

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
National Garment Co (Comp) .....	St. Louis, MO .....	11/20/1998	NAFTA-2,750.	Children's Clothing.
AR Accessories Group, Inc (Wrks) .....	West Bend, WI .....	11/20/1998	NAFTA-2,751.	Retail Selling of Wallets.
Asarco, Inc () .....	Omaha, NE .....	11/20/1998	NAFTA-2,752.	Refined Lead, Bismuth.
Nortel (Wrks) .....	Nashville, TN .....	11/20/1998	NAFTA-2,753.	Repair Telephones.
AG-Chem Equipment Co (Wrks) .....	Jackson, MN .....	11/17/1998	NAFTA-2,754.	Farming Spray Equipment.
J.M. Huber Corp (Comp.) .....	Houston, TX .....	11/23/1998	NAFTA-2,755.	Oil and Gas Exploration and Production.
Anvil Knitwear, Inc (Wrks) .....	Whiteville, NC .....	11/24/1998	NAFTA-2,756.	T-Shirts.
Wundles (Wrks) .....	Williamsport, PA .....	11/30/1998	NAFTA-2,757.	Daywear, vests, camisoles, underpants.
Siebe (Co.) .....	Kendallville, IN .....	11/30/1998	NAFTA-2,758.	Infinite switches and pressure switches.
Tokyo Electron Oregon (Wrks) .....	Hillsboro, OR .....	11/20/1998	NAFTA-2,759.	Silicon wafers.
International Paper (AWPPW) .....	Gardiner, OR .....	11/24/1998	NAFTA-2,760.	Linerboard.
Bend Door (Wrks) .....	Bend, OR .....	11/24/1998	NAFTA-2,761.	Door parts.
Tycom (Wrks) .....	Adden Hills, MN .....	12/01/1998	NAFTA-2,762.	Drill bits.

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 BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

[Docket No. NRTL-1-98]

**National Technical Systems, Recognition as an NRTL**

**AGENCY:** Occupational Safety and Health Administration; Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's final decision on the application of National Technical Systems for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition becomes effective on December 10, 1998 and will be valid until December 10, 2003, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, 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, DC 20210, or phone (202) 693-2110.

**SUPPLEMENTARY INFORMATION:**

**Notice of Application**

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of National Technical Systems (NTS) as a Nationally Recognized Testing Laboratory, for testing and certification of the equipment or materials, and use of the site and the supplemental programs, listed below. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

NTS applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required notice in the **Federal Register** (63 FR 46079, 8/28/98) to announce the application. The notice included a preliminary finding that NTS could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by October 27, 1998. OSHA received no comments concerning this application for recognition.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket

Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL-1-98, the permanent record of public information on the NTS recognition.

The address of the testing facility (site) that OSHA recognizes for NTS is: National Technical Systems, 533 Main Street, Acton, Massachusetts 01720.

**Background on the Applicant and the Application**

National Technical Systems, according to its application, is headquartered in Calabasas, California, and became established in 1963. Also, NTS became a public company in 1968 and is listed in the NASDAQ exchange. The applicant asserts it is an independent testing, engineering, research, and support services organization, with more than 30 years of product testing experience. NTS also states that 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). In this notice, these two documents are 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 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). Through these amendments, NTS reduced the number of test standards it requested for recognition to 13. Also, it 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, under which an NRTL may use outside parties to perform some of the activities involved in testing and certification of products. OSHA's approval to use any of these programs is based on criteria first detailed in a March 9, 1995 **Federal Register** notice (60 FR 12980). 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). It also eliminated one test standard since the standards organization had withdrawn it. As a result, the recognition covers 12 test standards.

According to the applicant, 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.

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

#### **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.

According to the on-site review report, NTS has adequate space and utilities to perform the testing required. It has security measures in place to restrict or control access to its facility. The report also indicates that NTS has, available in the laboratory, all general test equipment required to perform testing to the test standards requested, and that it 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.

According to the review report, the NRTL QM and NRTL QAPs, and NTS' Internal Audit Program are the primary means of quality assurance. Other aspects of quality assurance will be the individual testing procedures and standard operating procedures. Also, the report 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 the NTS operations as an NRTL. Such an approach would not meet the requirement in 29 CFR 1910.7(b)(1) for "written testing procedures," which, like any other procedure, are intended to be a general set of instructions that are applicable to each test. These procedures must cover the

steps and methods that recur in examining and testing products.

The review report indicates that NTS has done only partial testing to portions of the test standards, as required for compliance of nuclear facility products and other testing programs. The applicant submitted samples of written testing procedures in its original application. These procedures 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 written testing 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. 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 Programs**

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.

According to the onsite review report, 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 must 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. They also contain policies for the contents of the legal agreements, and outline the processes that will define and control the way NTS implements its certification schemes. These documents also include a description of the process for selecting products for evaluation,

which may include NTS 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 the manufacturing facilities 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 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 the process reviewed during the onsite review was similar to an NRTL follow-up program. However, NTS has just developed its 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 NTS 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 its design and engineering services, previously mentioned, for manufacturers or vendors of the products it may test and certify as an NRTL. 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 NRTL

testing and certification activities, it would no longer be "completely independent" with respect to those manufacturers or vendors.

#### **Creditable 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.

#### **Supplemental Programs**

As previously mentioned, National Technical Systems applied for recognition to use the supplemental programs, based upon the criteria first detailed in a March 9, 1995 **Federal Register** notice (60 FR 12980). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition automatically includes 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 recognizes for NTS are limited to the three listed under Final Decision and Order.

The on-site review report and the application indicate that NTS meet the criteria for use of three supplemental programs. At this time, OSHA does not intend to recognize NTS for the other programs it 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 recognition to use 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 reviews of NTS.

#### **Additional 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 cannot retain its recognition as an NRTL under 29 CFR 1910.7.

OSHA's approach in imposing conditions is consistent with 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 audit of the NRTL. If deficiencies are not corrected, then OSHA will commence its process to revoke the recognition of the NRTL.

Many procedures and practices for its NRTL testing and certification processes 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. 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.

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 has included appropriate conditions below to address its concerns. These conditions apply solely to the NTS operations as an NRTL, and are in addition to the other conditions listed below, which OSHA normally imposes in its recognition of an organization as an NRTL.

#### Final Decision and Order

The NRTL Program staff has examined the complete application, the amendments to the application, the supporting documentation, and the OSHA staff finding including the on-site review report, dated December 22, 1997 (see Exhibit 3). Based upon this examination, OSHA finds that National Technical System has met the requirements of 29 CFR 1910.7 to be recognized as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, National Technical System is hereby recognized as a Nationally Recognized Testing Laboratory, subject to the limitations and conditions listed below.

#### Limitations

This recognition is limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. OSHA's recognition is further limited to the site listed above, and to the use of the following 12 test standards for the testing and certification of products included within the scope of these standards. OSHA has determined these 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

The designations and titles of the above standards were current at the time of the preparation of the notice of the preliminary finding.

This recognition is also limited to the use of the following 3 supplemental programs. Recognition of these programs is contingent on continued adherence to the criteria for their use.

Program 4: Acceptance of witnessed testing data

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission

Certification Body (IEC-CB) Scheme  
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

#### Conditions

National Technical Systems must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

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;

NTS must not test and certify products for a client to whom it primarily sells design or similar services;

NTS must not test and certify products for a client if an owner of NTS also owns more than two percent (2%) of that client's stock;

OSHA must be allowed access to NTS' facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If NTS has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

NTS must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, NTS agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

NTS must inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

NTS will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

NTS will continue to meet the requirements for recognition in all areas where it has been recognized; and

NTS will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC, this 2d day of December 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, Recognition as an NRTL

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's final decision on the application of NSF International for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition becomes effective on December 10, 1998 and will be valid until December 10, 2003, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.