

BRAZILIAN BIOFUEL POLICY DOCUMENTS
SOCIAL SUSTAINABILITY - II

Legislation relating to the Social Fuel Seal

NORMATIVE INSTRUCTION N°01, JULY 5, 2005
Relating to the criteria and procedures establishing the Social Fuel Seal

Ministry for Rural Development

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Towards a green energy pact between
Europe and Africa

Note: Names of Brazilian institutions and their abbreviations are put between square brackets and are kept in the original language.

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NORMATIVE INSTRUCTION N°01, JULY 5, 2005
Relating to the criteria and procedures establishing the Social Fuel Seal

The Ministry of Rural Development, drawing on the competences conferred to it under art. 87 of the Federal Constitution and under art. 27, section VIII of Law n° 10.638 of May 28 2003, **considers:**

- a) the potential for biomass fuels to strengthen and diversify the Brazilian energy matrix
- b) the potential for social inclusion and the generation of employment for rural families through the production of biodiesel
- c) the large number of small family farms in the North and North-eastern part of the country and the necessity to undertake action to generate employment and income in these regions
- d) the necessity to create public policies aimed at decentralising development policy and to bring it to the level of the regions of the North and the North-east of Brazil
- e) the legal framework relating to the production of biodiesel, as it is expressed in Law n°11.097 of January 2005
- f) the favorable environment for family-based agriculture to become involved in biodiesel production as it is described in Decree n°5.297 of December 6, 2007,

and decides:

CHAPTER I

Definitions

Art. 1° Within the context of this Normative Instruction, the following definitions are used:

I – **Biodiesel**: Fuel for internal combustion engines with compression ignition, obtained from renewable and biodegradable sources that can partly or totally replace diesel fuel from fossil origins, and that meets the technical specifications as defined by the ANP [Agencia Nacional de Petróleo, Gás Natural e Biocombustíveis], conforming to Law n° 11.097 of January 13, 2005;

II – **Pronaf**: National Program to Strengthen Family-based Agriculture [Programa Nacional de Fortalecimento da Agricultura Familiar], created by Decree n°1.946 of June 28, 1996 and altered by Decree n°3.991 of October 30, 2001;

III – **Declaration of the Competence of Pronaf (DAP)** [Declaração de Aptidão ao Pronaf – DAP]: this is the instrument which identifies the beneficiaries of the National Program to Strengthen Family-based Agriculture, conforming to Circular n°75 issued by the Ministry of Rural Development on September 17, 2004;

IV – **Family Farmer**: identified as a beneficiary of the Pronaf, as conforming to article n°5 of Decree n° 3.991 of October 30, 2001 and ratified by the DAP;

V – **Agricultural Cooperative of Family Farmers:** a cooperative in which a minimum of 70% (seventy percent) of the raw material that will be transformed into industrial products, originates from its own production or from organisations participating in the cooperative, and in which a minimum of 90% (ninety percent) of the active members are made up of Family Farmers that have been ratified as such by the DAP, and according to Circular n°75 issued by the Ministry of Rural Development on September 17, 2004 in its art. 2, §1, section V, and in the Manual of Rural Credit [Manual de Crédito Rural] (MCR), chapter 10;

VI – **Social Fuel Seal:** a seal granted by the Ministry of Rural Development to the producer of biodiesel, based on the criteria described in this Normative Instruction and which is ratified by it as a way to promote the social inclusion of family farmers within the framework of the Pronaf, and conforms to Decree n°5.297 of December 6, 2004;

VII – **Biodiesel Producer:** a juristic person operating as a company under Brazilian laws, having its administrative seat in the country, and granted the authorisation by the National Agency of Petroleum, Natural Gas and Biofuels [Agencia Nacional de Petróleo, Gás Natural e Biocombustíveis] to produce the biofuel, and recognized by the Special Register for Biodiesel Producers [Registro Especial de Produtor de Biodiesel] , which is part of the Secretariat of the Federal Ministry of the Treasury.

VIII – **Raw materials for the production of biodiesel:** one or more sources of vegetal or animal origin, the oils of which, in their crude form, can be transformed into biodiesel

IX – **Technical Assistance and Capacitation:** services aimed at providing technical assistance to and training for the family farmers in order to enhance their integration into the productive activities and to increase their productivity

CHAPTER II

On the criteria qualifying the Social Fuel Seal

On sourcing raw materials from family farmers

Art. 2. In order to obtain the Social Fuel Seal, the biodiesel producer must source a minimum percentage of the raw materials for the production of biodiesel from the family farmer. This percentage is set at 50% (fifty percent) for raw materials produced in the semi-arid North-eastern region, at 30% (thirty percent) for raw materials produced in Southern and Southeastern regions, and at 10% (ten percent) for raw materials produced in the Northern and Central-western regions of the country.

