

Draft Summary for Topic on NRTL Independence

The Nationally Recognized Testing Laboratory (NRTL) “independence requirement,” 29 CFR 1910.7(b)(3) requires NRTLs to be “completely independent of employers subject to the tested equipment requirements, and of any manufacturer or vendors of equipment or materials being tested for this purpose.” OSHA has an existing policy regarding the independence requirement. See OSHA Instruction CPL 01-00-003, *NRTL Program Policies, Procedures, and Guidelines*, App. C.V. Pursuant to that policy, “an NRTL must be free from commercial, financial and other pressures that could compromise the results of its testing and certification processes” and “[i]f the NRTL is not free of these pressures, it would not meet the requirements specified under 29 CFR 1910.7(b)(3), and would not obtain or could not retain its recognition unless it complies with the conditions that OSHA may impose.” Furthermore, “[t]hese pressures are presumed to exist if there is a substantial relationship between the NRTL and a supplier [*i.e.*, a manufacturer or vendor] or major user of products that must be certified which could compromise the objectivity and impartiality in determining the results of its testing and certification processes.” A “substantial relationship” includes, but is not limited to, the following:

- A. The NRTL is a supplier or major user of products that an NRTL must certify, or is affiliated organizationally with such a supplier or major user;
- B. The NRTL significantly finances, invests in, or sells product design, similar services, or products to a supplier or major user;
- C. The NRTL is owned in excess of two percent (2%) by a supplier or major product user, or their major owners;
- D. The NRTL receives significant financing from a supplier or major product user, or their major owners; or
- E. A person holding a substantial position with the NRTL has a significant financial interest in a product supplier or major product user, or is a director or key personnel of either.

OSHA is considering revising this policy to clarify it. For example, OSHA is considering adding a definition of the term “owner” to mean “any individual or entity that owns an NRTL.”¹ OSHA also is considering clarifying those situations in which an NRTL would be out of compliance with the independence requirement. These situations would be consistent with OSHA’s current NRTL independence policy, and may include, but not be limited to, situations in which:

- A. The NRTL or its owner is a manufacturer or supplier of products requiring NRTL approval;
- B. The NRTL or its owner is engaged in consulting or other types of services related to the design of products requiring NRTL approval;
- C. The NRTL or its owner is trade group or association representing manufacturers or suppliers of products requiring NRTL approval;

¹For purposes of this potential policy, an NRTL would mean an NRTL applicant or an existing NRTL.

Note: This draft summary contains concepts OSHA may implement if it revises its NRTL Independence policy. OSHA intends that the regulated community use this draft summary solely to understand 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 OSHA will implement any of the draft requirements, or, if OSHA implements a worksheet or process, that it will be in the form, or even contain identical substantive material, as that contained in the draft summary. OSHA is still developing its concepts on a new Independence 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.

- D. A subsidiary of the NRTL or its owner, which is owned in excess of ten percent (10%), is a manufacturer or supplier of products requiring NRTL approval;
- E. An individual responsible for the governance of the NRTL or its owner is employed by, or has governance responsibilities with respect to, a manufacturer or supplier of products requiring NRTL approval; or
- F. An employee of the NRTL or its owner has governance responsibilities with respect to a manufacturer or supplier of products requiring NRTL approval.

Like the existing policy, under the policy OSHA is considering, OSHA may, under certain circumstances, impose on an NRTL conditions that would allow the NRTL to comply with the NRTL independence requirement, and, thus, obtain or retain its NRTL recognition, even when situations, such as those listed above, are present. These circumstances would be consistent with OSHA's current NRTL independence policy. However, to help OSHA determine whether an NRTL is in compliance with the NRTL independence requirement, and whether OSHA may impose conditions for granting or maintaining NRTL recognition, OSHA may develop and implement an independence worksheet for NRTLs to complete that would contain a series of questions and information requests. Pursuant to the policy OSHA is considering, each NRTL would complete such a worksheet as part of its application for initial recognition, and, at OSHA's request, at least once during the NRTL's five-year renewal cycle. OSHA also may require NRTLs to submit limited information related to independence as part of NRTL audits, and to alert OSHA when a situation arises that would violate the NRTL independence requirement.

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