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SFI Program Legality Requirements

Certified Program Participants must comply with federal, provincial, state and local laws that cover a broad range of issues, and protect the environment, workers and people who live in the communities where they operate. They include federal, state, provincial or local *forestry*-related environmental laws and regulations found in the United States and Canada such as The Clean Water Act, The Endangered Species Act, The Species at Risk Act, and state or provincial forest practice laws. The social laws of the United States and Canada cover civil rights, equal employment opportunities, anti-discrimination and anti-harassment measures, workers' compensation, measures to protect indigenous peoples' rights, workers' and communities' right to know, wages and working hours, and occupational health and safety. Antitrust, business competition and other laws in the United States and Canada outline business procedures that must be followed.

The *SFI* program does not try to duplicate the comprehensive *sustainable forestry* laws and processes already mandatory in the United States and Canada. Both countries have mature legal systems that consistently discourage and punish illegal behavior. Given the wide range of due process and compliance mechanisms that ensure conformance with applicable laws, the *SFI Standard* purposefully focuses on continual improvement of the practice of *sustainable forestry*, forest *productivity*, environmental performance processes and community outreach that complements the existing legal framework.

When an *SFI Certified Program Participant* procures wood offshore (beyond North America), the *SFI 2015-2019 Standard* stipulates the need to avoid *controversial sources* of supply, including *illegal logging* and *fiber sourced from countries without effective social laws*.

SFI Principle 9. Legal Compliance. To comply with applicable federal, provincial, state, and local *forestry* and related environmental laws, statutes, and regulations.

SFI Objective 13. Avoidance of *Controversial Sources including Illegal Logging*. To broaden the practice of *sustainable forestry* by avoidance of *illegal logging*.

Performance Measure 13.1. *Certified Program Participants* shall ensure that their *fiber sourcing programs* support the *principles* of *sustainable forestry*, including efforts to reduce the risk of *illegal logging*.

Indicators:

1. Process to assess the risk that the *Certified Program Participant's fiber sourcing program* could acquire material from *illegal logging* such as consulting information from the World Resources Institute Risk Information Tool, the World Bank, or Transparency International.
2. *Program* to address any significant risk identified under 13.1.1.

3. *Program with direct suppliers to promote the principles of sustainable forestry.*
4. Documented information that includes knowledge about *direct suppliers'* application of the *principles of sustainable forestry.*

SFI Objective 14. Avoidance of Controversial Sources including Fiber Sourced from Areas without Effective Social Laws. To broaden the practice of *sustainable forestry* by avoiding *controversial sources*.

Performance Measure 14.1. *Certified Program Participants* shall avoid *controversial sources* and encourage socially sound practices.

Indicators:

1. Process to assess the risk that the *Certified Program Participant's fiber sourcing* could take place in countries without effective laws addressing the following:
 - a. workers' health and safety;
 - b. fair labor practices;
 - c. indigenous peoples' rights;
 - d. anti-discrimination and anti-harassment measures;
 - e. prevailing wages; and
 - f. workers' right to organize.
2. *Program* to address any significant risk identified under 14.1.1.

SFI Objective 15. Legal and Regulatory Compliance. Compliance with applicable federal, provincial, state and local laws and regulations.

Performance Measure 15.1. *Certified Program Participants* shall take appropriate steps to avoid illegally harvested wood and to comply with applicable federal, provincial, state and local *forestry* and related social and environmental laws and regulations.

Indicators:

1. Access to relevant laws and regulations in appropriate locations.
2. System to achieve compliance with applicable federal, provincial, state or local laws and regulations.
3. Demonstration of commitment to legal compliance through *available regulatory action information*.
4. Process to assess the risk that the *Certified Program Participants* fiber sourcing program could acquire material from illegal logging by considering some of the following:
 - a. communications with suppliers
 - b. independent research
 - c. contract documentation

d. maintain records

5. Program to address any significant risk identified under 15.1.4

Performance Measure 15.2. *Certified Program Participants* shall take appropriate steps to comply with all applicable social laws at the federal, provincial, state and local levels in the country in which the *Certified Program Participant* operates.

Indicator:

1. Written *policy* demonstrating commitment to comply with social laws, such as those covering civil rights, equal employment opportunities, anti-discrimination and anti-harassment measures, workers' compensation, indigenous peoples' rights, workers' and communities' right to know, prevailing wages, workers' right to organize, and occupational health and safety.
2. *Forestry enterprises* will respect the rights of workers and labor representatives in a manner that encompasses the intent of the ILO core conventions.

SFI definition of controversial sources:

- a) Forest activities which are not in compliance with applicable state, provincial or federal laws, particularly as they may relate to:
 - legally required protection of threatened and endangered species;
 - requirements of CITES (The Convention on International Trade in Endangered Species of Wild Fauna and Flora);
 - legally required management of areas with designated high environmental and cultural values;
 - labor regulations relating to forest workers; and
 - indigenous peoples' property, tenure and use rights
- b) fiber sourced from *illegal logging*.
- c) fiber sourced from *areas without effective social laws*.

