

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-823]

### Certain Kinesiotherapy Devices and Components Thereof; Commission Decision To Rescind a General Exclusion Order and Cease and Desist Orders

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has rescinded the general exclusion order and cease and desist orders issued at the conclusion of the above-captioned investigation. The general exclusion order was directed against infringing kinesiotherapy devices and components thereof, and the cease and desist orders were directed against certain respondents.

#### FOR FURTHER INFORMATION CONTACT:

Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-3041. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 10, 2012, based on a complaint filed by Standard Innovation Corporation of Ottawa, ON, Canada and Standard Innovation (US) Corp. of Wilmington, Delaware (collectively, "Standard Innovation"). 77 FR 1504-05 (Jan. 10, 2012). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of United States Patent Nos. 7,931,605 ("the '605 patent") and D605,779 ("the D'779 patent"). The complaint named twenty-one business entities as respondents, several of which have since been terminated from the

investigation based upon consent orders or withdrawal of the complaint. On July 25, 2012, the Commission determined not to review an ID (Order No. 25) granting Standard Innovation's motion to withdraw the D'779 patent from the investigation. An evidentiary hearing was held from August 21, 2012, to August 24, 2012.

On January 8, 2013, the ALJ issued a final ID finding no violation of Section 337. The ALJ also issued a recommended determination on remedy and bonding on January 22, 2013. Specifically, the ALJ found that Standard Innovation had not satisfied the economic prong of the domestic industry requirement. The ALJ found, however, that the accused products infringe the asserted claims, that the asserted claims were not shown to be invalid, and that the technical prong of the domestic industry requirement was shown to be satisfied.

On January 22, 2013, Standard Innovation and the Commission investigative attorney filed petitions for review of the final ID, and the remaining respondents in the investigation filed a contingent petition for review. On January 30, 2013, each party filed a response.

On March 25, 2013, the Commission determined to review the ID in its entirety and posed questions to the parties concerning the satisfaction of the economic prong of the domestic industry and remedy, the public interest, and bonding. The parties and the IA submitted briefs on April 8, 2013, and briefs in reply on April 15, 2013. The target date for completion of the investigation was also extended until June 17, 2013.

On June 17, 2013, the Commission issued its final determination finding that Standard Innovation had satisfied the economic prong of the domestic industry requirement and that Standard Innovation had proven a violation of Section 337 by reason of infringement of the '605 patent. Based on evidence of a pattern of violation and difficulty ascertaining the source of the infringing products, the Commission issued a general exclusion order against certain kinesiotherapy devices that infringe the '605 patent. The Commission also issued cease and desist orders against the following respondents: LELO Inc. of San Jose, California; PHE, Inc. d/b/a Adam & Eve of Hillsborough, North Carolina; Nalpac Enterprises, Ltd. of Ferndale, Michigan; E.T.C. Inc. (d/b/a Eldorado Trading Company, Inc.) of Broomfield, Colorado; Williams Trading Co., Inc. of Pennsauken, New Jersey; Honey's Place Inc. of San Fernando, California; and Lover's Lane & Co. of

Plymouth, Michigan. The Commission's remedial orders allowed entry under bond during the Presidential review period.

On August 20, 2013, respondents LELO, Inc. and Leloi AB filed a notice of appeal with the U.S. Court of Appeals for the Federal Circuit seeking review of the Commission's final determination. Standard Innovation intervened in the appeal and the parties filed briefs with the Court. On May 11, 2015, the Federal Circuit issued its opinion in *Lelo Inc. v. International Trade Commission*, 786 F.3d 879 (Fed. Cir. 2015). The Court indicated that the Commission had erred in relying solely upon qualitative factors to find "significant investment in plant and equipment" and "significant employment of labor or capital" under prongs (A) and (B) of the domestic industry requirement. Accordingly, the Court reversed the Commission's finding of a violation of 19 U.S.C. 1337. The Court issued its mandate on July 2, 2015.

As the U.S. Court of Appeals for the Federal Circuit has reversed the Commission's finding of violation, the Commission has determined that there is no longer a basis for the general exclusion order or the cease and desist orders previously issued in this investigation. The Commission has therefore rescinded the orders.

This action is taken under the authority of Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337(k) and Commission rule 210.76, 19 CFR 210.76.

By order of the Commission.

Issued: July 21, 2015.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2015-18269 Filed 7-24-15; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2007-0043]

#### TÜV SÜD America, Inc.: Grant of Expansion of Recognition

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

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces its final decision to expand the scope of recognition for TÜV SÜD America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on July 27, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: [Meilinger.francis2@dol.gov](mailto:Meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210; telephone: (202) 693-2110; email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov). OSHA's Web page includes information about the NRTL Program (see <http://www.osha.gov/dts/otpca/nrtl/index.html>).

**SUPPLEMENTARY INFORMATION:**

**I. Notice of Final Decision**

OSHA hereby gives notice of the expansion of the scope of recognition of TÜV SÜD America, Inc. (TUVAM), as an NRTL. TUVAM's expansion covers the addition of one test standard to its scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 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 properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The Agency processes applications by an NRTL for initial recognition, or for 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 are available from the Agency's Web site at [http://](http://www.osha.gov/dts/otpca/nrtl/index.html)

[www.osha.gov/dts/otpca/nrtl/index.html](http://www.osha.gov/dts/otpca/nrtl/index.html).

