

submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 30 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in TUVPTL's application and other pertinent documents (including exhibits), as well as all submitted comments, contact the Docket Office, Room N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at <http://www.regulations.gov> under Docket No. OSHA-2010-0013.

The NRTL Program staff will review all comments to the docket submitted in a timely manner, and, after addressing the issues raised by these comments, will recommend whether to grant NRTL recognition to TUVPTL. The Assistant Secretary will make the final decision on granting NRTL recognition, and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

#### Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 4-2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC on this 15th day of November 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010-29127 Filed 11-17-10; 8:45 am]

**BILLING CODE 4510-26-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2010-0046]

#### QPS Evaluation Services Inc.; Application for Recognition

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the application of QPS Evaluation Services Inc. for recognition as a Nationally Recognized Testing Laboratory, and presents the Agency's preliminary finding to grant this recognition.

**DATES:** Submit information or comments, or a request for an extension of the time to comment, on or before December 20, 2010. All submissions must bear a postmark or provide other evidence of the submission date.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* Submit comments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

*Fax:* If submissions, including attachments, are no longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, or messenger or courier service:* Submit one copy of the comments to the OSHA Docket Office, Docket No. OSHA-2010-0046, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, and 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 (*i.e.*, OSHA-2010-0046). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these submissions will be made available online at <http://www.regulations.gov>.

*Docket:* To read or download submissions or other material in the docket (*e.g.*, exhibits listed below), 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 an extension of the comment period on or before December 20, 2010 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 by 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 N-3655, Washington, DC 20210; telephone: (202) 693-2110. For information about the NRTL Program, go to <http://www.osha.gov>, and select "N" in the site index.

#### SUPPLEMENTARY INFORMATION:

##### I. Notice of Application for Recognition

The Occupational Safety and Health Administration (OSHA) is providing notice that QPS Evaluation Services Inc. (QPS) applied for recognition as a Nationally Recognized Testing Laboratory (NRTL). (*See* Ex. 2—QPS recognition application dated 1/27/2006.)<sup>1</sup> The application covers testing and certification of the equipment or materials, and use of the supplemental programs, listed below.

OSHA recognition of a NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by a NRTL for initial recognition, or for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding, and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages can be accessed from OSHA's Web site at

<sup>1</sup> A number of documents, or information within documents, described in this **Federal Register** notice are the applicant's internal, detailed procedures or contain other confidential business or trade-secret information. These documents and information, designated by an "NA" at the end of, or within, the sentence or paragraph describing them, are not available to the public.

<http://www.osha.gov/dts/otpca/nrtl/index.html>. Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that has/have the technical capability to perform the product testing and certification activities for test standards within the NRTL's scope; and (3) the supplemental program(s) that the NRTL may use, each of which allows the NRTL to rely on other parties to perform activities necessary for product testing and certification.

## II. General Background on the Application

In its application, QPS lists the current address of the laboratory facility covered by the application as: QPS Evaluation Services Inc., 81 Kelfield Street, Unit 8, Toronto, Ontario, M9W 5A3, Canada. According to its application, QPS was established in 1995 as a Canadian Standards Association field inspection agency. In 1998, QPS performed technical services for Entela, Inc., an organization formerly recognized by OSHA as a NRTL, which was then acquired by another NRTL. The application also states that QPS has been accredited by other well-known accreditors (*i.e.*, the Standards Council of Canada and the International Electrotechnical Commission Certification Body (IEC CB) Scheme).

QPS applied on January 27, 2006, for recognition of one site and a number of test standards. (*See* Ex. 2.) In response to OSHA's request for clarification, QPS amended its application to provide additional technical details, and then provided further details in a later update. (*See* Ex. 3—QPS amended application, dated 4/15/2008 and 11/30/2009.) OSHA's NRTL Program staff performed an on-site assessment of the QPS facility in April 2010. Based on this assessment, the OSHA staff recommended recognition of QPS in their on-site review report of the assessment. (*See* Ex. 4—OSHA on-site review report on QPS.)

