

conduct follow-up data collection to measure the impact of these interventions without authorization to collect from this group of smaller employers. OSHA is seeking approval to collect data from these employers only for performance measurement purposes. Data collected from this group would not be used for OSHA's enforcement activities. Some states operating state plans pursuant to Section 18 of the OSH Act also use the information collected for the same purposes as does Federal OSHA.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

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## 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). OSHA charges fees for specific types of services it provides to NRTLs. The fees charged to NRTLs first went into effect on October 1, 2000.

**DATES:** The new fees shown in this notice will become effective on February 5, 2007. You must submit information or comments by the following dates:

- Hard copy: postmarked or sent by January 4, 2007.
- Electronic transmission or facsimile: sent by January 4, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions.

*Fax:* If your submissions, 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:* You must

submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. NRTL95-F-1, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.-4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and the OSHA docket number for this notice (OSHA Docket No. NRTL95-F-1). Submissions, 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>.

*Docket:* To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index, however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

*Extension of Comment Period:* Submit requests for extensions concerning this notice to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3655, Washington, DC 20210. Or fax to (202) 693-1644.

#### FOR FURTHER INFORMATION CONTACT:

MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3655, Washington, DC 20210, or phone (202) 693-2110. Our Web page includes information about the NRTL Program (see <http://www.osha.gov> and select "N" in the site index).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Occupational Safety and Health Administration (OSHA) is proposing to adjust the fees that the Agency charges for the services it provides to Nationally Recognized Testing Laboratories (NRTLs). OSHA is taking this action as a result of its process for annually reviewing 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 adjustments to the current fee schedule, which has been in effect since January 2002. The fee adjustments described in this notice are based on the current approach for calculating fees, which is the same approach OSHA used in developing the first fee schedule (effective October 1, 2000).

OSHA is also in the process of developing a new approach to calculating fees that would more accurately recoup the total costs of the services OSHA provides to NRTLs. The Agency will be proposing this new approach, and seeking comments on it, in a **Federal Register** notice to be published at a later date.

##### II. Background

Many of OSHA's safety standards require that equipment or products used in the workplace be tested and certified to help ensure they can be used safely. See, e.g., 29 CFR part 1910, subpart S. In general, this testing and certification must be performed by a Nationally Recognized Testing Laboratory (NRTL). Products or equipment that have been tested and certified must have the NRTL's certification mark on them, or, if this is not feasible, then on its packaging. An employer may rely on the certification mark, which shows that 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 and comprehensive information about their programs, processes, and procedures in writing when they apply. 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 50 recognized sites in the U.S., Canada, Europe, and the Far East.

**III. Program Costs and Fee Calculation**

To understand the adjustments we are proposing to make to the fee schedule, Section A discusses the derivation of the hourly rate we will use to assess the fees. Section B discusses changes we are making to the estimate of activity times and briefly describes new chargeable activities for the services to NRTLs. Section C details the proposed new activity costs.

*A. Derivation of Hourly Rate (ECR)*

In preparing the proposed fee schedule presented in this notice, OSHA has updated its calculation of the total resources that it has committed to the NRTL Program overall and has then computed the costs that are involved solely with the application approval and the periodic review (i.e., audit) functions.

OSHA calculates the fees for these services by multiplying an equivalent average direct staff cost per hour rate (ECR) by the time it takes to perform the activities involved in application processing or audit functions. Simply put,  
 Fee for activity = ECR x Time for activity.

OSHA derives the ECR by taking the total estimated direct and indirect costs of the program, consisting of personnel costs (salary and fringe) and office expenses, but excluding travel, and dividing that total by the total available annual work hours of the direct staff

devoted to all the NRTL Program activities, i.e., the number of full-time equivalent (FTE) personnel.<sup>1</sup> Illustrated as an equation:  
 ECR = TPC / TAW,

where TPC is the total estimated direct and indirect program costs (excluding travel) and TAW is the total available annual work hours of the direct staff.

Figure 1, below, represents OSHA's TPC of providing the services for which we charge fees and shows the calculation of the ECR. As a result of our proposed adjustments, our base hourly rate for calculating our fees, i.e., the ECR, would increase approximately 17% above its present level, from \$54.50 to \$63.80. The \$54.50 was derived using 2002 projected staff salary and fringe, and other program costs. The 17% increase mainly reflects annual salary adjustments provided to Federal employees that have accumulated since the revision in 2002. The Agency believes these costs are fair and reasonable.

FIGURE 1.—NRTL PROGRAM ANNUAL COST ESTIMATES

Cost description	FTE	Avg. cost per FTE (including fringe)	Total costs
Direct Staff Costs .....	5.24	\$110,743	\$580,294
Indirect Staff & Other Costs .....	( <sup>1</sup> )	( <sup>1</sup> )	<sup>2</sup> 115,130
Subtotal Costs .....			695,424
Travel Expenses .....	( <sup>1</sup> )	( <sup>1</sup> )	60,000
Total Program Costs .....			755,424

Avg. direct staff cost/hr. = \$580,294/(5.24 FTE x 2,080 hours) = \$53.20.

ECR = Equivalent avg. direct staff cost/hr. rate = \$695,424/(5.24 FTE x 2,080 hours) = \$63.80 (includes direct & indirect costs but not travel).

<sup>1</sup> Not applicable.

<sup>2</sup> This amount consists of \$60,150 for management and support staff and \$54,980 for equipment and other costs.

In Figure 1, Direct Staff Costs are personnel costs for the staff that perform direct activities (i.e., the services, such as the application, on-site and legal reviews, and other activities involved in application processing and audits) as well as activities not directly connected to the fees. Indirect Staff and Other 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, which are necessary to perform the services covered by the proposed fees. In general, indirect costs,

by their very nature, are not readily identified with a specific output (in the present context, a specific activity) but are used in producing it. They are allocated to the application processing and audit activities based on direct staff costs. Travel Expenses shown in the figures are estimates of the costs we incur for travel related to the services that are covered by the fees. However, this amount is not included in the ECR since we charge for the actual staff travel expenses of the on-site visits performed by our program staff. In Figure 1, the travel expenses figure is presented only to show total program costs.

