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ANP RESOLUTION NO. 802 OF DECEMBER 5, 2019.

Provides for the procedures for generation of the guarantee necessary for primary issuance of Decarbonization Credits, referred to in art. 14 of Law No. 13,576 of December 26, 2017, and amends ANP Resolution No. 758 of November 23, 2018.

THE COLLEGIATE BOARD OF THE NATIONAL AGENCY OF PETROLEUM, NATURAL GAS, AND BIOFUELS – ANP, in the exercise of the duties assigned by art. 6 of the Internal Regulations and by art. 7 of Schedule I of Decree No. 2,455 of January 14, 1998, based on the provisions of Law No. 9,478 of August 6, 1997, considering Proceeding No. 48610.218856/2019-04 and the resolutions taken in the 1004th Meeting of the Collegiate Board held on December 5, 2019, RESOLVES TO:

Chapter I GENERAL PROVISIONS

Article 1. The criteria and procedures for generating the guarantee necessary for primary issuance of Decarbonization Credits (CBIOs), referred to in art. 14 of Law No. 13,576 of December 26, 2017, in an amount proportional to the eligible volume of biofuel produced, imported, and traded, and considering the Energy-Environmental Efficiency Rating, are hereby established.

Article 2. For purposes of this Resolution, the following definitions apply:

V – Decarbonization Credit (CBIO): a book-entry instrument for purposes of evidencing the individual target of the fuel distributor referred to in article 7 of Law No. 13,576 of 2017;

II – Fiscal Code for Transactions and Installments (CFOP): a document aimed at gathering in homogeneous groups in the tax books and documents, in the information guides, and in all data analyses the transactions and installments conducted by the taxpayers of the Tax on Industrialized Products (IPI) and of the Tax on the Circulation of Goods and Services (ICMS), as established by art. 5 of Convention with No Number of the Ministry of Economy of December 15, 1970;

III – primary issuer: producer or importer of biofuel authorized to operate by ANP, qualified to request the issuance of Decarbonization Credits in an amount proportional to the volume of biofuel produced or imported and traded, with regard to the Energy-Environmental Efficiency Rating included in the Certificate of Efficient Production of Biofuels, pursuant to art. 5, VII, of Law No. 13,576 of 2017;

IV – CBIO bookkeeping: issuance of book-entry Decarbonization Credits on behalf of a primary issuer by a bank or financial institution it has contracted;

V – CBIO retirement: proceeding carried out at the request of the holder of the credit to the bookkeeping agent who wants it to be definitely removed from circulation, which precludes any future trading of the retired credit, as defined in Ordinance No. 419 of November 20, 2019, of the Ministry of Mines and Energy – MME;

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VI – factor for issuance of CBIO: amount included in the Certificate of Efficient Production of Biofuels, calculated by applying the formula included in Schedule I, which shall be multiplied by the volume in liters informed in the Electronic Invoice (NF-e) to determine the amount of CBIOs to be booked;

VII – guarantee for issuance of CBIO: information required to ensure true issuance of the Decarbonization Credits related to the traded volumes of biofuels produced or imported and corresponding invoices and to the Certificates of Efficient Production of Biofuels granted, renewed, suspended, cancelled, or expired, with data of the producer or importer of biofuels, of the Energy-Environmental Efficiency Rating, of the effectiveness of the certificate, among other things, pursuant to art. 9, ¶ 1, of Law No. 13,576 of 2017; and

VIII – CBIO Platform: tool to be made available by a company contracted by ANP to provide computer services aiming at generating information required for ensuring true issuance of CBIOs and monitoring and control of the annual mandatory targets of reduction in emissions of greenhouse gases for fuel distributors.

Chapter II

GENERATION OF A GUARANTEE FOR THE ISSUANCE OF CBIOS

Article 3. The information necessary for issuance of the CBIOs shall be generated through the CBIO Platform, and the primary issuer shall pay for the service of generation of guarantee for the issuance of CBIO, by Electronic Invoice (NF-e) analyzed.

Article 4. To generate a guarantee for the issuance of CBIO, the primary issuer shall request the bookkeeping of the CBIOs through the CBIO Platform, within sixty days of the date of issuance of the Electronic Invoice certifying the commercialization of the biofuel it has produced or imported.

Paragraph 1. The granting of the request referred to in the main section shall only occur if the primary issuer has an agreement entered into with the company contracted by ANP for availability of the CBIO Platform.

Paragraph 2. For purposes of generation of a guarantee for CBIOs, only Electronic Invoices issued by the primary issuer as of December 24, 2019, shall be accepted, provided that, on that date, it already has the Certificate of Efficient Production of Biofuels.

Paragraph 3. For the primary issuer who has obtained the Certificate of Efficient Production of Biofuels after December 24, 2019, the request for generation of a guarantee for the issuance of CBIOs shall only include the Electronic Invoices for commercialization of biofuels issued after the date of issuance of such certificate.

Paragraph 4. The biofuel volumes included in the Electronic Invoices used to generate a guarantee for the issuance of CBIO shall be consistent with the biofuel volume produced or imported by the primary issuer.

