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FSC PROCEDURE

PROCESSING PESTICIDE DEROGATION APPLICATIONS

FSC-PRO-01-004 (Version 2-0) EN

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FSC Board of Directors

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The Forest Stewardship Council (FSC) is an independent, not for profit, non-government organisation based in Bonn, Germany.

The mission of the Forest Stewardship Council is to support environmentally appropriate, socially beneficial, and economically viable management of the world's forests.

FSC develops, supports and promotes international, national and regional standards in line with its mission; evaluates, accredits and monitors certification bodies which verify the use of FSC standards; provides training and information; and promotes the use of products that carry the FSC logo.

Summary

This document specifies the requirements and procedures to be followed by FSC –certified forest managers for requesting temporary derogations for the use of FSC ‘highly hazardous’ pesticides.

The objective of this procedure is to ensure that applications for temporary derogations to FSC Pesticides Policy (2005) are handled transparently, consistently, efficiently, timely and in compliance with the policy.

Notes on use of this procedure

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

Notes on development of this procedure

Version 1-0 was approved by the FSC Board of Directors at their 40th meeting in December 2005. This version was again reviewed in August-September 2006 taking into account the solicited stakeholder input. Versions 2-0 was approved by the FSC Executive Committee on the 5th of May 2007.

Please send comments and suggestions to the Policy and Standards unit.

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A. Scope

These procedures apply to FSC Policy and Standards Program staff, FSC-accredited certification bodies (certification bodies), Accreditation Services International staff, FSC-accredited National Initiatives (FSC National Initiatives), FSC Technical Advisors to the FSC Pesticides Committee (Technical Advisors), and members of the FSC Pesticides Committee of the FSC Board of Directors (FSC Pesticides Committee).

B. Procedures effective date

The specified procedures will become formal requirements with effect from 18th April 2007.

C. Terms and definitions

Terms and definitions are provided in *FSC-STD-01-002 FSC glossary of terms*.

Note: For the purposes of this document, the term region shall be interpreted as an area within a country, and shall be clearly defined in the derogation application.

Note: For the purposes of this document, the use of the term derogation shall be taken to mean temporary derogation.

D. References

FSC Policies, Standards, Guidance documents, Procedures:

- *FSC-POL-30-001 FSC Pesticides Policy (2005)*
- *FSC-GUI-30-001 FSC Pesticides Policy (2005): Guidance on Implementation*
- *FSC-GUI-30-001a FSC approved temporary derogations for the use of 'highly hazardous' pesticides in FSC-certified forests and plantations*
- *FSC-TPL-30-001 Application for a temporary derogation to use a 'highly hazardous' pesticide.*

1. General requirements

1.1 Derogation applications for the use of a 'highly hazardous' pesticide shall be submitted to the Policy and Standards Program of FSC by FSC-accredited certification bodies. Wherever possible, FSC National Initiatives should be involved in the consultation process related to a derogation application.

2. Responsibilities

2.1 **The Policy and Standards Program of the FSC International Center has responsibility for:**

- a) evaluating and checking for the completeness of applications for derogations for the use of 'highly hazardous' pesticides, in accordance and in compliance with the FSC policy and associated guidance;

- b) sending complete derogation application(s) to the FSC Pesticides Committee of the FSC Board of Directors and to the Technical Advisors;
- c) updating *FSC-GUI-30-001a FSC approved temporary derogations for the use of 'highly hazardous' pesticides in FSC-certified forests and plantations* in line with the approval of new derogation requests; and,
- d) entering into the FSC database a list of certification body's clients covered by an approved derogation.

2.2 The FSC Pesticides Technical Advisors have responsibility for:

- a) evaluating technical issues of the derogation application as outlined in Section 3.2 below and informing Policy and Standards Program of any additional information which they feel is necessary to make an informed decision. The Technical Advisors should also evaluate the merits of a derogation application;
- b) providing a technical recommendation to the FSC Pesticides Committee on the appropriateness of the derogation requested and support for its decision making process. These recommendations may be available to the certificate holder upon request from the Policy and Standards Program.

Note: The FSC Technical Advisors are professionals with in-depth knowledge on pesticides and environmental and social impacts related to forests. These professionals will be hired for assessing derogation applications on a case by case basis. Normally, there will be three FSC Technical Advisors evaluating a derogation application.