Note: *Conversion sources* cannot be included when calculating *certified forest content*

illegal logging:

The theft of timber or logs and cutting in parks, reserves or other similar areas where otherwise precluded by laws such as the United States Lacey Act, as amended in 2008, the European Union Timber Regulation (EUTR), or other relevant state, provincial, or federal legislation. The Lacey Act¹ makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United

¹ The Food, Conservation, and Energy Act of 2008 (Pub.L. 110-234, 122 Stat. 923, enacted May 22, 2008, H.R. 2419, Section 8204. Prevention of Illegal Logging Practices, also known as the 2008 U.S. Farm Bill).

States, a State, an Indian tribe, or any foreign law that protects plants. The EUTR² prohibits illegally harvested timber or products derived from such timber to be brought into the EU, and creates obligations for operators who place timber and timber products on the EU market. In addition, see Section 7 in the SFI requirements document, SFI Legality Requirements and Policies for Avoidance of Illegal Logging, for SFI Inc's Policy on Illegal Logging.

fiber sourced from areas without effective social laws: The United States and Canada have a strong legal framework. Fiber from countries without effective laws addressing the following will need a risk assessment:

1. workers' health and safety;
2. fair labor practices;
3. indigenous peoples' rights;
4. anti-discrimination and anti-harassment measures;
5. prevailing wages; and
6. workers' right to organize.

SFI Policy on Illegal Logging³

The *SFI* program has strong existing measures in the *SFI 2015-2019 Standard*, *SFI Certified Sourcing* label Standard and the *SFI Chain-of-Custody Standard* to avoid illegal sources of supply. This appendix covers the issue as to whether an organization can certify one operation to SFI's *Certified Sourcing* label Standard (Section 4) or SFI's Chain-of-Custody Standard (Section 3) in the *SFI* requirements document, while another operation controlled by the company is engaged in *illegal logging*. This is an evolving issue and as international laws, regulations, agreements, treaties and definitions of *illegal logging* change, *SFI Inc.* will review and update the language as necessary.

- (a) *SFI Inc.* will not license any person or entity to use SFI's trademarks or labels, and *SFI* may revoke any licence previously granted, if **the proposed licensee or an Affiliate of the licensee has been found to have engaged in *Illegal Logging* by a government authority in the jurisdiction where the logging occurred⁴**, unless the evidence available to *SFI* supports a conclusion that, in the business judgment of the *SFI Inc.* Board, any incidents of *Illegal Logging* by the entity are followed by prompt corrective action and do not show a pattern of *Illegal Logging*.
- (b) *SFI Inc.* will not license any person or entity to use SFI's trademarks or labels, and *SFI* may revoke any licence previously granted, if **the evidence available to *SFI* supports a**

²Regulation EU No 995/2010 of the European Parliament and of the Council of 20 October 2010.

³As Approved by the SFI Board of Directors September 23, 2008.

⁴ This enables SFI to take action that is based on a government finding (conviction, court decision, regulatory decision, fine etc.) of *Illegal Logging*. SFI would not make any factual determinations of *illegal logging*; they would be made by the government. No audit of overseas operations is required unless and until such a finding is made.

conclusion that, in the business judgment of the *SFI Inc.* Board, the proposed licensee or an Affiliate of the licensee has engaged in a pattern of *Illegal Logging*.⁵

(c) Any person or entity whose application for a *SFI* licence has been denied or whose license has been revoked pursuant to this section may reapply for a licence upon a showing that any past *Illegal Logging* has been stopped, that appropriate actions have been taken to prevent it from recurring, and that the proposed licensee and its Affiliates do not knowingly engage in *Illegal Logging*. Such showing shall be supported by a third party audit conducted by an *SFI certification body* accredited to conduct *SFI 2015-2019 Standard* certifications and shall include local expertise as part of the audit team.⁶

(d) As used in this section,

- "*Illegal Logging*" means logging on land where the entity conducting the logging has no legal right to harvest.⁷
- "Affiliate" means any person or entity that directly or indirectly controls, is controlled by, or is under common control with the proposed licensee.
- "Control" means owning a majority of the stock, appointing a majority of the directors, or otherwise having the practical or legal power to direct the operations of a person or entity.

SFI Program Forest Tree Biotechnology Requirements

***SFI* Principle 9. Legal Compliance.** To comply with applicable federal, provincial, state, and local *forestry* and related environmental laws, statutes, and regulations.

Objective 15. Legal and Regulatory Compliance. Compliance with applicable federal, provincial, state and local laws and regulations.

