



DEPARTMENT OF LABOR

Notice of Amendment to Procedural Guidelines for the Development and Maintenance of the List of Goods Produced by Child Labor or Forced Labor

AGENCY: Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Notice of amendment to procedural guidelines for the development and maintenance of a list of goods produced by child labor or forced labor in violation of international standards.

SUMMARY: The U.S. Department of Labor’s Bureau of International Labor Affairs (“ILAB”) amends a provision of its procedural guidelines (“Guidelines”) for the development and maintenance of a list of goods from countries that ILAB has reason to believe are produced by child labor or forced labor in violation of international standards (“List”). The Guidelines establish the process for the public submission of information and the evaluation and reporting process to be used by the U.S. Department of Labor’s (“DOL or Department”) Office of Child Labor, Forced Labor, and Human Trafficking (“Office”) in ILAB in maintaining and updating the List. DOL is required to develop and

make available to the public the List pursuant to the Trafficking Victims Protection Reauthorization Act of 2005.

DATES: This notice is effective on **[insert date of publication]**.

FOR FURTHER INFORMATION CONTACT: Director, Office of Child Labor, Forced Labor, and Human Trafficking, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693-4843 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the Federal Information Relay Service at 1-877-889-5627.

Information may be submitted by the following methods:

- Facsimile (fax): ILAB/Office of Child Labor, Forced Labor, and Human Trafficking at (202) 693-4830.
- Mail, Express Delivery, Hand Delivery, and Messenger Service: Austin Pederson at U.S. Department of Labor, ILAB/Office of Child Labor, Forced Labor, and Human Trafficking, 200 Constitution Ave., N.W. Room S-5317, Washington, DC 20210.
- E-mail: ilab-typra@dol.gov.

SUPPLEMENTARY INFORMATION: DOL is making no substantive changes to the Guidelines; rather, the change is technical in nature. Through this notice, DOL incorporates an amendment to the Department's mandate for the development and maintenance of the List set forth in the Frederick Douglass Trafficking Victims

Prevention and Protection Reauthorization Act of 2018, Pub. L. 115-425, title I, § 133(a), Jan. 8 2019, 132 State. 5481. This 2018 Act directs that the List include, “to the extent practicable, goods that are produced with inputs that are produced with forced labor or child labor.”

Section 105(b)(1) of the Trafficking Victims Protection Reauthorization Act of 2005 (“TVPRA of 2005”), Public Law 109-164 (2006), directed the Secretary of Labor, acting through the Bureau of International Labor Affairs, to “carry out additional activities to monitor and combat forced labor and child labor in foreign countries as described in paragraph (2).” Section 105(b)(2)(C) of the TVPRA, 22 U.S.C. 7112(b)(2)(C), directed the Department to “[d]evelop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs has reason to believe are produced by forced labor or child labor in violation of international standards.”

The Office carries out the Department’s responsibilities in the TVPRA of 2005, as amended. Pursuant to this mandate, DOL published in the *Federal Register* a set of procedural guidelines that ILAB follows in the development and maintenance of the List. 72 FR 73374 (Dec. 27, 2007). The Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, Pub. L. 115-425, title I, § 133(a), Jan. 8 2019, 132 State. 5481, expanded the scope of the Department’s mandate for the development and maintenance of the List. Pursuant to this law, the List must also include, “to the extent practicable, goods that are produced with inputs that are produced with forced labor or child labor.” Accordingly, the Department is amending the Guidelines to incorporate this new mandate. Though the Guidelines were initially

adopted after offering the public an opportunity to submit comments, the Department is not seeking comment on this amendment because it merely incorporates the recent changes to the statute. *Cf Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012) (notice and comment rulemaking under the Administrative Procedure Act is not necessary when “the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.”); *Gray Panthers Advocacy Comm. v. Sullivan*, 936 F.2d 1284, 1291-92 (D.C. Cir. 1991) (notice and comment rulemaking is not necessary when changes to the regulation merely restate the changes in the enabling legislation).

The Office will evaluate all information received according to the processes outlined in these amended Guidelines. Goods that meet the criteria outlined in these amended Guidelines will be placed on the List, published in the *Federal Register* and on the DOL Web site.

