



**MINISTRY OF INDUSTRY, FOREIGN TRADE, AND SERVICES
BRAZILIAN PATENT AND TRADEMARK OFFICE**

NORMATIVE INSTRUCTION No. 095/2018 OF DECEMBER 28, 2018.

Summary: It establishes the conditions for the registration of Geographical Indications

THE PRESIDENT AND THE OFFICER OF TRADEMARKS, INDUSTRIAL DESIGNS, AND GEOGRAPHICAL INDICATIONS OF THE BRAZILIAN PATENT AND TRADEMARK OFFICE – INPI, by using the legal powers vested in them, set forth in Decree No. 8,854 of September 22, 2016,

CONSIDERING that INPI's main purpose is to enforce the provisions that regulate Industrial Property, given its economic, social, legal, and technical functions,

CONSIDERING the increasing relevance of Geographical Indications for the economy, and

CONSIDERING, also, the need to grant the proper protection to the Geographical Indications in Brazil,

RESOLVE TO:

Article 1. Establish the conditions for the registration of the Geographical Indications in INPI.

Sole paragraph. The registration referred to in the chapeau of this article is declaratory and entails the acknowledgement of the Geographical Indications.

Article 2. For the purposes of this Normative Instruction the Indication of Provenance or the Denomination of Origin constitutes Geographical Indication.

Paragraph 1. Indication of Provenance is the geographic name of a country, city, region, or location in a territory that has become known as a center of extraction, production, or manufacturing of a certain good or provision of a certain service.

Paragraph 2. Denomination of Origin is the geographic name of a country, city, region, or location in a territory that designates the good or service which qualities or characteristics are an exclusive or essential result of the geographic environment, including natural and human factors.

Paragraph 3. Geographical name or its demonym, which may be accompanied by the name of the good or service, is the name commonly used to refer to a particular place, to a feature, or to an area whose identity is recognized in the surface of the Earth.

Paragraph 4. For purposes of Indication of Provenance, the geographical name is considered to have become known when expressly mentioned, by different sources, as a center of extraction, production, or manufacturing of the good or provision of the service identified.

Paragraph 5. The following definitions are considered for purposes of Denomination of Origin:

I. Natural factors are the geographical elements related to the natural environment, such as the soil, relief, climate, flora, fauna, among others, which influence the qualities or characteristics of the good or service;

II. Human factors are the typical elements of the community that produces the good or provides the service, such as the local know-how, including the development, adaptation, or improvement of its own techniques.

III. Qualities are the attributes of the good or service, or of the production chain or provision of services, that may be technically evidenced and measured;

IV. Characteristics are traits or properties inherent in the good or service, or of the production chain or provision of services.

Article 3. The provisions in this Normative Instruction are also extended to the graphic or figurative representation of the Geographic Indication, as well as to the geographic representation of a country, city, region, or location in a territory which name is a Geographic Indication.

Sole paragraph. The verbal element of the graphic representation shall be identical to the Geographical Indication applied for.

NON-REGISTRABLE TERMS

Article 4. Terms that are likely to cause confusion, that reproduce, imitate, or are constituted by the following, are non-registrable as Geographical Indication:

I – geographical name or its demonym that has become commonly used, designating a good or service;

II – name of a plant variety, cultured or otherwise, that is registered as cultivar, or which is commonly used or existing in the Brazilian territory on the date of the application;

III – name of an animal breed that is commonly used or existing in the Brazilian territory on the date of the application;

IV – homonym of a Geographical Indication already registered in Brazil to identify an identical or similar good or service, except if there is material differentiation in the distinctive sign.

APPLICANTS AND USERS OF THE REGISTRATION

Article 5. Any association, union, or any other entity that may act as procedural representatives by virtue of the law may apply for a Geographical Indication registration.

Paragraph 1. The procedural representative must have its principal place of business in the relevant territory and represent the lawful group to apply for registration of the geographical indication.

Paragraph 2. The corporate structure of the representative must be formed fully or predominantly by participants of the production chain of the relevant good or service.

