956, Underwriters' Laboratories."

See also: §§ 1910.106(b)(1)(iii)(*a*)(*1*), 1910.107(b)(5)(vi), 1910.107(k), and 1910.155(a)(17).

laboratory" which tests (and lists, labels, etc.) equipment:
(a) Subpart H—§ 1910.111(b)(1)(ii)
(b) Subpart S—§ 1910.111(a)(1)(i)

"Approved" Definitions with NRTL—In this category, both the "nationally recognized testing laboratory" term and the names of UL and FMRC have been used together to define the "approved" requirement for equipment specified in the particular standard:
(a) Subpart H—§ 1910.103(a)(l)(ii)
(b) Subpart H—§ 1910.106(a)(35)
(c) Subpart H—§ 1910.107(a)(8)
(d) Subpart H—§ 1910.108(a)(3)
(e) Subpart H—§ 1910.110(a)(14)
(f) Subpart L—§ 1910.155(c)(3) (i)
(g) Subpart N—§ 1910.178(a)(7)
(h) Subpart Q—§ 1910.251(b)

Text allows only UL/FMRC—In this last category, safety testing, listing or approval by UL and/or FMRC is required for specific products:
(a) Subpart D—§ 1910.28(f)(2)
(b) Subpart D—§ 1910.28(g)(3)
(c) Subpart D—§ 1910.28(h)(2)
(d) Subpart D—§ 1910.28(i)(1)
*(e) Subpart H—§ 1910.109(d)(2)(iii)(*a*)
*(f) Subpart H—§ 1910.110(b)(2)(iii)
*(g) Subpart H—§ 1910.110(c)(5)(i)(*g*)(*l*)
*(h) Subpart H—§ 1910.110(f)(5)(iv)
*(i) Subpart N—§ 1910.180(i)(4)(i)
*(j) Subpart N—§ 1910.181(j)(4)(i)
*(k) Subpart R—§ 1910.265(d)(2)(iv)(*c*)
*(l) Subpart R—§ 1910.266(c)(4)(iii)
*(m) Subpart R—§ 1910.266(c)(4)(iv)

4. Actions Being Taken

In the first two categories described above, when the names of UL and FMRC are removed from the provision in question, the term "nationally recognized testing laboratory" (NRTL) will remain.

For example, in the first category, § 1910.111(b)(1)(ii) previously read:

(ii) It is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory, such as, but not limited to, Underwriter's Laboratories Inc. and Factory Mutual Research Corporation: . . .

It will now read:

(ii) It is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; . . .

Similarly, in the second category, § 1910.103(a)(1)(ii) previously read:

(ii) Approved—Means unless otherwise indicated listed or approved by the following nationally recognized testing laboratories: Underwriters' Laboratories, Inc., and Factory Mutual Engineering Corp.

It will now read:

(ii) Approved—Means, unless otherwise indicated, listed or approved by a nationally recognized testing laboratory.

Concerning the "nationally recognized testing laboratory" (NRTL) term currently in use in 29 CFR Part 1910, the Agency notes that it had proposed, in its NPRM, several substitute terms for this NRTL term. Due to its decision not to adopt the scheme contemplated in the proposal considered as a whole, OSHA has decided to return to the nationally recognized testing laboratory term. The Agency believes that the regulatory text changes described above adequately demonstrate the practicality of this approach.

In items (a) through (h) of the third category, the standard simply designates UL and FMRC. A new term needs to be substituted for UL/FMRC, because the deletion of those names without some substitution would render the entire provision meaningless. Therefore, the term "nationally recognized testing laboratory" will be substituted in these instances.

For example, in § 1910.28(f)(2), the requirement that

The scaffold shall be provided with hoisting machines that meet the requirements of Underwriters' Laboratories or Factory Mutual Engineering Corp.

will become

The scaffold shall be provided with hoisting machines that meet the requirements of a nationally recognized testing laboratory.

Similarly, in § 1910.109(d)(2)(iii)(*a*), the requirement that

Only extinguishers listed or approved by Underwriters' Laboratories, Inc., or the Factory Mutual Engineering Corp. shall be deemed suitable for use on explosives-carrying vehicles.

will become

Only extinguishers listed or approved by a nationally recognized testing laboratory shall be deemed suitable for use on explosives-carrying vehicles.

However, in items (i) through (m) in the third category, it will not be necessary to insert the term nationally recognized testing laboratory. The Agency will simply delete the UL/FMRC names, and rely on the term "approved" which is currently used in the standard. The term "approved" is defined elsewhere in the standards as being accepted, labeled, listed or certified by a nationally recognized testing laboratory.

For example, § 1910.180(i)(4)(i) previously read:

(i) Refueling with small portable containers shall be done with Underwriters' Laboratories or Factory Mutual Laboratories approved, or equivalent, safety type can equipped with an automatic closing cap and flame arrester.

It will now read:

(i) Refueling with small portable containers shall be done with an approved safety type can equipped with an automatic closing cap and flame arrester.

As shown above, OSHA has also deleted the phrase "or equivalent" from §§ 1910.180(i)(4)(i) and 1910.181(j)(4)(i). The Agency interprets this phrase in these current standards as referring back to the two named laboratories. In other words, its inclusion appears to provide for possible acceptance of safety cans tested and accepted by laboratories other than UL and FMRC, a goal accomplished by this final rule in another manner.

Continued inclusion of the "or equivalent" phrase will no longer be necessary under the provisions of this final rule. The current definitions of "approved" in Part 1910—see, for example, § 1910.155(c)(3)(1)—refer to a "nationally recognized testing laboratory," and a suitable definition of that term is contained in this final rule. Since the new NRTL definition will allow for full activity by all nationally recognized testing laboratories, rather than just UL and FRMC, it is unnecessary to retain the term "or equivalent" in §§ 1910.180 and 1910.181.

As part of this revision, OSHA is including cross-references to terms such as "nationally recognized testing laboratory" and "approved" which are defined elsewhere in the Part 1910 standards in order to facilitate understanding of these requirements in the standards. These cross-references will be inserted in each of the 23 provisions included here. A cross-reference to the definition of nationally recognized testing laboratory is also being added to 29 CFR 1910.35(h) which uses this term.

This differs from the proposal, which included a thorough revision of many of the definitions in each Subpart. Such revisions are not necessary to achieve the goal of this final rule, namely the deletion of the names of UL and FMRC and the use or substitution of a newly-defined term, "nationally recognized testing laboratory," or the term "approved" instead. The other changes proposed are not necessary to achieve this end and are therefore not being made.

C. Nationally Recognized Testing Laboratory

1. OSHA Definition of NRTL

As mentioned above, it is necessary for the Agency to provide a definition of "NRTL" in 29 CFR Part 1910, in order to assure no diminution of worker safety as a result of this UL/FMRC name

deletion. The Agency has determined that the term "nationally recognized testing laboratory" needs to be defined at this time and in a manner which does not allow the term to be subject to possible misinterpretation or misapplication (TR 352, 364).

The Agency has decided to define the regulatory term "nationally recognized testing laboratory" (NRTL) using certain elements that had been included in the proposed definitions of "qualified fire testing laboratory" and "qualified electrical testing laboratory" (see proposed 29 CFR 1910.155(c)(46) and 29 CFR 1910.399(a)(99a); 49 FR 8326, 8351 and 8353).

The definition for the "nationally recognized testing laboratory" term being promulgated herein is as follows:

(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.

In promulgating this definition, it is not Agency purpose to impose a fixed organizational structure or operational scheme on any testing laboratory. Nor is it the Agency purpose to provide an OSHA-mandated definition of testing laboratories for uniform application to all OSHA standards including those in Subpart Z of this Part. This new definition will be applied only to those safety-related testing provisions in the Part 1910 general industry standards which are the subject of this rulemaking.

2. Overview of NRTL Definition

OSHA's new NRTL definition is comprehensive. It contains four detailed requirements, intended to be specific and exacting, which must be met by any organization intending to have itself considered as an NRTL for these purposes. Without exception, each NRTL must be technically qualified for the tasks it undertakes.

In addition, OSHA's NRTL definition does not require that NRTL status be limited only to those testing laboratories which are qualified to do all such OSHA-required testing, or even a major portion of it. Therefore, there could be an NRTL for only "ground fault circuit interrupters," another for only safety cans. OSHA recognition of a laboratory as an NRTL clearly will require designation of the specific equipment, or category of equipment, which the testing laboratory is found to be technically qualified to third-party test.

a. *Capability for Product Testing.* The first of the NRTL requirements addresses capability. The capability requirement includes proper testing equipment and facilities as well as trained personnel. This is a performance-oriented requirement and OSHA recognizes that the level of staff training and the sophistication of the equipment and facilities appropriate to do the testing to approve or list certain equipment or materials will vary with the particular equipment or materials that are the subject of the application for recognition. Generally, OSHA expects that most applicants will do the testing in-house. However, this is not a requirement of the standard. OSHA recognizes 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. 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.

The Agency believes that the capability required for any particular testing laboratory to test a product is primarily influenced by the actual product testing standards, methods and procedures used in that testing. Another aspect of the capability requirement has been subdivided to distinguish between two categories of testing activity conducted by NRTLs.

In the first, the NRTL tests products using testing standards, methods and procedures which are published and recognized in the United States as appropriate for the products being tested. This might be termed "ordinary" or "routine" testing.

A second testing activity, being termed "experimental" in this definition, entails the testing of new or innovative products or the use of new tests on existing products. These products often may not fit well under existing testing standards, methods and procedures of the first category. Many of these testing activities may require revised standards, methods or procedures, or totally new ones for adequate testing. Others may require the use of available standards (revised or unrevised), combined with engineering expertise and decisionmaking as yet unspecified in writing. NRTLs which engage in this type of activity clearly require capabilities different from those utilized for "ordinary" testing. A laboratory which is well qualified for "ordinary" testing may not have the capability to do "experimental" testing.

Each NTRL's capability must be demonstrated in relation to the specific product being tested, the testing standards, methods and procedures

being used (see discussion below), and the quality of engineering decisionmaking needed to reach a workplace safety determination for the product.

b. *Continued Oversight of Products.* The second requirement addresses the need for the NRTL to maintain sufficient oversight of the "product line" (those facsimiles of the successfully tested equipment and materials which bear the NRTL's listing, label or acceptance). An organized product "follow-through" program is necessary so that a testing laboratory can assure itself, and OSHA, of the accuracy of all of its listings, labelings and acceptances. This part of the definition of NRTL has three elements: the implementation of control procedures for identifying the listed or labeled equipment; production line inspection to assure conformance with the test standards; and the initiation of service value determinations through post-marketing field inspections to monitor and assure the proper use of the mark or label.

The requirement for field inspections to monitor and assure the proper use of its identifying marks or labels on products means that the NRTL must evaluate as necessary the field performance of equipment which it has listed or labeled. This field inspection would serve at least three purposes. First, the NRTL would check for the correct use of its labels on products and the possible improper transfer of the laboratory's listing mark. Second, the laboratory would determine, for example, by responding to complaints from customers, whether in fact the product meets the test standards and requirements, or whether due to improper manufacturing or testing, the product does not satisfy the safety requirements of the testing standard when actually used in the workplace. Third, the field inspections may be used in appropriate circumstances to evaluate the effectiveness of the test standard. Where a laboratory uses a test standard which it has developed, it may well be necessary for it to evaluate the effectiveness of its standard through field testing of the actual product. On the other hand, where a third-party standard, such as an ANSI or ASTM standard has been used, such evaluation, beyond that required by the standard itself, should be the responsibility of the developing organization. The requirement is performance-oriented in that it is framed in terms of "to the extent needed for the particular equipment or materials listed or labeled. * * *" This recognizes that the amount of product oversight will vary from product to product and from manufacturer to manufacturer and that the NRTL is in the best position to make rational decisions on a case by case basis as to the level of oversight appropriate.