The use of an "equivalent average direct staff cost per hour rate" (ECR) 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 this, assume that a direct staff member spends 10 hours on an activity; the direct staff costs would then be calculated as follows:  
 Direct staff costs = 10 hours x \$53.20/hour = \$532.

The \$53.20/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

<sup>1</sup> In discussing total hours in this notice, we often refer to FTEs which stands for full-time equivalents

and equals total hours divided by 2,080, the total

available annual work hours for one full-time employee.

costs shown in Figure 1. This ratio would be as follows:

Indirect costs/direct staff costs =  $\$115,130/\$580,294 = 0.1984$ .

Next, the indirect costs would be calculated based on the \$532 estimate of direct staff costs:

Indirect costs =  $\$532 \times 0.1984 = \$106$ .

Finally, the total costs of the activity are calculated:

Total costs = direct staff costs + indirect costs =  $\$532 + \$106 = \$638$ .

We derive the same amount using the ECR of \$63.80, i.e.,  $10 \text{ hours} \times \$63.80/\text{hour} = \$638$ .

**B. Modified Activity Times and Additional Activities**

In addition to updating the ECR, the Agency has updated estimates of the average staff time that it spends on some specific activities or functions of the services covered by the fees. The staff activity times we updated resulted in a portion of the adjustments in the proposed Fee Schedule. OSHA previously developed these times for

each major activity within the main types of services, which are application processing and audits.

For application processing, OSHA is increasing the average staff activity time in the areas of the on-site assessment and the final report/federal register notice activities. In the first case, the increase mainly reflects the time necessary for making travel arrangements and, in the second case, mainly reflects the separate time necessary for the preparation of the notice. For audits, OSHA is increasing the average staff activity time in the areas of the pre-site review and report preparation activities, each for similar reasons as the corresponding application activities just described. In addition, in both cases, we propose to charge for actual travel time (i.e., time in travel to and from sites), which replaces the nominal 4 hours that we currently include in the first day fee for assessments and audits.

OSHA also is charging for some additional activities it performs during application processing and audits.

These activities are for Additional Application Review, Supplemental Program Review, and Invoice Processing. Section IV of this notice further explains these activities and the modifications mentioned above. The proposed estimates reflect the Agency's experience with the NRTL Program fees over the four years since OSHA published the current fee schedule.

**C. Tables of Activity Costs**

Figures 2, 3, 4, and 5, below, present the costs of the major activities for which fees are charged. We include average travel costs in the figures below to provide an overall cost for a particular activity. However, as explained above, since we charge for actual travel, only the non-travel costs serve as the basis for the fees later shown in the Proposed Fee Schedule (Table A). In deriving the fee amounts shown in the Table A, OSHA has generally rounded the costs shown in Figures 2, 3, 4, and 5, up or down, to the nearest \$5 or \$10 amount.

FIGURE 2.—INITIAL APPLICATION COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost*
Initial Application Review .....	Office and field staff time .....	80	\$5,100
Additional Review Time .....	Office staff .....	16	1,020
On-Site Assessment—first day (per site, per assessor) .....	Field staff time (16 hours preparation, 6 hours travel processing, and 8 hours at site). Field staff travel expense (\$700 airfare/other + \$100 per diem). Total .....	30 ( <sup>1</sup> ) .....	1,914 800 2,714
On-Site Assessment—each addnl. day** (per site, per assessor).	Field staff time (at site) .....	8	510
	Field staff travel expense (per diem only) .....	( <sup>1</sup> )	100
	Total .....	.....	610
On-Site Assessment travel time—per day (per site, per assessor).	Field staff .....	8	510
Review and Evaluation (10 test standards) .....	Office staff time .....	2	128
Final Report & Federal Register notice .....	Field and office staff time .....	132	8,422
Fees Invoice Processing .....	Office staff time .....	2	128

\* Average cost for staff time = average hours x equivalent average direct staff cost/hr. (\$63.80).

\*\* Note: 2 additional days estimated if there are 2 assessors and 4 additional days estimated if there is 1 assessor.

<sup>1</sup> Not applicable.

FIGURE 3.—EXPANSION APPLICATION (ADDITIONAL SITE) COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost*
Application Review (expansion for site) .....	Office and field staff time .....	16	\$1,021
Additional Review Time .....	Office staff .....	8	510
On-Site Assessment—first day (per site, per assessor) .....	Field staff time (12 hours preparation, 4 hours travel processing, and 8 hours at site). Field staff travel time expense (\$700 airfare/other + \$100 per diem). Total .....	24 ( <sup>1</sup> ) .....	1,531 800 2,331
On-Site Assessment—addnl. day** (per site, per assessor)	Field staff time (at site) .....	8	510
	Field staff travel expense (per diem only) .....	( <sup>1</sup> )	100

FIGURE 3.—EXPANSION APPLICATION (ADDITIONAL SITE) COST ESTIMATES—Continued

Major activity	Type of cost	Average hours	Average cost*
	Total .....		610
On-Site Assessment travel time—per day (per site, per assessor).	Field staff .....	8	510
Review and Evaluation Fee (10 test standards) .....	Office staff time .....	2	128
Final Report & Federal Register notice .....	Field and office staff time .....	50	3,190
Fees Invoice Processing .....	Office staff time .....	2	128

\* Average cost for staff time = average hours x equivalent average direct staff cost/hr. (\$63.80).

\*\* Note: 2 additional days estimated for 1 assessor.

<sup>1</sup> Not applicable.

