



SUBMITTED VIA E-MAIL

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REGARDING DOCKET NUMBER 090306279-9290-01, PROPOSED REVISION OF PS 20-05, THE AMERICAN SOFTWOOD LUMBER STANDARD

Dear Mr. Alderman:

The National Institute of Standards and Technology (NIST) of the U.S. Department of Commerce published its notice and request for comments¹ on the proposed revision of PS 20-05, the American Softwood Lumber Standard².

Founded in 1917, The National Lumber and Building Material Dealers Association (NLBMDA) has over 6,000 members operating single or multiple lumber yards and component plants serving homebuilders, subcontractors, general contractors, and consumers in the new construction, repair and remodeling of residential and light commercial structures.

INTRODUCTION AND SUMMARY

With these comments, NLBMDA recommends, as a part of the review and revision of the American Softwood Lumber Standard (hereafter "PS 20-05"), a regime to certify the attribute of eco-origin for a lumber product, specifically to audit the receipt of raw material for proper chain-of-custody documentation from a recognized Sustainable Forest Certifier, certify proper materials handling to maintain chain-of-custody throughout lumber production, certify a permanent on-product eco-label.³ This would be

¹ See Volume 74, Number 63, of the Federal Register (April 3, 2009) at 15255 (hereafter "Notice").

² See Voluntary Product Standard (PS) 20-05, "American Softwood Lumber Standard" (hereafter "PS 20-05" with pagination).

³ The term "sustainable" is used here to mean "to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations". See Executive Order 13423, "Strengthening Federal Environmental, Energy, and Transportation Management, January 26, 2007," found in Volume 72, Number 17 of the

consistent with the goal of verifying other attributes of lumber products, and responsive to a growing awareness of products produced in association with sustainable natural resource decisions.⁴

The American Lumber Standard Committee (ALSC) has its roots in managing the voluntary product standard for lumber products.⁵

The certification of sustainable management of standing forests (the source of the raw material for lumber products)⁶ and the certification of the proper handling of raw material from forest to the point of production (chain of custody) rests with multiple proprietary forest management certification programs.⁷ Creating complexity and confusion in the

Federal Register (January 26, 2007) at 3919 et seq. See also DRAFT National Report on Sustainable Forest: 2010 (December 8, 2008) which may be found at: <http://www.fs.fed.us/research/sustain/2010SustainabilityReport/>.

⁴ The Federal definition of “sustainability” recognizes, as is widely recognized by other definitions for the same term, three arenas in which the impacts of natural resource decisions are closely linked: environment, society, and economy – commonly referred to as “the triple bottom line”. See DRAFT National Report on Sustainable Forest: 2010, in section 2, Defining Sustainability.

⁵ The term “lumber” as used in the Consent Decree in U.S. v. National Lumber Manufacturers Association means “all the products made wholly or in substantial part of sawn wood”. The term “lumber or lumber products” as used in the Consent Decree in U.S. v. National Retail Lumber Dealers Association means “all the products manufactured from the tree commonly used for building and construction purposes, including but not limited to boards, planks, dimension timbers, shingles, and such fabricated products and by-products as millwork, plywood, wallboard and shredded wood or bark wool insulation”. The signatories to the first cited Consent Decree agreed to refrain from, among other things, “Promoting public acceptance of published uniform rules for the grading and measurement of lumber of any species within any lumber producing region based on standards of identity, description, size, shape, pattern, measurement and quality … unless … such rules are fully and fairly available to all manufacturers, distributors and consumers of such lumber on equal terms and conditions …” The signatories to the latter cited Consent Decree agreed to restrain from, among other things, “Advising or recommending or seeking to induce public authorities to establish by law or administrative regulation any preference or requirement for the use of lumber which is identified by a lumber manufacturers’ association grade mark or by a lumber manufacturers’ association inspection certificate, or advising or recommending or seeking to induce any specifier or purchaser of lumber to require exclusive use of such lumber; provided, that nothing herein shall forbid efforts to persuade public authorities, specifiers or purchasers to give preference to lumber identified by the grade marks or inspection certificates of inspection agencies determined by such impartial agency as may be established or designated with the approval of the Court, to be competent and to be rendered an adequate and non-discriminatory lumber inspection service”.

⁶ The terms “timber” and “raw materials” are used here to mean a softwood log.

⁷ There are clear market drivers associated with the growing desire for “green” lumber products, as well as the desire to manage forests by using sustainable forest management programs. In the first instance and not exhaustively listed here, the U.S. Green Building Council, the Green Building Institute, and the National Association of

market for distributors, sellers, users and buyers of lumber products is the fact that the competing forest management certification programs have established chain-of-custody requirement and eco-labeling regimes that reach beyond the point of production and are entirely proprietary to participants in the respective programs.⁸

Third-party forest certification programs consist of three components: 1) forest certification – the evaluation of forest operations against a predetermined criteria, 2) Chain-of-custody (COC) – a system for addressing the origin of raw materials, and 3) ecolabels – labels that appear on products, which include raw material originating in certified forests. The following sections offer a more detailed description of each component.

Forest owners contract for third-party certification of sustainable forest management. Lumber producers⁹ source logs from many forests, including uncertified forests as well as those certified by one or more forest management certification schemes. Each forest certification program has established its own requirements governing the chain of custody of the raw material from the forest to the point of production. These schemes are intended to achieve a market place position for the various forest management programs. Currently there is no industry standard for a producer “eco-label” that is uniquely intended to address or capable of addressing the softwood lumber product.¹⁰ Each certification program defines its own copyrighted eco-labels and the terms under which a downstream producer and user can use them.

