

3. A new Section 2.962 is added to read as follows:

Section 2.962 Requirements for Telecommunication Certification Bodies

Telecommunication certification bodies designated by the FCC, or designated by another authority pursuant to an MRA, must comply with the following criteria.

(a) Certification Methodology

(1) The certification system shall be based on type testing as identified in sub-clause 1.2(a) of ISO/IEC Guide 65.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as in cases where certain tests are likely to render a sample inoperative. All test samples shall be returned to the applicant unless otherwise indicated by the applicant.

(b) Criteria for Designation

(1) To be designated as a telecommunication certification body under this section, the body must, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it is to certify. The scope of accreditation shall specify the group of equipment to be certified and the applicable regulations.

(2) The telecommunication certification body must demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The telecommunication certification body shall have the technical expertise ~~and capability~~ to test the equipment it will certify and must also be accredited in accordance with ISO/IEC Guide 25 ~~to demonstrate it is competent to perform such tests~~ for the tests it will conduct.

(4) The prospective telecommunication certification body must demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel must demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65 shall be taken into consideration.

(5) A telecommunication certification body shall participate in any consultative activities, announced by the Commission or NIST, to establish to facilitate a common understanding and interpretation of applicable regulations.

(c) Sub-contracting

(1) In accordance with the provisions of ~~sub-clause 4.4~~ of ISO/IEC Guide 65, the testing of a product, or a portion thereof, may be performed by a sub-contractor of a designated telecommunication certification body, including a supplier's laboratory. ~~provided the laboratory has been assessed by the telecommunication certification body in accordance with ISO/IEC Guide 25, or has been accredited to ISO/IEC Guide 25.~~

(2) When a subcontractor is used, the telecommunication certification body remains responsible for the tests and must maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight ~~must~~ shall include periodic audits of products that have been tested.

(d) Procedures for Designation

(1) NIST will give 30 days for ~~notice and comment in the Federal Register before upon~~ accrediting a prospective TCB. ~~In the case of a foreign TCB, the foreign Designating Authority will provide 30 days for the prospective TCB to be designated in accordance with the MRA.~~

(2) In case of concern raised during the 30 day comment period, ~~the Commission and~~ NIST will allow sufficient opportunity for the Designating Authority and prospective TCB to provide comments before a decision will be made. ~~on the designation of the TCB.~~

(3) A list of designated TCBs ~~will~~ shall be published by the Commission on Commission letterhead and available electronically.

(e) Procedures for Recognition of Foreign TCBs Under MRAs

The FCC will provide 30 days for comment in the Federal Register prior to recognition of any foreign TCB.

(f) Post-certification requirements

(1) ~~A TCB shall supply an electronic copy of each approved certification application to the Commission.~~

Upon equipment certification for domestic application, a TCB shall electronically provide the Commission with the following information:

a. applicant's name, address, and contact information,

- b. model number of certified equipment,
- c. description of equipment,
- d. product type,
- e. grantee number (FCC ID),
- f. TCB project and file number, and
- g. regulations addressed.

The certification document issued by the TCB shall be in the same format as the applicable FCC form. In addition, the certification application shall remain on file with the TCB for a period of five years after the product is no longer certified.

(2) A TCB grant shall state that it is FCC-designated.

~~(2) (3) In accordance with ISO/IEC Guide 65, the TCB is required to conduct appropriate surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The importing party may at any time request a list of products certified by the certification body in accordance with the MRAs. ~~and may request and receive copies of product evaluation reports.~~~~

~~(3)(4) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the applicant, supplier and the appropriate importing party. A follow-up report shall also be provided within thirty days of the action taken by the supplier to correct the situation.~~

~~(4)(5) Where concerns arise, the applicant shall provide a copy of the ~~product evaluation certification~~ report within 30 calendar days upon request by the Commission. ~~to the TCB and the manufacturer.~~ If the certification report is not provided within 30 calendar days, a statement shall be provided to the Commission as to why such a report cannot be provided. This could be grounds for revocation of the product certification.~~

(g) In case of dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. ~~Manufacturers Applicants~~ and designated TCBs will be afforded the opportunity to comment before a decision is reached consistent with the following due process considerations:

(1) The Commission will exercise such authority under exceptional circumstances only, and justified in an objective and reasoned manner, in writing to the TCB and applicant(s);

(2) The TCB and applicant(s) will be provided a period of at least 30 days to provide information to the Commission regarding this dispute. During this period, the TCB's designation will remain in effect and the affected certified product(s) will remain on the market;

(3) In the event the information is insufficient to settle the dispute, the Commission will allow the TCB and applicant(s) 90 days to resolve the dispute. During this period, the TCB's designation will remain in effect and the affected certified product(s) will remain on the market;

(4) If at the end of this 90-day period, the TCB and applicant(s) fail to resolve the dispute or the FCC is unpersuaded by the information presented, the Commission will advise the TCB that it intends to withdraw its designation. The affected product(s) can continue to be marketed provided that they otherwise conform with the Commission's rules.

(5) 90 days following withdrawal, the TCB may reapply for designation. In the case of a TCB designated or recognized, or a product certified pursuant to a bilateral or multilateral mutual recognition agreement or arrangement (MRA), the FCC may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB consistent with MRA obligations. The FCC shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any problems arising under an MRA for the USTR's investigation or review under the Telecommunications Trade Act of 1998 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988).

Title 47 of the Code of Federal Regulations Part 68 is proposed to be amended as follows:

4. The authority citation for Part 68 continues to read as follows:

AUTHORITY: Sections 1, 4, 5, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 155, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522.

5. A new Section 68.230 is added to read as follows:

Section 68.230 *Certification Bodies Designated by the Commission*

Section 68.230 *Designation of Telecommunication Certification Bodies (TCBs)*

Parties other than the Commission may be designated to ~~approve~~ certify equipment. These parties will be referred to as "Telecommunication Certification Bodies" or TCBs. TCBs will require applications with the all the information specified in this part, process applications in the same manner as the Commission, and issue written grants of equipment authorization.

(a) The Federal Communications Commission is the Designating Authority for designating TCBs in the United States to approve equipment subject to certification. The FCC will require TCBs to be accredited by qualified accrediting organizations operating to the requirements of Guide 61 and Guide 58 as appropriate. ~~The National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program to show compliance with the Commission's qualification criteria for TCBs. NIST may,~~

~~in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs and testing laboratories.~~ TCBs must comply with the requirements in § 68.232 of this Part.

(b) In accordance with the terms of a Mutual Recognition Agreement or Arrangement (MRA), bodies outside the United States will be permitted to ~~authorize~~ certify equipment in lieu of the FCC. The authority designating these telecommunication certification bodies must meet the following criteria.

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC Guide 61.

(2) The organization assessing the telecommunication certification body shall appoint a team of qualified experts to perform the assessment covering all of the elements within the scope of accreditation. For assessment of telecommunications equipment, the areas of expertise to be used during the assessment shall include, but not be limited to electromagnetic compatibility and telecommunications equipment (wired and wireless).

6. A new Section 68.232 is added to read as follows:

Section 68.232 Requirements for Telecommunication Certification Bodies

Telecommunication certification bodies designated by the FCC, or designated by another authority pursuant to an MRA, must comply with the following criteria.

(a) Certification Methodology

(1) The certification system shall be based on type testing as identified in sub-clause 1.2(a) of ISO/IEC Guide 65.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as in cases where certain tests are likely to render a sample inoperative. All test samples shall be returned to the applicant unless otherwise indicated by the applicant.

(b) Criteria for Designation

(1) To be designated as a telecommunication certification body under this section, the body must, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it is to certify. The scope of accreditation shall specify the group of equipment to be certified and the applicable regulations.

(2) The telecommunication certification body must demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The telecommunication certification body shall have the technical expertise ~~and capability~~ to test the equipment it will certify and must also be accredited in accordance with ISO/IEC Guide 25 ~~to demonstrate it is competent to perform such tests~~ for the tests it will conduct.

(4) The prospective telecommunication certification body must demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel must demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65 shall be taken into consideration.

(5) A telecommunication certification body shall participate in any consultative activities, announced by the Commission or NIST, to establish to facilitate a common understanding and interpretation of applicable regulations.