Paragraph 3. In the event that there is, in the location, a single manufacturer or service provider with eligibility to use the Geographical Indication, this person shall be authorized to apply for the registration.

Paragraph 4. For foreign Geographical Indication already recognized in its country of origin, or by competent international entities or bodies, the registration shall be applied for by the lawful applicant for the Geographical Indication in the country of origin.

Article 6. The manufacturers and service providers with their principal place of business in the relevant location may use the Geographical Indication, as long as they comply with the provisions of the list of technical specifications and are subject to concentrated control.

Sole paragraph. The absence of bond of the manufacturer or service provider with the procedural representative is not an obstacle to the use of the Geographical Indication.

APPLICATION

Article 7. The application for Geographical Indication shall refer to a geographical name and shall contain:

I – Application for Geographical Indication (model I);

II – List of technical specifications, which includes:

- a) The geographical name, as described in paragraph 3 of art. 2;
- b) Description of the good or service object of the Geographical Indication;
- c) Delimitation of the geographical area, according to the official instrument, using the rules of the National Cartographic System in effect, except for the geographical indications located outside the national territory;
- d) In an application for Indication of Provenance, the description of the process of extraction, production, or manufacturing of the good or provision of the service, through which the geographical name became known;
- e) In an application for Denomination of Origin, the description of the qualities or characteristics of the good or service that occur exclusively or essentially due to the

geographical environment, including natural and human factors, and its process of obtaining or provision;

f) Description of the control mechanism for manufacturers or service providers with the right to use the Geographical Indication, as well as to the good or service identified thereby;

g) Conditions and prohibitions of use of the Geographical Indication; and

h) Any sanctions applicable to the infringement of the provisions in item g)

III – Power of Attorney, as the case may be;

IV – Proof of payment of the corresponding fee;

V – Evidence of eligibility of the applicant, through:

a) Bylaws registered in the competent organ, providing for: the representation of the manufacturers and service providers; the direct relationship with the chain of the good or service object of the Geographical Indication; the possibility to file the application; the objective of managing the Geographical Indication; the territorial scope of action encompassing the area of the Geographical Indication;

b) Registered minutes of the General Meeting with the approval of the Bylaws;

c) Registered minutes of the takeover of the current Board of Executive Officers;

d) Registered minutes of the General Meeting with the approval of the list of technical specifications, accompanied by an attendance list indicating the manufacturers or providers of the service to be identified by the Geographical Indication;

e) Copy of the identity card and Individual Taxpayer's Register (CPF) of the legal representatives of the procedural representative; and

f) Declaration, under penalty of law, that the manufacturers or service providers and other operators have their principal place of business in the defined area, pursuant to model II, with their identification and qualification;

VI – With respect to the Indication of Provenance, documents evidencing that the geographical name has become known as a center of extraction, production, or manufacture of the good or provision of the service;

VII – With respect to the Denomination of Origin, documents evidencing the influence of the geographic environment on the qualities or characteristic of the good or service, and it must include the descriptive elements:

a) Of the geographical environment, including natural and human factors;

b) Of the qualities or characteristic of the good or service; and

- c) Of the causal relation between items “a” and “b”.

VIII – Official instrument that delimits the geographical area:

- a) Including the basis regarding the geographical delimitation submitted according to the type of Geographical Indication applied for;
- b) Issued by the competent authorities of each State, which are, in Brazil, within the specific scope of its competences, the Federal Government, represented by the Ministries related to the good or service distinguished by the Geographical Indication, and the States, represented by the Offices related to the good or service distinguished by the Geographical Indication.

IX – If that is the case, the graphic or figurative representation of the Geographic Indication, or the geographic representation of the country, city, region, or location in the territory.

Paragraph 1. In case there is a single manufacturer or service provider authorized to apply for the Geographical Indication, as provided for in paragraph 3 of art. 5 of this Normative Instruction, the submission of the documents listed in item V of art. 7 of the same Normative Instruction is not required.

Paragraph 2. The applicant referred to in paragraph 1 shall submit a declaration, under penalty of law, stating that he/she is the only manufacturer or service provider established in the delimited area, according to model III.