NLBMDA estimates that today over seventy percent (70%) of U.S. lumber sold is produced from forests certified by one or more of the sustainable forest management

Home Builders have developed and market rating programs for purposes of certifying “green” buildings. In the second instance and not exhaustively listed here, the Sustainable Forestry Initiative (SFI), the Forest Stewardship Council (FSC), the Programme for the Endorsement of Forest Certification schemes (PEFC), and Canada’s National Sustainable Forest Management Standard (CAN/CSA Z809) offer competing forest certification, chain-of-custody, and eco-labeling schemes.

⁸ See Forest Certification: Understanding Ecolabel Usage Requirements (Oregon State University) at http://www.csa-international.org/product_areas/forest_products_marking/related_articles/Ecolabel_Use.pdf.

⁹ The term “lumber producer,” the entity that creates the lumber product, is used to distinguish between the source of the raw material and the distributor, user and consumer of the lumber product.

¹⁰ The term “eco” is used in these comments to refer to those attributes associated with ecological, environmental, and socially responsible considerations that speak to sustainable forest management. The term “sustainable forest management certification” or “eco-forest management certification” refers to one or more regimes designed to confirm sustainable forest management such as SFI, FSC, CSA and others, without rendering any opinion on the various differences that are scrutinized and determined in the market place. Used as such, the term “eco-label” refers to a standard attribute designation verifying that a lumber product was produced from the raw material grown in a forest or stand of timber that has been certified by one or more of the competing eco-forest certification programs.

programs; however, we observe that almost no individual lumber product carries a label identifying its eco-origin into the marketplace¹¹. When on the rare occasions labels do appear, they are the proprietary brand-labels of the forest certifier, not functional lumber product labels. As such, there is no single program to certify the eco-origin of the lumber product, and the various forest management programs, certifications, and labeling requirements do not create a regime that addresses any green marketing issues that arise for sellers and buyers of lumber products.¹²

NLBMDA recommends¹³ the development of, as part of the revision of PS 20-05, a regime covering the lumber products from the point certified-forest raw materials reach the production plant (where the chain of custody transfers to the producer of the lumber product) to the final grade stamp of the finished lumber product as it comes off the line and enters the distribution channel¹⁴. This could be achieved by developing a sixth element to the current grade stamp¹⁵, verifying that the raw material was derived from a certified forest. The production processes would be audited and certified by the same infrastructure used to confirm the current elements of the grade stamp.¹⁶

¹¹ The various proprietary, competing forest management certification programs control the use of their brand names and marks. When such marks are used to label lumber products, they are most likely to be found on the wrapper on a unit of lumber, which for example, would be the protective wrapper on a shipping unit of 294 pieces of two-by-four lumber products. This leaves the distributor and down stream seller with the responsibility to accept risks associated with green marketing claims.

¹² Under the current requirements of the various eco-forest management certification programs, distributors and down stream sellers may voluntarily chose to be affiliated with one or more of these programs by actively participating in a product marketing proposition by becoming certified, being subject to auditing, and meeting in some cases segregation requirements (as is made necessary for any paper-based verification system for individual products not labeled under a certifiable regime for the attribute relied upon in the marketing of products). This voluntary participation, while contributing to an individual eco-forest management certification program, both in establishing a market place dominance as well as a source of revenue, does not serve the larger purpose of confirming for those distributors, users and consumers of a product whose attribute references back to a production process and will not be altered once the lumber product is produced.

¹³ NLBMDA's recommendation, made here in response to a notice and request for comments by the National Institute of Standards and Technology relative to the review and revision of the American Softwood Lumber Standard, is hereafter referred to as "the Recommendation".

¹⁴ The term "distribution channel" refers to the supply chain from point of production of the lumber product to the sale of the product to the user and consumer.

¹⁵ The five elements of the current grade stamp are type of wood, grade certification, moisture content, mill number, and agency mark. A sixth element as recommended is herein referred to as the "eco-label".

¹⁶ When the log arrives at the mill, with a Chain of Custody documented as required from a forest or stand of timber certified by one of the eco-forest management certification programs, the lumber products derived from that log would have included on the grade stamp a mark representing an eco-label.

As such, the authorized grade-stamp under PS 20-05 would include a mark or designation certifying the product attribute of sustainable forest origin, representing an important process innovation – an eco-forest origin certification for softwood lumber products and the corresponding agency-certified eco-label as part of the grade stamp under the current PS 20-05.

The development and implementation of the Recommendation will not require consensus building around forest management practices or any standards development of such practices or standards. ALSC would not be required to replicate or create de novo a forest management regime or interference with the operation and marketing necessities of the various forest management certification programs in existence today. These programs would be scrutinized only to the extent that they may or may not meet certain criteria required by PS 20-05 or the Procedures for the Development of Voluntary Product Standards.

In evaluating which sustainable forestry management programs to recognize, the ALSC may chose to rely on established process evaluators, such as ANSI¹⁷ and ISO, as well as other government agencies, particularly the U.S. Department of Agriculture's Forest Service, given its role and expertise relative to the Montréal Process and its criteria and indicators of sustainable forestry management¹⁸. ALSC should require additional criteria, such as audited chain-of-custody from the forest to the point of lumber production.¹⁹

Sustainable Forest Management (SFM) can be traced to the forest Principles and Chapter 11 of Agenda 21, adopted at UNCED in 1992. The Montréal Process on criteria and indicators for the conservation and sustainable management of temperate and boreal forests (MP) was launched in 1994 as a response to the Rio Forest Principles and the

¹⁷ See Memorandum of Understanding between the American National Standards Institute (ANSI) and the National Institute of Standards and Technology (NIST) dated December 27, 2000, where ANSI and NIST have agreed to provide a communications conduit between the voluntary, private sector, and the government standards and conformity assessment interests, at <http://ts.nist.gov/Standards/Conformity/ansimou.cfm>.

