

employees not to enter hazardous spaces and other dangerous atmospheres; exchange information regarding hazards, safety rules, and emergency procedures concerning these spaces and atmospheres with other employers whose employees may enter these spaces and atmospheres; post signs prohibiting ignition sources within or near a space that contains bulk quantities of flammable or combustible liquids or gases; ensure that a marine chemist or a U.S. Coast Guard authorized person tests and certifies confined and enclosed spaces and other dangerous atmospheres before performing hot work in these spaces and atmospheres; post this certificate in the immediate vicinity of the hot-work operation while the operation is in progress; and retain the certificate on file for at least three months after completing the operation. These paperwork requirements regulate employee entry into confined and enclosed spaces and other dangerous atmospheres located in shipyards, thereby preventing death or serious injury and illness that may result from employee exposure to the explosive, combustible, and toxic hazards contained in these spaces.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

## III. Proposed Actions

OSHA is proposing to decrease the existing burden-hour estimate, and to extend OMB approval of, the collection-of-information requirements specified by subparts A and B. The Agency is proposing to decrease the current burden-hour estimate from 134,993 hours to 134,819 hours, a total decrease of 174 hours.

*Type of Review:* Extension of a currently-approved information-collection requirement.

*Title:* Subpart A ("General Provisions") and Subpart B ("Confined

and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment") of 29 CFR part 1915.

*OMB Number:* 1218-0011.

*Affected Public:* Business or other for-profit; Federal government; State, local, or tribal governments.

*Number of Respondents:* 300.

*Frequency of Recordkeeping:* On occasion; other (daily).

*Average Time per Response:* Varies from two minutes (.03 hour) to 10 minutes (.17 hour).

*Total Annual Hours Requested:* 134,819.

*Total Annual Costs (O&M):* \$0.

## IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3-2000 (62 FR 50017).

Signed at Washington, DC, on December 6th, 2001.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 01-30729 Filed 12-11-01; 8:45 am]

BILLING CODE 4510-26-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. NRTL95-F-1]

### Nationally Recognized Testing Laboratories, Proposed Revised Fee Schedule

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

**ACTION:** Notice.

**SUMMARY:** This notice provides the proposed revised schedule of fees to be charged by the Occupational Safety and Health Administration (OSHA) to Nationally Recognized Testing Laboratories (NRTLs). As provided under 29 CFR 1910.7, OSHA charges fees for specific types of services if provided to NRTLs. These services are: Processing applications for the initial recognition of an organization as an NRTL, or for expansion or renewal of an existing NRTL's recognition, and performing audits (post-recognition reviews) of NRTLs to determine whether they continue to meet the requirements for recognition. The fees charged to NRTLs first went into effect on October 1, 2000.

Annually, OSHA reviews the costs to the Government of providing the

services to determine whether any changes to the fees are warranted. In this notice, we detail the projected costs of providing those services during calendar year 2002 and the resulting changes in the fees currently being charged. OSHA publishes this notice because it has determined that those changes are warranted.

**DATES:** The new fees shown in this notice will go into effect on January 1, 2002. Written comments must be received on or before December 27, 2001.

**ADDRESSES:** Submit written comments concerning this notice to: Docket Office, Docket NRTL95-F-1, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693-1648. Submit request for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Technical Programs and Coordination Activities at the above address, or phone (202) 693-2110. Our web page includes information about the NRTL Program (see <http://www.osha-slc.gov/dts/otpca/nrtl/index.html> or see <http://www.osha.gov> and select "Programs").

### SUPPLEMENTARY INFORMATION:

#### Notice of Changes in Fees

The Occupational Safety and Health Administration (OSHA) hereby gives notice that it proposes to revise the current fees that the Agency charges to Nationally Recognized Testing Laboratories (NRTLs). OSHA is taking this action as a result of its annual review of the fees, as provided under 29 CFR 1910.7(f). This review has shown that the costs of providing the services covered by the fees have changed sufficiently to warrant revisions to the current Fees Schedule. OSHA promulgated the rule that established the fees on July 31, 2000 (65 FR 46797-46819). The first Fee Schedule, i.e., the fees, went into effect on October 1, 2000. For those unfamiliar with OSHA's Program, we provide a brief overview below.

