

**U.S. Department of Labor**  
**Office of Inspector General—Office of Audit**

**Occupational Safety and  
Health Administration**



**OSHA Correctly Denied ED&D's  
Incomplete NRTL Application**

**Date Issued: March 31, 2005**  
**Report Number: 05-05-002-10-001**

# BRIEFLY...

Highlights of Report Number: 05-05-002-10-001, a report to the Assistant Secretary for Occupational Safety and Health. March 31, 2005

## WHY READ THE REPORT

OSHA safety standards require that specified equipment and materials (products) be tested and certified for safety by an OSHA-recognized organization. The Nationally Recognized Testing Laboratory (NRTL) program identifies organizations that meet OSHA requirements for testing and certifying equipment and materials. To be recognized as an NRTL, an organization must meet OSHA's requirements. Initial recognition, valid for 5 years and for a specific scope of recognition, is granted if the application and onsite review of the organization demonstrate the applicant meets four elements described in 29 CFR 1910.7 (b).

## WHY OIG DID THE AUDIT

Educated Design and Development, Inc. (ED&D), submitted an application for NRTL recognition in October 1996. ED&D filed a hotline complaint with the OIG regarding its application for NRTL recognition. ED&D alleged that OSHA failed to fulfill its NRTL recognition responsibilities.

The OIG conducted a performance audit of OSHA's NRTL recognition process to determine if ED&D's claims were valid with respect to negligence or misconduct by OSHA. Our audit covered NRTL procedures from the date of ED&D's application until its closure (May 2003), relating, but not limited to, the processing of ED&D's application.

## READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2004/05-05-002-10-001.pdf>

MARCH 2005

# OSHA Correctly Denied ED&D's Incomplete NRTL Application

## WHAT OIG FOUND

OSHA's decision to deny ED&D NRTL recognition and close its application was justified because ED&D did not meet all the elements required for recognition.

OSHA's records adequately supported its decision to grant recognition to several organizations ED&D alleged were given recognition inappropriately. However, OSHA permitted some applicants to self-certify they were independent and did not later verify the independence statements.

OSHA did not appropriately handle ED&D's application in two areas. However, these deficiencies did not adversely impact the outcome of ED&D's application.

## WHAT OIG RECOMMENDED

We recommended that the Assistant Secretary for Occupational Safety and Health direct staff to:

1. Make independence reviews a mandatory part of application reviews and periodic audits.
2. Modify current policy to ensure that all areas related to an NRTL's recognition, including independence, are reviewed at least once during each 5-year recognition period.
3. Review two NRTLs' current business practices to ensure conformance with the independence requirement.
4. Ensure that incomplete applications are closed.
5. Maintain a log of contacts with the applicants and NRTLs.
6. Develop procedures to acknowledge all requests for feedback.

OSHA agreed with, and plans to implement, our recommendations.

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## **Executive Summary**

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We conducted a performance audit of OSHA's process to grant recognition as a Nationally Recognized Testing Laboratory (NRTL). Our interest arose from concerns in a hotline complaint filed by Educated Design and Development, Inc. (ED&D) on December 31, 2002. There were allegations of negligence and misconduct by OSHA's NRTL evaluation group in the handling of ED&D's application for NRTL recognition, dated October 9, 1996. ED&D alleged that OSHA failed to perform its job. ED&D cited other applicants that it believed received NRTL recognition, although not qualified. ED&D stated that its requests for NRTL status were ignored, citing a lack of any communication from OSHA.

The purpose of our audit was to determine if ED&D's claims were valid with respect to negligence or misconduct by OSHA. To determine this, we focused on three objectives. We wanted to determine the answers to the following questions:

1. Was OSHA's decision not to grant ED&D NRTL recognition justified?
2. Were other NRTLs identified in ED&D's complaint given recognition inappropriately?
3. Did OSHA handle ED&D's application for NRTL recognition appropriately?

We found that:

1. OSHA's records show that ED&D did not meet two of the four primary requirements for recognition described in 29 CFR 1910.7(b) (capability to test and evaluate equipment, and control of certified products), and questions regarding ED&D's compliance with a third primary requirement (independence) were never resolved. Therefore, OSHA denied ED&D's NRTL recognition and closed its application on May 12, 2003. OSHA's decision was justified.
2. ED&D alleged that OSHA unfairly favored several unqualified organizations by granting them NRTL recognition. OSHA's records adequately supported its decision to grant recognition to Detroit Testing Laboratory, Inc. (DTL) and conditional recognition to Curtis-Straus LLC (CSL), and NSF International (NSF) because they had the capability to test and evaluate equipment.

ED&D also alleged that OSHA did not impose independence restrictions as a manufacturer on Underwriters Laboratories (UL), U.S. Testing Company, Inc. (now known as SGS U.S. Testing, Inc. (SGSUS)), and other unnamed NRTLs. At the time of UL's and SGSUS's applications, OSHA permitted NRTL applicants to self-certify that they were independent of manufacturing and marketing operations. UL and SGSUS

provided self-certifications, thus satisfying OSHA's requirement. While OSHA directives subsequently established procedures for verifying an NRTL's independence, verification is not required. We believe OSHA should verify ongoing independence during onsite audits.

3. We identified two areas where OSHA did not appropriately handle ED&D's application. However, these deficiencies did not adversely impact the outcome of ED&D's application. (1) OSHA did not follow its regulations for accepting applications when processing ED&D's request for NRTL recognition and did not apply procedures it finalized while the ED&D application was open. (2) We identified two instances where OSHA could not document any feedback. In one other instance, cited by ED&D, we found that OSHA did not provide timely feedback.

We recommend that the Assistant Secretary for Occupational Safety and Health direct staff to:

1. Make the procedures in Appendix E of Enforcement and Compliance Directive CPL 1-0.3 for review of independence a mandatory part of:
  - a. the initial and renewal recognition process;
  - b. at least one of the annual audits performed on the NRTL during each 5-year recognition period; and
  - c. the audit that is performed after notification of a change in the NRTL's ownership.
2. Modify CPL 1-0.3 to ensure that all areas related to an NRTL's recognition, including independence, are reviewed at least once during each 5-year recognition period.
3. Review UL's and SGSUS's current business practices to ensure conformance with the independence requirement for NRTL recognition.
4. Adhere to OSHA procedures when reviewing applications and performing onsite assessments so that incomplete applications are closed.
5. Maintain a log of contacts with the applicants and NRTLs as part of the application/reapplication files.
6. Develop procedures to acknowledge all requests for feedback (i.e., followup visits or status reports).