¹⁸ See conclusions relative to expanding the sustainability dialogue in the DRAFT National Report on Sustainable Forest: 2010, at page 1-3: “The need to expand the sustainability dialogue is evident. What is less apparent are the means by which to do so. Representatives from diverse sectors and scales come to the table with different backgrounds, institutional awareness, and even languages to communicate about sustainability. Since the publication of the 2003 report, the MP C&I have continued to emerge as a tool to assist this communication. Whether by furnishing direct means to measure progress towards sustainability using individual indicators, or by the provision of a framework to structure discussions, MP C&I are being looked at by many as the common language of sustainability.

¹⁹ It is important to note that the needs of distributors, users and consumers of lumber products relative to the role that an eco-element of PS 20-05 would serve do not include any need to meet certification requirements that may exist in one or more of the green building programs. A distributor, user or consumer of a lumber product should be able to discern, based on personal preference or social responsibility policies, whether or not a lumber product is derived from eco-forest management practices.

Chapter 11 of Agenda 2. The 12 country²⁰ agreement on the criteria and indicators of sustainable forests accounts for 80% of the world's temperate and boreal forests and 50% of all forests in the world.²¹ Annex F, Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests (Third Edition, December 2007),²² defines and provides rationales for the criteria and indicators of sustainable forestry. The Canadian forest certification program²³ is based on the Montreal Process.

The Recommendation would complement the scope of PS 20-05 and bring clarity and certainty to distributors, users and consumers of dimensional softwood lumber products relative to any green marketing claims or assumptions created in the marketplace relative to a products eco-origin. The Recommendation would establish a means for the market place to confirm that the lumber product is or is not derived from raw material certified under one or more of the recognized forest management programs recognized within PS 20-05 that the production process has been managed to ensure proper handling of certified raw materials, and that the product is accurately labeled. PS 20-05 is a product standard.

The Recommendation would be consistent with the Procedures for the Development of Voluntary Product Standards, and its adoption would be responsive to OMB Circular A-119 promoting the adoption of consensus based market drivers, without replicating or interfering with the competition and promotion of the various forest management certification programs. It will promote responsible supply chain practices and improve the flow of lumber from sustainable, eco-managed forests to home builders, commercial contractors, and consumers. It will not interfere with the development of or competition among the various forest management program, nor will it claim any market position relative to any drivers that may prefer one forest management certification over another.

²⁰ The member countries are Argentina, Australia, Canada, Chile, China, Japan, Republic of Korea, Mexico, New Zealand, Russian Federation, United States of America, and Uruguay.

²¹ See generally the Web site of the Montréal Process Working Group at: <http://www.rinya.maff.go.jp/mpci/>.

²² Find these Criteria and Indicators in Section V of the document at: <http://www.rinya.maff.go.jp/mpci/meetings/an-6.pdf>.

²³ See Canada's National Standard for Sustainable Forest Management (SFM) CAN/CSA-Z809 at http://www.csa-international.org/product_areas/forest_products_marking/default.asp?language=english. The SFM CAN/CSA-Z809 Standard, developed according to an internationally recognized and accredited standards development process, is based on the international Helsinki and Montréal processes. It incorporates Canada's own national SFM criteria, which were developed by the Canadian Council of Forest Ministers. Furthermore, the U.S. Department of Agriculture's Forest Service could serve as a source of objective expertise in verifying recognizable eco-forest management practices. ALSC could use these resources for purposes of establishing its process criteria for the eco-element of the grade stamp.

The Recommendation would be consistent with Executive Order 13423, “Strengthening Federal Environment, Energy, and Transportation Management,” as expanded upon by the United State’s role as a signatory and participant in the Montreal Process.²⁴

In order for society to agree upon sustainability goals, there must be a way to communicate more clearly across diverse interests about complex issues. The MP C&I provide a framework for such dialogue. Grouping many of these interests into seven broad, but definitive criteria allow for diverse interests to coalesce shared values. Diverse interests, for example, may differ upon the specifics of how to conserve biological diversity, but they can agree that it has value and is an important component of sustainable forests.

The shared values encompassed by the seven criteria are another way the MP C&I contribute to a common sustainability language. The seven criteria create a platform for launching dialogue to advance these shared values. Over time and through increasing use and scrutiny, this platform has proven to be solid. Since 2003 the seven criteria have not changed. In fact, other criteria and indicator development efforts (some of which are highlighted in Chapter 4) have looked to the MP C&I, and the criteria in particular, for guidance.²⁵

RECOMMENDATION

Appropriate to its mission, scope and intent to confirm product attributes of softwood lumber products, and consistent with its development and management under the Procedures for the Development of Voluntary Product Standards, the American Softwood Lumber Standard should develop procedures and mechanisms that will allow distributors, users and consumers of dimensional softwood lumber to confirm at a point of sale whether any given, specific lumber product is derived from timber certified under one or more recognized forest certification programs, and subject to an audited production process to ensure the product is correctly labeled.

Within the context of this current review and revision process for the American Softwood Lumber Standard, the American Lumber Standards Committee, as the standing Standard Review Committee for PS 20-05, should establish a regime to certify those dimensional softwood lumber products that are produced from raw materials that are certified under one or more of the recognized sustainable forest management certification systems, accredit agencies to certify the product standard, and establish a corresponding on-product eco-label element as a part of the current grade stamp.

1. A single regime for verifying the eco-attribute of lumber products with an on-product eco-label would eliminate the existing confusion and product disruption for distributors, users and consumers of dimensional lumber products where purchases and procurements are based on the eco-origin or other “green” aspects of the product.²⁶

²⁴ Find Executive Order 13423 at Volume 74, Number 17 of the Federal Register (January 26, 2007) at 3919 et seq.

²⁵ DRAFT National Report on Sustainable Forest: 2010, at page 1-4.