Article 8. For foreign Geographical Indications already acknowledged in their country of origin, or acknowledged by competent international organisms or entities, the applicant shall submit the same documents and information required of the Brazilian citizens, except for cases in which reciprocal treatment with Brazilians is ensured.

Sole paragraph. In cases of reciprocal treatment, foreign applicants shall submit a copy of the document that acknowledged the Geographical Indication in the country of origin, plus the elements provided for in item II of art. 7 and the documents provided for in items I, III, IV, VIII, and IX of art. 7, all in Portuguese language.

Article 9. The Geographical Indication application, as well as the petitions of any type (model IV) and requests for copies (model V), shall be delivered to INPI’s receptions, by mail with delivery confirmation (AR) addressed to INPI’s headquarters in Rio de Janeiro.

Paragraph 1. Applications filed and petitions submitted by mail are presumed to have been received on the sending date or on the on the subsequent business day if it they were sent on a Saturday, Sunday, or holiday, and at the time of discontinuance of the activities of INPI’s reception, in Rio de Janeiro.

Paragraph 2. If the application or petition have been submitted by mail and supplementary copies have been included to be sent back as a response to the applicant, one (1) additional envelope shall be included, addressed and sealed, for the

supplementary copies to be sent back by mail, and INPI is not liable for losses. In the absence of such addressed and sealed envelope, those supplementary copies shall be available for the applicant to pick up at INPI's reception in Rio de Janeiro.

Paragraph 3. All documents submitted shall include an informative title, preferably using the same nomenclatures provided for in art. 7 of this Normative Instruction.

Paragraph 4. All documents of the application shall be submitted in A4 sheets, for purposes of reproduction and visualization.

Paragraph 5. The sheets shall include the text inside the following margins:

Top 3 cm

Left 3 cm

Right 2.5 cm

Bottom 2.5 cm

Article 10. Filing is the act in which INPI files the Geographical Indication application using a specific numbering.

PRELIMINARY EXAMINATION

Article 11. Once the Geographical Indication application has been filed, it shall be subjected to a preliminary examination to verify the presence of the documents provided for in art. 7.

Paragraph 1. During the preliminary examination, amendments may be required for the rectification of the application.

Paragraph 2. The amendments shall be responded to within sixty (60) days of their publication, under penalty of definitive dismissal of the application.

Paragraph 3. INPI may recommend, as an amendment, the change of the type of Geographical Indication so that it suits better the content of the application.

Paragraph 4. In case there is any obstacle to the progress of the examination, the application may be suspended.

Article 12. Once the application has been rectified, the preliminary examination shall be deemed completed, and the application shall then be published for interested third parties to respond to.

Paragraph 1. The publication of the application for third parties to respond to shall be accompanied by the list of technical specifications of the Geographical Indication and by the official instrument that delimits the geographical area.

Paragraph 2. The term for third parties to respond is sixty (60) days of the date of publication of the application.

Paragraph 3. Once the term set forth in the preceding paragraph has elapsed, if there is a third-party response, it shall be published, and the applicant may respond to it, if interested, within sixty (60) days.

Paragraph 4. The responses of the third parties and of the applicant shall be analyzed during substantive examination.

SUBSTANTIVE EXAMINATION

Article 13. Once the terms established in art. 12 have elapsed, the substantive examination of the application shall be carried out, during which amendments may be required for clarification of issues related to merits.

Paragraph 1. The amendments shall be responded to within sixty (60) days of their publication, under penalty of definitive dismissal of the application.

Paragraph 2. INPI may recommend, as an amendment, the change of the type of Geographical Indication so that it suits better the content of the application.

Paragraph 3. In case there is any obstacle to the progress of the examination, the application may be suspended.

DECISION

Article 14. Once the substantive examination has been carried out, a decision of grant or refusal of the application for Geographical Indication shall be issued, with the respective publication.

Paragraph 1. If the registration has been granted, the respective certificate shall be issued simultaneously, and it shall be made available for the applicant in INPI.

