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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2020-0028]

**Interagency Labor Committee for Monitoring and Enforcement Procedural
Guidelines for Petitions Pursuant to the USMCA**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Interagency Labor Committee for Monitoring and Enforcement (Interagency Labor Committee) invites public comments on the procedures for submissions by the public of information with respect to potential failures of Canada or Mexico to implement their labor obligations under the United States-Mexico-Canada Agreement (USMCA or Agreement).

DATES: To be assured of consideration, submit comments by August 15, 2020.

ADDRESSES: The Office of the United States Trade Representative (USTR) strongly prefers electronic submissions made through the Federal eRulemaking Portal: <https://www.regulations.gov> (Regulations.gov), using Docket Number USTR-2020-0028. Follow the instructions for submitting comments below. For alternatives to on-line submissions, please contact Joshua Kagan, Deputy Assistant U.S. Trade Representative for Labor, in advance of the August 15, 2020 deadline at Joshua.M.Kagan@ustr.eop.gov or (202) 395-2953.

FOR FURTHER INFORMATION CONTACT: Joshua Kagan, Deputy Assistant U.S. Trade Representative for Labor, at Joshua.M.Kagan@ustr.eop.gov or (202) 395-2953.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2006, the United States Department of Labor published an updated notice of procedural guidelines for the receipt and review of public submissions on matters related to free trade agreement labor chapters and the North American Agreement on Labor Cooperation (NAALC). Those guidelines continue to apply to public submissions on matters related to free trade agreement labor chapters other than the USMCA.

The Protocol of Amendment for the USMCA terminates the NAALC upon the protocol's entry into force on July 1, 2020. Section 711 of the USMCA Implementation Act (Implementation Act), which entered into force on January 29, 2020, establishes the Interagency Labor Committee. Section 716(a) of the Implementation Act requires the Interagency Labor Committee to establish procedures for submissions by the public of information with respect to potential failures to implement the labor obligations of a USMCA country.

II. Public Comments

The Interagency Labor Committee invites public comments on the interim procedural guidelines in the Annex to this notice. You must submit comments by August 15, 2020. You must make all submissions in English via Regulations.gov, using Docket Number USTR-2020-0028. USTR will not accept hand-delivered submissions. To make a submission using Regulations.gov, enter Docket Number USTR-2020-0028 in the 'search for' field on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'filter results by' section on the

left side of the screen and click on the link entitled ‘comment now.’ The Regulations.gov website offers the option of providing comments by filling in a ‘type comment’ field or by attaching a document using the ‘upload file(s)’ field. The Interagency Labor Committee prefers that you provide submissions in an attached document and note ‘see attached’ in the ‘type comment’ field on the online submission form. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Include any data attachments to the submission in the same file as the submission itself, and not as separate files.

You will receive a tracking number upon completion of the submission procedure at Regulations.gov. The tracking number is confirmation that Regulations.gov received the submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for Regulations.gov. USTR may not consider documents you do not submit in accordance with these instructions. If you are unable to provide submissions as requested, please contact Joshua Kagan, Deputy Assistant U.S. Trade Representative for Labor, at Joshua.M.Kagan@ustr.eop.gov or (202) 395-2953, in advance of the August 15, 2020 deadline to arrange for an alternative method of transmission. General information concerning USTR is available at www.ustr.gov.

III. Business Confidential Submissions

If you ask USTR to treat information you submitted as business confidential information (BCI), you must certify that the information is business confidential and you would not customarily release it to the public. You must clearly designate BCI by marking the submission “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page, and indicating, via brackets, the specific

information that is BCI. Additionally, you must include ‘Business Confidential’ in the ‘type comment’ field. For any submission containing BCI, you must separately submit a non-confidential version, *i.e.*, not as part of the same submission with the confidential version, indicating where BCI has been redacted. USTR will post the non-confidential version in the docket and it will be open to public inspection.

ANNEX - USMCA Procedural Guidelines

Summary

The Interagency Labor Committee for Monitoring and Enforcement (Committee) announces the procedures for the receipt and review of petitions and information pursuant to the United States-Mexico-Canada Agreement (USMCA) Chapter 23 (Labor Chapter) and Annex 31-A (Facility-Specific Rapid Response Labor Mechanism, hereafter Rapid Response Mechanism), under Section 716 of the USMCA Implementation Act (Pub. L. 116-113) (Implementation Act). Direct petitions and information discussed below to the Department of Labor, Bureau of International Labor Affairs (ILAB), Office of Trade and Labor Affairs (OTLA), for Committee consideration.

For purposes of receiving petitions and information discussed below, the OTLA’s contact information is: Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S-5315, Washington DC 20210, USMCA-petitions@dol.gov, telephone number 202-693-4887.

Section A. Definitions

Another Party or *other Party* means a country other than the United States that is a Party to the USMCA.

Covered facility means a facility in the territory of Mexico that is in a Priority Sector and (i) produces a good, or supplies a service, traded between the Parties, or (ii) produces a good, or supplies a service, that competes in the territory of a Party with a good or a service of the United States.

Days means calendar days, unless otherwise specified.

Denial of rights means a denial of the right of free association and collective bargaining under Mexican legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico) of the USMCA.

Enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately owned or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization.

Labor Chapter means Chapter 23, including Annex 23-A of the USMCA.

Labor obligations means obligations under the Labor Chapter, including Annex 23-A.

Labor organization includes any organization of any kind, including local, provincial, territorial, state, national, and international organizations or federations, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

Party means a Party to the USMCA.

Person means a natural person or an enterprise.¹

¹ For greater certainty, “person” includes labor organizations and non-governmental organizations.

Petition means a written statement to the Committee asserting that there is a denial of rights at a covered facility (Rapid Response Petition) or any other failure to comply with the obligations of another Party under the Labor Chapter of the USMCA (Labor Chapter Petition).²

Petitioner means any person that files a petition.

Priority sector means a sector that produces manufactured goods, including but not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement; supplies services; or involves mining.

Section B. The Committee

1. In accordance with Section 711 of the Implementation Act, the Committee, co-chaired by the U.S. Trade Representative and the Secretary of Labor,³ has been established to coordinate United States efforts with respect to each Party:
 - a. To monitor the implementation and maintenance of the labor obligations.
 - b. To monitor the implementation and maintenance of Mexico's labor reform.
 - c. To request enforcement actions with respect to a Party that is not in compliance with such labor obligations.
2. The Committee will review petitions and accompanying information regarding another Party's labor obligations arising under the USMCA, as set out in Section D.

² "Petitions with accompanying information" for purposes of this document are similar to "submissions" as that term is used in the OTLA Procedural Guidelines regarding other free trade agreements. *See* Bureau of International Affairs; Notice of Reassignment of Functions of Office of Trade Agreement Implementation to Office of Trade and Labor Affairs; Notice of Procedural Guidelines, 71 FR 76691 (December 14, 2006).

³ The day-to-day operations of the Committee will be carried out by the Assistant U.S. Trade Representative for Labor Affairs, Office of the United States Trade Representative (USTR), and the Deputy Undersecretary for International Affairs at the U.S. Department of Labor.

3. In connection with any of its activities, the Committee may consider any information received from the public, including by means of the Department of Labor-monitored web-based hotline referred to in Section 717 of the Act.
4. The ILAB is the designated contact point, in regular consultation and coordination with the USTR Office of Labor Affairs, pursuant to Article 23.15 of the Labor Chapter. Submit petitions and information for Committee consideration to the ILAB's OTLA.

Section C. Petitions and Accompanying Information

1. Any person of a Party may, through the OTLA, file a Rapid Response Petition or Labor Chapter Petition with the Committee.
2. A petition may be accompanied by information, as described below.
3. When the OTLA receives a petition, information for the Committee, or both, the OTLA will notify, and forward it to, the Committee. Upon receipt of a petition with accompanying information, the Committee will follow the relevant review procedures identified in Section D.⁴
4. A petition must be in writing and be dated. The Committee prefers submissions to OTLA by electronic means in searchable formats, but will accept a petitions by hand delivery or mail, including by courier. The Committee encourages any petitioner that does not submit electronically to provide electronic versions of all documents.
5. Any person may provide information for the Committee to the OTLA. The information should be in written format, when practicable. Written information may

⁴ For the United States, a written submission for purposes of USMCA Article 23.11 triggers the review procedures identified in Section D when it is a petition with accompanying information.

be provided by electronic means, hand delivery, or mail, including courier. Clear identification of the person sending information will facilitate follow-up communication, and is encouraged where feasible.

Rapid Response Petitions

6. Any Rapid Response Petition must:
 - a. Identify the person filing the petition, as well as the person's physical or e-mail address, and other contact information.
 - b. Identify the facility to which the petition pertains.
 - c. Provide a description, including facts with sufficient specificity, of the matter alleged to constitute a denial of rights.
7. The Committee recommends that, as relevant and to the extent possible, each Rapid Response Petition be accompanied by information that supports the petitioner's allegation and addresses:
 - a. Whether the facility to which the petition pertains is a covered facility.
 - b. The laws, and specific provisions thereof, of Mexico with which there is alleged non-compliance.
 - c. Whether relief has been sought under the domestic laws or procedures of Mexico, and, if so, the status of any proceedings.
 - d. Whether any matter referenced in the petition has been addressed by, or is pending before, any international body.

Labor Chapter Petitions

8. Any Labor Chapter Petition must identify:

- a. The person filing the petition, as well as the person's physical or e-mail address, and other contact information.
 - b. The other Party alleged to be out of compliance with an obligation under the Labor Chapter.
 - c. Reasons, including facts with sufficient specificity, supporting the petitioner's allegation that the other Party is out of compliance.
9. The Committee recommends that, as relevant and to the extent possible, each Labor Chapter Petition be accompanied by information that supports the allegation and addresses:
- a. The particular obligation in the Labor Chapter with which the petitioner considers there is non-compliance.
 - b. Whether there has been harm to the petitioner or other persons, and, if so, to what extent.
 - c. For claims alleging a failure by a Party to effectively enforce labor laws under Article 23.5, whether there has been a sustained or recurring course of action or inaction of non-enforcement of labor law by another Party.
 - d. Whether the matter referenced in the petition occurred in a manner affecting trade or investment.
 - e. Whether relief has been sought under the domestic laws or procedures of the other Party, and, if so, the status of any proceedings.
 - f. Whether any matter referenced in the petition has been addressed by, or is pending before, any international body.

Section D. Review of a Petition

Rapid Response Petition

1. When the Committee receives a Rapid Response Petition with accompanying information, the Committee will review the Petition and information within 30 days of their receipt by the OTLA and determine whether there is sufficient, credible evidence of a denial of rights at the covered facility to enable the good-faith invocation of enforcement mechanisms.
2. If the Committee decides that there is sufficient, credible evidence of a denial of rights at the covered facility to enable the good faith invocation of enforcement mechanisms, the Committee will inform the U.S. Trade Representative for purposes of submitting a request for review in accordance with Article 31–A.4 of the USMCA.
3. If the Committee determines that there is not sufficient, credible evidence of a denial of rights at the covered facility to enable the good faith invocation of enforcement mechanisms, the Committee will certify that determination to the United States Senate Committee on Finance, the United States House of Representatives Ways and Means Committee, and the petitioner.

Labor Chapter Petition

4. When the Committee receives a Labor Chapter Petition with accompanying information, the Committee will review the Petition and information not later than 20 days after they were received by the OTLA.
5. If, after the review provided for in paragraph 4 of this section, the Committee determines that further review is warranted, the Committee will conduct a further review focused exclusively on determining, not later than 60 days after the date of submission, whether there is sufficient, credible evidence that the other Party is not in

compliance with its labor obligations, for purposes of initiating enforcement action under Chapter 23 or Chapter 31 of the USMCA.

6. If the Committee determines that there is sufficient, credible evidence that the other Party is not in compliance with its obligations under the Labor Chapter for purposes of initiating enforcement action under Chapter 23 or Chapter 31 of the USMCA, the Committee will immediately so inform the U.S. Trade Representative.

Process and Considerations for Determinations

7. In making a determination identified in paragraph 1 or 5 of this section, the Committee may consider, among other things, whether:
 - a. The petition clearly identifies the petitioner, and is dated.
 - b. The petition and accompanying information enable a determination of the scope and nature of the alleged non-compliance and permit an appropriate review.
 - c. Relief has been sought under the domestic laws of the other Party.
 - d. The matter or a related matter has been addressed by, or is pending before, any international body.
8. In making any determination identified in this section, the Committee may, among other things:
 - a. Consider views expressed by the public.
 - b. Consult with:
 - i. Officials of the United States government.
 - ii. Officials of any State or local government.
 - iii. Officials of any foreign government.
 - iv. The designated contact point of the relevant Party.

- v. Labor organizations.
 - vi. Non-government representatives.
 - vii. Advisory committees.
 - viii. The petitioner.
9. The Committee may keep the petitioner apprised of the status of a review, including of a review determination.

Section E. Confidentiality

1. Information provided by a person or another Party to the Committee in confidence shall be treated as exempt from public inspection if the information meets the requirements of 5 U.S.C. 552(b) of the Freedom of Information Act or if otherwise permitted by law.
2. The Committee recommends that each person or Party requesting such treatment clearly mark “provided in confidence” on each page or portion of a page so provided and furnish an explanation as to the need for exemption from public inspection.
3. The OTLA and the Committee are sensitive to the confidentiality needs of a person requesting confidential treatment of information and will make every effort to protect a natural person’s identity pursuant to the law.

Lewis Karesh,

Assistant United States Trade Representative for Labor,

Office of the United States Trade Representative.

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