Sections Revised

This notice makes only one technical revision to the Guidelines. In order to reflect the List’s mandate, as revised by the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, a revision to Section A of the Guidelines is necessary. The Department therefore replaces the following sentences: “Whether a good is placed on the List may depend on which stage of production used child labor or forced labor. For example, if child labor or forced labor was only used in the extraction, harvesting, assembly, or production of raw materials or component articles, and these materials or articles are subsequently used under non-violative

conditions in the manufacture or processing of a final good, only the raw materials/component articles and the country/ies where they were extracted, harvested, assembled, or produced, as appropriate, may be placed on the List.” with “To the extent practicable, the List will include goods that are produced with inputs that are produced with forced labor or child labor.” No other revisions have been made.

Final Procedural Guidelines

A. Sources of Information and Factors Considered in the Development and Maintenance of the List

The Office will make use of all relevant information, whether gathered through research, public submissions of information, a public hearing, interagency consultations, or other means, in developing the List. In the interest of maintaining a transparent process, the Office will not accept classified information in developing the List. The Office may request that any such information brought to its attention be declassified. If submissions contain confidential or personal information, the Office may redact such information in accordance with applicable laws and regulations before making the submission available to the public.

In evaluating information, the Office will consider and weigh several factors, including:

1. Nature of information. Whether the information about child labor or forced labor gathered from research, public submissions, hearing testimony, or other sources is relevant and probative, and meets the definitions of child labor or forced labor.
2. Date of information. Whether the information about child labor or forced labor in the production of the good(s) is no more than 7 years old at the time of receipt. More current information will generally be given priority, and information older than 7 years will generally not be considered.
3. Source of information. Whether the information, either from primary or secondary sources, is from a source whose methodology, prior publications, degree of familiarity and experience with international labor standards, and/or reputation for accuracy and objectivity, warrants a determination that it is relevant and probative.
4. Extent of corroboration. The extent to which the information about the use of child labor or forced labor in the production of a good(s) is corroborated by other sources.
5. Significant incidence of child labor or forced labor. Whether the information about the use of child labor or forced labor in the production of a good(s) warrants a determination that the incidence of such practices is significant in the country in question. Information that relates only to a single company or facility; or that indicates an isolated incident of child labor or forced labor, will ordinarily not weigh

in favor of a finding that a good is produced in violation of international standards. Information that demonstrates a significant incidence of child labor or forced labor in the production of a particular good(s), although not necessarily representing a pattern or practice in the industry as a whole, will ordinarily weigh in favor of a finding that a good is produced in violation of international standards.

In determining which goods and countries are to be placed on the List, the Office will, as appropriate, take into consideration the stages in the chain of a good's production. To the extent practicable, the List will include goods that are produced with inputs that are produced with forced labor or child labor. If child labor or forced labor was used in both the production or extraction of raw materials/component articles and the manufacture or processing of a final good, then both the raw materials/component articles and the final good, and the country/ies in which such labor was used, may be placed on the List. This is to ensure a direct correspondence between the goods and countries which appear on the List, and the use of child labor or forced labor.

Information on government, industry, or third-party actions and initiatives to combat child labor or forced labor will be taken into consideration, although they are not necessarily sufficient in and of themselves to prevent a good and country from being listed. In evaluating such information, the Office will consider particularly relevant and probative any evidence of government, industry, and third-party actions and initiatives that are effective in significantly reducing if not eliminating child labor and forced labor.

Goods and countries (“entries”) that meet the criteria outlined in these procedural Guidelines will be placed on an initial List, to be published in the Federal Register and on the DOL Web site. This initial List will continue to be updated as additional information becomes available. Before publication of the initial List or subsequent versions of the List, the Office will inform the relevant foreign governments of their presence on the List and request their responses. The Office will review these responses and make a determination as to their relevance. The List, along with a listing of the sources used to identify the goods and countries on it, will be published in the Federal Register and on the DOL Web site. The List will represent DOL’s conclusions based on all relevant information available at the time of publication.

For each entry, the List will indicate whether the good is made using child labor, forced labor, or both. As the List continues to be maintained and updated, the List will also indicate the date when each entry was included. The List will not include any company or individual names. DOL’s postings on its website of source material used in identifying goods and countries on the List will be redacted to remove company or individual names, and other confidential material, pursuant to applicable laws and regulations.