(c) Sub-contracting

(1) In accordance with the provisions of ~~sub-clause 4.4 of ISO/IEC Guide 65~~, the testing of a product, or a portion thereof, may be performed by a sub-contractor of a designated telecommunication certification body, including a supplier's laboratory. ~~provided the laboratory has been assessed by the telecommunication certification body in accordance with ISO/IEC Guide 25, or has been accredited to ISO/IEC Guide 25.~~

(2) When a subcontractor is used, the telecommunication certification body remains responsible for the tests and must maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight ~~must~~ shall include periodic audits of products that have been tested.

(d) Procedures for Designation

(1) NIST will give 30 days for ~~notice and comment in the Federal Register before upon~~ accrediting a ~~prospective~~ TCB. ~~In the case of a foreign TCB, the foreign Designating Authority will provide 30 days for the prospective TCB to be designated in accordance with the MRA.~~

(2) In case of concern raised during the 30 day comment period, ~~the Commission and~~ NIST will allow sufficient opportunity for the Designating Authority and prospective TCB to provide comments before a decision will be made. ~~on the designation of the TCB.~~

(3) A list of designated TCBs will be published by the Commission on Commission letterhead and available electronically.

(e) Procedures for Recognition of Foreign TCBs Under MRAs

The FCC will provide 30 days for comment in the Federal Register prior to recognition of any foreign TCB.

(f) Post-certification requirements

(1) ~~A TCB shall supply an electronic copy of each approved certification application to the Commission.~~

Upon equipment certification for domestic application, a TCB shall electronically provide the Commission with the following information:

- a. applicant's name, address and contact information,
- b. model number of certified equipment,
- c. description of equipment,
- d. product type
- e. grantee number (FCC ID),
- f. TCB project and file number, and
- g. regulations addressed.

The certification document issued by the TCB shall be in the same format as the applicable FCC form. In addition, the certification application shall remain on file with the TCB for a period of five years after the product is no longer certified.

(2) A TCB grant shall state that it is FCC-designated.

~~(2)(3) In accordance with ISO/IEC Guide 65, the TCB is required to conduct appropriate surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The importing party may at any time request a list of products certified by the certification body. and may request and receive copies of product evaluation reports.~~

~~(3)(4) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the applicant, supplier and the appropriate importing party. A follow up report shall also be provided within thirty days of the action taken by the supplier to correct the situation.~~

~~_____ (4)(5) Where concerns arise, the TCB shall provide a copy of the product evaluation certification report within 30 calendar days upon request by the Commission. to the TCB and the manufacturer. If the certification report is not provided within 30 calendar days, a statement shall be provided to the Commission as to why such a report cannot be provided. This could be grounds for revocation of the product certification.~~

(g) In case of dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. ~~Manufacturers Applicants~~ and designated TCBs will be afforded the opportunity to comment before a decision is reached consistent with the following due process considerations:

(1) The Commission will exercise such authority under exceptional circumstances only, and justified in an objective and reasoned manner, in writing to the TCB and applicant(s);

(2) The TCB and applicant(s) will be provided a period of at least 30 days to provide information to the Commission regarding this dispute. During this period, the TCB's designation will remain in effect and the affected certified product(s) will remain on the market;

(3) In the event the information is insufficient to settle the dispute, the Commission will allow the TCB and applicant(s) 90 days to resolve the dispute. During this period, the TCB's designation will remain in effect and the affected certified product(s) will remain on the market;

(4) If at the end of this 90-day period, the TCB and applicant(s) fail to resolve the dispute or the FCC is unpersuaded by the information presented, the Commission will advise the TCB that it intends to withdraw its designation. The affected product(s) can continue to be marketed provided that they otherwise conform with the Commission's rules.

(5) 90 days following withdrawal, the TCB may reapply for designation. In the case of a TCB designated or recognized, or a product certified pursuant to a bilateral or multilateral mutual recognition agreement or arrangement (MRA), the FCC may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB consistent with MRA obligations. The FCC shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any problems arising under an MRA for the USTR's investigation or review under the Telecommunications Trade Act of 1998 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988).