FIGURE 4.—RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost*
Application Review (renewal or expansion other than additional site).	Office and field staff time .....	2	\$128
Additional Review Time .....	Office staff .....	8	510
Renewal Application Information Review .....	Office staff .....	16	1,021
On-Site Assessment—first day (expansion) (per site, per assessor).	Field staff time (8 hours preparation, 4 hours travel processing, and 8 hours at site).	20	1,276
	Field staff travel expense (\$700 airfare/other + \$100 per diem).	( <sup>1</sup> )	800
	Total .....		2,076
On-Site Assessment—first day (renewal) (per site, per assessor).	Field staff time (16 hours preparation, 4 hours travel processing, and 8 hours at site).	28	1,787
	Field staff travel expense (\$700 airfare/other + \$100 per diem).	( <sup>1</sup> )	800
	Total .....		2,587
On-Site Assessment—addnl. day** (per site, per assessor)	Office staff time (at site) .....	8	510
	Field staff travel expense (covers per diem only) .....	( <sup>1</sup> )	100
	Total .....	610	
On-Site Assessment travel time—per day (per site, per assessor).	Field staff .....	8	510
Review and Evaluation Fee (10 test standards) (expansion)	Office staff time .....	2	128
Final Report & Federal Register notice .....	Office and field staff time (if there is an on-site assessment).	50	3,190
Final Report & Federal Register notice .....	Office and field staff time (if there is NO on-site assessment).	30	1,914
Supplemental Program Review .....	Office and field staff time (per program requested incl. consultation and assessor's memo).	4	255
Fees Invoice Processing .....	Office staff time .....	2	128

\* Average cost for staff time = average hours x equivalent average direct staff cost/hr. (\$63.80).

\*\* Note: 2 additional days estimated for renewal assessment; no additional days for expansion assessment.

<sup>1</sup> Not applicable.

FIGURE 5.—ON-SITE AUDIT COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost*
On-Site Audit—first day (per site, per auditor) .....	Field staff time (12 hours pre-site review preparation, 4 hours travel processing, and 8 hours at site).	24	1,531
	Prepare report/contact NRTL plus office review staff time (2 days for field staff and 2 hours for office staff).	18	1,148
	Subtotal (first day) .....		2,679
	Field staff travel expense (\$700 airfare/other + \$100 per diem).	( <sup>1</sup> )	800
	Total .....		3,479
On-Site Audit—addnl. day** (per site, per auditor) .....	Field staff time (at site) .....	8	510

FIGURE 5.—ON-SITE AUDIT COST ESTIMATES—Continued

Major activity	Type of cost	Average hours	Average cost *
	Travel expense (covers per diem only) .....	(1)	100
	Total .....	.....	610
On-Site Audit travel time—per day (per site, per auditor) ....	Field staff .....	8	510
Fees Invoice Processing .....	Office staff time .....	2	128

\* Average cost for staff time = average hours × equivalent average direct staff cost/hr. (\$63.80).

\*\* Note: 1.0 additional day estimated for 1 auditor.

<sup>1</sup> Not applicable.

#### IV. Proposed Fee Schedule and Description of Fees

OSHA proposes the adjusted fee schedule shown below as Table A.

TABLE A.—FEE SCHEDULE: NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM)  
[Fee Schedule (Effective February 5, 2007)]<sup>12</sup>

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
APPLICATION PROCESSING ....	Initial Application Review <sup>1 8</sup> .....	\$5,100.
	Expansion Application Review (per additional site) <sup>1 8</sup> .....	1,020.
	Renewal or Expansion (other) Application Review <sup>1</sup> .....	130.
	Renewal Information Review Fee <sup>7</sup> .....	1,020.
	Additional Review—Initial Application (if the application is substantially revised, submit one-half Initial Application Review fee) <sup>7</sup> .	1,020.
	Additional Review—Renewal or Expansion Application <sup>7</sup> .....	510.
	Assessment—Initial Application (per site—SUBMIT WITH APPLICATION) <sup>2 4 8</sup> .	8,890.
	Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT) <sup>2 10</sup> .	1,910 + actual travel expenses.
	Assessment—Renewal Application (per person, per site—first day) <sup>3 10</sup> ....	1,790 + actual travel expenses.
	Assessment—Expansion Application (additional site) (per person, per site—first day) <sup>3</sup> .	1,530 + actual travel expenses.
	Assessment—Expansion Application (other) (per person, per site—first day) <sup>3</sup> .	1,280 + actual travel expenses.
	Assessment—each addnl. day or each day on travel (per person, per site) <sup>2 3</sup> .	510 + actual travel expenses.
	Review & Evaluation <sup>5</sup> (\$13 per standard if it is already recognized for NRTLs and requires minimal review; OR else \$64 per standard).	13 per standard OR \$64 per standard.
	Final Report/Register Notice—Initial Application <sup>5 9</sup> .....	8,420.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs on-site assessment) <sup>5 9</sup> .	3,190.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs NO on-site assessment) <sup>5 9</sup> .	1,910.
AUDITS .....	On-site Audit (per person, per site, first day) <sup>6</sup> .....	2,680 + actual travel expenses.
	On-site Audit—each addnl. day or each day on travel (per person, per site) <sup>6</sup> .	510 + actual travel expenses.
MISCELLANEOUS .....	Office Audit (per person, per site) <sup>6</sup> .....	510.
	Supplemental Travel (per site—for sites located outside the 48 contiguous States or the District of Columbia) <sup>4</sup> .	1,000.
	Supplemental Program Review (per program requested) <sup>4</sup> .....	260.
	Fees Invoice Processing (per application or audit) <sup>4</sup> .....	130.
	Late Payment <sup>11</sup> .....	64.

<sup>1</sup> 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 submit this fee concurrently with your expansion or renewal application. See note 7 if you amend or revise your initial or expansion application.

