

PREFACE TO THE

Regulation regarding requirements for the sustainable production of biomass for use as biofuels (Biomass Sustainability Regulation – BioNachV)

A. Problem and objective

The purpose of the regulation, which is based on the authorizing provisions of Section 37d, paragraph 2, no. 3 of the Federal Immission Control Act (*Bundes-Immissionsgesetz*) in conjunction with Section 66, paragraph 1, no. 11a, letter a of the Energy Tax Act (*Energiesteuergesetz*), is to ensure conformity with minimum requirements for the sustainable cultivation of agricultural land and minimum requirements for the protection of natural habitats in the production of biomass for biofuels. Furthermore, biofuels must have a certain potential to reduce greenhouse gas emissions during all phases of production, processing and delivery.

In addition, the regulation shall provide a means, based on the greenhouse gas balance of a given biofuel, for defining a factor to be used in computing the proportion of a biofuel to be credited toward fulfilment of the requirements set forth in Section 37a, paragraph 1, sentences 1 and 2 in conjunction with Section 37a, paragraph 3 of the Federal Immission Control Act. This is intended to serve as an incentive for the development of innovative biofuels with above-average greenhouse gas reduction potentials.

B. Solution

Enactment of a regulation in accordance with Section 37d, paragraph 2, no. 3 of the Federal Immission Control Act in conjunction with Section 66, paragraph 1, no. 11a, letter a of the Energy Tax Act.

C. Alternatives

None

D. Financial impact on public budgets

Given the fact that the Regulation is closely related to the Biofuel Quota Act (*Biokraftstoffquotengesetz*), the increase in the costs of enforcing the regulation will be so

low that it would appear that there is no need for additional funding in this context and that implementation of the regulation will have no indirect impact on prices. Moreover, it will also be possible to rely on existing structures in the area of financial administration.

State and local governments will incur no costs for enforcement.

E. Other costs

The costs of producing biofuels generated on a sustainable basis are likely to be higher than the costs of producing biofuels which do not meet this requirement. This factor will contribute to an increase in market prices. It should be considered, however, that sustainably generated biofuels which have a better greenhouse gas balance will be credited with a higher factor toward fulfilment of the requirements set forth in Section 37a, paragraph 1, sentences 1 and 2 in conjunction with Section 37a, paragraph 3 of the Federal Immission Control Act.

Other costs include expenditures for biofuel certification. To the extent that these costs are passed on by suppliers to fuel consumers, this is also likely to cause a slight increase in fuel prices.

An impact on prices in general, and the consumer price index in particular, can be expected, albeit to a limited degree.

F. Administrative costs

a) Administrative costs to business

The draft regulation contains nineteen new information requirements.

An *ex ante* estimate forecasts net costs of 1,405,677 euro, of which 223,434 euro is a one-off expense.

b) Administrative costs for private citizens

No reporting obligations are to be introduced, amended or eliminated for private citizens.

c) Administrative costs to government

The draft regulation contains no new information requirements for government administrations.

Draft of a

Regulation regarding requirements for sustainable production of biomass for use in the production of biofuels (Biomass Sustainability Regulation – BioNachV)¹

2007

The following regulation is issued by

- the Federal Government following consultation with concerned entities on the basis of Section 37d, paragraph 2, no. 2 – 4 of the Federal Immission Control Act, which was introduced by Section 3, no. 4 of the law of 18 December 2006 (Federal Law Gazette I, p. 3180), and of which Section 37d, paragraph 2, no. 3 was amended by Section 1, no. 5, letter a of the law of (Federal Law Gazette I, p.....);
- the Federal Ministry of Finance in agreement with the Federal Ministry of Food, Agriculture and Consumer Protection and the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, the Federal Ministry of Transportation, Building and Urban Affairs and the Federal Ministry of Economic Affairs and Technology on the basis of Section 66, paragraph 1, no. 11a, letters a and b of the Energy Tax Act, which was introduced by Section 1, no. 11 of the law of 18 December 2006 (Federal Law Gazette I, p. 3180), and of which Section 66, paragraph 1, no. 11a, letter a, was amended by Section 2, no. 3 of the law of (Federal Law Gazette I, p.) and
- the Federal Ministry of Finance in agreement with the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety on the basis of Section 37d, paragraph 3, no. 2 of the Federal Immission Control Act and Section 66, paragraph 1, no. 11b of the Energy Tax Act, of which Section 37d of the Federal Immission Control Act was introduced by Section 3, no.4 of the law of 18 December 2006 (Federal Law Gazette I, p. 3180) and Section 66, paragraph 1, no. 11b of the Energy Tax Act was

¹ *The requirements set forth in Directive 98/34/EC of the European Parliament and the Council of the European Union of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards, regulations and rules on Information Society Services (OJ EC no. L 2904, p. 37), most recently amended by Directive 2006/96/EC of the EU Council of 20 November 2006 (OJ EU no. L 363, p. 81) have been taken into consideration.*

introduced by Section 1, no. 12 of the law of 18 December 2006 (*Federal Law Gazette I*, p. 3180);

- the Federal Ministry of Finance in agreement with the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety and the Federal Ministry of Food, Agriculture and Consumer Protection on the basis of Section 37e of the Federal Immission Control Act and Section 66a of the Energy Tax Act, of which Section 37e of the Federal Immission Control Act was introduced by Section 1, no. 6 of the law of (*Federal Law Gazette I*, p.) and Section 66a of the Energy Tax Act was introduced by Section 2, no. 4 of the law of (*Federal Law Gazette I*, p.):

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Chapter 1:

Specifications for biofuels and their production

Section 1

Recognition of fuels as biofuels

(1) Biofuels shall be credited toward the fulfilment of the provisions of Section 37a, paragraph 1, sentences 1 and 2 and Section 37a, paragraph 3 of the Federal Immission Control Act and thus eligible for tax relief pursuant to Section 50, paragraph 1, no. 1 to 3 of the Energy Tax Act only if proof can be furnished that

1. during the production of the biomass used in their production
 - a) the requirements regarding sustainable cultivation of agricultural land set forth in Section 2 and
 - b) the requirements regarding protection of natural habitats set forth in Section 3 are met, and
2. the biofuels exhibit a greenhouse gas reduction potential pursuant to Section 4, paragraph 1.

(2) The extent of credit toward the fulfilment of the requirements of Section 37a, paragraph 1, sentences 1 and 2 and Section 37a, paragraph 3 of the Federal Immission Control Act shall be granted only in the amount equivalent to the greenhouse gas reduction potential in accordance with Section 4, paragraph 2.

Section 2

Sustainable cultivation of agricultural land

(1) The requirements set forth in Section 1, paragraph 1, no. 1, letter a, shall be regarded as fulfilled only where the biomass was produced in accordance with the principles of good practice pursuant to the laws and regulations governing agriculture, forestry and fisheries or in conformity with the rules of cross-compliance.

(2) The requirements set forth in Section 1, paragraph 1, no. 1, letter a shall also be regarded as fulfilled if equivalent laws and regulations regarding the principles of good practice or other comparable laws and regulations (e.g. cross-compliance) are in effect in countries outside the scope of application of this regulation and the biomass used in the production of the biofuels in question was produced there in accordance with these laws and regulations.

(3) The requirements set forth in Section 1, paragraph 1, no. 1, letter a shall also be regarded as fulfilled if, in the absence of the equivalent laws and regulations mentioned in paragraph 2

regarding the principles of good practice or other comparable laws and regulations (e.g. cross-compliance), in countries outside the scope of application of this regulation, the following requirements, in particular, with effect on global protectable natural resources are met in producing the biomass used in the production of the biofuels:

1. no significant increase in emissions of acidic, eutrophic, ozone-depleting or toxic substances;
2. no significant deterioration of soil function or soil fertility (e.g. preservation of organic substance, protection against erosion);
3. no significant deterioration of water quality and water supply;
4. no significant deterioration of species and ecosystem diversity and
5. environmentally safe use of fertilizers, pesticides and herbicides.

Section 3

Protection of natural habitats

(1) The requirements pertaining to the protection of natural habitats as defined Section 1, paragraph 1, no. 1, letter b shall be regarded as fulfilled if the biomass used is not grown in nature reserves or in areas which had been identified as of 1 January 2005 as areas of high natural conservation value or subsequently declared as such.

