

**Ordinance on requirements pertaining to sustainable production of
bioliquids for electricity production**
**(Biomass-electricity-sustainability ordinance – Biomassestrom-
Nachhaltigkeitsverordnung (BioSt-NachV))**

Important notice: The following text is a translation of the German “Verordnung über Anforderungen an eine nachhaltige Herstellung von flüssiger Biomasse zur Stromerzeugung”. This translation is for information purposes only (non-binding). The official document can only be found in the Federal Law Gazette.

A. Problem and aim

In the past, bioliquids production has been responsible for disastrous environmental damage (involving such activities as slash-and-burn clearing of rain forests, and such impacts as loss of biodiversity). This ordinance, which is based on the empowerments set forth by Art. 64 para. 1 sentence 1 no 9 and Art. 64 para. 2 no 1 of the Renewable Energy Sources Act (EEG), is aimed at ensuring that bioliquids used for electricity production, and eligible for the pertinent payment framework under the EEG, are always produced in full compliance with binding sustainability standards. Consequently, bioliquids that are produced in non-sustainable ways will in future no longer be eligible for the pertinent payment framework under the EEG. This will ensure that intensified energy-related use of biomass does not have undesirable impacts on natural systems, on climate and on social welfare.

As of 1 January 2010, therefore, eligibility (with regard to bioliquids) for basic tariff pursuant to the EEG will be tied to documentation of compliance with specific requirements pertaining to sustainable management of agricultural land and to the conservation of landscapes worthy of special protection. Furthermore, bioliquids for electricity production must show a specified potential, in light of the entire relevant value-creation chain, for reducing greenhouse-gas emissions. These requirements conform to the standardised European requirements approved by the European Union in Directive 2009/28/EC. In the interest of environmental and climate protection, the energy crop bonus of the EEG shall be made subject, starting immediately, to the fulfilment of the potential for greenhouse-gas-emissions reductions. In addition, the Ordinance will provide a foundation for effective private-economic certification and control systems that guarantee compliance with the prescribed standards, throughout all parts of the value-creation chain, and that enable all stakeholders to review the quality of their goods clearly and completely, at all times.

B. Solution

The issuing of a legal ordinance pursuant to Art. 64 para. 1 sentence 1 no 9 and Art. 64 para. 2 no 1 of the Renewable Energy Sources Act (EEG).

C. Alternatives

None.

D. Financial impacts on public budgets

The Ordinance defines the sustainability requirements to which payments for biomass, under the EEG, shall be subject. Relevant monitoring is carried out by private certification bodies. The only pertinent burden for public budgets results in that a public agency, the Federal Agency for Agriculture and Food (BLE), has to certify and monitor the involved certification bodies and their certification systems. In addition, administrative costs would be incurred via the establishment of a central register of pertinent installations and relevant information.

No administrative expenses would result for the Länder and for municipalities.

E. Other costs

As a rule, the costs for producing bioliquids in sustainable ways are higher than those for producing bioliquids in non-sustainable ways. Additional costs result from certification of bioliquids. Such costs, in turn, lead to increases in the relevant market prices. In principle, such higher costs are offset by the tariffs under the Renewable Energy Sources Act (EEG), since payments under the EEG have already been structured to take account of the costs for producing bioliquids sustainably.

No impacts on general price levels – and, particularly, on consumer-price levels – are expected.

F. Bureaucracy costs

An ex ante estimate indicates that the following bureaucracy costs would be incurred by businesses, citizens and administrations:

a) Bureaucracy costs for businesses

The ordinance provides for 19 new obligations to provide information. The ex-ante estimates indicate that the resulting net costs would amount to about 1,470,000 EUR, of which some 260,000 EUR would be one-time costs.

b) Bureaucracy costs for citizens

For citizens, the ordinance includes no new obligations to provide information.

c) Bureaucracy costs for administrations

For the Federal Agency for Agriculture and Food (BLE), and for the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), the ordinance includes 17 new obligations to provide information.

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**(Biomass-electricity-sustainability ordinance – Biomassestrom-
Nachhaltigkeitsverordnung (BioSt-NachV)) ***

Of 23 July 2009

On the basis of

- Art. 64 para. 1 sentence 1 no 9 of the Renewable Energy Sources Act (EEG) of 25 October 2008 (Federal Law Gazette I p. 2074) the Federal Government, and, on the basis of
- Art. 64 para. 2 no 1 of the Renewable Energy Sources Act (EEG), the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), by agreement with the Federal Ministry of Food, Agriculture and Consumer Protection (BMELV), and with the consent of the Bundestag,

issue the following Ordinance:

* This Ordinance serves the purpose of transposing Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ. L 140 of 5 June 2009, p. 16). The obligations resulting from Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204 of 21 July 1998, p. 37), last amended by Directive 2006/96/EC (OJ. L 363 of 20 December 2006, p. 81), have been observed.

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Part 1
General Provisions

Art. 1
Area of application

This Ordinance shall apply to bioliquids used for electricity production, pursuant to the Renewable Energy Sources Act (EEG), with the exception of bioliquids only required as start-up, priming and supporting fuel.