Through its amended application information (*see* Ex. 3), QPS represents that it maintains the experience, expertise, personnel, organization, equipment, and facilities suitable for accreditation as an OSHA Nationally Recognized Testing Laboratory. It also represents that it meets or will meet the requirements for recognition defined in 29 CFR 1910.7.

The four requirements for recognition (*i.e.*, capability, control procedures, independence, and creditable reports and complaint handling) are addressed

below, along with examples that illustrate how QPS meets each of these requirements. Many, but not all, of the documents or processes described below are referenced in the applicant's summary addressing OSHA's evaluation criteria (*see* the QPS basic information summary; hereafter, "Basic Summary," which is part of Ex. 3, portions of which are confidential).

### Capability

Section 1910.7(b)(1) states that, for each specified item of equipment or material to be listed, labeled, or accepted, the NRTL must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality-control programs) to perform appropriate testing. The "Capability" section of the Basic Summary (NA) shows that the applicant has security measures and detailed procedures in place to restrict or control access to its facility, to areas within its facility, and to confidential information. This section states that QPS's facility has equipment for monitoring, controlling, and recording environmental conditions during tests. QPS provided a list of this equipment, which NRTL Program staff examined during the on-site review (Ex. 4, p. 1). Also, this section shows that QPS has detailed procedures for handling test samples. In addition, the Basic Summary or documents it references show that the QPS facility has adequate test areas and energy sources, and procedures for controlling incompatible activities. QPS provided a detailed list of its testing equipment (NA), and OSHA's on-site review (Ex. 4, p. 2) confirmed that much of this equipment is in place. Review of the application shows that the equipment listed is available (NA) and adequate for the scope of testing described below.

The "Capability" section of the Basic Summary (NA) indicates that QPS has detailed procedures addressing the maintenance and calibration of equipment, and the types of records maintained for, or supporting, many laboratory activities. It also indicates that QPS has detailed procedures for conducting testing, review, and evaluation, and for capturing the test and other data required by the standard for which it seeks recognition. OSHA's on-site review (Ex. 4, p. 2) examined these test data and evaluation documents. QPS is using some of these procedures to test products for NRTLs. Further, this section indicates that QPS has detailed procedures for processing applications and for developing new procedures.

The amended application (Ex. 3) contained adequate procedures to address training or qualifying staff for particular technical tasks (NA). The amended application indicates that QPS has sufficient qualified personnel to perform the proposed scope of testing based on their education, training, technical knowledge, and experience. OSHA's on-site review (Ex. 4, p. 3) confirmed many of these qualifications. The amended application provides evidence that QPS has an adequate quality-control system in place, and OSHA's on-site review (Ex. 4, p. 3) verified the performance of internal audits, and tracking and resolution of nonconformances.

### Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These controls and services include procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The "Control Programs" section of the Basic Summary shows that QPS has the quality-control manual and detailed procedures to address the steps involved to list and certify products. QPS has a registered certification mark. In addition, the "Control Programs" section shows that the applicant has certification procedures (NA); these procedures address the authorization of certifications and audits of factory facilities. The audits apply to both the initial evaluations and the follow-up inspections of manufacturers' facilities. This section indicates that procedures also exist for authorizing the use of the certification mark, and the actions taken when QPS finds that the manufacturer is deviating from the certification requirements. Factory inspections will be a new activity for QPS, and OSHA will need to review the effectiveness of QPS's inspection program when it is in place. As a result, OSHA is proposing a condition to ensure that inspections are conducted properly, and at the frequency set forth in the applicable NRTL Program policy (*see* OSHA Instruction CPL 1–0.3, Appendix C, paragraph III.A).

### Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers that are subject to the testing requirements, and of any manufacturers

or vendors of equipment or materials tested under the NRTL Program. OSHA has a policy for the independence of NRTLs that specifies the criteria used for determining whether an organization meets the above requirement. (See OSHA Instruction CPL 1–0.3, Appendix C, paragraph V.) This policy contains a non-exhaustive list of relationships that would cause an organization to fail to meet the specified criteria. The “Independence” section of the Basic Summary, and additional information submitted by QPS (NA), shows that it has none of these relationships, or any other relationship that could subject it to undue influence when testing for product safety. QPS is a privately owned organization, and OSHA found

no information about the ownership that would qualify as a conflict under OSHA’s independence policy. The amended application indicates that there is no financial affiliation between the ownership of QPS and manufacturers. In summary, the information related to independence demonstrates that QPS meets the independence requirement.

*Credible Reports and Complaint Handling*

Section 1910.7(b)(4) specifies that a NRTL must maintain effective procedures for producing credible findings and reports that are objective and free of bias, and for handling complaints and disputes under a fair and reasonable system. The “Report and

Complaint Procedures” section of the Summary document (NA) shows that the applicant has detailed procedures describing the content of the test reports, and other detailed procedures describing the preparation and approval of these reports. This section also shows that the applicant has procedures for recording, analyzing, and processing complaints from users, manufacturers, and other parties in a fair manner. The on-site review (Ex. 4, p. 3) confirmed that QPS processes complaints in a timely and appropriate manner.

*Standards Requested for Recognition*

QPS seeks recognition for testing and certifying products to the following test standards:<sup>2</sup>

UL 508A .....	Industrial Control Panels.
UL 913 .....	Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, III, Division I, Hazardous (Classified) Locations.
UL 1203 .....	Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations.
UL 6500 .....	Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use.
UL 60335–1 .....	Safety of Household and Similar Electrical Appliances, Part 1: General Requirements.
UL 60601–1 .....	Medical Electrical Equipment, Part 1: General Requirements for Safety.
UL 60950 .....	Information Technology Equipment.
UL 61010–1 .....	Electrical Equipment for Measurement, Control, and Laboratory Use—Part 1: General Requirements.

OSHA’s recognition of any NRTL for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product for which OSHA does not require such testing and certification, a NRTL’s scope of recognition does not include that product.

The test standards listed above may be approved as an American National Standard by the American National Standards Institute (ANSI). However, for convenience, we may use the designations of the standards-developing organization for the standards instead of the ANSI designation. Under the NRTL Program’s policy (*see* OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

*Supplemental Programs*

Should OSHA approve this application for NRTL recognition, it also will grant approval for QPS to use the

following supplemental program because QPS uses outside parties to perform its equipment calibration, and, therefore, must properly qualify these parties for this purpose following the criteria in the program:

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents (for calibration services only)

QPS applied to use additional programs, but then voluntarily withdrew its request after OSHA informed QPS that OSHA was ending the practice of approving most of these types of programs for new applicants. In the past, when granting recognition to an organization as a NRTL, OSHA approved the applicant’s use of any supplemental programs for which the applicant met the criteria. However, OSHA has concern about continuing this practice for new applicants for the NRTL Program because the applicants are not yet capable of implementing the procedures for testing, evaluating, and performing inspections used under the NRTL Program. By continuing this practice, OSHA does not allow the NRTL’s staff at its recognized site(s) to attain the necessary experience, nor does the practice allow OSHA adequate time to evaluate properly that staff’s

technical experience. OSHA has the same concern when an existing NRTL applies to expand its recognition under the NRTL Program to include additional standards for testing a type of product not tested previously by the NRTL under the NRTL Program. Examples of such product testing include testing hazardous-location products when OSHA recognizes the NRTL for testing only ordinary-location products, and testing gas-operated products when the NRTL’s recognition is limited to testing only electrically operated products. Therefore, before OSHA approves any NRTL or applicant to use or rely on tests, evaluations, and inspections performed by other parties, OSHA must first ensure that the NRTL/applicant performs these activities adequately using its own staff located at its recognized site(s). The only exception to this policy is Program 9, which permits the use of qualified parties to calibrate a NRTL’s testing equipment. This exception does not affect materially the capability of a NRTL/applicant to meet OSHA’s requirements for recognition. However, regarding approval to use other supplemental programs, a NRTL/applicant may apply for such approval when OSHA determines that the NRTL/applicant tests, evaluates, and performs

