

BRAZILIAN BIOFUEL POLICY DOCUMENTS
SOCIAL SUSTAINABILITY - III

Legislation relating to the Social Fuel Seal

NORMATIVE INSTRUCTION N°2, SEPTEMBER 30, 2005
Relating to the criteria and procedures establishing a social and financial framework for biodiesel production projects under the Social Fuel Seal

Ministry for Rural Development

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Towards a green energy pact between
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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°2, SEPTEMBER 30, 2005
Relating to the criteria and procedures establishing a social and financial framework for biodiesel production projects under 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,
- g) the norms for the financing of biodiesel production projects as instituted by financial agents under the special conditions set out for projects that promote the social inclusion of family farmers who provide raw materials, conforming to the framework established by the Ministry of Rural Development,

and decides:

CHAPTER I

Definitions

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

I – **Financial framework:** a framework adopted by financial agents, indicating the preliminary approval of the project and indicating that it conforms to the internal rules and procedures used by the financial agent;

II – **Social framework:** a framework adopted by the Ministry of Rural Development to certify biodiesel production projects that conform to the criteria of the Social Fuel Seal, and that aim to access special lines of project finance with the National Bank for Social and Economic Development [Banco Nacional de Desenvolvimento Econômico Social] (BNDES) and its Financial Credit Institutions, with the Bank of Amazonia [Banco da Amazônia S/A] (BASA), with the Bank of the Northeast of Brazil [Banco do Nordeste do Brasil] (BNB), with the Bank of Brazil [Banco do Brasil S/A] or other financial institutions that have special financing lines for projects under the Social Fuel Seal;

III – **Social Fuel Seal:** an identification component issued by the Ministry of Rural Development to a biodiesel producer who conforms to the criteria described under the Normative Instruction N°1 of July 5, 2005, by that Ministry, and which is aimed at promoting the social inclusion of family farmers in the production process, within the context of the National Program for Strengthening Family Agriculture [Programa Nacional de Fortalecimento da Agricultura Familiar] (Pronaf), established by Decree n°5.297 of December 6, 2004; and

IV: **Banks:** financial agents who have established dedicated financing lines for biodiesel production projects under the special conditions outlined by the social framework, and who are defined as agents belonging to the BNDES and its Financial Credit Institutions, the BASA, the BNB and the Bank of Brazil, and which may include other banks in the future.

CHAPTER II

On the criteria relating to the social framework for biodiesel projects

Art. 2. the framework for projects under the Social Fuel Seal is destined for companies juristically established under Brazilian laws and that run a project for the production of biodiesel with the aim to abide by the minimum criteria for the social inclusion of family farmers, which refers to feedstock acquisitions from family-run agricultural enterprises, the intention and will to enter into contracts with family farmers from who they source raw materials and to the plan for providing technical assistance and training to these farmers, as described in Normative Instruction N°1 of July 5, 2005 of the Ministry of Rural Development, in art. 2, 5, 6 and 7.

Art. 3. the minimum percentage of feedstocks the producer must source from the family farmers described in art. 2 of this Normative Instruction has been fixed at 50% (fifty percent) for operations in the semi-arid Northeast, at 30% (thirty percent) for operations in the Southeastern and South, and at 10% (ten percent) for the North and Center-West regions.

§ 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 he pays for raw materials sourced from third parties during the verification period.

§ 3. 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. 4. When the production of biodiesel is based on perennial crops, it will suffice to calculate the minimum percentages described in art. 3, 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).

Art. 5. Contractual negotiations with the family farmers described in art. 2 of this Normative Instruction require the participation 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

Single paragraph. 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

Art. 6. The plan to provide technical assistance and training to the family farmers referred to in art. 2, is either developed and implemented directly by the biodiesel producer's own technical team or by institutions he contracts specifically for this task.