Art. 2
Definitions

(1) "Biomass" within the meaning of this Ordinance is biomass within the meaning of the Biomass Ordinance of 21 June 2001 (Federal Law Gazette I p. 1234), last amended by the ordinance of 9 August 2005 (Federal Law Gazette I p. 2419), in the relevant applicable version. "Bioliquids" is biomass pursuant to sentence 1 that is liquid upon entering the combustion chamber or furnace.

(2) "Production" within the meaning of this Ordinance comprises all work steps, from cultivation of required biomass, particularly plants, to processing of bioliquids to the level of quality required for use in electricity-production installations.

(3) "Interfaces" within the meaning of this Ordinance are

1. companies and operational sites (companies) that receive biomass, as required for production of bioliquids, from the companies and operational sites that cultivate and harvest such biomass, for purposes of further processing,
2. oil mills and
3. refineries and other operational sites for processing bioliquids to the level of quality required for use in electricity-production installations.

(4) "Environmental verifiers" within the meaning of this Ordinance are

1. persons or organisation who, pursuant to the Environmental Audit Act (Umweltauditgesetz) in the version promulgated on 4 September 2002 (Federal Law Gazette I, p. 3490), last amended by Article 11 of the Act of 17 March 2008 (Federal Law Gazette I p. 399), in the relevant applicable version, are entitled to work as environmental verifiers or environmental-verification organisations for the agricultural or forestry sectors, and
2. other environmental verifiers and environmental-verification organisations certified, in another Member State of the European Union, or in another state that is party to

the Agreement on the European Economic Area, for the agricultural or forestry sectors or other, comparable area, in keeping with the criteria set forth by Art. 18 of the Environmental Audit Act.

(5) "Certificates" within the meaning of this Ordinance are proofs of conformity, certifying that interfaces, including all operations and companies they engage, either directly or indirectly, for production or transport and distribution (delivery) of biomass, conform to requirements under this Ordinance.

(6) "Certification bodies" within the meaning of this Ordinance are independent natural or legal persons who, within a recognised certification system,

1. issue certificates for interfaces that fulfil the requirements pursuant to this Ordinance, and
2. assess and ascertain compliance, of companies, interfaces and suppliers, with the requirements pursuant to this Ordinance.

(7) "Certification systems" within the meaning of this Ordinance are systems that organisationally ensure fulfilment of the requirements pursuant to this Ordinance for production, and of transport and delivery, of biomass, and, in particular, include standards for a further specification of the requirements pursuant to this Ordinance, for proof of fulfilment of such requirements and for checking of such proof.

Part 2

Sustainability requirements

Art. 3

Requirements pertaining to the basic tariff

(1) The entitlement to payment of the tariff pursuant to Art. 27 para. 1 of the Renewable Energy Sources Act (EEG), for electricity produced from bioliquids, shall be recognised only

1. if the requirements pertaining to
 - a) the protection of natural habitats pursuant to Arts. 4 through 6 and
 - b) the sustainable agricultural management pursuant to Art. 7
 are fulfilled,
2. the bioliquids used exhibit potential for reducing greenhouse-gas-emissions as set forth in Art. 8, and

3. the operator of the installation in which the bioliquid is used for electricity production has applied for registration of such installation in the register of installations pursuant to Arts. 61 through 63.

(2) The reference date for assessing requirements pertaining to protection of natural habitats pursuant to Arts. 4 through 6 shall be 1 January 2008. In cases in which no adequate data are available for determining compliance with requirements as of that date, a different date in January 2008 may be chosen as the reference date.

(3) Para. 1 shall apply both for bioliquids produced within Member States of the European Union and to bioliquids imported from states that are not Member States of the European Union (third countries), except where other provisions apply pursuant to the following provisions.

(4) Para. 1 no 1 shall not apply for bioliquids produced from waste or from residues, with the exception of residues from agriculture, forestry, fisheries and aquaculture.

Art. 4

Protection of areas of high value with regard to nature conservation

(1) Bioliquids shall not be made from raw material obtained from land with high biodiversity value.

(2) "Land with high biodiversity value" shall include all areas that, as of the reference date or a later date, had one of the following statuses, regardless of whether the areas still have such status:

1. forested areas pursuant to para. 3,
2. areas serving purposes of nature conservation pursuant to para. 4 or
3. grassland with great biodiversity pursuant to para. 5.

(3) Forested areas include

1. primary forests and
2. other wood land that has been left in a natural state and
 - a) has a cover of native tree species,
 - b) in which there is no clearly visible indication of human activity and
 - c) in which ecological processes have not been significantly disturbed.

