DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. NRTL 95–F–1]

RIN 1218–AB57

Nationally Recognized Testing Laboratories—Fees; Public Comment Period on Recognition Notices

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending the requirements for nationally recognized testing laboratories (NRTLs) by adding provisions for the establishment of fees for services provided by the government. On August 18, 1999, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** requesting comments on a proposed fee schedule. The NPRM also proposed a reduction of the public comment period on the ''preliminary'' **Federal Register** notices that OSHA publishes for its NRTL recognition activities. The four comments received have been reviewed, and this final rule is based on OSHA's consideration of the public record.

OSHA is amending its requirements to establish fees and to reduce the comment periods on **Federal Register** notices related to recognition.

DATES: This rule is effective on August 30, 2000.

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. You may also send an email to: nrtlprogram@osha-no.osha.gov, or review our web page on the NRTL Program. (See http://www.osha-slc.gov/dts/otpca/nrtl/index.html or see http://www.osha.gov and select ''Programs'')

SUPPLEMENTARY INFORMATION: This preamble is divided into seven (7) sections: background, summary and analysis of comments, explanation of the final rule, legal authority to charge fees, detailed discussion of the fees, the first fee schedule, and regulatory matters.

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 (for example, see 29 CFR 1910.303(a) coupled with definition of ''acceptable'' under 29 CFR 1910.399). 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 have been done appropriately, OSHA 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 for testing and certification.

Currently, there are 17 NRTLs operating 42 sites in the U.S., Europe, 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 three 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 that 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 (EU), a number of European laboratories are expected to submit applications for NRTL recognition. For more information on the MRA, refer to the U.S. Department of Commerce web site.

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 draft notice (see, *e.g.,* Exs. 2–13, 2–17, 2–21, 2–22, 2–24).

OSHA reviewed a number of legal precedents concerning the assessment of fees by Federal agencies in developing its proposal. Based on this review, the Agency determined that it has the authority to charge fees for services it provides to users of the NRTL recognition process, *i.e.,* the NRTLs and NRTL applicants. These fees are not intended to cover all the costs of the program.

In response to the fee issue, OSHA requested specific authority from Congress to retain the fees that it collects for the NRTL Program. 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 since then.

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 on-site visits. This information helped to refine the approach proposed, which the Agency is now adopting in this final rule. In addition, the Agency examined 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 under section IV of this preamble.

OSHA also is reducing 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.

II. Summary and Analysis of the Comments

We accepted comments on the Notice of Proposed Rulemaking (NPRM) (64 FR 45098, August 18, 1999) for forty-five (45) days after publication. The end of the comment period was October 4, 1999. We received four (4) comments, and we will discuss each of them individually.

The NPRM addressed two issues: Modification of 29 CFR 1910.7 to include a fee schedule, and reduction of the comment period on **Federal Register** notices proposing or granting recognition or a change in the scope of recognition. The text proposing a fee schedule included a description of the model used to develop the proposed fees (64 FR 45102, 8/18/99), as well as the initial proposed fee schedule (64 FR 45105). We also included in the NPRM preamble a short discussion of fees charged by other organizations performing similar services for laboratories.

Participation in the NRTL Program is voluntary. OSHA assumes that any laboratory that has chosen to complete the application and recognition process, as well as submit to the requirements for regular audits, has benefitted from its participation. Although the fees that OSHA will assess do not relate directly to financial benefits that NRTLs receive from OSHA's NRTL services, laboratories do have a clear financial incentive to seek and maintain NRTL recognition. Laboratories undoubtedly analyze the financial benefits of participation in the NRTL Program when determining whether to apply for recognition initially, as well as whether to take the time and effort to continue recognition in the future.

None of the four comments received addressed the model used to develop the proposed fee schedule, or any of the supporting documentation related to the fees proposed. They focused instead on whether fees should be assessed, and what services are associated with the fees.

Exhibit 8–1; European Commission

As mentioned in the NPRM (64 FR 45099) and again in this notice, the United States and the European Union (EU) have entered into a Mutual Recognition Agreement (MRA). The MRA includes an Electrical Safety Annex, which permits a European laboratory to apply to the NRTL Program without separately establishing that its country of origin has ''reciprocity'' for U.S. laboratories doing electrical safety work. While the MRA has now been in effect for more than a year, OSHA has yet to receive and process any complete applications from laboratories in the European Union. In part, this is because there are differing interpretations of the agreed text of the MRA and how it applies.

The MRA anticipates that OSHA may charge fees for its activities in processing EU applications or monitoring EU NRTLs. Although OSHA had no fees at the time the agreement was negotiated, the U.S. has always made clear that authority to assess and retain fees is in place and that OSHA would be proposing fees in the near future.

The EC comment states that the activities for which OSHA will assess fees under the proposal are similar to activities for which fees are already assessed by European Union authorities. Under the conditions of the MRA, they argue, some of the activities performed by EU authorities duplicate activities that are part of OSHA's NRTL recognition process. Based on this argument, the EC contends that OSHA should not assess fees for any of these activities that are performed by an EU authority, to avoid the possibility that these fees would duplicate those already incurred, which would be in violation of the MRA.

OSHA does not intend to charge fees for services the Agency has not provided itself. Any comparable services that a European authority performs in the context of their own accreditation process are not duplicative services since they involve recognition or accreditation by two different organizations. Similarly, the process used by European authorities to designate a laboratory under the MRA for consideration by OSHA does not duplicate any procedures used by OSHA to determine whether recognition should be granted under the NRTL Program. Therefore, we do not believe there is a legitimate problem in terms of duplicative fee assessment, or violation of the MRA, in establishment of a fee schedule for the NRTL Program.

Exhibit 8–2; Underwriters Laboratories Inc.

Underwriters Laboratories Inc. (UL) is an NRTL. They are opposing the imposition of fees for the NRTL Program. The following four points are the major arguments in their comment:

1. UL opposes the imposition of fees for OSHA's NRTL process.
2. The OSHA NRTL process has not enhanced workplace safety.
3. Funding for the OSHA NRTL process should come from Federal funds, if at all, because the NRTL process does not provide any ''special benefits''.
4. A complete economic impact analysis will not support a proposal for fees.

In order to understand the context of the UL comments, we need to review the history of the NRTL Program requirements and UL's role in NRTL testing and certification. When OSHA initially promulgated its safety standards requiring third party testing and certification for a number of products used in the workplace, it specified and, in some cases, implied that this testing and certification was to be done by one of two laboratories: UL or Factory Mutual Research Corporation (FMRC). Thus UL and Factory Mutual had the ''special benefits'' of being the source for all mandatory testing and certification of products to be used in the workplace. This was a significant benefit that lasted for many years. It was challenged in court by other testing laboratories on the basis that it gave an unfair business advantage to these two laboratories when others were equally qualified to perform such testing and certification. The litigation was settled when OSHA agreed to establish a system to recognize other qualified laboratories. The NRTL Program, established in 1988 (53 FR 12102, 4/12/88), is the result of that litigation.