²⁶ See a summary of a public forum on the issue at http://dealer.i4adev.com/files/public/LBMI_Forum_Summary.pdf.

The emergence of new and competing “green” rating systems for commercial and residential construction, each seeking adoption in model building codes and each specifying points for lumber products originating in certified sustainable forests, has the potential to significantly disrupt the homebuilding product supply chain. Absent a product standard, every entity in physical possession of lumber product throughout the supply channel must rely on the documentation of forest owner (sustainable forest certification) and pass that information on down to the point of retail sale, per item. Currently, five proprietary eco-forest management certification programs vie for preference. Each has its own definition of certified and mixed content, and each has its own chain of custody regimes. There are no barriers to even more eco-certification schemes emerging in the future.

2. The chain of custody requirements from numerous forest certification programs create complexity and burdens on the wholesale and retail distribution of lumber to users and consumers of dimensional softwood lumber products.

Each of the branded forest management certification regimes has a proprietary eco-forest management standard and distinct chain of custody requirements for tracking its certified raw material.²⁷ In some instances forest management certification programs may be or may become market drivers; in some instances they are responding to markets driven by building certification requirements; in some instances there may be elements of collusion between the two, otherwise distinct regimes.²⁸

Of significance to this proceeding and PS 20-05, the actual lumber product is not certified. In one instance the raw material of the lumber product is certified; in the other

²⁷ For example, but not intended to be exhaustive, see the forest management standard of the Sustainable Forestry Initiative (SFI), Sustainable Forestry Initiative Standard (SFIS) 2005-2009 Standard (found at <http://www.sfiprogram.org/files/pdf/sfi-standard-2005-2009-sept%2008%20update.pdf>) and Annex 2, SFI Chain-of-Custody Standard and Associated Labels (found at <http://www.sfiprogram.org/files/pdf/annex2-2008-12.pdf>), among other annexes and guidance found at <http://www.sfiprogram.org/label-standards.php>). See the same relative to the Forest Stewardship Council (FSC): FSC International Standard (“FSC Principles and Criteria for Forest Stewardship”), FSC-STD-01-001 (version 4-0) EN (found at http://www.fsc.org/fileadmin/web-data/public/document_center/international_FSC_policies/standards/FSC_STD_01_001_V4_0_EN_FSC_Principles_and_Criteria.pdf), and FSC Standard (“FSC Standard for Chain of Custody Certification”), FSC-STD-40-004 (Version 2-0) EN (found at http://www.fsc.org/fileadmin/web-data/public/document_center/international_FSC_policies/standards/FSC_STD_40_004_V2_0_EN_Standard_for_CoC_Certification_2008_01.pdf).

²⁸ An April 7, 2008 USGBC Memorandum to LEED users relative to guiding language in LEED Rating Systems articulates an effort to align FSC rules and LEED requirements utilizing the chain of custody documentation for the use of FSC certified wood. It requires that each wood product be identified on a line-item basis, that FSC products must be identified as such on a line-item basis, and that the vendor’s chain-of-custody certificate number must be shown on any invoice that includes FSC products, or in summary that each wood products vendor that invoices “FSC certified products” must be COC certified by an FSC accredited certifier.

instance a structure is rated based on the number of products and services incorporated against a prescriptive ratings model.²⁹ Chain of custody applies to the raw material from the certified forest to point of production. Absent a product standard, chain of custody for raw material must be maintained to the end user or consumer. Since no on-product labels are required under the proprietary systems, these proprietary systems are not in and of themselves subject to restrictions relative to green marketing claims or liabilities that may occur resulting from consumer protection laws. The only method to determine the source of the product is to follow the paperwork, item by item, load by load. Further, definitions behind the multiple levels of certification vary based on the proprietary requirements of the various forest management certification programs.³⁰ While PS 20-05 does anticipate some variation to grades (a five percent allowance), the goal of PS 20-05 is to confirm elements relative to the individual lumber product that would otherwise be claimed or asserted in an unregulated and potentially fraudulent environment.³¹

3. Distributors and sellers of lumber products must be responsive to the needs and demands of the consumer.

Lumber and building material dealers occupy a unique place between product manufacturers and the users and consumers of the product, builders, homeowners, and consumers, and so are situated to bring new technologies and environmentally-preferred products into the market place. NLMBDA members increasingly respond to the growing interest in environmentally-friendly building materials, including, but not limited to, the new green-rating schemes for new construction. Even as the housing market has struggled, dealers report an increase in demand for “green” products. NLBMDA supports responsible forest management practices and our members are committed to sourcing products from sustainably-managed forests. An eco-label on dimensional softwood lumber products would confirm for users and consumers any green marketing claims relative to these products and it would more consistently identify the source of the raw materials from which they are produced as certified by one or more recognized forest certification bodies. This would enable distributors, users and consumers of lumber products to make purchasing and procurement decisions with confidence and readily source certified lumber products. This would also enable those who specify the use of specific products in building projects, architects and engineers, to specify eco-originated

²⁹ Without an attempt to cite a legal basis for this assertion, NLBMDA does note that, with the possible exception of manufactured and modular housing construction, an enclosed environment resulting from a commercial and residential construction activity is not considered a single product for purposes of normal product labeling expectations in the marketplace.

³⁰ For example, a Mixed Content designation from one system requires seventy percent (70%) certified content, while another system’s label apparently requires only ten percent (10%) certified content. In a solid sawn lumber product, does material sold under such a claim mean the buyer has a “seven-in-ten” chance the product originated in a sustainable forest under one scheme, and a “one-in-ten” chance under the other?

³¹ There is no suggestion here that any one or more of the forest management certification programs would not be in compliance with “green” marketing parameters. NLBMDA raises concerns relative to “green” marketing only in relationship to the lumber product and the ability of distributors and sellers of that product to represent to a user or consumer that such a product does possess certain “green” attributes.

lumber products with confidence.³² It is the absence of an eco-product standard for lumber the need to document the raw material flow throughout the distribution channel.