Single paragraph. The plan outlining the technical assistance and capacitation program for the family farmers referred to in art. 2 must be 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

On the procedures relating to the social framework for biodiesel projects

Art. 7. The Ministry of Rural Development will only analyse the social framework of projects that have proved to be eligible for financing by the financial agents.

Single paragraph. The analysis of the social framework can be undertaken by the financial agent who received the project and who is accredited by the Ministry of Rural Development to this aim under a Contract for Technical Cooperation.

Art. 8. The request for a social framework must be submitted by the applicant, and validated by the Secretariat of Family Agriculture of the Ministry of Rural Development, or directly with the financial agent who operates under the conditions described in art. 7 of this Normative Instruction. The request requires the use of the appropriate documents, which are included in Annex 1 of this Normative Instruction.

Single paragraph. The request for the analysis of the social framework requires the presentation, by the interested party, of the social fuel project in a form that consists of the referential model included in Annex II, as well as a presentation of the main data contained in the contracts made between the producer and the family farmers.

Art. 9. The Ministry of Rural Development has a period of 30 (thirty) days, counting from the date it validated the application, to evaluate the project and to determine:

- I. Conformity, after which the Secretary of Family Agriculture or his legal representative will issue and send to the applicant a notification of conformity to the social framework, indicating the name and the CNPJ of the company and its approved project;
- II. Non-conformity, after which the Secretary of Family Agriculture or his legal representative will issue and send a notification of non-conformity to the applicant and indicate in which way the project does not conform to the criteria of the social framework. The name and the CNPJ of the company and its non-conform project will be indicated.

Single paragraph. In case the analysis is made by the financial agent who is accredited to do so by the Ministry of Rural Development under a Contract for Technical Cooperation, the stated period for the analysis of the social

framework will be determined by this financial agent for the party that requested financing.

Art. 10. In case a project is approved for financing under the social framework by a bank, the company will present to the Ministry of Rural Development a chronological overview of the implementation of the material and financial measures it is planning to undertake in order to conform:

§ 1. The stated period for the fulfilment of the criteria of the Social Fuel Seal has to coincide with the stated period of the initialisation of the industrial operations, as indicated in the final project as it was approved by the financial agent.

§ 2. Delays in the implementation of these steps will only be accepted by the Ministry of Rural Development if they are deemed acceptable by the financial agent.

Art. 11. Within six months of the initialisation of the industrial operations or within six months after the stated period indicated in the chronological overview of the implementation of the project, the Ministry of Rural Development will evaluate the fulfilment of the criteria of the Social Fuel Seal by means of an external evaluation, after which it will determine:

I. Conformity, after which the representative of the company must apply for the Social Fuel Seal within a period of 30 (thirty days);

II. Non-conformity, in case the Ministry of Rural Development rejects the outlined project and the applicant's justifications, after which the project remains unframed, the data concerning the project will be updated in the database of the Ministry of Rural Development, and its status will be communicated to the financial agent who approved the project.

§. 1. The declaration of non-conformity and the resulting absence of the social framework for the project, or failure to file the application for the Social Fuel Seal within the stated period of 30 days after the initialisation of the industrial project, prompts the Ministry of Rural Development to inform the financial agent who approved the project of the fact that the financing of the Social Fuel Seal will be lost.

§ 2. The social framework will be maintained for six additional months, and extended to a total of 12 (twelve) months counting from the date of the initialisation of the industrial operations, under the following conditions:

I. The company carrying out the project with the social framework makes a formal request.

II. The obligations regarding the sourcing of raw materials from family farmers as established in the contracts, are fully met.

III. The contracted family farmers are provided with technical assistance.

CHAPTER IV

Final remarks

Art. 12. 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. 13. The social framework of the projects does not confer to the companies who enjoy the framework the right to use the Social Fuel Seal for commercial purposes.

Art. 14. This Normative Instruction enters into force on the date of its publication.

**SEPTEMBER 30, 2005
MINISTRY OF RURAL DEVELOPMENT
BRASIL**