The 1988 NRTL regulation allowed UL and FMRC to continue to operate as NRTLs for five years without applying for OSHA recognition. At the end of the five-year temporary recognition period, they were to be treated like other testing laboratories, *i.e.,* they had to apply to OSHA and be evaluated to keep their NRTL status. However, the temporary recognition did not end automatically at the end of the five-year period. As long as they filed timely applications, their temporary NRTL status continued until OSHA acted on their application. Both companies did file timely applications for permanent recognition. In 1994, while OSHA was evaluating those applications, other NRTLs sued OSHA in Federal district court seeking an immediate end to UL's and FMRC's temporary recognition status. In a 1995 decision[1], the court held that OSHA had violated the earlier settlement agreement by continuing to give preferential treatment to UL and FMRC after the end of the five-year temporary recognition period and ordered OSHA to act on their applications as expeditiously as possible so that they would be treated the same as all other NRTLs. Later in 1995, OSHA completed its evaluations and recognized UL and FMRC as NRTLs.

UL argues that the NRTL Program has not increased workplace safety. In fact, the NRTL Program itself is an administrative mechanism to ensure that laboratories performing third party testing and certification have the competency and qualifications to do so. As UL notes in its comments, it is a ''strong supporter of the benefits to the safety of the American public at large, as well as those in the workplace, provided by competent third party product safety certifications.'' OSHA has agreed with UL and others that third party certification is the best way to ensure workplace safety. The safety standards promulgated by OSHA that require third party testing and certification of products used in the workplace have, we believe, enhanced workplace safety. The NRTL Program is the means we use to ensure that enhancement continues by reviewing and monitoring the laboratories in the program as they implement an appropriate program to conduct testing and certification.

UL also argues that such testing and certification would take place regardless of OSHA requirements. Certainly it is true that voluntary testing and certification is undertaken by a number of manufacturers. In addition, there are other types of requirements that may encourage such manufacturers to do the testing and certification to protect themselves from liability, to comply with insurance company requirements, or to follow state or local requirements. However, a mandatory requirement for such testing and certification is most certainly a stronger incentive than most of those that result in voluntary testing and certification.

UL and Factory Mutual are unique among the current NRTLs in that their benefits changed as a result of the 1988 rule and the court's 1995 ruling that they should no longer receive preferential treatment. However, they continue to enjoy the benefits of NRTL status, even though they now share those benefits with other laboratories. Had OSHA not recognized them as NRTLs under the 1988 rule, they would no longer be able to test and certify products for workplace use. Thus, the argument that they do not receive benefits from the NRTL Program is not valid.

UL's continued participation in the NRTL Program is perhaps the most telling argument regarding the special benefits it receives. Since participation is completely voluntary, UL must have accrued benefits from its participation and regular expansion of UL's scope of recognition. Most recently, UL was the first NRTL to obtain recognition for sites in the European Union in order to do NRTL testing in Denmark, Italy, and the United Kingdom. UL also has sites in Taiwan and Hong Kong. These business decisions are undoubtedly based on the recognition of the special benefits of being able to test products for use in American workplaces, and give them an NRTL certification, in the countries where they are produced before they are shipped to the U.S. The costs to OSHA to deal with expansions into other countries are significant, particularly with regard to travel. These are the types of direct expenses that the fees are designed to address, so that resources are available as laboratories expand their NRTL business opportunities into other countries.

While UL makes no specific comment on the economic analysis included in the NPRM (64 FR 45107), it argues that more analysis is needed. In its arguments, however, UL tacitly acknowledges that the fees are not unreasonable: ''The fees may be minimal now, but this may only be the initial assessment with the potential for substantial uncontrolled increases to follow.''

As described in the NPRM (64 FR 45101), the fee structure is based essentially on the time that OSHA spends to perform activities related to a laboratory's application for recognition, expansion, renewal, or annual audits. The fees for these activities were calculated based on current experiences, and are related to the salaries of the individuals assigned to the Program, to the time needed to complete the required actions, as well as to the travel costs associated with on-site assessments and audits.

Under the requirements for Federal agencies that assess fees, a ''substantial uncontrolled'' increase in fees is not permitted. First, as proposed in the NPRM (64 FR 45104), OSHA will publish any proposed changes to the fee structure in the **Federal Register** for comment. In doing so, the Agency must

[1] MET Laboratories v. Reich, 875 F. Supp. 304 (D. Md., 1995)

explain any changes and the necessity for any increase in fees. Secondly, based on our review of the items that contribute to the fees, we believe that none of them are subject to great fluctuation or uncontrolled increases. We must emphasize that since the fees must be used only for the NRTL Program, we will only collect fees that are specifically related to that program.

Salaries of Federal employees, which are one of the two main bases for the fee structure, increase in relation to comparable salary increases in the private sector. These increases are modest, and would be unlikely to have a major impact on the fee structure. Similarly, while travel costs do increase periodically, these increases are also not expected to rise dramatically. If they increase, it will be commensurate with travel expenses in the private sector. Laboratories will benefit from the fact that travel expenses will be assessed based on rates paid by the government for items such as air travel and hotel bills, since these rates are generally lower than those paid by private sector business travelers.

We believe that the current economic analysis is adequate, and that it supports our determinations that the proposed fees are reasonable and that the manner of determining the fee schedule is fair, equitable, and unlikely to result in ''substantial uncontrolled increases.'' The fees that OSHA will impose on laboratories for the NRTL Program are small, particularly when compared to the other costs of testing and certification that are already borne by manufacturers. The small additional cost to the laboratories will likely have little impact on the ultimate cost of the product itself.

UL mentions trade issues as a reason for more economic analysis. In fact, as noted in the NPRM (64 FR 45099), the opportunity for foreign laboratories to participate in the NRTL Program is expected to increase the costs to the Agency, particularly in the area of travel expenses. Assessment of fees for reimbursement of these direct costs will ensure that the costs are borne by those laboratories acquiring the benefits of participation in the NRTL Program rather than the American taxpayer.

Exhibit 8–3; ACIL

ACIL is a trade association of independent laboratories, including 12 of the 16 current NRTLs. It has a committee of NRTL laboratories that meets on a regular basis to discuss issues of common interest.

ACIL states that it supports the assessment of fees as follows:

> ACIL supports OSHA's intent to obtain fees for services as necessary to maintain the NRTL Program and to insure greater workplace safety involving electrical products. We believe the method described for establishing fee schedules is fair and equitable. Every country or entity that offers laboratory accreditation charges a fee for services. Establishing this fee is reasonable and should be accepted by laboratories that desire NRTL accreditation and recognition.

However, ACIL then indicates that its support is contingent upon ''improved services,'' and it enumerates what it would consider to be such services. The services ACIL describes are discussed below.

