

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration**

[Docket No. NRTL-1-98]

**National Technical Systems, Application for Recognition****AGENCY:** Occupational Safety and Health Administration, Labor.**ACTION:** Notice.

**SUMMARY:** This notice announces the application of National Technical Systems for recognition as an NRTL under 29 CFR 1910.7, and presents the Agency's preliminary finding.

**DATES:** Comments submitted by interested parties must be received no later than October 27, 1998.

**ADDRESS:** Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 219-7056.

**SUPPLEMENTARY INFORMATION:****Notice of Application**

Notice is hereby given that National Technical Systems (NTS) has applied to the Occupational Safety and Health Administration (OSHA), pursuant to 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (NRTL) for testing and certification of the equipment or materials, and use of the programs and procedures, listed below.

The address of the laboratory covered by this application is: National Technical Systems, 533 Main Street, Acton, Massachusetts 01720.

**Background**

According to the applicant, National Technical Systems (NTS) is headquartered in Calabasas, California, and was established in 1963. It became a public company in 1968, and it is listed in the NASDAQ exchange. Furthermore, the applicant states it is an independent testing, engineering, research, and support services organization, with more than 30 years of product testing experience. NTS also states it has provided testing services to the military/aerospace, commercial, and power industry, and has conducted qualification testing for the nuclear power industry for more than 20 years.

The engineering services that NTS provides include design of instrumentation and specialized hardware, and electrical and mechanical engineering.

NTS submitted an application for recognition, dated September 30, 1994 (see Exhibit 2A). It separately submitted a Quality Manual (QM), dated June 24, 1997, and Quality Assurance Procedures (QAPs), dated December 22, 1997, specifically for the activities it plans to undertake as an NRTL (see Exhibits 2C and 2E). These two documents are hereinafter referred to as "NRTL QM" and "NRTL QAPs," respectively. The NRTL QM replaced the Quality Manual submitted by NTS in the original application. The QAPs were marked confidential by the applicant. The applicant originally requested recognition for a facility in Acton and for another facility in Boxborough, both in Massachusetts. The applicant also originally requested recognition to test and certify to more than 90 test standards.

OSHA performed an on-site assessment (review) of the Acton and Boxborough facilities, on January 23-26, 1995. The review determined that NTS did not meet all the requirements necessary for recognition under 29 CFR 1910.7, and the applicant was so informed. After OSHA completed the review, NTS eliminated the Boxborough facility from consideration. In response to the findings of the review, the applicant also submitted amendments to OSHA, dated April 10, and September 22, 1997 (see Exhibits 2B and 2D), to revise and reduce the number of test standards it sought to include in its scope of recognition to 13. Also, NTS developed and submitted the previously mentioned NRTL QM and NRTL QAPs. In the submittal covering the NRTL QM, NTS also applied to OSHA for recognition to use the supplemental programs and procedures permitted under the March 9, 1995 **Federal Register** notice (60 FR 12980). During the preparation of this notice, NTS deleted one test standard since the standards organization had withdrawn it. As a result, the recognition request covers 12 test standards. Finally, in response to OSHA's request for clarification, dated March 18, 1998 (see Exhibit 2F), NTS submitted amendments to its NRTL QAPs and to its NRTL QM, dated April 8, 1998 (see Exhibit 2G).

Regarding the merits of the application, the applicant states that the NRTL QM is the first tier document that will direct its NRTL activities. The NRTL QAPs provide more detailed policies, processes, and steps for those

activities. In addition, the on-site review report references other procedures and practices that NTS uses for the parts of its operations that can be designated "non-NRTL" activities. However, the recognition will not apply to any aspect of the non-NRTL activities, except to those product testing or certification procedures and practices that are incorporated in the NRTL QM and NRTL QAPs, and are in conformance with the requirements of 29 CFR 1910.7.

In summary, NTS represents that it maintains the experience, expertise, personnel, organization, equipment, and facilities suitable for accreditation as an OSHA Nationally Recognized Testing Laboratory. It also contends that it meets or will meet the criteria of recognition defined in 29 CFR 1910.7.

The four primary criteria for recognition are presented below, along with examples that illustrate how NTS has met each of these criteria.

**Capability**

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review report indicates that NTS has adequate space and utilities to perform the testing required. Security measures are in place to restrict or control access to their facility. The report also indicates that all general test equipment required to perform testing to the test standards requested are available in the laboratory, and that NTS maintains records of repair, routine maintenance, and calibrations. The NRTL QAPs cover the general processes and practices NTS will use for its equipment calibrations, and NTS has detailed procedures for the calibration of specific items of equipment. The application and revisions address personnel qualifications and training, and identify NTS staff involved with product testing, along with a summary of their education and experience. Also, the on-site review report indicates that NTS personnel have the necessary education, training, technical knowledge, and experience specified by their position descriptions. In addition, the review report indicates that the NRTL QM and NRTL QAPs, and NTS' Internal Audit Program are the primary means of quality assurance. The review report also indicates that other aspects of quality assurance will be the individual test procedures and standard

operating procedures. The report further indicates that the engineer assigned to handle the testing for a customer writes a unique procedure for each product that NTS tests in its "non-NRTL" activities, and that this approach may be used for NTS's operations as an NRTL. However, such an approach would not meet the requirement in 29 CFR 1910.7(b)(1) that the NRTL's capability includes "written test procedures." These procedures, like any other procedure, are intended to be a general set of instructions that can be applied to each test, and in this case, steps and methods that recur in examining and testing products. The applicant submitted samples of written test procedures in its original application which illustrate how some requirements of the standard will be verified, but did not address all the requirements of the standard in all cases. NTS will need to develop and/or identify test procedures that will be applicable over the broad range of products that it plans to test and certify as an NRTL. These procedures will need to be in place when OSHA performs its first review of NTS after it has been recognized. The report further indicates NTS has done only partial testing to portions of the test standards, as required for compliance of nuclear facility products and other testing programs. Therefore, OSHA has not yet evaluated the testing and reporting procedures that NTS will utilize for purposes of certifying to a complete test standard, and OSHA needs to investigate this aspect of NTS operations when these procedures are in use.

#### Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The onsite review report indicates that NTS currently applies a mark to components used in the nuclear power industry. The report also mentions that NTS has applied for a registered certification mark that it will use in its operations as an NRTL. NTS will need to obtain approval from the U.S. Patent and Trademark Office for this mark before it can issue any certifications in its capacity as an NRTL. NTS has not listed or labeled any products under the

NRTL Program. Therefore, OSHA has not evaluated the actual listing and labeling procedures NTS will use as an NRTL.

The NRTL QM and NRTL QAPs contain general descriptions of the certification processes that NTS will utilize, along with requirements for the contents of the legal agreements and for processes that will define and control the way NTS implements its certification schemes. They also describe the process for selecting products for evaluation, which may include their purchasing a commercial sample. NTS also submitted a draft of a sample certification agreement. For the certification schemes that NTS proposes to use, it will conduct follow-up inspections of products at least once every three months. The NRTL QAPs also contain more detailed descriptions of the processes to qualify and then audit a manufacturer. According to the on-site review report, NTS plans to utilize the approach it currently uses for its vendor surveillance and audits to perform manufacturer site inspections. The report further indicates that while the programs reviewed during the onsite review were similar to an NRTL follow-up program, NTS has just developed the NRTL follow-up program and OSHA needs to investigate this new program when it is in use. Therefore, OSHA has been unable to evaluate the actual use of the follow-up program.

#### Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

In its original application, NTS states that it performs all testing and certification activities independently of all NTS clients, and that no clients have any significant ownership position in NTS, or any influence on NTS activities. The application further states that NTS employees are not under the influence or control of manufacturers or suppliers, and that NTS is not under the influence of any manufacturer or producer of hardware items. NTS also submitted a detailed listing of "beneficial owners" of 5% or more of NTS common stock.

NTS could conceivably perform the design and engineering services previously mentioned for manufacturers or vendors of the products covered within the scope of the test standards for which OSHA has recognized NTS. Financial considerations could give these outside parties significant influence on the results of the NTS

testing and certification activities. For example, assume that NTS sells design services for products to a manufacturer, and certifies the same or different products for that manufacturer. Such a relationship would violate the requirement for complete independence of an NRTL.

Since NTS is a public company, it is also conceivable that manufacturers or vendors could acquire ownership of NTS. If such an acquisition were to control or influence NTS in its testing and certification activities, it would no longer be "completely independent" with respect to those manufacturers or vendors of the products covered within the recognized scope of NTS.

#### Credible Reports/Complaint Handling

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

The NRTL QAPs contain the steps that the laboratory will use to set up and inspect test apparatus, and record test data. Regarding the handling of complaints and disputes, the NRTL QAPs describes some of the process steps to handle a complaint either from a manufacturer or user of the products NTS certifies.

#### Standards

NTS seeks recognition for testing and certification of products to determine compliance with the following twelve (12) test standards, and OSHA has determined the standards are "appropriate," within the meaning of 29 CFR 1910.7(c):

- ANSI/UL 465 Central Cooling Air Conditioners
- ANSI/UL 484 Room Air Conditioners
- ANSI/UL 489 Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
- ANSI/UL 499 Electric Heating Appliances
- ANSI/UL 1012 Power Supplies
- ANSI/UL 1459 Telephone Equipment
- ANSI/UL 1778 Uninterruptible Power Supply
- UL 1863 Communication Circuit Accessories
- ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment
- UL 2601-1 Medical Electrical Equipment, Part 1: General Requirements for Safety
- UL 3101-1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
- UL 3111-1 Electrical Measuring and Test Equipment, Part 1: General

#### Programs and Procedures

As previously mentioned, National Technical Systems has applied for all nine programs and procedures, based

upon the criteria detailed in OSHA's March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). These programs and procedures (collectively, programs) may be used by an NRTL to control and audit, but not actually to generate, the data relied upon for product certification. An applicant, when recognized as an NRTL, is automatically accredited for the first, or basic, program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product.

Based on the recommendation of the staff of the NRTL Program, the programs that OSHA proposes to recognize for NTS are limited to the following:

1. Program 4: Acceptance of witnessed testing data.
2. Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme.
3. Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

The on-site review report indicates that NTS appears to meet the requirements for use of the above programs and procedures. At this time, OSHA does not intend to approve the other programs that NTS requested. NTS must have documented procedures and practices in place providing much greater detail, before OSHA can approve the use of the remaining programs. The NRTL QAPs that are applicable to these programs are, in many cases, minimal in nature, some of which just restate the criteria in the March 9, 1995 notice that must be met. As such, they constitute more policies than procedures. In addition, NTS needs to develop certain experience to obtain approval of the programs involving use of manufacturers to perform tests or evaluations (Programs 5, 6, and 7).

The March 9 notice specifies the need for a confidence-building period with the manufacturer that can only result after NTS has gained experience as an NRTL in certifying products for those manufacturers. An additional consideration is that NTS does not have experience in testing and certification to a complete standard, and may have less opportunity to develop the required experience if it uses others to do these activities. This experience is essential for its continued recognition as an NRTL. Finally, OSHA will need to review the actual implementation of certain key aspects of NTS' operations as an NRTL, which, as already noted, were not formally evaluated since they were not yet in place at the time OSHA performed its on-site review of NTS.

### Conditions

As described above, OSHA has concerns about NTS because it has not had the opportunity to evaluate the actual testing and reporting procedures, and use of the follow-up program, since these have not yet been implemented. OSHA has also identified issues related to the ownership and commercial relationships that could affect the independence of NTS. Unless NTS meets certain conditions imposed by OSHA, it could not be recognized as an NRTL under 29 CFR 1910.7. Also, the proposed NTS approach of developing a unique test procedure for each test makes it difficult for OSHA to evaluate its testing capabilities. OSHA will therefore need to evaluate NTS when it implements the detailed procedures and practices it plans to use to test and certify products as an NRTL, and will conditionally recognize NTS subject to a later assessment of the process once it is in place.

Many of these procedures and practices will be new to NTS. Those that exist or are incorporated in the NRTL QAPs may need to be supplemented by more detailed specific instructions on the many activities involved in testing and certifying products to a complete test standard.

This approach is consistent with OSHA's past recognition of other organizations as NRTLs who, like NTS, were mainly experienced in testing products to specific customer or partial test standard requirements. OSHA indicated in the **Federal Register** notice for those recognitions that the procedures to be used were new to the organization (for example, see 56 FR 28581, 6/21/91; and 58 FR 15511, 3/23/93). OSHA will require NTS to take steps to correct any deficiencies that OSHA may find during its initial follow-up review. If deficiencies are not corrected, then OSHA will commence its process to revoke the recognition of the NRTL.

Regarding independence, NTS has or could potentially have relationships that eliminate its complete independence, and OSHA intends to impose conditions to assure this will not occur. Such relationships may be the normal result of the NTS ownership structure, and its financial and commercial transactions. However, as an NRTL, those relationships could adversely influence the results of its testing and certification processes, such that NTS may no longer be, intentionally or not, impartial and objective. As a result, NTS would no longer be completely independent, which is a requirement fundamental to assuring that the products tested and

certified are safe for use by workers and employers.

Therefore, OSHA intends to impose the following conditions in the final notice to officially recognize NTS as an NRTL. These conditions apply solely to its operations as an NRTL, and will be in addition to all other conditions that OSHA normally imposes in its recognition of an organization as an NRTL.

1. Within 30 days of certifying its first products under the NRTL Program, NTS will notify the OSHA NRTL Program Director so that OSHA may review NTS' adoption and implementation of its NRTL Quality Manual, NRTL Quality Assurance Procedures, and other procedures from other NTS Program areas for use in the NRTL Program.

2. NTS shall not test and certify products for a client to whom it primarily sells design or similar services.

3. NTS shall not test and certify products for a client if an owner of NTS also owns more than two percent of that client's stock.

### Preliminary Finding

National Technical Systems has addressed the criteria that must be met for recognition as an NRTL, as summarized above. In addition, the OSHA staff has performed an on-site review of NTS' Acton facility and investigated the processes, procedures, practices, and general operations used by the laboratory. Discrepancies noted by the review team during the on-site review were addressed by NTS following the on-site evaluation, as detailed above, and are included in the on-site review report (see Exhibit 3).

Following a review of the application file and the on-site review report, the NRTL Program staff has concluded that the applicant be granted recognition as a Nationally Recognized Testing Laboratory for the Acton, Massachusetts facility, subject to the conditions described above. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary hereby makes a preliminary finding that National Technical Systems' Acton, Massachusetts facility can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the 12 standards and the 3 programs noted above with the conditions to be applied as noted.

All interested members of the public are invited to supply detailed reasons and evidence as to whether National Technical Systems has met the requirements of 29 CFR 1910.7 for

recognition as a Nationally Recognized Testing Laboratory. Pertinent written documents and exhibits must be received no later than the last date for comments (see **DATES** above), and submitted to the address provided above (see **ADDRESS**). Copies of the NTS application, amendments and supplements to the application, the on-site review report, and all submitted comments, as received, are available for inspection and duplication (under Docket No. NRTL-1-98) at the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (NTS) satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with 29 CFR Section 1910.7, and Appendix A to that section.

Signed at Washington, D.C. this 18th day of August, 1998.

**Charles N. Jeffress,**

*Assistant Secretary.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. NRTL-2-98]

#### NSF International, Application for Recognition

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the application of NSF International for recognition as an NRTL under 29 CFR 1910.7, and presents the Agency's preliminary finding.

**DATES:** Comments submitted by interested parties must be received no later than October 27, 1998.

**ADDRESS:** Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 219-7056.

#### SUPPLEMENTARY INFORMATION:

##### Notice of Application

Notice is hereby given that NSF International (NSF) has applied to the Occupational Safety and Health Administration (OSHA), pursuant to 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (NRTL). The application covers testing and certification of the equipment or materials, and use of the programs and procedures, listed below.

The address of the laboratory covered by this application is: NSF International, 3475 Plymouth Road, Ann Arbor, Michigan 48105.

##### Background

According to the applicant, NSF International (NSF) is headquartered in Ann Arbor, Michigan, and was incorporated in that state in 1990. The applicant also states it has been a not-for-profit developer of test standards and a third party certifier for more than fifty years. The Bylaws of NSF state that it "shall be operated exclusively for charitable, educational, and scientific purposes and for the purpose of testing for public safety \* \* \* as a nonprofit corporation." The Bylaws and other documentation submitted by NSF indicate that NSF develops "third-party consensus standards" covering the areas of safety, health, sanitation, and environment. The application further documents that NSF currently engages in conformity assessment activities connected with several certification programs that it operates in those areas.

NSF submitted an application for recognition, dated July 6, 1997 (see Exhibit 2A), and later submitted three amendments. On July 29, 1997, NSF amended its application to add two additional test standards to the proposed scope of recognition (see Exhibit 2B). On December 9 and 16, 1997, NSF amended its application to request additional programs and procedures, and to replace one test standard it previously requested (see Exhibits 2C and 2D).

The applicant submitted a number of documents in support of its application. These documents include its Corporate Quality Assurance Manual (CQAM) and its Laboratories Quality Assurance Manual (LQAM). The CQAM describes the overall quality system used at NSF, and includes an explanation and reference to the Standard Operating Procedures (SOPs), which "detail the actions necessary to accomplish a particular task." The LQAM provides detailed policies, processes, and steps for the activities performed by NSF's laboratories. The LQAM also references

the more specific SOPs. The CQAM and LQAM provide part of the overall framework that will govern many of the activities NSF would have to perform as an NRTL. NSF also submitted an example of an application and contract for its certification services, and the detailed Certification Policies that form part of this contract (see Exhibit 2E). These items are applicable to all products certified by NSF, and will be applicable to the certification of products for electrical safety.

In summary, NSF represents that it maintains the experience, expertise, personnel, organization, equipment, and facilities suitable for accreditation as an OSHA Nationally Recognized Testing Laboratory. It also contends that it meets or will meet the criteria of recognition defined in 29 CFR 1910.7.

The four primary criteria for recognition are presented below, along with examples that illustrate how NSF has met each of these criteria.

##### Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The LQAM provides overall descriptions of NSF's laboratories, and details facilities and equipment available in each of these laboratories. The applicant contends it has security measures in place to restrict or control access to its facility, to sections within its facility, and to confidential information. The LQAM contains a listing or references to listings of equipment available for each laboratory. It also addresses the maintenance program for equipment, the calibration procedures and frequency, and the types of records maintained for or supportive of many laboratory activities. NSF addresses testing, sample handling, sampling, and test methods in its CQAM or its LQAM. It also has documented the specific equipment it plans to use for testing to the standards it has requested for recognition.

In addition, NSF has submitted for OSHA review samples of the test procedures and evaluation it plans to use. However, the test standard information NSF has submitted indicates that many test procedures it plans to use are not yet in place. As a result, OSHA has not performed an actual evaluation of the specific testing, evaluation and reporting methods that