§ 1. The minimum percentage described in this article is calculated on the basis of the costs of the raw materials sourced from the family farmer or the agricultural cooperative of which he is a member, in relation to the total annual expenditures for raw materials made by the biodiesel producer.

§ 2. The value of the raw materials produced by the biodiesel producer himself, will be determined on the basis of the average price paid for raw materials sourced during the third quarter.

§ 3. In case the biodiesel producer has not sourced any raw materials from third parties during the verification period, the value of the raw materials produced by the biodiesel producer and the minimum percentage he needs to source from family farmers, will be determined on the basis of the reference price utilized in the locality or region closest to the biodiesel production facilities.

§ 4. In case the raw materials are produced under an agricultural partnership, under a sharecropping system, under contract farming or under a similar system, the value of the raw materials the biodiesel producer sources from these systems will be determined on the basis of the average price demanded by the sharecropper or agricultural partner.

Art. 3. Using the appropriate official documents, the biodiesel producer keeps a register of all the raw materials acquisitions made during each calendar year for a period of 5 (five) years, taking into account the statutory retention period as foreseen in law.

§ 1. The official documents for the registration of the acquisition of raw materials from the family farmer are

included in this law [appendix].

§ 2. The official documents showing the registered acquisitions of raw materials from the family farmer or from the agricultural cooperative of which he is a member, have to be supplemented with the following complementary information: the DAP registration number of the farmer in case raw materials are sourced from individuals, or the registration number of the agricultural cooperative in case the raw materials are sourced from such a group or collective organisation.

§ 3. The family farmer will keep a register of sales made to the biodiesel producer, for a period of 5 (five) years, taking into account the statutory retention period as foreseen in law.

Art. 4. Taking into account the statutory retention period as foreseen in law, the Agricultural Cooperative of Family Farmers that sells to the biodiesel producer who has obtained the Social Fuel Seal, has to keep a register of the total annual acquisitions of raw materials sourced from its family farmers, using the appropriate official documents.

Single paragraph: The official documents for the registration of the acquisitions of raw materials made from the family farmers by the cooperative for the producer, contain the prices received by the farmers, the quantities, and the DAP registration number of the family farmer.

Art. 5. When the production of biodiesel is based on perennial crops, it will suffice to calculate the minimum percentages described in art. 2, on the basis of the expected yields in function of the area cultivated and contracted by the family farmer.

Single paragraph: In order to calculate the expected yield of the perennial crop, the average technical productivity coefficients spanning the entire productive life of the crop will be used, as they are defined and established by the Ministry of Agriculture, by the National Supply Company [Companhia Nacional de Abastecimento] (Conab) or by the Brazilian Enterprise of Agricultural Research [Empresa Brasileira de Pesquisa Agropecuária] (Embrapa).

On entering into contracts with family farmers

Art. 6. Before and in order to obtain the permission to use the Social Fuel Seal, the biodiesel producer has to enter into contracts with all the family farmers or their agricultural cooperatives from which he sources raw materials.

§ 1. To be valid, the contractual negotiations between the biodiesel producer and the family farmers have to occur in the presence of at least one representative of the family farmers. This representative can be delegated by:

- I. Rural Labor Unions or Family Farmers' Unions or Federations affiliated to the National Confederation of Agricultural Workers [Confederação Nacional dos Trabalhadores na Agricultura] (Contag);
- II. Rural Labor Unions or Family Farmers' Unions or Federations affiliated to the National Confederation of Family Farmers [Federação dos Trabalhadores da Agricultura Familiar] (Fetraf);
- III. Rural Labor Unions or Family Farmers' Unions affiliated to the National Association of Small Farmers [Associação Nacional dos Pequenos Agricultores] (ANPA); or by
- IV. other institutions recognised by the MDA

§ 2. The contracts made between the parties have to stipulate at least the following terms:

- I. the duration of the contract
- II. the purchase value of the raw materials
- III. the criteria for readjustments of the contracted price
- IV. the conditions for the delivery of the raw materials
- V. safeguards foreseen by each party
- VI. the identification of the representative of the family farmers who was present during the negotiation of the contract and his agreement over its terms

On providing technical assistance and training

Art. 7. In order to obtain the Social Fuel Seal, the biodiesel producer has to ensure that all the family farmers he sources raw materials from, receive adequate technical assistance and training.