(4) "Areas serving purposes of nature conservation" are areas that have been designated, by law or by the competent authority, for nature protection purposes. Where the Commission of

the European Communities, on the basis of Article 18 para. 4 sub-paragraph 2 sentence 3 of 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140 of 5 June 2009, p. 16) recognises areas, for protection of rare, threatened or endangered ecosystems or species, that

1. are recognised by international agreements or
2. are included in lists drawn up by intergovernmental organisations or the International Union for Conservation of Nature (IUCN),

for the purposes of Article 17 para. 3 letter b no ii of this Directive, such areas shall be considered to be areas that serve nature protection purposes. Para. 1 shall not apply if cultivation and harvesting of the raw material do not interfere with the aforementioned nature protection purposes.

(5) "Highly biodiverse grassland" is grassland that, in the absence of human intervention,

1. would remain grassland and which maintains its natural species composition and ecological characteristics and processes (natural grassland) or
2. would cease to be grassland, that is species-rich and not degraded (non-natural grassland), except where harvesting of the raw material is necessary to preserve the land's grassland status.

"Highly biodiverse grassland" shall especially be considered to include areas that the Commission of the European Communities has defined as such, on the basis of Article 17 para. 3 sub-paragraph 2 of Directive 2009/28/EC. The criteria established by the Commission for determination of natural or non-natural grassland on the basis of Article 17 para. 3 sub-paragraph 2 of Directive 2009/28/EC shall be taken into account in interpretation of sentence 1.

Art. 5

Protection of areas with high carbon stock

(1) Bioliquids shall not be made from raw material obtained from land with high above-ground or underground carbon stock.

(2) "Land with high above-ground or underground carbon stock" shall include all areas that, as of the reference date or later, had one of the following statuses and that no longer have such status at the time of cultivation and harvest of relevant raw material:

1. wetlands pursuant to para. 3 or
2. continuously forested area pursuant to para. 4.

(3) "Wetlands" are land that is covered with or saturated by water permanently or for a significant part of the year. "Wetlands" shall especially include all wetlands included in the list of internationally important wetlands pursuant to Article 2 para. 1 of the Convention of 2 February 1971 on wetlands, especially as habitats of international importance for waterfowl and wading birds (Federal Law Gazette 1976 II p. 1266).

(4) "Continuously forested areas" are land spanning more than one hectare with trees higher than five metres and

1. with a canopy cover of more than 30 %, or trees able to reach those thresholds in situ, or
2. with a canopy cover of between 10 % and 30 %, or trees able to reach those thresholds in situ, unless evidence is provided that the carbon stock of the area before and after conversion is such that the bioliquid would have the greenhouse-gas-emissions savings potential pursuant to Art. 8 para. 1 even when such potential is determined via calculation pursuant to Art. 8 para. 3.

Art. 6

Protection of peatlands

(1) Bioliquids shall not be made from raw material obtained from land that was peatland on the reference date or later.

(2) Para. 1 shall not apply if the cultivation and harvesting of the biomass does not involve drainage of previously undrained soil.

Art. 7

Sustainable agricultural management

Cultivation of biomass for purposes of bioliquids production, where agriculturally cultivated within a Member State of the European Union, must take place

1. in accordance with the provisions set forth in Annex II nos 1 through 5 and 9 of Council Regulation (EC) no 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers (OJ L 30 of 31 January 2009, p. 16), and
2. in accordance with the minimum requirements for good agricultural and environmental condition defined pursuant to Article 6 para. 1 of Council Regulation (EC) no 73/2009.

Art. 8**Greenhouse-gas-emissions savings potential**

(1) The greenhouse gas emission saving from the use of bioliquids must be at least 35 %. That emission saving shall increase

1. on 1 January 2017 to at least 50 %, and
2. on 1 January 2018 to at least 60 %, if the interface pursuant to Art. 2 para. 3 no 2 has been commissioned after 31 December 2016.

(2) Compliance with para. 1 sentence 1 shall not be required until 1 April 2013 if the interface pursuant to Art. 2 para. 3 no 2 was commissioned before 23 January 2008.

(3) The greenhouse-gas-emissions savings potential shall be calculated on the basis of actual values, in accordance with the method laid down in Annex 1. The actual values for greenhouse-gas emissions must be determined on the basis of precise measurements. Measurements shall be recognised as precise if, in particular, they are carried out in accordance with

1. a certification system recognised under this Ordinance, or
2. a regulation that
 - a) the Commission of the European Communities, on the basis of Article 18 para. 4 sub-paragraph 2 sentence 1 or sub-paragraph 3 of Directive 2009/28/EC, or
 - b) the competent authorityhas recognised as a basis for precise measurements.

The competent authority shall promulgate the content of regulations pursuant to sentence 3 no 2 by a separate communication in the Electronic Federal Gazette.

(4) In calculation of the greenhouse-gas-emissions savings potential pursuant to para. 3, the default values listed in Annex 2 may be used, either completely or in part, for the formula in Annex 1 no 1. Sentence 1 shall apply for the disaggregated default values for cultivation in Annex 2 no 1 letter a only if

1. the biomass
 - a) has been cultivated outside of the Member States of the European Union or
 - b) has been cultivated in the Member States of the European Union, in an area included in a list pursuant to Art. 19 para. 2 of Directive 2009/28/EC,or

2. the bioliquids have been produced from waste or residues, with the exception of residues from agriculture, fisheries or aquaculture.