B. Procedures for the Maintenance of the List

1. Following publication of the initial List, the Office will periodically review and update the List, as appropriate. The Office conducts ongoing research and monitoring of child

labor and forced labor, and if relevant information is obtained through such research, the Office may add an entry to, or remove an entry from the List using the process described in Section A of the Guidelines. The Office may also update the List on the basis of public information submissions, as detailed below.

2. Any party may at any time file an information submission with the Office regarding the addition or removal of an entry from the List. Submitters should take note of the criteria and instructions in the “Information Requested on Child Labor and Forced Labor” section of this notice, as well as the criteria listed in Section A of the Guidelines.

3. The Office will review any submission of information to determine whether it provides relevant and probative information.

4. The Office may consider a submission less reliable if it determines that: the submission does not clearly indicate the source(s) of the information presented; the submission does not identify the party filing the submission or is not signed and dated; the submission does not provide relevant or probative information; or, the information is not within the scope of the TVPRA and/or does not address child labor or forced labor as defined herein. All submissions received will be made available to the public on the DOL Web site, consistent with applicable laws or regulations.

5. In evaluating a submission, the Office will conduct further examination of available information relating to the good and country, as necessary, to assist the Office in making

a determination concerning the addition or removal of the good from the List. The Office will undertake consultations with relevant U.S. government agencies and foreign governments, and may hold a public hearing for the purpose of receiving relevant information from interested persons.

6. In order for an entry to be removed from the List, any person filing information regarding the entry must provide information that demonstrates that there is no significant incidence of child labor or forced labor in the production of the particular good in the country in question. In evaluating information on government, industry, or third-party actions and initiatives to combat child labor or forced labor, the Office will consider particularly relevant and probative any available evidence of government, industry, and third-party actions that are effective in significantly reducing if not eliminating child labor and forced labor.

7. Where the Office has made a determination concerning the addition, maintenance, or removal of the entry from the List, and where otherwise appropriate, the Office will publish an updated List in the Federal Register and on the DOL Web site.

C. Key Terms Used in the Guidelines

“Child Labor” — “Child labor” under international standards means all work performed by a person below the age of 15. It also includes all work performed by a person below the age of 18 in the following practices: (A) All forms of slavery or practices similar to

slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes; (C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and (D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children. The work referred to in subparagraph (D) is determined by the laws, regulations, or competent authority of the country involved, after consultation with the organizations of employers and workers concerned, and taking into consideration relevant international standards. This definition will not apply to work specifically authorized by national laws, including work done by children in schools for general, vocational or technical education or in other training institutions, where such work is carried out in accordance with international standards under conditions prescribed by the competent authority, and does not prejudice children's attendance in school or their capacity to benefit from the instruction received.

“Countries” — “Countries” means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands.

“Forced Labor” – “Forced labor” under international standards means all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily, and

includes indentured labor. “Forced labor” includes work provided or obtained by force, fraud, or coercion, including: (1) By threats of serious harm to, or physical restraint against any person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process. For purposes of this definition, forced labor does not include work specifically authorized by national laws where such work is carried out in accordance with conditions prescribed by the competent authority, including: any work or service required by compulsory military service laws for work of a purely military character; work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations; work or service required in cases of emergency, such as in the event of war or of a calamity or threatened calamity, fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; and minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives have the right to be consulted in regard to the need for such services.

“Goods”— “Goods” means goods, wares, articles, materials, items, supplies, and merchandise.

“Indentured Labor” – “Indentured labor” means all labor undertaken pursuant to a contract entered into by an employee the enforcement of which can be accompanied by process or penalties.

“International Standards” – “International standards” means generally accepted international standards relating to forced labor and child labor, such as international conventions and treaties. These Guidelines employ definitions of “child labor” and “forced labor” derived from international standards.

“Produced” — “Produced” means mined, extracted, harvested, farmed, produced, created, and manufactured.

Authority: 22 U.S.C. § 7112(b)(2)(C)

Signed at Washington, D.C., this *6th* day of *May* 2020.

Martha Newton,

Deputy Undersecretary for International Affairs.

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