

Ensure EPA's Procurement Recommendations Do Not Discriminate Against Forest Products

May 8, 2017

Summary of Issue:

We want to ensure that our federal government is encouraged to purchase forest products from the millions of acres of responsibly managed forests across the US. Unfortunately, with unclear authority, EPA issued procurement recommendations in 2015 that were harmful to our forests and discriminated against two recognized and credible forest certification standards – the Sustainable Forestry Initiative (SFI) and the American Tree Farm System (ATFS). While EPA in December 2015 said this recommendation was “under review”, we are concerned about further actions that EPA may take on this issue. We are also concerned that this policy could now be recognized in the Federal Acquisition Regulations, making it a requirement on federal agencies, not just an EPA recommendation backed by an Obama-era executive order.

Our Recommendation:

EPA should discontinue its work on any recommendations for lumber/wood purchasing, deferring exclusively to the USDA BioPreferred Program, which sets mandatory purchasing requirements for federal agencies. This approach not only avoids duplicative and conflicting agency guidance but it is also backed by Congressional mandate. EPA's current approach is not backed by a Congressional mandate and lacks appropriate authority.

Background:

On Sept. 25, 2015, EPA published, without an opportunity for public review and comment, [Interim Recommendations](#) related to the use of environmental standards and ecolabels in procurement by federal agencies. EPA designated lumber and wood as products subject to the new requirements, identifying only one forest certification standard – Forest Stewardship Council (FSC) – as qualifying lumber and wood for federal procurement. This action made products certified to the Sustainable Forestry Initiative (SFI) and American Tree Farm (ATFS) standards, and most other U.S. produced wood products, ineligible for procurement. EPA offered no credible justification for this action.

Because EPA-recommended standards and labels are made mandatory under [Executive Order 13693](#) “Planning for Federal Sustainability in the Next Decade” and exclusive under the [Implementing Instructions](#) issued by CEQ, the effect of EPA's decision is to significantly discourage the use of wood products from over 95% of North American forests, including those certified to SFI and ATFS standards.

After close to a year of bipartisan congressional inquiries, EPA signaled in December 2016 that this recommendation is under review, which was a positive development. However, neither SFI nor ATFS has been informed of when and how this recommendation may be further considered or finalized.

In March, SFI and ATFS submitted joint comments to GSA in regards to the proposed Sustainable Acquisition amendments to the Federal Acquisition Regulation (FAR Case 2015-033), as published in the Federal Register (82 Fed. Reg. 5490, Jan. 18, 2017). SFI and ATFS' joint comments expressed concern about the proposal that agencies must purchase products that “meet or exceed specifications, standards, or labels recommended by EPA” as defined by EPA's “greener products” website (<https://www.epa.gov/greenerproducts>). If the amendments to the FAR were implemented as proposed, it would put required regulatory weight behind any EPA recommendations for lumber and wood, regardless of what those recommendations might specify.

The USDA BioPreferred program, which sets mandatory purchasing requirements for federal agencies as directed by Congress beginning in the 2002 Farm Bill, directs that that the raw material used in a product be sourced from “a legal source, a responsible source, or a certified source as designated by the ASTM 7612–10 standard” for wood and wood-based products – which lists SFI and ATFS among its recognized forest certification standards.

It is critical that EPA bring this issue to a close by referring solely to the USDA BioPreferred Program.

On May 3, 2017, EPA hosted a webinar that they billed as a “**Community Update on EPA’s Recommendations of Specs, Standards, and Ecolabels, Implementation Plans, and Next Steps**”.

During this webinar, EPA highlighted the supposed authority for the Environmentally Preferable Purchasing (EPP) program, referring to the following:

- The P2 Act (42 U.S.C.A. §13103(b)(11))
- Various clauses and subparts of FAR 7, 11, 12, 13, and 23
- Executive Orders for environmental leadership in the Federal government since 1993 (including EO 13693)
- National Technology Transfer and Advancement Act and OMB Circular A-119

EPA also indicated that “to the extent practicable and applicable, products/services purchased by feds must be mandated by name in statutes (e.g., USDA Biopreferred, Energy Star) **AND** must meet other EPA programs to help meet federal purchasing requirements OR must meet EPA recommended private sector standards/labels/specs.” The EPA recommended private sector standards/labels/specs are the ones that were included in their September 2015 Interim Recommendations or that were approved through the pilot process. This demonstrates that EPA is looking to make their recommendations mandatory for federal procurement.