






Forest Stewardship Council®



## **Calculating financial penalty/compensation fee and processing evidence for blocked organizations**

FSC-PRO-10-003 V1-0 EN



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The Forest Stewardship Council® (FSC) is an independent, not for profit, non-government organization established to support environmentally appropriate, socially beneficial, and economically viable management of the world's forests.

FSC's vision is that the world's forests meet the social, ecological, and economic rights and needs of the present generation without compromising those of future generations.

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## **A Objective**

The objective of this document is to provide the procedures for the calculation of the financial penalty/compensation fee and the process for blocked organizations to contest their blocked status in response to false claims.

This procedure is not subject to the rules and regulations outlined in FSC-PRO-01-001.

## **B Scope**

This procedure shall be applied by FSC, FSC-accredited certification bodies and blocked organizations. All aspects of this document are normative, including the scope, standard effective date, references, terms and definitions, tables, notes and annexes, unless otherwise stated.

## **C Effective date**

Approval date	10 March 2020
Publication date	11 March 2020
Effective date	6 April 2020
Period of validity	until replaced or withdrawn

## **D References**

The following referenced documents are indispensable for the application of this document. For undated references, the latest edition of the referenced document (including any amendments) applies.

FSC-STD-20-001 General requirements for FSC accredited Certification bodies

FSC-STD-20-007 Forest management evaluations

FSC-STD-20-011 Chain of Custody Evaluations

FSC-STD-20-012 Standard for evaluation of FSC Controlled Wood in Forest Management Enterprises

FSC-STD-40-003 Chain of Custody Certification of Multiple Sites

FSC-STD-40-004 Chain of Custody Certification

FSC-STD-01-002 FSC Glossary of Terms

## **E Terms and definitions**

The terms and definitions given in FSC-STD-01-002 FSC Glossary of Terms, FSC-STD-01-001 FSC Principles and Criteria for Forest Stewardship and FSC-STD-40-004 Chain of Custody Certification, and the following apply:

**Annual turnover:** Total revenue of an organization derived from the provision of goods and services, less trade discounts, VAT, and any other taxes based on this revenue (Dictionary of Business, Oxford University Press, 1996). In the context of the coefficient of capacity, turnover refers to all certified and uncertified forest products (e.g. sawn timber, particle boards, paper, non-timber forest products) and products containing wood or fiber components. It does not refer to other 100% non-forest products companies might produce. The annual turnover refers to the most recently completed fiscal year.

**Blocked organization:** A certificate holder or a former certificate holder that is blocked from the FSC Certification Scheme in response to false claims by:

(1) the suspension of the Granted Rights, alternatively the termination of the License Agreement for the FSC Certification Scheme, and

(2) the restriction from carrying out processes or activities that are included within the scope of their FSC certification.

**Clear and convincing evidence:** Evidence available to the certification body, ASI and/or FSC that supports a conclusion that a fact is substantially more probable to be true than not. In other words, there must be a firm conviction or belief that the organization deliberately made false claims. Clear and convincing evidence shall be supported by documents, facts, other information or records, either quantitative or qualitative, that can be verified through analysis, observation, measurement, and other means of research.

**Compensation fee:** a monetary sanction voluntary paid by a certificate holder or former certificate holder in order to remedy a false claim.

**Deliberate:** with knowledge and awareness of the consequences.

**False claim:** FSC claim made on sales documents (physical or electronic) or the use of the FSC trademarks, on products and for projects that are not eligible to be claimed, labelled and/or promoted as being FSC-certified or FSC Controlled Wood. A false claim is different from an inaccurate claim, in which a product, that is eligible to be sold as FSC certified, is sold with the wrong claim.

**Financial penalty:** a monetary sanction that is contractually and mutually agreed in the FSC Trademark License Agreement and paid by a certificate holder or former certificate holder in order to remedy a false claim and to deter the certificate holder from harming the integrity of the FSC Certification Scheme.

**Granted Rights:** The right to use the FSC trademarks for FSC claims, as defined in FSC-STD-40-004, for on-product labeling on FSC-certified products and for promotional use worldwide as licensed and further regulated by via the FSC Trademark License Agreement.

**Negligence:** Failure to exercise reasonable care.

**FSC Trademark License Agreement:** The License Agreement for the FSC Certification Scheme signed by the certificate holder organization permitting use of the FSC trademarks ('licensed materials').

**Overall annual turnover:** Total revenue of an organization derived from the provision of goods and services, less trade discounts, VAT, and any other taxes based on this revenue (Dictionary of Business, Oxford University Press, 1996). The overall annual turnover refers to the most recently completed fiscal year and is not limited to forest products only.

**Parties to the process:** the organization, and all parties considered relevant by the FSC, the FSC Board of Directors, ASI and CBs.

## 1. Impact of false claims

- 1.1. A false claim causes severe damages to the credibility and reputation of the FSC certification system as well as to certificate holders that are in full compliance with the requirements for FSC certification. A false claim also has further negative impacts, damages the credibility and reputation of the FSC trademarks and misleads customers and consumers.

## 2. Applicable criteria

- 2.1. A financial penalty/compensation fee is determined by FSC in accordance with the seriousness (Clause 3.4) and the duration (Clause 3.5) of the specific false claim as well as with the economic capacity (Clause 3.6) of the blocked organization based on the annual turnover. Each of the aforementioned criteria is further scaled to reflect the seriousness and duration of each specific false claim. This calculation is used to ensure that the financial penalty/compensation fee is reasonable and to ensure fair treatment to blocked organizations who made false claims.

## 3. Calculation of the financial penalty/compensation fee

- 3.1. A standard flat rate for calculating the financial penalty/compensation fee is set at USD 60<sup>1</sup>.
- 3.2. The financial penalty/compensation fee is calculated as follows:

$$\text{Financial penalty/compensation fee} = (\text{Flat rate} \times C_s \times C_d) \times C_c$$

- $C_s$  = coefficient of seriousness as calculated per Clause 3.4
- $C_d$  = coefficient of duration as calculated per Clause 3.5
- $C_c$  = coefficient of capacity determined by the blocked organization's annual turnover as calculated per Clause 3.6

- 3.3. The financial penalty/compensation fee shall not exceed ten percent (10%) of the blocked organization's overall annual turnover.

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<sup>1</sup> Subject to adjustment for inflation

## Basis for calculation

### 3.4. Coefficient of seriousness

Market value of products affected by false claims (USD)	Coefficient of seriousness
Less than 2,500	1
2,500 - 5,000	2
5,001 - 12,500	3
12,501 - 25,000	4
25,001 - 50,000	5
50,001 - 100,000	6
100,001 - 300,000	7
300,001 - 500,000	8
500,001 - 700,000	9
700,001 - 1 Million	10
Any additional million	10+ (millions)

Examples for the 10+ category:

- a market value equal or above USD 2 million and less than USD 3 million corresponds to a coefficient of seriousness of 12 (= 10+2).
- a market value equal or above USD 15 million and less than USD 16 million corresponds to a coefficient of seriousness of 25 (= 10+15).

NOTE: The exchange rate used for the calculation of the market value is the rate published by the German Federal Bank of the date of the false claim.

### 3.5. Coefficient of duration

3.5.1. The coefficient of duration is equal to the number of months in which the false claim was made.

Examples:

- a false claim that lasted for 2 weeks corresponds to a coefficient of duration of 1.
- a false claim that lasted for 6 weeks corresponds to a coefficient of duration of 2.
- a false claim that lasted for 11 months and 1 week corresponds to a coefficient of duration of 12.



### 3.6. Coefficient of capacity

Coefficient of capacity	Turnover of the organization for forest products (in USD) <sup>2</sup>		Coefficient of capacity to	Turnover of the organization for forest products (in USD)	
	from	to		from	to
11	0	30,000	71	72,900,001	87,480,000
12	30,001	60,000	72	87,480,001	102,060,000
13	60,001	90,000	73	102,060,001	116,640,000
14	90,001	120,000	74	116,640,001	131,220,000
15	120,001	150,000	75	131,220,001	145,800,000
16	150,001	180,000	76	145,800,001	160,380,000
17	180,001	210,000	77	160,380,001	174,960,000
18	210,001	240,000	78	174,960,001	189,540,000
19	240,001	270,000	79	189,540,001	204,120,000
20	<b>270,001</b>	<b>300,000</b>	80	<b>204,120,001</b>	<b>218,700,000</b>
21	300,001	360,000	81	218,700,001	262,440,000
22	360,001	420,000	82	262,440,001	306,180,000
23	420,001	480,000	83	306,180,001	349,920,000
24	480,001	540,000	84	349,920,001	393,660,000
25	540,001	600,000	85	393,660,001	437,400,000
26	600,001	660,000	86	437,400,001	481,140,000
27	660,001	720,000	87	481,140,001	524,880,000
28	720,001	780,000	88	524,880,001	568,620,000
29	780,001	840,000	89	568,620,001	612,360,000
30	<b>840,001</b>	<b>900,000</b>	90	<b>612,360,001</b>	<b>656,100,000</b>
31	900,001	1,080,000	91	656,100,001	787,320,000
32	1,080,001	1,260,000	92	787,320,001	918,540,000
33	1,260,001	1,440,000	93	918,540,001	1,049,760,000
34	1,440,001	1,620,000	94	1,049,760,001	1,180,980,000

<sup>2</sup> Refers to the definition of “annual turnover” in this document.

Coefficient of capacity	Turnover of the organization for forest products (in USD) <sup>2</sup>		Coefficient of capacity to	Turnover of the organization for forest products (in USD)	
	from	to		from	to
35	1,620,001	1,800,000	95	1,180,980,001	1,312,200,000
36	1,800,001	1,980,000	96	1,312,200,001	1,443,420,000
37	1,980,001	2,160,000	97	1,443,420,001	1,574,640,000
38	2,160,001	2,340,000	98	1,574,640,001	1,705,860,000
39	2,340,001	2,520,000	99	1,705,860,001	1,837,080,000
40	<b>2,520,001</b>	<b>2,700,000</b>	<b>100</b>	<b>1,837,080,001</b>	<b>1,968,300,000</b>
41	2,700,001	3,240,000	101	1,968,300,001	2,361,960,000
42	3,240,001	3,780,000	102	2,361,960,001	2,755,620,000
43	3,780,001	4,320,000	103	2,755,620,001	3,149,280,000
44	4,320,001	4,860,000	104	3,149,280,001	3,542,940,000
45	4,860,001	5,400,000	105	3,542,940,001	3,936,600,000
46	5,400,001	5,940,000	106	3,936,600,001	4,330,260,000
47	5,940,001	6,480,000	107	4,330,260,001	4,723,920,000
48	6,480,001	7,020,000	108	4,723,920,001	5,117,580,000
49	7,020,001	7,560,000	109	5,117,580,001	5,511,240,000
50	<b>7,560,001</b>	<b>8,100,000</b>	<b>110</b>	<b>5,511,240,001</b>	<b>5,904,900,000</b>
51	8,100,001	9,720,000	111	5,904,900,001	7,085,880,000
52	9,720,001	11,340,000	112	7,085,880,001	8,266,860,000
53	11,340,001	12,960,000	113	8,266,860,001	9,447,840,000
54	12,960,001	14,580,000	114	9,447,840,001	10,628,820,000
55	14,580,001	16,200,000	115	10,628,820,001	11,809,800,000
56	16,200,001	17,820,000	116	11,809,800,001	12,990,780,000
57	17,820,001	19,440,000	117	12,990,780,001	14,171,760,000
58	19,440,001	21,060,000	118	14,171,760,001	15,352,740,000
59	21,060,001	22,680,000	119	15,352,740,001	16,533,720,000
60	<b>22,680,001</b>	<b>24,300,000</b>	<b>120</b>	<b>16,533,720,001</b>	<b>17,714,700,000</b>
61	24,300,001	29,160,000	121	17,714,700,001	21,257,640,000

