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NEPCon LegalSource Standard

Draft version for consultation

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Introduction

Organisations buying, processing, and selling forest products face an ever more challenging task in documenting and tracking their supply of raw material inputs in order to minimize the risk that material from illegal sources enter their supply chain. Increased regulatory and market driven requirements place continuous demands on the ability of these organisations to provide a higher level of assurance for the legality of their products. As a response many companies implement their own verification systems or source material that carries different verification or certification claims, but may also be sourcing unverified material and material of unknown origin.

To support organisations in this work NEPCon has developed this standard for certification of Legal Sourcing for organisations requesting a third party audit to certify that:

1. Organisation implements a sourcing policy fulfilling the minimum requirements established by this standard;
2. Organisation ensures the fulfilment of the policy;
3. Organisation is monitoring the implementation of the policy;
4. Organisation implements a due diligence system in order to minimize the risk of sourcing inputs from illegal sources, and;
5. NEPCon has audited the system, and can attest to the performance and accuracy of the system, as well as its related and approved public claims.

Organisations fulfilling NEPCon's requirements for legal sourcing and due diligence can be issued a NEPCon LegalSource certificate.

The standard is designed to support organisations to meet due diligence and due care requirements that may be needed in markets such as the EU, the US or Australia.

Public Comment

NEPCon encourages public comments and inputs to standards and procedures, which are also accepted outside the official consultation period. Organisations and individuals are encouraged to submit their concerns or comments regarding this standard to NEPCon, using the email address above.

NEPCon will open this draft standard to a public 60 day period of stakeholder consultation and staff reviews in the very near future with a potential second phase of another 60 days consultation in accordance with the ISEAL Guidelines¹. The standard may be applied for certification work during the stakeholder consultation period (for further information, contact Christian Sloth, cs@nepcon.net).

Note on the use of this standard

All aspects of this standard are considered to be normative, including the scope, standard effective date, references, terms and definitions, tables and annexes, unless otherwise stated.

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A Scope

This standard is applicable to organisations requesting independent certification of their wood products supply chain due diligence system (including sources, sub-suppliers, and direct suppliers). Certification to this standard establishes that:

6. Organisation implements a Public Sourcing policy fulfilling the minimum requirements established by this standard;
7. Organisation ensures the fulfilment of the policy;
8. Organisation is monitoring the implementation of the policy;
9. Organisation implements a due diligence system in order to minimize the risk of sourcing inputs from illegal sources, and;
10. NEPCon has audited the system, and can attest to the performance and accuracy of the system, as well as its related and approved public claims.

NOTE: the standard is not a product certification standard, and certification to this standard does not certify or guarantee the legality of all products and materials included in the scope of the Organisation.

B Standard Effective Date

This standard is effective from the date of the Approved version date stated on this document. The standard will be updated periodically replacing outdated versions as necessary.

¹ ISEAL Code of Good Practice for Setting Social and Environmental Standards, P005 – Version 5.0 – January, 2010

C References:

- VER-04 SmartWood Generic Standard for Verification of Legal Compliance (VLC), 18JAN10
- FSC-STD-30-010 V2-0 EN Controlled Wood Standard for Forest Management Organisations
- Regulation (EU) No 995/2010 of the European parliament and of the council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.
- Amendments to the Lacey Act 2008 from H.R.2419, Sec. 8204
- Australian Illegal Logging Prohibition Bill 2011(23 November 2011)
- FSC-STD-40-004 (Version 2-1) EN: FSC Standard for Chain of Custody Certification
- FSC-STD-40-005 V2-1 EN Company Evaluation of Controlled Wood
- FSC-STD-01-002 (V1-0) EN Glossary of Terms
- PEFC ST 2002 2010 CoC standard 2010 11 26

D Acronyms

EUTR:	European Timber Regulation
FME:	Forest Management Enterprise
VLC:	Verification of Legal Conformance

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PART I: General Requirements for Sourcing

1 Sourcing Policy and Commitment

1.1 Organisation shall have a publicly available Responsible Sourcing Policy endorsed by management that commits the organisation to responsible sourcing, promoting sustainable use and processing of natural resources. As a minimum, the policy shall include the following elements:

1.1.1 Organisation shall demonstrate a commitment to avoid trading of forest products that have been harvested, traded or processed in violation of applicable national legislation and international treaties; and,

1.1.2 Organisation shall demonstrate a commitment to continuously improve the sustainability level of its sourcing by favouring stricter and more credible certification and verification standards and sourcing requirements and by avoiding sourcing from unknown and unsustainable sources.

1.2 Organisation shall observe due care to ensure its suppliers, sub-suppliers and sources are meeting the minimum requirements in Criterion 1.1 and associated indicators.