(2) Areas of high natural conservation value are areas which, as rare ecosystems, have significant nature conservation value or serve as habitats for particularly rare species of plants or animals. These areas are characterized by one or more of the following features:

1. areas which exhibit, in globally or regionally significant levels, accumulations of protectable resources of relevance to biodiversity (e.g. endemic or endangered species, refuges);
2. areas which lie in globally or regional rare, threatened or endangered ecosystems or which encompass such ecosystems;
3. areas which serve fundamental protective functions.

(3) Paragraph 1 shall not apply in cases in which cultivation of the biomass is in conformity with the protection objectives of the protected area in question or in which the nature conservation value of an area with a high nature conservation value is not impaired as a result of cultivation of the biomass. Sentence 1 shall not apply in cases in which forests are converted to agricultural land or plantations.

Section 4

Greenhouse gas reduction potential

(1) Biofuels must have a greenhouse gas reduction potential of at least 30 percent and, from 1 January 2011, 40 percent (base value). The greenhouse gas reduction potential shall be computed in accordance with the rules set forth in Annex 1. In cases in which specific values are not identified, the values listed in Annex 2 shall be used.

(2) If the greenhouse gas reduction potential exceeds the base value, the contribution to the energy quota as defined in Section 37a, paragraph 3 of the Federal Emissions Act shall be calculated by multiplying the actual quantity of the biofuel in circulation by a specific computation factor. The computation factor is equivalent

1. for requirements in accordance with Section 37a, paragraph 3, sentence 1 of the Federal Immission Control Act (quota for biofuels used as substitutes for diesel fuel), to the greenhouse gas reduction potential, in percent, divided by the average greenhouse gas reduction potential, in percent, of the biofuels placed into circulation in the previous year to meet the obligations pursuant of Section 37a, paragraph 3, sentence 1 of the Federal Immission Control Act by all those under obligation;
2. for requirements in accordance with Section 37a, paragraph 3, sentence 2 of the Federal Immission Control Act (quota for biofuels used as substitutes for petrol), to the greenhouse gas reduction potential, in percent, divided by the average greenhouse gas reduction potential, in percent, of the biofuels placed into circulation in the previous year to meet the obligations pursuant of Section 37a, paragraph 3, sentence 2 of the Federal Immission Control Act by all those under obligation;
3. for requirements in accordance with Section 37a, paragraph 3, sentence 3 of the Federal Immission Control Act (quota for biofuels used as substitutes for petrol and diesel fuels), to the greenhouse gas reduction potential in percent divided by the average greenhouse gas reduction potential, in percent, of the biofuels placed into circulation in the previous year to meet the obligations pursuant of Section 37a, paragraph 3, sentence 3 of the Federal Immission Control Act by all those under obligation.

The average percentage values for greenhouse gas reduction potential shall be announced separately for fuels subject to the requirements set forth in Section 37a, paragraph 3, sentence 1 (quota for biofuels used as a substitute for diesel fuel), Section 37a, paragraph 3, sentence 2 (quota for biofuels used as a substitute for petrol) and Section 37a, paragraph 3, sentence 3 (quote for biofuels used as a substitute for petrol and diesel fuel) of the Federal Immission Control Act by the relevant authority no later than the end of May. The computation factor shall be applied for the first time in 2011.

Chapter 2: Certification

Section 5 Certification systems, interfaces

(1) A certification system shall establish the specific rules for compliance with the requirements set forth in Sections 1 to 4 pertaining to operations in all phases of production, processing and delivery cited in paragraph 2. In particular, specific rules shall be required governing:

1. how the provisions of Sections 1 to 4 will be implemented in the certification system and compliance with the rules of the system ensured,
2. the documentation to be prepared by operating facilities pursuant to Section 2 and which serves as evidence of compliance with the requirements set forth in Sections 1 to 4, as well as the assessment of the risk of deficient documentation in the categories “high”, “moderate” and “low”,
3. the measures which ensure that the required documentation is treated as confidential and protected against access by uninvolved third parties,
4. the control system for the certification system to be employed at all phases of production, processing and delivery (inhouse controls), including audits performed by an independent audit body recognized by the accrediting authority,
5. the measures which ensure execution of the audits pursuant to Section 8, and
6. the measures to be taken with regard to interfaces as defined in paragraph 2 where they fail to comply with the provisions of Sections 1 to 4.

(2) The facility at which the data required to document compliance with the specific requirements relating to the provisions of Sections 1 to 4 are collected, processed or transmitted for all phases of production, processing and delivery (interface) is the operating facility which produces biofuels from the biomass. If an oil mill precedes this facility in the chain of custody, it shall be regarded as an additional interface. Interfaces must be members of a certification system. It must be possible for operating facilities which precede interfaces in the chain of custody to be assigned to a certification system on the basis of contractual agreements; the contractual agreements with the interfaces must contain provisions specifying that the facilities preceding the interfaces in the chain of custody agree to collect data required for documenting the specific requirements relating to the provisions of Sections 1 to 4.

Section 6

Certificates

(1) Compliance with the requirements set forth in Sections 1 to 4 shall be shown by way of a certificate issued for a period of one year after the date of the audit (Section 8) by an independent audit body recognized in accordance with Section 10 paragraph 1. The certificate shall be issued to the interfaces (Section 5, paragraph 2, sentences 1 and 2). It shall serve with regard to the interfaces pursuant to Section 5, paragraph 2, sentence 1 as proof of all phases of production, processing and delivery of the operation facilities pursuant to Section 5, paragraph 2; in the cases of Section 5, paragraph 2, second sentence, the certificate shall serve with regard to oil mills as proof of all phases of production, processing and delivery of the operation facilities pursuant to Section 5, paragraph 2 as far as the oil mill, and with regard to interfaces following the oil mill in the chain of custody as proof of all phases of production, processing and delivery of the operation facilities pursuant to Section 5, paragraph 2 following the oil mill in the chain of custody.

(2) Annual average values for greenhouse gas emissions shall be entered in kilograms of carbon dioxide (CO₂ equivalent) per gigajoule of fuel for each interface – itemized by biofuel type and production chain phase – for the purpose of calculating the greenhouse gas reduction potential pursuant to Section 4. Regarding phases following the interface, the greenhouse gas emission values for these phases shall be entered in the certificate. Values for these phases which deviate from the values listed in Annex 2 shall be documented in a supplementary certificate, as needed. Sentences 2 and 3 shall not apply to oil mills, which are regarded as additional interfaces in accordance with Section 5, paragraph 2, sentence 2.

(3) The certificate shall be assigned a unique certificate number derived from the registration number of the certification system, the registration number of the independent audit body and a unique number issued by the independent audit body. The certificate must bear the date of issue and confirmation that it is valid for a period of one year.

(4) A certificate shall be issued

1. a) if the following is documented by all interfaces:

- compliance with the requirements set forth in Sections 1 to 4,
- the suppliers as well as the quantity and type of biofuels or precursor products procured,
- the total energy value in gigajoules of all biofuels produced,

b) if the following is also documented by interfaces which are not preceded by other interfaces in the chain of custody:

- the location at which the biomass was cultivated – represented as a polygonal figure in geographic coordinates with an accuracy tolerance of 40 metres for each individual point –
- greenhouse gas emission values for the procured precursor products, each indicated in kilograms of carbon dioxide (CO₂ equivalent) per gigajoule of fuel,

2. if it is ascertained in a given operating facility that the quantity of raw material or biofuel input into a process, for which the requirements set forth in Sections 1 to 4 are fulfilled, corresponds to the quantity of raw material or biofuel output from the process, for which the requirements set forth in Sections 1 to 4 are fulfilled; a corresponding proportion of output can be credited toward fulfilment, without the need to keep the materials in question separate during subsequent processing; and
3. if the documentation to be prepared and maintained by the interface (pursuant to Section 5, paragraph 2) is clear and comprehensible.

(5) A copy of each certificate pursuant to paragraph 1 shall be maintained in the files of the independent audit body for a period of ten years.

Section 7

Evidence of conformity

(1) Persons under obligations pursuant to Section 37a of the Federal Immission Control Act shall furnish evidence of conformity to the requirements set forth in Sections 1 to 4 for biofuels which are to be credited toward the fulfilment of the requirements set forth in Section 37a, paragraph 1, sentences 1 and 2 in conjunction with Section 37a, paragraph 3 of the Federal Immission Control Act to the responsible authority (Section 37d, paragraph 1 of the Federal Immission Control Act) in the form of an attestation issued to the interface. The attestation named in the first sentence shall contain the following information:

1. the contents of the certificate,
2. the energy value of the biofuel quantity to which the attestation refers in gigajoules, and
3. the greenhouse gas reduction potential in kilograms of carbon dioxide (CO₂ equivalent) per gigajoule.

Where tax relief in accordance with Section 50 of the Energy Tax Act is applied for, the person eligible for the tax relief shall be required to submit the attestation pursuant to sentence 1 to the responsible main customs office. A copy of the attestation pursuant to sentences 1 and 3 shall be submitted to the independent audit body immediately after issue.

(2) In the event that the biofuel quantity for which an attestation was issued is subdivided into smaller lots, proof of conformity to the requirements set forth in Sections 1 to 4 shall be furnished in the form of a partial attestation for which the receiver of the partial lot of biofuel shall apply to the competent authority. Sentence 1 shall apply accordingly to the subdivision of biofuel quantities in a partial attestation. The competent authority shall maintain corresponding records.

(3) Certificates, attestations or partial attestations shall not be recognized by the agencies

cited in paragraph 1, sentence 1 or 3 where, in particular

1. the validity of the certificate, attestation and partial attestation is not based on the same time period,
2. certificates, attestations and partial attestations are forged or falsified,
3. the information contained in certificates, attestations and partial attestations is incorrect,
4. the certificate was issued by an independent audit body whose accreditation has been suspended or revoked pursuant to Section 11, paragraph 2 prior to issuance of the certificate, or
5. the certificate is based on a certification system whose accreditation has been suspended or revoked pursuant to Section 11, paragraph 1 prior to issuance of the certificate.

In the event of doubt with regard to the authenticity or correctness of the certificates, attestations or partial attestations, proof of authenticity or correctness shall be furnished by the persons cited in paragraph 1, sentence 1 or 3.

Section 8 Audits

(1) An independent audit body shall conduct an audit of interfaces as defined in Section 5, paragraph 2 at least once annually. In the case of agricultural facilities subject to cross-compliance regulations, the requirements set forth in Section 2 shall be assumed to have been met. In these cases, the control authority shall check these facilities for compliance with the requirements set forth in Sections 3 and 4 as well as a minimum of 5 percent of all other facilities which precede the facilities cited in sentence 1 in the chain of custody in all phases of production, processing and delivery each year.

(2) An independent audit body shall inform the certification system regarding the results of each audit immediately in electronic form so that, on the basis of these results, the latter may take the measures required to ensure compliance with Sections 1 to 4.

Section 9 Accreditation of certification systems

(1) A certification system shall be accredited by way of application to the Federal Agency for Food and Agriculture (Bundesanstalt für Landwirtschaft und Ernährung) (accreditation authority). Accreditation shall be granted with the agreement of the Federal Environmental Agency (Umweltbundesamt). The accreditation authority shall issue a registration number for each certification system. A certification system shall be accredited where

1. assurance of the required independence from facilities with an interest in the results of the conformity test as well as reliability and the requisite knowledge are given,
2. the requirements are rendered concrete, with consideration given to the needs of concerned groups,
3. the functions, responsibilities and fields of expertise as well as the specific requirements of the certification system regarding compliance with Sections 1 to 4 in accordance with Section 5, paragraph 1 have been described and published,
4. it has at its disposal an organizational structure necessary for fulfilling independently the functions and responsibilities of the certification system, including in particular a sufficient number of competent employees who are independent of the facilities which have an interest in the results of conformity test,
5. a declaration of the certification system has been submitted stating that individuals appointed by the accreditation authority, as well as employees of the Federal Ministry for Food, Agriculture and Consumer Protection, shall be permitted during working and business hours and at all locations at which the certification system is in operation to access grounds, offices, operation and storage areas and means of transport, to conduct inspections, to view, examine and make transcriptions, extracts, print-outs or copies of all written or electronic business documents, and to request the necessary information,
6. a declaration of the facilities as defined in Section 5, paragraph 2 has been submitted stating that individuals appointed by the accreditation authority, as well as employees of the Federal Ministry for Food, Agriculture and Consumer Protection, the certification system and the independent audit bodies shall be permitted during working and business hours and at their locations to access grounds, offices, operation and storage areas and means of transport, to conduct inspections, to view, examine and make transcriptions, extracts, print-outs or copies of all written or electronic business documents, to request the necessary information and to take samples,
7. an independent audit body is designated and
8. it has a branch office or serviceable address in Germany.

(2) Compliance with the requirements set forth in paragraph 1 shall be shown by submission of suitable documents relating to the physical resources of the certification system and the individuals employed by it. The accreditation authority may request additional documentation to the extent that it is required in order to render a decision on the application.

(3) Accreditation shall be limited to a period of five years. It shall be extended for five years on request, provided that all requirements for accreditation are still met. Applications in accordance with sentence 2 shall be submitted no later than six months prior to the expiration of accreditation. Accreditation may be granted under conditions or made subject to

conditions at a later date if this is deemed necessary to ensure proper performance of the activities of a certification system. Accreditation shall be disclosed by way of publication in the *Federal Gazette* by the accreditation authority.

(4) Accreditation shall expire where the certification system does not commence its activities within one year of issuance of the original accreditation or fails to perform said activities for a period exceeding one year after commencing operations. Expiration of an accreditation shall be determined by way of notice by the accreditation authority and disclosed by it in the *Federal Gazette*.

Section 10

Accreditation of independent audit bodies

(1) An independent audit body shall be accredited by way of application to the Federal Agency for Food and Agriculture (Bundesanstalt für Landwirtschaft und Ernährung) (accreditation authority). Accreditation shall be granted with the agreement of the Federal Environmental Agency (Umweltbundesamt). The accreditation authority shall issue a registration number for each independent audit body. An independent audit body (conformity inspector) shall be accredited where

1. assurance of the required independence from persons, facilities, organisations and certification systems with an interest in the results of the conformity test as well as reliability and the requisite knowledge are given,
2. the functions, responsibilities and fields of expertise have been described and published;
3. it has at its disposal an organizational structure necessary for fulfilling independently its functions and responsibilities, including in particular competent employees who are independent of the persons, facilities, organisations and certification systems which have an interest in the results of conformity test in sufficient numbers to ensure that the conformity test is carried out correctly,
4. a declaration has been submitted stating that individuals appointed by the accreditation authority, as well as employees of the Federal Ministry for Food, Agriculture and Consumer Protection, shall be permitted during working and business hours and at all locations at which the independent audit body is in operation to access grounds, offices, operation and storage areas and means of transport, to conduct inspections, to view, examine and make transcriptions, extracts, print-outs or copies of all written or electronic business documents, and to request the necessary information,
5. accreditation in accordance with European Standard DIN EN 45011 (version of March 1998) issued by an accreditation authority exists, and
6. it has a branch office or serviceable address in Germany

(2) Compliance with the requirements set forth in paragraph 1 shall be shown by submission

of suitable documents relating to the physical resources of the independent audit body and the individuals employed by it. The accreditation authority may request additional documentation to the extent that it is required in order to render a decision on the application.

(3) Accreditation shall be limited to a period of five years. It shall be extended for five years on request, provided that all requirements for accreditation are still met. Applications in accordance with sentence 2 shall be submitted no later than six months prior to the expiration of accreditation. Accreditation may be granted under conditions or made subject to conditions at a later date if this is deemed necessary to ensure proper performance of the activities of an independent audit body. Accreditation shall be disclosed by way of publication in the *Federal Gazette* by the accreditation authority.

(4) Accreditation shall expire where the independent audit body does not commence its activities within one year of issuance of the original accreditation or fails to perform said activities for a period exceeding one year after commencing operations. Expiration of an accreditation shall be determined by way of notice by the accreditation authority and disclosed by it in the *Federal Gazette*.

Section 11

Suspension and revocation of accreditation of certification systems and independent audit bodies

(1) Accreditation of a certification system shall be suspended or revoked when proper performance of the functions of a certification system is no longer ensured. Specifically, accreditation shall be rescinded in cases in which

1. assurance of the required independence from facilities with an interest in the results of the conformity test as well as reliability and the requisite knowledge are no longer given,;
2. the functions, responsibilities and fields of expertise as well as the specific requirements of the certification system regarding compliance with Sections 1 to 4 in accordance with Section 5, paragraph 1 have not been described and published,
3. the certification system does not have at its disposal an organizational structure necessary for fulfilling independently the functions and responsibilities of the certification system, including in particular a sufficient number of competent employees who are independent of the facilities which have an interest in the results of conformity test,
4. a declaration pursuant to Section 9, paragraph 1, no. 5 or from all facilities pursuant to Section 9, paragraph 1, no. 6 has not been submitted,
5. an accredited independent audit body does not audit the facilities pursuant to Section 5 paragraph 2 participating in the certification system, or
6. the certification system does not have a branch office or serviceable address in

Germany.

(2) The accreditation of an independent audit body shall be suspended or revoked by the accreditation authority when assurance of proper performance of the conformity test can no longer be given. Specifically, accreditation shall be rescinded in cases in which

1. the required independence especially from persons, facilities, organisations and certification systems with an interest in the results of the conformity test as well as reliability and the requisite knowledge are given,
2. the independent audit body no longer has at its disposal an organizational structure necessary for fulfilling independently its functions and responsibilities, including in particular competent employees who are independent of the persons, facilities, organisations and certification systems which have an interest in the results of conformity test in sufficient numbers to ensure that the conformity test is carried out correctly,
3. the declaration in accordance with Section 10, paragraph 1, no. 4 has not been submitted,
4. accreditation in accordance with European Standard DIN EN 45011 (version of March 1998) issued by an accreditation authority does not exist, or
5. the independent audit body does not have a branch office or serviceable address in Germany.

(3) The suspension and revocation of accreditation shall be announced by the accreditation authority in appropriate form. All other administrative regulations pertaining to rescission and revocation shall remain unaffected.

Section 12

Reporting obligations

(1) A certification system shall forward to the accreditation authority in electronic form for each calendar year no later than 1 March of the following calendar year an updated list of all participating interfaces and all operating facilities involved in the preceding phases of production, processing and delivery which are contractually affiliated with these interfaces. It shall notify the accreditation authority of all measures undertaken by it where the interfaces or the facilities contractually affiliated with the interfaces fail to comply with the provisions of Sections 1 to 4. It shall report any changes regarding the participants in a certification system and all facilities contractually affiliated with said participants to the accreditation authority immediately in electronic form.

(2) An independent audit body shall be required to prepare a report upon completion of every audit (Section 8), which shall contain in particular the results of the audit. If it is determined that the requirements set forth in Sections 1 to 4 are not being met, the report shall be

forwarded immediately to the accreditation authority in electronic form.

(3) An independent audit body shall forward without delay to the accreditation authority copies of the certificates issued to interfaces. It shall forward to the accreditation authority for each calendar year no later than 1 March of the following year a list of all audits performed within the calendar year and in which compliance with the requirements set forth in Sections 1 to 4 was determined.

(4) The accreditation authority may publish in the *Federal Gazette* a pre-printed form for use in filing the reports described in paragraphs 1 to 3. It may prescribe a specific format for use in electronic data transmission.

(5) An independent audit body shall forward to the competent office pursuant to Section 37d, paragraph 1 of the Federal Immission Control Act

1. copies of certificates for interfaces, immediately upon their issue,
2. copies of attestations issued by interfaces in accordance with Section 7, paragraph 1, sentence 1, immediately upon submission by the interfaces, and
3. copies in electronic form of the the data cited in Section 6, paragraph 4.

Section 13 Supervision

(1) The accreditation authority shall supervise the certification systems and the independent audit bodies.

(2) The accreditation authority may issue the necessary orders to certification systems and independent audit bodies to ensure that identified deficiencies are eliminated and future deficiencies are prevented. In particular, it may order that an employee of an independent audit body be barred from performing conformity tests due to insufficient independence, qualifications or reliability.

Chapter 3 Miscellaneous provisions

Section 14 Transmission of data

To the extent required to implement this regulation, the accreditation authority shall be entitled to forward information obtained, including personal data, to the following recipients:

1. the Federal Ministry for Food, Agriculture and Consumer Protection,
2. the Federal Ministry for Environment, Nature Conservation and Nuclear Safety,
3. the Federal Ministry of Finance,
4. the Federal Environmental Agency,
5. the competent office pursuant to Section 37d of the Federal Immission Control Act,
6. the relevant ministries and authorities of other Member States and third countries and
7. the organs of the European Community.

Section 15

Fees

The accreditation authority shall levy fees for official actions in accordance with the Schedule of Fees contained in Annex 3.

Section 16

DIN and DIN EN Standards

DIN and DIN EN Standards referenced in this regulation are published by Beuth-Verlag GmbH, Berlin und Cologne, and securely archived at the German Patent and Trademark Office in Munich.

Section 17

External relations

Relations with relevant ministries and authorities of other Member States and third countries and with the organs of the European Community shall be the responsibility of the Federal Ministry of Food, Agriculture and Consumer Protection. It may delegate responsibility for relations with the relevant ministries and authorities in other Member States and third countries and the organs of the European Community to the accreditation authority.

Section 18

Transition clause

The requirement set forth in Sections 1 to 4 shall apply to biofuels in free circulation after the end of the 16th month following the date of entry into force of this regulation. Applications pursuant to Sections 9 or 10 may be filed with the accreditation authority after the end of the 6th month following the date of entry into force of this regulation.

Section 19
Date of entry into force

This regulation shall enter into force on the day following the date of its promulgation.

Annex 1

(Regarding Section 4)

Principles to be applied
in computing greenhouse-gas reduction potential:

1. Emissions:

The term emissions as used in this Annex applies to CO₂ equivalents; the values for N₂O and CH₄ as well as the other greenhouse gases listed in Annex A of the Kyoto Protocol are to be converted in accordance with the rules set forth in the Kyoto Protocol.

2. System limits for biofuels:

The system encompasses the production of biomass, the operating resources deployed to this end, processing, transport and use of biofuels.

2.1 Emissions covered by the regulation:

Production of biomass:

Emissions resulting from the production of biomass – from both animal and plant primary products and by-products – in the preliminary chain (production resources, transport, etc.) shall be credited proportionally.

Operating resources:

Emissions resulting from production and use of operating resources used in the production of biomass, excluding capital goods and infrastructure.

Examples:

Seed and seedlings, fertilizers and pesticides, fuels for agricultural vehicles: yes;
production of agricultural vehicles, production of silos: no.

Processing:

Emissions resulting from processing, including operating resources, but not capital goods and infrastructure. Where biogenic waste and residual materials are used, the resources used for their treatment and processing, as well as their emissions, are to be credited.

Transport:

Emissions resulting from transport from the point at which the biomass departs the facility at which it was produced along the further stages in the processing chain until it reaches the persons under obligation pursuant to 37a, paragraph 2 of the Federal Immission Control Act

or the applicant pursuant to Section 50 of the Energy Tax Act (tax warehouse).

Waste:

Emissions from waste accumulated during production or processing, (emissions from waste treatment and disposal), provided relevant quantities accumulate.

2.2 Co-products

The inclusion of coproducts is effected through allocation on the basis of the lower heating values.

2.3 Land utilization changes

Emissions may result from the conversion of land with high carbon deposits to biomass cultivation areas. This may occur through the conversion of land that has been unused or used for different purposes since 1 January 2005 to land used for the cultivation of biomass (direct land utilization changes). Emissions from direct land utilization changes are to be included.

3. Reference system:

The reference system to be used for the comparison with fossil fuels is the average value of emissions resulting from the production and use of fossil fuels traded on the German market on the basis of the year 2005. These values are 85 kg of CO₂ equivalents per gigajoule for petrol and 86.2 kg of CO₂ equivalents per gigajoule for diesel fuel. The standard for comparison for biofuels used as a substitute for petrol is petrol and for comparison of biofuels used as a substitute for diesel fuel is diesel fuel. It should be noted that emissions are no longer taken into consideration for biofuels and fossil fuels after release from tax warehouses.

The system restrictions for fossil fuel balancing correspond to the system restrictions for biofuels.

Annex 2
(Regarding Section 4)

Tables with default values

The following tables contain the default values for the most important biofuels and their primary regions of origin.

Pursuant to Section 4, paragraph 1, sentence 3 of the draft regulation, these values are to be applied in cases in which specific values cannot be documented. Modular application is possible in these cases: If specific values are documented for individual segments of the production chain only (cf. 1st column of the table), the respective default value in the corresponding line is to be used for the other segments of the production chain. The total value listed in the last line of the table is to be used only in cases in which no specific values are documented for a given biofuel.

With respect to biofuels for which no default values are shown in the table, the highest value in the corresponding line is to be used for the respective segment of the production chain.

Upon application by a person obliged under Section 7 paragraph 1 to submit a certificate, and in agreement with the Federal Ministry for Food, Agriculture and Consumer Protection and the Federal Ministry for Environment, Nature Conservation and Nuclear Safety, the Federal Ministry of Finance may also set default values for a biofuel for which no default values are shown in the table. These values are to be published in the *Federal Gazette*.

All entries are in kg of CO₂ equivalents per gigajoule

Production chain segment \ Biofuel Biomass Origin	Ethanol Wheat Europe	Ethanol Maize North America	Ethanol Sugar cane Latin America	Ethanol Sugar beats Europe	FSME Rape seed Europe	FSME Soy Latin America	FSME Soy North America	FSME Palm oil Southeast Asia
Direct land utilization change	26.2	19.8	158.8	15.6	32.8	289.6	54.5	112.8
Biomass production	22.3	17.8	19.5	11.3	29.1	12.9	15.2	6.6
Biomass transport	0.7	0.7	1.5	1.7	0.4	0.5	0.5	0.1
Processing conversion stage 1	-	-	0.8	6.6	7.6	7.3	9.2	6.9
Transport between conversion stages	-	-	-	-	0.2	3.8	3.4	4.3
Processing conversion stage 2	34.3	25.0	1.0	48.9	7.6	7.7	7.7	7.7
Transport to refinery, storage, admixture	0.4	4.8	5.5	0.4	0.3	0.3	0.3	0.3
Total	83.9	68.0	187.1	84.4	78.1	322.0	90.7	138.7

Production chain segment Biomass Origin	NatVO¹ Rape seed Europe	NatVO¹ Soy Latin America	NatVO¹ Soy North America	NatVO¹ Palm oil Southeast Asia	HydrVO² Rape seed Europe	HydrVO² Soy Latin America	HydrVO² Soy North America	HydrVO² Palm oil Southeast Asia
Direct land utilization change	34.2	298.8	56.2	117.4	33.2	293.4	55.2	114.3
Biomass production	30.4	13.1	15.5	6.9	29.5	13.0	15.4	6.7
Biomass transport	0.5	0.6	0.6	0.1	0.4	0.8	0.5	0.1
Processing conversion stage 1	7.6	7.1	9.0	7.4	7.3	6.8	8.6	7.2
Transport between conversion stages	-	-	-	-	0.2	3.8	3.5	4.3
Processing conversion stage 2	-	-	-	-	9.7	9.7	9.7	9.7
Transport to refinery, storage, admixture	0.2	3.9	3.	4.4	0.7	0.7	0.7	0.7
Total	72.8	323.5	84.7	136.2	81.1	328.2	93.5	143.1

¹ Explanation: NatVO = native vegetable oil

² HydrVO= hydrated vegetable oil

Annex 3
(Regarding Section 15)

Schedule of
fees for official actions by the Federal Agency for Food and Agriculture pursuant to
Section 15 of the Regulation regarding requirements for the sustainable production of
biomass for use as biofuels

Fee number	Fee schedule	Fee in Euro
1	Accreditation of a certification system pursuant to Section 9	
1.1	First accreditation pursuant to Section 9	4 000 to 35 000
1.2	Change or extension of accreditation pursuant to Section 9	400 to 8 000
1.3	Supervision of certification systems pursuant to Section 10 - simple audits - more complex audits - highly complex audits	600 to 1 000 1 001 to 2 500 2 501 to 8 000
1.4	Response to enquiries regarding Section 9 - simple enquiries - more complex enquiries - extensive enquiries	50 to 100 101 to 200 201 to 500
2	Accreditation of an independent audit body pursuant to Section 10	
2.1	Initial accreditation pursuant to Section 10	2 000 to 20 000
2.2	Change or extension of accreditation pursuant to Section 10	300 to 6 000
2.3	Supervision of independent audit bodies pursuant to Section 10 - simple audits - more complex audits - highly complex audits	600 to 1 000 1 001 to 2 000 2 001 to 6 000
3	Response to enquiries regarding this regulation - simple enquiries - more complex enquiries - extensive enquiries	100 to 200 201 to 400 401 to 1000

Explanatory notes

A. General notes

The Biofuel Quota Act

With the new provisions of Section 37d, paragraph 2, no. 3 of the Federal Immission Control Act and of Section 66, paragraph 1, no. 11a, letter a of the Energy Tax Act introduced by the Biofuel Quota Act, the Federal Government has been empowered to enact regulations requiring compliance with specific sustainability requirements as a prerequisite for recognition of a fuel as a biofuel. Pursuant to the amendment of these authorizing provisions through the “Eighth Law Amending the Federal Immission Control Act of (*Federal Law Gazette* I, p.) the Federal Government is authorized to stipulate that biofuels may be credited against fulfilment of the requirements set forth in Section 37a, paragraph 1, sentences 1 and 2 in conjunction with Section 37a, paragraph 3, of the Federal Immission Control Act and/or qualify as eligible for tax relief in accordance with Section 50, paragraph 1, no. 1 to 3 of the Energy Tax Act only "where it can be shown that, in generating the biomass used, certain standards for the sustainable management of agricultural land or certain standards for the protection of natural habitats have been met, or where the energy product exhibits a certain potential for greenhouse gas reduction”.

Section 37d, paragraph 2, no. 2 of the Federal Immission Control Act empowers the Federal Government to require that the greenhouse-gas balance of a biofuel be taken into account in crediting biofuels toward fulfilment of the biofuel quota. Lastly, the Federal Ministry of Finance is empowered by Section 37d, paragraph 3, of the Federal Immission Control Act, in agreement with the Federal Ministry for Environment, Nature Conservation and Nuclear Safety, to enact implementation provisions for these regulations and, in particular, to establish regulations regarding the required documentation and the supervision of compliance with the requirements pertaining to biofuels.

International and European activities with respect to sustainability requirements

Because biomass and biofuels are traded world-wide, the best solution would be an agreement regarding internationally applicable sustainability requirements. The Federal Government has undertaken efforts in various international forums, including, among others, the Global Bioenergy Partnership and the Biodiversity Treaty, to initiate corresponding activities. However, no recognized institutional framework for an agreement on such requirements has been established to date. The necessary processes are likely to be very time-consuming.

Efforts to develop sustainability requirements for biomass used in energy production have also been initiated in the EU, e.g. in Great Britain and the Netherlands. The European

Commission also plans to present a draft directive containing corresponding requirements and specifications for documentation systems in the near future. This intention is most welcome, as common principles governing requirements for biofuels would be highly desirable in an EU Single Market. At present, the Commission has not indicated whether it plans to introduce an exhaustive regulation at the EU level or a non-exhaustive regulation on the basis of which the fundamental provisions could be supplemented by national regulations regarding individual incentive programmes.

Reporting

For practical or legal reasons, some essentially relevant requirements cannot be articulated as sustainability requirements applicable to individual operating facilities. This applies in particular to such macroeconomic effects as the impact on food safety and the consequences of indirect land utilization changes. Government authorities should monitor developments in the countries of origin and provide regular reports in this context. Efforts should be made to promote cooperation with the countries of origin. The Biofuel Quota Act does not provide a legal basis for such reporting obligations. However, the Federal Government has assumed the obligation to pursue appropriate action.

Administrative costs

The draft regulation contains nineteen new information obligations for the business sector. No new information obligations have been imposed on private citizens or government administrative authorities, nor have existing obligations been changed or suspended. An *ex ante* estimate forecasts net costs of **1,405,677 euro**, of which **223,434 euro** represent one-off expenditures.

The draft regulation introduces the following new information obligations for the business sector:

a) Section 7, paragraph 11:

This provision requires persons under obligation pursuant to Section 37a of the Federal Immission Control Act to furnish the competent body (Section 37d, paragraph 1, of the Federal Immission Control Act) with proof of compliance with the preconditions of section 1 to 4 by way of attestation by the interface with respect to biofuels which are to be credited against fulfilment of their obligations under Section 37a, paragraph 1, sentences 1, and 2 in conjunction with Section 37a, paragraph 3 of the Federal Immission Control Act.

Annual costs for this procedure amount to **67,541 euro**.

There is no other, more cost-effective alternative to the submission of attestations documenting compliance with the requirements of Sections 1 through 4.

b) Section 7, paragraph 1, sentence 3:

Companies applying for tax relief under Section 50 of the Energy Tax Act are obliged to submit an attestation by an independent audit body to the relevant Regional Customs Office documenting compliance with the requirements set forth in Sections 1 to 4.