Many of OSHA's safety standards require equipment or products that are going to be used in the workplace to be tested and certified to help assure they

can be used safely. Products or equipment that have been tested and certified must have a certification mark on them. An employer may rely on the certification mark, which shows the equipment or product has been tested and certified in accordance with OSHA requirements. In order to ensure that the testing and certification is done appropriately, OSHA implemented the NRTL Program. The NRTL Program establishes the criteria that an organization must meet in order to be and remain recognized as an NRTL.

The NRTL Program requirements are set forth under 29 CFR 1910.7, "Definition and requirements for a nationally recognized testing laboratory." To be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of the manufacturers, vendors, and major users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures.

OSHA requires NRTL applicants (i.e., organizations seeking initial recognition as an NRTL) to provide detailed information about their programs, processes and procedures in writing when they apply for initial recognition. OSHA reviews the written information

and conducts an on-site assessment to determine whether the organization meets the requirements of 29 CFR 1910.7. OSHA uses a similar process when an NRTL (i.e., an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits to ensure that the recognized laboratories maintain their programs and continue to meet the recognition requirements.

Currently, there are 18 NRTLs operating over 45 recognized sites in the U.S., Canada, Europe, and the Far East.

**Program Costs**

In preparing the proposed fee schedule presented in this notice, OSHA has evaluated the total resources that it has committed to the NRTL Program overall and has then estimated the costs that are involved solely with the application approval and the periodic review (i.e., audit) functions. It is these costs alone that OSHA seeks to recover through its fees. Personnel costs are the wages, salary, and fringe benefits costs of the staff positions involved and the number of full time equivalent (FTE) personnel devoted to the NRTL approval and review activities. These estimates also include travel and other costs of these activities. The Agency believes these estimates are fair and reasonable.

Based on the total estimated costs and the total estimated FTE, OSHA has

calculated an estimated equivalent cost per hour (excluding travel). This equivalent cost per hour includes both the direct and indirect cost per hour for "direct staff" members, who are the staff that perform the application, on-site, and legal reviews and the other activities involved in application processing and audits. In Figure 1, direct costs are expenses for direct staff members, and indirect costs are expenses for support and management staff, equipment, and other costs that are involved in the operation of the program. Support and management staff consists of program management and secretarial staff. Equipment and other costs are intended to cover items such as computers, telephones, building space, utilities, and supplies, that are necessary or used in performing the services covered by the proposed fees. Although essential to the services provided, these indirect costs are not readily linked to the specific activities involved in application processing and audits and, as explained later, are therefore allocated to the activities based on direct staff costs.

Figure 1 is an itemization of the estimated costs and the equivalent cost per hour calculated. OSHA believes that the costs shown fairly reflect the full cost of providing the services to NRTLs. This figure shows how we calculated the estimated equivalent cost per hour (excluding travel).

FIGURE 1.—CURRENT ESTIMATED ANNUAL COSTS OF NRTL PROGRAM

Cost description	Est. FTE	Aver. cost per FTE (including fringe)	Total est. costs
Direct Staff Costs .....	4.7	\$97,830	\$459,800
Travel .....	na	na	50,000
Indirect Staff & Other Costs .....	na	na	173,050
<b>Total Est. Program Costs .....</b>			<b>582,850</b>
Avg. direct staff cost/hr (\$459,800 ÷ 4.7 FTE × 2,080 hours) .....			47
Equivalent avg. direct staff cost/hr (\$532,850 ÷ 4.7 FTE × 2,080 hours) (includes direct & indirect costs) .....			54.50

<sup>1</sup> This amount consists of \$34,800 of indirect staff costs and \$38,250 for equipment and other costs.

