



BILLING CODE: 4510-26-P

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0053]

Nationally Recognized Testing Laboratories; Proposed Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination.

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

ACTION: Notice.

SUMMARY: In this notice, OSHA proposes a policy for transitioning to the termination of the Satellite Notification and Acceptance Program (SNAP).

DATES: Submit comments, information, and documents in response to this notice, on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at: <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2007-0053, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3653, 200 Constitution Avenue, NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET. Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the above address. All documents in the docket (including this *Federal Register* notice) are listed in the <http://www.regulations.gov> index under Docket number OSHA-2007-0053; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA-2007-0053). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor by phone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693-2110 or email: robinson.kevin@dol.gov.

Copies of this Federal Register notice: Electronic copies of this *Federal Register* notice are available at <http://www.regulations.gov>. This *Federal Register* notice, as well as other relevant information, is also available on OSHA's webpage at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

A. Nationally Recognized Testing Laboratories (NRTL) Program

Many of OSHA's safety standards require employers to use products tested and certified as safe (e.g., 29 CFR 1910, subpart S). In general, testing laboratories, and not employers, perform the required testing and certification. To ensure that the testing and certification performed on products is appropriate, OSHA implemented the NRTL Program. This program establishes the criteria that a testing laboratory must meet to achieve, and retain, NRTL recognition.

OSHA recognition of a NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7, the regulatory provision containing the

requirements an organization must meet to become a NRTL and retain NRTL status. Recognition is an acknowledgment by OSHA that the organization can perform independent safety testing and certification of the specific products covered within the organization's scope of recognition, and is not a delegation or grant of government authority. Recognition under the NRTL Program, therefore, enables employers to use products approved by NRTLs to meet OSHA standards that require product testing and certification.

Each NRTL is approved for a scope of recognition, which identifies: (a) the type of products the NRTL may approve; and (b) the NRTL's "recognized sites." The requirements for NRTL recognition are outlined in the NRTL Program Regulation at 29 CFR 1910.7 and Appendix A to that regulation.

B. NRTL Program Directive

The NRTL Program Directive sets forth OSHA policies, procedures, and interpretations that supplement and clarify the NRTL Program regulation, 29 CFR 1910.7 and Appendix A (NRTL Program Policies, Procedures and Guidelines, CPL 01-00-004, available at https://www.osha.gov/sites/default/files/enforcement/directives/CPL_01-00-004.pdf). OSHA recently revised the NRTL Program Directive, on October 1, 2019. The revised NRTL Program Directive contains a revised definition of "recognized site." To be recognized, "a site must be administratively and operationally controlled by the NRTL and must perform at least one of the following functions: testing and inspection (and/or accepting test data or inspections), performing reviews, or making certification decisions with the NRTL management system" (NRTL Program Directive, Annex C). In

revising the definition, OSHA eliminated ownership requirements contained in the prior definition of recognized site (Id., Ch. 1.IX.D). Thus, to be a recognized site, the site no longer has to be owned by the NRTL.

Prior to issuing the revised NRTL Program Directive (CPL-01-004), OSHA permitted NRTLs use a number of different supplemental programs in order to use the services of other facilities to test and certify products used in the workplace (60 FR 12980, 74 FR 923). One of these supplemental programs was Supplemental Program 10, SNAP, that was implemented on May 11, 2009 (74 FR 923) and permitted NRTLs to perform certain functions to support testing and certification operations at “SNAP sites.” Under SNAP, a NRTL had to have administrative and operational control over the NRTL’s SNAP sites. However, the majority of SNAP sites could not be “recognized sites” because of the ownership requirements that were then contained in the definition of recognized sites in the old NRTL Directive (i.e., a majority of the sites could not be “recognized sites” because they were not owned by the NRTLs).

OSHA terminated all the supplemental programs, including SNAP, in the revised NRTL Program Directive (Ch. 1.IX.B, D). SNAP is no longer necessary because the revised definition of “recognized site” permits OSHA to recognize sites that are administratively and operationally controlled by the NRTL but not necessarily owned by the NRTL. As OSHA noted in the revised Directive, NRTLs will now be able to apply to OSHA to make existing SNAP sites recognized sites (Id.).