(5) Where the Commission of the European Communities adapts Annex V Part C or D of Directive 2009/28/EC, on the basis of Art. 19 para. 7 of that Directive, in line with technical and scientific progress, the pertinent changes shall also be applied in calculation of the greenhouse-gas-emissions savings potential pursuant to para. 3 and 4.

**Art. 9
(repealed)**

**Art. 10
Requirements pertaining to the energy crop bonus**

With regard to electricity produced from bioliquids, claims to the energy crop bonus pursuant to Art. 27 para. 4 no 2 of the Renewable Energy Sources Act (EEG) shall be recognised only if the requirements pursuant to Arts. 3 through 8, with the exception of Art. 8 (2), which shall not be applied, have been fulfilled.

**Part 3
Furnishing of proof**

**Section 1
General Provisions**

**Art. 11
Proof of fulfilment of requirements pertaining to the basic tariff**

Installation operators must furnish proof, to the grid system operator, that requirements for the tariff pursuant to Art. 3 para. 1 have been fulfilled. Proof

1. with regard to Art. 3 para. 1 nos 1 and 2, in conjunction with Arts. 4 through 8, must be furnished via submission of a proof pursuant to Art. 14, and
2. with regard to Art. 3 para. 1 no 3, in conjunction with Arts. 61 through 63, must be furnished via submission of the certification from the competent authority pursuant to Art. 64 para. 4.

Art. 12
Other proof

No other proof that the requirements pursuant to Art. 3 para. 1 have been fulfilled may be required for the basic tariff pursuant to Art. 27 para. 1 of the Renewable Energy Sources Act (EEG). Art. 58 shall not be affected.

Art. 13
Transmission of proof to the competent authority

Installation operators must also provide to the competent authority, without delay, copies, in writing, of the proof, pursuant to Art. 11 sentence 2 no 1, that they furnish to the grid system operator for purpose of fulfilment of obligations to furnish proof. In cases pursuant to Art. 27 para. 3 no 2 of the Renewable Energy Sources Act (EEG), a copy of the record of the substances used must be attached to such copies.

Section 2
Proof of compliance with sustainability requirements

Art. 14
Recognised types of proof

Recognised types of proof to the effect that bioliquids fulfil the requirements pursuant to Arts. 4 through 8 include the following:

1. proofs of sustainability, if issued pursuant to Art. 15 or Art. 24,
2. proofs of sustainability pursuant to Art. 22,
3. proofs of sustainability pursuant to Art. 23, and
4. proofs of compliance from environmental verifiers pursuant to Art. 59 para. 1.

Art. 15
Issuance of proof of compliance with sustainability requirements

(1) For bioliquids that they have produced, interfaces may issue proofs of compliance with sustainability requirements if

1. they have a pertinent certificate that is recognised under this Ordinance and that is valid at the time at which the proof of compliance with sustainability requirements is issued,

2. their upstream (in the workflow) interfaces
 - a) each present them with copies of their certificates that are recognised under this Ordinance and that were valid at the time of the relevant production, processing or other steps taken with regard to the biomass,
 - b) confirm that the requirements pursuant to Arts. 4 through 7 have been fulfilled in production of the biomass, and
 - c) provide, in each case in grams of CO₂ equivalents per megajoule of bioliquids (g CO_{2eq}/MJ), the greenhouse-gas emissions caused by them and by all companies / operations they have engaged, either directly or indirectly, to produce or supply bioliquids, and that are not themselves interfaces, in producing and supplying the biomass, where such emissions must be taken into account in calculation of the greenhouse-gas-emissions savings potential pursuant to Art. 8,
3. the origins of the biomass, from cultivation to the point at which it reached the interface, have been proven at least with a mass balance system that meets the requirements pursuant to Art. 16, and
4. the biomass exhibits the greenhouse-gas-emissions savings potential set forth in Art. 8.

(2) Proof of compliance with sustainability requirements must be issued within a certification system that is recognised under this Ordinance.

(3) Only interfaces for which no further interface is sited downstream (in the workflow process) are entitled to issue proofs of compliance with sustainability requirements.

Art. 16

Issuance on the basis of mass balance systems

(1) For furnishing of proof of the origins of biomass, with regard to production, mass balance systems must be used that meet at least the requirements pursuant to para. 2.

