

Topics for Informal Stakeholder Meeting
Concerning the Nationally Recognized Testing Laboratory Program

These comments are presented by the Measurement, Control & Automation Association, a not-for-profit trade association whose members are manufacturers and distributors of instrumentation, systems and software used in industrial process control and factory automation. We offer these comments for consideration by OSHA with regard to the topics for discussion at the Stakeholder's Meeting on October 22, 2014 and have, for ease of identification, incorporated our comments in RED related to the individual Topics.

A. Options for Using the Private Sector to Increase the Efficiency of the NRTL Program

OSHA is considering using private-sector accreditation bodies and/or independent contractors to increase the efficiency of the NRTL Program. As a result, OSHA is considering a number of different models to serve this purpose. This subsection of topics presents these models in general terms, and asks specific questions about each of these approaches.

OSHA is not endorsing any of these models at this time. Moreover, OSHA is open to considering other options or models for revising NRTL Program policies and regulations. OSHA invites stakeholders to provide any additional options, models, feedback, or suggestions that may assist OSHA in its decision-making.

TOPICS 1-3 RELATE TO NRTL ACCREDITATION, NOT PRODUCT CERTIFICATION – MCAA EXPRESSES NO OPINION ON THESE PROPOSALS

4. Under 29 CFR 1910.7, an NRTL must have the capability to perform both testing and certification functions. OSHA is considering a modification to the regulation that separates these two functions, thus allowing organizations to apply to the NRTL Program to perform testing only, certification only, or both testing and certification. If OSHA revises the regulation in this manner, it would also plan to use ISO/IEC 17025 and NRTL Program-specific policies to evaluate testing organizations, and ISO/IEC 17065 and NRTL Program-specific policies to evaluate certification organizations. Under this approach, OSHA-recognized testing organizations would submit evaluation and testing results to OSHA-recognized certification organizations, and these organizations would authorize the certification of the product and conduct factory-surveillance on-site assessments.

a. Are you in favor of this approach? Please explain.

YES. IN THE CURRENT MARKET SOME CUSTOMERS REQUIRE THE CERTIFICATION MARK OF A SPECIFIC NRTL WHEN, IN FACT, OTHER NRTL'S ARE RECOGNIZED AND ACCREDITED TO TEST TO THE APPROPRIATE STANDARD. WE BELIEVE THAT THIS OPTION WOULD ALLOW COMPANIES TO SELECT THE APPROPRIATELY RECOGNIZED AND ACCREDITED NRTL TO PERFORM THE REQUIRED TESTING AND HAVE THEIR TEST DATA ACCEPTED BY THE CERTIFICATION BODY. IF MULTIPLE CERTIFICATIONS WERE REQUIRED, THE SINGLE TEST DATA WOULD SUFFICE. THERE IS A SIGNIFICANT CAVEAT TO THIS APPROACH AND THAT IS THAT EACH TESTING NRTL MUST USE THE SAME TESTING STANDARD (WE BELIEVE ONLY ANSI STANDARDS SHOULD BE PERMITTED). THOSE STANDARDS MIGHT NEED TO BE ENHANCED TO BE EVEN MORE SPECIFIC AS TO THE TESTING APPROACH SO THAT THE RESULTS CANNOT BE QUESTIONED. TODAY, IT IS NOT UNCOMMON FOR ONE EXAMINER TO HAVE A DIFFERENT APPROACH AND REJECT THE TEST RESULTS FROM ANOTHER EXAMINER EVEN WITHIN HIS OWN NRTL ORGANIZATION. STANDARDS SHOULD NOT BE OPEN TO BROADLY DIVERGENT INTERPRETATIONS.

b. What are the benefits to this approach?

MANUFACTURERS WOULD BE FREE TO CHOOSE THE NRTL WHICH IS ABLE TO OFFER THE BEST TURNAROUND FOR THE TESTING OF THEIR PRODUCTS. MANUFACTURERS SHOULD BE ABLE TO ESTABLISH BETTER RELATIONSHIPS WITH THE TESTING NRTLs THAT THEY SELECT, ENSURING THAT THEY HAVE FULL ABILITY TO PROVIDE ALL THE DATA THAT WILL BE REQUIRED WITH FEWER SURPRISES IN THE TESTING PROCESS. SIMILARLY, THEY WOULD BE ABLE TO ESTABLISH BETTER RELATIONSHIPS WITH THE CERTIFICATION BODIES WHICH AUDIT THEIR MANUFACTURING PROCESS.

c. What are the weaknesses to this approach?

NRTLs ARE LIKELY TO FEEL THAT THERE WILL BE TOO MUCH COMPETITION AND THAT NRTL RECOGNIZED TESTING ORGANIZATIONS WITH LESSER CAPABILITIES COULD BE ALLOWED TO TEST PRODUCTS AND LEAD TO LOWER CONFORMITY TO STANDARDS. IT WILL BE INCUMBENT UPON OSHA TO MAINTAIN THE HIGHEST STANDARDS IN CERTIFYING NRTLs FOR TESTING AND TO ENSURE THAT THE STANDARDS TO WHICH THEY TEST PRODUCTS ARE NOT OPEN TO IMPROPER INTERPRETATION. WE DO NOT BELIEVE THAT THIS SHOULD OPEN THE FLOODGATES TO A HOST OF INFERIOR TESTING LABORATORIES TO GAIN THE NRTL IMPRIMATEUR.

d. What resources and/or costs would be associated with this approach? Please explain.

CLEARLY MANUFACTURERS WILL PAY ONE FEE TO A TESTING NRTL AND ANOTHER FEE TO A CERTIFYING NRTL. IT COULD IN THE LONG RUN BE MORE EXPENSIVE IN FEES BUT WE BELIEVE THAT THE TURNAROUND TIME IN THE TESTING PORTION OF THE PROCESS WILL LIKELY GET PRODUCTS TO MARKET MUCH MORE QUICKLY WHICH SHOULD MORE THAN COMPENSATE FOR POTENTIALLY HIGHER COSTS DUE TO SEPARATING THE TESTING FROM THE CERTIFYING PROCESS.

IT IS NOT GOING TO BE POSSIBLE TO CHANGE A LARGE NUMBER OF STANDARDS TO BE SO TIGHT THAT THERE IS ZERO ROOM FOR INTERPRETATION. THERE WILL ALWAYS BE DIFFERENCES OF OPINION BETWEEN NRTL'S ON HOW TO INTERPRET SOME PART OR ALMOST ANY STANDARD, EVEN WITH A CONCERTED EFFORT TO DEFINE THE TEST AS FINELY AS POSSIBLE. WE BELIEVE THE EFFORT TO DEFINE THE TESTS SHOULD BE MADE.

MCAA SUPPORTS ADOPTION BY ANSI OF PROPRIETARY STANDARDS (SUCH AS UL 508) AND REQUESTS THAT A REQUIREMENT BE ADOPTED THAT ALL STANDARDS BE REFERRED TO BY THE ANSI NOMENCLATURE (RATHER THAN A PROPRIETARY STANDARD IDENTIFICATION) TO HELP USERS UNDERSTAND THAT THE STANDARD IS NOT TIED TO A SPECIFIC NRTL.

e. Would there be any cost savings associated with this approach? Please explain.

WE DO NOT BELIEVE THE MANUFACTURERS WILL EXPERIENCE COST SAVINGS ALTHOUGH IT IS POSSIBLE THAT THE TESTING NRTLs MAY BE MORE COMPETITIVE FOR THE TESTING CONTRACTS. GIVEN THE CALIBER OF TEST LAB IS MAINTAINED, WE DO NOT PROJECT SIGNIFICANTLY LOWER COSTS. ONCE ESTABLISHED, WE BELIEVE THIS WILL GENERATE COMPETITION AMONG THE NRTLs WHICH WE VIEW AS A POSITIVE IMPROVEMENT.

f. If OSHA were to revise its regulation as described above, OSHA also may revise its regulation to require certification organizations authorized under the NRTL Program to accept test results from any testing organization authorized under the NRTL Program. Are you in favor of such a requirement? If OSHA had to adopt this requirement to successfully implement this model, would you be in favor of this requirement? Please explain.

EMPHATICALLY. MCAA HAS LONG ARGUED THAT TEST DATA FROM ANY RECOGNIZED AND

ACCREDITED NRTL MUST BE ACCEPTED BY OTHER NRTLs. MOREOVER, CERTIFICATES ISSUED UNDER A GIVEN NRTL SCOPE OF RECOGNITION SHOULD BE RECOGNIZED BY OTHER NRTLs UNDER THE SAME SCOPE OF RECOGNITION. MANY TEST LABS CURRENTLY RECOGNIZE AND ACCEPT THE TEST DATA OF OTHER ORGANIZATIONS. SOME MAJOR NRTLs REFUSE TO DO SO WHICH CAUSES MAJOR COST AND TIME DELAYS WHEN A SPECIFIC CERTIFICATION IS REQUIRED BY A CUSTOMER. WE VIEW SUCH ACTION COUNTER TO THE PURPOSE OF THE NRTL SYSTEM WHICH WAS ESTABLISHED TO ENSURE THAT ONLY QUALIFIED LABORATORIES COULD PERFORM PRODUCT TESTING AND CERTIFICATION. AT THE SAME TIME, WE RECOGNIZE THAT THERE ARE OFTEN MORE THAN ONE STANDARD THAT CAN BE APPLIED TO A SPECIFIC PRODUCT (SOME NRTLs ARE ALSO STANDARDS DEVELOPERS AND INDICATE THAT THEIR OWN STANDARDS ARE MORE ROBUST). STANDARDS SHOULD BE HARMONIZED TO ANSI AND THEY SHOULD BE AMPLIFIED TO BE AS SPECIFIC AS POSSIBLE ABOUT THE TESTS TO VERIFY CONFORMANCE.

B. Certification Marks for the NRTL Program

Under OSHA's current policy regarding certification marks, an NRTL is in compliance with the NRTL Program regulation, 29 CFR 1910.7, if it has a registered certification mark issued by the U.S. Patent and Trademark Office (USPTO) or by a national or international body under a registration system that requires ownership of the mark(s) and that is equivalent to the USPTO system of registration. Additionally, the NRTL can only use this certification mark(s) for its NRTL activities. OSHA is considering revising its policy to better account for ownership and use of certification marks for NRTL activities. **USE OF THE MARKS IS NRTL-CENTRIC; MCAA WOULD HAVE NO OPINION EXCEPT TO ENCOURAGE WHATEVER SYSTEM IS ADOPTED IMPROVE THE CLARITY OF MARKS TO THE CUSTOMER.**

5. OSHA is considering making the following policy change: If an entity wholly owned by an NRTL owns a certification mark, and the NRTL uses that mark for its NRTL certifications, the entity owned by the NRTL could no longer use the mark for any purpose, including marketing or advertisement.
 - a. What impact would this policy change have on NRTLs? Please explain.
 - b. What resources and/or costs would be associated with this approach? Please explain.
6. OSHA is considering making the following policy change: Any mark owned by an NRTL, and used for its NRTL certifications, would need to be clearly distinguishable from the mark of another entity owned or affiliated with the NRTL (e.g., a mark used by an entity that is not a recognized NRTL would need to be clearly distinguishable from the mark used by the entity recognized as an NRTL, and a product certified by a non-NRTL could not appear to be a product certified by the NRTL).
 - a. What impact would this policy change have on NRTLs? Please explain.
 - b. What resources and/or costs would be associated with this approach? Please explain.
7. Under current OSHA policy, NRTLs need not add a unique identifier to their certification mark to signify work conducted under the NRTL Program and compliance to particular product-safety test standards (i.e., similar to the "C" mark for Canada). Some NRTLs voluntarily include the acronym "NRTL" with their regular certification marks. Under a policy change OSHA is considering, each NRTL would need to add a unique identifier to its certification mark to signify testing and certification conducted under the NRTL Program.
 - a. Are you in favor of requiring the NRTLs to add a unique identifier to their certification mark? Please explain.

MCAA HAS LONG SUPPORTED THE NOTION OF A SINGLE MARK TO INDICATE CONFORMITY TO

APPROPRIATE STANDARDS. WE ARE CONCERNED THAT THE MULTIPLICITY OF MARKS IS CONFUSING TO THE CUSTOMER AND DOES NOT HELP THEM UNDERSTAND THAT THE PRODUCT IS SAFE FOR THE USE INTENDED. THE NRTL SYSTEM IS NOT WIDELY UNDERSTOOD BY THE CONSUMING PUBLIC WHETHER INDIVIDUALS BUYING ELECTRICAL APPLIANCES OR PLANTS PURCHASING INSTRUMENTATION AND CONTROL SYSTEMS SOLD BY OUR MEMBERS. WE SUPPORT EVERY EFFORT TO MAKE THE FACT OF PRODUCT SAFETY TESTING AND CERTIFICATION TRANSPARENT TO CUSTOMERS AND TO REMOVE EVERY BARRIER TO MARKET WHICH EXISTS WHERE A CUSTOMER BELIEVES (USUALLY WRONGLY) THAT THEY MUST LOOK FOR A SPECIFIC CERTIFICATION MARK FROM A SPECIFIC TESTING LABORATORY. NRTLs WHICH WRITE THEIR OWN TESTING STANDARDS AND MAY HAVE AN INSURANCE ARM MAY BE RELUCTANT TO PRESENT AN EQUAL ACCEPTANCE OF OTHER EQUIVALENT NRTL CERTIFICATIONS. ANY CHANGES TO THE CERTIFICATION MARK PROCESS SHOULD BE TO WORK TOWARD A SINGLE CERTIFICATION MARK.

b. What resources and/or costs would be associated with this approach? Please explain.

ASIDE FROM THE PHASE-IN PERIOD AND EDUCATIONAL EFFORTS, NO SIGNIFICANT NEW COSTS ARE APPARENT.

c. OSHA is considering delaying the effective date of this policy change for 2 years after it finalizes the policy change. Are you in favor of delaying the effective date of this policy change? If so, are you in favor of a 2 year delay? Please explain.

MCAA BELIEVES THAT EDUCATING THE CUSTOMER BASE IS AN IMPERATIVE IN THIS PROCESS. IF A BRANDED "NRTL-APPROVED" OR, BETTER, A SINGLE NRTL-APPROVED MARK IS BROUGHT INTO PLAY, OSHA, THE NRTLs AND MANUFACTURERS WILL ALL NEED TO EDUCATE THE CONSUMER ABOUT THE NRTL PROCESS AND HOW THE MARKS INDICATE THAT THE PRODUCT THEY ARE ABOUT TO USE IS SAFE FOR THE USE INTENDED. THIS LIKELY IS MORE THAN A TWO YEAR PROCESS; WE SUPPORT AS FAST A TIMELINE AS CAN BE JUSTIFIED IN EDUCATING THE PUBLIC RECOGNIZING THE NEED FOR A PHASED-IN PRODUCT LABELING APPROACH.

C. Factory Inspections

8. Under OSHA's current policy for factory inspections (OSHA Instruction CPL 01-00-003, NRTL Program Policies, Procedures, and Guidelines, App. C.III.A, "*NRTL Follow-up Inspections at Manufacturing Facilities, Frequency of Inspections*" (Dec. 2, 1999)), NRTLs need to perform more frequent inspections at facilities where heightened safety concerns exist regarding the manufacture of products certified by the NRTLs. As outlined in the existing policy, an NRTL needs to perform no fewer than four (4) inspections per year at facilities where heightened safety concerns exist, but needs to perform no fewer than two (2) inspections per year at facilities where heightened safety concerns or similar situations do not exist. OSHA is considering modifying its policy regarding the frequency of inspections to allow each NRTL to adopt its own risk-based approach (1) to determine the frequency with which it performs factory inspections.

a. Should OSHA allow each NRTL to adopt its own risk-based approach to determine the frequency with which it performs factory inspections or should OSHA keep its current policy in which NRTLs must perform a minimum number of inspections per year? Please explain.

MCAA SUPPORTS THE RISK-BASED APPROACH BUT INSIST THAT THERE SHOULD BE A MAXIMUM NUMBER OF INSPECTIONS. WE HAVE ASKED OSHA FOR AN ANNUAL AUDIT WHERE ISO QUALITY PROGRAMS ARE IN PLACE AND WHERE THE HISTORICAL PERFORMANCE OF THE MANUFACTURER HAS BEEN ESTABLISHED. ALLOWING NRTLs TO SET THE FREQUENCY AT WILL COULD RESULT IN MORE FREQUENT INSPECTIONS WHICH ARE UNWARRANTED. WE RECOGNIZE THAT SOME NRTLs MAY SEE LESS FREQUENT AUDITS AS A LOSS TO POTENTIAL

INCOME. THE COST TO THE MANUFACTURER IS NOT FOUND IN THE FEES THAT ARE CHARGED FOR THE AUDITS BUT THE INTERRUPTION TO THE MANUFACTURER FACILITY BY AUDITS BY A VARIETY OF NRTLs, EVEN DUPLICATIVE AUDITS FOR THE SAME PRODUCT WHICH HAS HAD TO BE CERTIFIED BY A NUMBER OF DIFFERENT NRTLs TO SATISFY CUSTOMER REQUIREMENTS (AN ISSUE THAT WOULD BE SOLVED IF PRODUCTS CAN BE CERTIFIED BY FEWER NRTLs AS IN THE PROPOSAL A4.

- b. What resources and/or costs would be associated with allowing NRTLs to adopt their own risk-based approach to determine the frequency with which they perform factory inspections? Please explain.

MANUFACTURERS ALREADY KEEP APPROPRIATE RECORDS FOR ISO 9001 QUALITY CERTIFICATIONS WHICH WE BELIEVE SHOULD BE A KEY FACTOR IN REDUCING AUDIT FREQUENCY. THEY CAN MAINTAIN RECORDS ON THE RESULTS OF AUDITS TO ESTABLISH THEIR HISTORY; NRTLs CAN SHARE THAT AUDIT HISTORY INFORMATION AS WELL TO ESTABLISH THE RISK ASSOCIATED WITH EITHER A SPECIFIC MANUFACTURER OR A SPECIFIC PRODUCT OR PRODUCT LINE.

9. Under OSHA's current policy for factory inspections (OSHA Instruction CPL 01-00-003, NRTL Program Policies, Procedures, and Guidelines, App. C.III.B, "*NRTL Follow-up Inspections at Manufacturing Facilities, Policies and Procedures for Inspections*" (Dec. 2, 1999)), NRTLs need to determine the specific activities to undertake in performing each inspection, and document these activities. However, follow-up inspections activities (but not necessarily every inspection) need to at least include or address activities specified in the policy. OSHA is considering modifying its policy regarding factory inspections, and seeks input on the following questions:
 - a. Are you in favor of OSHA standardizing inspection content and processes for factory inspections? For example, should OSHA specify the activities NRTLs need to perform during each factory inspection and delineate how documentation should occur? Please explain.

HAVING CLARITY AND REPEATABILITY IN ALL AUDIT PROCESSES WILL GREATLY REDUCE THE EFFORT THAT MANUFACTURERS HAVE TO PUT FORTH TO SATISFY SPECIFIC NRTLs OR SPECIFIC INSPECTORS. DOCUMENTATION ONCE PREPARED CAN BE SHARED WITH ALL AUDITORS.

- b. Are you in favor of OSHA developing forms, with stakeholder involvement, for NRTLs to use during factoring inspections? Please explain.

AS IN A ABOVE, STANDARDIZATION OF AUDIT INSPECTIONS WILL REDUCE THE TIME REQUIRED TO PREPARE FOR SAME. MCAA SUPPORTS A STANDARDIZATION IN THE PROCESS.

MANUFACTURERS MUST BE INTIMATELY INVOLVED IN THE DEVELOPMENT OF SUCH FORMS.

- c. What resources and/or costs would be associated with the modifications addressed in questions (a)-(c) above for your organization? Please explain.

STAFF RESOURCES TO PREPARE FOR AUDITS WILL BE GREATLY REDUCED WITH THE CLARITY AND REPEATABILITY OFFERED THROUGH A STANDARDIZED AUDIT PROCESS. THIS ASSUMES THAT THE STANDARDIZATION WOULD SET GOOD LEVELS OF EXPECTATION ON BOTH SIDES.

D. Field Inspections

10. Under 29 CFR 1910.7(b)(2)(iii), an NRTL must conduct field inspections to monitor and assure proper use of its identifying mark or labels on products. OSHA is considering eliminating this requirement. Are you in favor of OSHA eliminating this requirement? Please explain.

MCAA OFFERS NO OPINION.

E. Fees

11. OSHA currently requires NRTLs to pay all NRTL Program fees in U.S. dollars by check or money order. OSHA is considering allowing NRTLs to make online electronic payments only (e.g., through credit card or ACH), and disallowing payments made by check or money order.
 - a. What impact would such a change have? Please explain
 - b. What resources and/or costs would be associated with this approach? Please explain.

MCAA OFFERS NO OPINION.