C. Revised NRTL Program Directive Implementation Memorandum

After issuing the revised NRTL Program Directive, OSHA issued a policy memorandum on the transition from the prior version to the current version of the NRTL Program Directive (available at <https://www.osha.gov/dts/otpca/nrtl/NRTLDirectiveTransitionMemo.html>). A portion of that policy memorandum pertains to existing NRTLs applying for expansion of recognition and provides:

- Existing NRTLs (each organization OSHA recognized as a NRTL on October 1, 2019) must comply with the requirements of the revised NRTL Program Directive no later than October 1, 2020. Existing NRTLs may comply with the requirements of the prior NRTL Directive (CPL-01—00-003) until September 30, 2020.
- OSHA will evaluate pending expansion applications for existing NRTLs under the prior NRTL Program Directive to the extent final decisions on those applications are published in the *Federal Register* prior to October 1, 2020. Assuming OSHA grants the expansion application, the NRTL will need to be in full compliance with the revised NRTL Program Directive, with respect to the NRTL's entire scope of recognition, no later than October 1, 2020. For example, if OSHA publishes a final decision on an expansion application in the *Federal Register* on September 30, 2020, then the NRTL will have to be in full compliance with the revised NRTL Program Directive, with respect to the NRTL's entire scope of recognition, no later than October 1, 2020.

- OSHA will evaluate pending expansion applications for existing NRTLs under the revised NRTL Program Directive to the extent final decisions on those applications are published in the *Federal Register* on or after October 1, 2020. Depending on the status of the application, OSHA may, in the discretion of the agency, waive certain fees associated with the application to the extent accrual of those fees are due solely to OSHA's transition to the revised NRTL Program Directive. Assuming OSHA grants the expansion application, the NRTL will need to be in compliance with the revised NRTL Program Directive with respect to the NRTL's expanded scope immediately (i.e., on the date the final decision on the expansion application is published in the *Federal Register*).
- Audits and assessments of existing NRTLs conducted on or after October 1, 2019, will be conducted under the revised NRTL Program Directive. However, until October 1, 2020, items that OSHA would normally note as nonconformances with the revised NRTL Program Directive requiring timely response and correction will be noted as observations or long term corrective actions. While such observations and long term corrective actions will not require a response and correction in connection with the relevant audit or assessment, existing NRTLs will need to comply with the revised NRTL Program Directive no later than October 1, 2020.

II. OSHA's Proposed Transition Policy

OSHA recognizes that immediate termination of the SNAP may cause an undue burden on some NRTLs with existing SNAP sites. OSHA therefore proposes the following policy to permit a smooth transition to SNAP termination for NRTLs with existing SNAP sites. Although OSHA is not required by the Administrative Procedures Act, 5 U.S.C. 551, et seq., to engage in notice and comment rulemaking procedures prior to the adoption and implementation of this proposed policy, OSHA is requesting public comment regarding the proposed policy in order to gain input and insight from interested parties.

OSHA notes that, as of October 1, 2019 (the date OSHA issued the revised NRTL Program Directive), in accordance with current OSHA policy, OSHA will reject any application submitted by a NRTL or NRTL applicant-organization to be recognized for any of the previous supplemental programs, including SNAP. Under the proposed policy, SNAP would be entirely terminated one year after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy. Prior to that time, if a NRTL with existing SNAP sites followed the proposed procedures described in this Notice, that NRTL could continue to perform SNAP activities at the NRTL's existing SNAP sites (for a period, or periods, that would be established by this proposed policy, and ending no later than one year after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy). OSHA notes that the policies proposed in this Notice would supersede the policies contained in the Revised NRTL Program Directive Implementation Memorandum (discussed above), to the extent there is a conflict.

Proposed Procedures for the Conversion of Existing SNAP Sites to Recognized Sites and the Interim Performance of SNAP Activities at SNAP Sites. OSHA proposes the following procedures to allow for the conversion of existing SNAP sites to NRTL-recognized sites under 29 CFR 1910.7 and the interim performance of SNAP activities at SNAP sites:

1. *Preconditions of Eligibility.* To meet the preconditions of eligibility, a NRTL would need to:
 - a. Submit to OSHA a list of the NRTL's existing SNAP sites no later than the 30th day after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy. For each SNAP site listed, a NRTL would need to include the date the SNAP site was approved by the NRTL.
 - b. Not designate any new SNAP sites after submitting to OSHA the list of existing SNAP sites.
 - c. Submit to OSHA an application for scope expansion (i.e., to convert existing SNAP sites to recognized sites) no later than the 60th day after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy.
 - d. Include in the scope expansion application a list of the SNAP sites the NRTL wants converted to recognized sites. The NRTL would be permitted to include in the scope expansion application list only those SNAP sites the NRTL also included in the list of SNAP sites

it submitted to OSHA by the 30th day after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy.