The current practice of only proprietary product labels for lumber products produced from raw materials derived from one or more of the forest management certification programs leaves lumber and building material dealers (those who sell the lumber product to users and consumers) to not only comply with various and competing regimes, but to in fact document the pedigree of each piece of lumber it buys/sells via elaborate chain of custody of the raw material, under rules and processes unique to each program. Without this documentation, even if a lumber product is derived from raw material grown in eco-certified forests, the seller cannot make any claims to the attribute of the product relative to its eco-origin, a practice forced onto the marketplace that leaves products inaccurately characterized, and users and consumers, who may not be responding to any green building certification requirements or may not be sufficiently expert to determine preferences among the various forest management certification programs, or among the various claims under the various programs, without any verification of the eco-attribute of the lumber products. Participation for the distributor is costly, particularly if attempting to be market neutral and participating in multiple forest management programs, a cost ultimately borne by the consumer. Distributors choosing not to participate in tracking raw material from forest to consumer adversely limit the choices of users and consumers of lumber products who desire to know this increasingly important and desirable attribute.

4. On-product labeling of eco-attributes is a market necessity.

The forest of origin cannot change once the raw material of the forest is used to produce a lumber product for sale and use in the economy. The Recommendation seeks to improve the flow of, and documentation on, lumber products derived from the raw materials of eco-certified forests, from point of production, through the supply chain, to the end user, utilizing an agency-certified on-product eco-label. Once a log is milled into lumber, now a specific lumber product, the forest of origin cannot change; however, forest-of-origin claims continue through the entire supply chain, and these claims are expected to increase with the growing interest in green marketed products.

Green rating programs³³ are seeking or have achieved recognition from the American National Standards Institute (ANSI) and the International Code Council (ICC). They are also being adopted into local building codes³⁴. Builders, green certifiers, local building inspectors and homeowners want and need defined, easy to understand, proof of eco-

³² The recommended eco-element for PS 20-05 would be used by specifiers as they currently rely on PS 20-05. The authorized grade stamp is not intended to replace or compete with any specific chain of custody requirements under one or more of the green building rating programs, or that of one or more of the forest certification programs.

³³ The principal green rating programs are the U. S. Green Building Council's LEED Rating System, the National Association of Home Builders' National Green Building Standard, and the Green Building Institute's Green Globes assessment and rating system.

³⁴ As an example, see the summary of the Green Globes assessment and rating system at: <http://www.greenglobes.com/about.asp>. See also a history of the NAHB National Green Building Program at: <http://www.nahbgreen.org/About/history.aspx>.

origin on product. Furthermore, consumers, without responding to any market drivers such as green building rating programs or forest management certification programs, are increasingly looking for opportunities to make purchases based on self-determined social responsibility choices.

Forest certification verifies that a forest's eco-management practices comply with sustainable forestry standards, including chain-of-custody raw material from forest to point of production. The NLBMDA fully supports forest management practices which promote sustainability and result in long term environmental benefit. The Association recognizes there are multiple, credible sustainable forestry management systems in place throughout North America and the World. The Association also acknowledges the competitive marketplace necessities of establishing mechanisms to protect each brand through the various chain of custody requirements and restriction on the use of brand labels.

The plastics and aluminum industries enjoy substantial public success with their re-cycle labels. NLBMDA members want to promote the renewable and sustainable qualities of lumber & forests. Public confidence in the eco-origin of lumber products is best achieved with a simple, universally understood, on-product eco-label.³⁵

*Forest certification also has marketing implications, since many proponents believe that consumers prefer to purchase products derived from well-managed forests. Ecolabels are the marketing mechanism used to distinguish certified products from similar non-certified products. An ecolabel is an on-product label meant to inform consumers that the product differs from similar products based on environmental impacts that may be associated with the production, distribution, use, or disposal of the product. **In the case of forest certification, the ecolabel only signals that the raw material used to make the product has come through a forest certification system.** For this reason, forest certification ecolabels are often referred to as single-issue labels. It is important to note that ecolabels differ from many "green" claims made by manufacturers, because ecolabel claims are verified by an independent third-party.*

Each forest certification scheme is responsible for determining exactly what its ecolabel means. This system differs from that used, for example, with ecolabeling of organic foods. Since 2001, the United States Department of Agriculture's National Organic Program has defined and regulated the use of the term "organic". Before 2001, similar to forest certification, a number of independent certifying agencies determined exactly what the term "organic" meant. Many believe that a unified ecolabel would facilitate commerce in organic foods. Forest certification ecolabels may follow a similar evolutionary trend.

Forest certification schemes classify ecolabel use into two categories: (1) On-product – this usage refers to the actual label placed on the product or it's

³⁵ For a summary of the various forest management certification programs and their chain-of-custody requirements and eco-label usage, see Forest Certification: Understanding Ecolabel Usage Requirements (Oregon State University) found at http://www.csa-international.org/product_areas/forest_products_marking/related_articles/Ecolabel_Use.pdf.

packaging to identify and promote products derived from certified forests. (2) Off-product – this usage refers to those logo or insignia placed on brochures, websites, advertising, and other forms of communication to demonstrate participation in the program. (Under trademark law, a certification mark registered for on-product use may only be used on a product.)³⁶

BASIS FOR RECOMMENDATION

1. The review and revision of the American Softwood Lumber Standard should ensure that PS 20-05 remains consistent with the underlying principles for voluntary product standards.

A. Section 10.0(a) of the Procedures for the Development of Voluntary Product Standards acknowledges the importance of product standardization.