Annual costs for this procedure amount to **168,160 euro**.

There is no other, more cost-effective alternative to the submission of attestations documenting compliance with the requirements of Sections 1 to 4.

c) Section 12, paragraph 5, no. 1:

An independent audit body is required to transmit copies of certificates for interfaces to the competent office pursuant to Section 37d, paragraph 1 of the Federal Immission Control Act immediately upon issue of such certificates.

Annual costs for this procedure amount to **570 euro**,

There is no other, more cost-effective alternative to electronic transmission of certificates.

d) Section 12, paragraph 5, no.2:

An independent audit body is obliged to transmit copies of attestations issued by interfaces in accordance with Section 7, paragraph 1, sentence 1 in electronic form to the competent office pursuant to Section 37d, paragraph 1 of the Federal Immission Control Act immediately upon their submission by interfaces.

Annual costs for this procedure amount to **8,550 euro**.

The transmission of attestations in electronic form is the most cost-effective method of forwarding the information in question.

e) Section 7, paragraph 2:

The recipient of a partial lot of biofuel for which an attestation or partial attestation has been issued is obliged to request a partial attestation from the competent office for the purpose of documenting compliance with the requirements set forth in Sections 1 to 4.

Annual costs for this procedure amount to **728,551 euro**.

Partial attestations provide the only effective means of tracing the origin, disposition and

distribution of a certified quantity of biofuel and documenting that the quantity of fuel in question is a certified biofuel. Electronic applications represent the most cost-effective form of data transmission.

f) Section 7, paragraph 3, sentence 2:

Those designated in Section 7, paragraph 1, sentence 1 or 3 are obliged to furnish proof of the authenticity and correctness of certificates or partial attestations in the event of uncertainty regarding their authenticity or correctness.

Annual costs for this procedure amount to **39,953 euro**.

There is no other, more cost-effective alternative to the submission of proof of authenticity or correctness for the purpose of eliminating uncertainty. Without such proof, certificates, attestations or partial attestations would not be recognized and would have to be applied for again.

g) Section 8, paragraph 1, sentence 1:

An independent audit body must perform an audit of the facilities pursuant to Section 5, paragraph 2 at least once per year.

Annual costs for this procedure amount to **123,060 euro**.

Restriction to a single annual audit results in the lowest possible bureaucratic burden.

h) Section 8, paragraph 1, sentence 3:

An independent audit body audits the facilities pursuant to sentence 2 and at least 5 percent of all facilities preceding facilities pursuant to sentence 1 in the chain of custody at each stage of production, processing and delivery for the purpose of verifying compliance with Section 2, paragraphs 4, no. 3 and 4 once during each calendar year.

Annual costs for this procedure amount to **26,370 euro**.

The method of conducting spot checks of only 5 percent of all facilities results in the lowest possible bureaucratic burden.

i) Section 8, paragraph 2:

An independent audit body must report to the certification system the results of audits immediately in electronic form.

Annual costs for this procedure amount to **3,516 euro**.

There is no other, more cost-effective method of forwarding the data in question.

j) Section 9, paragraph 1:

Applications for accreditation of certification systems must be filed with the Federal Agency for Food and Agriculture (accreditation authority).

One-off costs for this procedure amount to **116,767 euro**.

The selected method for furnishing evidence of compliance with the obligations set forth in Sections 1 to 4 in the form of certificates requires accreditation by a single authority in order to ensure that the requirements imposed by certification systems do not differ significantly from one another. The submission of applications for accreditation as a certification system allows the Federal Agency for Food and Agriculture to conduct this review. There is no alternative to this approach.

k) Section 9, paragraph 3:

Applications for extension of accreditation for a certification system must be submitted to the Federal Agency for Food and Agriculture (accreditation authority) every five years.

Computed on a yearly basis, the costs of this procedure amount to **1,821 euro**.

Because the conditions governing the production of biomass and the production of biofuels are subject to constant change, a review of accreditations of certifications systems within the context of the extension process is indispensable. The selected five-year extension period imposes the lowest possible bureaucratic burden on the business sector.

l) Section 10, paragraph 1:

Applications for accreditation of independent audit bodies must be filed with the Federal Agency for Food and Agriculture (accreditation authority).

The one-off costs for this procedure amount to **106,667 euro**.

There is no other, more cost-effective alternative to the application process. The application process permits the Federal Agency for Food and Agriculture to deny accreditation as an independent audit body in cases of uncertainty regarding the reliability of an applicant.

m) Section 10, paragraph 3:

Applications for extension of accreditation of independent audit bodies must be filed with the Federal Agency for Food and Agriculture every five years.

Computed on a yearly basis, the costs for this procedure amount to **2,684 euro**.

There is no other, more cost-effective alternative (see explanatory note to letter g).

n) Section 12, paragraph 1, sentences 1 and 2:

A certification system is obliged to forward an updated list for a given calendar year of all participating interfaces and all operating facilities involved in preceding phases of production and processing which are contractually affiliated with the interfaces to the accreditation authority in electronic form and to notify the accreditation authority of all measures taken in cases of non-compliance with Sections 1 to 4 no later than 1 March of the following calendar year.

The annual costs of this procedure amount to **245 euro**.

This requirement is necessary in order to ensure proper supervision of certification systems. A more cost-effective alternative solution does not appear to be available.

o) Section 12, paragraph 1, sentence 3:

A certification system is obliged to report all changes regarding participants and their contractually affiliated facilities to the accreditation authority immediately in electronic form.

The annual costs of this procedure amount to **2,578 euro**.

Only in this way is it possible to ensure that the accreditation authority is informed at all times of the production facilities from which certified biofuels originate and of any changes and problems that have arisen. Electronic data transmission is the most cost-effective means of forwarding the data in question.

p) Section 12, paragraph 2:

An independent audit body is obliged to submit an audit report in which it has determined non-compliance with Sections 1 to 4 to the accreditation authority immediately in electronic form.

Annual costs for this procedure amount to **63 euro**.

There is no other, more cost-effective alternative to this solution.

q) Section 12, paragraph 5, no. 3:

An independent audit body must transmit copies of the data specified in paragraph 2 to the competent office pursuant to Section 37d, paragraph 1, of the Federal Immission Control Act in electronic form.

No further costs are incurred, as the information obligation is identical to that described in Section 12, paragraph 2. The data in question is merely transmitted electronically to an additional recipient.

r) Section 12, paragraph 3, sentence 1:

An independent audit body is obliged to forward copies of certificates to the accreditation authority immediately.

Annual costs for this procedure amount to **8,550 euro**.

A more cost-effective alternative is not available.

s) Section 12, paragraph 3, sentence 2:

An independent audit body is obliged to transmit for each calendar year no later than 1 March of the following calendar year a list of all audits performed in a given calendar year in which compliance with Sections 1 to 4 was verified.

Annual costs for this procedure amount to **31 euro**.

There does not appear to be a more cost-effective alternative.

B. Special notes

Section 1 (Recognition of fuels as biofuels)

Section 1 describes requirements for biofuels. Fuels which do not meet these requirements cannot be credited toward the fulfilment of the obligations set forth in Section 37a, paragraph 1, sentences 1 and 2 in conjunction with Section 37 a, paragraph 3 of the Federal Immission Control Act and are not eligible for tax relief in accordance with Section 50, paragraph 1, no. 1 to 3 of the Energy Tax Act. Pursuant to paragraph 2, biofuels can be credited toward fulfilment of the obligations set forth in Section 37a, paragraph 1, sentences 1 and 2 in conjunction with Section 37a, paragraph 3 of the Federal Immission Control Act on the basis of a factor to be defined.

Section 2 (Sustainable cultivation of land)

The requirements pertaining to sustainable cultivation of agricultural lands are regarded as met in cases in which the principles of good practice in the fields of agriculture, forestry and fishery management are applied. In view of the number and diversity of energy crops and local conditions, it is neither possible nor appropriate to impose more detailed requirements for specific cultivation methods and operations.

Requirements relating to crop rotation, soil processing (e.g. erosion prevention), fertilization and plant protection would differ significantly, for example, for growers of rape in Germany, oil palms in Southeast Asia and sugar cane in Brazil. They would also depend to an excessive degree on discreet local conditions (e.g. climate, soil, slope incline). Therefore, the regulation is to impose general requirements only. More detailed requirements are to be set by accredited certification systems for specific energy crops and regional conditions.