- e. Specify that it wants the scope expansion application processed under the proposed procedures described here.
- f. Submit to OSHA all required application fees as outlined in the Revised NRTL Schedule of Fees. See <https://www.osha.gov/dts/otpca/nrtl/nrtlfees.html>. The following fees would need to accompany the scope expansion application: \$2,490 for the Expansion application – Limited review; and \$2,490 for each site for which the NRTL seeks recognition. (Other fees would be invoiced as necessary (for example the \$3,180 fee for a *Federal Register* notice application, and fees for onsite assessments, if conducted)).
- g. At a minimum, submit to OSHA, for each SNAP site listed in the application, the following historical assessment records and supporting documentation:
 - i. The NRTL functions performed at the SNAP site (testing, certification - audits of testing laboratories);
 - ii. Copies of any audit or other reports of, or about, the SNAP site generated (either internally (e.g., by the NRTL) or externally (e.g., by OSHA or other accreditor)) in

connection with any audits, assessments, or other investigations conducted (a) by OSHA, the NRTL, any other entity, and (b) within the 30 months preceding the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy;

- iii. Supporting Documentation that shows (a) what was reviewed during any audits, assessments, or other investigations of the SNAP site conducted by OSHA, the NRTL, any other entity within the NRTL's organizational structure, or any other investigative body, and within the 30 months preceding the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy, (b) any nonconformances identified during these audits, assessments, or investigations, and (c) a root cause analysis of these nonconformances; and
- iv. An organizational chart for the SNAP site identifying leadership and employees involved with NRTL-related work activities.

2. *Continued Performance of SNAP Activities at Existing SNAP Sites Contingent on Timely Submission of Documents.*

- a. If a NRTL fails to timely submit to OSHA a list of the NRTL's existing SNAP sites (by the 30th day after the date of publication of the

Federal Register notice announcing OSHA’s final decision on this proposed policy), the NRTL would be required to cease performing SNAP activities at all of the NRTL’s existing SNAP sites on the 31st day after the date of publication of the *Federal Register* notice announcing OSHA’s final decision on this proposed policy.

- b. If a NRTL timely submits to OSHA a list of the NRTL’s existing SNAP sites (by the 30th day after the date of publication of the *Federal Register* notice announcing OSHA’s final decision on this proposed policy), but that list does not contain all of the NRTL’s existing SNAP sites, the NRTL would be required to cease performing SNAP activities at existing SNAP sites not contained in the list on the 31st day after the date of publication of the *Federal Register* notice announcing OSHA’s final decision on this proposed policy.
- c. If a NRTL timely submits to OSHA a list of the NRTL’s existing SNAP sites (by the 30th day after the date of publication of the *Federal Register* notice announcing OSHA’s final decision on this proposed policy), but does not submit to OSHA a timely application to convert the existing SNAP sites in the list to recognized sites (by the 60th day after the date of publication of the *Federal Register* notice announcing OSHA’s final decision on this proposed policy), then the NRTL would be required to cease performing SNAP activities at all of the NRTL’s existing SNAP sites no later than the 61st day after the date of

publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy.

- d. If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites (by the 30th day after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy), and then submits to OSHA a timely application to convert only some of the existing SNAP sites in the list to recognized sites (by the 60th day after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy), then the NRTL would be required to cease performing SNAP activities at SNAP sites that the NRTL did not list in the application no later than the 61st day after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy.
- e. OSHA might allow for short extensions of these time limits, at the discretion of the agency, and if good cause is shown by the NRTL.

3. *Effect of Meeting the Preconditions of Eligibility.* If a NRTL meets all the preconditions of eligibility for a SNAP site, it would be entitled to the following:

- a. *Potential Streamlined Conversion.* OSHA typically performs onsite assessments in connection with site expansion requests. However, OSHA might, at the discretion of the agency, opt not to do so with respect to SNAP sites that meet the preconditions of eligibility.

Appendix A to the NRTL Program Regulation, 29 CFR 1910.7, provides that, in reviewing expansion applications, OSHA shall, as necessary, conduct an on-site review of the testing facilities of the applicant, and may decide not to conduct an on-site review, where the substantive scope of the request to expand recognition is closely related to the current area of recognition. Consistent with Appendix A, OSHA would make determinations as to whether on-site reviews are necessary on a case-by-case basis.

b. Interim Performance of SNAP Activities at SNAP Sites. NRTLs would be permitted to continue performing SNAP functions, but only at the SNAP sites that are listed in the NRTL's application and that meet the preconditions of eligibility, and only for the time period(s) permitted by these proposed procedures.

4. Review of Applications.

a. To the extent SNAP sites in an application meet the preconditions of eligibility, OSHA would review that application, or portion of application, in accordance with the NRTL Program regulation, 29 CFR 1910.7, Appendix A to that regulation, the Revised NRTL Program Directive Implementation Memorandum, discussed above, and these proposed SNAP conversion procedures, to determine the capability of the SNAP site to operate as a NRTL-recognized site. OSHA would base this determination on the documentation submitted with the application,

historical on-site assessments of the NRTL's SNAP Sites and SNAP Headquarters, and any other factors it deems relevant, including, for example, the conduct of an on-site assessment(s), if deemed necessary.

b. In reviewing applications, or portions of applications, concerning SNAP sites that do not meet the preconditions of eligibility, OSHA would follow normal site expansion procedures, including the conduct of on-site assessments. NRTLs should consult the NRTL Program regulation, 29 CFR 1910.7, Appendix A to that regulation, and the Revised NRTL Program Directive Implementation Memorandum, discussed above, for the procedures that OSHA would follow with respect to these SNAP sites.