OSHA concurred with our recommendations and its response is attached as Appendix D. Recommendation 4 is resolved, but not closed. Recommendations 1, 2, 3, 5, and 6 are unresolved pending the receipt of specific implementation plans.

**U.S. Department of Labor**

Office of Inspector General  
Washington, DC. 20210



## **Assistant Inspector General's Report**

Mr. Jonathan L. Snare  
Acting Assistant Secretary  
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We audited OSHA's process to grant recognition as a Nationally Recognized Testing Laboratory (NRTL), in response to a hotline complaint filed by Educated Design and Development, Inc. (ED&D) regarding its application for NRTL recognition. ED&D alleged that OSHA failed to perform its job. ED&D cited other applicants that it believed received NRTL recognition, although not qualified. ED&D stated that its requests for NRTL status were ignored, citing a lack of any communication from OSHA. See Appendix A for additional background information.

The purpose of our audit was to determine if ED&D's claims were valid with respect to negligence or misconduct by OSHA. To determine this we focused on three objectives. We wanted to determine the answers to the following questions:

1. Was OSHA's decision not to grant ED&D NRTL recognition justified?
2. Were other NRTLs identified in ED&D's complaint given recognition inappropriately?
3. Did OSHA handle ED&D's application for NRTL recognition appropriately?

We conducted the audit in accordance with Government Auditing Standards for performance audits. Our audit scope, methodology, and criteria are detailed in Appendix B.

## **Objective 1: Was OSHA's Decision Not to Grant ED&D NRTL Recognition Justified?**

### **Results**

Yes. OSHA's records show that ED&D did not meet two of the four primary requirements for recognition described in 29 CFR 1910.7(b), and questions regarding ED&D's compliance with a third primary requirement (independence) were never resolved. Specifically, ED&D did not (1) provide quality assurance procedures to demonstrate the capability to test and evaluate equipment, (2) demonstrate it had developed control of certified products, including a registered certification mark and factory followup inspection procedures, and (3) provide sufficient information to resolve OSHA's questions about its compliance with the independence requirement. OSHA denied ED&D NRTL recognition by closing its application on May 12, 2003. OSHA's decision was justified.

### Capability to Test and Evaluate Equipment

To be recognized, an NRTL applicant is required to have the capability to test and evaluate equipment for conformance with appropriate test standards. ED&D's application lacked complete quality control programs, one of the elements needed to demonstrate the capability to test and evaluate equipment.

Section 1910.7 (b)(1) of CFR 29 requires quality control programs as part of the capability element for NRTL recognition:

For each specified item of equipment or material to be listed, labeled or accepted, the NRTL has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs). . . .

At the time of ED&D's application, October 9, 1996, OSHA was using a draft OSHA Instruction, Enforcement and Compliance Directive CPL 1.3, *Processing Applications for NRTL Recognition* (referred to as Draft SOP). The Draft SOP, Appendix 1A, *A Guide For Applying as a NRTL*, was developed to assist companies in preparing their application. A section titled "Quality Control Programs" states:

The laboratory should maintain complete and adequate records of the quality control programs and a complete file of all the standards, codes and regulations which are necessary in the evaluation of products or the performance of appropriate tests. Included in the above should be the maintenance of a quality control program and manual, and a master file of relevant safety and test standards.



On February 12, 2001, the OSHA assessor issued his review of the corrective actions for the nonconformances from the assessment conducted March 27 - 29, 2000. He reported that there were still deficiencies in ED&D's internal audit checklists, as follows:

1. The instructions on the checklists do not cover all essential elements of the audited procedure.
2. Actions required by the checklist do not constitute a valid confirmation that essential elements of the policy are being followed.
3. The checklist confirms existence of assigned responsibility, not conformance to a policy.
4. The documents specified in the checklist will not have the information needed to verify conformance with policy.
5. Followup audits, completion of the listing and labeling agreements, and other areas of certification are not audited.
6. The checklists do not require the auditor to record the documents examined.
7. In some cases, although the action is technically in conformance with OSHA policy, the actions are so far from the norm that I question if the procedure will be followed.

OSHA requested a revised internal audit checklist from ED&D to further proceed with the application. ED&D did not provide a revised checklist.

On May 12, 2003, OSHA notified ED&D it closed the ED&D application and noted:

. . . In addition, your application initially lacked many of the detailed procedures necessary for the host of activities involved in testing and certification of products to meet the requirements for recognition. . . .

An organization must have the necessary capability both as a product testing laboratory and as a product certification organization to receive recognition from OSHA as an NRTL. The capability includes having qualified personnel, proper equipment and facilities, and policies, procedures, methods, and practices in place and in sufficient detail, to do the activities necessary in testing and certifying specific types of products for safety. While an organization that primarily tests products may apply, it must also adequately demonstrate that it is or can be a product certification organization.

### Control of Certified Products

At the time of application, an NRTL applicant is required to have, or to have applied for, a registered certification mark that will be affixed to products it certifies, and procedures to control the certification mark. In addition, an applicant is also required to have procedures and resources in place to conduct inspections of manufacturer's products for certification. ED&D did not meet these requirements at the time of application or during the time the application was reviewed.

Section 1910.7(b)(2) of CFR 29 defines the controls for certified products:

The NRTL shall provide, to the extent needed for the particular equipment or materials listed, labeled, or accepted, the following controls or services:

- (i) Implements control procedures for identifying the listed and labeled equipment or materials;
- (ii) Inspects the run of production of such items at factories for product evaluation purposes to assure conformance with the test standards; and
- (iii) Conducts field inspections to monitor and to assure the proper use of its identifying mark or labels on products.

In the Draft SOP, Appendix 1A, *A Guide For Applying as a NRTL*, a section titled "Supplemental Information" lists additional information to be submitted with the application, including:

- A sample of the laboratory's registered certification mark (or evidence to the fact that one has been applied for); and
- Copies of the programs for conducting factory inspections for product evaluation and for conducting field inspections to monitor and assure proper use of its Federally registered certification mark.

On June 2, 1997, OSHA informed ED&D that its application was incomplete because it submitted only a drawing of the proposed certification mark. On July 8, 1997, ED&D confirmed in a letter to OSHA that it had not registered its mark with the U. S. Patent Office.

Likewise, OSHA's June 2, 1997, letter informed ED&D that it did not provide followup and field inspection procedures. ED&D had submitted a Quality Assurance Manual that appeared to pertain mainly to products manufactured by ED&D, not the products it would be inspecting at other manufacturers. ED&D responded in the July 8, 1997, letter that it was in the process of writing procedures for factory followup and field inspections.