The Recommendation, through the establishment of a single regime for confirming the sustainable forest source of timber used in production of dimensional softwood lumber products, will reduce costs throughout the supply chain for lumber products created by the competing and duplicative chain of custody certification requirements for each of the proprietary forest management certification systems, establish better understanding of product attributes among supply chain participants, through a common regime of product certification, terminology and marks, and simplify the purchase and use of these lumber products by all users and consumers. This would not eliminate the market value of the forest management certification programs and would not negate any requirements they may develop and require relative to chain of custody of the raw material certified under their programs.

The Department of Commerce (hereinafter “Department”) recognizes the importance, the advantages, and the benefits of voluntary standards and standardization activities. Such standards may cover, but are not limited to, terms, classes, sizes (including quantities of packaged consumer commodities), dimensions, capacities, quality levels, performance criteria, inspection requirements, marking requirements, testing equipment, test procedures and installation procedures. Economic growth is promoted through:

- (1) Reduction of manufacturing costs, inventory costs, and distribution costs;*
- (2) Better understanding among manufacturers, producers, or packagers (hereinafter referred to as producers), distributors, users, and consumers; and*
- (3) Simplification of the purchase, installation, and use of the product being standardized.*

B. Section 10.1(b) of the Procedures for the Development of Voluntary Product Standards authorizes the Department to sponsor this Recommendation.

The Recommendation would have a beneficial impact on the distribution and sale of dimensional softwood lumber products derived from timber certified under one or more of the proprietary forest management certification programs. Users and consumers of

³⁶ See Forest Certification: Understanding Ecolabel Usage Requirements (Oregon State University) found at page 4.

lumber products are increasingly at risk of false green marketing claims, and distributors and sellers are thereby increasingly at risk of liability for false green marketing claims. At the same time, market drivers such as green building rating programs seek to confirm the use of lumber products derived from timber certified under sustainable forest management certification programs, the competing forest management certification programs themselves become market drivers for their own value propositions, and the American public, along with its government, is increasing its efforts to choose among products with attributes to speak to eco-sensitive practices. The lack of functional on-product labels generates confusion at the point of sale for lumber products and can result in the unintentional mixing of products of certified and uncertified raw material at any point of the supply chain and by the end user.

The Department may sponsor the development of a voluntary Product Standard if, upon receipt of a request, the Department determines that:

- (1) The proposed standard is likely to have substantial public impact;*
- (2) The proposed standard reflects the broad interest of an industry group or an organization concerned with the manufacture, production, packaging, distribution, testing, consumption, or use of the product, or the interest of a Federal or State agency;*
- (3) The proposed standard would not duplicate a standard published by, or actively being developed or revised by, a private standards-writing organization to such an extent that it would contain similar requirements and test methods for identical types of products, unless such duplication was deemed by the Department to be in the public interest;*
- (4) Lack of government sponsorship would result in significant public disadvantage for legal reasons or reasons of domestic and international trade;*
- (5) The proposed standard is not appropriate for development and maintenance by a private standards-writing organization; and*
- (6) The proposed standard will be funded by a proponent organization or government agency to cover costs for administrative and technical support services provided by the Department.*

C. PS 20-05 offers the best ways and means and utilizes existing mechanisms to establish a mark sufficient to confirm if the dimensional lumber product is derived from timber certified under one or more of the recognized sustainable forest management certification program.

Presently, the PS 20-05 grade-stamp enables the distribution side of construction supply channel to treat dimension lumber with equal grade attributes as interchangeable commodity products assuring availability, fresh quality, and competitively sourced product.

Distributors turn dimension lumber on a bi-weekly to monthly cycle. This turnover of product is fundamental to the financial stability of this industry and also to the supply of competitively priced framing materials for new homes. In addition, PS 20-05 grade-stamping provides instant and permanent documentation of whether the product meets design specification and/or building code.

Currently the only method to identify the raw material source of a lumber product is for each distributor, or end user, to interpret and follow the chain of custody by item. This requires not just the recognition of any one or more raw material certification claims, but also participation as a “certified distributor” in the supply chain for a finished lumber product. Thus the seller is expected to warrant and represent any eco-claims stated or implied, not the producer of the product. The producer makes no eco-representations and simply passes through the raw material certifier’s chain of custody documentation. In the context of forest management certification, the product does not exist; it is still raw material in the supply channel.

2. The Recommendation is consistent with the existing scope of PS 20-05.

A. PS 20-05 establishes and maintains, through a consensus process and in the public interest, certain attributes of dimensional softwood lumber and it is implemented through an accreditation and certification program to provide for uniformity of verification and marks relative to those attributes of dimensional softwood lumber products.

PS 20-05 should address the attribute of the origin of raw material for softwood lumber products relative to its certification under one or more of the recognized forest management certification programs, for purposes of addressing the public interest in identifying at the point of sale products that claim sustainable forest content or that can help users and consumers achieve certain environmental or ecological objectives.

1.1.1 This Voluntary Product Standard establishes and maintains, through a consensus process and in the public interest, standard sizes (both in metric and conventional units) and general requirements for developing grades of softwood lumber. It is implemented through an internationally recognized consensus accreditation and certification program, the purpose of which is to provide for uniform, industry-wide grade marking and inspection of softwood lumber.

B. PS 20-05 establishes the basis for consistency of certain attributes of the various species of softwood relative to the lumber products created at the mill.

PS 20-05 could also serve to establish a single, consistent certification and mark to confirm the attribute of the raw material of lumber products relative to its originating in a forest certified by one or more recognized forest management certification programs. The Recommendation would apply across all the various species used to produce softwood lumber products.

1.1.2 This Standard also provides a basis for the coordination of the grades of the various species of softwood lumber, the assignment of design values to lumber when called for, and the preparation of grading rules applicable to each species.

C. PS 20-05 establishes consistent trade classifications and sizes of softwood lumber products, as well as uniform methods in grading, inspection, measurement and description of softwood lumber.