5. *Opportunity to Respond (Discretionary) for NRTLs That Specify in Their Scope Expansion Applications That They Want Their Applications Processed Under the Proposed Procedures Described.* Although a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites (by the 30th day after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy), and then submits to OSHA a timely application to convert all or some of the NRTL's existing SNAP sites in the list to recognized sites (by the 60th day after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy), the NRTL might not meet one or more of the other preconditions of eligibility for some or all of the

SNAP sites listed in the application. For example, a NRTL might fail to submit to OSHA the required historical assessments or supporting documentation for one or more of the SNAP sites listed in an application. In addition, to make a determination on an application, OSHA might require further information or clarification, in addition to the information that would be required by the preconditions of eligibility. Therefore, after conducting a review of a scope expansion application in which a NRTL specifies that it wants the application processed under the proposed procedures described here (Precondition of Eligibility (e)), OSHA might, at the discretion of the agency, give the NRTL 15 days to provide clarification or missing information.

- a. If OSHA receives a timely response from the applicant (within 15 days), or a timely written request for an extension (within 15 days) and subsequent response within the time permitted for extension (if the request for extension is granted), OSHA would recommend a positive or negative finding on the application.
- b. Alternatively, OSHA would treat the application as a normal site expansion application, outside of these proposed procedures, if the NRTL requested in a timely-filed response that the application be treated as such. At this point (when the NRTL made the request), the NRTL would be required to immediately cease performing SNAP activities at the SNAP sites listed in the application.

- c. If OSHA does not receive a timely response, or a timely request for an extension and subsequent response within the time permitted for extension (if granted), it would consider the application withdrawn.
6. *Effect of a Negative Finding on an Application.* If a negative finding is issued, the NRTL would have an opportunity (a) to withdraw the application, (b) revise the application (for example, to remove from the application those sites OSHA staff considers non-compliant, or to indicate that OSHA should process the application as a traditional application for site expansion rather than under these proposed procedures), or (c) request that the original application be forwarded to the Assistant Secretary for Occupational Safety and Health, as outlined in Appendix A to the NRTL Program regulation, 29 CFR 1910.7.
7. *Effect of Withdrawal of an Application Meeting the Preconditions of Eligibility.* If the application is withdrawn by the applicant or considered withdrawn by OSHA, the NRTL would be required to immediately cease performing SNAP activities at the SNAP sites that were listed in the withdrawn application and met the preconditions of eligibility. While the NRTL could still apply to have these sites included in the NRTL's scope of recognition, OSHA would follow normal site expansion procedures, including the conduct of on-site assessments, for any such applications.
8. *Effect of the Revision of an Application Meeting the Preconditions of Eligibility.* If the applicant revises the application to remove from the

application individual SNAP sites listed in the application, the NRTL would be permitted to continue to perform SNAP activities only at those SNAP sites that remain in the application and meet the preconditions of eligibility. The applicant would be required to immediately cease performing SNAP activities at SNAP sites no longer in the application. While the NRTL could still apply for recognition of any sites removed from the application, OSHA would follow normal site expansion procedures, including the conduct of on-site assessments, for any such applications.

9. *Effect of Final Decision on Application Meeting the Preconditions of Eligibility.* Once a final decision is made regarding the capability of a SNAP site to operate as a NRTL-recognized site, this decision would be published in the *Federal Register*, upon which time the NRTL would be required to immediately cease performing SNAP activities at the SNAP sites that were listed in the application and met the preconditions of eligibility.
10. *Termination of the SNAP Entirely.* A NRTL would be required to cease performing SNAP activities at existing SNAP sites that were listed in the application and met the preconditions of eligibility one year after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy. This would be the case even if OSHA does not issue a final decision on the NRTL's application by that date.

The SNAP would be entirely terminated one year after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy.

11. *Potential Extension of SNAP Termination Date.* OSHA might, at the discretion of the agency, extend the SNAP termination date. OSHA notes that it would not extend the termination date because final decisions on some applications could not be issued on a streamlined basis. OSHA would not be able to issue a final decision on a streamlined basis, for example, if it determines that it needs to conduct an on-site assessment or a negative finding is issued in connection with an application. An extension of the SNAP termination date based on these time-intensive issues would not be justified.

OSHA requests comment on this proposed policy. Comments should consist of pertinent written documents and exhibits. OSHA will review all comments submitted to the docket in a timely manner, and, after considering the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health regarding this proposed policy for transitioning to the termination of SNAP, who will then make a final decision.

OSHA will publish a public notice of this final decision in the *Federal Register*.

IV. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on February 4, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

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