§ 1. The services providing technical assistance and training to the family farmers are either developed and

provided directly by the biodiesel producer's own technical team or by institutions he contracts specifically for this task.

§ 2. The biodiesel producer has to present a service-plan outlining the technical assistance and capacitation program for family farmers, compatible with the achievements made in Family Agriculture and with the principles and guidelines outlined in the National Policy for Technical Assistance and Rural Extension of the MDA, and which must contain at least the following terms:

- I. a description of the professional staff involved in providing technical assistance, alongside their respective curricula and professional functions
- II. if outsourced to a third party, a copy of the contract made with that party
- III. a description of the geographical extent of the service-plan, indicating the state, the municipalities, communities, villages or hamlets covered by it
- IV. the number of farmers that are to be assisted
- V. a description of the methodology to be used and of the activities developed for and in cooperation with the family farmers

CHAPTER III

Procedures relating to the application for, the maintenance, the renewal, and the suspension of the permission to use the Social Fuel Seal

Art. 8. The request for the permission to use the Social Fuel Seal has to be filed by the biodiesel producer, with the Secretariat of Family Agriculture at the Ministry of Rural Development.

§ 1. The documents needed for the application for the permission to use the Social Fuel Seal are presented in Annex I.

§ 2. A standard model of the format in which the project for the production of Social Fuel must be presented is included in Annex II.

§ 3. the request for the permission to use the Social Fuel Seal obliges the interested party to file vouchers proving the fulfilment of the criteria describing the Social Fuel Seal as outlined in Chapter two, as well as a copy of the contract or contracts made with the family farmers or the Agricultural Cooperative of Family Farmers.

Art. 9. The Ministry of Rural Development has a period of 60 (sixty) days, counting from the date it received the application, to evaluate whether the criteria of the Social Fuel Seal are met and to inform the applicant of its evaluation.

§ 1. If granted, the permission to use the Social Fuel Stamp will be published, in abridged form, in the Official Federal Gazette [Diário Oficial da União].

§ 2. The publication of the permission to use the Social Fuel Stamp in the Official Federal Gazette [Diário Oficial da União] exempts the applicant of repeating the act of filing other documents, such as certificates, declarations and other documents.

Art. 10. The Social Fuel Seal granted to the biodiesel producer remains valid for a period of 5 (five) years from the date of the publication of the permission in the Official Federal Gazette [Diário Oficial da União] onwards.

Art. 11. By means of an external and independent evaluation, the MDA will evaluate, on an annual basis, whether the biodiesel producer meets the criteria of the Social Fuel Seal, in order to determine:

I – Conformity, in which case the permission to use the seal will be maintained

II – Non-conformity, in which case the biodiesel producer has a period of 30 (thirty) days to present a justification for his failure to meet the criteria, to the MDA; in case the producer fails to present such a justification, his permission to use the seal will be suspended for a period of one year. This suspension will be recorded in the database of the Ministry of Rural Development and published in the Official Federal Gazette [Diário Oficial da União].

Art. 12. After a suspension, the concerned party can submit a request for a new evaluation, that will be carried out by the MDA, in order to determine:

- I – Conformity, after which the producer will be reintroduced into the Ministry of Rural Development's database and the permission published in the Official Federal Gazette [Diário Oficial da União].
- II – Non-conformity, in which case the suspension is reaffirmed.

Single paragraph. After three consecutive requests and suspensions, or after 5 (five) years of suspension, the MDA will cancel the permission the use the seal for a period of 5 (years), enter the biodiesel producer into the Ministry of Rural Development's database and publish the cancellation of his permission in the Official Federal Gazette [Diário Oficial da União].

CHAPTER IV

Final remarks

Art. 13. Any changes in the address of the biodiesel producer permitted to use the Social Fuel Seal, a change of his corporate name, changes in the incorporation statute of the company, or the termination of its activities, must be communicated to the Ministry of Rural Development utilising the appropriate documents.

Art. 14. Each year, the biodiesel producer will communicate the Cadaster of Family Farmers to the Ministry of Rural Development, a document that contains:

- I – in the case of contracts made with individual family farmers, the Name, CPF and DAP registration number of each farmer
- II – in case of contracts made with an Agricultural Cooperative of Family Farmers, the Name of the Cooperative, the CNPJ and its DAP registration number.

Art. 15. The Ministry of Rural Development has the authority to validate the contracts and accords dealing with the procedures that must be followed in order to meet the criteria of the Social Fuel Seal.

Art. 16. This Normative Instruction enters into force on the date of its publication.

JULY 5, 2005
MINISTRY OF RURAL DEVELOPMENT
BRASIL