<sup>2</sup> 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 \$8,890 for each site for which you wish to obtain recognition, and you must submit this amount concurrently with your initial application. We base this amount on two assessors performing a three-day assessment at each site. After completing the actual assessment, we calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We calculate this fee at the rate of \$1,910 for the first day at the site, \$510 for each additional day at the site, and \$510 for each day in travel, plus actual travel expenses, for each assessor. (Note: days charged for being in travel status are those allowed under government travel rules. This note applies to any assessment or audit.) Actual travel expenses are determined by government per diem and other travel rules. We bill or refund the difference between the amount you pre-paid and the actual assessment fee. We reflect this difference in the final bill that we send to you at the time we publish the preliminary Federal Register notice announcing the application.

<sup>3</sup>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 bill you for this fee after we perform the assessment. The fee is based on the actual staff time and travel costs we incurred in performing the assessment. We calculate this fee at the rate of \$1,790, \$1,530, or \$1,280 for the first day at the site of a renewal, expansion (site), and expansion (other) assessment, respectively. We also include \$510 for each additional day at the site and \$510 for each day in travel, plus actual travel expenses, for each assessor. Actual travel expenses are determined by government per diem and other travel rules. When more than one site of the NRTL is visited during one trip, we charge the \$510 additional day fee, plus actual travel expenses, for each day at a site.

<sup>4</sup>When do I pay the Supplemental Travel, the Supplemental Program Review, or the Fees Invoice Processing fees? You must include the Supplemental Travel fee when you submit an initial application for recognition and the site you wish to be recognized is located outside the 48 contiguous U.S. states or the District of Columbia. The current supplemental travel fee is \$1,000. We factor in this prepayment when we bill for the actual costs of the assessment, as described in our note 2, above. See note 8 for possible refund of application or assessment fees. You must include the Supplemental Program Review fee when you apply for approval to use other qualified parties or facilities to perform specific activities. See Chapter 2 of the NRTL Program Directive for more information. We will include the Fees Invoice Processing fee in the total for each of our invoices to you.

<sup>5</sup>When do I pay the Review and Evaluation and the Final Report/Register Notice fees? We 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 calculate the Review and Evaluation Fee at the rate of \$13 per test standard requested for those standards that OSHA previously recognized for any NRTL and that require minimal review or do not represent a new area of testing for the NRTL. Otherwise, this fee is \$64 per standard requested.

<sup>6</sup>When do I pay the Audit fee? We bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit and base the fee on actual staff time and travel costs incurred in performing the audit. We calculate our fee at the rate of \$2,680 for the first day at the site, \$510 for each additional day at the site, and \$510 for each day in travel, plus actual travel expenses for each auditor. Actual travel expenses are determined by government per diem and other travel rules.

<sup>7</sup>When do I pay the Additional Review fee or Renewal Information Review fee? The Additional Review fees cover the staff time in reviewing new or modified information submitted after we have completed our preliminary review of an application. There is no charge for review of a "minor" revision, which entails modifying or supplementing less than approximately 10% of the documentation in the application. The Additional Review fee applies to revisions modifying or supplementing from 10% to 50% of that documentation. For a new application, the fee represents 16 hours of additional review time and for a renewal or expansion application, the fee represents 8 hours of additional review time. If an applicant exceeds that 50% threshold in revising its application, we will charge one-half the Initial Application Review fee and the full Expansion Application Review fee, as applicable. The Renewal Information Review fee applies when an NRTL submits updated information to OSHA in connection with a request for renewal of recognition.

<sup>8</sup>When and how can I obtain a refund for the fees that I paid? If you withdraw before we complete our preliminary review of your initial application or your expansion application to include an additional site, we will refund half of the application fee. If you are applying for initial recognition as an NRTL, we will refund the pre-paid assessment fees if you withdraw your application before we have traveled to your site to perform the on-site assessment. For an initial application, we will also credit your account for any amount of the pre-paid assessment fees collected that is greater than the actual cost of the assessment. Other than these cases, we do not generally refund or grant credit for any other fees that are due or collected.

<sup>9</sup>Will I be billed even if my application is rejected? If we reject your application, we will bill you for the fees pertaining to tasks that we have performed that are not covered by the fees you have submitted. For example, if we perform an assessment for an expansion application but deny the expansion, we will bill you for the assessment fee. Similarly, we will bill you for the Final Report and **Federal Register** fee if we also wrote the report and published the notice. See note 11 for the consequences of non-payment.

<sup>10</sup>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 = \$63.80.

<sup>11</sup>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 any assessment and for the Review and Evaluation and Final Report/Register Notice 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 10). 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 generally 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. However, please note that in either case, you may be subject to collection procedures under U.S. (Federal) law.

<sup>12</sup>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 "N" in the Subject Index at <http://www.osha.gov>. Any application review fees are those in effect on the date you submit your application. Other application processing fees are those in effect when the activity covered by the fee is performed. Audit fees are those in effect on the date we begin our audit.

In evaluating the adjustments to the fee schedule, OSHA has considered the following: (1) Actual expenditures for the 2005 fiscal year, and (2) expected costs for the 2006 fiscal year. Both increases and decreases are reflected in these adjustments.

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 determination on the test standards requested, which is reflected in the Review and

Evaluation fee. Application fees are based upon average costs per type of application. OSHA uses an average cost because 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, indeed, most applicants do follow the application guide that OSHA provides. Two new fees are being added in this area, which are explained in the Section VI, below.

**Assessment Fees:** This fee is different for the initial renewal expansion (site) and expansion (other) applications. It is based on the number of days for staff preparatory and on-site work and related travel. Six types of fees are

shown, and five are charged per site and per person. The four fees for the first day reflect time for office preparation and 8 hours at the applicant's facility. There is one fee covering either additional days at the facility and/or days in travel. Additional days or days in travel are assessed for either a half or a full day. A supplemental travel amount is assessed for travel outside the contiguous 48 states or the District of Columbia. For initial applications, an amount to cover the assessment must be submitted "up-front" with the application. In addition to the first day and additional day amounts, the applicant or NRTL must pay actual travel expenses, based on government per diem and travel rules. For initial applications, any difference between actual travel expenses and the up-front

travel amount is reflected in the final bill or refund sent to the applicant.

