



**Billing Code: 4510-26-P**

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**[Docket No. OSHA-2023-0013]**

**Element Materials Technology Portland - Evergreen Inc.: Application for Recognition**

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

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of Element Materials Technology Portland – Evergreen, Inc. (EMT), for recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant this recognition.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Comments may be submitted as follows:

*Electronically:* You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA-2023-0013). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public,

or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this *Federal Register* notice) 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 website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

*Extension of comment period:* Submit requests for an extension of the comment period on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] to the 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-3653, 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, 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, phone: (202) 693-2110 or email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Many of OSHA's workplace standards require that a NRTL test and certify certain types of equipment as safe for use in the workplace. NRTLs are independent laboratories that meet OSHA's requirements for performing safety testing and certification of products used in the workplace. To obtain and retain OSHA recognition, the NRTLs must meet the requirements in the NRTL Program regulations at 29 CFR 1910.7. More specifically, to be recognized by OSHA, an organization must: (1) have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of employers subject to the tested equipment requirements, and manufacturers and vendors of products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures. Recognition is an acknowledgement by OSHA that the NRTL has the capabilities to perform independent safety testing and certification of the specific products covered within the NRTL's scope of recognition and is not a delegation or grant of government authority. Recognition of a NRTL by OSHA also allows employers to use products certified by that NRTL to meet those OSHA standards that require product testing and certification.

The agency processes applications for initial recognition following requirements in Appendix A of 29 CFR 1910.7. This appendix requires OSHA to publish two notices in the *Federal Register* in processing an application. In the first notice, OSHA announces the application, provides its preliminary findings, and solicits comments on its preliminary findings. In the second notice, the agency provides its final decision on the application and sets forth the NRTL's scope of recognition.

## **II. Notice of the Application for Recognition**

OSHA is providing notice that Element Materials Technology Portland - Evergreen Inc., (EMT) is applying for recognition as a NRTL. According to public information (see

<https://www.element.com/about-element/>) EMT states that it is an internationally accredited testing laboratory. In its application, EMT lists the current address of its headquarters as: Element Materials Technology Portland - Evergreen Inc., 41 Tesla, Irvine, California 92618. OSHA has determined preliminarily that EMT has the capability to perform as a NRTL as outlined in 29 CFR 1910.7.

Each NRTL's scope of recognition has two elements: (1) the type(s) of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that have the technical capability to perform the product-testing and product-certification activities for the applicable test standards within the NRTL's scope of recognition. EMT applied on June 26, 2020, for three recognized sites and thirteen recognized test standards (OSHA-2023-0013-0001). This application was amended on June 28, 2022, to remove two of the three sites and seven of the thirteen standards requested in the original application (OSHA-2023-0013-0002). The following sections set forth the requested scope of recognition included in EMT's application that OSHA has considered.

**A. Standards Requested for Recognition**

Table 1 below lists the appropriate test standards included in EMT's amended application for testing and certification of products under the NRTL Program.

**Table 1**

**Proposed List of Appropriate Test Standards for Inclusion in**

**EMT's NRTL Scope of Recognition**

<b>Test Standard</b>	<b>Test Standard Title</b>
ANSI/AAMI ES60601-1	Medical Electrical Equipment – Part 1: General Requirements for Basic Safety and Essential Performance
UL 61010-1	Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements
UL 61010-2-010	Electrical Equipment for Measurement, Control and Laboratory Use - Part 2-010: Particular Requirements for Laboratory Equipment for the Heating of Materials

Test Standard	Test Standard Title
UL 61010-2-081	Standard for Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use - Part 2-081: Particular Requirements for Automatic and Semi-Automatic Laboratory Equipment for Analysis and Other Purposes
UL 61010-2-101	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use - Part 2-101: Particular Requirements for In Vitro Diagnostic (IVD) Medical Equipment
UL 62368-1	Audio/Video, Information and Communication Technology Equipment - Part 1: Safety Requirements

### **B. Site Requested for Recognition**

The current address of the EMT site included in its application for recognition as a NRTL is:

Element Materials Technology Portland - Evergreen, Inc., 41 Tesla, Irvine, California 92618.

The NRTL Program requires that to be a recognized site, the site listed above must have the capability to conduct product testing in accordance with the appropriate test standard for the equipment or material being testing and certified.

### **III. Preliminary Finding on the Application for Recognition as a NRTL**

OSHA’s NRTL Program recognition process involves a thorough analysis of a NRTL applicant’s policies and procedures, and a comprehensive on-site review of the applicant’s testing and certification activities to ensure that the applicant meets the requirements of 29 CFR 1910.7. OSHA staff performed a detailed analysis of EMT’s application packet and reviewed other pertinent information. OSHA staff also performed a comprehensive on-site assessment of EMT’s testing facility, at EMT Irvine, California on January 18-19, 2023. An overview of OSHA’s assessment of the four requirements for recognition (i.e., capability, control procedures, independence, and credible reports and complaint handling) is provided below.