OSHA's onsite assessment, dated March 27 - 29, 2000, reported that ED&D still had not developed or written procedures for the certification process. On May 12, 2003, OSHA closed the ED&D application and noted ED&D had not submitted factory followup inspection procedures for the control programs.

### Independence

An NRTL applicant is required to be independent of manufacturers, users, suppliers, and distributors of products for which OSHA requires NRTL certification, and major users of such products. ED&D's application and subsequent OSHA assessments show that questions regarding ED&D's compliance with independence requirements were never resolved.

Section 1910.7 (b)(3) of CFR 29 defines the independence element for NRTL recognition:

The NRTL is completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

In the Draft SOP, Appendix 1A, *A Guide For Applying as a NRTL*, a section titled "Required Evidence of Independence" states:

*Written evidence* of the independence of the applicant should be presented to achieve objectivity and preclude conflict of interest and to meet the provisions of 29 CFR 1910.7, i.e., applicant must be totally independent financially and administratively of the manufacturer, user, supplier, and distributor. The laboratory should be primarily engaged in testing and certifying activities and not in design, promotion, or consultation with respect to the products(s) being tested. In addition, the security of employment for laboratory employees should not be under the influence or control of manufacturers or suppliers.

Federal Register, Vol. 60 No. 46, dated March 9, 1995, issued a Notice of Interpretation to clarify the types of programs and procedures that NRTLs may engage in under the program. Regarding independence, the Background states, in part:

Independence also does not mean that an NRTL has to carry out all of its functions totally separate from other entities, including the manufacturer. Simply put, the independence means that the analytical and decision making process, which are the critical functions that must be performed, are accomplished by an organization which is financially independent of manufacturers, vendors, and users of certified products.

. . . As long as the NRTL, which was not economically affiliated with the manufacturer, had ultimate authority and responsibility for the approval of the product and use of the certification mark, the needs of independence would be satisfied.

OSHA reviewed ED&D's October 1996 application and, in a letter dated June 2, 1997, asked ED&D to respond to the following questions:

- Clarify what is meant by "equipment under our testing capabilities."
- If ED&D were to receive NRTL recognition, will it manufacture, then test and certify equipment falling within the scope of any of the safety standards for which it is recognized?
- Refer to the section of the application guidelines titled "Affiliation." Do any owners, officer, Member of the Board of Directors, or other official of ED&D hold more than two percent of stock in any corporation that is a manufacturer or supplier of products which ED&D will or may certify?

ED&D provided the following responses to OSHA in a July 8, 1997, letter:

- The reference to "equipment under our testing capabilities" simply means any equipment we resale or manufacture. When the time comes to obtain certification on this equipment, we will employ the services of one of the other NRTLs (UL, ETL, CSA).
- Again, we will not certify our own equipment, and intend to employ the services of one of the other NRTLs (UL, ETL, CSA).
- No, the owners, officers and board members of ED&D do not own more than 2% stock in any corporation whose products we would certify.

On March 5, 1999, OSHA reported on the first followup assessment of ED&D and noted:

ED&D manufactures and sells a line of electrical test equipment.

In August 25, 2000, an ED&D official informed OSHA:

Due to the testing services market, ED&D and its owners/officers are divesting itself of its equipment sales division. As this was an action item on OSHA's previous comments, we believe this recent decision should assist if this was a consideration with regard to testing labs involved in sale of equipment. We can provide you details with our progress of the sale of this division at your request, but would hope to have it finalized before the end of 2000.

To become an NRTL, an applicant had to be independent of all manufacturing and distributing of products being tested and primarily engaged in testing and certifying activities. Questions regarding ED&D's compliance with independence requirements were never resolved. OSHA's May 13, 2003, letter notifying ED&D it was closing the application noted:

. . . Finally, as noted in our June 2<sup>nd</sup> [1997] letter, ED&D did not appear to meet the requirements for independence of an NRTL and the most recent information provided by our assessor indicates that ED&D continued to fail to meet this requirement.

In its complaint, ED&D did not disclose whether it was successful in selling the testing equipment division.

## **Objective 2: Were Other NRTLs Identified in ED&D's Complaint Given Recognition Inappropriately?**

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### **Finding**

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No. ED&D alleged that OSHA unfairly favored several unqualified organizations by granting them NRTL recognition. OSHA's records adequately supported its decision to grant recognition to Detroit Testing Laboratory, Inc. (DTL) and conditional recognition to Curtis-Straus LLC (CSL), and NSF International (NSF) because they had the capability to test and evaluate equipment. ED&D could not be considered for complete or conditional recognition because it had not demonstrated capability, as discussed on page 6.

ED&D also alleged that OSHA did not impose independence restrictions as a manufacturer on Underwriters Laboratories (UL), U.S. Testing Company, Inc. (now known as SGS U.S. Testing, Inc. (SGSUS)), and other unnamed NRTLs. At the time of UL's and SGSUS's applications, OSHA permitted NRTL applicants to self-certify that they were independent of manufacturing and marketing operations. However, OSHA did not verify the independence statements. Further, OSHA did not verify independence during the annual onsite audit of SGSUS.

### Recognition of Selected Entities

ED&D alleged that OSHA unfairly favored several unqualified organizations by granting them NRTL recognition before they met the requirements. The complaint named DTL, CSL, and NSF. OSHA granted recognition to DTL because it met the four elements described in 29 CFR 1910.7(b). OSHA granted conditional recognition to CSL and NSF because they met the capability to perform requirement.

OSHA's files documented that DTL met the four elements for recognition. OSHA's files also documented the determination to grant conditional recognition to CSL and NSF.

Per OSHA, Section 1910.7 of CFR 29, Appendix A, Subsection I.C. provides for conditional recognition:

The recognition by OSHA of any NRTL will be evidenced by a letter of recognition from OSHA. The letter will provide the specific details of the scope of the OSHA recognition, . . . as well as any specific conditions imposed by OSHA [emphasis added].

Per OSHA, Directive CPL 1-0.3, NRTL Program Policies, Procedures, and Guidelines, dated December 2, 1999, refers to conditional recognition in Chapter 5, Paragraph II.D.3 with regard to the Assistant Secretary's approval of recognition:

. . . This letter or document sets forth the terms of recognition, which include the scope of recognition, specific conditions and limitations imposed by OSHA . . . [emphasis added].

Conditional recognition may be granted if an NRTL meets the requirements but has just developed procedures that are not yet implemented. In this case, OSHA has not had the opportunity to review the implementation. Therefore, if OSHA believes the NRTL has the capability to perform, OSHA may grant conditional recognition but reserve the right to conduct followup visits once the NRTL implemented and performed procedures. The requirements of 29 CFR 1910.7 are based upon capability, rather than experience.