In response, OSHA notes that assessment of fees is based on the services currently provided, and expected to continue to be provided, on the processing of applications and on the maintenance of recognition. The fees are assessed on an individual laboratory basis and are related to specific actions involving that laboratory. These do not include any unrelated overhead or management activities of the program as a whole. The rules for assessment of such fees by a Federal Agency are very narrowly drawn and are not related to any of the items mentioned by ACIL. In other words, the items listed by ACIL are not ''services'' in the sense of the requirements for assessment of fees by a Federal agency, and the fees themselves are in no way related to those items. ACIL's list of items generally relates to the overall management of the Program and internal OSHA decisions regarding priorities and activities. However, we believe it is useful to list those items and specifically respond to them.

1. NRTL Program Training for Compliance Officers

OSHA has prepared a training program for compliance officers during the past year, and copies of the presentation have been made available to the NRTLs electronically. Furthermore, the training program has been made available to the public through OSHA's web site for the NRTL Program. The training presentation was a joint effort between the NRTL Program staff and OSHA's professional curriculum development staff in its Office of Training and Education. We consulted about the best and most useful format, as well as manner of presentation, given the competing training needs of OSHA's compliance staff. Ultimately, it was decided that the most useful way to get information about the Program out to our staff would be through the development and distribution of a training presentation that can be used at the Area and Regional Office level in staff meetings or as a module in other training courses. The program has been broadly distributed and well-received. Development of such a program was funded by the Agency, and would have been even if the fee schedule was in place, since it is not the type of activity that is specific to a laboratory and thus could be subject to fees. The training is an internal OSHA activity and is not a ''service'' to the laboratories.

2. OSHA Employing Outside Auditors To Assist and Support OSHA Staff, Whether They Be OSHA Trained Contract Auditors or Permanent OSHA Auditors

OSHA does not have a shortage of trained auditors to perform on-site visits under the NRTL Program, nor do we expect to be unable to meet the requirements of the Program any time in the foreseeable future. This is actually financially advantageous to the laboratories since we would be unlikely to be able to contract for the services performed for any less money than we currently spend using our own staff. If we were to have a shortage of staff, we would consider using this approach. At this point, it is not necessary. This again is not a ''service'' to the laboratories. It is related to the management of the program, and if we did have to use such an approach, we would have to adjust the fee schedule accordingly.

3. Increased Enforcement Efforts by Compliance Officers, OSHA Inspectors, and Program Auditors

In no way are OSHA enforcement activities a ''service'' to the NRTLs. OSHA determines its enforcement activities based on consideration of a number of factors, including targeting, complaints, and accidents. The safety standards that require NRTL testing and certification are among many other requirements that are reviewed by compliance staff as they conduct inspections. The fees to be collected for the NRTL Program are not and cannot be related to enforcement.

4. Development of a Program To Support the Significance of the NRTL Program

It is not clear what this means specifically, but we believe it is related to the efforts of some NRTLs to promote the use of the NRTL Program for purposes beyond workplace safety and health. For example, some NRTLs have encouraged State and local authorities to rely on NRTL product testing and certification in their public safety program activities outside the

workplace. This is outside the scope of OSHA's authority. While it is certainly the prerogative of these authorities to use testing laboratories, including NRTLs, for that purpose, OSHA does not endorse, promote, or engage in such activity since our mandate is limited to workplace safety and health. Again, this is unrelated to the services addressed by the fee schedule.

5. Promoting Employer Awareness of the NRTL Program

Promotion of employer awareness of any OSHA requirements is related to improving workplace safety and health. It is not a ''service'' to the NRTLs, and would not be an item subject to the fee schedule.

It appears from these suggestions that there is a basic misunderstanding about the fact that fees are specific to a laboratory, and to the activities related to recognition that are performed for that laboratory. There is a further issue underlying these items that should be addressed. Based on discussions OSHA has had with ACIL and the NRTLs they represent, we know that ACIL's suggestions are intended to promote the NRTL Program for marketing purposes. In other words, increased training, enforcement, and program promotion all increase the visibility of the NRTLs as business concerns. When OSHA promotes the NRTL Program, it does so to increase workplace safety and health. We continue to promote the Program in this way through various means funded directly by OSHA. Besides the training presentation already described, we have developed a web page on the NRTL Program that includes extensive information, as well as listing the NRTLs, showing their marks, and addressing their scope of recognition. We believe this is the most effective way to reach our own compliance staff, as well as the public, with substantive information about the NRTL Program and the recognized laboratories. This is done to enhance workplace safety and health, and is not a ''service'' to the NRTLs.

We have also completed a directive that details the policies and procedures of the NRTL Program for the first time in its history. This directive ensures that OSHA staff, as well as the NRTLs and the public, has access to information about the Program and its operation.

OSHA will continue to undertake such activities as resources permit and as found appropriate by the Agency. However, the fees to be collected will not be used for these purposes. We will be happy to continue to work with ACIL or any NRTL or other interested party, to define appropriate activities to increase workplace safety and health through enhancement of the NRTL Program and the testing and certification requirements.

ACIL also indicated that it did not believe that fees should be retroactively assessed. OSHA has no plans to assess fees on a retroactive basis for services already provided without cost to the laboratory. ACIL also suggested that OSHA bill for its services ''at the time services are rendered,'' rather than at the beginning of the year, as proposed in the notice (64 FR 45105).

We find merit in ACIL's suggestion. This approach would reduce the collection activity of the Agency, since only one bill would have to be sent to the NRTL for an audit, rather than the two contemplated under the NPRM. There would be minimal financial burden to the Agency by delaying collection. We proposed ''up-front'' billing in the NPRM to ensure the Agency would receive payment regardless of the outcome of the audit process. Since an NRTL's recognition can be revoked for non-payment, we believe this is enough incentive to pay after the audit is performed. For similar reasons, we plan to bill the NRTLs for any assessment that we perform for a renewal or expansion after we have performed it. However, we will still require applicants seeking initial recognition to submit the assessment fee with their application to ensure the Agency is reimbursed for its costs should an applicant decide to withdraw its application after OSHA performs its assessment.

On the issue of reducing the comment period, ACIL indicated this would provide some benefit to the laboratories. Because the longest time period in the process precedes this formal comment period, ACIL suggests that OSHA should include a set time period for processing.

Based on OSHA's experience, this is not possible. The biggest delays in the process are generally associated with incomplete information provided in an application, or the time a laboratory spends to correct deficiencies found in on-site assessments. In addition, new applicants frequently have testing experience, but they may not have experience in the certification process. Considerable work may be required to ensure they have internal procedures to meet the requirements of OSHA's NRTL Program.