Increasingly important to the concern among distributors, users and consumers of products which may be subject to green marketing claims, PS 20-05 could serve as a

means to verify the eco-origin of the raw material used for dimensional softwood lumber products. The Recommendation would establish a process certification and accreditation for the product beginning with transfer from forest owner to lumber producer of raw material certified by one or more recognized forest certifications, and audit chain-of-custody and proper material handling throughout lumber production process defined in 1.1.3.

1.1.3 [The Standard] establishes the principal trade classifications and sizes of softwood lumber for yard, structural, factory and shop use. It provides for the classification, measurement, grading and grade marking of rough and dressed sizes of various items of lumber including finish, boards, dimension and timbers. Terms and procedures are defined and discussed to provide a basis for the use of uniform methods in the grading, inspection, measurement and description of softwood lumber. This Standard applies to lumber that is to be identified as a manufactured product from a softwood log in a sawmill, or in a sawmill and planing mill. Such lumber, when rough, shall show saw or other primary manufacturing marks in the wood on the four longitudinal surfaces of each piece for its over-all length and shall not have been further manufactured other than by crosscutting, ripping, resawing, joining by finger-jointing, face-gluing and/or edge-gluing, surfacing with or without end matching, and working.

3. The Recommendation addresses the growing need for a standardization of “green” marketing of lumber products.

A. The Recommendation would create a regime complementary to the efforts of the Federal Trade Commission and its efforts to create certainty and parameters around green marketing claims.

With its release of the Guides for the Use of Environmental Marketing Claims³⁷, the Federal Trade Commission (Commission) has acknowledged the challenges relative to creating clarity and consistency relative to products subject to environmental claims.

The Commission’s Environmental Guides attempt to address the potential confusion of users and consumers of products and applies to environmental claims associated with labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means.

These guides apply to environmental claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means, including marketing through digital or electronic means, such as the Internet or electronic mail. The guides apply to any claim about the environmental attributes of a product, package or service in connection with the sale, offering for sale, or marketing of such product, package

³⁷ See Part 260 of Title 16 of the Code of Federal Regulations (Hereafter referred to as the Environmental Guides).

*or service for personal, family or household use, or for commercial, institutional or industrial use.*³⁸

The Recommendation would create clarity of product's raw material's origin for the user and consumer, eliminate supply-side chain of custody costs from the numerous forest management certification systems, and maximize the likelihood that those who specify the use of specific lumber products³⁹, users, and consumers will be basing use of dimensional softwood lumber products on a defined set of criteria, a standard.

*The Commission traditionally has held that in order to be effective, any qualifications or disclosures such as those described in these guides should be sufficiently clear, prominent and understandable to prevent deception. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.*⁴⁰

The Recommendation would provide on-product labeling and assure that the environmental attributes of any dimensional softwood lumber product was not intentionally or otherwise overstated. By focusing on the attribute of the timber (the raw material) originating in a certified sustainably managed forest, comparative claims relative to the merits of any of the underlying forest management certification programs, which vary by the eco-systems and environmental factors present in each forest, should be minimized.

An environmental marketing claim should not be presented in a manner that overstates the environmental attribute or benefit, expressly or by implication. Marketers should avoid implications of significant environmental benefits if the benefit is in fact negligible.

*Environmental marketing claims that include a comparative statement should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception. In addition, the advertiser should be able to substantiate the comparison.*⁴¹

The Recommendation would protect distributors, seller, users and consumers of dimensional softwood lumber products from deception or misrepresentation, it would create certainty in the marketplace for those participants in the supply chain after the production of the dimensional lumber at the mill, and in the use of the product, without favoring or otherwise replicating any underlying sustainable forest management certification systems.

³⁸ See Environmental Guides, Section 260.2, Scope of Guides.

³⁹ Those who specify the use of specific lumber products include architects and engineers as well as building code inspectors and code officials, all of whom will need to rely on certain certifications relative to the lumber products used and the specific manner in which they are used.

⁴⁰ See Environmental Guides, Section 260.6(a), Qualifications and Disclosures.

⁴¹ See Environmental Guides, Sections 260.6(c), Overstatement of Environmental Attribute, and 260.6(d), Comparative Claims.

*It is deceptive to misrepresent, directly or by implication, that a product, package or service offers a general environmental benefit. Unqualified general claims of environmental benefit are difficult to interpret, and depending on their context, may convey a wide range of meanings to consumers. In many cases, such claims may convey that the product, package or service has specific and far-reaching environmental benefits. As explained in the Commission's Advertising Substantiation Statement, every express and material implied claim that the general assertion conveys to reasonable consumers about an objective quality, feature or attribute of a product or service must be substantiated. Unless this substantiation duty can be met, broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.*⁴²

In its explanatory publication, "Complying with the Environmental Marketing Guides," the Commission speaks to the use of labels and certifications.

*Environmental seals-of-approval, eco-seals and certifications from third-party organizations imply that a product is environmentally superior to other products. Because such broad claims are difficult to substantiate, seals-of-approval should be accompanied by information that explains the basis for the award. If the seal-of-approval implies that a third party has certified the product, the certifying party must be truly independent from the advertiser and must have professional expertise in the area that is being certified. The FTC analyzes third-party certification claims to ensure that they are substantiated and not deceptive. Third-party certification does not insulate an advertiser from Commission scrutiny or eliminate an advertiser's obligation to ensure for itself that the claims communicated by the certification are substantiated.*⁴³

B. The Recommendation would eliminate the uncertainty relative to environmental claims and conform a growing aspect of the use of dimensional softwood lumber products to the expectations of the Procedures for the Development of Voluntary Product Standards and OMB Circular A-119.