Article 5. In case of biofuel producers associated with a cooperative, to generate a guarantee for the issuance of CBIO, Electronic Sales Invoices issued by such cooperative to third parties shall be accepted, in a volume corresponding to the volume delivered for commercialization by the associated primary issuer.

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Paragraph 1. For the cases provided for in the main section, the primary issuer shall prove to ANP its association with the cooperative by providing:

I – the bylaws of the cooperative, evidencing its responsibility for the commercialization of the biofuel produced by the primary issuer; and

II – every three months, a declaration containing the biofuel production volume delivered exclusively for sale through the cooperative.

Paragraph 2. For purposes of determining the period provided for in art. 13, ¶ 2, of Law No. 13,576 of December 26, 2017, the date of sale of the biofuel by the cooperative from producers of biofuel established in the Electronic Invoice shall be used.

Article 6. The following conditions shall be taken into account for generating a guarantee for the issuance of CBIOs:

I – the Electronic Invoice informed in the request shall:

- a) include a valid access key for verification in the Brazilian Federal Revenue Office;
- b) be valid, with no later return or cancellation;
- c) include a biofuel;
- d) include a proof of receipt of the product by the recipient; and
- e) not have been previously used as a guarantee for the issuance of CBIO.

II – the request for issuance of a CBIO guarantee shall occur at least fifteen days and up to sixty days after the date of issuance of the bill of sale of the biofuel by the primary issuer;

III – The Fiscal Code for Transactions and Installments (CFOP), included in the Electronic Invoice, shall only represent transactions indicating sales, shipment of a future delivery, sales of production of the establishment delivered to the recipient for the account and the order of the original acquirer, and sales on order, pursuant to Schedule II; and

IV – the recipient of the Electronic Invoice shall be an economic agent authorized by ANP.

Paragraph 1. In case of commercialization of biomethane, the recipient referred to in item IV may be an economic agent registered with ANP.

Paragraph 2. In case of cancellation of an invoice or return of a volume of biofuel used to generate a CBIO guarantee, the primary issuer shall inform ANP about the fact through the CBIO Platform within 48 hours.

Paragraph 3. The amount of CBIOs generated by a cancelled Electronic Invoice, whose volume of biofuels has been returned or does not satisfy the conditions provided for in this article, shall be deducted from the right to issuance of CBIOs regarding the subsequent requests made by the primary issuer, in a volume equivalent to the Electronic Invoice that has been cancelled for purposes of issuance of CBIOs.

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Article 7. For purposes of generation of a guarantee for the issuance of CBIOs, the following shall not be taken into account:

- I – transactions whose CFOP indicates commercialization of biofuel for industrialization or export;
- II – commercialization, by a producing unit, of a biofuel acquired or received from third parties, after reprocessing, regardless of how the product is used; or
- II – commercialization, by a producing unit, of a biofuel acquired or received from third parties, regardless of how the product is used;
- IV – the biofuel sales transactions conducted between producers of biofuel or between a producer of biofuel and a company that trades ethanol whose final disposal is changed into a non-fuel market.

Sole paragraph. The issuance of CBIOs guaranteed in transactions listed in this article shall subject the offender to the penalties provided for in Law No. 9,847 of October 26, 1999.

Article 8. The amount of CBIOs guaranteed by each Electronic Invoice shall be calculated by multiplying the traded volume included in the Electronic Invoice by the Factor for issuance of CBIO included in the primary issuer's Certificate of Efficient Production of Biofuels.

Paragraph 1. The amount of CBIOs guaranteed by each Electronic Invoice shall be an integer.

Paragraph 2. If the digit of the first decimal place of the multiplication described in the main section is higher or equal to five, the amount of CBIOs guaranteed by the Electronic Invoice shall be rounded to the next integer.

Paragraph 3. If the digit of the first decimal place of the multiplication described in the main section is lower than five, the amount of CBIOs guaranteed by the Electronic Invoice shall be the integer of the multiplication.

Chapter III CBIO PLATFORM

Section I Access to the System

Article 9. The following may have access to the CBIO Platform:

- I – primary issuers;
- II – CBIO bookkeeping agents;
- III – fuel distributors; and
- IV – ANP and regulatory authorities.

Article 10. The primary issuer shall have access to the CBIO Platform to:

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I – request the issuance of CBIO guarantees; and

II – check CBIO guarantees that have been issued and that will be issued.

Sole paragraph. The access to the CBIO Platform shall be granted to the primary issuer upon execution of an administrative agreement with the company contracted by ANP, responsible for the availability of the CBIO Platform.

Article 11. The CBIO bookkeeping agent shall have access to the CBIO Platform to:

I – check CBIO guarantees of the primary issuers with whom it has an agreement; and

II – upload information on booked and retired CBIOs.

Article 12. The fuel distributor shall have access to the CBIO Platform to check:

I – its target set for the current year; and

II – the total CBIOs it has retired for purposes of achieving its target.

Article 13. The procedures for request and granting of authorization to access the CBIO Platform shall be subject to a specific document published on ANP's website.