2 Quality System

2.1 Organisation shall establish a control system ensuring implementation of all applicable standard requirements.

2.2 Organisation shall define system responsibilities and appoint positions, including the following:

2.2.1 One overall responsible position shall be designated for the control system; and,

2.2.2 Individual responsible positions shall be designated for all applicable requirements of this standard.

2.3 All applicable staff, workers and auditors shall be competent in implementing relevant requirements of this standard and demonstrate awareness of their responsibilities.

2.4 Organisation shall continuously monitor and evaluate the implementation of standard requirements to ensure that these are met.

2.5 All non-conformances and corrective actions shall be documented.

2.6 Organisation shall ensure that all non-compliances are addressed and mitigated in a timely and efficient manner.

2.7 Organisation shall establish and maintain records to provide evidence of conformance with the requirements of this standard and its efficiency.

2.8 Organisation shall keep records of internal monitoring and identified non-conformances and corrective and preventive actions.

2.9 If applicable the Organisation shall keep relevant records documenting compliance with applicable activities as related to risk assessment and mitigation program (see principle 8).

2.10 The Organisation shall maintain records for at least 5 years.

PART II: Access to Information and Risk Assessment

3 Access to Information

3.1 Organisation shall secure access to the following information:

3.1.1 The type of product as well as the common and scientific name of tree species used for all products placed on the market.

3.1.2 Quantity (volume or weight) of inputs and sales by each timber product group².

3.1.3 Country of harvest, and where applicable³:

- Sub-national region where the timber was harvested; and,
- Concession of harvest.

3.1.4 Name and address of current suppliers from whom the organisation has purchased material

3.1.5 Name and address of buyers (*traders/operators*) to whom the organisation has supplied products.

3.1.6 Documents or other information indicating compliance of those timber and timber products with the applicable legislation.

4 Risk Assessment

4.1 Organisation shall identify the supply chain for each product group or material used in each product group to be placed in the market.

4.2 Organisation shall identify *critical control points* and associated risks where illegal material could enter the supply chain.

4.3 For material from sources certified or verified against an existing product certification or verification standards, the risk shall be assessed to identify gaps between the applicable standard and the EUTR legality requirements⁴.

4.4 The Organisation shall carry out risk assessments of all sources and products included in the scope of the LegalSource Program. The risk assessment shall take into account⁵:

4.4.1 Available information about compliance with applicable legislation⁶;

4.4.2 Prevalence of illegal harvesting of specific tree species;

4.4.3 Prevalence of illegal harvesting or practices in the country of harvest and/or sub-national region where the timber was harvested, including consideration of the prevalence of armed conflict;

4.4.4 Current sanctions imposed by the UN Security Council or the Council of the EU on timber imports or exports;

² In the EU the product groups are defined in the EU Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87.

³ This formulation originates from the EUTR. Identifying the region or concession of harvest can be applicable in cases where this knowledge can be considered to be important in relation to the risk assessment.

⁴ NEPCon will provide a standard review against existing legality standards and certification standards to be used.

⁵ Reflects the current requirements of the EU Timber Regulation.

⁶ See a definition in appendix I

4.4.5 The complexity of the supply chain.

4.5 The risk assessment shall determine the level of risk for each risk category associated with the products as either “negligible” or “non-negligible”.

4.6 Sources and products identified to have non-negligible risk in all types can be approved for placement on the market.

4.7 The Organisation shall categorise material from sources with non-negligible risk as “Not Approved” until further mitigating actions has been taken as outlined in Part II of this standard.

4.8 The risk assessment for each wood source shall be updated as soon as the Organisation receives information that the wood origin has changed or if there are other relevant changes related to the risk classification of the supply chain.

4.9 Organisation shall ensure that suppliers report if any changes occur in the supply chain.

4.10 The Organisation shall review the risk assessment at least annually, and update if applicable.

Material Control

5.1 Organisation shall ensure that suppliers do not mix approved products supplied to the Organisation, or to other entities in the supply chain, with material “Not Approved”.

Claims and Public Information

6.1 Organisation shall ensure that all certification claims and marks follow the applicable NEPCon policies:

6.1.1 Only organisations implementing an approved LegalSource due diligence system may use the LegalSource claim.

6.1.2 On-product labelling referring to the NEPCon LegalSource Program is not permitted.

6.1.3 Use of the NEPCon LegalSource claim in promotion of the Organisation’s certification shall not imply that any aspects are included which are outside the scope of the verification.

6.2 Organisation shall submit all claims related to the LegalSource program to NEPCon for review and approval prior to use.

PART III: Risk Mitigation

The risk mitigating actions implemented by the organisation are applicable for organisations that wish to source material that cannot be approved based on initial evaluation and access to information, but which CAN be traced back to the origin. For any material to be eligible to be included in the scope of the mitigation program, the organisation shall meet the applicable requirements detailed in this part of the standard. Once conformance to these requirements has been secured and is confirmed by NEPCon, the material can be categorised as Approved and included under the scope of the LegalSource Program and placed on the market.

NOTE: The Organisation can choose to develop and implement its own verification program or authorise another organisation to do it on its behalf. Under either option, it is ultimately the Organisation that holds responsibility for the correct implementation and findings.

Additional Supplier Management and Information Requirements

7.1 The Organisation shall identify the area⁷ of origin, suppliers and sub-suppliers included in the scope of the verification program, including:

7.1.1 List of source FMEs, including name, address, date of entry, and removal when applicable or other evidence documenting the forest area of origin as applicable to the type of risks identified.

7.1.2 List of suppliers and sub-suppliers, including type of entity, name, address, date of entry, and removal when applicable;

7.1.3 Records showing the scope of verification for each site (species, product groups, sourcing FMEs);

7.2 Organisation shall ensure that all suppliers, sub-suppliers and sources included in the scope of the verification program have signed a consent form including the following points:

7.2.1 Agreement to conform to the relevant NEPCon Standard and procedures

7.2.2 Agreement to follow all applicable legal requirements as relevant for their type of organisation.

7.2.3 Agreement to address any Non Conformance Reports issued by the Organisation.

7.2.4 Agreement to make relevant information about the material or product available upon request from the Organisation.

7.2.5 Agreement to exclude timber with unknown or illegal origin from the supply chain.

7.2.6 Agreement to allow the Organisation, NEPCon and NEPCon representatives to conduct audits of all entities included in the scope in order to verify conformance with these rules including providing access to all relevant evidence.

7.3 Organisation shall monitor that all approved suppliers, sub-suppliers and sources meet the requirements of the consent form.

⁷ The level of detail of the information on origin of material shall be considered in connection to the ability of the Organisation to evaluate the risks connected to the material and source.

8 Mitigating Actions for Sources with Non-Negligible Risk

8.1 Organisation shall identify and implement mitigating actions for all sources and products that have been identified to have "non-negligible" risk.

8.2 Mitigating actions shall cover the relevant risk categories identified in section 4.4.

8.3 Organisation shall document the implementation and efficiency of mitigating actions and make this information available to RA/NEPCon.

8.4 Organisation shall specify and justify reasons for approving wood sources in their supply chain.

8.5 Organisation shall discontinue relationships with suppliers in case of major or continuous violations of the requirements of this standard.

Annex I: Definitions

Applicable Legislation: means the legislation in force in the country of harvest covering at least, but not necessarily limited to, the following matters:

- rights to harvest timber within legally gazetted boundaries,
- payments for harvest rights and timber including duties related to timber harvesting,
- timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting,
- third parties' legal rights concerning use and tenure that are affected by timber harvesting, and
- trade and customs, in so far as the forest sector is concerned.

Due Care: Due care refers to the effort made by an ordinarily prudent or reasonable party to avoid harm to another, taking the circumstances into account. It refers to the level of judgment, care, prudence, determination, and activity that a person would reasonably be expected to do under particular circumstances. This standard is applied in a vast variety of contexts, whether the duty may be driving on the road or performing a background check. The precise definition is usually made on a case-by-case basis, judged upon the law and circumstances in each case.

Due Diligence: A Due Diligence system will normally refer to a system or Purchasing Policy/Code of Conduct ensuring that care is taken that illegal timber does not enter into the supply chain

Organisation: Individual, company or other legal entity responsible for the implementation of the standard.

Origin of wood: The origin refers to the Forest Management Enterprise where the wood has been harvested.

Placing on the market: means the supply by any means, irrespective of the selling technique used, of timber or timber products for the first time on the EU, US or AUS markets for distribution or use in the course of a commercial activity, whether in return for payment or free of charge.

Publicly available: By publicly available is meant to make documents available to the general public either through access upon request or e.g. posting on organisation's website.

Product Group: Product groups are defined as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87

Risk: The risk from the supply chain is combined from risk in the country of origin, any specific risks related to the species and risks from the complexity of the supply chain.

Supplier: Company trading, processing, brokering or otherwise handles forest products for the *Organisation*.

Supply chain: A supply chain is a system of organisations, people, technology, activities, information and resources involved in moving a product from supplier to customer.

Source: The source of the trees from which the material originates. This may be the country of origin, the region or the concession of origin as applicable.

Supplier vs. sub-supplier: a supplier is the first tier supplier to the organisation under evaluation, whereas sub-suppliers are suppliers of that entity. There may be several layers of sub-suppliers in a given supply chain.

Supplier verification program: defines the verification program implemented by the Organisation itself to verify the supply chain of its material.

Verified material: material that has been verified or certified against a recognised third party standard.

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