

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1910**

[Docket No. NRTL 95-F-1]

**Nationally Recognized Testing Laboratories; Fees; Reduction of Public Comment Period on Recognition Notices****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** Under the requirements for nationally recognized testing laboratories (NRTLs), the Occupational Safety and Health Administration (OSHA) recognizes private sector laboratories to test and certify the safety of certain equipment or products that will be used in the workplace. Such testing and certification is required by various OSHA safety standards. These laboratories are referred to as Nationally Recognized Testing Laboratories, or NRTLs. OSHA proposes to establish fees for specific services the Agency provides to these NRTLs. Congress has authorized OSHA to charge fees for these services since 1997 in bill language in its annual appropriations bills, most recently in Public Law 105-277.

These services are: Processing applications for the initial recognition of an organization as an NRTL, or for expansion or renewal of an existing NRTL's recognition, and performing audits (post-recognition reviews) of NRTLs to determine whether they continue to meet the requirements for recognition. Since the inception of the NRTL Program in 1988, OSHA has provided these services at no charge to the NRTLs.

In addition, OSHA proposes to amend provisions of the recognition process to reduce the public comment period on the "preliminary" **Federal Register** notices that OSHA must publish concerning the recognition of an NRTL from 60 days to 30 days for initial recognition and to 15 days for expansions and renewals.

**DATES:** Written comments must be received on or before October 4, 1999.

**ADDRESSES:** Submit comments on the proposed rule in duplicate or 1 original (hardcopy) and 1 disk (5¼ or 3½) in WP 5.0, 5.1, 6.0, 6.1, 8.0 or ASCII to: Docket Officer, Docket NRTL-95-F-1, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue,

N.W., Washington, D.C. 20210. The phone number for the OSHA Docket Office is (202) 693-2350. You may transmit your written comments of 10 pages or less by facsimile (fax) to the Docket Office at (202) 693-1648, provided you send an original and one (1) copy to the Docket Office thereafter. You may also submit comments electronically using the following web page address: <http://www.osha-slc.gov/e-comments/e-comments-nrtl.html>. If your submission contains attached electronic files, the files must be in WordPerfect 5.0, 5.1, 6.0, 6.1, 8.0 or ASCII. When submitting a comment electronically, please include your name and address.

Submit, in duplicate, any information not contained on disk or not provided electronically (e.g., studies, articles). Written submissions must clearly identify the issues or specific provisions of the proposal which are addressed and the position taken with respect to each issue or provision. The data, views, and arguments that you submit will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bonnie Friedman, Office of Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, D.C., 20210, Telephone: (202) 693-1999, or Mr. Bernard Pasquet, Office of Technical Programs and Coordination Activities, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW, Washington, D.C., 20210, telephone: (202) 693-2110. Our web page includes information about the NRTL Program. (See <http://www.osha-slc.gov/dts/otpc/nrtl/index.html> or see <http://www.osha.gov> and select "Programs")

**SUPPLEMENTARY INFORMATION:****I. Background**

Many of OSHA's safety standards require equipment or products that are going to be used in the workplace to be tested and certified to help ensure they can be used safely. Products or equipment that have been tested and certified must have a certification mark on them. An employer may rely on the certification mark, which shows the equipment or product has been tested and certified in accordance with OSHA requirements. In order to ensure that the testing and certification has been done appropriately, OSHA has implemented the NRTL Program. The NRTL Program

establishes the criteria that an organization must meet in order to be recognized as an NRTL.

The NRTL Program requirements are in 29 CFR 1910.7, "Definition and requirements for a nationally recognized testing laboratory." To be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of the manufacturers, vendors, and users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) establish effective reporting and complaint handling procedures.

OSHA requires NRTL applicants (i.e., organizations seeking initial recognition as an NRTL) to provide detailed information about their programs, processes and procedures in writing when they apply for initial recognition. OSHA reviews the written information and conducts on-site assessments to determine whether the organization meets the requirements. OSHA uses a similar process when an NRTL (i.e., an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits to ensure that the recognized laboratories maintain their programs.

The NRTL Program is an effective public and private partnership. Rather than performing testing and certification itself, OSHA relies on private sector organizations to accomplish it. This helps to ensure worker safety, allows existing private sector systems to perform the work, and avoids the need for the government to maintain facilities.

Currently, there are 16 NRTLs operating 40 sites in the U.S., Canada, and the Far East. The NRTL Program has grown significantly in the past few years, both in terms of numbers of laboratories and sites, as well as the number of test standards included in their recognition.

OSHA has devoted significant resources in the last two years to improving the management of the NRTL Program, ensuring its viability, and enhancing its credibility with the public. This has included a process improvement project; audits of all the NRTL sites; reduction of the backlog of applications for recognition, expansion, and renewals; and development of application guidelines and information about our procedures to help people understand the process of NRTL recognition. A web page on the NRTL Program is now available to provide

information about the recognized labs and the scope of their recognition, as well as a description of the NRTL Program. (See web page address in above "Contact" information.) We also have prepared a new training program for our compliance staff to increase awareness within the Agency of NRTL requirements.

The size of the NRTL Program, and the amount of work involved in maintaining it, have resulted in large costs for the Agency, both in terms of human resources and in direct costs such as travel. For example, OSHA's goal is to audit every site once a year. This involves about 40 annual visits, given the current number of sites recognized, not only to locations in the U.S. but also to many foreign locations. Time and travel costs are obviously much higher for foreign locations. Because international trade in many of the types of products OSHA requires to be tested and certified is increasing substantially, the Agency anticipates there will be more applications for laboratories or sites in locations outside the U.S. In particular, under the terms of a recent Mutual Recognition Agreement (MRA) with the European Union, a number of European laboratories are expected to submit applications for NRTL recognition.

The number of people who can be assigned to work in a particular area in OSHA, as well as the travel money that can be used, is dependent on the overall funding the Agency receives from Congress in a given year. The potential for reduced funding, leaving OSHA with inadequate money to properly implement the Program, led to discussions about the possibility of assessing fees. Having a consistent funding process related specifically to the time and travel needed to maintain the Program would help OSHA ensure that the NRTL Program can continue to function and can be perceived as a viable and credible part of OSHA's overall approach to workplace safety.

In 1995, OSHA sent a letter to the existing NRTLs regarding its plan to explore the possibility of assessing fees (Ex. 1), and received twelve responses. Nine responses were conditionally in favor of establishing fees (Exs. 2-2, 2-4, 2-5, 2-6, 2-7, 2-8, 2-9, 2-11, 2-12). The favorable responses generally were conditioned on OSHA utilizing the funds generated from the fees for the NRTL Program to improve the services provided to the NRTLs.

At a September 24, 1996, meeting with the NRTLs, OSHA released a draft **Federal Register** notice for a proposed revision of 29 CFR 1910.7 allowing the Agency to collect fees. Comments

received on the September 1996 draft indicated that most of the NRTLs supported the concept of a fee schedule, although the specific approach they favored was not necessarily the one included in the notice (see, e.g., Exs. 2-13, 2-17, 2-21, 2-22, 2-24). OSHA considered all of the comments it received in developing this proposed rule. We are not going to address the specific comments received at that time in this preamble because the approach in the draft rule that was distributed is not the approach that is being proposed in this notice. However, we believe that those who commented will find that many of their concerns have been addressed in this revised approach.

OSHA has reviewed a number of legal precedents concerning the assessment of fees by Federal agencies. Based on this review, the Agency believes that it can charge fees for services it provides to users of the NRTL recognition process, i.e., the NRTLs and NRTL applicants, and does not propose, at this time, to assess fees to cover all the costs of the program.

In response to the fee issue, OSHA requested specific authority from Congress to collect and retain fees. In its Fiscal Year 1997 appropriations for OSHA, Congress authorized the Secretary of Labor to collect and retain fees for services provided to NRTLs and to use such fees to administer the NRTL Program. Congress has renewed this authorization annually.

OSHA decided to implement the improvements in the Program described above before undertaking rulemaking to establish fees. The process of implementing these improvements also allowed OSHA to better estimate the time involved in providing certain services to NRTL applicants or existing NRTLs, and the travel costs associated with onsite visits. This information helped to refine the approach being proposed. In addition, the Agency has examined legal authority issues; the practices of other Federal agencies that assess fees; and the fees of other organizations that recognize or accredit laboratories. Our findings in these areas are described below in the description of the proposed requirements and the explanation of the approach.

In addition to addressing the issue of fees, OSHA proposes to reduce the time allowed for public comment on **Federal Register** notices required under the Program. OSHA has considered a number of ways to improve the program's application handling process and believes that a reduction in the comment period is an appropriate way to help make such improvements. This proposed reduction is partly in response

to the informal comments from NRTLs regarding the length of time the Agency takes to process applications. We do not believe this reduction will reduce the opportunity for public input; however, we solicit comments on this issue.

## II. Discussion of Proposed Fees

### A. Statutory Authority

OSHA is basing its proposed fees structure on the Office of Management and Budget's (OMB's) policies for user fees imposed by Federal Agencies. These policies are contained in OMB Circular A-25, "User Fees," dated 7/8/93. Some key portions of Circular A-25 are as follows:

- "General Policy: A user charge. \* \* \* will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public."
- "For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service. \* \* \* enables the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public," \* \* \* or \* \* \* is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public."
- "\* \* \* user charges will be sufficient to recover the full cost to the Federal Government. \* \* \*"

OMB developed Circular A-25 in accordance with Title V of the Independent Offices Appropriations Act of 1952 (IOAA), codified at 31 U.S.C. § 9701. The criteria established by the IOAA to guide agency heads in the establishment of fees were that the fees be "fair" and be based on:

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

#### 31 U.S.C. § 9701(b)

As discussed below, the U.S. Supreme Court has decided in two key cases that the intent of the IOAA was to require fees to be based on "value to the recipient" and not upon "public policy or interest served [or] other [relevant] \* \* \* facts."