TUVAM submitted an application, dated October 6, 2014 (OSHA-2007-0043-0011, Exhibit 15-1—TUVAM Expansion Letter), to expand its recognition to include two additional test standards. In response for requests for additional information from NRTL staff, TUVAM withdrew one of the proposed test standards, reducing their request for expansion to one test standard. OSHA staff performed a comparability analysis and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing TUVAM's expansion application in the **Federal Register** on May 6, 2015 (80 FR 26096). The Agency requested comments by May 21, 2015, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of TUVAM's scope of recognition.

To obtain or review copies of all public documents pertaining to TUVAM's application, go to [www.regulations.gov](http://www.regulations.gov) or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-2625, Washington, DC 20210. Docket No. OSHA-2007-0043 contains all materials in the record concerning TUVAM's recognition.

**II. Final Decision and Order**

OSHA staff examined TUVAM's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that TUVAM meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant TUVAM's scope of recognition expansion. OSHA limits the expansion of TUVAM's recognition to testing and certification of products for demonstration of conformance to the test standard listed in Table 1 below.

TABLE 1—APPROPRIATE TEST STANDARD FOR INCLUSION IN TUVAM'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title                                       |
|---------------|---|
| UL 8750 ..... | Light Emitting Diode (LED) Equipment for Use in Lighting. |

OSHA's recognition of any NRTL for a particular test standard is limited to

equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standard listed above as an American National Standard. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to 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.

*A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, TUVAM must abide by the following conditions of the recognition:

1. TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);
2. TUVAM must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. TUVAM must continue to meet the requirements for recognition, including all previously published conditions on TUVAM's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVAM, subject to the limitation and conditions specified above.

**III. Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 22, 2015.

**David Michaels,**

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

[FR Doc. 2015-18320 Filed 7-24-15; 8:45 am]

BILLING CODE 4510-26-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2012-0035]

#### Traylor Bros., Inc., Application for Permanent Variance and Interim Order; Grant of Interim Order; Request for Comments

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

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of Traylor Bros., Inc., for a permanent variance and interim order from the provisions of OSHA standards that regulate work in compressed-air environments at 29 CFR 1926.803 and presents the Agency's preliminary finding to grant the permanent variance. OSHA also announces its grant of an interim order in this notice. OSHA invites the public to submit comments on the variance application to assist the Agency in determining whether to grant the applicant a permanent variance based on the conditions specified in this application.

**DATES:** Submit comments, information, documents in response to this notice, and request for a hearing on or before August 26, 2015. The interim order specified by this notice becomes effective on July 27, 2015, and shall remain in effect until the interim order is modified or revoked.

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

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

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

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA-2012-0035, Technical Data Center, U.S. Department

of Labor, 200 Constitution Avenue NW., Room N-2625, Washington, DC 20210; telephone: (202) 693-2350 (TDY number: (877) 889-5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.-4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA-2012-0035). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *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.<sup>1</sup> All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of Comment Period:* Submit requests for an extension of the comment period on or before August 26, 2015 to the Office of Technical Programs and Coordination Activities, Variance Program, Directorate of Technical Support and Emergency Management, 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:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of

Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: [Meilinger.francis2@dol.gov](mailto:Meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210; telephone: (202) 693-2110; email: [Robinson.kevin@dol.gov](mailto:Robinson.kevin@dol.gov). OSHA's Web page includes information about the Variance Program (see <http://www.osha.gov/dts/otpc/variances/index.html>).

#### SUPPLEMENTARY INFORMATION:

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

*Hearing Requests.* According to 29 CFR 1905.15, hearing requests must include: (1) A short and plain statement detailing how the proposed variance would affect the requesting party; (2) a specification of any statement or representation in the variance application that the commenter denies, and a concise summary of the evidence adduced in support of each denial; and (3) any views or arguments on any issue of fact or law presented in the variance application.

#### I. Notice of Application

On April 26, 2012, Traylor Bros., Inc., 835 N. Congress Ave., Evansville, IN 47715, and Traylor/Skanska/Jay Dee Joint Venture, Blue Plains Tunnel, 5000 Overlook SW., Washington, DC 20032, submitted under Section 6(d) of the Occupational Safety and Health Act of 1970 ("OSH Act"; 29 U.S.C. 655) and 29 CFR 1905.11 ("Variances and other relief under section 6(d)"), an application for a permanent variance from several provisions of the OSHA standard that regulates work in compressed air at 29 CFR 1926.803. OSHA is addressing this request as two separate applications: (1) Traylor Bros., Inc. ("Traylor" or "the applicant") request for a permanent variance for future tunneling projects; and (2) Traylor/Skanska/Jay Dee Joint Venture, Blue Plains Tunnel ("Traylor JV"). This notice only addresses the Traylor application for an interim order and permanent variance for future tunneling projects. This notice does not address

<sup>1</sup> Traylor indicated that the decompression tables it intends to use for decompression with trimix are proprietary. Therefore, these tables are not available in the docket.