On May 8, 2000, the Federal Register published notice of OSHA's conditional recognition of CSL and explained the reason for conditional recognition. CSL had not tested products to all requirements of a test standard, since it had just finished developing procedures. As a result, OSHA had not evaluated implementation of the testing and procedures CSL would use nor CSL's operations while using the procedures. OSHA granted conditional recognition with the proviso that CSL notify the OSHA NRTL Program Director within 30 days of certifying its first products so that OSHA could review CSL's implementation procedures.

NSF was originally granted conditional recognition on December 10, 1998. However, ED&D's allegation provided a copy of the June 28, 2000, Federal Register notice for expansion of NSF's recognition for eight additional test standards explaining the reason for conditional recognition. NSF had not had an opportunity to perform its first certification of either the original or these additional products under the NRTL program. OSHA granted conditional recognition with the proviso that NSF notify the OSHA NRTL Program Director within 30 days of

certifying its first products so that OSHA could review NSF's implementation procedures.

ED&D could not be considered for conditional recognition because it had not demonstrated capability, as discussed on page 6.

### Independence

ED&D also alleged that OSHA did not impose independence restrictions as a manufacturer on UL, SGSUS, and other unnamed NRTLs. As discussed on page 9, an NRTL applicant is required to be independent of suppliers or major users of products NRTLs must certify and independent of the manufacture or distribution of such products. At the time of UL's and SGSUS's applications, OSHA permitted NRTL applicants to self-certify that they were independent of manufacturing and marketing operations. UL and SGSUS provided self-certifications, thus satisfying OSHA's requirement. While OSHA directives subsequently established procedures for verifying an NRTL's independence, verification is not required. We believe OSHA should verify ongoing independence during onsite audits.

UL was one of two testing laboratories grandfathered as an NRTL in 1988. In preparation for the initial assessment for renewal in 1993, UL submitted a Statement of Independence in September 1992. Our review of OSHA's files documents that OSHA accepted the Statement of Independence from UL without verification.

SGSUS received NRTL recognition in March 1993. OSHA also relied on a Statement of Independence from SGSUS at the time of NRTL recognition without verification.

Subsequent to these recognitions, OSHA Directive CPL 1-0.3, dated December 2, 1999, includes procedures for reviewing independence as part of an annual onsite audit in Appendix E, Part IV. However, these procedures are only guidelines, not requirements.

OSHA did not review SGSUS for conformity with the NRTL independence requirements during its annual onsite audit of SGSUS on July 11 - 12, 2000. OSHA's report, dated August 8, 2000, states in the Background:

This audit did not acquire any additional information on the organizational or ownership structure of SGS that would question the independence of the organization.

The report Recommendation states:

This on site audit did not discover any factors that would lead to a recommendation that the recognition of this SGS facility as a Nationally Recognized Testing Facility, be revoked.

While OSHA has policies and procedures for reviewing independence as part of an annual review, OSHA did not review independence in this instance.

UL and SGSUS provided a self-certification with their applications, thereby meeting the requirements at the time. However, this control would be strengthened if verified by OSHA. We believe OSHA should verify ongoing independence through onsite audits.

## **Recommendations**

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Our draft report had three recommendations to address conditions described in this finding. The recommendations, OSHA's response to each recommendation, and the auditor's conclusion for each recommendation follow.

### **Recommendation 1**

We recommend that the Assistant Secretary for Occupational Safety and Health direct staff to make the procedures in Appendix E of CPL 1-0.3 for review of independence a mandatory part of:

- a. the initial and renewal recognition process;
- b. at least one of the annual audits performed on the NRTL during each 5-year recognition period; and
- c. the audit that is performed after notification of a change in the NRTL's ownership.

### **Response**

OSHA agrees with this recommendation. OSHA plans to develop and implement more detailed and comprehensive procedures for the independence review.

### **Auditor's Conclusion**

This recommendation is unresolved pending the receipt of a specific plan detailing independence review procedures, which includes a time line for accomplishing the proposed corrective actions.



### Recommendation 2

We recommend that the Assistant Secretary for Occupational Safety and Health direct staff to modify CPL 1-0.3 to ensure that all areas related to an NRTL's recognition, including independence, are reviewed at least once during each 5-year recognition period.

### Response

OSHA agrees with this recommendation and will implement it.

### Auditor's Conclusion

This recommendation is unresolved pending the receipt of a specific plan detailing independence review procedures, which includes a time line for accomplishing the proposed corrective actions.

### Recommendation 3

We recommend that the Assistant Secretary for Occupational Safety and Health direct staff to review UL's and SGSUS's current business practices to ensure conformance with the independence requirement for NRTL recognition.

### Response

OSHA agrees with this recommendation and will implement it concurrently with the implementation of Recommendation 1.

### Auditor's Conclusion

This recommendation is unresolved pending the receipt of a specific plan detailing independence review procedures and a time line for completion, to include UL and SGSUS.

## **Objective 3: Did OSHA Handle ED&D's Application for NRTL Recognition Appropriately?**

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### **Finding**

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No. We identified two areas where OSHA did not appropriately handle ED&D's application. However, these deficiencies did not adversely impact the outcome of ED&D's application. (1) OSHA did not follow its regulations for accepting applications when processing ED&D's request for NRTL recognition and did not apply procedures it finalized while the ED&D application was open. (2) We identified two instances where OSHA could not document any feedback. In one

other instance, cited by ED&D, we found that OSHA did not provide timely feedback.

ED&D's application should have been complete when submitted. It was not OSHA delays or neglect that ultimately resulted in ED&D being denied recognition, but rather ED&D's incomplete application that did not include complete Quality Assurance procedures, followup inspection procedures, nor evidence of independence (see Objective 1).

### Closing the Application

OSHA did not follow its regulations for accepting applications when processing ED&D's request for NRTL recognition. Further, OSHA procedures finalized while the ED&D application was open were not applied to the ED&D application. Because ED&D's application was incomplete, OSHA never "accepted" it. However, OSHA continued to respond to ED&D's correspondence and conduct onsite assessments, which provided additional opportunities for ED&D to correct non-conformances. OSHA eventually closed ED&D's application without granting NRTL certification and expended a great deal of staff resources during the process.