The Procedures for the Development of Voluntary Product Standards insists on standards and certification regimes, where they are market drivers, to be developed in an open, consensus making environment. OMB Circular A-119⁴⁴ requires agencies to look to private sector consensus forums where regulations may be required to address unfavorable market forces. The Commission's Workshop on Green Building and Textiles identified these concerns.⁴⁵

⁴² See Environmental Guides, Section 260.7(a), General Environmental Benefit Claims.

⁴³ A copy of Complying with the Environmental Marketing Guides may be found on the FTC Web site at <http://www2.ftc.gov/bcp/edu/pubs/business/energy/bus42.pdf>.

⁴⁴ A copy of OMB Circular A-119 may be found on the NIST Web site at: <http://ts.nist.gov/Standards/Conformity/upload/fr-omb119.pdf>.

⁴⁵ See Project Number P084203; 16 CFR Part 260: Guides for the Use of Environmental Marketing Claims; Green Building and Textiles; Public Workshop (August 15, 2008) at <http://www.ftc.gov/os/comments/buildingandtextilesworkshop/index.shtm>,

Process standards are important in evaluating voluntary standards-development organizations, because they run the risk of anti-competitive behavior. Traditionally, environmental standards were defined through regulation. Market-based standards bodies, however, have anti-trust exposure, albeit under a rule of reason approach. The best way organizations ensure their actions are not anti-competitive is by developing standards in a consensus forum with balanced representation reflecting diverse points of view. These principles are reflected first in the very basis of the American Softwood Lumber Standards, and also, more broadly, in the due process requirements of the American National Standards Institute. Similarly, OMB Circular A-119 requires that voluntary, private sector standards be set by a body that is open, reflects a balance of interest, operates by due process, includes an appeals process, and operates by consensus. OMB Circular A-119 is important because it establishes the requirements private sector standards should meet and encourages federal agencies to use them in achieving their own regulatory missions, within their authorized rulemaking powers.

CONCLUSION

With these comments, NLBMDA recommends, as a part of the review and revision of the American Softwood Lumber Standard, a regime to certify the attribute of sustainable forest origin for raw material in a lumber product, and to provide for an on product eco-label. This new element to the existing grade stamp would require a regime that covers lumber production from the point certified-forest raw materials reach the production plant to the final grade stamp of the finished lumber product as it comes off the line and enters the distribution channel.

Appropriate to its scope and intent, and consistent with its development and management under the Procedures for the Development of Voluntary Product Standards, the American Softwood Lumber Standard should include procedures and mechanisms to allow distributors, users and consumers of dimensional softwood lumber to confirm at a point of sale whether the lumber product was derived from raw material certified under one or more forest management certification schemes recognized by the ALSC and referenced within PS-20-05.

This Recommendation speaks to the development of, as part of the revision of PS 20-05, a process standard covering lumber production from the point certified-forest raw materials reach the production plant (where the chain of custody transfers to the producer of the lumber product) to the final grade stamp of the finished lumber product as it comes off the line and enters the distribution channel. This would be achieved by developing a sixth element to be added to the agency grade stamp(s), verifying the raw material was derived from a certified forest management program, and that such material was correctly handled throughout lumber production, and correctly labeled. The production processes would be audited and certified by the same infrastructure used to confirm the current elements of the Grade Rules.

As such, the authorized grade stamp under PS 20-05 would include a symbol or designation verifying the product's attribute relative to the raw material's sustainable forest origin. The eco-forest origin verification for softwood lumber products would represent an important process innovation within the current certification and

accreditation regime of PS 20-05 and address the growing need to standardize a mark that allows the user and consumer to make informed purchasing and procurement decisions.

This Recommendation would complement the scope of PS 20-05 and bring clarity and certainty to distributors, users and consumers of dimensional softwood lumber products relative to any green marketing claims or assumptions created in the marketplace. The Recommendation would be consistent with the Procedures for the Development of Voluntary Product Standards, and its adoption would be responsive to OMB Circular A-119 promoting the adoption of consensus based market drivers, without replicating or interfering with the competition and promotion of the various forest management certification programs.

The Recommendation possesses criteria that merit consideration and implementation.⁴⁶

1. It is likely to have a substantial and favorable public impact relative to growing demand and social responsibility of the general public.
2. It complements a broad segment of the economy that uses dimensional softwood lumber products, it reflects the broad interest of groups involved in the distribution and use of lumber products, it complements numerous policy statements of federal and state governments, as well as certification and code bodies, and it complements existing forest certification programs and certain rating systems covering new construction and re-modeling.
3. It would not duplicate a standard published by, or actively being developed or revised by, a private standards-writing organization, nor would it interfere with existing management certification programs.
4. Lack of government sponsorship would result in significant public disadvantage for reasons associated with green marketing claims, reliance on disparate marks or documentation to verify a single, unchangeable attribute of the lumber product, and potential liability for distributors and sellers responding to increased demand for eco-origin products.
5. The Recommendation is not appropriate for development and maintenance by a private standards-writing organization, as evidenced in part by the competing proprietary forest management certification programs and competing green building rating programs. As discussed, the purposes of these various programs and regimes do not address the need for a product standard. Indeed, the absence of a lumber product standard causes distributors and sellers to invest in and maintain disparate documentation of chain of custody for raw material as though the product did not exist.
6. The Recommendation should not require significant costs for administrative and technical support services provided by the Department, nor is this

⁴⁶ This itemization is responsive to Section 10.1(b) of the Procedures for the Development of Voluntary Product Standards.

Recommendation suggesting a stand-alone voluntary product standard; instead, it would enhance the existing voluntary product standard for dimensional softwood lumber, it would utilize existing certification and accreditation regimes, and it would be incorporated into the agency accreditation and certification functions of the existing standard.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. O'Brien". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Michael P. O'Brien, CAE
President & CEO

NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION