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GUIDELINES ON THE IMPLEMENTATION OF THE SOCIAL AMELIORATION AND WELFARE PROGRAM FOR WORKERS IN THE BIOFUEL INDUSTRY UTILIZING MOLASSES AS FEEDSTOCK

DOLE Department Order No. 144, s. 2015, May 22, 2015

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I. Legal Basis

Section 11 (e) of Republic Act No. 9367, otherwise known as 'The Biofuels Act of 2006' provides for the role that the Department of Labor and Employment (DOLE) shall (1) Promote gainful livelihood opportunities and facilitate productive employment through effective employment services and regulation; (2) Ensure the access of workers to productive resources and social protection coverage; and (3) Recommend plans, policies and programs that will enhance the social impact of the National Biofuels Program (NBP).

Section 17 of the same Act mandates the National Biofuels Board (NBB) shall establish a similar mechanism provided under the Sugar Amelioration Act of 1991 or RA 6982 for the benefit of other biofuel workers.

Per authority granted under Joint Administrative Order No. 2008-1 Series of 2008, the Department of Labor and Employment (DOLE) shall be the implementing agency for the development and management of the Social Amelioration and Welfare Program (SAWP) for biofuel workers. In pursuance thereof, the foregoing Guidelines on the SAWP for Workers in the Biofuel Industry, using Molasses as feedstock, are hereby issued:

II. Definition of Terms

For purposes of these Guidelines, the following definitions shall apply:

- Act - refers to Republic Act No. 9367, otherwise known as the BiofueI Act of2006;

- Bioethanol - refers to ethanol (C2H2OH) produced from feedstock and other biomass that shall be technically proven and approved by the DOE for use in gasoline-fed engines, including hydrous ethanol, with quality specifications in accordance with the PNS, and for higher blends beyond the 10% blend, the DOE shall issue appropriate PNS;

- Bioethanol Producer - refers to any person or entity accredited by the DOE to engage in the production of PNS compliant bioethanol;

- Biofuel - refers to bioethanol and biodiesel and other fuels made from biomass and primarily used for motive, thermal and power generation with quality specifications in accordance with the PNS, and added or blended to petroleum fuels to enhance or alter the chemical or physical properties and improve performance/usage of the fuels;

- Bioethanol Plant - refers to the area of bioethanol production which includes, but not limited to the processing plant waste management facilities and other facilities directly related to bioethanol production;

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- Bioethanol Plant Worker - refers to the rank and file workers or employees in the bioethanol plant who are directly involved in the production of bioethanol;

- Bureau - refers to the Bureau of Workers with Special Concerns (BWSC) of the Department of Labor and Employment created under Executive Order No. 366 s 2007;

- Crop Year - refers to the 12-month milling period declared by the SRA. The crop year commences September 1 and ends August 31 of the following year;

- Delivery Receipt - refers to the document that evidences the quantity of sugarcane and/or molasses delivered to the bioethanol plant as feedstock in the production of bioethanol;

- DOE - refers to the Department of Energy created under Republic Act No. 7638, as amended;

- DOF - refers to the Department of Finance created under Administrative Order No. 127 and 127-A;

- DOLE - refers to the Department of Labor and Employment created under Executive Order No. 126, as amended;

- Feedstock - refers to organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum, oil palm and other biomass used in the production of biofuels;

- Lien - refers to the levy collected from the production of bioethanol utilizing molasses as feedstock, to support the Social Amelioration and Welfare Program for bioethanol plant workers;

- Liter Ethanol or LE - refers to the volume of bioethanol produced from sugarcane or molasses;

- Lkg - refers to a unit of measurement which is equivalent to 50 kilograms;

- Managerial Employee - refers to one is vested with power or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, pursuant to Rule 1, Book V of the Implementing Rules and Regulations of the Labor Code, as amended;

- Mill District - refers to a centrifugal sugar mill together with all plantations adherent thereto;

- PNS - refers to Philippines National Standards consistent with Section 26 of RA No. 8749 otherwise known as the “Philippine Clean Air Act of 1999”;

- Regional Office - refers to the Regional Office of the Department including its Provincial and other extension offices;

- SRA - refers to the Sugar Regulatory Administration of the Department of Agriculture created under Executive Order No. 18 s 1986; and

- TCC - refers to the Tripartite Consultative Council for SAWP in the Bioethanol Sector of the Biofuel Industry tasked to be the advisory body to the DOLE in the policy and program development and implementation of SAWP.

III. Objectives

- Promote gainful livelihood opportunities;

- Facilitate productive employment through effective employment services and regulations; and

- Ensure the access of workers to productive resources and social protection coverage.

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IV. Coverage

- Employers who are Bioethanol Producers duly accredited under RA 9367 or existing laws, who own and operate bioethanol producing plant; that uses molasses as feedstock.

- Workers or Employees of bioethanol producing plants whose names appear in the payroll of Bioethanol Producer including those “who are employed through an agency or contractor who are directly involved in the production of bioethanol utilizing molasses, except managerial employees.

V. Tripartite Consultative Council

- The DOLE shall create a Tripartite Consultative Council for SAWP in the Bioethanol Sector of the Biofuel Industry (TCC SAWP) composed of representatives of management, labor and government sectors, which shall serve as the advisory body of the Department in policy-making, program implementation and monitoring of the SAWP for bioethanol workers.

- Local TCCs shall likewise be created as may be necessary.

- The BWSC and the Regional Office concerned shall provide secretariat and technical support to the TCC and LTCC, respectively.

VI. The BWSC and DOLE Regional Offices

- Role of the BWSC

a.

Assist the DOLE Secretary in carrying out the provisions of these guidelines and developing other related policies, and procedures;

b.

Opening and maintaining an interest bearing bank account in an authorized government depository bank under the name of the Department of Labor and Employment, for which SAWP lien will be deposited as a trust in behalf of the biofuel workers;

b.

Monitor and report the status of compliance on the collection and remittance of the SAWP lien including the utilization of SAWP fund;

c.

Coordinate, monitor and evaluate the social and economic programs, projects and activities undertaken pursuant to these guidelines;

d.

Provide technical assistance and support to the Regional Offices in implementing the SAWP for bioethanol workers;

e.

Develop appropriate manual of operations and procedures as may be necessary for the effective and efficient implementation of the SAWP; and

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f.

Prepare reports to the DOLE Secretary on the program.

2. Role of the DOLE Regional Offices

- Conduct advocacy and information dissemination on relevant policies and projects on the SAWP for bioethanol workers;

- Enforce compliance of all concerned producers on the collection and remittance of the SAWP lien;

- Provide technical assistance to the program stakeholders on the development, implementation, of social and economic projects;

- Monitor and evaluate the status of programs and projects implemented at the regional level;

- Submit to the DOLE Secretary, through the TCC, periodic reports and status on SAWP implementation including the required financial reports;

- Provide secretariat and technical support to the local TCCs, as may be created; and

- Perform such other functions as may be deemed necessary.

VII. Management of the Lien

- Nature and Purpose

A lien shall be imposed and collected for the implementation of Social Amelioration and Welfare Program (SAWP) for workers engaged in the bioethanol production using molasses as feedstock. It shall be primarily utilized to improve the socio-economic well-being of the bioethanol plant workers and their dependents.

- Fund Allocation, Budget and Audit

- Ninety five percent (95%) of the Fund shall be allocated for the social and economic programs and projects for distillery workers of the bioethanol plant to be distributed as follows:

a.1

Fifty per cent (50%) for livelihood assistance;

a.2

Twenty per cent (20%) for training and educational assistance;

a.3

Fifteen per cent (15%) for social protection and welfare benefits; and

a.4

Ten per cent (10%) for emergency assistance.

- Five per cent (5%) of the Fund shall be for the management and implementation of the SAWP by the DOLE and for the operation of TCC or local consultative bodies that may be created;

- For the implementation of programs and projects that will benefit the bioethanol plant workers and their dependents, the same allocation as provided under RA 6982 may be followed, unless other allocation scheme as may be recommended by the Tripartite Consultative Council and approved by the DOLE Secretary.

- The BWSC, in collaboration with the TCC, shall prepare an annual budget for the above purpose, to be approved by the Secretary; and

- The said fund shall be audited by the Commission on Audit (COA).

- Amount Lien

- The SAWP lien on molasses-based bioethanol shall be equal or equivalent to the lien share of sugar mill imposed on raw sugar produced as provided under Republic Act 6982 or the Sugar Amelioration Act of 1991. To ensure equivalent collection of SAWP lien, conversion of the amount of SAWP lien collected per 50 kilogram (Lkg) of raw sugar produced shall be computed and multiplied by 35% or percentage share of nearest operating sugar mill district as industry practice.

The following computation shall be observed to determine the equivalent

SAWP lien per liter of molasses-based bioethanol produced:

Equivalent Lien/liter = Lien on raw sugar produced x No. of Lkg per TC

x 35% share of bioethanol plant

No. of Liter Ethanol per TC

= Php7.90513 Lkg x 1.70Lkg_per TC x 35% share of bioethanol plant

70 LE per TC

= Php0.19 per liter on bioethanol x 35% share of bioethanol plant

= Php0.07 per liter of molasses-based bioethanol

- Collection and Remittance of the SAWP Lien

- Collection

a.1

The Bioethanol Producer shall immediately collect the SAWP lien of Php0.07 per liter of molasses-based ethanol upon production and sale as may be evidenced by delivery receipt (DR) and Official Receipt (OR).

- Remittance

b.1

The Bioethanol Producer shall directly remit to the DOLE-SAWP Bioethanol Collection Account maintained at the Land Bank of the Philippines, Intramuros Branch, the 100% SAWP Lien due from Molasses-based Bioethanol

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produced and sold, not later than the 15th day after the reference month

- Penalty of Non-Remittance of SAWP Lien Collection

A penalty of ten percent (10%) per month on the unremitted SAWP lien collection shall be imposed upon the violator. Such penalties for non- remittance of lien collected shall accrue to the social and economic programs for the bioethanol plant workers.

- Required Report

For purposes of monitoring, the Bioethanol Producer shall prepare and submit the following reports:

d.1

Bioethanol Plant Using Molasses as Feedstock.

The Bioethanol Producer shall submit to the DOLE Regional Office a Monthly Report of Molasses Purchased/Processed, Lien Collection and Remittance within fifteen (15) working days from the end of the reference month. If using different classes of molasses, a separate report for each class of molasses shall be submitted.

d.2

Bioethanol Plant Using Multiple Feedstock.

The Monthly Reports on Bioethanol Produced, Lien Collection and Remittance per Feedstock shall be prepared by the Bioethanol Producer and submitted to the DOLE Regional Office within working fifteen (15) days from the end of the reference month.

Submission of the above reports shall be supported/accompanied by copies of the deposit slips or bank statements duly validated by the depository bank.

- Program Monitoring and Supervision

e.1

Complementation Scheme on Monitoring SAWP Lien Collection.

The DOLE shall establish with the Sugar Regulatory Administration (SRA), the Department of Energy (DOE), the Department of Finance (DOF) and other concerned implementing agencies, a complementation scheme for the proper monitoring of molasses purchased and processed for ethanol production, and for the timely collection of the SAWP lien.

e.2

Manual of Operation

The DOLE thru the BWSC shall formulate the Social Amelioration and Welfare Program Operation Manual, including the Accounting and Management Reporting Systems of the SAWP-Related Funds, pursuant to Section 17 of RA 9367. Consultation with the stakeholders may be conducted, as necessary.

VII. Mechanics for the Availment and Implementation of Programs

- Availment of SAWP Benefits.

- The following may propose socio-economic project for bioethanol workers:

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a.1

Accredited and SAWP lien contributing Bioethanol Producers;

a.2

Duly registered workers' organizations; and/ or

a.4

The Department of Labor and Employment.

- The workers of the distillery/plant should be members of registered or duly accredited organizations with the Department of Labor and Employment or any government registering organization;

- The benefits provided under these guidelines shall not in any way reduce any benefit, interest, right or participation already enjoyed by the workers. No amount received by any worker under these guidelines shall be subject to any form of taxation.

- Before and after receipt of the financial and welfare benefits in the form of cash by the worker, the same cannot be subject to attachment, garnishment, levy or seizure by virtue of or under any legal process except to pay any debt of the worker or whenever expressly authorized in satisfaction of his/her legal obligation.

- SAWP Benefits

The following benefits and other benefit scheme as may be recommended by the Tripartite Consultative Council and approved by the DOLE Secretary may be availed by distillery workers including their dependents:

- Livelihood Assistance shall include a package of direct services to establish or improve and expand workers' existing livelihood assets and transform these into sustainable livelihood and community enterprises that can provide supplemental income for their families and communities. The services shall include training on entrepreneurship and enterprise development, provision of tools and equipment, materials including initial start up working capital;

- Training and Vocational Education Assistance shall include skills training and retraining to enhance organizational and community development, financial literacy, network building and other capacity building assistance to promote entrepreneurship; provision of stipends or allowance to deserving biofuel workers and their dependents for technical vocational education or tertiary assistance toward developing skilled manpower in the industry;

- Social Protection and Welfare Benefits shall include package of services that will promote work improvement, productivity, safety and health; promote basic preventive health care, nutrition and hygiene practices; conduct of medical and dental missions; and other strategies to reduce their vulnerabilities against job loss and/or health risks; and

- Emergency Assistance shall include assistance against unexpected or catastrophic events such as earthquake, typhoons, landslides, flooding, prolonged drought and other emergencies. It covers the provision of food relief and cash assistance, emergency employment program and other services to eligible workers. Likewise, emergency assistance may also be provided in the event of economic displacement due to mergers, closures or retrenchments for purpose of providing start-up capital for self-employment and enterprise development.

- Processing, Release, Utilization and Audit of the Project Fund

- The DOLE Regional Offices or units may provide technical assistance to the proponents in the preparation of

project proposals, when necessary or as requested.

- The RO/BWSC, shall take appropriate action on the project proposals intended to benefit bioethanol workers.

- A Memorandum of Agreement (MOA) shall be entered into by the DOLE and the proponent, upon approval of the proposal.

- The release of the fund to the proponent shall be in accordance with the government accounting and auditing rules and procedures.

- The proponent shall utilize the SAWP fund received from DOLE exclusively for the intended purpose and in accordance with the guidelines.

- The proponent shall keep and maintain separate books of account, subsidiary records and combo/savings bank account for SAWP fund received from DOLE which shall be subject to the visitorial audit and examination of the DOLE and/or the Commission on Audit (COA).

- The proponent shall submit to DOLE the required physical and financial reports on the project.

- Acquisition and Disposition of Equipment and Machinery

- No purchase of equipment and machinery shall be allowed, unless authorized in writing by the DOLE Secretary or his/her authorized representative as contained in the approved project proposal.

- As a general rule, authorized procurement of equipment and machinery shall be made through competitive bidding. All supporting documents relative to the purchase of said items shall form part of the liquidation report to be submitted to the DOLE.

- In the event that a particular project ceases its operation or the proponent organization disintegrates, any equipment and machinery acquired out of the project fund shall be submitted and turned over by the proponent to DOLE for proper disposition, subject to accounting and auditing rules.

- The BWSC/concerned DOLE Regional Office shall maintain an inventory of assets, equipment and machinery derived from SAWP fund, subject to prescribed government rules on disposition thereof and execution of Deed of Donation as may be provided in the MOA.

VIII. Administrative Expense Fund and Program Management

- The 5% of the SAWP lien referred to as the Administrative Expense Fund (AEF) to be administered by the DOLE through the BWSC shall be utilized for the management and implementation of the SAWP and operation of the TCC and/or local consultative bodies.

- The BWSC shall prepare an annual operational budget relative to the implementation of the SAWP for approval of the Secretary.

- All disbursements thereof shall be made in accordance with existing government auditing rules and regulations.

- For accounting and management reporting purposes, the BWSC and concerned Regional Offices shall maintain separate books of accounts and other records, such as general and subsidiary ledgers, journals including related financial reports on transactions pertaining to SAWP Fund.

- In addition to the usual required financial reports, the Regional Offices and other program partners and implementors shall submit the following reports to the BWSC:

- Financial Report not later than the 20th day of the month after the reference quarter; and

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- Physical Report not later than the 20th day of the month after the reference quarter.

- The BWSC shall consolidate said reports and submit program and financial reports to the Secretary, copy furnished the TCC, the NBB and other concerned entities.

IX. Monitoring and Evaluation

- The DOLE, SRA, DOE and the DOF through the Bureau of Internal Revenue shall set up a complementary monitoring system on the bioethanol production and sales including employment and income generated due to bioethanol, including the development and maintenance of database on bioethanol workers, towards ensuring timely and accurate collection of the SAWP lien.

- Reportorial Requirement

2.1

The Bioethanol Producers shall submit to DOLE through the BWSC the following:

a)

Proof of monthly SAWP lien payment or copy of bank deposit slip;

b)

Report on volume and amount of feedstock used and bioethanol production volume and sales;

c)

List of rank and file workers in bioethanol plant, their position and employment status who are directly involved in the bioethanol production; and

d)

Other data or information as may be necessary.

- The DOLE through the BWSC/Regional Office shall validate the amount of SAWP lien remittance with records of delivery of feedstock used and bioethanol production reports from DOE records of bioethanol production data as provided by Bioethanol Producers.

- The BWSC shall be responsible for the development of monitoring and evaluation instruments for the SAWP lien collection, remittance and releases including projects implemented for bioethanol workers and their dependents.

X. Penalties and Sanctions/Resolution of Issues

- As provided for under Section 13 of the RA 9367, any person who willfully aids or abets in the commission of prohibited acts under Section 12 thereof or who causes of the commission of any such act by another shall be liable in the same manner as the principal.

- In case of association, partnership or corporation, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers, responsible for the violation.

- The DOLE Secretary shall recommend to NBB and DOE to suspend or stop the business operations of concerned biofuel producers for refusal to comply with the provisions of RA 9367 and/or these guidelines as well as to impose appropriate administrative fines and penalties for any violation, thereof.

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- The DOLE Secretary or his/her authorized representative shall recommend to the NBB or DOE the filing of appropriate case against any erring company, organization, person/s for any violation of these guidelines in the appropriate court.

- Issues arising from the implementation or interpretation of these guidelines shall be submitted to the DOLE Secretary for resolution and appropriate action.

XI. Effectivity

- Any provision of these guidelines which may be declared null or void shall not affect the validity and effectivity of other provisions thereof.

- These guidelines shall take effect fifteen (15) days upon publication in a newspaper of general circulation and/or in the Official Gazette.

Done this 22 day of May 2015 at Manila, Philippines.

(SGD) ROSALINDA DIMAPILIS-BALDOZ
Secretary

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