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 to performing the on-site work. The fee for the additional day reflects time spent at the facility and the actual travel expenses for that day.

**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 on the office review of an application varies based on the number of test standards requested by the applicant. In general, 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 10 standards.

This translates to \$13 per standard. When the review is more substantial, the estimated average review time per standard is one hour for each standard, which translates to \$64 per standard. Substantial review will occur when the standard has not been previously recognized for any NRTL or when the NRTL is proposing to conduct testing in a "new" area, *i.e.*, for a type of product not similar to any currently included under its scope of recognition.

**Final Report/Register Notice Fees:** Each of these fees are charged per application. The fee reflects the staff time required to prepare the report of the on-site review of an applicant's or an NRTL's facility, which includes contacting the applicant or NRTL to discuss issues or items in its response to our findings during our assessment. 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 in response 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 of 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 between one and two days. As previously described, the audit fee includes amounts for travel, and, similar to assessments, OSHA will bill the NRTL for actual travel expenses.

**Miscellaneous Fees:** Four different fees are shown under this category. OSHA can charge a Late Payment fee if an invoice is not paid by the due date. This amount represents 1 hour of staff time for contacting the NRTL and preparing a late invoice and cover letter. The Supplemental Travel fee applies per site for an initial application if the site to be recognized is located outside the 48 contiguous U.S. states or the District of Columbia. The fee is \$1,000. We are adding two new miscellaneous fees, which are explained in Section VI, below.

## VI. Major Changes to the Fee Schedule

The following table shows the major adjustments (*i.e.*, increases or decreases of \$100 or more) that we propose to make to the fee schedule in Table A as compared to the current fee schedule.<sup>2</sup> Following the table, we explain each of the major adjustments.

TABLE OF MAJOR ADJUSTMENTS TO FEE SCHEDULE

Description of activity or category	Current fee amount	Proposed fee amount	Comment on change in fee amount
Initial Application Review .....	\$4,400 .....	\$5,100 .....	None.
Expansion Application Review .....	850 .....	1,020 .....	None.
Additional Review—Initial Application .....	None .....	1,020 .....	New fee.
Renewal Application Information Review .....	None .....	1,020 .....	New fee.
Additional Review—Renewal or Expansion Application .....	None .....	510 .....	New fee.
Assessment—Initial Application (SUBMIT WITH APPLICATION).	6,500 .....	8,890 .....	None.
Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT).	1,500 .....	1,910 .....	None.
Assessment—Renewal Application (per person, per site—first day).	1,100 .....	1,790 .....	Currently combined with expansion assessment fee.
Assessment—Expansion (additional site) (per person, per site—first day).	1,100 .....	1,530 .....	Currently combined with renewal assessment fee.
Assessment—Expansion (other) (per person, per site—first day).	1,100 .....	1,280 .....	Currently combined with renewal assessment fee.
Assessment—each addnl. day OR travel time—each day (per person, per site).	440 .....	510 .....	Only 4 hours of travel time currently charged through the first day fee for assessments.
Review & Evaluation .....	10 per ten standards .....	13 per standard .....	Correction of undercharge per ten standards: \$130 + \$10 = \$120.
Final Report/Register Notice—Initial Application .....	6,550 .....	8,420 .....	None.

<sup>2</sup> Our current fee schedule is available on the OSHA Web site.

TABLE OF MAJOR ADJUSTMENTS TO FEE SCHEDULE—Continued

Description of activity or category	Current fee amount	Proposed fee amount	Comment on change in fee amount
Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs on-site assessment).	2,600 .....	3,190 .....	None.
Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs NO on-site assessment).	1,500 .....	1,910 .....	None.
On-site Audit (first day) .....	1,950 .....	2,680 .....	None.
Supplemental Program Review .....	None .....	260 .....	New fee
Fees Invoice Processing .....	None .....	130 .....	New fee.

*Application and Assessment.* The increase in the application review fees, the assessment-related fees, and the final report/register notice fees resulted primarily from the increase in the hourly cost charged for the direct staff time. The audit-related fees also increased in part for the same reason but also because we added 4 hours for the pre-site review of each audit and 14 hours for the preparation of the audit report. These extra hours are reflected in Figure 5. In our current fee schedule, we have a fee for Assessment—Expansion or Renewal Application (first day). Under the proposed schedule, we would replace this with a separate assessment fee for renewals and a separate fee for each type of expansion.

*Travel.* We changed our treatment of “travel time,” which is time in travel to and from a site, as opposed to audit or assessment time at a site. Travel time is determined following Government travel regulations. Currently, the fee schedule includes only 4 hours of travel time for an entire trip, which is reflected in the first day fee for assessments and audits. As explained in the notes to the fee schedule, we have removed the 4-hour travel time from these first day fees and propose to charge for actual travel time at the rate for an additional day, which under the proposed schedule would be \$510. This rate would be charged based on either a half-day or a full day. We are charging for this fee separately, as opposed to including it in the first day flat fee, in order to more accurately recoup our travel costs. For example, if a trip for an audit lasts a total of three days, with two of those days spent at the site, we currently charge the lab for 2.5 workdays (20 hours). Under the proposed schedule, we would charge for 3 workdays (24 hours). This charge is most important in the case of foreign travel where travel time may be 2 or 3 days in total. Of course, the removal of the 4 hours of travel time from the first day of an assessment or of an audit reduces those fees.