<sup>2</sup>The designations and titles of these test standards were current at the time of the preparation of this notice.

inspections adequately using its own staff located at its recognized site(s). Accordingly, OSHA would continue to deny use of such a program, or withdraw its prior approval to use such a program, when it determines that a NRTL/applicant is not testing, evaluating, and performing inspections adequately using its own staff located at its recognized site(s).

#### *Additional Condition*

As described above, while QPS has testing and evaluation procedures, OSHA could not review how QPS has implemented them because QPS has not used them for testing and certifying products under the program. In addition, as also described above, while QPS has factory-inspection procedures, it currently does not conduct regular factory inspections. Some of these testing- and factory-inspection procedures are newly developed by QPS. Therefore, OSHA also must review the effectiveness of QPS's testing and evaluation procedures, and its factory-inspection program should OSHA grant NRTL recognition to QPS, and do so within a reasonable period after granting recognition. Consequently, OSHA proposes to recognize QPS conditionally, *i.e.*, subject to a later determination of the effectiveness of these procedures. OSHA would include these conditions in the final notice should OSHA recognize QPS as a NRTL. These conditions apply solely to QPS's operations as a NRTL, and solely to those products that it certifies for purposes of enabling employers to meet OSHA product-approval requirements. These conditions would be in addition to all other conditions that OSHA normally imposes in its recognition of an organization as a NRTL.

Imposing these conditions is consistent with OSHA's past recognition of certain organizations as NRTLs that met the basic recognition requirements, but needed to further refine or implement their procedures (for example, *see* 63 FR 68306, 12/10/1998, and 65 FR 26637, 05/08/2000). Given the applicant's current activities in testing and certification, OSHA is confident that QPS will properly perform its activities in the areas noted above.

Therefore, the following conditions would apply should OSHA recognize QPS under the NRTL Program:

Within 30 days of certifying its first products under the NRTL Program, QPS will notify the OSHA NRTL Program Director of this activity so that OSHA may schedule its first audit of QPS. At this first audit of QPS, QPS must demonstrate that it properly conducted testing, review, and evaluation,

and factory inspections, and, for inspections, did so at the frequency set forth in the applicable NRTL Program policy.

#### *Preliminary Finding on the Application*

QPS submitted an acceptable application for recognition as a NRTL. OSHA's review of the application file and the results of the on-site review indicate that QPS can meet the requirements prescribed by 29 CFR 1910.7 for recognition to use the test standards listed above. This preliminary finding does not constitute an interim or temporary approval of the application. QPS corrected the discrepancies noted by OSHA during the on-site review, and these corrections are described in its response to the on-site review report (NA).

Following examination of the application file and the on-site review report, the NRTL Program staff concluded that OSHA can grant the applicant recognition as a Nationally Recognized Testing Laboratory for its Toronto, Ontario, facility, subject to the conditions described above. The staff, therefore, recommended preliminarily that the Assistant Secretary approve the application.

OSHA welcomes public comment as to whether QPS meets the requirements of 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 30 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in QPS's application and other pertinent documents (including exhibits), and all submitted comments, contact the Docket Office, Room N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at <http://www.regulations.gov> under Docket No. OSHA-2010-0046.

The NRTL Program staff will review all comments submitted to the docket in a timely manner, and, after addressing the issues raised by these comments, will recommend whether to grant NRTL recognition to QPS. The Assistant Secretary will make the final decision on granting NRTL recognition, and, in making this decision, may undertake other proceedings prescribed in

Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

#### *Authority and Signature*

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 4-2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC on this 15th day of November 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

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**BILLING CODE 4510-26-P**

## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

#### **Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA-W) number issued during the period of November 1, 2010 through November 5, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by