The elements of this product line/oversight requirement include well known and acceptable techniques for attempting to maintain the integrity of the testing and listing/labeling/acceptance systems in the United States. They include controlled marking/labeling procedures, factory inspections, and field inspections of products.

c. *Organizational Independence.* The third requirement is for independence of the NRTL from manufacturers, suppliers, vendors, and users of the equipment and materials it tests. Absent the direct involvement of the Agency in testing laboratory decisionmaking, this independence requirement is necessary to assure the integrity of the testing activities.

This independence requirement is consistent with longstanding practice by authorities enforcing NFPA codes and related standards. Historically, they have required the use of third-party or independent testing laboratories for fire/electrical safety testing.

d. *Controls and Accountability.* This last requirement is essentially procedural. It includes performance requirements related to the internal control and external accountability of the NRTL. The first subparagraph is intended to result in creditable findings and reports upon which reliance can be placed. The second requires the NRTL to have set procedures for handling complaints and disputes from parties having an interest in the NRTL's activities. These two requirements are focused primarily on promoting the high quality of NRTL operations necessary for workplace safety assurance.

3. Provisions Revised From Proposal

The OSHA definition of NRTL being adopted in this final rule is based on the definition of "qualified testing laboratory" (either fire or electrical) [5] included in the Agency's proposal of March 6, 1984. The proposed definition for these testing laboratories was based on an analysis of (1) OSHA's original section 6(a) and current section 6(b) safety standards (particularly those for electrical and fire safety); (2) past National Fire Protection Association and National Electrical Code documents which were sources for OSHA's standards; and (3) the testing laboratory requirements currently contained in 29 CFR Part 1907.

In this final definition of NRTL, the following changes have been made:

- The "OSHA-designated standards" requirement has been deleted
- The laboratory "capability" requirement is better focused
- The provision concerning "recall" has been deleted
- The "independence" requirement is clarified
- New "control" and "accountability" requirements, relating to "testing quality" and "due process," have been added
- The linkage to "third-party certification" has been deleted.

a. *Deletion of "OSHA-Designated Standards".* The Agency has deleted the phrase "in accordance with OSHA-designated standards" from the "capability" criterion in paragraph (ii) of the proposed definition.[6] In this final rule, the Agency will not be "identifying" or designating the test standards in the manner it had originally proposed in Part 1936.

The question of whether or not to require the use of "OSHA-designated standards" by the laboratories arose during the development of the March 4, 1984, proposal. It was generated by two concerns regarding "OSHA-recognized third-party certification" activity:

(1) There were many claims made to OSHA during the development of the

[5] The originally proposed definition for Subpart S—Electrical, § 1910.399(a)(99a), read as follows:

"(99a) *Qualified electrical testing laboratory.* The validating laboratory of a third-party certification program recognized under Part 1936 of this Title which:

(i) Is completely independent of manufacturers, vendors, and employers subject to this standard,

(ii) has the capability for properly examining and identifying equipment and materials as described in § 1910.303(b) in accordance with OSHA-designated standards, and

(iii) provides, to the extent needed for the particular equipment or materials tested, such controls or services as:

(A) Experimental testing for safety of specified items of equipment and materials referred to in this standard to determine conformance with appropriate test standards or performance in a specified manner;

(B) inspecting the run of such items of equipment and materials at factories for product evaluation to assure conformance with the test standards;

(C) service-value determinations through field inspections to monitor the proper use of labels on products, with provisions for recall in the event a hazardous product is installed; and

(D) controlled procedure for identifying the listed and/or labeled equipment or materials tested." (49 FR 8353; See also 49 FR 8351–2 for proposed § 1910.155(c)(46) in Subpart L—Fire Protection.)

[6] In addition, the phrases "as described in § 1910.303(b)" (Subpart S—Electrical) and ". . . in this subpart" (Subpart L—Fire) have been deleted from the proposed "Qualified testing laboratory" definition. The NRTL definition will serve more than one subpart, which makes these deletions necessary.

proposal as to the caliber and applicability of testing standards, methods and procedures being used in the private sector to test or certify products; and

(2) It was not clear to the Agency whether each third-party certification program should determine its own testing methods and procedures which would be used in its program, or whether those should be stipulated beforehand by OSHA.

The Agency raised the test standard issue in the proposal and invited comments on the necessity for including a requirement that equipment be tested to OSHA-designated standards (49 FR 8334, col. 3). A considerable number of comments were received on this issue (EXs 8–17, 8–22, 8–23, 8–26, 8–30, 8–34, 8–36B, 8–43, 8–44, 8–47, 8–49, 37 and 38). A number of organizations, including NEMA, the National Bureau of Standards (NBS), UL, FMRC, ETL Testing Laboratories, and the Electronic Industries Association, testified on this subject at the hearings (TR 174, 309, 395, 527, 572 and 606).

A large proportion of these commenters (EXs 8–17, 8–22, 8–23, 8–26, 8–34, 8–44 and 8–47; TR 210, 255, 287, 404, 473, 532, 540 and 611) urged OSHA not to engage in designating test standards, suggesting that such action would be both generally impractical and a needless imposition on the manufacturers of these products.

Certain other commenters, particularly NEMA, restated a position that had been argued before the Consumer Product Safety Commission at a hearing prior to the OSHA hearing on this proposal. In summary, that position strongly opposed a CPSC proposal concerning possible "recognition" by that Agency of private-sector voluntary consensus product standards which are acknowledged as essential to national efforts to improve the safety of many products. In the OSHA proceeding, NEMA also opposed this concept and argued that OSHA designation or adoption of specific test standards requires rulemaking under section 6(b) of the OSH Act (EXs 8–36B and 8–49; TR 177, 179, 192, 194–195, 252, 274 and 499). Beyond that, it was also claimed that any other similar action by OSHA in relation to sanctioning test standards for purposes of testing or certification requirements would constitute an evasion of the section 6(b) due process rights of manufacturers (EXs 8–36B, 33 and 39).

OSHA's proposal clearly indicated that it intended to identify the test standards for both manufacturer self-certification and third-party certification (proposed Part 1936), and OSHA may seek additional public comment on this issue in the future (see discussion below, II.c.3.f.). However, the Agency will not designate standards to be tested to in connection with this proceeding, which requires that third-party testing laboratories approving or listing certain equipment or materials required by OSHA standards to be approved must be recognized by OSHA as NRTLs for that purpose.

At this time, the Agency need only decide this issue to the extent that it is relevant to this final rule, i.e., third-party testing performed by nationally recognized testing laboratories. The evidence suggests that in the context of defining the NRTL, there is no need to designate the test standard for every product which must be listed, labeled or approved under the OSHA standards.

The record indicates that the preponderance of test standards being used in this country to test workplace equipment and materials of interest to OSHA in this rulemaking (and to workplaces subject to its standards and enforcement) are ANSI standards developed by Underwriters Laboratories (TR 413). In addition, most of the other standards being used are either those of FMRC (TR 531–539) or those which are in the process of being developed by UL (EX 31, pp. 1, 4). The latter are either proposed ANSI standards (in that they are in published form and have entered into an ANSI-sanctioned review process) or are in a preliminary development stage ("desk standards") and will ultimately be processed through the standards development process (TR 401 thru 404). Therefore, within this limited testing context, the Agency will not specify the specific test standards, methods and procedures to be used by the NRTLs in product evaluation.

In addition, one potential NRTL has indicated in the hearing record that it uses, intends to use, only the ANSI/UL standards (the nationally recognized standards) as part of its testing activities, since it (unlike UL) is not a standards-setting organization (TR 589, 592; EX 31).

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 FRMC, could be seriously disrupted if the Agency attempted to undertake rulemaking on the testing standards, methods and procedures they are using. The Agency is not prepared to make such a change at this time, particularly since the record does not reflect any need to impose such a requirement on these third-party testing laboratories (see EX 31, p. 4).

A related question was raised by NEMA concerning multiple producers of similar standards in the private sector standards community (TR 185). A short list of comparable standards was submitted by NEMA to the record (EX 33, pg. 2 and Appendix B). However, while the record indicates that current safety testing standards and practices may vary slightly among the various 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).

Based upon its review of the record, the Agency observes that these minor operational differences are considered, and have been considered, as acceptable by the private and other public sector entities participating in the development and enforcement of the NFPA-based fire and electrical safety codes and standards. The Agency has found no evidence in the record which would justify any attempt, based on workplace safety considerations, to modify these currently acceptable practices, or to consider them as antithetical to worker safety and therefore requiring Agency involvement.

The sole purpose of this present action is to remove the specification of UL/FMRC as preferred testing laboratories from the OSHA standards; to provide relief for other laboratories by substituting and defining the term NRTL and to provide a procedure by which they can receive OSHA recognition (EX 30).

The Agency concludes that there is an adequate system of testing standards, methods and procedures currently existing in this country under the auspices of the private sector consensus standards community. Consequently, there appears to be no need at this time for OSHA to undertake the burdensome task of specifying each testing standard, method or procedure to be used by the NRTLs (EX 8–26, pp. 4–5). The recognition scheme adopted herein, as opposed to the more indirect scheme

contemplated in the proposal, provides an ample opportunity for Agency overview of the applying laboratory and its operation (TR 540–541). Therefore, there is no need to decide at this time whether the Agency would need to go through rulemaking in order to designate test standards.

Moreover, the insertion of an "OSHA-designated standards" requirement into the NRTL definition would constitute a substantial change in the current relationship between this Agency and the NRTLs as third-party testing organizations. It is not the purpose of this rulemaking to change these basic relationships.

However, the Agency believes that some guidance should be given to laboratory organizations seeking to be recognized as nationally recognized testing laboratories concerning what test standards will be considered "appropriate test standards."

OSHA has provided a definition of an appropriate test standard in § 1910.7 as follows:

(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.

In addition to accepting ANSI test standards as appropriate test standards within the meaning of this rule, OSHA also recognizes the American Society for Testing and Materials' (ASTM) test standards for products and materials as appropriate test standards. ASTM has been the nationally recognized standards development organization for product and materials testing standards since its beginning in 1898. In addition, it should be noted that many of the ANSI standards make use of or incorporate ASTM test standards; for example, the *ANSI/UL 153–1983 Standard for Portable Electric Lamps* makes use of these standards by referencing over nine separate ASTM standards. OSHA believes that the definition of appropriate test standard should specifically include test standards produced by these two organizations (see EX 8–21). OSHA does, however, retain the right to review the test standards and revisions to test standards of these two organizations. If OSHA believes that one of these test standards would compromise or diminish worker safety, OSHA would take appropriate action to disallow the use by nationally recognized testing laboratories of the standard in question.

This definition is intended to allow competent testing laboratories applying for OSHA recognition to continue following the responsible, safety enhancing practices which they have already been following successfully (see TR 529). In other words, it is an attempt to incorporate into the procedure successful past practice in the area. The record shows that testing laboratories prefer, where possible, to use test standards already developed by ANSI through an elaborate consensus process. Since it is not OSHA's intention to change this successful relationship but merely to codify it, ANSI standards are clearly stated to be presumed to be acceptable (see TR 531). The definition also allows necessary flexibility; even where an appropriate ANSI standard exists, applying laboratories may use alternative test procedures so long as they provide an adequate level of safety (EX 8–26, pp. 4–5; TR 532, 539, 547, 559). The definition also addresses the issue of that small percentage of cases where there is no test standard developed: the applying laboratory will determine how best to test the materials or equipment in question and the Secretary will ascertain as part of the recognition procedure that the testing will produce an adequate level of safety. This definition is intended to be fluid and dynamic to enable testing laboratories to meet the challenge of new products in a timely manner. For example, in some cases such a burden would be met by combining parts of already established test standards to adapt the test procedure to an innovative product (see TR 532–533, 543).

b. *Laboratory Capability.* In the NRTL definition, new paragraph (1) addresses "capability" and requires that the laboratory:

(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.