2.3 The FSC Pesticides Committee has responsibility for:

- a) evaluating and approving or rejecting applications for derogations for the use of 'highly hazardous' pesticides, in accordance with the FSC policy and associated guidance.

3. Standard for evaluating a temporary derogation request

3.1 In all cases, derogations shall be evaluated on the basis of documented evidence of compliance with the requirements specified in *FSC-POL-30-001 FSC Pesticides Policy (2005)* and the associated guidance specified in *FSC-GUI-30-001 FSC Pesticides Policy (2005): Guidance for Implementation*.

3.2 Derogations shall only be approved where:

- a) there is a demonstrated need - the use of the pesticide as the only socially, environmentally and economically feasible way of controlling specific organisms which are causing severe damage in natural forests or plantations in the specified country or region (as indicated by documented evidence of current feasibility study reports: field-trials of alternative non-chemical or less toxic pest-management methods, cost-benefit analysis, social and environmental impact assessment);
- b) controls are specified to prevent, minimize and mitigate negative social and environmental impacts associated with the use of the 'highly hazardous' pesticide in question (for example restrictions related to weather conditions, soil types, application method, waters courses);

Note: Prevention of negative social and environmental impacts shall always take priority over minimization and mitigation measures;

- c) there are programs in place to investigate, research, identify and test alternatives to the 'highly hazardous' pesticide, with clear actions, timelines, targets and resources allocated;

Note: The information on requirements b) and c) shall be specifically provided for each certificate holder. However, a general description may be provided if multiple companies within a region can demonstrate that they have common protocols with regard to b) and c) above.

- d) the public consultation part of the derogation application process shows that:
- the directly affected parties (e.g. neighbouring communities) have had an opportunity to provide comments on the derogation and have agreed (with the applicant) with the measures for preventing, minimizing and mitigating negative social and environmental impacts associated with the use of the 'highly hazardous' pesticide in question.
 - other stakeholders (e.g. social and environmental NGOs, environmental departments/authorities, forest/fisheries departments, etc) have been consulted and have had an opportunity to provide comments on the need for the derogation and on the controls established to prevent, minimize and mitigate negative impacts associated to the use of the 'highly hazardous' pesticide; and,
 - stakeholders have been given appropriate time, not less than 45 days, to provide their comments.

Stakeholder Consultation

The decision to approve a derogation application considers not only the scientific information included in the application but also the public opinion, which is a reflection of the demonstrated need for the pesticide and their willingness to accept the risks associated with its use during the temporary derogation period. It is therefore very important that the applicant demonstrate the extent to which the affected stakeholders have been engaged during the derogation application development process, how their comments were taken into account and what is their support for it.

4. Developing and submitting an application for a temporary derogation

- 4.1 Derogation applications can be submitted for certificate holders located in a range of different geographical scopes, up to the country level. However, sufficient information shall be provided to justify that the derogation is necessary for each of the different geographical scopes for which it is being requested. Derogation applications should be submitted at the smallest geographical range necessary.
- 4.2 In all cases the Certification Body shall inform the FSC Policy and Standards Program that it will apply for a derogation for the use of a 'highly hazardous' pesticide, before the consultation process is initiated.

- 4.3 For countries in which there is an FSC-accredited National Initiative, the certification body shall inform the National Initiative that it will apply for a derogation for the use of a 'highly hazardous' pesticide, and shall give the NI the option of assisting in the consultation with stakeholders in the country in relation to their opinions on the application and in developing the derogation application. The FSC-accredited National Initiative should endeavour to assist the certification body, within the limitations of its resources. However, the certification body is responsible for completing the derogation application, whether or not the National Initiative is able to contribute. The FSC-accredited National Initiative may offer to carry out stakeholder consultation or contribute to the development of the derogation application for a fee to cover its administrative costs and relevant expenses.
- 4.4 The certification body shall be responsible for evaluating the derogation application to check for its completeness. The certification body shall then submit the derogation application to the FSC Policy and Standards Program. If an application is incomplete or is submitted without appropriate supporting documentation the Policy and Standards Program will inform the applicant what further information is required. It is the responsibility of the applicant to provide the additional information.
- 4.5 Whether derogations are submitted for certificate holders at country or regional or Forest Management Unit (FMU) level, the following conditions shall apply:
- a) each certification body shall submit to the FSC Policy and Standards Program a completed derogation application form together with evidence demonstrating compliance with the requirements listed under Section 3.2 above;
 - b) each certification body shall submit to the FSC Policy and Standards Program a list of all certificate holders to be covered by the derogation; and,
 - c) certification bodies shall pay a flat fee for every derogation application plus an additional fee per certificate holder included in the application, to cover the administrative costs of handling derogation applications by the Policy and Standards Program and the FSC Technical Advisors to the FSC Pesticide Committee.