Section II

Amounts and Payment for Access to the CBIO Platform

Article 14. The amounts related to the generation of a guarantee for the issuance of CBIOs through the CBIO Platform to be paid by the primary issuer to the company contracted by ANP shall be established by ANP in an Order and published on its website.

Paragraph 1. The purpose of the amounts charged for the generation of a guarantee for the issuance of CBIOs is to pay the expenses arising from the availability of the CBIO Platform properly and proportionally.

Paragraph 2. The amounts referred to in the main section shall be adjusted based on the variation of the Information Technology Cost Index (ICTI), calculated by the Institute of Applied Economic Research – IPEA, accrued in the last twelve months after the date of publication of the Order.

Paragraph 3. The amounts referred to in the main section may change according to the volume of invoices processed by the CBIO Platform.

Chapter IV

PENALTIES

Article 15. Failure to comply with the provisions in this Resolution shall subject the offender to the penalties provided for in Law No. 9,847 of October 26, 1999, without prejudice to other applicable sanctions.

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Paragraph 1. When the fine set forth in Law No. 9,847 of October 26, 1999, does not correspond to the advantage obtained as a result of an undue generation of a guarantee for the issuance of CBIOS, a cancellation penalty shall be imposed for the Certificate of Efficient Production of Biofuels, as well as a temporary full or partial suspension penalty for the operation of facilities of the producer or importer that holds the Certificate of Efficient Production of Biofuels.

Paragraph 2. The advantage obtained as a result of an undue generation of a guarantee for the issuance of CBIOS shall be measured based on the amount of CBIOS generated and on the average CBIO price in effect in the year when the nonconformity was detected.

Article 16. The administrative sanction shall be applied by means of an administrative proceeding initiated to investigate the infraction of this Resolution, being the right to legal defense and adversary proceeding ensured under Law No. 9,784 of January 29, 1999, and Decree No. 2,953 of January 28, 1999.

Chapter V FINAL PROVISIONS

Article 17. In case of suspension, cancellation, or expiration of the Certificate of Efficient Production of Biofuels held by the producer or importer, the CBIOS issued during the effective period of the certification shall remain valid for all purposes.

Article 18. ANP Resolution No. 758 of November 23, 2018, hereby becomes effective with the following wording:

Article 19. Item I of art. 26 of ANP Resolution No. 758 of November 23, 2018, is hereby revoked.

Article 20. This Resolution becomes effective as of the date of its publication.

SCHEDULE I (referred to in art. 2, item V, of ANP Resolution No. 802 of December 5, 2019)

Formula to Calculate the Factor for issuance of CBIO:

$$f = NEEA * f_{\text{eligible}} * 100 * Q * PCI * 10^{-6}$$

Where:

f is the factor for issuance of CBIO;

NEEA is the Energy-Environmental Efficiency Rating, in gCO₂eq/MJ;

f_{eligible} is the eligible fraction of the biofuel volume, in %;

Q is the specific biofuel mass, in t/m³;

PCI is the lower heating value of the biofuel, in MJ/kg.

SCHEDULE II (referred to in art. 6, item III, of ANP Resolution No. 802 of December 5, 2019)

Table 1 – Ethanol commercialization transactions that generate a guarantee for the issuance of CBIO

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Issuer of the Invoice	Recipient of the Invoice	CFOP	CST(1)	Additional information
Ethanol producing unit with a Certificate of Efficient Production of Biofuels	* Fuel distributor * Ethanol Commercialization Company * Producer of ethanol	* 5652 * 6652 * 5653 * 6653 * 5109 * 6109	0	The CBIO shall take into account the Energy-Environmental Efficiency Rating (NEEA) of the producing unit issuing the Invoice.
Importer of ethanol with a Certificate of Efficient Production of Biofuels	* Fuel distributor Ethanol Commercialization Company	* 5655 * 6655	1	Identification of source
Cooperative producers of ethanol	* Fuel distributor * Ethanol Commercialization Company	* 5655 * 6655	0	National Register of Legal Entities Enrollment Number (CNPJ) of a biofuel producing unit holding a Certificate of Efficient Production of Biofuels, associated with the issuer of the invoice, pursuant to article 4, ¶2

(1) Tax Status Code

Table 2 – Biodiesel commercialization transactions that generate a guarantee for the issuance of CBIO

Issuer of the Invoice	Recipient of the Invoice	CFOP	CST(1)	Additional information
Biodiesel producing unit with a Certificate of Efficient Production of Biofuels	Acquirer of the biodiesel auction	* 5118 * 6118	0	-
Biodiesel producing unit with a Certificate of Efficient Production of Biofuels	* Fuel distributor * Final user	* 5652 * 6652 * 5653 * 6653 * 5109 * 6109	0	-

(1) Tax Status Code

Table 3 – Biomethane commercialization transactions that generate a guarantee for the issuance of CBIO

Issuer of the Invoice	Recipient of the Invoice	CFOP	CST(1)	Additional information
Biomethane producing unit with a Certificate of Efficient Production	-	* 5652 * 6652 * 5653 * 6653 *	0	-

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of Biofuels		5109 * 6109		
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(1) Tax Status Code