ED&D submitted its application for NRTL recognition on October 9, 1996. On June 2, 1997, OSHA informed ED&D in writing that the application was incomplete and needed clarification. OSHA stated in this notification letter that it would continue processing the application as soon as it received ED&D's response. Although ED&D responded to OSHA on July 8, 1997, the response did not adequately demonstrate that ED&D met the independence requirement. In addition, ED&D did not have written procedures for factory followup inspections at the time of application, as required. Instead, it promised to complete them by August 1997.

OSHA conducted its initial onsite assessment of ED&D in October 1997, and issued its report November 6, 1997. Excerpts from the report include:

. . . This report consists of a summary of the non-conformities with 29 CFR 1910.7 we found during the recent assessment. By December 15 please send me your anticipated schedule for completing the corrective action.

This report is not a comprehensive list of non-conformance but is simply some of the major items we encountered in the assessment. Because the ED&D quality system is still in its development stages, bringing ED&D into compliance with 29 CFR 1910.7 will involve not just correcting the non-conformities identified onsite, but also implementing all the elements of an effective and working quality system. Once you have corrected all the non-conformance and

implemented an effective quality system, please send me a summary of the corrective actions taken. If I need additional documentation, I will request it after I receive your summary of corrective actions. . . .

ED&D responded on December 13, 1997, with a proposed schedule for addressing the corrective actions. The letter states: "We estimate having an effective quality system implemented by December of 1998, including internal audits and corrective actions."

OSHA continued responding to ED&D's correspondence, indicating that OSHA could not proceed with an evaluation of ED&D until all nonconformances had been corrected. In February 1999, OSHA conducted a followup assessment, in response to ED&D's corrective action from the October 1997 assessment. The report on this assessment, dated March 5, 1999, listed 20 nonconformances and 15 "other findings."

Throughout the remainder of 1999, ED&D continued to send correspondence promising documents or providing documents with corrective actions. In January 2000, the lead assessor wrote to an ED&D official regarding a recent package of information he received. In response to apparent requests about the time frame for continuing the certification process, the lead assessor wrote:

. . . The usual process is that the non-conformances are corrected in a few months after the initial onsite assessment and the assessment report is sent to Washington sometime after that . . . ED&D, on the other hand, had just started to implement a quality program at the time of the NRTL application. Consequently the number and seriousness of the non-conformances were much higher than normal. In my followup assessment, I still found numerous nonconformances . . . after reading your documentation I hope I will have confidence that ED&D meets all the requirements to become a NRTL. If I determine ED&D meets the requirements, I will prepare a report for Washington.

If I feel ED&D does not yet meet the requirements, the course is not as clear-cut. I have already spent a great deal of time assisting ED&D. My role is suppose (sic) to be to evaluate, not train. Technically OSHA could reject the ED&D application as not meeting requirements. I hope to avoid that, but if I send up a report before ED&D meets all the requirements or spend a great deal of more time training/assisting, that is the likely outcome.

OSHA conducted a second followup assessment in March 2000. The April 18, 2000, report again listed nonconformances and requested a timetable for completing the corrective actions by May 15, 2000.

Appendix A to 29 CFR 1910.7, Subsection I.B. outlines the review and decision process for NRTL issuance:

1. "Acceptance and onsite review."
  - a. Applications submitted by eligible testing agencies will be accepted by OSHA, and their receipt acknowledged in writing. After receipt of the application, OSHA may request additional information if it believes information relevant to the requirements for recognition has been omitted.
  - b. OSHA shall, as necessary, conduct an onsite review of the testing facilities of the applicant . . .
  - c. . . . A written report shall be made of each onsite review and a copy shall be provided to the applicant . . .
3. "Negative finding by staff."
  - a. "Notification to applicant." If, after review of the application, any additional information and the onsite report, the applicant does not appear to have met the requirements for recognition, the responsible OSHA personnel shall notify the applicant in writing, listing the specific requirements of 1910.7 and this Appendix which the applicant has not met, and allow a reasonable period for response.

We believe the ED&D application was allowed to continue so long because OSHA did not have clear and complete application review procedures implementing the regulations at the time of ED&D's application. We reviewed a Draft SOP that OSHA was using at the time of ED&D's application. We were told that, although it was being used, parts were never implemented.

In December 1999, OSHA finalized and issued procedures for processing applications in OSHA Directive CPL 1-0.3. However, these procedures were not applied to the ED&D application in process. Chapter 3, Section II.A of the Directive has provisions for notifying the applicant if the application is incomplete or inadequate upon initial review after receipt:

If an application is frivolous or grossly incomplete or inadequate, the Director returns the application, notifying the applicant in writing that processing cannot proceed and explaining why this action is necessary, and takes no further action. The Director processes any future application from the applicant as a new application, following the review procedures in this Appendix C.

Following the implementation of these procedures, OSHA conducted a second followup assessment of ED&D in March 2000. Instead of closing the application, OSHA again gave an opportunity for ED&D to complete corrective actions.

Providing Timely Feedback

ED&D alleged OSHA failed to respond timely to its inquiries regarding the acceptability of the information provided to OSHA. In two instances, OSHA could not document any feedback. In one other instance, cited by ED&D, we found that OSHA did not provide timely feedback.

We compared the five instances of untimely response cited by ED&D to OSHA's application timeline. See the table below:

<b>ED&amp;D's Requests for Feedback</b>	<b>Response, Per OSHA's Application Timeline</b>	<b>Lapse</b>
December 13, 1997	Response not documented	
January 15, 1999	Followup February 18, 1999	1 month
March 31, 1999	Response not documented	
April 10, 2000	Followup April 18, 2000	1 week
June 20, 2000	On August 28, 2000, OSHA promised feedback; Progress Report dated February 12, 2001	8 months

We concluded that there was a significant lapse (8 months) in responding to ED&D's June 20, 2000, e-mail, which asked for the status of OSHA's acceptability on their completed audit finding items. For two other inquiries, we concluded there was no significant delay. In two other instances, OSHA's timeline did not document a response to ED&D's inquiry.

The OSHA Lead Assessor did not retain all of the incoming e-mails, and did not maintain a log to keep track of contacts with applicants and NRTLs. OSHA's Assessment and Audit Schedule shows the Lead Assessor was responsible for finalizing 11 other assessment reports with no support staff during the time ED&D's application was open. OSHA should have documented contacts with all applicants to ensure that all requests for feedback were acknowledged in a timely manner.

**Recommendations**

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Our draft report had three recommendations to address conditions described in this finding. The recommendations, OSHA's response to each recommendation, and the auditor's conclusion for each recommendation follow.

Recommendation 4

We recommend that the Assistant Secretary for Occupational Safety and Health direct staff to adhere to OSHA procedures when reviewing applications and performing onsite assessments so that incomplete applications are closed.