We have prepared application guidelines to help address the first issue, and have made them available on our web site. If an applicant provides all of the information and supporting documentation indicated in the guidelines, we should not need to go back to the laboratory on one or more occasions to gather additional information. The application guidelines also follow what is normally reviewed in an on-site assessment. If laboratories provide the information specified and are ready to show assessors what they do in these areas, they may have to correct fewer deficiencies before we grant recognition. These guidelines are just beginning to be used, and we will be monitoring their use to determine how well they are working.

We process applications in the order they arrive, and the time to wait for processing depends on the number that have already been submitted by other laboratories. There is no way to predict when applications will be submitted, and there is no advance indication about the numbers of laboratories that may choose to apply at any given time. We continue to encourage laboratories to cover as many test standards as possible in any one application to help reduce the overall number of applications to be processed.

ACIL also attached a paper regarding some issues on surveillance audits, which were not addressed by the NRPM. The paper contains certain suggestions that ACIL wants the Agency to consider, and OSHA will consider them for future action.

Exhibit 8–4; National Electrical Manufacturers Association

The National Electrical Manufacturers Association (NEMA) represents a number of manufacturers of products that are subject to requirements for third party testing and certification under OSHA's safety standards. NEMA objects to the assessment of fees, and questions whether OSHA has the authority to require fees. In particular, NEMA states that because the testing activities are mandatory, they ''do not support the conclusion that the fee is incident to a voluntary act.''

While testing and certification of equipment is mandatory, participation in the NRTL Program by a laboratory is completely voluntary. As noted in the NPRM (64 FR 45100), OSHA has the authority to collect fees under the OMB Circular, and Congress has given OSHA specific authority to collect and retain those fees for the specific use of the NRTL Program.

NEMA also notes that the fees will be passed on to manufacturers such as those they represent. While this is true, the fees themselves are quite small compared to the overall costs of testing and certification, and will be spread among the customers for whom the laboratories are testing and certifying

products for. In addition, the manufacturers will most likely distribute these costs to their customers through the pricing of their products. The costs are so small that the price increase for any particular product is also unlikely to be significant.

NEMA further argues that if fees are assessed, foreign laboratories should not be given any special treatment or privilege. OSHA will be applying any fee schedule in the same manner to all NRTL Program participants, both foreign and domestic.

Conclusion

OSHA has decided to establish a fee schedule for the NRTL Program in this final rule. The comments received did not address the specific fees proposed or the method of developing the proposed fee schedule. While two of the commenters objected to the assessment of fees (Exs. 8–2 and 8–4), their arguments were not compelling. ACIL, the trade association that includes 12 of the 16 organizations from whom fees would be collected, stated that the fees are fair and equitable and simply reflect what is common practice for other organizations doing similar work. OSHA has the authority to assess fees to laboratories for the direct expenses the Agency incurs as a result of providing services to them. The laboratories receive ''special benefits'' as a result of the requirements established by OSHA for testing and certification of products to be used in the workplace. In addition, Congress has given OSHA the authority to collect and retain these fees for the administration of the NRTL Program.

On the issue of reducing the comment period for **Federal Register** notices concerning recognition, only ACIL commented, and it agreed that this would lead to a useful reduction in the total time for processing applications. The reduction of the time for public comment is also being addressed in this final rule.

III. Explanation of Final Rule

A. Establishment of Fees

OSHA is modifying 29 CFR 1910.7 to add a new paragraph ''(f) Fees'' related to the assessment and payment of fees for certain services rendered to NRTLs and NRTL applicants. This new paragraph provides 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, which will be published on the OSHA web site, consistent with the framework laid out in this final rule.

1. Obligation To Pay and Fee Assessment

The first part of paragraph (f) reads as follows:

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

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

(ii) Audits of sites.

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

Typically, OSHA annually audits the testing sites it has recognized for an NRTL. However, if an NRTL has appropriate controls in place, OSHA allows it to use non-recognized sites, such as testing sites of other laboratories or even manufacturers, to conduct testing or other activities necessary for certifying products. OSHA may also need to audit such non-recognized sites to determine whether the NRTL or the site is properly controlling the NRTL-related activities. For example, OSHA may audit a manufacturer to determine how well it controls the NRTL's certification mark or maintains production or quality controls. NRTLs must also pay for these ''special'' audits when required and will be billed accordingly.

2. Fee Calculation

The second part of paragraph (f) reads as follows:

(2) The fee schedule established by OSHA reflects the cost of performing the activities for each service listed in paragraph (f)(1) of this section. OSHA calculates the fees based on either the average or actual time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and the average or actual costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

Activity Fee = [Average (or Actual) Hours to Complete the Activity × Staff Costs per Hour] + Average (or Actual) Travel Costs

Each activity performed by OSHA accomplishes a particular phase of the service the Agency provides to the recipients (*i.e.*, NRTLs or NRTL applicants). Currently, these activities are as follows:

—Review of initial, expansion, and renewal applications;
—On-site assessment per person, per site—first day , and 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; and
—On-site audit (per person, per site) and office audit (per site).

The fees that the Agency is initially establishing are shown in the Fee Schedule (Table A in section VI of this preamble). This schedule is somewhat different from the one we published in the NPRM. We have made changes as a result of our decision, as explained in section II of this preamble, to bill NRTLs for audits and for certain assessments after we perform them. We had proposed in the NPRM (64 FR 45105) to pre-bill the NRTLs for these activities. We further explained that we would bill or refund to NRTLs the difference between any pre-paid fee amounts and the ''actual costs'' for an assessment and or audit. Since we have decided not to pre-bill for these activities, we have changed the fee schedule to clearly reflect this approach. The fee schedule now contains two types of fees: flat fees and variable fees.

The ''flat fees'' are calculated by multiplying the average estimated time to perform the work by the equivalent staff cost per hour, and adding the average travel costs for any assessment we must perform for an application for initial recognition. Use of the average time spent on each activity simplifies the accounting for the NRTL and for OSHA since the recordkeeping time and associated costs are reduced. The variable fees are based on the ''actual costs,'', *i.e.,* actual staff time and travel costs to the government. These are calculated by multiplying the equivalent staff cost by the actual number of days or fractional days that staff spend in performing the on-site activity, and adding actual staff travel costs, using government rates where possible. In section V of this preamble, we show how we derived the equivalent staff cost per hour (Figure 1) and provide details on the costs and calculation for the fees.

As indicated above, we will bill applicants or NRTLs for the ''actual costs'' of an assessment and audit after we perform these activities. However, as we proposed in the NPRM (64 FR 45106) and now adopt in this final rule, applicants seeking initial recognition must still pay for an assessment in advance, i.e., at time of application, using the amount in the fee schedule. After we perform the assessment, OSHA will send them a bill or refund (i.e, credit their account) for the difference that reflects the ''actual costs''. We have added appropriate information to the fee schedule to clearly show the nature of the assessment fee for a new applicant.