(2) Mass balance systems must ensure

1. that, in cases in which the biomass is mixed with other biomass that does not fulfil the requirements of this Ordinance,
 - a) the quantity of the biomass that fulfils the requirements of this Ordinance and is added to such mixture is determined in advance, and
 - b) the quantity of the biomass that is withdrawn from such mixture and is to serve as biomass pursuant to this Ordinance is not higher than the quantity pursuant to letter a, and

2. that, in cases in which different quantities of

a) bioliquids are mixed for which proofs of compliance with sustainability requirements have already been issued and that have different greenhouse-gas-emissions savings potentials, the pertinent greenhouse-gas-emissions savings potentials are balanced only if all quantities added to the mixture had the greenhouse-gas-emissions savings potential pursuant to Art. 8 prior to the mixing, or

b) biomass that is used to produce bioliquids pursuant to this Ordinance, and for which no proofs of compliance with sustainability requirements have been issued, and that has different greenhouse-gas emissions, the greenhouse-gas emissions are balanced only if all quantities that are added to the mixture had, prior to such mixing, the value defined for this production step

aa) by the Commission of the European Communities or,

bb) by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU).

(3) The values pursuant to para. 2 no 2 letter b double letter bb shall be derived from the default values pursuant to Annex 2 and shall be promulgated by separate communication in the Electronic Federal Gazette. Such values shall apply only if the Commission of the European Communities has not published values for the relevant production step in the Official Journal of the European Union.(4) Other requirements stated by certification systems that preclude mixing, completely or in part, of bioliquids with other biomass, shall not be affected.

Art. 17

Supply on the basis of mass balance systems

(1) To make it possible to prove the origins of produced bioliquids, from the interface that issued the proof of compliance with sustainability requirements,

1. the bioliquids, throughout the spectrum from that interface to the installation operator, may be delivered solely by suppliers that keep records of delivery of such biomass in a mass balance system that fulfils the requirements pursuant to Art. 16 para. 2, and

2. checking of fulfilment of the requirement pursuant to no 1 is assured.

(2) The requirements pursuant to para. 1 shall be considered fulfilled if

1. all suppliers have obligated themselves to fulfil the requirements of a certification system recognised under this Ordinance, where such system includes requirements pertaining to supply of bioliquids, or

2. all suppliers have kept records of receipt and forwarding of the bioliquids, including the information required in the relevant proof of compliance with sustainability requirements, and including records of the place and date at/on which they have received or forwarded the bioliquids, in one of the following electronic databases:
 - a) the database of a certification system, if recognition of the certification system pursuant to Art. 33 para. 2 also refers to the operation or use of such a database, or
 - b) the database of a certification body, or of another legal or natural person, if such database has been promulgated, in the Electronic Federal Gazette, as a recognised proof of fulfilment of requirements pursuant to para. 1;

in cases affecting the public interest, a pertinent database may also be operated by the competent authority; in such cases, the justified interests of relevant economic operators, especially their business and operational secrets, shall be protected, or

3. fulfilment of requirements pertaining to supply of bioliquids is checked via a mass balance system complying with an Ordinance on sustainable production of biomass for use as biofuels that has been issued on the basis of Art. 37d para. 2 no 3 and no 4 and para. 3 no 2 of the Federal Immission Control Act in the version promulgated on 26 September 2002 (Federal Law Gazette I, p. 3830), last amended by Art. 1 of the Act of 15 July 2009 (Federal Law Gazette I p. 1804), and by Art. 66 para. 1 no 11a letters a and b of the Energy Taxation Act (Energiesteuergesetz) of 15 July 2006 (Federal Law Gazette I, p. 1534), last amended by Art. 2 of the Act of 15 July 2009 (Federal Law Gazette I p. 1804), in the relevant applicable version.

(3) The fulfilment of the requirements pursuant to para. 1 shall be confirmed, within the proof of compliance with sustainability requirements, by the supplier that delivers the bioliquids to the installation operator.

Art. 18

Contents and form of proof of compliance with sustainability requirements

(1) Proofs of compliance with sustainability requirements must include at least the following information:

1. the name and address of the issuing interface,
 - 1a. the date of issuance,
2. a unique proof number composed at least of the certificate number of the issuing interface and of a unique number to be issued by that interface,

3. the name of the certification system in which the proof of compliance with sustainability requirements has been issued,
4. the quantity and the type of the bioliquids to which the proof of compliance with sustainability requirements refers,
5. the confirmation that the bioliquids to which the proof of compliance with sustainability requirements refers fulfils the requirements pursuant to Arts. 4 through 8, including,
 - a) in cases referred to by Art. 8 para. 2, information as to whether the interface pursuant to Art. 2 para. 3 no 2 was commissioned prior to 23 January 2008, or
 - b) the following information:
 - aa) the energy content of the bioliquids, in megajoules,
 - bb) the greenhouse-gas emissions produced in producing and supplying the bioliquids, in grams of carbon dioxide equivalents per megajoule of bioliquids (g CO_{2eq}/MJ),
 - cc) the comparator for fossil fuels, that was used for calculation of the greenhouse-gas-emissions savings potential pursuant to Annex 1, and
 - dd) the countries or states in which the bioliquids may be used; such information may refer to the entire area in which the bioliquids may be supplied and used without such actions' having the effect that the greenhouse-gas emissions from production and supply would be less than the greenhouse-gas-emissions savings potential pursuant to Art. 8,
6. the name and address of the supplier to whom the biomass is forwarded, and
7. the confirmation of the last supplier pursuant to Art. 17 para. 3.