Response

OSHA agrees with this recommendation and has adhered to this procedure for all applications received since the effective date of its Program Directive in December 1999. OSHA believes that continuation of this existing practice will implement this recommendation.

Auditor's Conclusion

We consider this recommendation resolved because OSHA officials are currently adhering to procedures when reviewing applications and performing onsite assessments so that incomplete applications are closed. OSHA will need to provide evidence of adhering to these procedures for the recommendation to be closed.

Recommendation 5

We recommend that the Assistant Secretary for Occupational Safety and Health direct staff to maintain a log of contacts with the applicants and NRTLs as part of the application/reapplication files.

Response

OSHA agrees with this recommendation and has begun to implement it. The agency has developed a phone log for detailing substantive contacts with each applicant. OSHA will also develop a chronological log for each staff to capture all contacts with applicants or other parties.

Auditor's Conclusion

This recommendation is unresolved pending the receipt a specific plan, including blank copies of these phone logs and instructions for staff implementation, and a time line for accomplishing the proposed corrective actions.

Recommendation 6

We recommend that the Assistant Secretary for Occupational Safety and Health direct staff to develop procedures to acknowledge all requests for feedback (i.e., followup visits or status reports).

Response

OSHA agrees with this recommendation and will implement it. OSHA's current operational goal is to respond to requests for feedback within three working days. OSHA maintains a tracking system for tasks, projects, and other assignments. Pending NRTL applications are tracked under this system. While OSHA has

controls in place, it will augment them to more fully comply with the intent of this recommendation.

Auditor's Conclusion

While OSHA tracks NRTL applications, it is important that every request for feedback be tracked and timely answered. This recommendation is unresolved pending the receipt of a specific plan, including evidence of a system to document both the request for feedback and that the request has been acknowledged and appropriately handled, and a timeline for accomplishing the proposed corrective actions.



Elliot P. Lewis  
March 23, 2004

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## **Exhibit**

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**EXHIBIT A**

**Timeline of ED&D's Application  
(Provided by OSHA)**

Date	Description
October 9, 1996	Date of Application
June 2, 1997	OSHA letter to ED&D to detail deficiencies in application
July 8, 1997	ED&D's letter responding to OSHA's June 2 <sup>nd</sup> letter
October 16, 1997	Initial OSHA assessment completed
November 6, 1997	OSHA report on assessment
September 8, 1998	OSHA followup letter to ED&D on continuing deficiencies (references August 31st ED&D letter)
October 26, 1998	ED&D's e-mail to OSHA assessor re: sending several documents to address deficiencies found during October 16, 1997 assessment
November 9, 1998	ED&D's amendment requesting adding Program 4 to their scope
February 18, 1999	First OSHA followup assessment completed
March 5, 1999	OSHA report on first followup assessment
April 26, 1999	ED&D's e-mail to assessor promising documents addressing corrective actions of the February 18 <sup>th</sup> assessment
May 25, 1999	ED&D's e-mail to assessor regarding additional documents to address deficiencies found during the February 18 <sup>th</sup> assessment
June 28, 1999	ED&D's e-mail to assessor regarding final items to address corrective actions of the February 18 <sup>th</sup> assessment
March 6, 2000	ED&D's letter to assessor with reports of internal audit
March 29, 2000	Second OSHA followup assessment completed
April 18, 2000	OSHA report on second followup assessment
May 3, 2000	Document showing ED&D's "timeline to complete audit issues" resulting from the March 29 assessment
May 9, 2000	ED&D's e-mail to assessor regarding items to address several corrective actions of the March 29 <sup>th</sup> assessment
May 10, 2000	ED&D's e-mail to assessor stating they would send package addressing corrective actions (of the March 29 <sup>th</sup> assessment) in its entirety
June 2, 2000	ED&D's e-mail stating that package referred to in May 10 <sup>th</sup> e-mail would be sent in a few days
June 5, 2000	E-mail response by assessor to ED&D's June 2 <sup>nd</sup> e-mail agreeing to extra time
June 2000	ED&D's response received (consists of several binders)
June 20, 2000	ED&D's e-mail asking about progress of review of their response
August 25, 2000	ED&D's e-mail requesting status and indicating sale of equipment division of ED&D
October 20, 2000	ED&D provided checklists for internal audits (assessor prepared handwritten notes on review of checklists)
December 11, 2000	OSHA internal memorandum from assessor recommending that ED&D's application be rejected
January 3, 2001	E-mail from ED&D just keeping in touch
February 12, 2001	OSHA letter to ED&D on continuing deficiencies
September 12, 2001	ED&D's e-mail with status report (Indicated expected completion of corrective actions by December 15, 2001)
December 14, 2001	More information provided by ED&D on internal audits and audit conducted by consultant (who found 24 non-conformances)
January 2002	Undocumented call from ED&D to assessor saying more information forthcoming
January 13, 2003	Recommendation by assessor to close application (Mentions that assessor's last contact with ED&D was December 2001, at which time ED&D indicated that it was planning major changes in its operations – nothing received to date)
May 12, 2003	OSHA letter to ED&D closing the application

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## **Appendices**

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## **Background**

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### **NRTL Program**

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OSHA safety standards require that specified equipment and materials (products) be tested and certified for safety by an OSHA-recognized organization. The NRTL program identifies organizations that meet OSHA requirements for testing and certifying equipment and materials. To be recognized as an NRTL, an organization must meet OSHA's requirements. Initial recognition, valid for 5 years and for a specific scope of recognition, is granted if the application and onsite review of the organization demonstrate the applicant meets four elements described in 29 CFR 1910.7 (b):

- capability to test and evaluate equipment;
- control of certified products;
- independence; and
- procedures to produce credible findings.

A clarification of this regulation, printed in the Federal Register on March 9, 1995 states:

These four elements that define an NRTL are incorporated into the criteria for the various types of procedures, which OSHA approves, and, when followed, provide OSHA with a reasonable degree of assurance that the products may be used safely in the workplace.

### **ED&D**

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Educated Design and Development, Inc. (ED&D) submitted an application for NRTL recognition on October 9, 1996. OSHA notified ED&D it was closing the application on May 12, 2003. See Exhibit A for a timeline of events while OSHA was considering ED&D's application.

On October 1, 2002, ED&D filed a hotline complaint regarding its application for NRTL recognition. ED&D alleged that OSHA failed to perform its job. ED&D cited other applicants that it believed received NRTL recognition, although not qualified. ED&D stated that its requests for NRTL status were ignored, citing a lack of any communication from OSHA. The Inspector General responded to the initial complaint stating that it was unlikely the OIG would initiate a review of OSHA's activities or conduct in this matter unless we received some specific information that supports a claim of fraud or misconduct.