3. Annual Review of Fee Schedule and Issuance

The third part of paragraph (f) reads as follows:

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

The first Fee Schedule, set forth in section VI of this preamble, will remain in effect until it is superseded by a revised schedule. OSHA will annually review the costs to the Government of providing the services to determine whether any changes to the fees are needed. In addition, as part of this annual review, OSHA will consider requests for changes to the fee schedule that it receives from the public. If OSHA believes that changes may be needed, we will publish a notice to provide the NRTLs and other members of the public an opportunity to comment on such changes. The Agency will follow the implementation table shown in paragraph (f)(4) of this rule. We will publish all subsequent fee schedules in the **Federal Register** and post them on the OSHA web site.

4. Fee Implementation

The fourth part of paragraph (f) reads as follows:

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

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

One significant change has been made to the table as a result of comments from ACIL (Ex. 8–3). Rather than billing each NRTL at the beginning of the year as proposed (64 FR 45105), we will bill them after an audit is conducted. Failure to pay the bill in a timely fashion may lead to revocation of recognition.

With regard to the other items in the schedule, OSHA needs approximately 30 days after the close of the government fiscal year (GFY) on September 30th, to obtain and review data for its annual review of the fee schedule. If a change in the schedule is necessary, OSHA will publish a proposed revision around November 1st, including an analysis of the changes. The period for comments will be no less than 15 calendar days. Approximately 30 days thereafter, OSHA will officially issue the new fee schedule in the **Federal Register**.

After we have audited an NRTL, we will bill that NRTL for the appropriate audit fee shown in the fee schedule in effect at the time the audit is performed. This bill will reflect actual travel costs and staff time for the audit. OSHA anticipates that most of the bills will be for on-site audits, rather than office audits. OSHA will automatically assess the NRTL the late fee, shown in the fee schedule, if the Agency does not fully receive the amount billed within 30 days. Fifteen days thereafter, if payment has not been received, OSHA will send 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 will publish a notice in the **Federal Register** announcing its intent to revoke the NRTL's recognition. OSHA will then proceed with permanent revocation of the NRTL's recognition, which includes publication of a second notice formally revoking recognition.

In revoking recognition due to non-payment of fees, OSHA will follow the procedures described in this paragraph and not those under II.E of Appendix A to 29 CFR 1910.7. The Agency may consider reinstating an organization's recognition if it provides an explanation for non-payment that is acceptable to OSHA and it pays all fees that are due. We will address such a reinstatement option in the directive mentioned in paragraph (f)(5) below.

OSHA will bill the NRTL separately for additional audits of a site or for any ''special'' audits, and will bill

applicants separately for any additional or special assessment that it must perform in connection with an application. OSHA will bill the NRTL or applicant for these fees after these audits or assessments and will follow the same collection process as described above.

5. Details for Payment

The fifth and last part of paragraph (f) reads as follows:

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

For application processing, OSHA will bill the NRTL applicant or NRTL for the balance of fees due, including the ''actual costs'' for any assessment, at the time we publish the preliminary notice to announce the application. As previously explained, publication of this notice occurs after we have completed any assessment for processing an application. For new applicants, the bill will reflect a refund (*i.e.,* a credit) if the amount pre-paid exceeds the ''actual costs'' for the assessment. For expansion and renewal applications, the bill to the NRTL will include the fees for any assessment that we performed. For audits, we will also bill the NRTL after completion of the audit. For application processing and audits, any fees that are not paid when due will result in cancellation of application or revocation of recognition, as appropriate. OSHA will follow the same collection process for applications as that described for audits in paragraph (f)(4).

The instructions that accompany a fee schedule will include appropriate details about fee payments. OSHA will require payment of all fees in U.S. dollars by certified check or money order drawn on a U.S.-based institution or organization, but may include additional payment terms in these instructions. The Agency may consider other modes or methods for payment in these instructions.

The fees established by this final rule go into effect on October 1, 2000. Fees must be submitted for any application (whether for initial recognition, or expansion or renewal of recognition) postmarked on or after the effective date of the Fee Schedule shown in section VI of this preamble. Also, any application pending on October 1, 2000, will be subject to the fees for activities that OSHA has not yet begun as of that date. OSHA will bill applicants accordingly. However, since delays in processing may have occurred through no fault of an applicant, OSHA will review the circumstances surrounding all applications that are pending on October 1, 2000, to determine whether some fees should be waived.

B. Reduction of Public Comment Period

OSHA is amending 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 announces OSHA's ''preliminary finding'' on an initial, expansion, or renewal application. The amended provisions of Appendix A will now provide a 30-day comment period for notices on applications for initial recognitions, and a 15-day comment period for notices on applications for expansion or renewal of recognition. The 30-day period for initial applications is consistent with that provided for some other notices published by the Agency. The shorter 15-day period reflects the nature and scope of OSHA's evaluation of expansion and renewal requests. Based on our experience, OSHA believes that such requests will present few issues. However, anyone who believes that the NRTL's request affects them but needs more time may request an extension of time to comment.

As pointed out in the proposal (64 FR 45107), in recent years, OSHA has received few or no comments on the preliminary notices. The comment periods add significantly to the amount of time required to process an application. Thus OSHA proposed to reduce the time periods required. ACIL (Ex. 8–3) recognized that this would reduce overall processing time. No comments were received objecting to this change.

NRTLs routinely adopt new test standards for the products that are within their testing and certification capability. Many of the new test standards are simply new revisions that supersede those for which OSHA has already recognized the NRTL. As a result, the NRTL must often apply to OSHA to ''expand'' its recognition to enable it to use the new test standards. While the NRTL may ''expand'' its recognition primarily to attain or maintain an economic benefit, timely recognition of the new test standards for the NRTL could also enhance safety in the workplace. The shorter periods will speed up approval of those expansions.

Federal Register notices are currently accessible to the public through the Office of the Federal Register web site on the day they are published. 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. 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. OSHA will generally grant an extension but will limit it to 15 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted.

IV. Legal Authority and Other Considerations

A. Statutory Authority

OSHA is basing its fees 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 2000 appropriations, Congress specifically authorized the Secretary of Labor to collect and retain the fees to be collected under this rule: ''* * * the Secretary of Labor is authorized, during the fiscal year ending September 30, 2000, 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: * * *'' Public Law 106–113 (113 Stat. 1501A–222). Through this rider, OSHA has the necessary authority to retain the fees, which otherwise would be credited to the general fund of the U.S. Treasury, as explained in OMB Circular A–25.

B. Legal Basis for Assessing the Fees

As noted in the proposal (64 FR 45100), to determine a proper basis for assessing the fees, OSHA reviewed a number of legal precedents and analyzed the costs and activities for the functions undertaken for the NRTL Program. We summarize our legal review below, and provide the details of our costs in section V of this preamble.

The legal precedents center 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 as 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 (DC 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 application processing and audit fees in this final rule.