The requirements of good agricultural practice and cross-compliance can also be applied to the cultivation of biomasses in the EU.

Section 3 (Protection of natural habitats)

The destruction of endangered natural habitats in general and the threat to the last remaining old growth forests and other valuable ecosystems in particular play a significant role in the discussion of the potential impact of biomass cultivation on nature and the environment.

Thus the Biofuel Quota Act contains special provisions regarding the conservation of natural habitats. The process of determining the areas which require special protection begins with the identification of protected areas which are to be protected against the potential negative effects of biomass cultivation. Emphasis is also placed on the need to protect areas of high nature conservation value against destruction. Therefore, the corresponding definition contained in the international principles and criteria of the FSC (Forest Stewardship Council e. V.) can serve as a useful guide. According to this definition, areas of high nature conservation value are areas which have unusually high nature conservation value as rare

ecosystems or are habitats for very rare species of plants and animals. These areas are described in further detail in conformity with the FSC definition in the proposed text. The text relates not only to forest habitats but also includes other habitats with high conservation value, such as “high nature value farmland”. A global or regional perspective on the assessment of natural resources is adopted in the interest of compatibility with WTO law.

In cases in which biomasses are grown in the areas described in paragraph 1, a biofuel can be credited toward fulfilment in accordance with paragraph 3 only if cultivation of the biomass is compatible with the conservation goals set for the protected area in question and the nature conservation value of an area of high nature conservation value is not impaired as a result of cultivation of the biomass. In order to respond appropriately to the specific threat to forests, biomass cannot be credited toward fulfilment in cases in which forest areas are converted to agricultural land or plantations.

The reference date is 1 January 2005. From that point on, producers have been compelled to reckon with the imposition of corresponding requirements without the entitlement to claim protection for bona fide action.

Section 4 (Greenhouse-gas reduction potential)

Paragraph 1 specifies that biofuels can be credited toward fulfilment of quotas and are eligible for tax relief only if they have a greenhouse-gas reduction potential of at least 30 percent (and of 40 percent from 1 January 2011). The Federal Government plans to continue this dynamic progression in the light of practical experience with the specified base values. Annex 1 to the regulation contains principles of a method to be used in computing greenhouse-gas reduction potential. Annex 2 provides a list of values to be used in cases in which no specific values are documented. The Federal Government plans to publish a guide for the computation of greenhouse-gas reduction potential as an aid in practice.

Because the other greenhouse gases covered by the Kyoto Protocol are also highly relevant in this context and other greenhouse gases are regularly included in all other international agreements, CO₂ equivalents are to be used as the basis for computation of greenhouse-gas reduction potentials. Values are to be converted on the basis of the Kyoto Protocol.

Unlike the requirements pertaining to sustainable cultivation of agricultural land, the requirements relating to greenhouse-gas reduction potential are applicable to the entire “life cycle” of biofuels, from cultivation to possible multiple processing and transport stages. Annex 1 contains further details regarding such matters as emissions, coproducts and land utilization changes. It also provides information regarding the “reference system” to be used for fossil fuels.

In order to provide an incentive for further reduction of greenhouse-gas emissions, paragraph 2 provides, with reference to Section 37d, paragraph 2, no. 2 of the Federal Immission Control Act, that the crediting of biofuels toward the fulfilment of quotas shall be oriented to the actual reduction of greenhouse-gas emissions on a continuous basis. The higher the

reduction of greenhouse-gas emissions as compared to fossil fuels, the higher the proportion of biofuel that will be credited toward fulfilment of the quota.

In order to ensure compliance with this principle, the quantity of biofuel to be credited toward fulfilment of a quota is to be multiplied by a computation factor – the greenhouse-gas reduction potential of the actual quantity of biofuel calculated on the basis of Annex 1 (and Annex 2, if applicable) divided by the average greenhouse-gas reduction potential of the biofuels traded by all entities subject to the regulation and credited toward fulfilment of the quota in the preceding year. If this average were not taken into account, the regulation would fail to ensure that the biofuel quota specified by law – on average for the market as a whole – is achieved. Since the Federal Immission Control Act specifies three different quotas for petrol, diesel and all fuels, different computation factors are used for the three quotas. In cases in which companies trade biofuels with average greenhouse-gas reduction potential that exceeds the average greenhouse-gas reduction potential of all fuels traded in the market during the preceding year, they are required to trade a correspondingly lower quantity of biofuels.

Because the costs of documenting greenhouse-gas reduction may be very high in some cases, Annex 2 provides standard values which may be used without the need to furnish specific evidence. However, actual values can always be documented in individual cases. It is also possible to furnish documentation for individual segments in the production chain in order to account for processes with especially low emission levels and to use the standard values for the remaining segments of the production chain (modular application).

The indirect effects of land utilization changes (displacement of previous use to other land with high carbon deposits) are not taken into consideration. This issue is the focus of preliminary scientific research and intense discussion. However, this discussion has not progressed to the point at which a methodological approach to the problem that is based on sound arguments and is sufficiently verified with respect to its impact on trade flows and land utilization is available. Therefore – and in view of the urgent need to finalize the regulation – the current draft regulation does not contain such a provision. However, the Federal Government plans to continue promoting further study of the indirect effects of land utilization changes vigorously in order to amend Annex 2 accordingly as soon as possible, thereby contributing to the discussion within the EU.

Section 5 (Certification systems, interfaces)

Paragraph 1, sentence 1 provides that certification systems shall set detailed requirements for compliance with Sections 1 to 4 by facilities in all stages of production, processing and delivery. Paragraph 1, sentence 2 cites specific requirements to be imposed by certification systems.

Paragraph 2 defines the interface, i.e. the point at which data required for documentation of compliance with the specific requirements set forth in Sections 1 to 4 must be collected, processed or transmitted. The interfaces are always the biofuel production facilities and oil

mills which precede production facilities in the chain of custody.

Interfaces must be members of a certification system. Facilities which precede the entire production, processing and delivery chain need not be members of a certification system. However, it must be possible to assign them to a certification system on the basis of contractual agreements with interfaces.

Section 6 (Certificates)

In view of the fact that proof of fulfilment of the requirements set forth in Sections 1 to 4 must be credible, paragraph 1 provides that such proof must be provided by an independent audit body accredited by the Federal Government. Proof is provided in the form of a certificate to be submitted to the biofuel quota office or the appropriate main customs office.

Certificates are issued for periods of one year. Proof of compliance must cover the entire chain of delivery from the point of cultivation, as essential requirements imposed by the regulation relate to the cultivation of biomass. The entire chain of delivery must be traceable. However, this would be very cost- and work-intensive in the case of mass products, as certified products would have to be kept separate from non-certified products during all phases of transport and processing. A simplified approach would be based on the input-output principle used by forestry certification systems such as the FSC and the PEFC. Proof is furnished in each case that a certain proportion of certified material was used in a given process (e.g. processing facility). A corresponding proportion of the output can be certified without requiring that the materials be kept separate during subsequent processing.

Because the certificate is issued at the processing level, it cannot contain data pertaining to the specific greenhouse-gas emissions in subsequent processing stages in the production chain (transport to a tax warehouse). This requires an additional certificate unless the default values in Annex 2 are used.

In order to ensure that a given certificate can be attributed clearly, paragraph 3 specifies that certificates must contain the date of issue, the date of expiration and a unique number assigned by the independent audit body.

An essential basis for the certificate is the documentation of compliance with Sections 1 to 4 by the interface. Paragraph 4 contains provisions regarding this documentation. Paragraph 5 specifies the length of time certificates must be maintained in the records of independent audit bodies.

Section 7 (Evidence of compliance)

Section 7 contains detailed provisions regarding evidence of compliance to be provided to the competent body pursuant to Section 37d, paragraph 1 of the Federal Immission Control Act. Evidence is furnished in the form of an attestation by the interface issued on the basis of

the one-year certificate for the respective consignment.

As a rule, biofuels pass through multiple stages of the trading chain from the production facility to the location at which they are used. It is entirely possible that a consignment of biofuel for which a certificate was issued is divided into partial lots. In order to show proof of certification for each partial quantity of biofuel, an application for a partial attestation can be filed with the biofuel quota office electronically. This partial attestation is sufficient evidence of compliance with the requirements set forth in Sections 1 to 4. The biofuel quota office cannot issue a partial attestation unless it has prior knowledge of the contents of the certificate issued for the biofuel in question. For this reason, paragraph 3 provides that the independent audit body must transmit the contents of every certificate issued to the biofuel quota office. Applications for partial attestations are to be filed by the entities which divide the biofuel into partial lots.