*Additional Application Review.* The new Additional Review fees cover the staff time in reviewing new or modified information submitted for an application. For example, an applicant may need to revise or amend an initial or expansion application if we find that there are “major” deficiencies with it. There is no charge for review of a “minor” revision, which as Note 7 to the Fee Schedule describes, entails modifying or supplementing less than approximately 10% of the documentation in the application. The Additional Review fee applies to revisions modifying or supplementing from 10% to 50% of that documentation. For a new application, the fee represents 16 hours of additional review time and for a renewal or expansion application, the fee represents 8 hours of additional review time. If an applicant exceeds that 50% threshold in revising its application, we will charge one-half the Initial Application Review fee and the full Expansion Application Review fee, as applicable. The Renewal Information Review fee applies when an NRTL submits updated information to OSHA in connection with a request for renewal of recognition. For example, such information may include revised procedures and manuals for various parts of its testing and certification activities.

*Supplemental Program Review and Fees Invoice Processing.* There are two more new fees, which would recoup costs for tasks we now perform in application processing and/or audits, but for which we do not charge. The first fee, Supplemental Program Review, covers the time to review requests by NRTLs to use a supplemental program, under which NRTLs can use other qualified parties to perform tasks necessary for product testing and certification. Currently, there are eight of these programs, and NRTLs may apply to use one or more of them. The use of the term “program” in this context may be a bit misleading. It is not

separate from, but just a segment within, the NRTL Program and defines the category or type of activity or service that the NRTL can accept from other parties or facilities. To be approved to use a program, the NRTL must meet certain criteria and the fee covers the time for us to make the office review and determination. If an on-site assessment were needed as part of granting the approval, this would be covered separately in the fee for the on-site assessment or audit during which we review documentation or other operational aspects related to a proposed use of the applicable program(s). The second fee is Fees Invoice Processing, which also involves tasks directly related to the application processing or audit activities and for which we have not been recouping costs. We follow essentially the same process to prepare each invoice for either an application or an audit and would thus charge per invoice prepared.

*Review and Evaluation Fee.* The increase in the Review and Evaluation Fee is primarily a correction to the basis we used in the current fee schedule. In both cases, we base the fee on performing two separate reviews of 10 standards in 2 hours. However, the current fee schedule incorrectly reflects a \$10 cost for those 2 hours. Since the current hourly rate is \$54.50, this means the current fee is understated by about \$100 per ten standards (i.e., currently, it should be \$109 per 10 standards, but we are only charging \$10 per 10 standards). At the proposed hourly rate, those 2 hours would result in a cost of \$130 for the 10 standards or \$13 per standard.

*Notes to the Fee Schedule.* We also propose to change a few of the notes to the fee schedule. In the table below, we show the notes that we plan to modify or add and explain why. Proposed adjustments that merely update a fee amount mentioned in a note are not explained or described in the table below.



TABLE OF MODIFIED OR NEW NOTES TO THE FEE SCHEDULE

Note to fee schedule	Fee or area covered by note	Reason(s) for modifying or adding note
2	Initial application assessment	This note now also describes the separate charge for staff travel time.
3	Expansion or renewal assessment	This note now also describes the separate charge for staff travel time and shows the different first day fees for renewal and expansion assessments.
4	Supplemental travel	This note mentions possible refund of application fees. It also describes the new Supplemental Program Review and Fees Invoice Processing fees.
5	Review and evaluation	We corrected the basis for charging this fee, as explained in the section above.
6	Audit	This note now also describes the separate charge for staff travel time.
7	Additional review	Note 7 previously covered refund of fees and now would cover the fee for additional reviews of applications.
8	Refunds	This note would permit refunds of half the application fee if an applicant withdraws its initial or expansion (additional site) application before we complete our preliminary review. Note 8 previously covered the hourly rate for staff time, which is now under Note 10.
9	Application rejection	Note 9 previously covered non-payment of fees and now would cover the new area of fees due if we were to reject an application.
11	Non-payment	Note 11 is new. This area was previously covered under Note 9 and now would include a statement about collection procedures under U.S. (Federal) law.
12	Fees in effect	Note 12 is new. This area was previously covered under Note 10 and now would include a note primarily to change the "in-effect" criterion for certain application processing fees.

Finally, we are explaining again a matter dealing with the fee for Review and Evaluation, which was addressed when revising our fees in 2002. We revisit it here to clarify one aspect of our work involved in this activity. NRTLs submit requests to expand their scope to include additional test standards, *i.e.*, testing of additional types of products. Generally, this request has consisted of a listing of the test standards. If we determine that the products requested are similar to products already in the particular NRTL's scope, the testing would fall within its current capabilities, and no additional documentation needs to be reviewed. In that case, the NRTL would be charged the proposed fee of \$13 per standard requested. However, if the NRTL requests a standard that represents a new area of testing under its scope, then it must submit information on the testing equipment and procedures it will use as well as qualifications of personnel that will perform the testing. In that case, the charge would be \$64 per standard, representing an average of 1 hour to review the information that must be submitted. Similarly, if OSHA has not previously recognized a particular standard for any NRTL, even

though it may cover types of products under test standards that we have recognized, we would charge \$64 per standard, representing an average of 1 hour to review the testing and other provisions of the standard and to determine if the NRTL has the necessary capability.

**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 the current fee schedule warrants adjustment, as detailed in this notice. As a result, OSHA proposes to revise those current fees by adopting the Nationally Recognized Testing Laboratory Program Fee Schedule shown as Table A, above, which would become effective on February 5, 2007.

OSHA welcomes public comments, including supporting information on the proposed fee schedules. Your comment should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension at the

address provided above no later than the last date for comments. OSHA will limit any extension to 15 days, unless the requester justifies a longer period. 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. Docket No. NRTL95-F-1, contains all materials in the record concerning OSHA's 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 Fee Schedule to the Assistant Secretary. The Agency will publish a public notice of its final version of the fee schedule in the **Federal Register**, as provided under 29 CFR 1910.7.

**Edwin G. Foulke, Jr.**,  
*Assistant Secretary of Labor.*

For the reasons discussed in the preamble, OSHA proposes to revise the fees it currently charges to Nationally Recognized Testing Laboratories by adopting the following Fee Schedule:

NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM)

[FEE SCHEDULE (Effective December 20, 2006)]<sup>12</sup>

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee Amount
APPLICATION PROCESSING.	Initial Application Review <sup>1 8</sup>	\$5,100.
	Expansion Application Review (per additional site) <sup>1 8</sup>	1,020.
	Renewal or Expansion (other) Application Review <sup>1</sup>	130.
	Renewal Information Review Fee <sup>7</sup>	1,020.

## NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM)—Continued

[FEE SCHEDULE (Effective December 20, 2006)]<sup>12</sup>

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee Amount
	Additional Review—Initial Application (if the application is substantially revised, submit one-half Initial Application Review fee) <sup>7</sup> .	1,020.
	Additional Review—Renewal or Expansion Application <sup>7</sup> .....	510.
	Assessment—Initial Application (per site—SUBMIT WITH APPLICATION) <sup>2 4 8</sup>	8,890.
	Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT) <sup>2 10</sup> .	1,910 + actual travel expenses.
	Assessment—Renewal Application (per person, per site—first day) <sup>3 10</sup> .....	1,790 + actual travel expenses.
	Assessment—Expansion Application (additional site) (per person, per site—first day) <sup>3</sup> .	1,530 + actual travel expenses.
	Assessment—Expansion Application (other) (per person, per site—first day) <sup>3</sup>	1,280 + actual travel expenses.
	Assessment—each addnl. day or each day on travel (per person, per site) <sup>2 3</sup> ..	510 + actual travel expenses.
Review & Evaluation <sup>5</sup>	(13 per standard if it is already recognized for NRTLs and requires minimal review; OR else \$64 per standard).	13 per standard OR 64 per standard.
	Final Report/Register Notice—Initial Application <sup>5 9</sup> .....	8,420.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs on-site assessment) <sup>5 9</sup> .	3,190.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs NO on-site assessment) <sup>5 9</sup> .	1,910.
AUDITS .....	On-site Audit (per person, per site, per day) <sup>6</sup> .....	2,680 + actual travel expenses.
	On-site Audit—each addnl. day or each day on travel (per person, per site) <sup>6</sup> ..	510 + actual travel expenses.
	Office Audit (per person, per site) <sup>6</sup> .....	510.
MISCELLANEOUS .....	Supplemental Travel (per site—for sites located outside the 48 contiguous States or the District of Columbia) <sup>4</sup> .	1,000.
	Supplemental Program Review (per program requested) <sup>7</sup> .....	260.
	Fees Invoice Processing (per application or audit) <sup>4</sup> .....	130.
	Late Payment <sup>11</sup> .....	64.

<sup>1</sup> 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 submit this fee concurrently with your expansion or renewal application. See note 7 if you amend or revise your initial or expansion application.

<sup>2</sup> 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 \$8,890 for each site for which you wish to obtain recognition, and you must submit this amount concurrently with your initial application. We base this amount on two assessors performing a three-day assessment at each site. After completing the actual assessment, we calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We calculate this fee at the rate of \$1,910 for the first day at the site, \$510 for each additional day at the site, and \$510 for each day in travel, plus actual travel expenses, for each assessor. (Note: days charged for being in travel status are those allowed under government travel rules. This note applies to any assessment or audit.) Actual travel expenses are determined by government per diem and other travel rules. We bill or refund the difference between the amount you pre-paid and the actual assessment fee. We reflect this difference in the final bill that we send to you at the time we publish the preliminary **Federal Register** notice announcing the application.

<sup>3</sup> 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 bill you for this fee after we perform the assessment. The fee is based on the actual staff time and travel costs we incurred in performing the assessment. We calculate this fee at the rate of \$1,790, \$1,530, or \$1,280 for the first day at the site of a renewal, expansion (site), and expansion (other) assessment, respectively. We also include \$510 for each additional day at the site and \$510 for each day in travel, plus actual travel expenses, for each assessor. Actual travel expenses are determined by government per diem and other travel rules. When more than one site of the NRTL is visited during one trip, we charge the \$510 additional day fee, plus actual travel expenses, for each day at a site.

<sup>4</sup> When do I pay the Supplemental Travel, the Supplemental Program Review, or the Fees Invoice Processing fees? You must include the Supplemental Travel fee when you submit an initial application for recognition and the site you wish to be recognized is located outside the 48 contiguous U.S. states or the District of Columbia. The current supplemental travel fee is \$1,000. We factor in this prepayment when we bill for the actual costs of the assessment, as described in our note 2, above. See note 8 for possible refund of application or assessment fees. You must include the Supplemental Program Review fee when you apply for approval to use other qualified parties or facilities to perform specific activities. See Chapter 2 of the NRTL Program Directive for more information. We will include the Fees Invoice Processing fee in the total for each of our invoices to you.

<sup>5</sup> When do I pay the Review and Evaluation and the Final Report/Register Notice fees? We 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 calculate the Review and Evaluation Fee at the rate of \$13 per test standard requested for those standards that OSHA previously recognized for any NRTL and that require minimal review or do not represent a new area of testing for the NRTL. Otherwise, this fee is \$64 per standard requested.

<sup>6</sup> When do I pay the Audit fee? We bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit and base the fee on actual staff time and travel costs incurred in performing the audit. We calculate our fee at the rate of \$2,680 for the first day at the site, \$510 for each additional day at the site, and \$510 for each day in travel, plus actual travel expenses for each auditor. Actual travel expenses are determined by government per diem and other travel rules.

<sup>7</sup> When do I pay the Additional Review fee or Renewal Information Review fee? The Additional Review fees cover the staff time in reviewing new or modified information submitted after we have completed our preliminary review of an application. There is no charge for review of a "minor" revision, which entails modifying or supplementing less than approximately 10% of the documentation in the application. The Additional Review fee applies to revisions modifying or supplementing from 10% to 50% of that documentation. For a new application, the fee represents 16 hours of additional review time and for a renewal or expansion application, the fee represents 8 hours of additional review time. If an applicant exceeds that 50% threshold in revising its application, we will charge one-half the Initial Application Review fee and the full Expansion Application Review fee, as applicable. The Renewal Information Review fee applies when an NRTL submits updated information to OSHA in connection with a request for renewal of recognition.

<sup>8</sup>When and how can I obtain a refund for the fees that I paid? If you withdraw before we complete our preliminary review of your initial application or your expansion application to include an additional site, we will refund half of the application fee. If you are applying for initial recognition as an NRTL, we will refund the pre-paid assessment fees if you withdraw your application before we have traveled to your site to perform the on-site assessment. For an initial application, we will also credit your account for any amount of the pre-paid assessment fees collected that is greater than the actual cost of the assessment. Other than these cases, we do not generally refund or grant credit for any other fees that are due or collected.

<sup>9</sup>Will I be billed even if my application is rejected? If we reject your application, we will bill you for the fees pertaining to tasks that we have performed that are not covered by the fees you have submitted. For example, if we perform an assessment for an expansion application but deny the expansion, we will bill you for the assessment fee. Similarly, we will bill you for the Final Report and **Federal Register** fee if we also wrote the report and published the notice. See note 11 for the consequences of non-payment.

<sup>10</sup>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 = \$63.80.

<sup>11</sup>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 any assessment and for the Review and Evaluation and Final Report/Register Notice 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 10). 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 generally 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. However, please note that in either case, you may be subject to collection procedures under U.S. (Federal) law.

<sup>12</sup>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 "N" in the Subject Index at <http://www.osha.gov>. Any application review fees are those in effect on the date you submit your application. Other application processing fees are those in effect when the activity covered by the fee is performed. Audit fees are those in effect on the date we begin our audit.

[FR Doc. E6-21670 Filed 12-19-06; 8:45 am]

BILLING CODE 4510-26-P

## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2006-7]

### Notice of Intent to Audit

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Public notice.

**SUMMARY:** The Copyright Office of the Library of Congress is announcing receipt of a notice of intent to audit 2005 statements of account concerning the eligible nonsubscription transmissions of sound recordings made by Beethoven.com ("Beethoven") under statutory licenses.

#### FOR FURTHER INFORMATION CONTACT:

Tanya M. Sandros, Associate General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024-0977. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:** Section 106(6) of the Copyright Act, title 17 of the United States Code, gives the copyright owner of a sound recording the right to perform a sound recording publicly by means of a digital audio transmission, subject to certain limitations. Among these limitations are certain exemptions and a statutory license which allows for the public performance of sound recordings as part of "eligible nonsubscription transmissions."<sup>1</sup> 17 U.S.C. 114. A music

<sup>1</sup> An "eligible nonsubscription transmission" is a noninteractive digital audio transmission which, as the name implies, does not require a subscription

service that operates under the section 114 statutory license may also make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act. Use of these licenses requires that services make payments of royalty fees to and file reports of sound recording performances with SoundExchange. SoundExchange is a collecting rights entity that was designated by the Librarian of Congress to collect statements of account and royalty fee payments from services and distribute the royalty fees to copyright owners and performers entitled to receive such royalties under sections 112(e) and 114(g) following a proceeding before a Copyright Arbitration Royalty Panel (CARP)—the entity responsible for setting rates and terms for use of the section 112 and section 114 licenses prior to the passage of the Copyright Royalty and Distribution Reform Act of 2004 (CRDRA), Pub. L. No. 108-419, 118 Stat. 2341 (2004). See 69 FR 5695 (February 6, 2004).

This Act, which the President signed into law on November 30, 2004, and which became effective on May 31, 2005, amends the Copyright Act, title 17 of the United States Code, by phasing out the CARP system and replacing it with three permanent Copyright Royalty Judges (CRJs). Consequently, the CRJs will carry out the functions heretofore

for receiving the transmission. The transmission must also be made as a part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the primary purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. See 17 U.S.C. 114(j)(6).

performed by the CARPs, including the adjustment of rates and terms for certain statutory licenses such as the section 114 and 112 licenses. However, section 6(b)(3) of the Act states in pertinent part:

[t]he rates and terms in effect under section 114(f)(2) or 112(e) . . . on December 30, 2004, for new subscription services [and] eligible nonsubscription services . . . shall remain in effect until the later of the first applicable effective date for successor terms and rates . . . or such later date as the parties may agree or the Copyright Royalty Judges may establish.

Successor rates and terms for these licenses have not yet been established. Accordingly, the terms of the section 114 and 112 licenses, as currently constituted, are still in effect.

One of the current terms, set forth in § 262.6 of title 37 of the Code of Federal Regulations, states that SoundExchange, as the Designated Agent, may conduct a single audit of a Licensee for the purpose of verifying their royalty payments. As a preliminary matter, the Designated Agent is required to submit a notice of its intent to audit a Licensee with the Copyright Office and serve this notice on the service to be audited. 37 CFR 262.6(c).

On December 23, 2005, SoundExchange filed with the Copyright Office a notice of intent to audit Beethoven for the years 2002, 2003, and 2004. See 72 FR 624 (January 5, 2006). Subsequently, on November 22, 2006, SoundExchange filed a second notice of intent to audit Beethoven,<sup>2</sup>

<sup>2</sup> A copy of the new Notice of Intent to Audit Beethoven is posted on the Copyright Office Website at <http://www.copyright.gov/carp/beethoven-notice.2006.pdf>.