Based in large part on the results of the foregoing six cases and on the guidelines of OMB Circular A–25, OSHA is establishing fees for specific benefits that organizations receive as a result of the specific services that OSHA provides to them for their initial and continued recognition as an NRTL. 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

To help clarify the basis for the fees in this final rule, the following describes how OSHA generally 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 performs 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 prepares 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 comment period (now established as 30 days or 15 days in this final rule, but formerly 60 days), 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 expansion of 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 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 final 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, the NRTL's clients. These opportunities may be in the form of new, additional, or continuing revenue and clients. Once the NRTL has properly certified a product, a manufacturer may then sell this product 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.

D. Fees of Other Agencies

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 that cover 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 Service; Department of Agriculture	9 CFR 318.21 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 non-governmental organizations that accredit or recognize testing laboratories or certification bodies. Although the fees established in this final rule are specific to the costs to OSHA, the practices of these other organizations may be of interest to reviewers of this rule.

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
	Annual accreditation fee	$9,000 + a business volume fee (up to $36,000)
ANSI Accreditation for Certification Programs	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
	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
American Association for Laboratory Accreditation (A2LA).	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)
	Annual fee	$1,100 for first field/lab, less for two or more fields/labs
American Industrial Hygiene Association—Laboratory Quality Assurance Programs.	Application fee	$250

FEES CHARGED BY VARIOUS ACCREDITATION ORGANIZATIONS—Continued

Organization	Activity	Fee (as of 3/8/99)
	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

V. Detailed Discussion of Fees

A. Cost Basis for the Fees

OSHA's first Fee Schedule (set forth in section VI of this preamble) is 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.[2]

For application processing, full 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 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.

For audits, full 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 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.

Prior to developing the proposed rule on the fees, OSHA had not accounted separately for the costs of the NRTL Program. The personnel and other costs associated with performing activities related to the Program involve a number of different offices throughout the Department of Labor. In preparing the fee schedule presented in this final rule, 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 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, and we include $29,800 in our estimate in Figure 1 to cover these costs. 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 fees. We include $46,500 in our estimate in Figure 1 to cover these costs. 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 total 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 and NRTL applicants. Figure 1 shows the costs used to calculate the fees.

[2] 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 6(d) 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:

(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.

FIGURE 1.—CURRENT ESTIMATED ANNUAL COSTS OF NRTL PROGRAM

Cost description	Est. FTE	Avg. 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) $49
(includes direct & indirect costs)

[a] 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.

Figures 2, 3, and 4 show the estimated time the Agency spends on each major service category. These estimates were developed, in part, for the information collection package for the NRTL Program submitted to OMB in September 1997 under the Paperwork Reduction Act. The major service categories are initial applications, expansion and renewal applications, and audits; and each figure shows the major activities performed and the estimated staff time and travel costs for each of these activities. The Agency calculates 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 shown in the first Fee Schedule (refer to section VI of this preamble).

FIGURE 2.—ESTIMATED COSTS FOR INITIAL APPLICATION

Major activity	Average hours	Average costs [a]
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

[a] Average costs for staff time equal average hours × equivalent average direct staff cost/hr ($49).

FIGURE 3.—ESTIMATED COSTS FOR EXPANSION OR RENEWAL APPLICATION

Major activity	Average hours	Average costs [a]
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)		
$1,570On-Site Assessment—first day:		

FIGURE 3.—ESTIMATED COSTS FOR EXPANSION OR RENEWAL APPLICATION—Continued

Major activity	Average hours	Average costs [a]
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

[a] Average costs for staff time equal average hours × equivalent average direct staff cost/hr ($49).

FIGURE 4.—ESTIMATED COSTS FOR ON-SITE AUDIT

Major activity	Average hours	Average costs [a]
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:		
Staff time: (includes work performed by field staff and office staff)	16	785
Total costs		$2,436 [b]

[a] Average costs for staff time equal average hours × equivalent average direct staff cost/hr ($49).
[b] Based on a one day audit. The costs for any additional days are the same as the additional day costs for an assessment.

In deriving the fee amounts shown in the Fee Schedule shown in section VI of this preamble, 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 the Fee Schedule 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 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 fees but only the costs of providing the specific services already described.

B. Description of the Fees

The following is a description of the fees and work involved for the activities currently covered under each type of fee service category, e.g., application processing fees, and the basis used to charge each fee. The amount of each fee is shown in the Fee Schedule set forth in section VI of this preamble.

Application Review Fees: This fee reflects the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. This fee does not cover the work involved in reviewing the test standards requested, which is reflected in the review and evaluation fee. Application fees are based on average costs per type of application. OSHA uses 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: There are three assessment fees: a fee for the first day for initial applications, a fee for the first day for expansion or renewal applications, and a fee for each additional day for any type of application. The assessment fee for an initial application covers the estimated time for staff preparatory and on-site work for the first day and an amount to cover travel in the 48 contiguous states (including the District of Columbia). As in the case of application review fee, the office preparation time generally involves the same types of tasks. Actual time assessing the facility may vary, but our staff devote at least a full day for traveling and for performing the on-site work. The fee for each additional day reflects time spent at the facility and an amount for one day's room and board. Generally, an applicant for initial recognition must pay for two additional days, submitting these fees with its application. Both the first day and the additional day fees are calculated per person per site. As previously explained, all applicants pay ''actual costs'' for an assessment (defined in section III of this preamble). Any difference between actual costs and the amounts submitted with an application will be reflected in the final bill that we provide to the applicant.

The assessment fee for expansion and renewal applications, submitted only by NRTLs, covers the estimated time for staff preparatory and the actual on-site work with travel expenses. Upon

completion of these activities, OSHA will bill the NRTL for ''actual costs'' of the assessment.

For initial applications, a supplemental travel amount is assessed for travel outside the 48 contiguous states (including the District of Columbia). The supplemental amount is 1,000 US dollars and is shown in footnote 4 of Table A. FEE SCHEDULE. This amount reflects an estimate of the additional cost of staff and travel. All travel amounts are only estimates for purposes of submitting the initial payment of the fees. As already noted, an applicant will be billed for actual travel expenses, based on government per diem and travel fares in effect at the time of the travel.

A supplemental travel cost table reflecting a specific dollar amount was not developed for applicants from each potential country that could apply for recognition. Even though such a table was proposed in the NPRM, it was not developed since the supplemental fee is only an estimate for prepayment of assessment fees, and is not the final billed cost to the applicant. The supplemental travel fee will be updated along with the fee schedule to reflect changes in the government travel rates. OSHA may develop supplemental travel fees based upon specific countries or regions as costs dictate. Specific instructions on submitting the fees will be made available to the public along with the current fee schedule.

Review and Evaluation Fee: This fee is 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 with the number of test standards requested by the applicant. The fee is 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 requires 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. In addition, 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 test standard is one hour.

Final Report/Register Notice Fees: Each of these fees is charged per application. The fee reflects 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: The on-site audit fee reflects the time for office preparation, time at the facility and travel, and time to prepare the audit report of the on-site audit. OSHA will bill the NRTL for the on-site audit fee after we have performed the audit, and the bill will reflect the actual staff time and travel costs for the audit. We have based the audit fee on the premise that we spend a full day at a site. In some cases, due to the proximity of two sites, we may actually audit two sites in one day. In such cases, we would apportion our audit fee between the two sites based on the percent of time we spent at each site.

Miscellaneous Fees: 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. Fee Schedule

The first Fee Schedule, included in this section VI of the preamble, is effective on October 1, 2000. The fees apply to any organization seeking recognition or already recognized as an NRTL on or after October 1, 2000. Fees must be submitted for any application (whether for initial recognition, or expansion or renewal of recognition) postmarked on or after October 1, 2000. The fees apply also to any pending application (*i.e.,* an application that OSHA has not yet completed processing) only for those activities that the Agency begins on or after the effective date of this first Fee Schedule.

OSHA establishes the following fee schedule:

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

[Fee schedule (effective October 1, 2000)] [10]

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
Application Processing	Initial Application Review [1]	$3,900.
	Expansion Application Review [1]	$1,550.
	Renewal Application Review [1]	$100.
	Assessment—Initial Application (per site—SUBMIT WITH APPLICATION) [2, 4]	$5,900.
	Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT) [2, 7, 8].	$1,350 + travel expenses.
	Assessment—Expansion or Renewal Application (per person, per site—first day) [3, 8].	$1,000 + travel expenses.
	Assessment—each addnl. day (per person, per site) [2, 3, 8]	$400 + travel expenses.
	Review & Evaluation (per standard) [5] (for initial or expansion applications)	$50.
	Final Report/Register Notice—Initial Application [5]	$7,850.
	Final Report/Register Notice—Expansion or Renewal Application [5]	$4,300.
Audits	On-site Audit (per person, per site-first day) [6]	$1,750 + travel expenses.
	On-site Audit (per person, per site-each addnl. day) [6]	$400 + travel expenses.
	Office Audit (per site) [6]	$400.
Miscellaneous	Supplemental Travel (per site—for sites located outside the 48 contiguous States, including the District of Columbia) [4].	$1,000.
	Late Payment [9]	$50.

Notes to OSHA Fee Schedule for NRTLs:

1. Who must pay the Application Review fees, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay the Initial Application Review fee and include this fee with your initial application. If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the Expansion Application Review fee or Renewal Application Review fee, as appropriate, and include the fee with your expansion or renewal application.

2. What assessment fees do you submit for an initial application, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay $5,900 for each site for which you wish to obtain recognition, and you must include this amount with your initial application. We base this amount on two assessors performing a three day assessment at each site. After we have completed the assessment work, we will calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We will calculate this fee at the rate of $1,350 for the first day and $400 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares. We will bill or refund the difference between the amount you pre-paid, $5,900/site, and this fee. We will reflect this difference in the final bill that we will send to you at the time we publish the preliminary **Federal Register** notice announcing the application.

3. What assessment fees do you submit for an expansion or renewal application, and when must they be paid?

If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we will bill you for the fee after we perform the assessment for the actual staff time and travel costs we incurred in performing the assessment. We will assess this fee at the rate of $1,000 for the first day and $400 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares.

4. When do I pay the Supplemental Travel fee?

You must include this fee when you submit an initial application for recognition and the site you wish to recognized is located outside the 48 contiguous U.S. states (including the District of Columbia). The current supplemental travel fee is $1,000. We will factor in this prepayment when we bill for the actual costs of the assessment, as described in our note #2 above. See note 7 for possible refund of Assessment fees.

5. When do I pay the Review and Evaluation and the appropriate Final Report/Register Notice fees?

We will bill an applicant or an NRTL for the appropriate fees at the time we publish the preliminary **Federal Register** notice to announce the application.

6. When do I pay the Audit fee?

We will bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit. We will calculate our fee based on actual staff time and travel costs incurred in performing the audit. We will calculate this fee at the rate of $1,750 for the first day and $400 for each additional day, plus actual travel expenses for each auditor. Actual travel expenses are based on government per diem and travel fares.

7. When and how can I obtain a refund for the fees that I paid?

If you are applying for initial recognition as an NRTL, we will refund the assessment fees that we have collected if you withdraw your application before we have traveled to your site to perform the on-site assessment. We will also credit your account for any amount we owe you if the assessment fees we have collected are greater than the actual costs of the assessment. Other than these two cases, we will not refund or grant credit for any other fees that are due or that we have collected.

8. What rate does OSHA use to charge for staff time?

OSHA has estimated an equivalent staff cost per hour that it uses for determining the fees that are shown in the Fee Schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, supervision and support for each ''direct staff'' member, that is, the staff that perform the main activities identified in the Fee Schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = $49.

9. What happens if I do not pay the fees that I am billed?

As explained above, if you are an applicant, we will send you a final bill for the fees at the time we publish the preliminary **Federal Register** notice. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in the Fee Schedule. This late payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 8). If we do not receive payment within 60 days of the bill date, we will cancel your application. As also explained above, if you are an NRTL, we will send you a bill for the audit fee after completion of the audit. If you do not pay the fee by the due date, we will assess the Late Payment Fee shown in the Fee Schedule. If we do not receive payment within 60 days of the bill date, we will publish a **Federal Register** notice stating our intent to revoke recognition.

10. How do I know whether this is the most Current Fee Schedule?

You should contact OSHA's NRTL Program (202–693–2110) or visit the program's web site to determine the effective date of the most current Fee Schedule. Access the site by selecting ''Subject Index'' or ''Programs'' at *www.osha.gov.* Any application processing fees are those in effect on the date you submit your application. Audit fees are those in effect on the date we begin our audit. Any pending application (*i.e.,* an application that OSHA has not yet completed processing) will be subject only to the fees for the activities that OSHA begins on or after the effective date of the initial fee schedule.

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 final rule. In evaluating any changes to a fee schedule, OSHA will 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.

An organization applying for its initial recognition as an NRTL must include both the application fee and on-site review (''assessment'') fee with the application. An existing NRTL that is applying solely for an expansion or renewal of NRTL recognition need

include only the application fee. If we need to perform an on-site review for the expansion or renewal request, we will bill the NRTL for the fee after we perform the assessment. If a renewal applicant does not pay all fees that are due, OSHA will not renew the NRTL's recognition.

If an applicant withdraws its initial application before we have traveled to their site to perform an on-site assessment, we will refund any on-site assessment fee that we have collected. However, if we have begun our travel for the on-site visit, we will not refund any portion of the assessment fee. When we publish a preliminary **Federal Register** notice to announce an application for initial recognition, expansion, or renewal, we will bill the applicant for the balance of the application processing fees and will include actual travel costs and staff time for the assessment. For applications and audits, if an NRTL or applicant does not pay its fees, we will cancel the application or revoke its recognition, as appropriate.