Note: The rationale for having a flat fee and an additional fee per certificate holder is that processing derogation applications has both fixed costs, which do not vary according to the number of certificate holders in a derogation request (i.e. assessment of rationale for demonstrated need) and variable costs, which are associated with the evaluation of specific information for each certificate holder (i.e. control mechanisms and program for identifying alternatives).

Note: A common derogation application from two or more certification bodies seeking a derogation for the same pesticide in the same country or region is possible, provided all the applicable requirements of this procedure are followed in the application.

- 4.6 Approval of derogation within a country or region provides a precedent in terms of establishing the need for this derogation. Any FSC certificate holder in that country/region may apply to use the derogated pesticide under the following preconditions:
- a) the certification body shall send to the FSC Policy and Standards Program information related to parts b) and c) of Section 3.2. This information will be assessed by the FSC Technical Advisors and the supervisor of the Policy and

Standards Program shall approve the inclusion of the certificate Holder for this derogation if the applicant's geographic range is within the already approved derogation and if no additional consultation is required with directly affected stakeholders and;

- b) the certification body has paid the corresponding additional fee for processing the certificate holder's specific information related to the derogation request.

Note: The certificate holder's progress in implementing programs to look for alternatives to the use of 'highly hazardous' pesticides shall be included in the certification body's evaluation reports and in all subsequent surveillance and reassessment reports.

5. Evaluation of a temporary derogation request

- 5.1 All applications for derogations shall be submitted to the Policy and Standards Program using FSC's template "Application for a derogation to use a 'highly hazardous' pesticide (see Annex 1). If an application is incomplete or is submitted without appropriate supporting documentation the Policy and Standards Program will inform the applicant (i.e. the certification body) what further information is required. It is the responsibility of the applicant to provide the additional information.
- 5.2 When the application is complete, the Policy and Standards Program will within two weeks send it to the Pesticides Technical Advisors.
- 5.3 The Pesticides Technical Advisors will evaluate the appropriateness of the derogation request and provide their opinion to the Policy and Standards Program within two weeks of receiving the complete application.
- 5.4 The Policy and Standards Program will then send the complete derogation application and opinions from the FSC Technical Advisors and the revised Policy and Standards Program recommendations to the FSC Pesticides Committee, requesting a decision.
- 5.5 The FSC Pesticides Committee shall act in accordance with its terms of reference and shall make its decisions by consensus only on the basis of those terms of reference.
- 5.6 The FSC Pesticides Committee may seek further information from the Policy and Standards Program and/or may consult, collectively or individually, with any parties, at its discretion.
- 5.7 The FSC Pesticides Committee will report its decisions within four weeks of receiving a request for a decision from the Policy and Standards Program. The decision may consist of approval (with or without conditions), request for more time, or disapproval.

Note: When a derogation request for use of a 'highly hazardous' pesticide has been rejected, the continued use of the pesticide will lead to the immediate suspension of the certificate. This shall be independent of whether an appeal has been filed against the FSC Pesticide Committee's decision.

- 5.8 When the FSC Pesticides Committee has made its decision, the Policy and Standards Program will immediately inform the certification body responsible for the application of the decision in writing. It is the responsibility of the Certification Body to inform the certificate holders included in the derogation application about the decision.