This criterion relates to paragraph (ii) in the proposal.[7]

In establishing this capability requirement, the Agency has sought to allow the flexibility in approach which each testing laboratory will need in order to determine its NRTL capabilities, and also has sought to promote the exercise of rational decisionmaking by the Agency and others in determining the adequacy of these NRTLs.

As now written, this performance-related capability requirement would allow each testing laboratory to continue to determine its own level of competence, as long as those which operate as NRTLs in the OSHA sense meet the requirements of the NRTL definition (see generally, TR 534).

This performance (as opposed to specification) requirement allows for sufficient flexibility so that testing laboratories will not have to be overqualified for the task at hand merely to meet OSHA requirements (TR 552). Nor does the Agency consider it necessary to establish a specific model as the sole criterion against which all other NRTLs providing OSHA-related testing are to be evaluated.

As mentioned previously, it is the particular equipment or material which is to be tested (and then listed, labeled or accepted), combined with the particular testing standards, methods and procedures available for that testing, which will determine the capability level necessasry for the NRTL to make the workplace safety determination needed for that product.

Therefore, the NRTL capability requirement in this definition establishes two categories of NRTL operation:

(1) "Ordinary" testing for workplace safety purposes, and

[7] See footnote 5 above (or 49 FR 8353).

(2) "Experimental" testing for the same purpose. Each category is based on the current status of the testing standards, methods and procedures being used. An NRTL can be recognized to do both types of testing, ordinary as well as experimental.

As mentioned above, "appropriate standards" form the basis of the "ordinary" testing mode for NRTLs. These appropriate standards are those testing standards, methods and procedures which are published and recognized in the United States as appropriate for product evaluation safety level purposes. They include but are not limited to ANSI or ASTM test standards.

The second testing category addresses testing of "new or innovative" products against these "appropriate standards." This category also includes the testing of a product for performance in a specified manner, or for conformance with other pertinent codes and standards accepted and used in the United States, either during such time when these testing standards, methods or procedures are still unpublished or in the occasional absence of such appropriate standards. An example of this category would be the testing of tray cable (TR 181; EX 32, pg. 4; EX 33, pg. 1, Appendix A).

An experimental testing designation does not imply any diminished OSHA role in overseeing the recognition process. Those applying for recognition must specify in their application the test standard or standards that they will be using for a particular type of equipment or material to be tested. OSHA will then evaluate the proposed standard to determine that it provides an adequate level of safety before granting a recognition where the NRTL will use that standard as part of its testing. The alternative test standard provisions found in paragraph (d) of the new rule were included at least in part to provide flexibility to deal with products that are new or innovative and for which no other standard exists. However, even laboratories doing "ordinary" testing can avail themselves of the alternative standard provisions if they wish to use test standards that do not meet the criteria in paragraph (c) provided, of course, that the Assistant Secretary agrees that the test standards in question provide an adequate level of safety.

The capability requirements for NRTLs also specifically mention important elements of capability including "proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs." These capability requirements, and others, are already routinely included within existing laboratory evaluation and accreditation documents used by the private sector, such as ASTM E548–84.

The Agency believes that accreditation is an increasingly valuable tool for testing laboratories in demonstrating their capability. OSHA encourages the voluntary use of properly designed and operated accreditation systems. They provide an excellent means of identifying those laboratories which have the capability to engage in product safety testing, including third-party testing as nationally recognized testing laboratories. However, as noted above, for the present OSHA has decided not to require accreditation.

c. *Deletion of "Recall".* In this final rule, as part of the "controls and services" portion of the NRTL definition, the testing laboratory is required in paragraph (b)(2)(iii) to provide services such as:

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

In the original proposal, subparagraph (iii)(C) required the qualified laboratory to make service-value determinations through field inspections to monitor the proper use of labels on products "with provisions for recall in the event a hazardous product is installed . . ." [8]

The recall phrase has been deleted in the final rule because there was considerable confusion as to its purpose. The deletion reflects the Agency's position, disclosed in the hearing record, that the purpose of this subparagraph is to insure monitoring of the proper use of the laboratory's identifying mark and labels on products (TR 32, 83, 265, 372, 388, 441, 489, 490, 566, 587).

Six commenters had specifically addressed the recall issue initially (EXs 8–16, 8–30, 8–33, 8–36C, 8–43, 8–45). The National Electrical Manufacturers Association (NEMA) suggested that the inclusion of "recall" in the proposed definition of "qualified electrical testing laboratory" in Subpart S may have been inappropriate when compared with NFPA/NEC texts (EX 8–36C). To some extent, UL paralleled this by stating its general impression that entities such as itself do not have "delegated" authority relative to the recall of products (EX 8–30). OSHA agrees; it was never its intention in the proposed definition to "empower" anyone to require recalls (EX 8–33).

During the development of the proposal, the recall clause in proposed subparagraph (iii)(C) originally was related to the criteria in proposed § 1936.111 concerning identification and control of certified equipment. Proposed § 1936.111 reflected industry practice whereby a laboratory already would have established all appropriate procedures it considers necessary to prevent misuse of a mark, including corrective actions to be taken when necessary to maintain the integrity of the certification program. These would then be made operative through contractual arrangements with the manufacturer or product supplier. The Agency expected that the same would hold true for the marks used by these product testing laboratories for identifying successfully tested equipment.

Indeed, the Agency continues to expect that entities performing product safety testing functions will take all necessary control and remedial measures needed to maintain the integrity of their activities, including pre-established procedures and such supplementary contractual arrangements with manufacturers as may be needed. The testing laboratory may use recall or any other means to achieve the objective of assuring the proper use of its marks. OSHA considers this to be appropriate and necessary for workplace safety reasons. Program integrity would be quickly compromised by hazardous products being listed or bearing these marks or labels. This remedial activity would continue to be a contractually-based private sector activity; it involves no grant of authority from this Federal agency.

d. *"Independent Testing" Still Required.* In the Agency's proposal, the "Qualified testing laboratory" was required to be "completely independent of manufacturers, vendors and employers subject to this standard" under proposed paragraph (i).[9]

Several commenters addressed this question of independence (or "third-party" status) of testing laboratories (EXs 8–8, 8–17, 8–30, 8–33, 8–37). Seven organizations commented on this issue at the informal public hearing, including Iron Age Protective Company, NEMA, the American Plywood Association (APA), the Safety Equipment Institute (SEI), UL, FMRC and ETL (TR 92, 152, 176, 191, 302, 340, 370, 496, 569, 578).

The record supports the need for independent testing in the NFPA-related fire/electrical safety testing arena (EXs 5–2, 5–13, 5–15, 8–6, 8–17; TR 176, 578).

[8] See footnote 5 above (or 49 FR 8353, col. 2).

[9] See footnote 5 above (or proposed § 1910.399(a)(99a)(i), 49 FR 8353, col. 2).

The Agency finds nothing substantial in the record to dispute its historical interpretation (unchanged since 1971) that "authorities having jurisdiction" [10] which adopt and enforce NFPA codes and related standards (including the National Electrical Code (NEC)) have always relied upon this type of "independence" for proper operation of the testing requirements. NEMA corroborates this by stating that OSHA's electrical safety standards (Subpart S of 29 CFR Part 1910) require third-party testing (TR 302). The Fire Equipment Manufacturer's Association, Inc. (FEMA) also supports the need for independent, third-party testing and indicates that it is necessary when addressing fire protection equipment (Subpart L of 29 CFR Part 1910) (EX 8–17). Since this standard is merely elaborating on what is already in place, it is appropriate that the element of independence be specifically preserved.

The reliance on "independence" by the users of these codes and standards does not adversely reflect on the caliber or motivation of company-owned testing laboratories. Rather, it appears to call for special analytical and decisionmaking relationships to be maintained through the fire/electrical safety testing process for the benefit of all potential users of this equipment.

Certain manufacturers also appear to accept and value a third-party relationship. As NEMA stated:

> We support that concept of third party testing where the user, if you will, requests it and requires it. And some manufacturers may on their own, I know of several manufacturers who will not produce any product unless it has third party listing. They use that as a matter of manufacturing and sales policy. (TR 191)

In the Agency's new NRTL definition, the testing laboratory is required to be "independent" in that it:

> (b)(3) . . . 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.

The revised format for this requirement emphasizes that products and their producers, i.e., manufacturers, suppliers, and vendors, are not directly subjected to these testing requirements by the 23 OSHA testing-related provisions in Part 1910 discussed above. Instead, they are indirectly influenced by the OSHA-employer relationships established under the OSH Act and the standards.

The independence requirement being specified in paragraph (3) of the NRTL definition in this final rule applies only to this NRTL definition and to the 23 NFPA-derived testing requirements in Part 1910 which are the subject of this rule. It is not intended for other applications without further rulemaking action by OSHA. In particular, OSHA notes that this determination on independence is not relevant to the concerns raised by the American Plywood Association (APA) (Exs 8–37, 28; TR 92).

This means that the Agency's adoption of this independence requirement for the NRTLs in Part 1910 does not preclude it from reaching a different decision on the "independence" concept—either as to the requirement itself or as to any specific criteria which define it—in future rulemaking related to other testing or laboratory requirements in its other safety standards, or to any future third-party certification program requirements. This will be especially pertinent in situations where testing requirements are derived from non-NFPA standards sources, or are based on other historical practices, or simply are new OSHA requirements. The Agency will continue to review these independence requirements in the context of third-party certification.

e. *Testing Quality and Fairness Requirements.* This last requirement in OSHA's new NRTL definition reads:

> (b)(4) The NRTL maintain 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.

This requirement is essentially a procedural one. It includes performance requirements related to the internal and external accountability of the NRTL.

The first subparagraph is intended to result in creditable findings and reports upon which reliance can be placed routinely. It is essential that the testing results, i.e., the findings and reports, be totally reliable, objective and without bias. If they are not, employee safety may be adversely affected. Moreover, the employer would not know whether any particular listing, labeling or approval was worthy of acceptance; thus, the entire purpose of the tested equipment requirement would be undermined.

This requirement is indirectly derived from that part of the Agency's proposal which proposed a new *§ 1910.7, "Valid testing data and certifications for safety."* While the scheme proposed for § 1910.7 is not being adopted at this time, its intent needs to be incorporated into this final NRTL definition.

In the proposal, the Agency stated:

> Since OSHA is not a testing or certifying organization, OSHA believes that the most appropriate means to provide assurance to employers and workers, and to itself, that specific equipment or material will conform to the Agency's requirements is to require valid testing data and valid certifications. The Agency proposes that whenever OSHA standards require that equipment be tested or certified, the validity of the testing or certification is the prerequisite of the equipment's acceptability.
>
> This entire activity would be based on fundamental OSHA requirements for the validity of testing data combined with whatever level of product manufacturing quality control is considered necessary for worker safety under each of OSHA's safety standards. (49 FR 8327, col. 3) [11]

No comments were received on this aspect of proposed § 1910.7. However, since (1) the issue was raised in the proposal, (2) the need for the requirement is evident, and (3) UL and FMRC, and also ETL, give sufficient indirect evidence in their comments and testimony that such quality control systems are necessary and in place, the Agency believes that this requirement is justifiably included in this final rule.

The exact design and operation of such an "internal quality control" system for each NRTL is being left for each NRTL to determine in light of OSHA's requirement.

The second subparagraph addresses complaints and disputes which could arise from external sources concerning an NRTL's activites. It requires that such complaints and disputes be handled in a planned and organized manner by the NRTL.

The handling of complaints and disputes was raised as a question regarding proposed § 1936.402 "Dispute resolution procedures" in the Agency's proposal:

> * * * this regulation will include provisions for resolving complaints * * * concerning testing * * * practices related to safety * * * Comments are requested from the public * * * on this subject area. Constructive proposals submitted for the rulemaking record will be considered for

[10] "Authority having jurisdiction" is a term of art used originally in materials produced by the National Fire Protection Association (NFPA). The NFPA has defined it as an "organization, office or individual responsible for 'approving' equipment, an installation, or a procedure," with an added note "The phrase . . . is used in NFPA documents in a broad manner since jurisdictions and 'approval' agencies vary as do their responsibilities . . ." (NFPA 70E–1979). This is also reflected in the definition of "Approved" in § 1910.399(a)(7).

[11] The "product manufacturing quality control" considered by the Agency as necessary for these NFPA-related OSHA safety standards is covered separately in paragraph (2)(ii) of the NRTL definition.

incorporation in the final rule. (49 FR 8341, col. 2)

Although there was little substantive comment in the public record, OSHA is acting on its belief that this subject is of importance to workers, and their representatives, as well as manufacturers and testing laboratories (TR 11). At the informal public hearing, OSHA presented as one of its witnesses David Swankin, Esq., a recognized expert on questions of consumer affairs, testing and certification, and product safety in the United States.

Mr. Swankin discussed those mechanisms needed to assure the public that complaints and disputes which may arise in relation to testing activities would be properly handled by the appropriate responsible person or entity (TR 115). He indicated that a "fair and reasonable system for handling both procedural and technical complaints" was necessary and that it should be included in "any final rule" (TR 116):

> * * * it is clear that with recognition goes a tremendous responsibility to test properly. Because of this, it is essential that the rights of all interested parties are protected. A fair and reasonable complaint system is one of the essential ways in which such rights can indeed be protected* * * (TR 145–146)

To demonstrate that "an appeals system for handling complaints is an essential ingredient of due process," Mr. Swankin discussed recent activities of various institutions and their end products, such as the "National Policy on Standards for the United States," OMB Circular A–119, the *ASME* v. *Hydrolevel* decision of the U.S. Supreme Court (456 U.S. 556, 102 S. Ct. 1935 (1982)), the FTC Proposed Trade Regulation Rule Governing Standards and Certification (43 FR 57269, December 7, 1978), the provisions contained in the Presiding Officers Report on the above FTC issue (16 CFR Part 457, Public Record 215–61, June 1983), the laboratory accreditation criteria of the American Association for Laboratory Accreditation (AALA) and the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Bureau of Standards, Guides 25 and 40 of the International Organization for Standardization (ISO), and the voluntary standard ASTM E–548 (TR 116–123).

Mr. Swankin also suggested specific criteria to be used and the language which should be incorporated in any OSHA rule (TR 123–125, 144, 146–148). In summary, Mr. Swankin urged:

> * * * it behooves OSHA to insure that its final rule recognizes the need for any of these organizations that seek recognition to assure full due process and, in particular, to assure adequate complaint mechanisms. (TR 145)

Subsequent comments by NEMA, UL, FMRC and ETL during the informal public hearing were generally positive ((TR 290, 445, 562, 563, 593). An additional 30 day period was given after the close of the hearing for additional comments on dispute handling requirements, and any alternative methods of appeals handling (49 FR 47049). There were five post-hearing comments submitted on this topic. They generally agreed with the due process concept proposed by Mr. Swankin (EXs 31, 32, 33, 37 and 38).

OSHA has determined that Mr. Swankin's suggestion is consistent with the purposes of this final rule, and will significantly contribute to its effectiveness. Therefore, the Agency has incorporated the requirement that NRTLs have effective procedures for complaint and dispute settlement within the new NRTL definition.

The dispute/complaint resolution system actually used by each NRTL must be fair and reasonable, but the exact design and operation of the system is being left to each testing laboratory to determine. As mentioned above, specific criteria which might be used by NRTLs have been described in Mr. Swankin's testimony, and in the exhibits he submitted to the record.

f. *"Third-Party Certification" Inappropriate.* The beginning of the NRTL definition reads:

> 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:

This new phrasing replaces the beginning of the proposed definition of "Qualified testing laboratory," which would have required that the laboratory be the "validating laboratory of a third-party certification program recognized under Part 1936 of this Title * * *"[12]

The proposed phrasing was consistent with the regulatory scheme which formed the basis of the March 6, 1984, proposal. That scheme was based on the adoption of third-party certification procedures to handle the fire/electrical safety testing requirements. In that proposal, OSHA stated that it had "categorically classified all UL, FM, testing laboratory, and 'nationally recognized testing laboratory' terms and requirements as having been third-party certification requirements under its safety standards" (49 FR 8329, col. 3).

This classification was being applied across the board to the various testing-related provisions in 29 CFR Part 1910 which were included in the proposal. The proposed definition of "Qualified testing laboratory" was developed to reflect this determination.

The written record developed as the result of the March 6, 1984 proposal contains only one substantive challenge to the Agency's intended "classification" action described above. Harvey Hubbell, Incorporated, a manufacturer of electrical products, stated:

> On page 8329 there is the statement that OSHA has "categorically classified all UL, FM, testing laboratory and 'nationally recognized testing laboratory' terms and requirements as having been third party certification requirements". . . The "categorical classification" seems to be an arbitrary action by OSHA. (EX 8–23, pg. 3)

In support of its claim, the firm explained its qualifications and intent:

> Hubbell has been in business since 1888 and it has correspondence in its files indicating a relationship with Underwriters Laboratory (UL) since 1907. As a result of this long experience in working with UL, we have become familiar with the process and we feel competent to comment on the OSHA proposal. We are particularly interested in the effect of the [proposal] on Subpart S of Part 1910, and our comments should be construed as being limited to the effect of the proposed rule on this Subpart. (EX 8–23, pg. 1)

After carefully reviewing the entire record of this proceeding, and as a result of its recent reexamination of the many testing-related provisions proposed for revision, OSHA has concluded that the "third-party certification" claim it made in the proposal was incorrect. There exists no clear pattern, either in the record or in the Part 1910 standards themselves, which indicates that the affected workplace equipment and materials must be certified (as opposed to tested) for safety.

Instead, the Agency now believes the product safety testing requirements already contained in the standards in question to be comparatively simple. As indicated in each of the 23 standards provisions included in the final rule, employers may use only equipment and materials which have been tested successfully as conforming to the NEC, to nationally recognized standards, to Federal regulations, or to other NFPA codes and related standards. For such products to be acceptable, this testing must have been conducted by an appropriate safety testing organization, i.e., a "nationally recognized testing

[12] See footnote 5 above (or proposed § 1910.399(a)(99a), 49 FR 8353, col. 2).

laboratory," and may be evidenced by that organization's identifying mark, label or listing.[13] In other words, re-examination of the provisions in question supports the view that approval contemplated third-party testing as opposed to third-party certification.

Since the third-party certification linkage is not being established for the 23 standards provisions covered in this final rule, the Agency has determined that the proposed certification-related terminology is clearly inappropriate for the new NRTL definition. Therefore, it will not be used.

Instead, the text at the beginning of the NRTL definition reflects the sense of the definition of "Acceptable" currently in the Part 1910 standards. For example, § 1910.399(a)(1) states:

> (1) Acceptable. An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart S: (i) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory. . .

Clearly, the new NRTL definition tracks the term "acceptable" by simply characterizing the laboratory organization as one which tests for safety, and which then lists, labels or accepts the equipment and materials.[14]

g. *Requirement for OSHA Recognition.* The proposed rule intended to revise completely OSHA's unimplemented regulation at 29 CFR Part 1907, "Accreditation of Testing Laboratories." Major portions of Part 1907 were to be revised and redesignated as part of a proposed new Part 1936; other provisions of questionable utility were to be revoked.

Part 1907 was never implemented by OSHA, and was proposed for revocation on June 3, 1974 (although no actual revocation ever took place). Part 1907 contains the criteria and procedures which OSHA intended to use to "accredit" independent testing laboratories. The accredited laboratories were to test and certify equipment which is required to be "acceptable" or "approved" under OSHA safety standards.

A new 29 CFR Part 1936—entitled: "OSHA Recognition of Testing-Related Agencies and Certification Programs"—proposed a new framework for recognition by OSHA of enterprises it considered competent to perform activities related to the testing or certification requirements contained in the Part 1910 safety standards.

It would have included considerations related to (1) laboratory accreditation agencies and accredited laboratories, and (2) product certification systems, including both manufacturer self-certification and third-party certification programs.

As stated earlier, OSHA believes that, based on a thorough review of the public comments and testimony in the record, a "comprehensive overhaul" which it originally proposed need not be undertaken at this time. OSHA therefore is not creating a new 29 CFR Part 1936 in this rulemaking, and is dropping for the present that proposed framework for recognition by OSHA.

At this time, it is establishing in its place a mandatory requirement for OSHA recognition, using approval procedures similar to those in Part 1907.

The Agency believes that its definition of NRTL, in order to be most effective, should address only the minimum necessary criteria which must be met by such laboratories. OSHA's definition provides the means of identifying those laboratories which are properly engaged in the required testing and whose activities meet OSHA's requirements, and thereby should be acceptable to employers, workers, OSHA and other safety-related personnel. OSHA believes that a reliable means must be provided in the absence of a new Part 1936 by which these laboratories can be recognized as meeting these criteria, and by which the concerned public can be informed of the results of a recognition process. OSHA has determined therefore that it will fill this role at this time (TR 528–529). OSHA will evaluate this mandatory process with an eye to future rulemaking that will look for alternatives to a major OSHA involvement.

It should be noted that under all of the schemes under consideration since before the promulgation of Part 1907 in 1973, some element of OSHA recognition or accreditation has always been included. See for example, 29 CFR 1907.1(b): proposed 29 CFR 1936.100, 49 FR 8356. The proposed definition of qualified testing laboratory also required that it be "recognized under Part 1936." The Agency believes that a requirement for universal OSHA recognition of these testing laboratories is necessary and appropriate.

Although the issue of OSHA recognition was extremely controversial and was opposed by many participants (see, for example, EX 8–36C and TR 530), a thorough review of this rulemaking record has led OSHA to conclude that it is necessary to impose an "OSHA-recognition" requirement upon these laboratories as part of the NRTL definition itself.

The Agency even considered allowing testing laboratories to designate themselves as nationally recognized testing laboratories, certifying in effect that they meet all of the elements of the definition (EX 61). Various comments from the public expressed concern that incompetent laboratories might avail themselves of this process and thereby diminish workplace safety while lending a false sense of security to employers who bought materials or equipment labeled by such laboratories. It would be very difficult for employers under such a scheme to have any idea as to whether the equipment they purchase would be acceptable to OSHA. Moreover, it would be difficult for OSHA compliance personnel in the field to easily determine if a given piece of equipment had been approved by a legitimate laboratory which might be many miles or continents away. The spectre of unfair competition between "legitimate" and "illegitimate" or incompetent laboratories was also raised. Finally, some felt that a mandatory recognition process was the only way to undo the preferential treatment that the OSHA standards unwittingly may have accorded UL and FM.

The March 4, 1984, proposal was wide-ranging in scope: it set up procedures for all aspects of product/equipment safety testing, proposing procedures for OSHA recognition of laboratory accrediting agencies, requiring all validating laboratories in third-party certification programs to be accredited by an OSHA-recognized laboratory accreditation system within six years, and also setting up procedures for manufacturer self-certification. The proposal also addressed other issues that are relevant to the testing field in general, but are not relevant to the issue at hand, i.e., providing a mechanism whereby competent laboratories can approve equipment or material already required by OSHA standards to be acceptable. In fact, some topics covered by the proposal (e.g., manufacturer self-certification) are not presently required by any existing OSHA standard; they would have been triggered only if and when a substantive regulation would require manufacturer self-certification. In other words, the proposal attempted to set up a comprehensive framework

[13] Only two minor exceptions are allowed. Refer to any definition of "Acceptable"—29 CFR 1910.399(a)(1), for example—for the details of these two exceptions.

[14] These are the activities which have been characteristic of product safety testing laboratories such as UL and FMRC (now being deleted from the definition of "Acceptable" and from other standards). The Agency anticipates that these activities will continue to be performed in the future by whichever testing laboratories meet the requirements of its new NRTL definition.

for numerous aspects of product and equipment safety testing, ambitious but far more comprehensive than necessary to resolve any problems posed by the lawsuit or the requirements of OSHA standards presently in effect.

The main thrust of the proposal was setting up a framework to recognize accrediting agencies, who would in turn accredit third-party certifiers. OSHA subsequently determined that the standards in question contemplate third-party testing, rather than requiring third-party certification. FMRC and others expressed concern that the proposal would result in a diminution of the safety afforded by the present system. To assure that a uniform high level of performance in safety testing be maintained, FMRC urged OSHA "to modify the proposal so that responsibility for the recognition or accreditation of testing laboratories and certification programs will remain vested with the federal government" (TR 423, 530, 559–560). FMRC stated:

> It is our view that rule making, to delegate this activity to private sector agencies, should not be proposed until it is clear that such agencies are fully prepared to carry out the entire scope of the activity required. (TR 530)

This is not to say that presently existing laboratory accrediting systems would not be capable of performing satisfactorily in the proposed regulatory scheme. However, it must be noted that no private sector accrediting system is presently recognized by OSHA. Moreover, since OSHA subsequently determined that the standards in question contemplate third-party testing rather than third-party certification, it is not necessary to resolve all of these issues at this time.

OSHA is adopting therefore a streamlined approach that will provide for recognition of testing laboratories listing or approving certain workplace equipment and materials as required by OSHA standards (see TR 565). This approach has substantial support in the record (e.g., EXs 2–7, 2–8, 5–25, 5–31, 5–32). OSHA intends to monitor the program being put into place today and to look for alternatives to OSHA recognition of testing laboratories. One such alternative would be to amend the pertinent OSHA standards to require third-party certification, and to engage in further investigation concerning the ability of other enterprises to carry out this activity. In this regard, there are a number of unanswered questions that need to be studied (see, e.g., EX. 8–26, p. 8).

D. *Procedures for Obtaining OSHA Recognition*—1. Accepting Applications for Recognition. OSHA has determined, on the basis of its review of the entire record, that a testing laboratory which wants to function as a "nationally recognized testing laboratory" under the OSHA standards must obtain recognition from OSHA that the laboratory satisfies the criterial for an NRTL. This recognition will be reflected in a letter from OSHA. Recognition will be granted only with the respect to those items of equipment which the application requested and the review under Appendix A to this section clearly supports. In the event that the application is acceptable as to some items of equipment or material but does not presently meet the criteria for other requested areas of recognition, the Agency may issue a letter of recognition limited to those areas where the applicant has demonstrated that it meets the criteria. Opportunities for public input in this review process are also provided.

Appendix A to this section, which establishes the procedures for obtaining OSHA recognition, is based primarily on Subpart D of proposed Part 1936 (49 FR 8337, March 6, 1984). The procedures adopted in this final rule focus on the key elements necessary to assure a reasonable process, which is fair to the applicants for recognition and to others whose safety is affected by the decisions made. More detailed procedures may develop as OSHA and the regulated community gain experience with implementation of these provisions.

2. Procedure

Certain highlights of the procedure for recognition in Appendix A are discussed below.

Any testing organization is allowed to apply to OSHA for recognition. At the request of the Office of the U.S. Trade Representative, however, some restrictions may be placed on foreign entities in cases where the foreign government does not recognize U.S. testing laboratories (EX 8–39).

Like the proposal, the final rule requires that the application contain sufficient detail, including the scope of the recognition which is sought. No specific form is required for the application, as long as the necessary information is submitted. Applications which are submitted will be accepted and acknowledged by OSHA in writing.

The proposed procedure in Subpart D of Part 1936 contained several points, such as § 1936.121(d)(5) (ii) and (iii), where action would have been automatically discontinued by the Agency if the applicant unreasonably delayed in providing requested data and information. Similar provisions are included in this final rule; for example, in paragraph I.A.4.b. of Appendix A. The applicant, not the Agency, bears the responsibility for the completeness of the application. This will also be reflected in Agency procedural directives, as appropriate. This is necessary so that the Agency can deal expeditiously with fully completed applications and not waste resources on incomplete applications.

New Appendix A includes the following provisions:

- On-site review of testing facilities, and administrative and technical practices.
- Technically qualified experts to be involved.
- Written reports of all reviews available to applicant.

These provisions were originally included as part of proposed § 1936.121.

A decision by Agency staff to proceed with a positive finding will be sent to the Assistant Secretary for ratification of the staff work and conclusions (paragraph I.B.2., Appendix A).

At this point a new process is added to the evaluation procedure under Appendix A. The public is given an opportunity, after **Federal Register** notice, to review and comment upon the entire application which has been preliminarily acted upon by the Assistant Secretary. This is a much more open procedure than had been envisioned in the original Part 1907. This procedure with increased public participation was proposed as part of § 1936.121 and there were no objections.

During a 60-day period, any member of the public may supply written comments concerning the applicant's fulfillment of the criteria for recognition. At this point, while the application has been "accepted" by the Assistant Secretary, it has not received any official sanction, nor has there been any interim or temporary recognition given to the applicant.

Assuming smooth processing through the public comment period, with no need to do follow-up work concerning the application, the Assistant Secretary will proceed to make a final decision and, after giving notice in the **Federal Register**, initiate a five-year recognition period.

There could be, on occasion, significant objection raised to the applicant's proposal, either from the Agency staff or from the public during the public comment period. If so, special additional reviews, a reopening of the public record for more documentary submissions, or the convening of an informal hearing may be undertaken. This will lead ultimately to a decision on

every application, using a procedure which allows every opportunity for each applicant to complete the application process successfully, or know clearly why the application process was unsuccessful.

Appendix A also includes a section on special terms and conditions, including details on:

- Letter of recognition
- Periods of recognition
- Consistency in NRTL operations
- Accurate and controlled publicity
- Handling test method changes

A careful reading of the text of Appendix A will show each of these various factors built into OSHA's rule. Additionally, the remainder of the rule covers other aspects of recognition such as expansions of recognitions, renewals, and possible revocations of recognition which are all treated in a similar manner to those in proposed Part 1936.

3. Temporary Recognition of Certain NRTLs.

The issue of how to treat Underwriters Laboratories (UL) and Factory Mutual Research Corporation (FMRC) has been carefully considered. In many people's opinion, both laboratories have been recognized by OSHA for many years as the very definition of nationally recognized testing laboratories. The Agency finds no support in the record for forcing either of these two organizations to apply initially for recognition. If these two organizations were forced to apply immediately for recognition, it might cause undue disruption and gaps in employee protection during the OSHA recognition process. There would be a hiatus in the ability of employers to comply with certain OSHA standards that require the use of approved equipment. Ongoing approval activity would be disrupted if OSHA were not to accord temporary recognition to these two laboratories. Moreover, the processing of recognition applications from heretofore unrecognized laboratories might be unduly delayed. However, it might be inappropriate to "grandfather" these laboratories indefinitely. In fact, neither of these organizations requested permanent recognition (TR 427–428, 531). Therefore, the Agency has included in Appendix A, at I.C.6., a section entitled, "Temporary Recognition of Certain NRTLs." This section would establish temporary recognition of UL and FM for a period of five years beginning with the effective date of the final rule. Five years was selected since that is the period of OSHA initial recognition for other laboratories which seek OSHA recognition. At the end of the five-year period, the two temporarily recognized laboratories will need to apply for renewal of OSHA recognition, as will all other recognized laboratories.

III. Detailed Summary of CFR Changes

A. Subpart A—General

A new § 1910.7, is being added to Subpart A of Part 1910 to provide a single definition of "nationally recognized testing laboratory" as it applies to Part 1910 provisions. The definition parallels that which was proposed for "Qualified fire testing laboratory" (49 FR 8351, col. 3), and "Qualified electrical testing laboratory" (49 FR 8353, col. 1), amended as has been described previously.

Paragraph (a) restricts use of this definition to those provisions in Part 1910 which use the term "nationally recognized testing laboratory."

The four subparagraphs in the definition in § 1910.7(b) provide four separate criteria, all of which must be met in order that any organization may be considered a "nationally recognized testing laboratory."

Paragraphs (c) and (d) define appropriate test standards and paragraph (e) and Appendix A provide a method for a testing organization to be considered an NRTL. The method provides that a testing laboratory must request that OSHA review its operations against the NRTL definitional criteria.

Appendix A to § 1910.7

This new appendix implements the method provided in § 1910.7. Entitled: "OSHA Recognition Process for Nationally Recognized Testing Laboratories," this Appendix establishes procedures for use by testing organizations and OSHA.

The Appendix consists of two parts:

- Procedures for initial OSHA recognition
- Supplementary procedures

Part I—*Procedures for Initial OSHA Recognition*—consists of three sections:

- Applications
- Review and Decision Process
- Terms and Conditions of Recognition

Section A. Applications addresses eligibility, content of application, filing office location and amendments.

In particular, paragraph A.1. provides eligibility for this procedure to any testing organization believing it fulfills the definition of NRTL in § 1910.7, while providing a possible ineligibility for NRTLs in nations whose practices in this regard are not similar to those incorporated in the text of this standard and Appendix.

Paragraph A.2. allows eligible applicants to determine the content and scope of their application, as long as it is sufficient to allow the Assistant Secretary to make an informed decision of each applicant's case. In other words, it establishes the minimum information which must be included. Also, no fixed Federal application form will be required.

Paragraphs A.3. and A.4. provide specific administrative details for use by the applicant.

Section B. Review and decision process details the steps to be followed by the Assistant Secretary and the applicant. It consists of seven paragraphs:

- Acceptance and on-site review
- Positive finding by staff
- Negative finding by staff
- Preliminary finding by Assistant Secretary
- Public review and comment period
- Action after public comment
- Action after public objection

Paragraph B.1. covers acceptance and on-site review requirements. In particular, subparagraphs B.1.b. and c. establish that an on-site review of the applicant's administrative and testing practices and the testing facilities themselves will be conducted. A written report may be prepared, as well as documentation of all standards used in the process, which will be made available to the applicant.

Paragraph B.2. provides that OSHA conduct a review of the application, supporting documents, on-site review reports to determine whether the applicant appears to meet the requirement for recognition. If positive, a written recommendation for approval shall be submitted by OSHA staff to the Assistant Secretary.

Paragraph B.3. provides, in the case of a negative finding, that no recommendation be made to the Assistant Secretary at that occasion. Instead, responsible OSHA staff will provide the applicant with a listing of shortcomings, and provide a reasonable time to respond to this negative finding. The applicant may submit a revised application, or make a request, that the application be processed despite the negative staff finding. This revision procedure is limited to one use per application, in the interest of expediting the procedure. If more revisions are necessary, the application must be refiled.

Paragraph B.4. provides for a preliminary finding by the Assistant Secretary based on the results of paragraphs B.2. and B.3. Each preliminary finding is a straightforward yes or no decision. Documentation is not

required of the Assistant Secretary, except that notification will be made in writing to the applicant. Notice will also be published in the **Federal Register**; no status accrues to any applicant by such publication.

Paragraph B.5. establishes a public review and comment period of 60 days on the question of whether the applicant has fulfilled the requirements for recognition. All materials submitted or developed during this procedure under Appendix A to § 1910.7 will be available for public inspection and copying. Any member of the public may provide comments in writing during the review period.

Paragraph B.6. provides for a final decision to be made by the Assistant Secretary on recognition of the applicant if there are no serious objections or substantive claims contrary to the preliminary finding that was published. The published preliminary finding by the Assistant Secretary may have been positive or negative, and, therefore, a "positive recognition" or a "denial" could be forthcoming in the final decision in subparagraph B.6.a. This final decision shall be based on all materials provided through the preliminary finding by the Assistant Secretary, supplemented by the information received through the public review and comment period. A copy will be provided to the applicant and published in the **Federal Register**.

Subparagraph B.6.c. states that, at this point, Agency action is complete and that there is no review available in the Department to the Assistant Secretary's final decision.

Paragraph B.7. covers what will be done if serious objections or substantial claims contrary to the preliminary finding have been received during the public review and comment period. The Assistant Secretary has the authority to assign or engage Federal, State or contract personnel to initiate special reviews of information in the public comment record which require resolution. Each special review will be included in the public record, also. Based on the results, the Assistant Secretary will either reopen the written comment period for further comments, or convene an informal hearing for the same purpose. (While this informal hearing would be conducted under applicable OSHA procedures for similar hearings, the discretion as to its necessity and utility remains with the Assistant Secretary at all times.) Once this extended public review and comment period or informal hearing phase is complete, a final decision will be made by the Assistant Secretary. The remaining procedures track the procedure established in subparagraphs B.6.a., b., and c. above.

Section C. Terms and Conditions of Recognition provides what will be the terms and conditions of every recognition. There will be a written letter of recognition containing details of the scope, the specific equipment and materials, and any additional special conditions; and a period of validity, usually five years; and a requirement for continuous conformity. This section also addresses questions related to proper advertising to avoid misleading employers, vendors, or workers themselves as to the meaning of "OSHA-recognized NRTL." The fifth paragraph provides for temporary recognition of UL and FMRC.

Part II—*Supplementary Procedures*—consists of five sections:

- Test standard changes;
- Expansion of current recognition;
- Renewal of OSHA recognition;
- Voluntary termination by laboratory;
- Revocation of recognition for cause by OSHA.

Section A. Test standard changes requires the already recognized testing laboratory to notify the Assistant Secretary of any changes they intend to make in the test standards that are being used, certify that the revised test standard will be at least as effective as the one for which they received aproval, and provide data to support this conclusion. However, it is not OSHA's intention to require the NRTL to notify it of a change in ANSI or ASTM test standards. In general, currently designated ANSI safety-designated product standards or ASTM test standards used for evaluation of products or materials as well as future revisions to test standards in this category are presumed to be acceptable to OSHA. OSHA does, however, retain the right to specifically disallow the use of any one of these test standards by its recognized laboratories if this use might compromise or diminish employee safety.

This section does not require prior OSHA approval before a recognized NRTL may use a new test standard. Laboratories that have already been recognized by OSHA will have already undergone close scrutiny of all aspects of their operation as it relates to the testing of specified equipment or materials. Therefore, OSHA sees no need to delay the implementation of a new test standard. The Agency does reserve the right, however, after evaluating the new test standard, to disapprove it if it will not provide a substantially equivalent level of safety to that obtained from the prior test standard. In the event that OSHA disapproves the new test standard, the Agency will initiate proceedings to discontinue that aspect of the recognition affected by the modification.

Section B. Expansion of current recognition addresses the questions of eligibility and procedure. Eligibility is limited only to currently OSHA-recognized NRTLs under paragraph B.1.; the procedure followed will be that in I.B., except that on-site reviews may not be necessary in many cases.

Section C. Renewal of OSHA recognition also consists of eligibility and procedural items. A renewal request must be filed within one year and not less than nine months before the expiration date of the current recognition (paragraph 2.a.). A renewal visit will be performed only at OSHA's discretion. However, should the Agency receive, during the comment period specific and substantial evidence indicating the need for them, the need for these on-site reviews will be reevaluated (paragraph 2.b.). Properly filed renewal requests will ensure that the current recognition will not expire until a final decision has been made by OSHA.

Renewal procedures are both necessary and appropriate to assure continuing compliance with the standard and to guard against a diminution of worker safety. Therefore, NRTLs wishing to continue their recognition must make timely application for renewal. However, after a NRTL has successfuly obtained the renewal of its recognition once, subsequent renewals may be obtained by certifying that the laboratory is in continuing compliance with the terms of its letter of recognition as well as 29 CFR 1910.7 (paragraph 2.d.). It is felt that this provision will provide some relief from any possible burden that might be caused by forcing the NRTL to go through the recognition process again and again. After a 10-year track record (original recognition and one five year renewal), it is felt that the Agency would have enough experience with a particular laboratory to make laboratory self-certification of continuing compliance acceptable.

Under certain circumstances, a recognized laboratory would not have to go through the procedure of submitting a renewal application and would merely be required to certify its continuing compliance with the standard and its letter of recognition (paragraph 3). This alternative procedure would apply where OSHA makes a finding that there is a sufficient basis for continuing the

recognition and good cause to dispense with the renewal procedure.

Section D. Voluntary termination provides a procedure to end a recognition when an OSHA-recognized NRTL decides to discontinue participation under Appendix A.

Section E. Revocation by OSHA is provided to use when OSHA, for cause, decides to withdraw current recognition. It addresses potential causes for revocation action, procedures which must be followed, special factors involved in making the final decision, and the public announcement.

In paragraph E.1., three potential causes are described: failure substantially to satisfy § 1910.7 and Appendix A requirements; poor performance of testing requirements which are described in its letter of recognition; or misrepresentation in any documentation used under this procedure or misrepresentation of the scope or conditions of its recognition. The rule allows for complete or partial revocation decisions.

Paragraph E.2. requires OSHA to identify alleged deficiencies and give a reasonable period to the OSHA-recognized NRTL to reconcile or correct them. If the NRTL fails to take acceptable action, OSHA will propose to revoke, in 60 days, in a letter directed to the recognized NRTL but not otherwise publicized. The recognized NRTL will be expected to correct the deficiencies or request a hearing in writing. Parties to the hearing would be OSHA, the recognized NRTL, and such other parties as OSHA may determine could be useful to the purpose of the proceeding.

Under paragraph E.3., the Administrative Law Judge (ALJ) shall issue a decision based on the entirety of the record, with the burden of proof on OSHA to prove why recognition should be revoked. Exceptions to the ALJ decision will be accepted for 20 days. If no exceptions are filed, this will become the final decision of the Assistant Secretary. If exceptions are filed, the ALJ decision, the exceptions filed, and the entire file will be forwarded to the Assistant Secretary for final decision. Additional administrative procedures related to the final decision, discussed above, are also included here to complete the procedure.

B. Subpart D—Walking-Working Surfaces

§ 1910.28 Safety requirements for scaffolding is revised to delete the names of "Underwriters' Laboratories" and "Factory Mutual Engineering Corp." from four paragraphs—(f)(2), (g)(3), (h)(2) and (i)(1)—in the standard. Inserted in their stead is the term "nationally recognized testing laboratory," which is defined at § 1910.7 in Subpart A—General. Additional text provides a cross-reference to the Subpart A definition for the user.

C. Subpart E—Means of Egress

§ 1910.35 Definitions is amended in paragraph (h), Approved, to add a cross-reference to the definition of Listed located in Subpart L—Fire Protection, and Nationally recognized testing laboratory in Subpart A. The definition of Approved remains unchanged from the current text in the CFR. The text references are included for the purpose of providing consistency throughout the safety standards in Part 1910 as regards these requirements.

D. Subpart H—Hazardous Materials

A revision is being made to Subpart H which consists of 10 separate amendments being made to seven sections. Each amendment deletes the names of "Underwriters' Laboratories, Inc." and/or "Factory Mutual Engineering Corp." (or "Factory Mutual Research Corporation") from the standards involved.

Only four provisions had been indicated in the original proposal. However, all 10 include specific laboratory name references which are the subject of this proceeding and therefore are being amended in this final rule. In each instance, additional text provides cross-references to related terms in Part 1910 for the user.

§ 1910.103 Hydrogen is revised to delete the testing laboratory names from paragraph (a)(1)(ii) and to provide a cross-reference to the definition of Nationally recognized testing laboratory.

§ 1910.106 Flammable and combustible liquids is similarly changed in paragraph (a)(35).

§ 1910.107 Spray finishing using flammable and combustible materials is revised to delete the testing laboratory names from paragraph (a)(8) and to provide a cross-reference to the definition of Nationally recognized testing laboratory.

§ 1910.108 Dip tanks containing flammable or combustible liquids is revised to change paragraph (a)(3) similarly.

§ 1910.109 Explosives and blasting agents is revised in paragraph (d)(2)(iii)(*a*) to delete the testing laboratory names, to insert in their stead the "nationally recognized testing laboratory" term, and to insert a cross-reference to the definitions of Listed in Subpart L—Fire Protection, and the NRTL in Subpart A.

§ 1910.110 Storage and handling of liquefied petroleum gases is revised in four separate locations.

In § 1910.110(a)(14), the testing laboratory names are deleted from the "Approved" definition, and a cross-reference to the definition of NRTL in Subpart A is included.

In §§ 1910.110(b)(2)(iii), 1910.110(c)(5)(i)(*g*)(*1*) and 1910.110(f)(5)(iv), the testing laboratory names, or the name of UL alone, have been deleted from the text and the NRTL term substituted instead, with a cross-reference to the NRTL definition in Subpart A.

§ 1910.111 Storage and handling of anhydrous ammonia is revised in paragraph (b)(1)(ii) to delete the illustrative example, which included the names of UL and FMRC, leaving simply the NRTL term. A new paragraph (b)(1)(vi) referencing the NRTL definition in Subpart A has been added.

E. Subpart L—Fire Protection

§ 1910.155 Scope, application and definitions applicable to this subpart is revised in paragraph (c)(3) to delete the illustrative example of "such as, but not limited to, Underwriter's Laboratories, Inc. or the Factory Mutual System" and to use only the already existing "nationally recognized testing laboratory" (NRTL) term. A new paragraph (c)(3)(iv)(E) has been added to refer the user to the NRTL definition being included in Subpart A—General.

F. Subpart N—Materials Handling and Storage

§ 1910.178 Powered industrial trucks is revised in paragraph (a)(7) to delete the example, which included two testing laboratory names, and to use only the "nationally recognized testing laboratory" (NRTL) term. A cross-reference is included to refer the user to the definition of Listed in Subpart L, and the NRTL in Subpart A.

In addition to revising paragraph (a)(7), revision is being made to two other sections in Subpart N. Each revision deletes the testing laboratory names from these standards.

§ 1910.180 Crawler, locomotive and truck cranes is revised in paragraph (i)(4)(i) to delete the names of "Underwriters Laboratories" and "Factory Mutual Laboratories" from the text, leaving the qualification of "approved" as the operative requirement, and to add a cross-reference to the definition of Approved in Subpart L. The term "or equivalent" has been deleted as redundant since the names of specific laboratories have been removed.

§ 1910.181 Derricks is revised similarly in paragraph (j)(4)(i).

G. Subpart Q—Welding, Cutting, and Brazing

§ 1910.251 Definitions is revised in paragraph (b) to delete the illustrative example, which included the names of "Factory Mutual Engineering Corp." and "Underwriters' Laboratories, Inc.," and to use the already existing "Nationally recognized testing laboratory" (NRTL) term. Additional text refers the user to the definitions of Listed or NRTL in other subparts.

H. Subpart R—Special Industries

Revision is being made to two sections in Subpart R which had not been included in the March 6, 1984, proposal. Each revision will delete the testing laboratory names from these standards.

§ 1910.265 Sawmills is revised in paragraph (d)(2)(iv)(*c*) to delete the name of "Underwriters' Laboratories, Inc." from the text, leaving "approved" as the operational requirement, and to add new text referring the user to the definition of Approved in Subpart L.

§ 1910.266 Pulpwood logging is revised similarly in paragraphs (c)(4)(iii) and (iv), after deleting the names of "Underwriter's Laboratories" and "Factory Mutual Engineering Corp."

I. Subpart S—Electrical

§ 1910.399 Definitions applicable to this subpart is revised by the amendment of existing paragraph (a)(1).

"Acceptable" is revised to delete the illustrative example, which included the names of "Underwriters' Laboratories, Inc." and "Factory Mutual Engineering Corp." This leaves simply the NRTL term, with an added reference to the NRTL definition being provided in § 1910.7(b) in Subpart A—General. (Although § 1910.399(a)(1) is only partially revised, the entire text of the revised paragraph is being reprinted for the benefit of users of this document.)

IV. Regulatory Assessment

A. Regulatory Impact Assessment

1. Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has assessed the potential economic impact of this final rule. OSHA has determined that this final rule is not a "major" action requiring a Regulatory Impact Analysis (RIA) because the annual cost of compliance would be between $167,000 and $235,000. In addition, OSHA has determined that this final rule would increase competition in the affected markets while maintaining the necessary level of employee safety. Thus, OSHA has concluded that this final rule does not require an RIA.

2. Data Sources

The primary data sources for this section are: the May 1985 Final Report by Eastern Research Group (ERG) entitled, "Supporting Analysis for Economic Impact Study of the Final Rule on Equipment Testing or Certification"; the Docket compiled in response to OSHA's January 4, 1983, Advance Notice of Proposed Rulemaking (ANPR) on the Accreditation of Testing Laboratories; the record compiled in response to OSHA's March 6, 1984, Notice of Proposed Rulemaking (NPRM) on the Safety Testing or Certification of Certain Workplace Equipment and Materials; the testimony from the September 25, 26, and October 1, 1984, public hearings on the NPRM; and the post-hearing comments submitted to the Docket.

3. Industry Profile

Those most significantly affected by this final rule are the following: (1) Employers and employees using products that OSHA requires to be tested for use in the workplace; (2) manufacturers of those products; and (3) domestic and foreign testing laboratories. This final rule does not impose any new requirements for product testing. It provides a mechanism in which various testing organizations can perform testing already required by OSHA safety standards by showing that they are NRTLs.

As this final rule is not concerned with whether any specific product testing requirement in Part 1910 is necessary, detailed information concerning the affected employers and employees is not needed.

The types of products that OSHA requires to be tested are items such as electrical wiring and equipment; valves and other equipment used in the handling of hazardous substances; equipment necessary for fire protection; and equipment necessary for motor vehicles used in hazardous work areas, etc. Generally, these requirements are based on requirements in the National Electric Code (NEC).

These products are manufactured by firms of all sizes and are sold in all types of markets. They are frequently used in situations other than those exclusively regulated by OSHA; e.g., electrical equipment must meet both OSHA requirements and, often, consumer product safety requirements as well as state and local building code requirements. In addition, manufacturers have products examined by testing laboratories in order to meet the demands of their product liability insurers as well as to improve the product.

Based on the ERG report, OSHA has estimated that the total projected value of products that will be tested for safety considerations would be approximately $20 billion to $30 billion, of which approximately $2 billion to $3 billion would be the value of products affected by OSHA standards.

An independent testing laboratory (e.g., Underwriters Laboratories, Inc. (UL), Factory Mutual Research Corporation (FMRC), Maryland Electrical Testing (MET), etc.) is a laboratory that is not affiliated with a manufacturer and is one that tests products for many different firms.

A profitmaking independent testing laboratory is one run as a typical profitmaking business, whereas a non-profit independent testing laboratory (government controlled or privately controlled) charges its clients only enough to cover expenses.

Based upon the ERG report, OSHA has estimaed that in 1983 there were approximately 2,500 independent testing laboratories, of which 2,275 were profitmaking and 225 were non-profit. Total receipts for these laboratories were approximately $950 million, of which profitmaking laboratories received approximately $820 million, and non-profit laboratories received approximately $130 million.

Total employment in these independent laboratories was approximately 38,500. Most of these laboratories are very small entities—45 percent have four or fewer employees, and 85 percent have fewer than 20 employees. About 82 percent of these laboratories have annual revenues of less than $500,000.

Most of these small laboratories specialize in very specific types of tests and very specific products. Even the larger testing laboratories tend to have specialty areas and do not test every product category.

Only eight laboratories employ more than 250 workers, and of those, only three employ more than 1,000. These eight laboratories generated approximately 20 percent of the total testing laboratory revenues.

Both domestic and foreign testing laboratories may be affected by this final rule. The Canadian Standards Association (CSA) is the only foreign organization that has entered the American product testing market to any significant degree. Its program is

recognized by several state and local building code agencies.

4. Annual Market Projection

The market for product testing directly affected by the OSHA requirements has been estimated by OSHA, based upon the ERG report, to have total sales of between $70 million and $100 million. Of that total, $50 million goes to UL; $5 million to FMRC; between $10 million and $35 million to manufacturer-affiliated laboratories, and between $5 million and $10 million to independent testing laboratories.

As has been described, much of the product testing performed for OSHA-related purposes is also performed to comply with state and local building code requirements, as well as with product liability insurance demands.

Nevertheless, conformance by a testing laboratory with the criteria in the NRTL definition would probably lead that laboratory to claim that it thereby demonstrated the competence and capability required for such testing, and to attempt to obtain OSHA recognition as a nationally recognized testing laboratory. Obtaining such a status would then, in turn, improve that testing laboratory's ability to compete for the total yearly testing market business of $950 million.

Finally, this market also includes the testing of foreign manufactured products for safety. Based upon the ERG report, this foreign product share of the market is approximately $13 million of which UL receives approximately $12 million. No foreign testing laboratory or foreign manufacturer has submitted any testimony or comment concerning the ANPR or the NPRM, and OSHA has concluded that this final rule would not significantly affect them.

5. Current Regulatory Environment

OSHA has examined the existing regulatory environment from two perspectives. The first perspective is whether the intent of the Part 1910 provisions requiring product testing—ensuring that workers have safe equipment—has been met. The second perspective is the economic impact of the existing requirements.

In terms of the first issue, OSHA has found that the existing system has generated safe products and equipment. Thus, the safety intentions underlying the testing requirements in Part 1910 have been met.

From the manufacturer's point of view, the price of testing entails not only the direct testing service charges, but also the length of time taken by the testing process. In other words, the time spent by the manufacturer waiting for his product to be tested is time during which the product is not being sold and the manufacturer is not receiving the income necessary to offset the expenses of designing the product, establishing a production line, etc.

In addition to the time component, there is the issue of the actual fees charged by testing laboratories. OSHA has determined that within the likely range of these fees, the manufacturer demand for testing services is highly competitive and the price inelastic because, in general, the price for testing services is a very small component of the overall costs of the product. Consequently, even a relatively large increase in testing fees would likely not cause a manufacturer to abandon the testing service. The current situation therefore contains little incentive for serious cost containment.

OSHA suggests it is likely that—as a byproduct of increasing competition in this market—the nationally recognized testing laboratories may find new and innovative ways of testing products more rapidly and at lower costs than is currently being done, without reducing the current level of workplace safety provided through OSHA's safety testing requirements.

6. The Regulatory Environment Expected from the Final Rule

The final rule has been designed to maintain the existing level of worker safety gained from product testing, in the most cost-effective manner.

This final rule will eliminate the specific references to UL and FMRC in Part 1910. OSHA has determined that allowing nationally recognized testing laboratories into this market will increase competition which, in turn, will likey result in reduction in both product testing fees and product testing time. Tha main beneficiaries will be the product manufacturers and nationally recognized testing laboratories. The primary groups that may be adversely affected are UL and FMRC.

In order to ensure a continuation of worker safety, OSHA has established a review and evaluation procedure for testing labs. Based on the ERG Report, OSHA estimates that between 25 and 50 testing labs will seek OSHA recognition as meeting the criteria with respect to testing equipment for compliance with Part 1910. Of these testing labs, about 10 will seek acceptance for a wide variety of products within a major testing discipline (e.g., electrical, thermal, etc.), whereas, between 15 and 40 will seek acceptance for a specialized subset of products within a major testing discipline. On average, the larger testing labs will test about 50 types of products, and the smaller testing labs will test about 10 types of products.

Based on the ERG Report, OSHA has determined that certain work practices of some testing labs would need to be upgraded before the testing lab would be recognized by OSHA. In particular, improvements in the follow-up testing procedures will be necessary. On that basis, OSHA estimates that the annual costs of this upgrading for all of these testing labs would be between $144,500 and $200,000. The costs of applying and being reviewed by OSHA would have an annual cost to these testing labs of between $23,000 and $34,700. Thus, the total annual costs to these testing labs would be between $167,500 and $234,700.

In addition, UL and FM would be required to apply to OSHA acceptance five years from the promulgation of this standard. This application would impose costs upon UL and FM. In particular, the requirements for making all test standards available to OSHA and the OSHA on-site investigation of these testing labs would be the two major components of these costs. OSHA estimates that the annual costs starting in five years to UL would be $23,000 and the annual costs starting in five years to FM would be $2,300.

Even though OSHA does not have a quantitative basis for demonstrating that this final rule will provide net benefits to the economy, OSHA does have a qualitative basis for its expectation that there will be net benefits. This regulation makes entry into product safety testing markets accessible to a larger number of testing organizations; however, no individual testing laboratory will have to participate. To the extent that any of these enterprises enter these markets, it is self-evident that they will do so with the expectation of making a profit or, at least, breaking even.

OSHA has also determined that the final rule will maintain the existing level of worker safety because only testing laboratories that are recognized by OSHA as being well qualified in that product area will be utilized to test products covered under Part 1910.

The interlocking relationships mentioned above, including activities of other federal agencies, state and local governments, the insurance industry, and the testing industry, when combined with the criteria in the NRTL definition and the OSHA recognition process provided in this final rule, will assure a high level of competence among nationally recognized testing laboratories. This arrangement provides sufficient assurance to the Agency that

worker safety will not be reduced by the definitional changes being made in this final rule.