VII. Regulatory Matters

A. Final Economic Analysis and Final Regulatory Flexibility 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. In accordance with these requirements, OSHA prepared this final economic analysis to accompany this final rule by OSHA to allow the Department of Labor to charge and retain fees for services provided to Nationally Recognized Testing Laboratories (NRTLs). The analysis included 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 examined the costs and impacts of the proposal on affected small entities, as defined by the Small Business Administration. Because the fee structure has remained largely unchanged, and because there were no comments on the substance of this analysis, it is the same as that for the proposed rule.

Affected Industry

OSHA standards require 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 [3]. 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
- 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.

sbull; 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, 2000.

A product testing lab tests equipment in accordance with test standards, such as those 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 materials 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 can be 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,

[3] A substantial amount of the 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.

trade association, or equipment vendor. They typically test a variety of products 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 [4] 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 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.

TABLE 2.—CHARACTERISTICS OF TESTING LABORATORIES

	Number of firms	Number of establishments	Number of employees	Total receipts ($million)	Percent receipts [b] from testing
Taxable Establishments	3,513	4,540	70,762	$4,764	94.47
Non-Taxable Establishments	135 [a]	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 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 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 rule and will, therefore, incur no costs of compliance.

Currently, there are 17 testing laboratories that have NRTL status and that operate over 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 rule. 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. Applied Reserch Laboratories, Inc. (ARL)	1
2. Canadian Standards Association (CSA)	6
3. Communication Certification Laboratory, Inc. (CCL)	1
4. Curtis-Straus LLC. (CSL)	1
5. Detroit Testing Laboratory, Inc. (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, Inc. (MET)	1
11. National Technical Systems, Inc. (NTS)	1
12. NSF International (NSF)	1
13. SGS U.S. Testing Co., Inc. (SGSUS)	2
14. Southwest Research Institute (SwRI)	1
15. TUV Rheinland of North America, Inc. (TUV)	1
16. Underwriters Laboratories Inc. (UL)	10
17. Wyle Laboratories, Inc. (WL)	1
Total	42

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 2000.

Costs

This section presents estimates of the costs that will be incurred by firms to come into compliance with the final 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 rule will transfer the payment of these costs to the NRTLs themselves and NRTL applicants.

Testing laboratories participating in the OSHA program will be subject to

[4] Biological and chemical testing labs perform such tests as chemical composition of substances, blood tests, etc., and would not be affected by the final rule.

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, in Part VI 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 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 being adopted 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 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. number 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 economic impacts of the costs of compliance with the regulation for NRTL fees and has determined that the regulation is economically feasible for firms in this industry. The rule 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 rule would transfer the payment of some of these costs to firms receiving the service from OSHA.

To determine whether the rule's projected costs of compliance would raise issues of economic feasibility for the affected industry or would adversely alter the competitive structure of the industry, OSHA developed quantitative estimates of the economic impact of the 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 associated with the NRTL fees could lead to significant impacts on the affected firms. The actual impact of the rule 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 FEES

	Annual costs of compliance	Revenues ($1000)	Pre-tax profits ($1000)	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.
[a] 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 completely 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 completely elastic, firms cannot absorb the costs simply by passing the cost increase through in the form of a price increase; instead, they must absorb the cost 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 revenue 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 imposed by the 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 rule is determined to be economically feasible for affected laboratories.

As previously noted, OSHA 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 demand 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 fees have been implemented.

Potential Economic Impacts of the Regulation on Small Entities

This section measures the potential economic impacts of the regulation on small entities in the affected testing laboratory industry to determine whether the regulation 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-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.

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[5]. 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-profit entity are currently NRTLs and thus certain to be affected. However, the rule could 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 rule will not have a significant impact on small entities (as defined by the SBA), OSHA certifies that this final rule 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 cost of compliance as a percent of	
							Sales	Pre-tax profit
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, 2000; Office of Technical Programs and Coordination Activities, 1999.
US Small Business Administration, Office of Advocacy. Table 3: US Establishments, Employments, 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.

B. 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 final rule will not have a significant impact on the external environment.

C. Federalism

This final rule has been reviewed in accordance with Executive Order 13132,

[5] The Bureau of the Census defines a ''firm'' as ''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 the Census would count this as four firms in the nursing home industry in the 100 to 499 employment size classification.

regarding Federalism. This final rule would only set fees for services provided by the Federal Government to private entities and has no impact on Federalism. The rule does not limit or restrict State policy options.

D. 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.

E. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), 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.

F. State Plan States

The 25 States and territories with their own OSHA approved occupational safety and health plans are not affected by this final 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.

VIII. 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, D.C. 20210. The final 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 final sections are also issued under authority of OMB Circular A–25 (dated 7/8/93); Public Law 106–113 (113 Stat. 1501A–222); 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 20th day of July, 2000.

Charles N. Jeffress,

Assistant Secretary.

For the reasons discussed in the preamble, OSHA amends 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, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

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 NRTL must pay fees for services provided by OSHA. OSHA will assess fees for the following services:

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

(ii) Audits of sites.

(2) The fee schedule established by OSHA reflects the cost of performing the activities for each service listed in paragraph (f)(1) of this section. OSHA calculates the fees based on either the average or actual time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and the average or actual costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

Activity Fee = [Average (or Actual) Hours to Complete the Activity × Staff Costs per Hour] + Average (or Actual) Travel Costs

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

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

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

Approximate dates	Action required
I. Annual Review of Fee Schedule	
November 1	OSHA will publish any proposed new Fee Schedule in the **Federal Register**, if OSHA determines changes in the schedule are warranted.
November 16	Comments due on the proposed new Fee Schedule.
December 15	OSHA will publish the final Fee Schedule in the **Federal Register**, making it effective.
II. Application Processing Fees	
Time of application	Applicant must pay the applicable fees shown in the Fee Schedule when submitting the application; OSHA will not begin processing until fees are received.

Approximate dates	Action required
Publication of preliminary notice	Applicant must pay remainder of fees; OSHA cancels application if fees are not paid when due.
III. Audit Fees	
After audit performed	OSHA will bill each existing NRTL for the audit fees in effect at the time of audit, but will reflect actual travel costs and staff time in the bill.
30 days after bill date	NRTLs must pay audit fees; OSHA will assess late fee if audit fees are not paid.
45 days after bill date	OSHA will send a letter to the NRTL requesting immediate payment of the audit fees and late fee
60 days after bill date	OSHA will publish a notice in the **Federal Register** announcing its intent to revoke recognition for NRTLs that have not paid these audit fees.

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

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. 00–18922 Filed 7–28–00; 8:45 am]

BILLING CODE 4510–26–P