



May 12, 2020

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
EXECUTIVE STAFF

FROM: LOREN SWEATT
PRINCIPAL DEPUTY ASSISTANT SECRETARY

SUBJECT: Temporary Revision to Policy Impacting Factory Surveillance for
Nationally Recognized Testing Laboratories During the
Coronavirus Disease 2019 (COVID-19) Pandemic

This memorandum establishes a temporary policy allowing for the remote conduct of factory surveillance, including initial factory inspections, by Nationally Recognized Testing Laboratories (NRTLs) due to the travel and safety limitations associated with the coronavirus disease 2019 (COVID-19) pandemic. Under this policy, a NRTL may perform factory surveillance, including initial factory inspections, remotely, in-lieu of in-person surveillance inspections, but only if the NRTL follows the alternative procedures described in this temporary policy. Performing these surveillance activities remotely, in-lieu of performing in-person, on-site inspections helps to support the social distancing recommendations of the Centers for Disease Control and Prevention (CDC) while allowing critical, lifesaving equipment to be certified by a NRTL. This temporary policy supplements the policies contained in NRTL Program Policies, Procedures, and Guidelines, OSHA Instruction CPL 01-00-004 (Oct. 1, 2019) (the NRTL Program Directive), Annex B, Section 7.9, Surveillance (available at https://www.osha.gov/sites/default/files/enforcement/directives/CPL_01-00-004.pdf).

Background

OSHA's NRTL Program requires surveillance of manufacturing facilities that produce products affixed with NRTL certification marks to ensure compliance with NRTL Program Policy and Procedures. This surveillance consists of an initial factory inspection, and periodic factory surveillance inspections throughout the year to monitor the manufacturing of products requiring testing and certification by a NRTL.

Current NRTL Factory Surveillance Policy

The NRTL Program Directive's Surveillance policy in Annex B, Section 7.9, provides for the conduct of in-person, on-site visits of manufacturing facilities by a representative of the NRTL, as follows:

Under Annex B, Section 7.9.A:

The applicant organization or NRTL shall ensure that, before any manufacturing facility distributes or makes available to the user or consumer a product that an applicant organization or NRTL has certified, the applicant organization or NRTL conducts factory surveillance of the manufacturing facility to determine that the product is manufactured in compliance with the applicable test standards, and it shall prepare a record or report of this factory surveillance that shows its findings in the areas described in Annex B Section 7.9.D, below.

Under Annex B, Section 7.9.C:

The applicant organization or NRTL shall conduct factory surveillance, at each manufacturing facility of products that have been certified, in order to provide the applicant organization or NRTL with confidence that certified products continue to be manufactured in compliance with applicable test standards. Factory surveillance shall involve an actual visit to each manufacturing facility.

Impact of COVID-19

The CDC currently recommends that Americans, and several state and local governments have ordered citizens to, practice shelter-in-place and limit travel to prevent the spread of COVID-19. Additionally, countries throughout the world have closed borders and placed restrictions on international flights, limiting the ability to travel abroad. NRTL stakeholders informed OSHA that they cannot be in compliance both with OSHA's in-person factory surveillance policies and COVID-19-related stay at home orders and other travel restrictions. Following these travel restrictions does not permit physical on-site surveillance of a factory prior to the authorization to label compliant equipment. Importantly, if OSHA does not implement this temporary policy allowing for the remote conduct of factory surveillance, including initial factory inspections, NRTLs may be prevented from certifying products critical to addressing the COVID-19 pandemic and the response to the COVID-19 global emergency may be impeded.

Temporary NRTL Factory Surveillance Policy

OSHA establishes the following Temporary NRTL Factory Surveillance Policy:

- A. NRTLs may temporarily perform factory surveillance of manufacturing facilities, including initial factory surveillance, remotely. The NRTL Program Directive, Annex B, Sections 7.9.A and 7.9.C are temporarily revised as follows:

The applicant organization or NRTL shall ensure that, before any manufacturing facility distributes or makes available to the user or consumer a product that an applicant organization or NRTL has certified, the applicant organization or NRTL conducts either in-person or remote factory surveillance of the manufacturing facility to determine that the product is manufactured in compliance with the applicable test standards, and it shall prepare a record or report of this factory

surveillance that shows its findings in the areas described in Annex B Section 7.9.D, below.

The applicant organization or NRTL shall conduct either in-person or remote factory surveillance, at each manufacturing facility of products that have been certified, in order to provide the applicant organization or NRTL with confidence that certified products continue to be manufactured in compliance with applicable test standards. Procedures shall be in place to address factory surveillance that may be impacted due to travel restrictions (e.g., war, military activity or bad weather that prevents travel).

This policy temporarily revises the NRTL Program Directive Annex B, Sections 7.9.A and 7.9.C only. The remainder of the NRTL Program Directive remains unchanged by this temporary policy and will continue to apply to NRTL Program activities during the COVID-19 pandemic (unless OSHA issues additional policies containing further temporary revisions to the NRTL Program Directive).

- B. Examples of methods for remote surveillance include desk audits to review documents and procedures, as well as web conferencing and live video of the manufacturing facilities and to review products; however, in conducting remote surveillance, the NRTL must ensure the chosen method(s) meet the minimum performance standards for surveillance activities identified within the NRTL Program Directive.
- C. If a NRTL chooses to perform factory surveillance remotely:
 - 1. The NRTL must ensure that a physical, on-site factory surveillance inspection is conducted at each manufacturing facility that received remote surveillance inspections within three months after this temporary policy is rescinded; and
 - 2. The NRTL must maintain a list of all remote factory surveillance inspections performed during the period this temporary surveillance policy was in effect, and make this record available to OSHA upon request.
- D. OSHA emphasizes that this temporary policy does not apply to witness testing, internal audits, or qualification of independent or non-independent testing laboratories.

This memorandum will take effect immediately and remain in effect until further notice. This guidance is intended to be time-limited to the current public health crisis. Please frequently check OSHA's webpage at www.osha.gov/coronavirus for updates. If you have any questions regarding this temporary policy, please contact Thomas Hannigan, Acting Director Office of Technical Programs and Coordination Activities at 202-693-2110 or hannigan.thomas@dol.gov.