Coefficient of capacity	Turnover of the organization for forest products (in USD) <sup>2</sup>		Coefficient of capacity to	Turnover of the organization for forest products (in USD)	
	from	to		from	to
<b>62</b>	29,160,001	34,020,000	<b>122</b>	21,257,640,001	24,800,580,000
<b>63</b>	34,020,001	38,880,000	<b>123</b>	24,800,580,001	28,343,520,000
<b>64</b>	38,880,001	43,740,000	<b>124</b>	28,343,520,001	31,886,460,000
<b>65</b>	43,740,001	48,600,000	<b>125</b>	31,886,460,001	35,429,400,000
<b>66</b>	48,600,001	53,460,000	<b>126</b>	35,429,400,001	38,972,340,000
<b>67</b>	53,460,001	58,320,000	<b>127</b>	38,972,340,001	42,515,280,000
<b>68</b>	58,320,001	63,180,000	<b>128</b>	42,515,280,001	46,058,220,000
<b>69</b>	63,180,001	68,040,000	<b>129</b>	46,058,220,001	49,601,160,000
<b>70</b>	<b>68,040,001</b>	<b>72,900,000</b>	<b>130</b>	<b>49,601,160,001</b>	<b>53,144,100,000</b>

3.7. If actual figures are not available to FSC to calculate the coefficients due to limited access to the blocked organization's transaction records and information, and the blocked organization is not cooperating with FSC, FSC will use the best available information to calculate the financial penalty/compensation fee.

#### 4. Legal successors of the financial penalty/compensation fee

4.1. To prevent the blocked organization from circumventing the payment of financial penalty/compensation fee, FSC will take the following measures:

4.1.1. If the blocked organization that was responsible for the false claim has meanwhile been dissolved, but another organization acts as its legal successor, then this legal successor shall be held liable to pay the financial penalty/compensation fee.

4.1.2. If an individual(s) responsible for the false claims within the personnel or shareholder of the blocked organization, establishes a new organization which applies for FSC certification to avoid the payment financial penalty/compensation fee, FSC reserves the right to prohibit the new company from entering into the FSC Certification Scheme.

## 5. Duration of blocked status

5.1. The duration of the blocked status is linked to the amount of the compensation fee.

5.2. The blocked organization who made a false claim shall be blocked for the period specified in the following table:

Compensation fee in USD	Duration of the certificate blocked status in months
Below 900	6
Between 901 - 1,800	12
Between 1,801 - 3,600	18
Between 3,600 - 7,200	24
Between 7,201 - 14,400	30
Between 14,401 - 28,800	36
Between 28,801 - 59,600	42
Between 59,601 - 119,200	48
Between 119,201 - 238,400	54
Above 238,400	60

### Calculation examples of the financial penalty/compensation fee

**Example 1:** Certificate holder “Arana” with annual turnover of 4,000,000 USD made false claims on products of a value of 600,000 USD during the period of 12 months.

**Financial penalty/compensation fee = (Flat rate x Cs x Cd) x Cc = (60 x 9 x 12) x 43 = 278,640 USD, or a duration of the certificate blocked status for 60 months.**

**Example 2:** Certificate holder “Dovis” with annual turnover of 320,000 USD made false claims on products of a value of 30,000 USD during the period of 9 months.

**Financial penalty/compensation fee = (Flat rate x Cs x Cd) x Cc = (60 x 5 x 9) x 21 = 56,700 USD, or a duration of the certificate blocked status for 42 months.**

**Example 3:** Certificate holder “Luvera” with annual turnover of 90,000 USD made false claims on products of a value of 30,000 USD during the period of 3 months.

**Financial penalty/compensation fee = (Flat rate x Cs x Cd) x Cc = (60 x 5 x 3) x 13 = 11,700 USD, or a duration of the certificate blocked status for 30 months**

## 6. Contesting a blocked status and financial penalty/compensation fee

6.1. The blocked organization may submit evidence within four (4) calendar weeks after they have been informed of the decision taken by FSC in order to contest the blocked status and the financial penalty/compensation fee.

6.2. All incoming and outgoing correspondence, including the final decisions and follow-up actions, will be filed in electronic format and/or hard copy, and maintained by FSC for a period of at least seven (7) years.

6.3. Parties to the process should refrain from commenting publicly on the review until FSC informs all parties to the process about the outcome of the submission.

6.4. Submitting evidence to contest a blocked status and financial penalty/compensation fee

6.4.1. The blocked organization shall submit evidence by sending a submission to [fscintegrity@fsc.org](mailto:fscintegrity@fsc.org).

6.4.2. The submission shall conform with all of the following requirements:

6.4.2.1. contain the name and contact information of the blocked organization;

6.4.2.2. be written in one of the official FSC languages (English or Spanish);

6.4.2.3. specify the events and issues regarding the false claim;

6.4.2.4. contain evidence contesting the false claim;

6.4.2.5. have supporting documents.

6.4.3. Submissions not meeting the requirements listed in Clause 6.4.2 will not be processed.

6.4.4. The blocked organization may use the FSC template (Annex 1) for submitting evidence to contest the blocked status and the financial penalty/compensation fee

NOTE: Documents submitted in other languages than the official FSC languages shall be translated by the blocked organization who provides the material.

6.4.5. The blocked organization may withdraw the submission at any point in time of the process, at their sole discretion.

6.4.6. The lack of cooperation by the blocked organization may be considered as grounds to discontinue the review.

6.5. Processing and evaluating the submitted evidence

6.5.1. The FSC Supply Chain Integrity Team ([fscintegrity@fsc.org](mailto:fscintegrity@fsc.org)) and ASI are responsible for reviewing the evidence submitted according to the following process:

- a) acknowledge receipt of the submission within ten (10) working days of receipt of the evidence;
- b) review evidence related to the blocked organization and the false claim; and
- c) keep a record of the conversations, including date, time and a summary of issues.

## 6.6. Final decision making by FSC

6.6.1. FSC will make a decision based on the information provided by the blocked organization and the review conducted by the FSC Supply Chain Integrity Team and ASI.

6.6.2. FSC will communicate the outcome of the decision to the blocked organization and their certification body and all other certification bodies within thirty (30) calendar days.

## 6.7. Rejecting the submission

6.7.1. If the submitted evidence does not support lifting the blocked status and of the financial penalty/compensation fee, then the submission is rejected. The notification of the rejection shall include an explanation of why the evidence did not support the lifting of the blocked status and of the financial penalty/compensation fee.

6.7.2. The blocked status of the blocked organization will remain unchanged until the conditions specified in the Advice Note (ADVISE-40-004-18 *Addressing deliberate false claims*), the Procedure FSC-PRO-10-003 or/and the FSC Normative Framework are met.

## 6.8. Reverse decision based on the submission

6.8.1. If the submitted evidence supports the lifting of the blocked status and of the financial penalty/compensation fee, then the blocked organization did not deliberately make false claims and FSC will:

- a) inform the certification body of the outcome of the process, and
- b) lift the suspension of the Granted Rights.

6.8.2. Upon receipt of this information, the certification body shall immediately update the FSC database to change the certification status of the blocked organization from 'Suspended and Blocked' to 'Valid'.

## 7. Appeals

7.1.1. Decisions made by FSC after the submissions process cannot be appealed.

7.1.2. The procedure FSC-PRO-01-005 (Processing Appeals) does not apply to FSC decisions made in response to the submission process.

## Annex 1 FSC Template for submitting evidence to contest blocked status and financial penalty/compensation fee

### Information of the individual(s) or organization(s):

Name of individual or organization	
Contact person (for organizations)	
Postal address: <ul style="list-style-type: none"> <li>• Street + number</li> <li>• City</li> <li>• Area code</li> <li>• Country</li> </ul>	
Phone number	
Email address	
Website	
FSC member (if yes: international/national, chamber, North/South)	
Date of submission	
Signature of legal representative	

### Information and evidence to be submitted to FSC:

Issue	Information to support the false claim was not deliberate
Description of the issues and events that lead to the false claim.	Evidence to support the false claim was not deliberate. Please provide an overview, a description and attach supporting documents.

### Verbal forms for the expression of provisions

[Adapted from *ISO/IEC Directives Part 2: Rules for the structure and drafting of International Standards*]

“*shall*”: indicates requirements strictly to be followed in order to conform with the standard.

“*should*”: indicates that among several possibilities one is recommended as particularly suitable, without mentioning or excluding others, or that a certain course of action is preferred but not necessarily required.

“*may*”: indicates a course of action permissible within the limits of the document.

“*can*”: is used for statements of possibility and capability, whether material, physical or causal.