The use of an "equivalent average direct staff cost per hour" measure is a convenient method of allocating indirect costs to each of the services for which OSHA will charge fees. The same result is obtained if direct staff costs are first calculated and then indirect costs are allocated based on the value, i.e., dollar amount, of the direct staff costs, which is an approach that is consistent with Federal accounting standards. To illustrate, assume a direct staff member spends 10 hours on an activity; the

direct staff costs would then be calculated as follows:

$$\text{Direct staff costs} = 10 \text{ hours} \times \$40/\text{hour} = \$400$$

The \$40/hour is the direct staff cost/hour amount shown in Figure 1. The indirect costs would be allocated by first calculating the ratio of indirect costs to direct staff costs, again using the costs shown in Figure 1. This ratio would be as follows:

$$\text{Indirect costs/direct staff costs} = \$76,300/\$352,200 = 0.217$$

Next, the indirect costs would be calculated based on the \$400 estimate of direct staff costs:

$$\text{Indirect costs} = \$400 \times 0.217 = \$87$$

Finally, the total costs of the activity are calculated:

$$\text{Total costs} = \text{direct staff costs} + \text{indirect costs} = \$400 + \$87 = \$487$$

Taking into account the rounding shown in Figure 1, the actual amount calculated would be \$490.

After estimating program costs, the Agency then estimated the time it spends on specific activities or functions. These estimates reflect the Agency's actual experience in performing the services covered by the

fees. OSHA calculated time estimates for each major service category. These categories are: initial applications, expansion and renewal applications, and audits. OSHA further divided some categories into the major activities performed and estimated the staff time and travel costs for each of these

activities. The Agency then calculated the cost of each major activity using the time estimates, the equivalent cost per hour, and the estimate of travel costs. These costs then serve as the basis for the fees later shown in the proposed fee schedule. Examples of the calculations are shown in Figures 2, 3, 4, and 5.

FIGURE 2.—ESTIMATED COSTS FOR INITIAL APPLICATION

Major activity	Average hours	Average cost <sup>1</sup>
Initial Application Review; staff time: (includes review by office and field staff) .....	80	\$4,360
On-Site Assessment—first day:		
Staff time (includes 16 hours preparation, 4 hours travel, 8 hours at site) .....	28	1,526
Travel .....		670
Total (per site, per assessor) .....		2,196
On-Site Assessment—addnl. day:		
Staff time .....	8	436
Travel amount (to cover per diem) .....		70
Total (per site, per assessor) .....		506
Final Report & <b>Federal Register</b> notice; staff time (includes work performed by field staff and office staff) .....	120	6,540

<sup>1</sup> Average cost for staff time equal average hours × equivalent average direct staff cost/hr (\$54.50).

FIGURE 3.—ESTIMATED COST FOR EXPANSION APPLICATION (ADDITIONAL SITE)

Major activity	Average hours	Average cost <sup>1</sup>
Application Review (expansion for site); staff time: (includes review by office and field staff) .....	16	\$870
On-Site Assessment—first day:		
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site) .....	20	1,090
Travel .....		670
Total (per site, per assessor) .....		1,760
On-Site Assessment—addnl. day:		
Staff time .....	8	436
Travel amount: (to cover per diem) .....		70
Total (per site, per assessor) .....		506
Final Report & <b>Federal Register</b> notice; staff time: (includes work performed by field staff and office staff) .....	48	2,616

<sup>1</sup> Average cost for staff time equal average hours × equivalent average direct staff cost/hr (\$54.50).

FIGURE 4.—ESTIMATED COSTS FOR RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION

Major activity	Average hours	Average cost <sup>1</sup>
Application Review (renewal or expansion other than additional site); staff time: (includes review by office and field staff) .....	2	\$109
On-Site Assessment—first day:		
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site) .....	20	1,090
Travel .....		670
Total (per site, per assessor) .....		1,760
On-Site Assessment—addnl. day:		
Staff time .....	8	436
Travel amount: (to cover per diem) .....		70
Total (per site, per assessor) .....		506
Final Report & <b>Federal Register</b> notice; staff time: (includes work performed by field staff and office staff, if there is an on-site assessment) .....	48	2,616
Final Report & <b>Federal Register</b> notice; staff time: (includes work performed by field staff and office staff, if there is no on-site assessment) .....	28	1,526

<sup>1</sup> Average cost for staff time equal average hours × equivalent average direct staff cost/hr (\$54.50).