- 5.9 If the decision is to approve the derogation request, the Policy and Standards Program will add the information related to the new derogation to the official list of derogations (*FSC-GUI-30-001a FSC approved temporary derogations for the use of 'highly hazardous' pesticides in FSC-certified forests and plantations*) and publish this on the FSC website and circulate copies to all FSC-accredited certification bodies and National Initiatives.
- 5.10 Certification bodies and National Initiatives shall be informed of any new pesticide added to the 'highly hazardous' pesticides list. Certificate holders shall be required to submit a derogation application within six months from when the addition of a pesticide to the 'highly hazardous' pesticides list is announced to the certification bodies. Certificate holders who have submitted a complete derogation request within this timeframe may continue to use the pesticide in question until a decision on the derogation application has been made.
- 5.11 Use of a 'highly hazardous' pesticide by FSC certificate holders without a valid derogation is only permitted where:
- a) a new pesticide becomes listed by FSC as 'highly hazardous', as outlined in 5.10 above;
 - b) a new and complete derogation application requesting an extension of the use of a pesticide that had a previously approved derogation according to the requirement established in section 7 below has been submitted to the Policy and Standards Program; and,
 - c) the occurrence of an emergency which requires the continued use of a 'highly hazardous' pesticide, according to section 8 below.
- 5.12 Use of a 'highly hazardous' pesticide by FSC forest management certificate holders without a valid derogation shall lead to the immediate suspension of the certificate, with the exception of the cases specified under sections 5.11 a) and b) and 8.4 below.
- 5.13 Forest management enterprises applying for FSC certification and which are currently using a pesticide on FSC's list of 'highly hazardous' pesticides, shall discontinue the use of the pesticide before they can become FSC certified.

16 Appeal to the decisions of the Pesticide Committee

- 6.1 Decisions of the FSC Pesticides Committee may be appealed, in which case the appellant shall follow FSC's dispute resolution protocol.
- 6.2 Alternatively, the applicant may modify the original derogation request or provide additional supporting documentation to respond to any issues identified by the Technical Advisors or the FSC Pesticides Committee, and then resubmit the derogation application. In this case the Policy and Standards Program will repeat the steps established in this procedure.

7 Extension of a temporary derogation

- 7.1 Derogations shall normally be issued for only a five-year period and the FSC Pesticide Committee will not normally issue an extension. Extension of a derogation at the end of this five-year period will not be granted unless there are exceptional circumstances and it can be clearly demonstrated that the program to identify

alternatives was fully implemented but has failed to identify an acceptable alternative in the available time. In such cases, FSC certificate holders working under an approved derogation and their respective certification body shall make a request for a derogation period extension three months before the expiration of the approved derogation, if they wish to continue using the derogated pesticide. The applicant may continue to use the pesticide while the request for extension of the derogation is being processed.

7.2 The applicant seeking a derogation extension shall only be required to fill in the application template (Annex 1) for the following sections: *B1) Specified controls to prevent, minimize and mitigate the hazard*, *B2) program to identify alternatives to the use of 'highly hazardous' pesticides*, and *A2) stakeholder consultation*.

7.3 The approval of an extension shall be based on the provided evidence that:

- a) specified controls were fully implemented and there is no evidence that negative impacts occurred during the previous derogation period as a result of the use of the 'highly hazardous' pesticide; and,
- b) during the derogation period alternatives to the use of a 'highly hazardous' pesticide have been identified and are under development (as indicated by field trials) or that the program to identify alternatives has been fully implemented but has failed to identify a viable option in the available time.

Note: There may be cases where a new pesticide has been found to replace the 'highly hazardous' pesticide but for which the national registration process takes longer than the approved derogation period. In such circumstances, certificate holders with approved derogations shall request an extension of the derogation to the FSC, following the requirements established in this section, including the information on the registration process. This information will be taken into account when evaluating requests for the extension of a derogation.

Note: Although the Certificate Holder may apply for a five-year extension to the derogation period, the decision to grant the five-year extension shall be at the discretion of the FSC Pesticides Committee. This implies that after an approved five-year derogation, any extension period may be granted from one to five years, depending on the justification for the extension request.

8 Emergencies

8.1 Emergencies may include sudden invasions or infestations of animal pests, weed plants, certain fungal diseases, or dramatic changes in vegetation composition, which threaten ecological stability, and which cannot feasibly be controlled by pesticides not listed on the list of FSC's 'highly hazardous' pesticides.