In a rider to OSHA's Fiscal Year 1999 appropriations, Congress specifically authorized the Secretary of Labor to collect and retain the fees proposed under this rule: "\* \* \* the Secretary of Labor is authorized, during the fiscal year ending September 30, 1999, to collect and retain fees for services provided to Nationally Recognized Testing Laboratories, and may utilize such sums, in accordance with the provisions of 29 U.S.C. 9a, to administer national and international laboratory

recognition programs that ensure the safety of equipment and products used by workers in the workplace: \* \* \* P.L. 105-277 (112 STAT. 2681-343). Through this rider, OSHA has the necessary authority to retain the fees, which otherwise would be credited to the general fund of the Treasury as explained in OMB Circular A-25.

#### B. Legal Basis for Assessing the Fees

To determine a proper basis for assessing the fees, OSHA has reviewed a number of legal precedents and analyzed the costs and activities for the functions undertaken for the NRTL Program. The legal precedents centered on the application of the IOAA and its interpretation by federal agencies. The most pertinent precedents are two decisions by the U.S. Supreme Court, and four cases of the U.S. Court of Appeals for the D.C. Circuit.

In March 1974, the Supreme Court decided the companion cases of *National Cable Television Ass'n v. United States and FCC*, 415 U.S. 336 (1974) and *Federal Power Commission v. New England Power Co.*, 415 U.S. 345 (1974). In *National Cable*, the Court expressed the view that an agency may charge a "fee" for services based on "value to the recipient." The Court essentially ruled out the other bases permitted in the IOAA, which, in the court's opinion, could change an assessed "fee" into the levy of a "tax." In *Federal Power Commission*, the Court held that only specific charges for specific services to specific individuals or companies may be recouped by the fees permitted by the IOAA.

The first of the Court of Appeals decisions was *National Cable Television Ass'n Inc. v. Federal Communications Commission* (FCC), 554 F.2d 1094 (1976). The Court of Appeals upheld the charging (by the FCC, in this case) of both an application fee and an annual fee, provided the agency makes clear which activities are covered by each of these fees to prevent charging twice for the same activity. The court acknowledged that fees based on reasonable approximations for costs of services rendered would be acceptable. The court stated the following: "It is sufficient for the Commission to identify the specific items of \* \* \* cost incurred in providing each service or benefit \* \* \*, and then to divide the cost among the \* \* \* [recipients] in such a way as to assess each a fee which is roughly proportional to the 'value' which that member has thereby received." Id. at 1105-06.

In *Electronic Industries Ass'n v. F.C.C.*, 554 F.2d 1109 (D.C. Cir. 1976), the court indicated that a fee for services

may be charged for private benefits "although they may also create incidental public benefits as well." Id. at 1115. In the case of NRTLs, the services that OSHA provides to NRTLs and NRTL applicants result primarily in private benefits to these parties, as described below. In *Capital Cities Communications, Inc. v. F.C.C.*, 554 F.2d 1135 (D.C. Cir. 1976), the court held that a fee for services should bear a reasonable relationship to the cost to the government to provide the service.

Finally, in *Miss. Power and Light v. U.S. Nuclear Regulatory Comm'n* (NRC), 601 F.2d 223 (5th Cir. 1979), the court upheld a fee for agency services. The NRC calculated its fees based upon the costs of providing the services to the private parties. OSHA is using a similar method to calculate the NRTL application and administration fees in this proposed rule.

Based in large part on the results of the foregoing six cases and on the guidelines of OMB Circular A-25, OSHA proposes to charge fees to NRTLs for specific benefits that they receive as a result of the specific services that OSHA provides them for initial or continued recognition. The fees will reflect the costs of providing these services, and the costs will be reasonably itemized to the smallest unit practical.

#### C. Special Benefits and Services Provided, and Fees

OSHA will establish a schedule of fees based on the "full cost" to OSHA of the activities it undertakes for NRTLs. "Full cost" is defined in Section 6d of OMB Circular A-25<sup>1</sup>. To help clarify

<sup>1</sup> OMB Circular A-25, Section 6. General policy: A user charge, as described below, will be assessed \* \* \*

- a. Special benefits
  1. \* \* \*
  2. Determining the amount of user charges to assess.
    - (a) Except as provided in Section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in Section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign. \* \* \*
    - d. Determining full cost and market price
      1. "Full cost" includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:
        - (a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in Circular No. A-11.
        - (b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

the basis for the fees in this proposed rule, the following describes how OSHA handles applications and continuing services under the NRTL Program.

When an organization submits its application, the NRTL Program staff thoroughly review it for completeness and adequacy. Each organization applies for a specific scope of recognition. This scope consists of the specific safety test standards, locations or sites, and programs for which the organization seeks recognition. OSHA has broadly grouped the activities an NRTL may perform in testing and certifying products into nine categories of "programs and procedures," or just "programs." (See 60 FR 12980, March 9, 1995)

When the NRTL Program staff determine that the application is complete and adequate, the staff perform an in-depth on-site review of the applicant's organization, programs, and facilities. Based upon the information obtained primarily through the on-site review, the staff prepare a report and recommendation. The report and the application provide the main basis for a preliminary finding on the application. OSHA publishes a notice of this finding in the **Federal Register** to allow for public comment. Following a 60-day comment period (which OSHA is proposing to modify in this notice), OSHA must publish a final decision and response to comments in the **Federal Register**. Publication makes the recognition official for successful applicants and officially denies the recognition for unsuccessful applicants.

NRTL recognition is valid for five years. During this period, OSHA program staff audit the NRTL to assure that it continues to meet the requirements for recognition. NRTLs may also on occasion request to expand their scope of recognition to include additional test standards, facilities, or programs. At the end of its initial recognition period, the NRTL may apply for renewal of its recognition. OSHA processes requests for expansion and renewal following a process similar to

(i) depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) an annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources used.

(c) The management and supervisory costs.

(d) The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

(e) Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

that used for initial applications for recognition.

Program staff work closely with attorneys of the Department of Labor on a regular basis for both initial recognition and continuing recognition activities. These attorneys review the **Federal Register** notices. They also advise the program staff on issues and other matters that directly relate to the services covered by the fees.

In addition to application processing and audits, NRTL Program staff also perform a number of activities that are essential to the normal operation of the NRTL Program. These activities include administration of program, budgetary, and policy matters; assistance in training OSHA personnel about the program; inter-agency and international coordination; response to requests for information related to the program; and participation in meetings with stakeholders and outside interest groups. Although necessary to the continued functioning of the program, these activities are incidental to the direct services of application processing and the audits of the NRTLs.

Accordingly, costs for these activities are not covered by this proposed rule.

NRTLs accrue "special benefits" from the services that OSHA renders to them. These "special benefits" are the product of OSHA's initial and continuing evaluation of their qualifications to test and certify products used in the workplace, e.g., the acknowledgment of their capability as an NRTL. The primary special benefits of NRTL recognition are the resulting business opportunities to test and certify products for manufacturers. A manufacturer then sells these products to employers, enabling them to comply with product approval requirements in OSHA standards. The services rendered by OSHA that confer these "special benefits" to NRTLs are: (1) processing of applications for initial recognition as an NRTL and for expansion and renewal of an existing NRTL's recognition, and (2) audits ("post recognition reviews"),

which enable the NRTL to maintain the recognition from OSHA. As a result, OSHA proposes to charge two categories of fees.

First, the Agency will charge fees to cover the full costs of application processing. These costs consist mainly of the salary and benefits of office and field personnel, travel costs, and other direct and indirect costs necessary to the processing and related support activities. The fees will equal the estimated cost of staff time and the actual cost of travel for these activities. These activities mainly include the following: performing the office review of the application, preparing for and performing the on-site review of the organization's testing and administrative facilities, resolving findings of deficiencies in the application, drafting and finalizing the on-site review report, and preparing and publishing the Federal Register documents. OSHA will collect part of this category of fees at the time the application is submitted and the remainder following publication of the initial, i.e., preliminary, notice in the **Federal Register**.

Second, the Agency will charge fees to cover the full costs of performing the audits of the NRTL that ensure its continued compliance with the recognition requirements. These costs consist mainly of the salary and benefits of office and field personnel, travel costs, and other costs necessary to the audit and related support activities. The fees will equal the estimated cost of staff time and the actual cost of travel for those activities. These activities mainly include the following: preparing for and performing the office or on-site audit of the NRTL, drafting and finalizing necessary reports or documentation, resolving findings of deficiencies in the NRTL's operations, and reviewing and processing audit reports. OSHA will impose these fees annually or more frequently if OSHA determines it must perform more than one audit in a given year.

Many other Federal agencies charge fees for services they provide to specific recipients. The following is a list of some of these agencies, along with a citation to the regulations pertaining to the fees they charge:

#### FEDERAL AGENCIES THAT CHARGE FEES FOR SERVICES

Agency	Regulation
Federal Communications Commission.	47 CFR 1.1151.
Federal Maritime Commission.	46 CFR 514.21.
Environmental Protection Agency.	40 CFR 152.400.
National Voluntary Laboratory Accreditation Program (NVLAP); US Department of Commerce.	15 CFR 285.
Mine Safety and Health Administration; Department of Labor.	30 CFR 5.10.
Bureau of Indian Affairs; Department of the Interior.	25 CFR 143.4.
Food Safety and Health Services; Department of Agriculture.	9 CFR 218.21 and 391.5.
Federal Aviation Administration; Department of Transportation.	14 CFR 187.1.

With the exception of the FCC and NVLAP, the above agencies also derive their authority for charging the fees from the IOAA.

OSHA has also examined the fee schedules for other organizations that accredit or recognize testing laboratories or certification bodies. Although the fees proposed in this notice are specific to the costs to OSHA, the practices of these other organizations may be of interest to rulemaking participants.

#### FEES CHARGED BY VARIOUS ACCREDITATION ORGANIZATIONS

Organization	Activity	Fee (as of 3/8/99)
Standards Council of Canada—Fees for Certification Organizations.	Application fee .....	\$15,000.
	Fees for assessments and audits .....	Per person on a per diem basis + travel expenses.
ANSI Accreditation for Certification Programs.	Annual accreditation fee .....	\$9,000 + a business volume fee (up to \$36,000).
	Application fee .....	\$2,000.
	Accreditation fees .....	\$1,200/day per professional staff time + travel expenses.
	Continuing accreditation .....	\$1,200/day for professional staff time related to audits + travel expenses; plus, Percent of gross revenues related to the certification program, up to \$40,000.
National Voluntary Laboratory Accreditation Program (NVLAP).	Application fee .....	\$500.
	Assessment fee (for accreditation and every two years).	per program/field, \$1,600 to \$3,000 or variable.

## FEES CHARGED BY VARIOUS ACCREDITATION ORGANIZATIONS—Continued

Organization	Activity	Fee (as of 3/8/99)
American Association for Laboratory Accreditation (A2LA).	Annual support fee .....	per program/field, \$3000 to \$3,925 less \$2,200 for more than one field.
	Annual proficiency testing fee .....	per program/field, \$0 to \$5,405 or variable.
	Application fee .....	\$800.
	Assessment fee (for accreditation and every two years).	Deposit of \$3,000 + \$1,500/extra field/lab, actual costs billed at \$750/day + travel expenses (fee also paid for surveillance visit in 2nd year).
American Industrial Hygiene Association—Laboratory Quality Assurance Programs.	Annual fee .....	\$1,100 for first field/lab, less for two or more fields/labs.
	Application fee .....	\$250.
	Site visit fee .....	\$675/day or \$2,400 outside North America + expenses.
	Annual fee (also due with application).	\$300/program (\$150/program with application after June 30)
	Proficiency analytical testing program fee.	program/sample specific, also based on # of samples, \$86 to \$1,800.

### III. Estimated Program Costs

Until now, OSHA has not accounted separately for the costs of the NRTL Program. The personnel and other costs associated with performing activities and functions related to the Program involve a number of different offices throughout the Department of Labor. In preparing the proposed fee schedule presented in this notice, OSHA has evaluated the total resources that it has committed to the NRTL Program overall and has then estimated the costs that are involved solely with the approval and periodic review functions. It is these costs alone that OSHA seeks to recover through its proposed fees. Personnel costs are the wages, salary, and fringe benefit costs of the staff positions involved and the number of full time equivalent (FTE) personnel devoted to

the NRTL approval and review activities. These estimates also include travel and other costs of these activities. The Agency believes these estimates are fair and reasonable.

Based on the total estimated costs and the total estimated FTE, OSHA has calculated an estimated equivalent cost per hour (excluding travel). This equivalent cost per hour includes both the direct and indirect costs per hour for "direct staff" members, who are the staff that perform the application, on-site, and legal reviews and the other activities involved in application processing and audits. Direct costs are expenses for direct staff members. Indirect costs are expenses for support and management staff, equipment, and other costs that are involved in the operation of the program. Support and management staff consists of program

management and secretarial staff. Equipment and other costs are intended to cover items such as computers, telephones, building space, utilities, and supplies, that are necessary or used in performing the services covered by the proposed fees. Although essential to the services provided, these indirect costs are not readily linked to the specific activities involved in application processing and audits and, as explained later, are therefore allocated to the activities based on direct staff costs.

Figure 1 is an itemization of the estimated costs and the equivalent cost per hour calculated. OSHA believes that the costs shown fairly reflect the full cost of providing the services to NRTLs, but OSHA mainly uses these costs to illustrate how the fees will be calculated.

FIGURE 1.—CURRENT ESTIMATED ANNUAL COSTS OF NRTL PROGRAM

Cost description	Est. FTE	Aver. cost per FTE (including fringe)	Total est. costs
Direct Staff Costs .....	4.2	\$83,860	\$352,200
Travel .....	na	na	40,000
Indirect Staff & Other Costs .....	na	na	76,300*
Total Est. Program Costs .....			468,500
Avg. direct staff cost/hr (\$352,200 ÷ 4.2 FTE (2,080) hours) .....			40
Equivalent avg. direct staff cost/hr (\$428,500 ÷ 4.2 FTE hours) (includes direct & indirect costs) .....			49

\* This amount consists of \$29,800 of indirect staff costs and \$46,500 for equipment and other costs.

The use of an "equivalent average direct staff cost per hour" measure is a convenient method of allocating indirect costs to each of the services for which OSHA will charge fees. The same result is obtained if direct staff costs are first calculated and then indirect costs are allocated based on the value, i.e., dollar amount, of the direct staff costs, which is an approach that is consistent

with Federal accounting standards. To illustrate, assume a direct staff member spends 10 hours on an activity; the direct staff costs would then be calculated as follows:

Direct staff costs = 10 hours × \$40/hour = \$400.

The \$40/hour is the direct staff cost/hour amount shown in Figure 1. The indirect costs would be allocated by first

calculating the ratio of indirect costs to direct staff costs, again using the costs shown in Figure 1. This ratio would be as follows:

Indirect costs/direct staff costs = \$76,300/\$352,200 = 0.217.

Next, the indirect costs would be calculated based on the \$400 estimate of direct staff costs:

Indirect costs = \$400 × 0.217 = \$87.

Finally, the total costs of the activity are calculated:

Total costs = direct staff costs + indirect costs = \$400 + \$87 = \$487.

Taking into account the rounding shown in Figure 1, the actual amount calculated would be \$490.

After estimating program costs, the Agency then estimated the time it spends on specific activities or functions. These estimates were

performed, in part, for the information collection package for the NRTL Program submitted to OMB in September 1997 under the Paperwork Reduction Act. OSHA calculated time estimates for each major service category. These categories are: initial applications, expansion and renewal applications, and audits. OSHA further divided each category into the major activities performed and estimated the

staff time and travel costs for each of these activities. The Agency then calculated the cost of each major activity using the time estimates, the equivalent costs per hour, and the estimate of travel costs. These costs then serve as the basis for the fees later shown in the proposed fee schedule. Examples of the calculations are shown in Figures 2, 3, and 4.

FIGURE 2.—ESTIMATED COSTS FOR INITIAL APPLICATION

Major activity	Average hours	Average costs*
Initial Application Review		
Staff time: (includes review by office and field staff) .....	80	\$3,924
On-Site Assessment—first day		
Staff time: (includes 16 hours preparation, 4 hours travel, 8 hours at site) .....	28	1,373
Travel: .....		670
Total (per site, per assessor) .....		2,043
On-Site Assessment—addnl. day		
Staff time .....	8	392
Travel amount: (to cover per diem) .....		70
Total (per site, per assessor) .....		462
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff) .....	160	7,848

FIGURE 3.—ESTIMATED COSTS FOR EXPANSION OR RENEWAL APPLICATION

Major Activity	Average Hours	Average Costs*
Initial Application Review (expansion)		
Staff time: (includes review by office and field staff) .....	32	\$1,570
(Note for renewals: 2 hours, i.e. \$98, are allotted for processing the NRTL's request) .....		
On-Site Assessment—first day		
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site) .....	20	981
Travel: .....		670
Total (per site, per assessor) .....		1,651
On-Site Assessment—addnl. day		
Staff time .....	8	392
Travel amount: (to cover per diem) .....		70
Total (per site, per assessor) .....		462
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff) .....	88	4,316

FIGURE 4.—ESTIMATED COSTS FOR ON-SITE AUDIT

Major Activity	Average Hours	Average Costs*
Pre-site Review		
Staff time: (field staff only) .....	8	\$392
On-Site Audit—first day		
Staff time: (includes 4 hours travel) .....	12	589
Travel: .....		670
Total (per site, per assessor) .....		1,259
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff) .....	16	785
Total costs .....		**2,436

\* Average costs for staff time equal average hours × equivalent average direct staff cost/hr (\$49)

\*\* Based on a one day audit. The costs for any additional days are the same as the per-day costs for an assessment.

In deriving the fee amounts shown in the fee schedule, OSHA has generally rounded the costs shown in Figures 2, 3, and 4, up or down, to the nearest \$50 or \$100 amount.

OSHA believes that its proposed fee schedule, shown in Table A, accurately reflects costs to the Agency for the staff time and travel involved in performing and administering the application processing and auditing activities. The amounts shown in the proposed schedule reflect the Agency's current reasonable estimation of the costs involved for the services rendered. As previously mentioned, OSHA is not attempting to recover the entire costs of the NRTL Program through the proposed fees but only the costs of providing these services. OSHA will publish the fee schedule in the **Federal Register** with the final rule.

#### IV. Proposed New Paragraph

OSHA proposes a new paragraph "(f) Fees" under 29 CFR 1910.7 to provide for the assessment and payment of fees for certain services rendered to NRTLs and NRTL applicants. This new paragraph consists of five parts, which provide the general framework that OSHA will use to calculate, charge, and collect the fees. OSHA will provide the specific details for calculating, charging, and collecting the fees through appropriate OSHA Program Directives, consistent with the framework laid out in this notice.

##### A. Obligation to Pay and Fee Assessment

OSHA proposes that the first part of paragraph (f) would read as follows:

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

- (i) Processing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices; and
- (ii) Audits of sites.

The Agency proposes that applicants seeking OSHA recognition (i.e., NRTL applicants) and organizations that OSHA has recognized as NRTLs must pay fees required for the specific services that OSHA provides to them. As previously described, the services for which the Agency would charge fees are: (1) processing of applications for initial recognition, expansion of recognition, or renewal of recognition, and (2) audits, i.e., post-recognition on-site or office reviews. The activities involved in providing these services have already been described in general,

and are described in more detail later in this notice.

NRTL applicants would pay fees related only to initial application processing. NRTLs would pay fees for applications for expansions and renewal of recognition and for audits of the sites they use for their NRTL operations. Typically, OSHA audits only the sites it has recognized for an NRTL and contemplates assessing fees mainly for on-site audits of these sites. However, the Agency allows NRTLs that have appropriate controls to use non-recognized sites, such as testing sites of other laboratories or even manufacturers, to conduct testing or other activities necessary in certifying products. OSHA may need, for good cause, to audit such sites to determine whether the NRTL or the site properly controls the NRTL-related activities. For example, OSHA may need to audit a manufacturer to determine how well it controls the NRTL's certification mark or maintains production or quality controls. NRTLs would pay for these "special" audits and would be billed accordingly.

##### B. Fee Calculation

OSHA proposes that the second part of paragraph (f) would read as follows:

(2) The fee schedule established by OSHA reflects the estimated cost of performing the tasks and functions for each activity. OSHA calculates the fees based on the average time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and an estimate of the average costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

Activity Fee = Average Hours to Complete the Activity × Staff Costs per Hour + Travel Costs.

Each activity represents tasks and functions that OSHA performs to accomplish a particular phase of the service the Agency provides to the recipients (i.e., NRTLs or NRTL applicants). OSHA would compute the fees on the basis of the average time spent on each task or function. This will simplify the accounting for the NRTL and for OSHA.

The tasks and functions for which OSHA currently plans to charge a fee are: initial, expansion, and renewal applications; on-site assessment (per person, per site—first day) and on-site assessment (per person, per site—each additional day); review and evaluation (per standard)—initial and expansion applications; final report/**Federal Register** notice—initial and expansion or renewal applications; on-site audit

(per site) and office audit (per site); and miscellaneous. The fee for each task or function—which equals the estimated cost of the work involved—would equal the average estimated staff time to perform the work multiplied by an equivalent staff cost per hour, plus an estimate of average travel costs for on-site assessment or audit activities. Figure 1 describes how the equivalent staff cost per hour is derived.

OSHA would include as direct and indirect costs the estimated expenses described in Section III above.

##### C. Annual Review of Fee Schedule and Issuance

OSHA proposes that the third part of paragraph (f) would read as follows:

(3) OSHA will review costs and estimates annually and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated costs for the NRTL Program. If a change is warranted, OSHA will follow the schedule in paragraph (f)(4) of this section. OSHA will issue all fee schedules in the **Federal Register**. Once issued, a fee schedule remains in effect until it is superseded. Any member of the public may request a change to the fees included in the current fee schedule. Such a request must include appropriate documentation in support of the suggested change.

The first proposed fee schedule is set forth in Table A. Once issued, the fee schedule would remain in effect until it is superseded by another schedule. OSHA would annually review the costs and estimates of the program to determine whether any changes to the fees are warranted. In addition, OSHA would consider requests for changes to the fee schedule that it receives from the public. In performing any review, OSHA will apply the formula established in this regulation to the current estimated costs for the program to determine whether any changes to the fee schedule are warranted. If change is warranted, OSHA would publish a notice to provide the NRTLs and other members of the public an opportunity to comment on such changes. The Agency would follow the implementation schedule shown in paragraph (f)(4) of this proposed rule. OSHA would issue the initial and all subsequent fee schedules in the **Federal Register**. In addition, OSHA would provide more specific details regarding implementation of the fees proposed in this rule through appropriate program directives.

##### D. Fee Implementation

OSHA proposes that the fourth part of paragraph (f) would read as follows:

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

Approximate dates	Action required
<b>Application Fees</b>	
Time of application.	Applicant must pay the applicable fees shown in the Fee Schedule when submitting the application; OSHA will not begin processing until fees are received.
Publication of preliminary notice.	Applicant must pay remainder of fees; OSHA cancels application if fees are not paid when due.
<b>Audit Fees</b>	
November 1 ...	OSHA will publish proposed new Fee Schedule in the <b>Federal Register</b> , if OSHA determines changes in the schedule are warranted.
November 16	Comments due on the proposed new Fee Schedule.
December 15	OSHA will publish the final Fee Schedule in the <b>Federal Register</b> .
January 1 .....	OSHA will bill each existing NRTL for the audit fees shown in the Fee Schedule, including estimated travel costs.
February 1 .....	NRTLs must pay audit fees; OSHA will assess late fee if audit fees are not paid.
February 15 ...	OSHA will send a letter to the NRTL requesting immediate payment of the audit fees and late fee.
March 1 .....	OSHA will publish a notice in the <b>Federal Register</b> to revoke recognition for NRTLs that have not paid audit fees for the year.

We discuss application fees under paragraph E below and under Fee Schedule and Description of Fees, Section V of this notice. OSHA would assess an applicant the fees in effect on the submission date of the application.

Regarding the remainder of the schedule, OSHA needs approximately 30 days after the close of the

government fiscal year (GFY), September 30, to obtain the estimates and costs for its annual review of the fee schedule. Therefore, approximately on November 1 of each year, when warranted, OSHA would publish a proposed new Fee Schedule, including a report on the estimated costs that are the basis of the fees. The period for comments would be no less than 15 calendar days. Approximately 30 days thereafter, OSHA would officially issue the Fee Schedule in the **Federal Register**.

In January of each year, OSHA would bill each NRTL for the appropriate audit fee shown in the Fee Schedule in effect at the time the bill is mailed. OSHA anticipates that most of the bills would be for on-site audits. The Agency would include the appropriate supplemental amounts for travel outside the 48 contiguous states, if applicable. The NRTL would be automatically assessed the late fee, shown in the Fee Schedule, if OSHA does not fully receive the amount billed within 30 days. Fifteen days thereafter, OSHA would also issue a letter notifying the NRTL of the failure to pay the fees for the audit and requesting immediate payment, including a late fee. If the NRTL fails to fully pay those fees within 15 days of the issuance of the letter, OSHA would publish a notice in the **Federal Register** announcing its intent to revoke the NRTL's recognition. OSHA would then proceed with permanent revocation of the NRTL's recognition. In revoking recognition due to non-payment of fees, OSHA would follow the procedures described in this paragraph and not those under II.E of Appendix A to 29 CFR 1910.7.

OSHA would bill the NRTL separately for additional audits of a site or for any "special" audits. OSHA would bill the NRTL for these fees prior to the commencement of such an audit and would follow the same collection process here as described above for a regular audit. OSHA would refund the audit fee for any audit, whether or not annual, that it does not perform. OSHA would follow similar collection procedures for any additional or special

assessment that it must perform in connection with an application.

#### E. Details for Payment

OSHA proposes that the fifth and last part of paragraph (f) would read as follows:

(5) OSHA will provide the details regarding how to pay the fees through appropriate OSHA Program Directives.

For application processing, OSHA anticipates that it will bill the NRTL applicant or NRTL for balance of fees due, including actual travel expenses, at the time the preliminary notice is published; the Agency will also refund any balances due at that time. Also, for expansions and renewals, applicants would not pay the assessment fee at time of application, but OSHA would bill an applicant for these fees if it determines an assessment is necessary. In such cases, OSHA will not begin the assessment until fees are received. For audits, additional days of audit time will be billed after an audit. Also, any difference between actual travel expenses and the travel amounts in the fee schedule will be billed or refunded to the NRTL. For applications and audits, any fees that are not paid when due would result in cancellation of application or revocation of recognition, as appropriate. OSHA also anticipates that all fees must be paid in U.S. dollars by certified check or money order drawn on a U.S.-based institution or organization. The fee schedule would include appropriate details about fee payments.

Additionally, the Agency plans to implement the fees 30 calendar days after the effective date of this rule. Any application received by OSHA on or after that date will be subject to the fees. Also, any pending application (i.e., an application that OSHA has not yet completed processing) on this effective date will be subject to the fees for the activities that OSHA has not yet commenced. OSHA would bill applicants, accordingly.

#### V. Fee Schedule and Description of Fees

OSHA proposes the following fee schedule:

TABLE A.—FEE SCHEDULE; NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTLTP)

Fee Schedule (Effective \_\_\_\_\*)

Type of Service	Fee Category (per application unless noted otherwise)	Fee Amount
Application Processing .....	Initial Application Fee <sup>1</sup> .....	3,900
	Expansion Application Fee <sup>2</sup> .....	1,550
	Renewal Application Fee <sup>2</sup> .....	100
	Assessment Fee—Initial Application (per person, per site—first day) <sup>3, 4, 8</sup> .....	2,050



TABLE A.—FEE SCHEDULE; NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTLTP)—Continued  
 Fee Schedule (Effective \_\_\_\_\*)

Type of Service	Fee Category (per application unless noted otherwise)	Fee Amount
	Assessment Fee—Expansion or Renewal Application (per person, per site—first day) <sup>3, 4, 8</sup>	1,650
	Assessment Fee (per person, per site—each addnl. day) <sup>3, 4, 8</sup> ...	450
	Review & Evaluation Fee (per standard) <sup>5</sup> (for initial or expansion applications).	50
	Final Report/Register Notice Fee—Initial Application <sup>5</sup> .....	7,850
	Final Report/Register Notice Fee—Expansion or Renewal Application <sup>5</sup> .	4,300
Audits .....	On-site Audit Fee (per person, per site—one day) <sup>6, 8</sup> (each additional day is billed at \$450 per day).	2,450
	Office Audit Fee <sup>6</sup> .....	400
Miscellaneous .....	Staff Costs Fee (per day) <sup>7</sup> .....	400
	Late Payment Fee .....	50

Notes:

<sup>1</sup> Only NRTL applicants must pay the Initial Application Fee. These fees must be included with the application.

<sup>2</sup> An NRTL must pay the Expansion Application Fee for each request to expand its recognition. An NRTL must pay the Renewal Application Fee for its initial renewal request or for any notification to certify its continuing compliance. These fees must be included with the application.

