

## Allowable certification marks for the NRTL Program

**Background:** Program policy currently requires that each NRTL must have a registered certification mark(s), as evidenced by a certificate of registration 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. An applicant for initial recognition must submit, at the time of application, evidence of such registration or, if not registered, evidence of application for registration of its mark(s) with the USPTO and, within a reasonable time after applying for recognition, evidence of registration with the USPTO. This current policy does not explicitly require ownership of the mark, only that the NRTL must “have” a registered mark. As a result, the program has been flexible and allowed certain NRTLs to share one certification mark, but has no policy to allow such cases, or, generally, to address cases when the NRTL wishes to use a mark that it has not registered. Program policy also does not address cases when NRTLs want to use different marks because they acquire, or are acquired by, another entity. In general, OSHA cannot allow NRTLs to use the mark of a non-NRTL, or a mark that would indicate that a non-NRTL is recognized under the program.

**Proposed Updated Policy:** An NRTL must implement “control procedures for identifying” products it has certified, as prescribed by 29 CFR 1910.7(b)(2). As part of meeting this requirement, an NRTL would have the following:

1. A registered certification mark(s), as evidenced by a certificate of registration 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. An applicant for initial recognition would submit, at the time of application, evidence of such registration or, if not registered, evidence of application for registration of its mark(s) with the USPTO and, within a reasonable time after applying for recognition, evidence of registration with the USPTO. The USPTO records, or records of a comparable national or international body, must show that the NRTL owns the certification mark. The NRTL may authorize the use of a mark it does not directly own if:
  - a. It is the registered certification mark of another NRTL, these NRTLs agree to use the mark, and OSHA only allows these NRTLs to authorize the mark; or
  - b. It is owned by an entity that the NRTL wholly owns, and that entity no longer authorizes the use of the mark, or OSHA permits that entity to authorize the use of the mark only for the NRTL’s certification.

**Note:** This document is an early draft of requirements OSHA may ask NRTLs and NRTL applicants to follow if OSHA revises its NRTL certification mark policy. OSHA intends that the regulated community use this draft summary solely to get an idea of the general direction OSHA may be heading in terms of its policy. The regulated community should not rely on the draft summary for any other purpose, and should not assume that any of the draft requirements would be implemented, or, that if a worksheet or process is implemented, that it would be in the form, or even contain identical substantive material, as that contained in the draft summary. OSHA is still developing its thoughts on a new certification mark policy, and views its sharing of the draft summary with the regulated community as one step in that process. The draft summary has no legal effect, nor is it an expression of OSHA policy.

2. Any mark owned by an NRTL, and used for its NRTL certifications, would need to be clearly distinguishable from the mark of another entity; e.g., the mark must not indicate that an entity that is not an NRTL is recognized by OSHA, or that a product certified by a non-NRTL is certified by the NRTL. In addition, the NRTL would:
  - a. Use only this certification mark(s) for its NRTL activities, and
  - b. Ensure this certification mark(s) is applied to each unit, or if not feasible, to the smallest package of the products it has certified; and... (same as the current remaining policy)

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