8.2 If such emergencies require the use of a pesticide on the FSC list of highly hazardous pesticides, the certificate holder shall inform its certification body of the action and its justification within 30 days of the beginning of the use of the pesticide. Failure to do so shall lead to the suspension of the certificate.

8.3 The certification body shall immediately inform the Policy and Standards Program of the occurrence, including an explanation on the nature of the emergency and the justification for the use of the highly hazardous pesticide in response. The Policy and Standards Program shall review the information provided and inform the FSC Pesticides Committee.

- 8.4 The FSC Pesticides Committee shall determine if the use of the 'highly hazardous' pesticide was justified in the absence of an approved derogation and decide if:
- a) the use of the 'highly hazardous' pesticide has not been justified under the circumstances presented and its continued or repeated use shall lead to the immediate suspension of the certificate by the certification body; and,
 - b) the use of the 'highly hazardous' pesticide has been justified under the circumstances presented and its continued or repeated use requires an approved derogation. In this case the certificate holder and its certification body shall submit a complete derogation application within 6 months of the initial use of the pesticide. Failure to do so shall lead to the immediate suspension of the certificate by the certification body.

Annex 1: FSC-TPL-30-001 Application for a temporary derogation to use a 'highly hazardous' pesticide

This form shall be used to submit derogation requests for the use of 'highly hazardous' pesticides to FSC. Part A of this form pertains to common information which is required for all Certificate Holders included in the derogation request. Part B pertains to specific information which shall be completed for each of the certificate holders applying for the derogation.

A. General Requirements	
Name and contact details of certification body requesting a temporary derogation:	
Active ingredient for which a temporary derogation is being requested:	
Trade name and formulation type of the active ingredient or formulation:	
Method of application and the application equipment:	
FSC certification codes of certificate holders for which a temporary derogation is being requested:	
Scope for which a temporary derogation is being requested:	
Requested time period for a temporary derogation: (NOTE: Derogations shall normally be issued for a five-year period. Extension of a temporary derogation after the expiry of the five-year period will only be granted in exceptional circumstances as outlined in section 11 above).)	
1. Demonstrated need	
Need may be demonstrated where: - The pesticide is used for protecting native species and forests against damage caused by introduced species or for protecting human health against dangerous diseases,	Explain how the proposed use complies with the specified criteria for need, including the consideration of alternatives which do not require the use of pesticides on the FSC list of 'highly hazardous' pesticides:

<p>OR</p> <ul style="list-style-type: none"> - Use of the pesticide is obligatory under national laws or regulations, OR - Use of the pesticide is the only economically, environmentally, socially and technically feasible way of controlling specific organisms which are causing severe damage in natural forests or plantations in the specified country (as indicated by documented evidence of current feasibility study reports: field-trials of alternative non-chemical or less toxic pest-management methods, cost-benefit analysis, social and environmental impact assessment); 	
<p>2. Stakeholder consultation</p>	
<p>All applications for derogations shall present the results of the stakeholder opinions and comments on the need to use the 'highly hazardous' pesticide in the country/region concerned and on adequacy of control mechanisms to prevent, minimize and mitigate negative impacts. It shall also demonstrate how stakeholder comments were taken into account in its derogation application.</p>	
<p>B. Certificate holder Specific Requirements</p>	
<p>FSC Certificate holder: FSC Registration Code:</p>	
<p>1. Specified controls to prevent, minimize and mitigate the hazards</p>	
<p>The derogation shall specify the controls that will be implemented to prevent, minimize and mitigate the hazards associated with the use of the pesticide, for example restrictions related to weather conditions, soil types, application method, water courses, etc.</p> <p>If the specified formulation is considered to reduce the level of hazard then the information on which this claim is based shall be presented, and the applicant shall provide</p>	<p>Specify the controls that will be implemented to mitigate the hazard:</p>

<p>credible independent, third party support for the claimed reduction of hazard. The derogation applicant shall declare all the other agents in the formulation.</p>	
<p>2. Program to identify alternatives to a 'highly hazardous' pesticide</p>	
<p>The certificate holder shall describe the program(s) which are in place or which will be put in place during the period over which the derogation will be applicable, designed to identify alternative pest control methods which do not use 'highly hazardous' pesticides.</p>	<p>Describe the programme(s) that are in place to identify alternatives:</p>