<sup>3</sup> An NRTL applicant must pay the first day and the additional day Assessment Fees. These fees must be included with the application. For expansion and renewal applications, OSHA will bill the NRTL for the appropriate Assessment Fees if an assessment is necessary. The NRTL must pay the fee before OSHA commences any assessment activities.

<sup>4</sup> The appropriate supplemental fee must be included for sites located outside the 48 contiguous U.S. states (see Supplemental Travel Costs table). OSHA will assess actual travel costs and actual number of assessment days in the bill mentioned in note 5. See note 8 for possible refund of Assessment Fees.

<sup>5</sup> OSHA will bill NRTL applicants and NRTLs for the Review and Evaluation and the appropriate Final Report/Register Notice Fees at the time it publishes the preliminary FEDERAL REGISTER notice. OSHA will cancel applications if payment is not received when due.

<sup>6</sup> OSHA will bill the NRTL annually for the audit fee (on-site or office, as deemed necessary) and will include the appropriate supplemental fee for sites located outside the 48 contiguous U.S. states (see Supplemental Travel Costs table). OSHA will revoke the NRTL's recognition for failure to pay an audit fee. OSHA will assess actual travel costs after any on-site audit.

<sup>7</sup> Current estimated equivalent staff costs per hour = \$49.

<sup>8</sup> Refund of Fees: Except for the Assessment and On-site Audit Fees, OSHA will not refund any fees after it receives payment. Assessment and On-site Audit Fees will be refunded as follows:

Refund = 100% of Assessment Fee paid, for withdrawn applications, if preparation for on-site not started, or OSHA does not perform assessment.

Refund = 100% of Assessment Fee paid less Staff Costs Fee, for withdrawn applications if only preparation for on-site started.

Refund = 0% of Assessment Fee paid, if travel for on-site visit commences

Refund = 100% of On-site Audit Fee paid, if OSHA does not perform audit (even if preparation for on-site started).

Refund = 0% of On-site Audit Fee paid, if travel for on-site visit commences.

\* Applicants must pay the application fees in effect on the date it submits the application. NRTLs must pay the audit fee in effect on the date OSHA sends the bill for the audit. [Note: for the initial fee schedule, any pending application (i.e., an application that OSHA has not yet completed processing) on this effective date will be subject to the fees for the activities that OSHA has not yet commenced.]

The fee schedule shows the current activities for which OSHA plans to charge fees. However, the Agency may find, after it has gained experience charging the fees or based upon suggestions it receives, that it may be better to further break down or even combine some fee categories. OSHA would give the public an opportunity to comment on any such changes. However, these changes would merely reapportion costs or further detail the fees; they would not apply to different services than those described in this proposed rule. In evaluating any changes to a fee schedule, OSHA would also consider the following in determining the fees it needs to charge for its services: (1) actual expenditures (direct and indirect) of the most recently completed government fiscal year for rendering the services for which fees will be charged, and (2) estimated costs (direct and indirect) of the upcoming government fiscal year for rendering the services for which fees will be charged.

OSHA proposes that an organization applying for either an initial NRTL recognition or a renewal must include the application fee and on-site review ("assessment") fee with the application. Applications received solely for an expansion of NRTL recognition would include only the application fee. OSHA would bill the NRTL for the assessment fee if it must perform an on-site review prior to the expansion request. The Agency would not perform the review until it receives the assessment fee. This would ensure that OSHA's costs will be reimbursed, regardless of how the application process turns out. If an applicant withdraws its application prior to commencement of on-site assessment activities, the Agency would refund any on-site assessment fee it has collected. However, if OSHA has commenced preparation for the on-site visits, it would refund only a portion of the assessment fee. The amount refunded would equal the assessment fee collected less the daily assessor rate (currently, 8 hours × \$49/hr, rounded to

\$400 in the fee schedule). The Agency would not refund the assessment fee if the on-site visit had commenced. Also, OSHA would bill the organization for the balance of the fees at the time of publication of the initial **Federal Register** notice.

The following is a description of the tasks and functions currently covered by each type of fee category, e.g., application fees, and the basis used to charge each fee.

**Application Fees:** This fee would reflect the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. The application review does not include a review of the test standards requested, which is reflected in the review and evaluation fee. Application fees would be based on average costs per type of application. OSHA plans to use average costs since the amount of time spent on the application review does not vary greatly by type of application. This is

based on the premise that the number and type of documents submitted will generally be the same for a given type of application. Experience has shown that most applicants follow the application guide that OSHA provides to them.

**Assessment Fees:** This fee would be different for initial and for expansion or renewal applications. It is based on the number of days for staff preparatory and on-site work and related travel. Three types of fees are shown, and each one would be charged per site and per person. The two fees for the first day reflect time for office preparation, time at the applicant's facility, and an amount to cover travel in the 48 contiguous states. A supplemental travel amount (to be included with the fee schedule) would be assessed for travel outside this area. These travel amounts are only estimates for purposes of submitting the initial fees. The applicant or NRTL would be billed actual expenses, based on government per diem and travel fares. Any difference between actual travel expenses and the travel amounts in the fee schedule will be reflected in the final bill or refund sent to the applicant or NRTL.

Similar to the application fee, the office preparation time generally involves the same types of activities. Actual time at the facility may vary, but the staff devote at least a full day for traveling and for performing the on-site work. The fee for the additional day reflects time spent at the facility and an amount for one day's room and board.

**Review and Evaluation Fee:** This fee would be charged per test standard (which is part of an applicant's proposed scope of recognition). The fee reflects the fact that staff time spent in the office review of an application varies mainly in accordance with the number of test standards requested by the applicant. The fee would be based on the estimated time necessary to review each standard to determine whether it is "appropriate," as defined in 29 CFR 1910.7, and whether it covers equipment for which OSHA mandates certification by an NRTL. The fee also covers time to determine the current designation and status (i.e., active or withdrawn) of a test standard by reviewing current directories of the applicable test standard organization. Furthermore, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards that have previously been approved for other NRTLs. The current

estimated average review time per standard is one hour.

**Final Report/Register Notice Fees:** Each of these fees would be charged per application. The fee would reflect the staff time to prepare the report of the on-site review (i.e., assessment) of an applicant's or an NRTL's facility. The fee also reflects the time spent making the final evaluation of an application, preparing the required **Federal Register** notices, and responding to comments received due to the preliminary finding notice. These fees are based on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant.

**Audit (Post-Recognition Review) Fees:** These fees would reflect the time for office preparation, time at the facility and travel, and time to prepare the audit report of the on-site audit. A separate fee is shown for an office audit conducted in lieu of an actual visit. Each fee is per site and does not generally vary for the same reasons described for the assessment fee and because the audit is generally limited to one day. As previously described, the audit fee would include amounts for travel, and, similar to assessments, OSHA will bill the NRTL for actual travel expenses.

**Miscellaneous Fees:** The sample fee schedule only shows the average cost for one full day of staff time. OSHA would use this fee primarily in cases of refunding the assessment fee. OSHA will also charge a fee for late payment of the annual audit fee.

The amount for the late fee is based on 1 hour of staff time.

## VI. Reduction of Public Comment Period

OSHA proposes to amend provisions in Appendix A to 29 CFR 1910.7 to reduce the 60-day comment period currently required for the "preliminary" **Federal Register** notices. "Preliminary" refers to the first of the two notices that OSHA must publish to initially recognize an organization as an NRTL, or to expand or renew an NRTL's recognition. The notice is termed preliminary since it announces OSHA's "preliminary finding" on an initial, expansion, or renewal application. In recent years, OSHA has received few or no comments on the preliminary notices. The few comments received, even when substantive, could have been prepared and submitted in much less than 60 days.

Regarding expansions, NRTLs must routinely adopt new test standards for the products that are within their testing and certification capability. Many of the

new test standards include new or additional tests to meet new or revised national or international safety criteria or requirements, and supersede those for which OSHA has already recognized the NRTL. As a result, the NRTL must often apply to OSHA to "expand" its recognition as an NRTL to enable it to use those new test standards. While the NRTL may "expand" its recognition primarily to attain or maintain an economic benefit, timely recognition of those new test standards for the NRTL could also affect safety in the workplace. The shorter periods would speed up approval of those expansions.

Also in support of the shorter periods, **Federal Register** notices are currently accessible to the public through the Office of the Federal Register web site on the day they are published. Given the rapid telecommunication (e.g., Internet, electronic mail, fax) capabilities that now exist throughout the world, comments or requests for an extension of the comment period can be filed in much less time than 60 days. Therefore, OSHA proposes to amend the provisions in Appendix A to provide a 30-day comment period for applications for initial recognitions as an NRTL. This period is consistent with that provided for the Agency's rulemaking notices.

OSHA also proposes to amend Appendix A to provide a 15-day comment period for requests by an NRTL for expansion or renewal of its recognition. The shorter period reflects the nature and scope of the Agency's evaluation of these requests and the anticipated issues that such requests will present to anyone who believes that the NRTL's request affects them. OSHA does not view either of the shorter periods as a way to limit comments, since reviewers of the notice can always request an extension of the comment period if they need more time for presenting any comments. OSHA will include a statement regarding such extensions in the preliminary notices.

## VII. Preliminary Economic Analysis

Executive Order 12866 and the Regulatory Flexibility Act require Federal agencies to analyze the cost, and other consequences and impacts, of proposed and final rules. Consistent with these requirements, OSHA has prepared this preliminary economic analysis to accompany a proposal by OSHA that would allow the Department of Labor to charge and retain fees for services provided to Nationally Recognized Testing Laboratories (NRTLs). The analysis includes a description of the industry, an estimation of the costs of compliance, and an evaluation of the economic and

other impacts of the proposed rule on firms in this sector. The analysis also examines the costs and impacts of the proposal on affected small entities, as defined by the Small Business Administration.

#### *Affected Industry*

The standards adopted and mandated in OSHA regulations stipulate that certain equipment and materials used in the workplace meet minimum criteria for performance or safety. In 29 CFR Parts 1910 (governing hazards in general industry) and 1926 (governing hazards in the construction industry), there are more than 160 paragraphs that require certain equipment to be either safety tested, listed, or approved in order for that equipment to be used in the workplace. Table 1 provides a listing of the types of equipment that require testing, listing or approval by NRTLs. The requirements to test, list or approve equipment are necessary to ensure that employees use appropriate safe equipment<sup>2</sup>. Although it is ultimately the employer's responsibility to provide safe equipment, few, if any, have the technical capabilities to test items such as electrical conductors and equipment, the fire resistance properties of materials, the lifting capacity of scaffold hoists, etc., for safety.

Table 1. Categories of Equipment/Materials Required by Various Provisions in OSHA's Standards to Be Certified by an NRTL.

- Electrical Conductors or Equipment
  - Automatic Sprinkler Systems
  - Fixed Extinguishing Systems (Dry chemical, water spray, foam or gaseous agents)
- Fixed Extinguishing Systems Components and Agents
- Portable Fire Extinguishers
- Automatic Fire Detection Devices and Equipment
- Employee Alarm Systems
- Self-Closing Fire Doors
- Fire (B) Doors
- Windows (Frames)
- Heat Actuated (Closing) Devices (Dip Tanks)
- Exit Components
- Spray Booth Overspray Filters

<sup>2</sup> A substantial amount of equipment tested is used in situations other than those in which OSHA has sole interest. As one example, electrical conductors and equipment installed in buildings must conform with the state and local building code, the National Electrical Code, and any requirements established by the property insurer. 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. Thus, OSHA is not the only organization concerned about the safety of many of these products.

- Flame Arresters, Check Valves, Hoses (Transfer Stations), Portable Tanks, and Safety Cans—Flammable Combustible Liquids)
- Pumps and Self-Closing Faucets (for Dispensing Class I Liquids)
- Flexible Connectors (Piping, Valves, Fittings)
- Service Station Dispensing Units (Automotive, Marine)
- Mechanical or Gravity Ventilation Systems (Automotive Service Station Dispensing Area)
- Automotive Service Station Latch—Open Devices for Dispensing Units
- New Commercial and Industrial LPG Consuming Appliances
- Flexible Connectors (Piping, Valves, Fittings)—LPG
- Powered Industrial Truck LPG Conversion Equipment
- LPG Storage and Handling Systems (DOT Containers, Cylinders)
- Automatic Shut-off Devices (Portable LPG Heaters Including Salamanders)
- LPG container assemblies (non-DOT) for interchangeable installation above or under ground.
- Fixed electrostatic apparatus and devices (coating operations).
- Electrostatic hand spray apparatus and devices.
- Electrostatic fluidized beds and associated equipment.
- Each appurtenance (e.g., pumps, compressors, safety relief devices, liquid-level gauging devices, valves and pressure gauges) in storage and handling of anhydrous ammonia.
- Gasoline, LPG, diesel, or electrically powered industrial trucks used in hazardous atmospheres.
- Acetylene apparatus (torches, regulators or pressure-reducing valves, generators [stationary and portable], manifolds).
- Acetylene generator compressors or booster systems.
- Acetylene piping protective devices.
- Manifolds (fuel gas or oxygen)—separately for each component part or as assembled units.
- Scaffolding and power or manually operated units of single-point adjustable suspension scaffolds.
- Hoisting machine and supports (Stone setters' adjustable multiple-point suspension scaffold).
- Hoisting machines (Two-point suspension; Masons' adjustable multiple-point suspension scaffold).

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 1997.

A product testing lab tests equipment in accordance with test criteria, such as those standards established by Underwriters Laboratories (UL), Factory Mutual Research Corporation (FMRC), the American National Standards Institute (ANSI), or the American Society for Testing and Materials (ASTM). These standards typically

contain requirements concerning the design specifications of the equipment, the specific physical tests to be performed, the criteria for passing these tests, etc. The development of a product test standard for a particular type of product is a deliberate, lengthy, and expensive process that involves a team of engineers and scientists. In addition, test standard development is a dynamic process in which test standards are constantly revised. For example, UL generally reviews each of its test standards at least once every 3 years. Further, at any point in time, between 10 and 20 percent of the UL test standards have been changed during the preceding 6 months. In light of this effort and expense, very few organizations develop their own product test standards.

Independent testing labs are entities that are separate from any manufacturer, trade association, or equipment vendor. They typically test a variety of products or substances within one or more general testing disciplines (e.g., electrical, thermal, mechanical) for many clients, such as manufacturers, trade associations, physicians, and state agencies. Most of the smaller labs specialize in testing specific types of products within one or two general testing disciplines. Even the larger testing labs tend to specialize within one or two general testing disciplines and do not test every type of product within a general testing discipline.

According to the 1992 Census, there are approximately 4,704 independent testing labs in the United States, of which 4,540 are profit making and 164 are not-for-profit (see Table 2). Of the 4,704 testing labs, 1,776 perform chemical or biological testing<sup>3</sup> and about 2,928 concentrate on product testing [1]. The second category of testing labs performs such types of tests as electrical resistance or capacity, fire resistance of materials, materials strength, acoustic and vibration testing, etc. Some of these testing labs will be affected by the proposed rule. Total combined receipts for taxable and non-taxable establishments were \$5.13 billion in 1992. Not-for-profit establishments represent 3.4 percent of the total number of testing establishments and 7.2 percent of total revenues.

<sup>3</sup> Biological and chemical testing labs perform such tests as chemical composition of substances, blood tests, etc., and would not be affected by the proposed rule.

TABLE 2.—CHARACTERISTICS OF TESTING LABORATORIES

	Number of firms	Number of establishments	Number of employees	Total receipts (\$ million)	Percent receipts <sup>b</sup> from testing
Taxable Establishments .....	3,513	4,540	70,462	\$4,764	94.47
Non-Taxable Establishments .....	<sup>a</sup> 135	164	6,256	371	90.13

Source: US Department of Commerce. 1992 Census of Service Industries. SC92—S-1. February 1995.

(a) Calculated based on the ratio of non-taxable firms to establishments in SIC 873.

(b) Other sources of receipts for taxable and non-taxable labs include physical or biological research and development, engineering consulting and design, and contributions (tax-exempt labs only).

By 1992, the testing industry increased by 40 percent, from a total of 3,458 testing labs in 1987; there are several reasons for this growth. First, as technology grows more complex, fewer personnel within the equipment manufacturing organization have the technical expertise to certify the quality of the finished product, i.e., fewer people in a given organization have the ability to perform the overall product certification function. Product testing laboratories can help to provide this quality assurance function. Second, the increase in product liability suits has encouraged manufacturers to take additional steps to verify the safety characteristics of their products. Third, more information is now being sought on product toxicity [2].

The testing industry employs 76,718 workers. Small establishments with one to nine employees represent 3,002 establishments (64 percent of all establishments), but collectively employ only 11,095 employees (14 percent of all employees).

The proposed rule contains requirements for the payment of fees for services provided by OSHA to the NRTLs. The two distinct groups of testing labs that will be affected by the proposed rule are: (1) testing labs that will seek acceptance by OSHA as "nationally recognized testing labs" for particular types of equipment testing, listing, and approval required under Part 1910.7, and (2) existing NRTLs wishing to retain their eligibility for testing and certification of workplace equipment and/or to expand their NRTL program. Testing labs that do not seek OSHA acceptance will not be affected by the proposed rule and will, therefore, incur no costs of compliance.

In 1998, there were 17 testing laboratories that had NRTL status and that operated 40 testing facilities (sites). Table 3 lists the laboratories and the number of sites for these labs. Both domestic and foreign testing laboratories may be affected by this proposal. The Canadian Standards Association (CSA) is a product testing lab that is Canadian-owned and operated and is the only foreign testing lab that has, to any

significant degree, entered the American product safety testing market. CSA certification is accepted by some state and local building code authorities.

TABLE 3.—NATIONALLY RECOGNIZED TESTING LABORATORIES (NRTLs)

Testing laboratory	Number of sites
1. American Gas Association Laboratories (AGA) .....	2
2. Applied Research Laboratories (ARL) .....	1
3. Canadian Standards Association (CSA) .....	6
4. Communication Certification Laboratory (CCL) .....	1
5. Detroit Testing Laboratory (DTL) .....	1
6. Electro-Test, Inc. (ETI) .....	2
7. Entela, Inc. (ENT) .....	2
8. Factory Mutual Research Corporation (FM) .....	2
9. Intertek Testing Services NA, Inc. (ITS) .....	8
10. MET Laboratories (MET) ....	1
11. National Technical Systems	1
12. NSF International .....	1
13. SGS U.S. Testing Co., Inc. (SGS) .....	2
14. Southwest Research Institute (SwRI) .....	1
15. TUV Rheinland of North America, Inc. (TUV) .....	1
16. Underwriters Laboratories (UL) .....	7
17. Wyle Laboratories, Inc. (WL) .....	1
TOTAL .....	40

Source: US Department of Labor, OSHA, Office of Regulatory Analysis, 1998.

#### Costs

This section presents preliminary estimates of the costs that will be incurred by firms to come into compliance with the proposed rule for NRTL fees. These costs do not represent new costs to the economy; instead, they represent a new method of paying for the costs of the NRTL certification program. Today, these costs are paid by taxpayers as part of OSHA's budget. This proposal would transfer the payment of these costs to the NRTLs themselves and NRTL applicants. OSHA welcomes comments on the preliminary

costs presented and assumptions used in this Preliminary Economic Analysis.

Testing laboratories participating in the OSHA program will be subject to costs for two types of services: (1) application processing for the initial recognition of an organization, and for expansion and renewal of an existing NRTL's recognition; and (2) audits (post-recognition reviews), which enable the NRTL to maintain its recognition from OSHA. The fees for these services are based on the actual cost of the service rendered and will thus vary by circumstances. Table A, previously shown in Part III of this notice, shows the elements of the fee structure and a sample fee schedule. The activities covered by each category of fees are explained in detail in that part.

OSHA relied on a review of the NRTL application information from 1988 to 1996 to develop estimates on the annual number of new applicants, and expansion and renewal requests. On average, OSHA receives about 3 initial applications for NRTLs and 3 applications for renewal, and 7 applications for expansions on an annual basis.

OSHA expects to receive several NRTL application requests from foreign-based testing laboratories as a result of a Mutual Recognition Agreement (MRA) between the United States and the European Union (EU). Through the MRA, foreign labs located in the EU that apply for and are recognized as NRTLs can perform the same activities as US based NRTLs. The fees proposed by OSHA will ensure that US taxpayers are not subsidizing foreign businesses. At this time, there is insufficient information to quantify the number of foreign labs that may apply for NRTL status and their future costs of compliance for these labs.

OSHA estimates that labs will require approximately 0.5 hours of an accountant's time to estimate OSHA-related activities and to process payment. Employee wages are based on the Bureau of Labor Statistics estimate of total employee compensation for the professional specialty of \$30.17 per

hour [3]. These costs and the estimated fee costs are shown combined in Table 5.

Estimates of the total cost of full compliance with the requirements of the proposed NRTL fee rule are presented in Table 4. This table also shows OSHA's estimates of the average fee for each

type of service costs, as well as a current estimate of total annual fee collections. Total estimated costs for the testing laboratory industry would amount to about \$240,000 annually. OSHA estimates that initial recognitions will cost an average of \$20,423 per

establishment, expansions of recognition application will cost an average of \$7,820 per establishment, renewals of recognition will cost an average of \$8,641 per establishment, and annual audits will cost an average of \$2,436 per establishment.

TABLE 4.—SUMMARY OF TOTAL ESTIMATED FEE COLLECTION BY CATEGORY

Category	Average cost per application or audit	Est No. per year	Estimated fee collection
Initial Recognition Applications .....	\$20,423	3	\$61,269
Expansion of Recognition Applications .....	7,820	7	54,739
Renewal of Recognition Applications .....	8,641	3	25,924
Annual Site Visits (Audits) .....	2,436	40	97,432
Total .....	.....	.....	239,364

Source: Office of Technical Programs and Coordination Activities, 1999.

### Economic Impacts

OSHA assessed the potential economic impacts of the costs of compliance with the proposed standard for NRTL fees and has preliminarily determined that the standard is economically feasible for firms in this industry. The proposal would have the advantage of encouraging economic efficiency by pricing the service of the NRTL program rather than providing the service for free. As mentioned above, the cost of the NRTL program is currently borne by taxpayers through OSHA's budget. This proposal would transfer the payment of some of these costs to firms receiving the service from OSHA.

To determine whether the proposed rule's projected costs of compliance would raise issues of economic

feasibility for the affected industry, i.e., would adversely alter the competitive structure of the industry, OSHA developed quantitative estimates of the economic impact of the proposed rule on establishments in the affected industry, and thus on the 17 firms already recognized as NRTLs. In this analysis, compliance costs are compared with industry revenues and profits.

Estimates of compliance costs are compared with estimates of annual revenues based on data from the U.S. Department of Commerce, Bureau of the Census, "Table 3: United States—The Number and Percent of Firms, Establishments, Employment, Annual Payroll, and Estimated Receipts by Industry and Employment Size for 1993," while estimates of pre-tax profits for most industries are based on data from Robert Morris Associates [3].

OSHA compared the baseline financial data with total annual compliance costs by computing compliance costs as a percentage of revenues. Table 5 shows compliance costs as a percentage of sales and pre-tax profits. This table is titled a screening analysis because it simply measures costs as a percentage of pre-tax profits and sales and does not predict impacts on these sales and pre-tax profits. The screening analysis is used to determine whether the compliance costs potentially associated with the proposed NRTL fee could lead to significant impacts on the affected firms. The actual impact of the proposal on the profits and sales of firms will depend on the price elasticity of demand for the services provided by the affected firms.

TABLE 5.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACTS OF THE PROPOSED NRTL FE

	Annual costs of compliance	Revenues (\$1000)	Pre-tax profits (\$1000) <sup>1</sup>	Annualized costs of compliance as a percent of	
				Sales	Pre-Tax Profit
Testing Laboratories (SIC 8734) .....	\$239,825	\$5,547,796	\$316,224	0.004	0.08

Sources: US Department of Labor, OSHA, Office of Regulatory Analysis, 1998; Office of Technical Programs and Coordination Activities, 1999. US Small Business Administration, Office of Advocacy. Table 3: US Establishments, Employment, and Payroll by Industry and Firm Size, 1993.

<sup>1</sup> Revenues do not include foreign laboratories sales.

Price elasticity refers to the relationship between the price charged for a product and demand for that product; that is, the more elastic the relationship, the less able a firm is to pass the costs of compliance through to its customers in the form of a price increase and the more it will have to absorb the costs of compliance from its

profit. When demand is inelastic, firms can absorb all the costs of compliance simply by raising the prices they charge for the service; under this scenario, profits are untouched. Where demand is inelastic, the impact of compliance costs that amount to 1 percent of revenues would be a 1 percent increase in the price of the product, with no decline

either in demand or in profits. Such a situation would be most likely when there are few, if any, substitutes for the service offered by the affected establishments and where such services account only for a small portion of the income of its consumers. When demand is elastic, firms cannot absorb all of the costs simply by passing the cost

increase through in the form of a price increase; instead, they must absorb some of the increase from their profits. In this case, no increase in price is possible, and before-tax profits would be reduced by an amount equal to the costs of compliance. Under this scenario, if the costs of compliance are a large percentage of the establishment's profits, some establishments might be forced to close. This scenario is highly unlikely to occur, however, because it can only arise when there are other services that are, in the eyes of consumers, perfect substitutes for the services the affected establishments provide. A common intermediate case would be a price elasticity of one. In this situation, if the costs of compliance amount to 1 percent of revenues, then production would decline by 1 percent and prices would rise by 1 percent. In this case, establishments remain in business and maintain the same profit as before but would produce 1 percent less product or service. Consumers would effectively absorb the costs through a combination of increased prices and reduced consumption; this, as the court described in *ADA v. Secretary of Labor*, is the more typical case.

As shown in Table 5, the impacts potentially imposed by the proposed rule are not sizeable on the industry. On average, annualized compliance costs would amount to only 0.004 percent of estimated industry revenues and 0.08 percent of estimated profits. Even if no price increase were possible, a 0.08 percent decline in profits would not threaten the viability of the industry. These impacts are overestimated since the revenues do not include foreign organization revenues. Thus, the proposed rule is preliminarily determined to be economically feasible for affected laboratories.

As previously noted, OSHA has received a comment from a "stakeholder" that stated the proposed fees would have a significant impact on the manufacturers who are customers of NRTL services [Ex. 2-19]. However, they did not present any information or evidence of such impacts. Testing fees are minor costs compared with the product's development and manufacturing costs. The price of testing entails not only the charges for the direct testing service, but also the length of time taken by the testing process. In other words, the time spent by the manufacturer waiting for the 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, the market 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. OSHA estimated in its Final Regulatory Impact Analysis of the Final Rule for 29 CFR Part 1910, Safety Testing of Certification of Certain Workplace Equipment and Materials and Programs, that the actual testing, listing and approval expenditures for tested equipment would be between 0.23 percent and 0.50 percent of the value of these products [2]. Thus, on average, product testing fees are a minor component of the cost of manufacturing equipment and will continue to remain so even after the proposed fees have been implemented. OSHA seeks more information on the impacts of the proposed rule on manufacturers. OSHA also seeks information on the impact of the proposed fee schedule on foreign testing laboratories.

#### *Potential Economic Impacts of the Proposed Standard on Small Entities*

This section measures the potential economic impacts of the proposed standard on small entities in the affected testing laboratory industry to determine whether the proposed standard has a significant impact on a substantial number of small firms, as required by the Regulatory Flexibility Act (as amended in 1996). For the purposes of this analysis, OSHA defines small entities using the Small Business Administration's (SBA) Table of Size Standards. The SBA size standards for for-profit firms identify firms with less than \$5 million in revenues as small in the testing laboratory service sector.

The Regulatory Flexibility Act addresses impacts on "small businesses," and "small not-for-profit organizations," both of which are referred to in this analysis as "small entities." What constitutes a small entity is defined by the SBA in terms of the number of employees or annual receipts (unless otherwise stated) constituting the largest size that a for-profit enterprise (together with its affiliates) may be and still remain eligible as a small business for various SBA and other Federal Government programs. A "small organization" is defined as any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Since this definition would include all of the not-for-profit entities, no separate analysis of small organizations is necessary. OSHA seeks comment on the appropriate definition of a small not-for-profit entity for the

purpose of this regulatory flexibility analysis.

The number of establishments operated by small firms and the number of affected workers employed in small firms are based on Bureau of the Census data.<sup>4</sup> The Bureau of the Census data classify firms according to the number of workers employed by the enterprise. The following employment size classifications were used: 1-4, 5-9, 10-19, 20-99, 100-499, 500+. For each firm size classification, data were provided on the total number of firms, establishments, employees and estimated annual receipts.

Based on the SBA size category and the Census data, OSHA has determined that most of the testing labs with NRTL status are of substantial size in terms of both gross revenues and number of employees. The average revenue of these firms, based on the employment size categories provided by the Census data, is estimated to range from \$6.9 million to \$18.9 million per firm.

The purpose of this analysis is to assess the impacts on business organizations consisting of one or more domestic establishments under common ownership or control, without regard to the number of states in which a business organization may be operating establishments. However, the data provided by the Census do not include the number of enterprises, but rather the number of firms, which, by the Census' definition, is essentially the number of states in which an enterprise operates establishments in a specific industry. Thus, to the extent that enterprises operate establishments in the same industry in multiple states, estimates of the number of entities may be overestimated.

To estimate the number of small entities, average revenues per firm were calculated in each enterprise size category using Census data, and size categories where average revenues per firm were less than the standards set by SBA (i.e., less than \$5 million for all other firms), firms in those size categories were assumed to be small entities. Table 6 shows the estimated number of small entities in the industry. Only 9 small businesses and 1 not-for-

<sup>4</sup> The Bureau of the Census defines a "firm" as a "a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control," and an "enterprise" as "a business organization consisting of one or more domestic establishments that were specified under common ownership or control." In other words, if, for example, an enterprise with 100 employees operates nursing homes in four states, the Bureau of Census would count this as four firms in the nursing home industry in the 100 to 499 employment size classification.

profit entity are currently NRTLs and thus certain to be affected. However, the proposed rule could potentially affect any of the 3,170 small independent testing laboratories if such entities wish to become NRTLs. About 87 percent of all independent testing laboratories are estimated to be operated by small entities.

Table 6 presents the results of the regulatory flexibility screening analysis. It shows the estimated annual

compliance costs and economic impacts relative to revenues and pre-tax profit for affected small entities. For testing laboratories seeking NRTL status for the first time, the annual compliance cost amounts to only 0.22 percent of revenues and 3.90 percent of profits for small entities. The analysis also shows that for-profit testing labs with current NRTL status have compliance costs that are 0.25 percent of revenues and 4.36 percent of profits. For not-for-profit

NRTLs, compliance costs represent 0.10 percent of revenues. Impacts of these magnitudes do not exceed the thresholds OSHA has established for significant impacts.

Thus, because this proposal will not have a significant impact on small entities (as defined by the SBA), OSHA certifies that this proposal will not have a significant impact on a substantial number of small entities.

TABLE 6.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACTS OF THE PROPOSED NRTL FEES RULE ON SMALL ENTITIES

	Definition of small entity	Employment size	Number of small firms	Annualized cost per firm	Average revenues per small firm	Pre-tax profits per small firm	Annualized costs of compliance as a percent of	
							Sales (percent)	Pre-tax profit (percent)
Testing Laboratories (SIC 8734).	<\$5 million .....	<100	NA	\$5,359	\$2,413,243	\$137,555	0.22	3.90
Testing Laboratories with NRTL Status								
For-Profit Firms .....	<\$5 million .....	<100	9	6,000	2,413,243	137,555	0.25	4.36
Not-For-Profit Firms .....	Not-for-Profit .....	500+	1	18,180	18,913,183	.....	0.10	.....

Source: US Department of Labor, OSHA, Office of Regulatory Analysis, 1998; Office of Technical Programs and Coordination Activities, 1999. US Small Business Administration, Office of advocacy. Table 3: US Establishments, Employment, and Payroll by Industry and Firm Size, 1993. Note: As defined by the Small Business Administration's Table of Size Standards.

## References

1. US Department of Commerce, Bureau of the Census. 1992 Census of Service Industries: Industry Series: SC92-S-1,-4,-5. Washington, D.C., February 1995.
2. US Department of Labor, OSHA. Final Regulatory Impact Analysis of the Final Rule 29 CFR PART 1910 for Safety Testing of Certification of Certain Workplace Equipment and Materials and Programs. March 1988
3. Robert Morris Associates. Annual Statement Studies. September 1995.

## VIII. Other Regulatory Matters

### A. Environmental Impact Assessment

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

### B. Federalism

This proposed rule has been reviewed in accordance with Executive Order 12612, regarding Federalism. This proposed rule would only set fees for services provided by the Federal Government to private entities and has no impact on Federalism.

### C. Paperwork Reduction Act of 1995

OSHA does not plan to develop or implement a form for NRTLs and NRTL applicants to use to pay the fees but will provide instructions on how to calculate the fees, as previously stated. The Agency does not believe a form is needed since the fee calculations are relatively simple. In addition, OSHA has no reporting requirements related to the fees. As a result, there are no additional burden hours associated with the fees.

### D. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Orders 12875 and 13084, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million in any year.

### E. State Plan States

The 25 States and territories with their own OSHA approved occupational safety and health plans are not affected by this proposed rule. These 25 states and territories are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota,

Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

## IX. Public Participation

### Comments

OSHA invites interested persons to submit written data, views, and arguments with respect to this proposal. OSHA must receive your comments, whether mailed or e-mailed, by October 4, 1999. Submit your comments in duplicate or 1 original (hardcopy) and 1 disk (5¼ or 3½) in WP 5.0, 5.1, 6.0, 6.1, 8.0 or ASCII to the: Docket Officer, Docket NRTL-95-F-1, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The phone number for the OSHA Docket Office is (202) 693-2350. You may transmit your written comments of 10 pages or less by facsimile (fax) to the Docket Office at (202) 693-1648, provided you send an original and one (1) copy to the Docket Office thereafter. You may also submit comments electronically using the following web page address: <http://www.osha-slc.gov/e-comments/e-comments-nrtl.html>. If your submission contains attached

electronic files, the files must be in WordPerfect 5.0, 5.1, 6.0, 6.1, 8.0 or ASCII. When submitting a comment electronically, please include your name and address.

Submit, in duplicate, any information not contained on disk or not provided electronically (e.g., studies, articles). Written submissions must clearly identify the issues or specific provisions of the proposal which are addressed and the position taken with respect to each issue or provision. The data, views, and arguments that you submit will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding. The preliminary economic analysis and the exhibits cited in this document will be available for public inspection and copying at the above address. OSHA invites comments concerning the preliminary conclusions reached in the economic analysis included in this notice.

#### X. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. The proposed sections are issued under the authority of section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657); and Secretary of Labor's Order No 6-96 (62 FR 111). The proposed sections are also issued under authority of OMB Circular A-25 (dated 7/8/93); Public Law 105-277; 29 U.S.C. 9a; the Administrative Procedure Act (5 U.S.C. 553); and the Independent Offices Appropriations Act (31 U.S.C. 9701)

#### List of Subjects in 29 CFR Part 1910

Fees, Laboratories, Occupational safety and health.

Signed at Washington, D.C. this 6 day of August, 1999.

**Charles N. Jeffress,**  
Assistant Secretary.

For the reasons discussed in the preamble, OSHA proposes to amend 29 CFR Part 1910 as follows:

#### PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart A of 29 CFR 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 Numbers 12-71 (36 FR 8754), 8-76 (41 FR

25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), or 6-96 (62 FR 111), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701.

2. Add new paragraph (f) to § 1910.7 to read as follows:

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

\* \* \* \* \*

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

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

(ii) Audits of sites.

(2) The fee schedule established by OSHA reflects the estimated cost of performing the tasks and functions for each activity. OSHA calculates the fees based on the average time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and an estimate of the average costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

Activity Fee = Average Hours to Complete the Activity × Staff Costs per Hour + Travel Costs

(3) OSHA will review costs and estimates annually and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated costs for the NRTL Program. If a change is warranted, OSHA will follow the schedule in paragraph (f)(4) of this section. OSHA will issue all fee schedules in the **Federal Register**. Once issued, a fee schedule remains in effect until it is superseded. Any member of the public may request a change to the fees included in the current fee schedule. Such a request must include appropriate documentation in support of the suggested change.

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

Approximate dates	Action required
<b>I. Application Fees:</b>	
Time of application.	Applicant must pay the applicable fees shown in the Fee Schedule when submitting the application; OSHA will not begin processing until fees are received.
Publication of preliminary notice.	Applicant must pay remainder of fees; OSHA cancels application if fees are not paid when due.
<b>II. Audit Fees:</b>	
November 1 ...	OSHA will publish proposed new Fee Schedule in the <b>FEDERAL REGISTER</b> , if OSHA determines changes in the schedule are warranted.
November 16	Comments due on the proposed new Fee Schedule
December 15	OSHA will publish the final Fee Schedule in the <b>FEDERAL REGISTER</b> .
January 1 .....	OSHA will bill each existing NRTL for the audit fees shown in the Fee Schedule, including estimated travel costs.
February 1 .....	NRTLs must pay audit fees; OSHA will assess late fee if audit fees are not paid.
February 15 ...	OSHA will send a letter to the NRTL requesting immediate payment of the audit fees and late fee.
March 1 .....	OSHA will publish a notice in the <b>FEDERAL REGISTER</b> to revoke recognition for NRTLs that have not paid audit fees for the year.

(5) OSHA will provide the details regarding how to pay the fees through appropriate OSHA Program Directives.

3. Revise paragraphs I.B.5.a, II.B.2.a, and II.C.2.a of Appendix A to § 1910.7, to read as follows:

#### Appendix A to § 1910.7—OSHA Recognition Process for Nationally Recognized Testing Laboratories

\* \* \* \* \*

##### I. Procedures for Initial OSHA Recognition

\* \* \* \* \*

##### B. Review and Decision Process; Issuance or Renewal

\* \* \* \* \*

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



available for public inspection in the OSHA  
Docket Office.

II. Supplementary Procedures

B. Expansion of Current Recognition

2. Procedure.—a. OSHA will act upon and  
process the application for expansion in

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

C. Renewal of OSHA Recognition

2. Procedure.—a. OSHA will process the  
renewal request in accordance with

subsection I.B. of this appendix, except that  
the period for written comments, specified in  
paragraph 5.a of subsection I.B. of this  
appendix, will be not less than 15 calendar  
days.

[FR Doc. 99-21216 Filed 8-17-99; 8:45 am]

BILLING CODE 4510-26-P