On December 31, 2002, ED&D provided additional documentation to support its allegations, organized in six areas:

1. Unfair consideration with respect to comparison to other companies receiving the NRTL status.
2. Written OSHA favoritism to other corporations and “favors” extended where their companies fell short of qualifying for NRTL status.
3. Proof that without this program certification laboratories are restricted from doing business not only in the United States of America but globally.
4. The delays and neglect from NRTL auditor (name withheld) have eliminated us as competition to other certification corporations.
5. Restrictions imposed on our organization as a hardware manufacturer in pursuit of the NRTL status that are not imposed on other existing and new NRTLs.
6. ED&D has lost employees, customers, and substantial opportunity in addition to significant capital due to OSHA’s actions and decisions.



## APPENDIX B

### Scope, Methodology, and Criteria

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#### Scope and Methodology

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We conducted an audit of OSHA's NRTL recognition process to determine if ED&D's claims were valid with respect to negligence or misconduct by OSHA (Allegations 1, 2, 4, and 5 – see page 30). Our audit covered NRTL procedures from the date of ED&D's application (October 9, 1996) until its closure (May 12, 2003), relating, but not limited to, the processing of ED&D's application.

To determine the merits of these allegations, we reviewed ED&D's documentation submitted to support its complaint, OSHA's policies and procedures, and OSHA's documentation pertaining to ED&D's application and other NRTL applications mentioned in the allegations. We also interviewed OSHA staff responsible for administering the NRTL program, assessing NRTL applications, and performing onsite assessments.

OIG did not review any documentation or make a determination on the validity of Allegations 3 and 6 (see page 30) because they are not issues related to OSHA's program or performance.

#### Management Controls

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To meet our objectives, we reviewed management controls over relevant activities. Our management controls work included obtaining and reviewing policies and procedures manuals, interviewing key personnel, and reviewing selected transactions to observe the controls in place. Our testing of management controls focused only on the controls related to our audit objective of reviewing the NRTL's process for recognition and was not intended to form an opinion on the adequacy of overall management controls, and we do not render such an opinion. Weaknesses noted in our testing are discussed in Objectives 1, 2, and 3 of this report.

#### Compliance with Laws and Regulations

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Our testing of OSHA's compliance with 29 CFR 1910.7, regarding requirements of an accredited NRTL program, was limited to ED&D and entities listed in its allegation. This testing was not intended to form an opinion on compliance with laws and regulations as a whole, and we do not render such an opinion.

#### Auditing Standards

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We conducted our audit in accordance with *Government Auditing Standards* for performance audits issued by the Comptroller General of the United States.

Those standards require that in planning and performing a performance audit, we use an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of OSHA.

We performed fieldwork May 21, 2003, through March 23, 2004, at the Office of Technical Programs and Coordination Activities (OTPCA) in Washington, DC; the OSHA Technical Center in Cincinnati, Ohio; and the OSHA OTPCA assessment field office in Tridelpia, West Virginia.

An audit made in accordance with these standards provides reasonable assurance that its objectives have been achieved; but it does not guarantee the discovery of illegal acts, abuse or all internal control weaknesses. Providing an opinion on compliance with all laws, regulations, and other compliance requirements or internal controls was not an objective of our audit and accordingly, we do not express such an opinion. We believe our audit provides a reasonable basis for our assessment and conclusions.

The conclusions provided in this report are the result of our performance audit of OSHA's NRTL procedures during the period of ED&D's application, October 9, 1996, through May 12, 2003. Changes in management of the program, including changes in controls or laws, regulations, and other compliance requirements could result in performance that would be different from the performance during that period. Therefore, this report should not be used to evaluate performance results of future periods.

#### Criteria

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We used the following criteria to perform this audit:

- Public Law 91-596, Occupational Safety and Health Act of 1970, and amendments
- Federal Register, Vol. 60, No. 46, dated March 9, 1995 – *Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures*
- 29 CFR 1910.7 – *Occupational Safety and Health Standards, Definition and requirements for a nationally recognized testing laboratory*, including Appendix A
- OSHA Instruction CPL 1.3, *Processing Application for NRTL Recognition* (Draft Standard Operating Procedures)
- OSHA Directive CPL 1-0.3, *NRTL Program Policies, Procedures, and Guidelines*, dated December 2, 1999

**APPENDIX C**

**Acronyms and Abbreviations**

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CFR	Code of Federal Regulations
CPL	Enforcement and Compliance Directive
CSL	Curtis-Strauss LLC
DTL	Detroit Testing Labs
ED&D	Educated Design and Development, Inc.
NRTL	Nationally Recognized Testing Laboratory
NSF	NSF International
OSHA	Occupational Safety and Health Administration
OTPCA	OSHA's Office of Technical Programs and Coordination Activities
PC	Program Coordinator
SGSUS	SGS U.S. Testing, Inc.
SOP	Standard Operating Procedure
UL	Underwriters Laboratories

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## **Response To Draft Report**

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**APPENDIX D**


**U.S. Department of Labor**

Assistant Secretary for  
Occupational Safety and Health  
Washington, D.C. 20210



MAR 29 2005

MEMORANDUM FOR: ELLIOT P. LEWIS  
Assistant Inspector General for Audit

FROM: JONATHAN L. SNARE   
Acting Assistant Secretary

SUBJECT: Response to OIG's Draft Audit Report  
No. 05-05-002-10-001  
"OSHA Correctly Denied ED&D's Incomplete NRTL  
Application"

This memorandum is in response to your March 8, 2005, transmittal of the Office of Inspector General (OIG) Draft Audit Report No. 05-05-002-10-001, "OSHA Correctly Denied ED&D's Incomplete NRTL Application." We are pleased that the OIG has found that OSHA acted properly in its handling of the Educated Design and Development, Inc. (ED&D) application for recognition as a Nationally Recognized Testing Laboratory (NRTL). OSHA appreciates the vindication of its actions as well as the effort that the OIG put into this audit to understand what occurred and to provide insights into how the agency can improve its NRTL Program.

Before addressing the specific conclusions and recommendations in the draft report, we wish to point out that OSHA was making many improvements to its NRTL Program operations at the same time that ED&D's application was under consideration. One of these improvements is noted in the report: the implementation of our revised application processing procedures in December 1999. Had these procedures been in place at the time ED&D applied for recognition, it is likely that the situation that led to ED&D filing its complaint with the OIG would have been avoided. We continue to address different facets of the program operations and believe that these ongoing improvement efforts are consistent with the tenor of your recommendations. Our specific responses below capture our commitment to implement your recommendations and to provide additional information and clarification to further clarify OSHA's handling of ED&D's application.