(2) Proofs of compliance with sustainability requirements must be issued in writing, in accordance with the sample provided in Annex 3.

(3) Proofs of compliance with sustainability requirements must be submitted to the grid system operator in German.

Art. 19**Subsequent provision of lacking information**

Information that, in derogation of Art. 18 para. 1, is lacking in a proof of compliance with sustainability requirements may be subsequently added only

1. by the interface that issued the proof of compliance with sustainability requirements, or
2. by a certification body that is recognised under this Ordinance.

Art. 20**Invalidity of proof of compliance with sustainability requirements**

Proofs of compliance with sustainability requirements are invalid if

1. they fail to include one or more of the information items referred to in Art. 18 para. 1, with the exception of no 5 letter b double letter dd,
2. they have been forged or contain incorrect information,
3. the certificate of the issuing interface was invalid, or no longer valid, at the time the proof of compliance with sustainability requirements was issued,
4. the proof of compliance with sustainability requirements, or the certificate of the issuing interface, has been issued in a certification system that, at the time at which the proof of compliance with sustainability requirements or the certificate was issued, was not, or was no longer, recognised under this Ordinance, or
5. the certificate of the issuing interface was issued by a certification body that, at the time the certificate was issued, was not, or was no longer, recognised under this Ordinance.

Art. 21**Other consequences of omission of required information or of provision of inadequate information**

(1) If a proof of compliance with sustainability requirements, in its information relative to the greenhouse-gas-emissions savings potential, does not include the comparator for the purpose for which the bioliquids are being used, the installation operator must furnish proof to the grid system operator to the effect that the bioliquids also have the relevant greenhouse-gas-emissions savings potential for the purpose in question. The competent authority may promulgate a calculation method, in the Electronic Federal Gazette, for converting the greenhouse-gas-emissions savings potential for different uses.

(2) If a proof of compliance with sustainability requirements fails to include information pursuant to Art. 18 para. 1 no 5 letter b double letter dd, or if the electricity production installation is not operated in the country or state pursuant to Art. 18 para. 1 no 5 letter b double letter dd, the installation operator must furnish proof to the grid system operator to the effect that the bioliquids would also have the relevant greenhouse-gas-emissions savings potential when operated in such country or state.

Art. 22**Recognised proof of compliance with sustainability requirements, on the basis of the Biofuel Sustainability Ordinance**

(1) Proofs of compliance with sustainability requirements shall also be considered recognised if, and insofar as, they are recognised on the basis of an ordinance on requirements pertaining to sustainable production of biomass for use as biofuels, issued on the basis of Art. 37d para. 2 no 3 and no 4 and para. 3 no 2 of the Federal Immission Control Act and of Art. 66 para. 1 no 11a letters a and b of the Energy Taxation Act (Energiesteuerengesetz), in their relevant applicable versions.

(2) In derogation of para. 1, proofs of compliance with sustainability requirements shall not be considered recognised if their recognition is applied for, pursuant to the ordinance named in para. 1, to the competent main customs office (Hauptzollamt) that is responsible for the tax reduction pursuant to Art. 50 of the Energy Taxation Act (Energiesteuerengesetz), unless the biomass to which the proof of compliance with sustainability requirements refers is eligible for simultaneous subsidies under the Renewable Energy Sources Act (EEG) and the Energy Taxation Act.

(3) Arts. 20 and 21 shall be applied mutatis mutandis.

Art. 23**Other recognised proof of compliance with sustainability requirements**

(1) Proofs of compliance with sustainability requirements shall also be considered recognised if, and to the extent, they are recognised, pursuant to the laws of the European Union or of another Member State of the European Union or of another country that is party to the Agreement on the European Economic Area, as proof that the requirements pursuant to Art. 17 paras. 2 through 6 of Directive 2009/28/EC have been fulfilled, and if they have been issued in such other Member State

1. by the competent authority, in that Member State, for furnishing of proof,
2. by the agency that has been recognised, by the competent authority pursuant to no 1, as responsible for furnishing of proof, or
3. by another body that has been accredited, for furnishing of proof, by the Member State's national accreditation agency, on the basis of general criteria for bodies that certify products.

(2) Where the Commission of the European Communities, acting on the basis of Art. 18 para. 4 sub-paragraph 1 sentence 2 of Directive 2009/28/EC, resolves that the sustainability requirements pertaining to biomass production set forth in a bilateral or multilateral agreement, that the European Community has concluded with a third country, fulfil the sustainability requirements pursuant to Art. 17 paras. 2 through 5 of Directive 2009/28/EC, fulfilment of the requirements pursuant to Arts. 4 through 8 may also be proven via proof of compliance with sustainability requirements that proves that the biomass was produced in the relevant third country. Otherwise, the provisions in such bilateral or multilateral agreement, relevant to proof of compliance with sustainability requirements, are to be observed.

