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

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

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

Washington, DC 20210.

## SUPPLEMENTARY INFORMATION:

## **Background**

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

- (1) To assure that products required to be tested and certified would be reliably tested and certified;
- (2) To implement testing and certification requirements and procedures which would be administratively workable; and
- (3) To take advantage of developments by others in organizing and evaluating product certification systems and in accrediting laboratories for testing.

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

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

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

the preamble to the final rule.

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

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

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

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

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

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

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