Paragraph 2. The application shall be refused whenever there is no compliance with the prohibitions and requirements provided for in Law No. 9,279/1996, in this Normative Instruction, and in the regulatory acts related to Geographical Indications issued by INPI.

CHANGES IN THE REGISTRATION

Article 15. After the registration of the Geographical Indication, the following may be changed:

I – The geographical name and its graphic or figurative representation;

II – The delimitation of the geographical area;

III – The list of technical specifications of the Geographical Indication;

IV – The type of Geographical Indication.

Paragraph 1. The changes in the registration of the Geographical Indication may only be requested after twenty-four (24) months of the date of registration.

Paragraph 2. The request for change may include more than one change.

Paragraph 3. Typical elements that supported the grant of the Geographical Indication may not be changed, under penalty of refusal of the request for change.

Article 16. The request for change shall be filed with INPI, and shall include:

I – Request for change to the Geographical Indication registration (model VI);

II – Substantiated justification for the change;

III – List of technical specifications amended and approved in registered minutes of the General Meeting;

IV – Power of attorney, if that is the case;

V – Proof of payment of the corresponding fee; and

VI – Evidence of the applicant's eligibility, pursuant to item V and paragraphs 1 and 2 of art. 7 of this Normative Instruction.

Paragraph 1. The eligibility to request the change in the registration of the Geographical Indication is the responsibility of the procedural representative who filed the application with INPI or who actually or lawfully succeeds that individual or legal entity.

Paragraph 2. With respect to the change in the registration referring to the delimitation of the geographical area, the eligibility will be extended to the individuals or legal entities directly interested, as long as such situation is evidenced and that the good or service is upon the conditions that justified the acknowledgement of the Geographical Indication.

Paragraph 3. The changes proposed must be compatible with the maintenance of the quality and genuineness of the good or service in order to respect the conditions that justified the acknowledgement of the Geographical Indication, namely:

a) the qualities or characteristics due exclusively or essentially to the geographical environment, including natural and human factors, in case of a Denomination of Origin; or

b) having become known as a center of extraction, production, or manufacturing of a certain good or provision of a certain service, in case of an Indication of Provenance.

Paragraph 4. Each change requested shall present specific reasons, the grounds for the justification, as well as the comparison with the original document.

Paragraph 5. A new change for the same requirement may only be requested after twenty-four (24) months of the date of approval or refusal of the prior request.

Article 17. In addition to the provisions in art. 16, the request for change in the geographic name shall contain:

I – Official instrument that delimits the geographical area, with the correction of the corresponding geographical name, pursuant to the provisions in item VI of art. 7 in case of an Indication of Provenance; and

II – The graphic or figurative representation of the Geographical Indication or geographical representation of a country, city, region, or location of the territory, as the case may be.

Paragraph 1. The request for change in the geographical name is limited to the inclusion or elimination: a) of a portion of the recognized geographical name, maintaining the original core; and

b) of the name of the good or service.

Paragraph 2. The request for change in the geographical name does not mandatorily entail the change in the geographical area defined.

Article 18. In addition to the provisions in art. 16, the request for change in the geographical area shall contain an official instrument presenting the new defined area, pursuant to the provisions in item VIII of art. 7.

Paragraph 1. The request for expansion of the geographical area related to the Indication of Provenance shall evidence that the area added has become known as a center of extraction, production, or manufacturing of a certain product or provision of a certain service, as well as in the area originally defined.

Paragraph 2. The request for expansion of the geographical area related to the Denomination of Origin shall evidence that the area added has the same conditions designating a good or a service which qualities or characteristics are due exclusively or essentially to the geographical environment, including natural and human factors, as well as in the area originally defined.

Paragraph 3. The request for reduction in the geographical area shall take into account the manufacturers or service providers already located in the defined geographical area and the conditions justifying its recognition.

Paragraph 4. The request for change in the geographical area does not mandatorily entail the change in the geographical name.