For ease of providing our response, we are following the presentation format of the report, first responding to the Objective and Findings section and then the Recommendations of the Draft Audit Report.

Objectives and Summary of Findings:

1. Was OSHA's decision not to grant ED&D NRTL recognition justified?

OIG Executive Summary of Findings:

OSHA's records show that ED&D did not meet two of the four primary requirements for recognition described in 29 CFR 1910.7(b) (capability to test and evaluate equipment, and control of certified products), and questions regarding ED&D's compliance with a third primary requirement (independence) were never resolved. Therefore, OSHA denied ED&D's NRTL recognition and closed its application on May 12, 2003. OSHA's decision was justified.

OSHA Comment:

OSHA's decision to close the application was based on the belief that ED&D had abandoned it, and that the agency had given ED&D more than adequate opportunity to meet the requirements for recognition. Under governing agency rules, closing an application due to inaction or incompleteness by an applicant does not legally deny recognition -- it merely halts the application process. The legal process for formal approval or denial of recognition under OSHA regulations involves the publication of two Federal Register notices. The first notice announces an application and OSHA's preliminary decision, i.e., approval or denial. The final decision is contained in the second notice. OSHA did not publish any such notices for the ED&D application. While we agree that closing the ED&D application was functionally equivalent to denying recognition, it was not a formal denial as required by our own regulations and suggested by the wording of the OIG language.

2. Were other NRTLs identified in ED&D's complaint given recognition inappropriately?

OIG Executive Summary of Findings:

ED&D alleged that OSHA unfairly favored several unqualified organizations by granting them NRTL recognition. OSHA's records adequately supported its decision to grant recognition to Detroit Testing Laboratory, Inc. (DTL) and conditional recognition to Curtis-Straus LLC (CSL), and NSF International (NSF) because they had the capability to test and evaluate equipment.

ED&D also alleged that OSHA did not impose independence restrictions as a manufacturer on Underwriters Laboratories (UL), U.S. Testing Company, Inc. (now known as SGS U.S. Testing, Inc. (SGSUS)), and other unnamed NRTLs. At the time of UL's and SGSUS's applications, OSHA permitted NRTL applicants to self-certify that they were independent of manufacturing and marketing operations. UL and SGSUS provided self-certifications, thus satisfying OSHA's requirement. While OSHA directives subsequently established procedures for verifying an NRTL's



independence, verification is not required. We believe OSHA should verify ongoing independence during onsite audits.

OSHA Comment:

OSHA appreciates the endorsement by the OIG of the sufficiency of agency records for granting NRTL recognition for the other applicants reviewed. Concerns about ongoing independence in future onsite audits are addressed in our response below to the related recommendation.

**3. Did OSHA handle ED&D's application for NRTL recognition appropriately?**

**OIG Executive Summary of Findings:**

We identified two areas where OSHA did not appropriately handle ED&D's application. However, these deficiencies did not adversely impact the outcome of ED&D's application. 1) OSHA did not follow its regulations for accepting applications when processing ED&D's request for NRTL recognition and did not apply procedures it finalized while the ED&D application was open. 2) We identified two instances where OSHA could not document any feedback. In one other instance, cited by ED&D, we found that OSHA did not provide timely feedback.

OSHA Comment:

One of the Objective 3 findings quotes the text of a January 2000 letter that could be misleading to those who are unfamiliar with our NRTL Program process. The text contains some inconsistencies. It alludes to a "training/assisting" role that OSHA does not perform in evaluating the capability of applicants in meeting our requirements. As clarification, we note that OSHA **does not** "train" any organization in how to meet the requirements for recognition. Our assistance to applicants only extends to clarifying or explaining our requirements.

As stated in the report, "In December 1999, OSHA finalized and issued procedures for processing applications in OSHA Directive CPL 1-0.3. However, these procedures were not applied to the ED&D application in process." OSHA notes that it did not apply those procedures to the ED&D application in order to be fair to the applicant. Had we applied those procedures then as we routinely do now, we would have closed the application shortly after the directive went into effect. However, earlier applicants, which were as inexperienced in testing and certification as ED&D, had been afforded adequate time to develop the necessary operational and quality systems, policies, and procedures to meet OSHA's requirements for recognition. When the directive went into effect, only 2 years had elapsed from the time of our initial review of ED&D's application, an amount of time that is not uncommon in terms of application processing. At that time, we had no guideline or policy limiting the time an application could remain open in the recognition process.

Recommendations

1. **Make the procedures in Appendix E of Enforcement and Compliance Directive CPL 1-0.3 for review of independence a mandatory part of:**
  - a. the initial and renewal recognition process;
  - b. at least one of the annual audits performed on the NRTL during each five-year recognition period; and
  - c. the audit that is performed after notification of a change in the NRTL's ownership.

OSHA concurs with this recommendation. We will develop more detailed and comprehensive procedures for this review and implement them.

2. **Modify CPL 1-0.3 to ensure that all areas related to an NRTL's recognition, including independence, are reviewed at least once during each five-year recognition period.**

OSHA concurs with this recommendation and will implement it.

3. **Review UL's and SGSUS's current business practices to ensure conformance with the independence requirement for NRTL recognition.**

OSHA concurs with this recommendation. We will implement this recommendation concurrently with the implementation of Recommendation #1.

4. **Adhere to OSHA procedures when reviewing applications and performing onsite assessments so that incomplete applications are closed.**

OSHA concurs with this recommendation. OSHA has adhered to its procedures for all applications received following the effective date of our Program Directive: December 1999. We believe that continuation of that existing practice will implement this recommendation.

5. **Maintain a log of contacts with the applicants and NRTLs as part of the application/reapplication files.**

OSHA concurs with this recommendation. OSHA has already begun to implement this recommendation. The agency has distributed a phone log document to its NRTL Program staff for purposes of detailing substantive contacts with applicants. However, we will also supplement this document with a chronological log for each staff to capture all contacts with applicants or other parties.

6. Develop procedures to acknowledge all requests for feedback (i.e., followup visits or status reports).

OSHA concurs with this recommendation and will implement it. We note that currently our operational goal is to respond to such requests within 3 working days. In addition, the directorate that administers the NRTL Program maintains a tracking system for tasks, projects, and other assignments. Pending NRTL applications are tracked under this system. OSHA has controls in place that are consistent with this recommendation, but we will augment them to more fully comply with the intent of this recommendation.