(3) Notwithstanding para. 2, in cases involving biomass production in a third country with which the European Community has concluded a bilateral or multilateral agreement on sustainable biomass production, fulfilment of the requirements pursuant to Arts. 4 through 8 may also be proved via proof provided by the agency named in such agreement, if, and to the extent, that the agreement determines that the requirements of Art. 17 paras. 2 through 5 of Directive 2009/28/EC have been fulfilled or permits such determination. Where such an agreement does not specify a pertinent body, certification issued by the third country's bodies pursuant to para. 1 nos 1 through 3 shall be accepted as proof.

(4) Art. 21 shall be applied *mutatis mutandis*.

Art. 24**Partial proof of compliance with sustainability requirements**

(1) At the owner's request, the competent authority shall issue partial proofs of compliance with sustainability requirements for partial consignments of bioliquids for which proof of com-

pliance with sustainability requirements has already been issued. Such requests shall be submitted electronically. Such partial proofs of compliance with sustainability requirements shall be issued without delay, and electronically, upon presentation of the proof of compliance with sustainability requirements that is to be divided into partial proofs. Art. 18 para. 1 shall be applied mutatis mutandis. Partial proofs of compliance with sustainability requirements shall be issued in accordance with the sample provided in Annex 4.

(2) Para. 1 shall be applied mutatis mutandis for partial consignments of bioliquids for which a proof of compliance with sustainability requirements has already been issued.

(3) Where greenhouse-gas-emissions savings potentials, or values for greenhouse-gas emissions of different quantities of bioliquids for which proof, or partial proof, of compliance with sustainability requirements has been issued, are balanced in keeping with the provisions of Art. 16 para. 2 no 2 letter a, at the request of the owner of such proof, or partial proof, of compliance with sustainability requirements, the competent authority shall issue a partial proof of compliance with sustainability requirements that contains the values that result from such balancing. Para. 1 sentences 2 through 5 shall be applied mutatis mutandis.

(4) In cases involving a proof of compliance with sustainability requirements pursuant to Art. 15 or Art. 22, the competent authority must transmit a copy of the partial proof of compliance with sustainability requirements, immediately, and electronically, upon issuance of such partial proof, to the certification body that has issued the certificate for the interface that issued the proof of compliance with sustainability requirements. In cases involving a proof of compliance with sustainability requirements pursuant to Art. 23, it may electronically transmit a copy of the partial proof of compliance with sustainability requirements to the authority or agency that issued the proof of compliance with sustainability requirements.

(5) In cases involving bioliquids supplied by suppliers who keep records of receipt and forwarding in an electronic database pursuant to Art. 17 para. 2 no 2, partial proofs of compliance with sustainability requirements pursuant to para. 1 through para. 3 may also be issued by the operator of the electronic database. In cases referred to in sentence 1, the operator of the database shall transmit to the competent authority, immediately and without delay, a copy of the partial proof of compliance with sustainability requirements; para. 4 shall not be applied. Other requirements pertaining to recognition of the electronic database, or to certification systems, shall not be affected.

(6) The provisions of this section shall be applied mutatis mutandis to partial proofs of compliance with sustainability requirements issued in accordance with paras. 1 through 3 and para. 5, except where conflicting requirements arise from paras. 1 through 3 or para. 5.

Section 3
Certificates for interfaces

Art. 25
Recognised certificates

The certificates recognised under this Ordinance include the following:

1. certificates issued pursuant to Art. 26,
2. certificates pursuant to Art. 30, and
3. certificates pursuant to Art. 31.

Art. 26
Issuance of certificates

(1) Upon request, interfaces may be issued certificates if

1. the interfaces have obligated themselves to fulfil, in production of biomass within the scope of application of this Ordinance, at least the requirements pertaining to a certification system recognised under this Ordinance,
2. the interfaces, in the case of interfaces pursuant to Art. 15 para. 3, have obligated themselves
 - a) to fulfil the requirements pursuant to Arts. 15 and 18 para. 1 and para. 2 in issuing of proofs of compliance with sustainability requirements,
 - b) to immediately transmit copies of all proofs of compliance with sustainability requirements that they have issued, on the basis of this Ordinance, to the certification body that has issued the certificate, and
 - c) to archive these proofs of compliance with sustainability requirements, along with all documents required for their issuance, for at least ten years,
3. the interfaces ensure that all companies that they have engaged, either directly or indirectly, with biomass production, and that are not themselves interfaces, have obligated themselves to fulfil, in biomass production within the scope of application of this Ordinance, at least the requirements pertaining to a certification system that is recognised under this Ordinance, and that actually fulfil such requirements,
4. the interfaces have obligated themselves to keep records of the following:
 - a) fulfilment of the requirements pursuant to Arts. 4 through 7 by the interfaces themselves and by all companies that they have engaged, either directly or

indirectly, with biomass production or supply, and that are not themselves interfaces, within the certification system,

- b) the quantity and the type of the biomass used for production,
- c) in the case of interfaces pursuant to Art. 2 para. 3 no 1, the site of biomass cultivation, drawn as a polygon in geographic coordinates with a precision of 20 metres for each individual point, and
- d) provide, in each case in grams of carbon dioxide equivalents per megajoule of bioliquids (g CO_{2eq}/MJ), the greenhouse-gas emissions caused by the interfaces and by all companies / operations they have engaged, either directly or indirectly, to produce or supply bioliquids, and that are not themselves interfaces, in producing and supplying the biomass, where such emissions must be taken into account in calculation of the greenhouse-gas-emissions savings potential pursuant to Art. 8, and

5. fulfilment of the requirements pursuant to nos 1 through 4 has been checked by the certification body.