Article 19. The request for change in the list of technical specifications is restricted to:

I – description of the good or service;

II – description of the processes of extraction, production, or manufacturing of the good or provision of the service in case of Indication of Provenance;

III – description of the qualities or characteristics of the product or service and its process of obtaining or provision, in case of Denomination of Origin;

IV – description of the control mechanism for manufacturers or service providers with the right to use the Geographical Indication, as well as to the good or service identified by the Geographical Indication;

V – conditions and prohibitions of use of the Geographical Indication;

VI – any sanctions applicable to the infringement of the provisions in item V of this article.

Sole paragraph. The request for change including a good or a service different than the one included in the registration will not be examined.

FUNGIBILITY OF THE REGISTRATION

Article 20. The request for change of a type of Geographic Indication into another shall meet the conditions provided for in this Normative Instruction.

Paragraph 1. The manufacturers or service providers already in the previously defined geographical area may not be excluded or hindered by the change.

Paragraph 2. The coexistence of a previous registration and a subsequent registration, arising from the former, will not be allowed.

Paragraph 3. The change may only be requested after twenty-four (24) months of the granting of registration of the Geographical Indication.

Article 21. The request for change shall be filed with INPI, contain the documents provided for in art. 16, and:

I – In case of changing a Denomination of Origin for an Indication of Provenance, documents evidencing that the geographical name has become known as a center of extraction, production, or manufacture of the good or provision of the service shall be submitted;

II – In case of changing an Indication of Provenance for a Denomination of Origin, a document shall be submitted supporting the following specificities:

- a) The geographical environment, including natural and human factors;
- b) The qualities or characteristic of the good or service; and
- c) The causal relation between items “a” and “b”;

Sole paragraph. The eligibility to request the change in the registration of the Geographical Indication is the responsibility of the procedural representative who filed

the application for Geographical Indication with INPI or who actually or lawfully succeeds that individual or legal entity.

EXAMINATION OF THE REQUEST FOR CHANGE IN THE REGISTRATION

Article 22. The request for change shall follow the same procedural steps as the application, as provided for in articles 11 to 14 of this Normative Instruction.

Paragraph 1. If the request for change is granted, when applicable, a new certificate of registration shall be issued, containing the change requested.

Paragraph 2. If the request for change is refused, the conditions of the original registration shall prevail.

REQUESTS FOR APPEAL

Article 23. INPI will examine the appeals filed as to the granting or refusal of the applications, as well as the requests for change in registration, pursuant to articles 212 to 215 of Law No. 9,279/1996

Sole paragraph. The appeal is not possible for the decision determining the final dismissal of the application for Geographical Indication.

TRANSITIONAL PROVISIONS

Article 24. For the Geographical Indications granted until the effectiveness of this Normative Instruction, the change to include the name of a good or service, as well as the relevant change in the graphic or figurative representation, may be requested at any time.

Article 25. For the applications filed before the effectiveness of this Normative Instruction, the change of the Geographical Indication to include the name of a good or service, as well as the relevant change in the graphic or figurative representation, may be requested before the granting of registration.

Sole paragraph. In case of failure to meet the term provided for in the chapeau of this article, the term for change shall be established in paragraph 1 of art. 15 of this Normative Instruction.

Article 26. The requirements as a result of preliminary examination established by this Normative Instruction are not applicable to the applications filed before the effectiveness of this Normative Instruction, already published for third-party response or that meet the conditions established by Normative Instruction No. 25/2013 for such publication.

GENERAL PROVISIONS

Article 27. The requirements provided for in this Normative Instruction, as well as any other document that guides them, must be submitted in Portuguese and, if there is a document in a foreign language, a simple translation shall be submitted.

Article 28. The legal provisions of general nature or technical specifications inherent in the production or provision of service, common in the segment, are exempted from the submission of a copy.

EFFECTIVENESS

Article 29. This Normative Instruction shall be effective sixty (60) days of its date of publication.

REVOCATION

Article 30. Normative Instruction INPI/PR No. 25 of August 21, 2013 is hereby revoked.

LUIZ OTÁVIO PIMENTEL
President

ANDRÉ LUIS BALLOUSSIER ANCORA DA LUZ
Officer of Trademarks, Industrial Designs, and Geographical Indications