#### **A. Capability**

Section 1910.7(b)(1) states that, for each specified item of equipment or material to be listed, labeled, or accepted, the NRTL must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality-control programs) to perform appropriate testing. OSHA staff performed a detailed analysis of EMT's application packet and reviewed other pertinent information to assess its capabilities to perform testing and certification activities. OSHA preliminarily determined that EMT has demonstrated these capabilities through the following:

- EMT's facility has adequate test areas, energy sources, and procedures for controlling incompatible activities.
- EMT provided a detailed list of its testing equipment. Review of the application shows that the equipment listed is available and adequate for the standards for which it seeks recognition.
- EMT has detailed procedures for conducting testing, review, and evaluation, and for capturing the test and other data required by the test standards for which it seeks recognition.
- EMT has detailed procedures addressing the maintenance and calibration of equipment, and the types of records maintained for, or supporting laboratory activities.
- EMT has sufficient qualified personnel to perform the proposed scope of testing based on their education, training, technical knowledge, and experience.
- EMT has an adequate quality-control system in place to conduct internal audits, as well as track and resolve nonconformances.

OSHA's on-site assessment of EMT's facility confirmed the capabilities described in its application packet. The assessors found some nonconformances with the requirements of 29 CFR 1910.7. EMT addressed these issues sufficiently to meet the applicable NRTL requirements.

## **B. Control Procedures**

Section 1910.7(b)(2) requires that the NRTL provide controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These controls and services include procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels. OSHA staff performed a detailed analysis of EMT's application packet and reviewed other pertinent information to assess its control procedures. OSHA preliminarily determined that EMT has demonstrated these capabilities through the following:

- EMT has a quality-control manual and detailed procedures to address the steps involved to list and certify products.
  - EMT has a registered certification mark.
  - EMT has certification procedures to address the authorization of certifications and audits of factory facilities. The audits apply to both the initial evaluations and the follow-up inspections of manufacturers' facilities.

OSHA's on-site assessment of EMT's facility confirmed the capabilities described in its application packet. The assessors found some nonconformances with the requirements of 29 CFR 1910.7. EMT addressed these issues sufficiently to meet the applicable NRTL requirements.

## **C. Independence**

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers that are subject to the testing requirements, and of any manufacturers or vendors of equipment or materials tested under the NRTL Program. The revised NRTL Program Policies, Procedures and Guidelines Directive, CPL-01-00-004, allows NRTLs to comply with the requirement in the NRTL Program regulation that NRTLs be "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” (29 CFR 1910.7(b)(3)) by meeting the minimum performance standards of Annex B of the NRTL Program Directive, CPL-01-00-004, with respect to impartiality. The revised policy focuses on the NRTL’s ability to effectively identify, eliminate and control any risk to its impartiality.

This policy provides for the NRTL to identify risks to impartiality on an ongoing basis and when risks to impartiality are identified, and for the NRTL to demonstrate how it eliminates or minimizes such risks. OSHA staff performed a detailed analysis of EMT’s application packet and reviewed other pertinent information to assess its independence. OSHA preliminarily determined that EMT has demonstrated independence through the following:

- EMT is a privately-owned organization, and OSHA found no information regarding ownership that would qualify as a conflict under OSHA's independence policy.
- EMT showed that it has none of the relationships described in OSHA’s independence policy or any other relationship that could subject it to undue influence when testing for product safety.
- EMT has policies and procedures in place to identify risks to impartiality and when risks to impartiality are found, EMT has policies and procedures to eliminate or minimize such risks.

#### **D. Credible Reports and Complaint Handling**

Section 1910.7(b)(4) specifies that a NRTL must maintain effective procedures for producing credible findings and reports that are objective and free of bias. The NRTL must also have procedures for handling complaints and disputes under a fair and reasonable system. OSHA staff performed a detailed analysis of EMT’s application packet and reviewed other pertinent information to assess its ability to produce credible

results and handle complaints. OSHA preliminarily determined that EMT has demonstrated these capabilities through the following:

- EMT has detailed procedures describing the content of test reports, and other detailed procedures describing the preparation and approval of these reports.
- EMT has procedures for recording, analyzing, and processing complaints from users, manufacturers, and other parties in a fair manner.

OSHA's on-site assessments of EMT's facilities confirmed the capabilities described in its application packet. The assessors found some nonconformances with the requirements of 29 CFR 1910.7. EMT addressed these issues sufficiently to meet the applicable NRTL requirements.

OSHA's review of the application file and pertinent documentation, as well as the results of the on-site assessments, indicate that EMT can meet the requirements prescribed by 29 CFR 1910.7 for recognition as a NRTL for its site located in Irvine, California.

OSHA's preliminary finding does not constitute an interim or temporary approval of EMT's application.

#### **IV. Public Participation**

OSHA welcomes public comment as to whether EMT meets the requirements of 29 CFR 1910.7 for recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request, for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, U.S. Department of Labor. These

materials also are generally available online at <http://www.regulations.gov> under Docket No. OSHA-2023-0013 (for further information, see the “Docket” heading in the section of this notice titled “ADDRESSES”).

OSHA staff will review all comments submitted to the docket in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health regarding EMT’s application for recognition as a NRTL. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the *Federal Register*.

#### **V. Authority and Signature**

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 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. 8-2020 (85 FR 58393, September 18, 2020) and 29 CFR 1910.7.

Signed at Washington, DC, on July 19, 2023.

**James S. Frederick,**  
*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

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