Paragraph 3 provides for cases in which the biofuel quota office does not recognize certificates and/or partial attestations as proof of compliance with Sections 1 to 4. The list is not final.

Section 8 (Audits)

Section 8 contains provisions regarding audits of interfaces. Interfaces defined in Section 5, paragraph 2 must be audited at least once per year. In the case of agricultural facilities subject to cross-compliance, extensive audits are performed in accordance with the relevant requirements of cross-compliance. These are taken into consideration in these cases, so that these facilities are audited only for compliance with Sections 3 and 4. At least 5 percent of all other facilities which precede interfaces in the chain of custody must be audited once per year.

Section 9 (Accreditation of certification systems)

Paragraph 1 stipulates that each certification system must be accredited. Every certification system must be independent of facilities with an interest in the result of conformity tests and provide evidence of sufficient reliability and requisite knowledge. These criteria are crucial to the maintenance of trust in a certification system. Doubt may arise as to the independence of a certification system especially in cases in which the certification system is affiliated directly or indirectly, through personnel or capital interest, with facilities involved in the production, processing or delivery of biomass. The certification system is required to submit and publish a description of its functions, responsibilities and field of expertise as well as the specific requirements imposed by the certification system with regard to compliance with Sections 1 to 4 for the facilities in all states of production, processing and delivery, including a description of action to be taken in cases of non-compliance with Sections 1 to 4. The certification system must have a sufficient number of qualified employees, furnish a declaration regarding auditing and entry rights for audits of compliance with Sections 1 to 4 and designate an independent audit body. A certification system must have either a branch

office or a serviceable address in Germany. A serviceable address is required so that the accreditation and supervision processes can be conducted in a proper manner.

Paragraph 2 provides that proof of fulfilment of the requirements set forth in paragraph 2 is to be furnished in the form of appropriate documents pertaining to the physical resources of the certification system and the individuals employed by the certification system. The accreditation authority may also require submission of additional documentation. The submission of the documentation in question is necessary in order to enable the accreditation authority to make an informed decision.

Paragraph 3 contains the provision limiting accreditation of a certification system to a period of five years. In cases in which a certification system still meets the prerequisites for accreditation, accreditation shall be extended by five years. Applications for extension must be submitted six months prior to expiration of the initial accreditation in order to allow sufficient time for review and timely extension of the accreditation. Accreditation may be granted subject to certain requirements in cases in which fulfilment of such requirements is necessary in order to ensure proper performance of the functions and responsibilities of a certification system. Accreditations are to be published in the *Federal Gazette* by the accreditation authority.

Accreditation expires pursuant to paragraph 4 in cases in which the certification authority does not commence operations within one year of initial accreditation or has not operated for a period of one year since initial accreditation. In the interest of legal certainty, expiration of accreditation is to be documented in official records, with a corresponding notice published in the *Federal Gazette*.

Section 10 (Accreditation of independent audit bodies)

Paragraph 1 stipulates that an independent audit body must be accredited. The requirements imposed on such audit bodies are even stricter than those which apply to certification systems. An independent audit body may not be affiliated directly or indirectly, through personnel or capital interest, with persons, facilities or organizations involved in the production, processing or delivery of biofuels or with certification systems. Its neutrality with regard to audits of compliance with Sections 1 to 4 must be beyond doubt. This is crucial to the maintenance of trust in independent, reliable and competent audits of compliance with Sections 1 to 4. The independent audit body must submit a description of its functions, responsibilities and fields of expertise. It must have a sufficient number of qualified employees and possess declarations regarding auditing and entry rights from the accreditation authority. The independent audit body must have a branch office or a serviceable address in Germany. A serviceable address is required so that the accreditation and supervision processes can be conducted in a proper manner. Independent audit bodies must furnish evidence of conformity with international standards in the form of an accreditation in accordance with Standard DIN EN 45011 to an accreditation authority within the context of the accreditation process.

Paragraph 2 provides that proof of fulfilment of the requirements set forth in paragraph 1 is to be furnished in the form of appropriate documents pertaining to the physical resources of the independent audit body and the personnel employed by the independent audit body. The accreditation authority may also require submission of additional documentation. The submission of the documentation in question is necessary in order to enable the accreditation authority to make an informed decision.

Paragraph 3 contains the provision limiting accreditation of an independent audit body to a period of five years. In cases in which an independent audit body still meets the prerequisites for accreditation, accreditation shall be extended by five years. Applications for extension must be submitted six months prior to expiration of the initial accreditation in order to allow sufficient time for review and timely extension of the accreditation. Accreditation may be granted subject to certain requirements in cases in which fulfilment of such requirements is necessary in order to ensure proper performance of the functions and responsibilities of an independent audit body. Accreditations are to be published in the *Federal Gazette* by the accreditation authority.

Accreditation expires pursuant to paragraph 4 in cases in which the independent audit body does not commence operations within one year of initial accreditation or has not operated for a period of one year. In the interest of legal certainty, expiration of accreditation is to be documented in official records, with a corresponding notice published in the *Federal Gazette*.

Section 11 (Suspension and revocation of accreditation of certification systems and independent audit bodies)

Section 11 contains provisions regarding the suspension and revocation of accreditations issued in accordance with this regulation. Paragraph 1 covers suspension and revocation of accreditations of certification systems. Accreditation is to be revoked for the reasons cited in sentence 2, as these are regarded as especially grave.

Paragraph 2 covers the suspension and revocation of accreditations of independent audit bodies. Accreditation is to be revoked for the reasons cited in sentence 2, as these are regarded as especially grave.

Paragraph 3 stipulates that the general provisions of administrative procedural law pertaining to rescission and revocation of official administrative actions are not affected by the special provisions set forth in sentences 1 and 2.

Section 12 (Reporting obligations)

The reporting obligations described in Section 12 facilitate the process of supervising certification systems and independent audit bodies for the accreditation authority.

Paragraph 1 describes the obligation of certification systems to prepare and submit an

annually updated list identifying all facilities participating in the certification system as well as all facilities contractually affiliated with these which precede participating facilities in the production, processing and delivery chain, arranged in chronological order. In addition, the accreditation authority is to be notified of all changes relating to participants in the certification system as well as all facilities contractually affiliated with them which precede participating facilities in the production, processing and delivery chain.

Paragraphs 2 and 3 describe the reporting obligations of independent audit bodies to the accreditation authority.

Paragraph 4 provides that the accreditation authority may publish appropriate pre-printed forms in the *Federal Gazette* for the purpose of standardizing the information received from certification systems and independent audit bodies.

Section 13 (Supervision)

Section 13 details the intervention authorizations required for the implementation and supervision of this regulation. Paragraph 1 describes the responsibility of the accreditation authority for supervision of certification systems and independent audit bodies. Paragraph 2 contains a blanket clause authorizing the accreditation authority to order measures required for supervision. Emphasis is placed in this context on the right of the accreditation authority to prohibit a given employee from conducting conformity audits due to insufficient independence, requisite knowledge or reliability.

Section 14 (Transmission of data)

Section 14 authorizes the accreditation authority to transmit data to other authorities for the purpose of complying with the provisions of this regulation.

Section 15 (Fees)

Section 15 stipulates that fees are to be levied for official actions performed pursuant to this regulation.

Section 16 (DIN and DIN EN Standards)

This section names the publisher of the DIN and DIN EN Standards cited in the regulation and the institution at which these standards are archived.

Section 17 (External relations)

Section 17 describes the responsibilities for external relations with relevant ministries and authorities of other Member States and organs of the European Community in connection with implementation of this regulation. The competent authority is the Federal Ministry of Food, Agriculture and Consumer Protection. The ministry may delegate responsibility to the accreditation authority.

Section 18 (Transition clause)

This clause provides that the requirements for biofuels set forth in Sections 1 to 4 must be met after the end of the 16th month following the date of entry into force of the regulation. This allows concerned business enterprises sufficient time to prepare for the new provisions. It is assumed that the EU notification procedure must be completed prior to implementation of the regulation.

This section also specifies the point in time at which applications may be submitted in accordance with Sections 9 and 10.

Section 19 (Date of entry into force)

This section contains a statement regarding the date of entry into force of the regulation.