Therefore, OSHA has determined that this final rule is a cost-effective solution to the problem of redressing any existing economic inequity in the product safety testing market while maintaining the existing high level of worker safety.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (P.L. 96–353, 94 Stat. 1164 [5 U.S.C. 60 et seq.], the Assistant Secretary has evaluated the impact of the final rule and has concluded that it would not have a significant adverse impact upon a substantial number of small entities. Some 82 percent of the testing laboratories have yearly sales of less than $500,000. This final rule, by opening a market to small testing laboratories, would likely have a positive impact upon them. Thus, this final rule would not adversely affect any small entity and would likely benefit small entities.

C. International Trade Impacts

This rule does not impact heavily on international trade nor affect a trade-sensitive activity, although it may have a minor impact. Nevertheless, no comments were received from foreign governments, industries, or other interests on this issue during the public comment period.

D. Environmental Impact Assessment and Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The final revisions to 29 CFR Part 1910—Deletion of Specific Testing Laboratory Names and Definition of Nationally Recognized Testing Laboratory—focus on changes in language, definition, and format of the standard. These revisions as such do not impact on air, water, or soil quality, on plant or animal life, or on the use of land or energy, or other aspects of the environment. Moreover, as safety standards these revisions can be categorized as excluded actions according to the DOL NEPA regulations (29 CFR 11.10(a)(1)).

V. OMB Approval Under the Paperwork Reduction Act

Appendix A to § 1910.7 of this section contains a collection of information as defined by OMB at 5 CFR Part 1320. The Appendix requires organizations, who want to be recognized by OSHA as a nationally recognized testing laboratory, to provide certain information to OSHA for evaluation. OMB has reviewed this collection and approved it. The approval number is OMB No. 1218–0147.

VI. State Plan States

The 25 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the effective date of the final rule. These States and territories are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New York (for State and local government employees only), New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a comparable standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

List of Subjects in 29 CFR Parts 1907 and 1910

Laboratory, Occupational safety and health, Reporting and recordkeeping requirements, Safety, Testing.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to 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. 9–83 (48 FR 35736), and 29 CFR Part 1911, 29 CFR Part 1910 is amended, as set forth below, effective June 13, 1988.

Signed at Washington, DC, this 5th day of April 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1907—[REMOVED]

Part 1907 of Title 29 of the Code of Federal Regulations is hereby removed.

PART 1910—[AMENDED]

Effective June 13, 1988, 29 CFR Part 1910 is amended as follows:

Subpart A—General

1. The authority citation for Subpart A of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sec. 41, Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Sections 1910.6(a) and 1910.7 also issued under 29 CFR Part 1911.

2. A new § 1910.7 is added to 29 CFR, to read as follows:

§ 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 of 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.

Subpart D—Walking-Working Surfaces

3. The authority citation for Subpart D of Part 1910 continues 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Sections 1910.23, 1910.24, 1910.25, 1910.26 and 1910.28 are also issued under 29 CFR Part 1911.

4. In § 1910.28, paragraphs (f)(2) introductory text, (g)(3), (h)(2), and (i)(1) are revised to read as follows:

§ 1910.28 Safety requirements for scaffolding.

* * * * *

(f) * * *

(2) The scaffold shall be provided with hoisting machines that meet the requirements of a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

(g) * * *

(3) When hoisting machines are used on two-point suspension scaffolds, such machines shall be of a design tested and approved by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

(h) * * *

(2) The hoisting machine and its supports shall be of a type tested and listed by a nationally recognized testing laboratory. Refer to § 1910.399(a)(77) for definition of listed, and § 1910.7 for nationally recognized testing laboratory.

* * * * *

(i) * * *

(1) The scaffolding, including power units or manually operated winches, shall be a type tested and listed by a nationally recognized testing laboratory. Refer to § 1910.399(a)(77) for definition of listed, and § 1910.7 for nationally recognized testing laboratory.

* * * * *

Subpart E—Means of Egress

5. The authority citation for Subpart E of Part 1910 continues 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.35, .37, .38 and .40 are also issued under 29 CFR Part 1911.

6. In § 1910.35, paragraph (h) is revised to read as follows:

§ 1910.35 Definitions.

* * * * *

(h) *Approved.* For the purpose of this subpart approved shall mean listed or approved equipment by a nationally recognized testing laboratory. Refer to § 1910.155(c)(3)(iv)(A) for definition of listed, and § 1910.7 for nationally recognized testing laboratory.

* * * * *

Subpart H—Hazardous Materials

7. The authority citation for Subpart H of Part 1910 is 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.103, .106, .107, .108, .109, .110 and .111 are also issued under 29 CFR Part 1911.

8. In § 1910.103, paragraph (a)(1)(ii) is revised to read as follows:

§ 1910.103 Hydrogen.

(a) * * *

(1) * * *

(ii) Approved—Means, unless otherwise indicated, listed or approved by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

9. In § 1910.106, paragraph (a)(35) is revised to read as follows:

§ 1910.106 Flammable and combustible liquids.

(a) * * *

(35) Approved unless otherwise indicated, approved, or listed by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

10. In § 1910.107, paragraph (a)(8) is revised to read as follows:

§ 1910.107 Spray finishing using flammable and combustible materials.

(a) * * *

(8) *Approved.* Shall mean approved and listed by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

11. In § 1910.108, paragraph (a)(3) is revised to read as follows:

§ 1910.108 Dip tanks containing flammable or combustible liquids.

(a) * * *

(3) *Approved.* Unless otherwise indicated, approval or listing by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

12. In § 1910.109, paragraph (d)(2)(iii)(*a*) is revised to read as follows:

§ 1910.109 Explosives and blasting agents.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

(*a*) Only extinguishers listed or approved by a nationally recognized testing laboratory shall be deemed suitable for use on explosives-carrying vehicles. Refer to § 1910.155(c)(3)(iv)(A) for definition of listed, and § 1910.7 for nationally recognized testing laboratory.

* * * * *

13. In § 1910.110, paragraphs (a)(14), (b)(2)(iii), (c)(5)(i)(*g*)(*1*) and (f)(5)(iv) are revised to read as follows:

§ 1910.110 Storage and handling of liquified petroleum gases.

(a) * * *

(14) Approved—unless otherwise indicated, listing or approval by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

(b) * * *

(2) * * *

(iii) In systems utilizing containers of over 2,000 gallons water capacity, each regulator, container valve, excess flow valve, gaging device, and relief valve installed on or at the container, shall have its correctness as to design, construction, and performance determined by listing by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(*g*)(*1*) Hose shall be designed for a working pressure of at least 250 p.s.i.g. Hose and hose connections shall have their correctness as to design, construction and performance determined by listing by a nationally recognized testing laboratory. The hose length may exceed the length specified in paragraph (b)(9)(vii)(*b*) of this section, but shall be as short as practicable. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

(f) * * *

(5) * * *

(iv) Each opening from such storage rooms to other parts of the building shall be protected by a 1½ hour (B) fire door listed by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

14. In § 1910.111, paragraph (b)(1)(ii) is revised, and new paragraph (b)(1)(vi) added, to read as follows:

§ 1910.111 Storage and handling of anhydrous ammonia.

* * * * *

(b) * * *

(1) * * *

(ii) It is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; or

* * * * *

(vi) For the purposes of this paragraph (b)(1), refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

Subpart L—Fire Protection

15. The authority citation for Subpart L is 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or No. 9–83 (48 FR 35736), as applicable.

Sections 1910.155, 1910.158, 1910.160 and 1910.161 also issued under 29 CFR Part 1911.

16. In § 1910.155, paragraph (c)(3)(i) is revised, and new paragraph (c)(3)(iv)(E) is added, to read as follows:

§ 1910.155 Scope, application and definitions applicable to this subpart.

* * * * *

(c) * * *

(3) * * *

(i) If it is accepted, or certified, or listed, or labeled or otherwise determined to be safe by a nationally recognized testing laboratory; or

* * * * *

(iv) * * *

(E) Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

Subpart N—Materials Handling and Storage

17. The authority citation for Subpart N of Part 1910 is 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059 (or 9–83 (48 FR 35736), as applicable.

Sections 1910.177, .178, .179, .180, .181, .183, .184, .189 and .190 also issued under 29 CFR Part 1911.

18. In § 1910.178, paragraph (a)(7) is revised to read as follows:

§ 1910.178 Powered industrial trucks.

(a) * * *

(7) As used in this section, the term, "approved truck" or "approved industrial truck" means a truck that is listed or approved for fire safety purposes for the intended use by a nationally recognized testing laboratory, using nationally recognized testing standards. Refer to § 1910.155(c)(3)(iv)(A) for definition of listed, and to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

19. In § 1910.180, paragraph (i)(4)(i) is revised to read as follows:

§ 1910.180 Crawler locomotive and truck cranes.

* * * * *

(i) * * *

(4) * * *

(i) Refueling with small portable containers shall be done with an approved safety type can equipped with an automatic closing cap and flame arrester. Refer to § 1910.155(c)(3) for definition of approved.

* * * * *

20. In § 1910.181, paragraph (j)(4)(i) is revised to read as follows:

§ 1910.181 Derricks.

* * * * *

(j) * * *

(4) * * *

(i) Refueling with portable containers shall be done with approved safety type containers equipped with automatic closing cap and flame arrester. Refer to § 1910.155(c)(3) for definition of Approved.

* * * * *

Subpart Q—Welding, Cutting, and Brazing

21. The authority citation for Subpart Q of Part 1910 is 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Section 1910.251 also issued under 29 CFR Part 1911.

22. In § 1910.251, paragraph (b) is revised to read as follows:

§ 1910.251 Definitions.

* * * * *

(b) "Approved" means listed or approved by a nationally recognized testing laboratory. Refer to § 1910.155(c)(3) for definitions of listed

and approved, and § 1910.7 for nationally recognized testing laboratory.

* * * * *

Subpart R—Special Industries

23. The authority citation for Subpart R of Part 1910 is 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.269, 1910.274 and 1910.275 also issued under 29 CFR Part 1911.

24. In § 1910.265, paragraph ((d)(2)(iv)(*c*) is revised to read as follows:

§ 1910.265 Sawmills.

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(*c*) Boat fuel shall be transported and stored in approved safety containers. Refer to § 1910.155(c)(3) for definition of approved.

* * * * *

25. In § 1910.266, paragraphs (c)(4)(iii) and (iv) are revised to read as follows:

§ 1910.266 Pulpwood logging.

* * * * *

(c) * * *

(4) * * *

(iii) An approved fire extinguisher shall be provided at locations where machines are operating and/or on each vehicle. Refer to § 1910.155(c)(3) for definition of approved.

(iv) Fuel shall be stored only in approved well-marked containers located for safe access for fueling vehicles and equipment and at a safe distance from all fire hazards. Refer to § 1910.155(c)(3) for definition of approved.

* * * * *

Subpart S—Electrical

26. The authority citation for Subpart S continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657); Secretary of Labor's Order No. 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

27. In § 1910.399, paragraph (a)(1) is revised to read as follows:

§ 1910.399 Definitions applicable to this subpart.

(a) * * *

(1) *Acceptable.* An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart S: (i) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; or (ii) with respect to an installation or equipment of a kind which no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency, or by a State, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code and found in compliance with the provisions of the National Electrical Code as applied in this Subpart; or (iii) with respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary and his authorized representatives. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

28. A new Appendix A and OMB numbers are added to § 1910.7 to read as follows:

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 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 informed 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 60 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 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 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. The application for expansion will be acted upon and processed by OSHA in accordance with subsection I.B. of this Appendix.

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. The renewal request will be processed in accordance with subsection I.B. of this Appendix.

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 Department 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.

(Approved by the Office of Management and Budget under Control Number 1218-0147)

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