Performance Measure 15.1. *Certified Program Participants* shall take appropriate steps to avoid illegally harvested wood and to comply with applicable federal, provincial, state and local *forestry* and related social and environmental laws and regulations.

Indicators:

1. Access to relevant laws and regulations in appropriate locations.
2. System to achieve compliance with applicable federal, provincial, state or local laws and regulations.
3. Demonstration of commitment to legal compliance through *available regulatory action information*.

⁵ This enables SFI to take action against a company that is known to engage in a pattern of *Illegal Logging*, but that has NOT been subject to government enforcement actions (perhaps because the local government is corrupt or ineffective). The SFI Board would need to make the factual determinations based on the best evidence available to it. No audit of overseas operations is required unless and until such a finding is made.

⁶ The audit shall cover all operations in all jurisdictions where the *illegal logging* occurred.

⁷ This definition does not cover most environmental law violations. It is intended to be limited to timber theft.

Objective 16. Forestry Research, Science, and Technology. To support forestry research, science, and technology, upon which sustainable forest management decisions are based.

Performance Measure 16.1. *Certified Program Participants* shall individually and/or through cooperative efforts involving *SFI Implementation Committees*, associations or other partners provide in-kind support or funding for forest research to improve *forest health, productivity*, and sustainable management of forest resources, and the environmental benefits and performance of forest products.

Indicator:

1. Research on genetically engineered trees via *forest tree biotechnology* shall adhere to all applicable federal, state, and provincial regulations and international protocols ratified by the US and/or Canada depending on jurisdiction of management.

forest tree biotechnology: As commonly used, *forest tree biotechnology* encompasses structural and functional studies of genes and genomes (including development and application of genetic markers); various methods of vegetative reproduction such as micropropagation, tissue culture, and somatic embryogenesis; and genetic engineering (GE), which is the physical manipulation and asexual insertion of genes into organisms.

SFI Policy on Forest Tree Biotechnology⁸

The SFI program has strong existing measures in the *SFI 2010-2014 Standard* regarding research on genetically engineered trees via *forest tree biotechnology*⁹. The use of genetically modified organisms is an evolving issue and as federal and international laws, regulations, agreements, treaties and market place recognition of the use of genetically engineered trees via *forest tree biotechnology* change, SFI Inc. will proactively review and update the SFI Standard language and this policy as necessary.

- (a) SFI Inc. recognizes that *forest tree biotechnology* offers the potential to prevent the loss of tree species like the American Chestnut due to devastating diseases and to further improve the quality and productivity of trees, their resistance to insects and disease and to grow trees with characteristics that allow them to be more efficiently manufactured into building products, paper and to provide feedstock for bioenergy.
- (b) SFI Inc. recognizes that genetically engineered forest trees are not approved for commercial plantings in the United States and Canada and, even if approved in the future,

⁸ As Approved by the SFI Board of Directors December 5, 2013.

⁹ 15.1.2. Research on genetically engineered trees via *forest tree biotechnology* shall adhere to all applicable federal, state, and provincial regulations and international protocols.

Definition: As commonly used, *forest tree biotechnology* encompasses structural and functional studies of genes and genomes (including development and application of genetic markers); various methods of vegetative reproduction such as micropropagation, tissue culture, and somatic embryogenesis; and genetic engineering (GE), which is the physical manipulation and asexual insertion of genes into organisms.

it will take many years for fiber from genetically engineered forest trees to reach manufacturing facilities.

- (c) SFI Inc. realizes that much research is still being conducted to study the ecological cost benefits of genetically engineered trees and regulations concerning forest biotechnology continue to evolve. As such research and regulations develop; SFI Inc. will review to understand the impacts of genetically engineered trees from an ecological perspective.
- (d) SFI Inc. is endorsed by the Program for the Endorsement of Forest Certification (www.pefc.org) which has restrictions on the use of genetically engineered trees until December 31, 2015:

"Genetically-modified trees shall not be used"¹⁰.

Note: The restriction on the usage of genetically-modified trees has been adopted based on the Precautionary Principle. Until enough scientific data on genetically-modified trees indicates that impacts on human and animal health and the environment are equivalent to, or more positive than, those presented by trees genetically improved by traditional methods, no genetically-modified trees will be used."

Note: The policy on the exclusion of material from genetically modified forest based organisms remains in force until 31 December 2015."

- (e) Given the issues identified in item (b) regarding legal approval and lack of commercialization and in item (d) regarding PEFC requirements for endorsement of the SFI program, the use of fiber from genetically engineered trees via *forest biotechnology* is not approved for use in SFI labeled products.
- (f) The SFI Standard requirements regarding research on genetically engineered trees via forest tree biotechnology will remain in place.
- (g) SFI Inc. will proactively review and update the SFI Standard language and this policy as necessary.

¹⁰ PEFC ST 1003:2010, Sustainable Forest Management-Requirements, 5.4.7