FIGURE 5.—ESTIMATED COSTS FOR ON-SITE AUDIT

Major activity	Average hours	Average cost*
Pre-site Review; staff time: (field staff only) .....	8	\$436
On-Site Audit—first day:		
Staff time: (includes 4 hours travel) .....	12	654
Travel .....		670
Total (per site, per assessor) .....		1,324
Final Report; staff time: (includes work performed by field staff) .....	16	872
Total costs .....		<sup>2</sup> 2,632

<sup>1</sup> Average cost for staff time equal average hours × equivalent average direct staff cost/hr (\$54.50).

<sup>2</sup> Based on a one day audit. The costs for any additional days are the same as the per-day costs for an assessment.

In deriving the fee amounts shown in the fee schedule, OSHA has generally rounded the costs shown in Figures 2, 3, 4, and 5, up or down, to the nearest \$50 or \$100 amount.

OSHA believes that the amounts shown in the proposed schedule reflect the Agency's current reasonable

estimation of the costs involved for the services rendered to NRTLs. As previously mentioned, OSHA is not attempting to recover the entire cost of the NRTL Program through the proposed fees but only the costs of providing these services.

### What Has Changed

The following table shows the major changes that we have made to the fee schedule, comparing the amount of the current fee to the fee in proposed fee schedule shown later in this notice. Following the table, we explain each of the changes.

TABLE OF MAJOR CHANGES TO FEES SCHEDULE

Description of fee	Current fee amount	Proposed fee amount	Change in fee amount (current minus proposed)
Initial Application Fee .....	\$3,900	\$4,400	\$3,900 – \$4,400 = \$500 (increase).
Expansion Application Fee (additional site) .....	1,550	850	\$1,550 – \$850 = \$700 (reduction).
Expansion Application Fee (additional test standards) .....	1,550	110	\$1,550 – \$110 = \$1,440 (reduction).
Assessment—Initial Application (per site—Submit With Application).	5,900	6,500	\$5,900 – \$6,500 = \$600 (increase).
Review & Evaluation Fee (per 10 standards) (for standards already recognized for NRTLs or not requiring on-site review).	*50	†10	\$500 – \$10 = \$490 per ten standards (reduction).
Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs on-site assessment).	4,300	2,600	\$4,300 – \$2,600 = \$1,700 (reduction).
Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs No on-site assessment). <sup>5</sup>	4,300	1,500	\$4,300 – \$1,500 = \$2,800 (reduction).

\* Per standard.

† Per ten standards.

The current Expansion Application Fee was based upon an NRTL submitting an application that included adding a site and a set of standards to its recognition. Many past expansion applications that we had received were so structured, and the fees were estimated on the basis of receiving similar such applications. However, more recently, NRTLs have opted to submit an expansion application covering a limited number of test standards and did not couple this request with an expansion for an additional site. In addition, the current expansion application fee was estimated on the basis of the NRTL submitting documentation to justify its capabilities for performing testing in an area outside its present scope of recognition. However, if the testing falls within its current capabilities, the application

consists of a letter listing the test standards for which it is seeking recognition. The review of this letter is similar to the review we perform for a renewal request. If OSHA must review substantial documentation, e.g., if the standard falls outside the NRTL's current testing capabilities, or if OSHA has not previously recognized the standard for any NRTL, the current per standard fee of \$50 covers the necessary staff work to grant the expansion request for the particular standard. If on the other hand OSHA must perform minimal review in determining whether to grant the request for a standard, the rate is \$10 for every ten or fewer standards. As a result, we have split the expansion application fee essentially into two fees and adjusted the review and evaluation fee to reflect the work

involved for the scenarios just described.

As shown in Figure 1 and later in the proposed fee schedule, the hourly cost charged for staff time will be \$54.50, or about 11% higher than the hourly rate of \$49 in our current fee schedule, which is available on our web site. The \$49 was based upon staff salary and fringe and other program costs during 1999, whereas the \$54.50 is based upon projected costs during 2002. Therefore, the 11% increase reflects changes that have accumulated over a three year period, or about 3.6% compounded annually, which is consistent with annual salary adjustments provided to Federal employees.

### Fee Schedule and Description of Fees

OSHA proposes the following fee schedule:

TABLE A. FEE SCHEDULE—NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM) FEE SCHEDULE (EFFECTIVE JANUARY 1, 2002) <sup>10</sup>

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
Application Processing .....	Initial Application Review <sup>1</sup> .....	\$4,400.
	Expansion Application Fee (per additional site) <sup>1</sup> .....	\$850.
	Renewal Application Fee or Expansion (other) Application Fee <sup>1</sup> .....	\$110.
	Assessment—Initial Application (per site—Submit with Application) <sup>2,4</sup> .....	\$6,500.
	Assessment—Initial Application (per person, per site—first day—Billed After Assessment) <sup>2,7,8</sup> .....	\$1,500 + travel expenses.
	Assessment—Expansion or Renewal Application (per person, per site—first day) <sup>3,8</sup> .....	\$1,100 + travel expenses.
	Assessment—each addnl. day (per person, per site) <sup>2,3,8</sup> .....	\$440 + travel expenses.
	Review & Evaluation Fee <sup>5</sup> (\$10 per 10 standards if standards already recognized for NRTLs or require minimal review; else \$55 per standard) .....	\$10 per 10 standards or \$55 per standard.
	Final Report/Register Notice—Initial Application <sup>5</sup> .....	\$6,550.
	Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs on-site assessment) <sup>5</sup> .....	\$2,600.
Audits .....	Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs No on-site assessment) <sup>5</sup> .....	\$1,500.
	On-site Audit (per person, per site—first day) <sup>6</sup> .....	\$1,950 + travel expenses.
	On site Audit (per person, per site—each addnl. day) <sup>6</sup> .....	\$440 + travel expenses.
Miscellaneous .....	Office Audit (per site) <sup>6</sup> .....	\$440.
	Supplemental Travel (per site—for sites located outside the 48 contiguous States, including the District of Columbia) <sup>4</sup> .....	\$1,000.
	Late Payment <sup>9</sup> .....	\$55.

**Notes to OSHA Fee Schedule for NRTLs**

1. Who must pay the Application Review Fees, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay the Initial Application Review fee and include this fee with your initial application. If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the Expansion Application Review fee or Renewal Application Review fee, as appropriate, and include the fee with your expansion or renewal application.

2. What Assessment Fees do you submit for an initial application, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay \$6,500 for each site for which you wish to obtain recognition, and you must include this amount with your initial application. We base this amount on two assessors performing a three day assessment at each site. After we have completed the assessment work, we will calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We will calculate this fee at the rate of \$1,500 for the first day and \$440 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares. We will bill or refund the difference between the amount you pre-pair,

\$6,500/site, and this fee. We will reflect this difference in the final bill that we will send to you at the time we publish the preliminary **Federal Register** notice announcing the application.

3. What assessment fees do you submit for an expansion or renewal application, and when must they be paid?

If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we will bill you for the fee after we perform the assessment for the actual staff time and travel costs we incurred in performing the assessment. We will assess this fee at the rate of \$1,100 for the first day and \$440 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares.

4. When do I pay the Supplemental Travel fee?

You must include this fee when you submit an initial application for recognition and the site you wish to recognized is located outside the 48 contiguous U.S. states (including the District of Columbia). The current supplemental travel fee is \$1,000. We will factor in this prepayment when we bill for the actual costs of the assessment, as described in our note #2 above. See note 7 for possible refund of Assessment fees.

5. When do I pay the Review and Evaluation and the appropriate Final Report/Register Notice fees?

We will bill an applicant or an NRTL for the appropriate fees at the time we publish the preliminary **Federal Register** notice to announce the application. We will bill at the rate of \$10 per 10 standards reviewed, or fraction thereof, for those standard and provide appropriate explanation.

6. When do I pay the Audit fee?

We will bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit. We will calculate our fee based on actual staff time and travel costs incurred in performing the audit. We will calculate this fee at the rate of \$1,950 for the first day and \$440 for each additional day, plus actual travel expenses for each auditor. Actual travel expenses are based on government per diem and travel fares.

7. When and how can I obtain a refund for the fees that I paid?

If you are applying for initial recognition as an NRTL, we will refund the assessment fees that we have collected if you withdraw your application before we have traveled to your site to perform the on-site assessment. We will also credit your account for any amount we owe you if the assessment fees we have collected are greater than the actual costs of the assessment. Other than these two cases, we will not refund or grant credit for

any other fees that are due or that we have collected.

8. What rate does OSHA use to charge for staff time?

OSHA has estimated an equivalent staff cost per hour that it uses for determining the fees that are shown in the Fee Schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, supervision and support for each "direct staff" member, that is, the staff that perform the main activities identified in the Fee Schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = \$54.5.

9. What happens if I do not pay the fees that I am billed?

As explained above, if you are an applicant, we will send you a final bill for the fees at the time we publish the preliminary **Federal Register** notice. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in the Fee Schedule. This late payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 8). If we do not receive payment within 60 days of the bill date, we will cancel your application. As also explained above, if you are an NRTL, we will send you a bill for the audit fee after completion of the audit. If you do not pay the fee by the due date, we will assess the Late Payment Fee shown in the Fee Schedule. If we do not receive payment within 60 days of the bill date, we will publish a **Federal Register** notice stating our intent to revoke recognition.

10. How do I know whether this is the most Current Fee Schedule?

You should contact OSHA's NRTL Program (202-693-2110) or visit the program's web site to determine the effective date of the most current Fee Schedule. Access the site by selecting "Subject Index" or "Programs" at [www.osha.gov](http://www.osha.gov). Any application processing fees are those in effect on the date you submit your application. Audit fees are those in effect on the date we begin our audit. Any pending application (i.e., an application that OSHA has not yet completed processing) will be subject only to the fees for the activities that OSHA begins on or after the effective date of the initial fee schedule.

The fee schedule shows the current activities for which OSHA plans to charge fees. In evaluating the changes to the fee schedule, OSHA has considered the following: (1) Actual expenditures of the 2001 fiscal year, and (2) estimated costs of the 2002 fiscal year.

The following is a description of the tasks and functions currently covered by

each type of fee category, e.g., application fees, and the basis used to charge each fee.

*Application Fees:* This fee reflects the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. The application review does not include a review of the test standards requested, which is reflected in the review and evaluation fee. Application fees would be based on average costs per type of application. OSHA uses an average costs since the amount of time spent on the application review does not vary greatly by type of application. This is based on the premise that the number and type of documents submitted will generally be the same for a given type of application. Experience has shown that most applicants follow the application guide that OSHA provides to them.

*Assessment Fees:* This fee is different for initial and for expansion or renewal applications. It is based on the number of days for staff preparatory and on-site work and related travel. Three types of fees are shown, and each one would be charged per site and per person. The two fees for the first day reflect time for office preparation, time at the applicant's facility, and an amount to cover travel in the 48 contiguous states. A supplemental travel amount (to be included with the fee schedule) is assessed for travel outside this area. These travel amounts are only estimates for purposes of submitting the initial fees. The applicant or NRTL is billed actual expenses, based on government per diem and travel fares. Any difference between actual travel expenses and the travel amounts in the fee schedule are reflected in the final bill or refund sent to the applicant or NRTL.

Similar to the application fee, the office preparation time generally involves the same types of activities. Actual time at the facility may vary, but the staff devote at least a full day for traveling and for performing the on-site work. The fee for the additional day reflects time spent at the facility and an amount for one day's room and board.

*Review and Evaluation Fee:* This fee is charged per test standard (which is part of an applicant's proposed scope of recognition). The fee reflects the fact that staff time spent in the office review of an application varies mainly in accordance with the number of test standards requested by the applicant. In generally, the fee is based on the estimated time necessary to review test standards to determine whether each one is "appropriate," as defined in 29

CFR 1910.7, and covers equipment for which OSHA mandates certification by an NRTL. The fee also covers time to determine the current designation and status (i.e., active or withdrawn) of a test standard by reviewing current directories of the applicable test standard organization. Furthermore, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards that have previously been approved for other NRTLs. When the review is minimal, these activities take approximately 2 hours for every 10 or fewer standards. When the review is more substantial, the estimated average review time per standard is one hour for each standard, which translates to \$55 per standard. Substantial review will occur when the standard has not been previously recognized for any NRTL or when the NRTL is proposing to do testing outside its current scope of recognition.

*Final Reports/Register Notice Fees:* Each of these fees are charged per application. The fee reflects the staff time to prepare the report of the on-site review (i.e., assessment) of an applicant's or an NRTL facility. The fee also reflects the time spent making the final evaluation of an application, preparing the required **Federal Register** notices, and responding to comments received due to the preliminary finding notice. These fees are based on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant. There is a separate fee when OSHA performs no on-site assessment. In these cases, the NRTL Program staff perform an office assessment and prepare a memo to recommend the expansion or renewal.

*Audit (Post-Recognition Review) Fees:* These fees reflect the time for office preparation, time at the facility and travel, and time to prepare the audit report on the on-site audit. A separate fee is shown for an office audit conducted in lieu of an actual visit. Each fee is per site and does not generally vary for the same reasons described for the assessment fee and because the audit is generally limited to one day. As previously described, the audit fee would include amounts for travel, and similar to assessments, OSHA will bill the NRTL for actual travel expenses.

*Miscellaneous Fees:* The sample fee schedule only shows the average cost for one full day of staff time. OSHA would use this fee primarily in cases of refunding the assessment fee. OSHA will also charge a fee for late payment

of the annual audit fee. The amount for the late fee is based on 1 hour of staff time.

### Proposed Decision

OSHA has performed its annual review of the fees it currently charges to Nationally Recognized Testing Laboratories, as provided under 29 CFR 1910.7(f). Based on this review, OSHA has determined that certain fees warrant change, as detailed in this notice. As a result, OSHA proposes to revise those current fees by adopting the Nationally Recognized Testing Laboratory Program Fees Schedule shown as Table A above, which would become effective on January 1, 2002. As provided in our regulations, this proposed fee schedule would remain in effect until superseded by another fee schedule. OSHA would give the public an opportunity to comment on any future changes to the fees, as we are doing through this notice.

OSHA welcomes public comments, in sufficient detail, as to whether it should adopt the proposed Nationally Recognized Testing Laboratory Program Fees Schedule shown as Table A above. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS** no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above (also see **ADDRESS** no later than the last date for comments (also see **DATES** above). You must include your reason(s) for any request for extension. OSHA will limit an extension to 15 days unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review documents related to the establishment of the fees and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL95-F-1, the permanent record of public information on OSHA NRTL Program fees.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend the final version of the NRTL Program Fees Schedule to the Assistant Secretary. The Agency will publish a public notice of its final version of the Fees Schedule in the **Federal Register**, as provided under 29 CFR 1910.7.

Signed at Washington, DC, this 30th day of November, 2001.

**John L. Henshaw,**

*Assistant Secretary.*

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BILLING CODE 4510-26-P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Exemption Application No. D-10848]

#### Prohibited Transaction Exemption 2001-46; Grant of Individual Exemption; Bank of America Corporation (BAC)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemption.

**SUMMARY:** This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

#### Bank of America Corporation (BAC), Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 2001-46; Exemption Application No. D-10848]

#### Exemption

#### Section I—Exemption for In-Kind Redemption of Assets

The restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply, effective August 1, 2001,<sup>1</sup> to certain in-kind redemptions (the Redemptions) by the NationsBank Cash Balance Plan (the In-house Plan) of shares (the Shares) of proprietary mutual funds (the Portfolios) offered by investment companies for which Bank of America, N.A. (Bank of America) or an affiliate thereof provides investment advisory and other services (the Nations Funds).

This exemption is subject to the following conditions:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than Bank of America and affiliates of Bank of America (Bank of America Affiliates));

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferrable Securities. Notwithstanding the foregoing, Transferrable Securities which are odd lot securities, fractional shares and

<sup>1</sup> BAC anticipates that the Redemptions will take place on or after August 1, 2001 and, for each Portfolio, will be completed in a single transaction on a single day. However, the applicant represents that different Portfolios may effect Redemptions on different dates. As a result, reference to "the Redemptions" throughout this proposed exemption shall include all in-kind redemptions of Shares made pursuant to the exemption regardless of whether such redemptions are made on the same day.