(2) Upon expiry of a certificate's validity, a new certificate may be issued to an interface, upon request, only if

- 1. the interface has fulfilled the requirements pursuant to para. 1 nos 1 through 4 for the duration of the validity of the previous certificate,
- 2. the records pursuant to para. 1 no 4 are clear and logical, and
- 3. the inspections pursuant to Art. 49 have not produced any conflicting findings.

If an interface has failed to fulfil the requirements pursuant to para. 1 nos 1 through 4 for the duration of the validity of the previous certificate, and the extent of the pertinent irregularities and violations is not considerable, then, in derogation of sentence 1 no 1, a new certificate may also be issued if the interface has neither acted intentionally nor been grossly negligent in failing to fulfil the requirements, and fulfilment of the requirements is assured for the duration of the validity of the new certificate.

(3) Para. 1 and para. 2 shall not affect the interface's right to produce raw materials or fuels that are not considered bioliquids under this Ordinance.

(4) Only those certification bodies are entitled to issue certificates pursuant to para. 1 and para. 2 that have been recognised pursuant to this Ordinance and that have been named by the certification system pursuant to para. 1 no 1; relevant certificates must be issued within this certification system.

Art. 27

Content of certificates

Certificates must contain the following information:

1. a unique certificate number that is composed, at least, of the registration number of the certification system, the registration number of the certification body and a number issued only once by the certification body,
2. the date of issuance, and
3. the name of the certification system in which the certificate has been issued.

Art. 28

Consequences of omission of required information

Certificates shall be invalid if they fail to contain one or more of the information items pursuant to Art. 27.

Art. 29

Validity of certificates

Certificates shall be valid for a period of twelve months from the date on which they are issued.

Art. 30

Recognised certificates, on the basis of the Biofuel Sustainability Ordinance

(1) Certificates shall also be considered recognised if, and insofar as, they are recognised on the basis of an ordinance on requirements pertaining to sustainable production of biomass for use as biofuels, issued on the basis of Art. 37d para. 2 no 3 and no 4 and para. 3 no 2 of the Federal Immission Control Act and of Art. 66 para. 1 no 11a letters a and b of the Energy Taxation Act (Energiesteuerengesetz), in their relevant applicable versions.

(2) Art. 28 shall be applied mutatis mutandis.

Art. 31

Other recognised certificates

(1) Certificates shall also be considered recognised if, and to the extent, they are recognised, pursuant to the laws of the European Union or of another Member State of the European Union or of another country that is party to the Agreement on the European Economic Area, as

proof that the requirements pursuant to Art. 17 paras. 2 through 6 of Directive 2009/28/EC have been fulfilled, and if they have been issued in such other Member State

1. by the competent authority, in that Member State, for furnishing of proof,
2. by the agency that has been recognised, by the competent authority pursuant to no 1, as responsible for furnishing of proof, or
3. by another body that has been accredited, for furnishing of proof, by the Member State's national accreditation agency, on the basis of general criteria for bodies that certify products.

(2) Art. 23 para. 2 and para. 3 shall be applied mutatis mutandis.

Section 4

Certification systems

Art. 32

Recognised certification systems

Recognised certification systems within the meaning of this Ordinance include the following:

1. certification systems, if and insofar as they have been recognised pursuant to Art. 33 or Art. 60 para. 1,
2. certification systems pursuant to Art. 40, and
3. certification systems pursuant to Art. 41.

Art. 33

Recognition of certification systems

(1) A certification system shall be recognised, upon application, if

1. the following information has been provided for it:
 - a) a natural or legal person who has organisational responsibility,
 - b) a valid address within a Member State of the European Union or within another country that is a party to the Agreement on the European Economic Area,
 - c) certification bodies that are recognised under this Ordinance and that use the relevant certification system,
 - d) the countries or states to which they refer,

2. they are suited to the task of ensuring that requirements pursuant to Arts. 17 through 19 of Directive 2009/28/EG, as specified in this Ordinance, are fulfilled,
3. they are accurate, reliable and protected against fraud, and they evaluate the frequency and methodology of sampling and the robustness of the data,
4. they ensure an adequate standard of independent auditing of the information submitted and provide evidence that this has been done, and
5. they contain, to this end, standards that correspond at least to the requirements pursuant to Annex III of the Agreement on Technical Barriers to Trade (OJ. L 336 of 23 December 1994, p. 86) and the requirements pursuant to Annex 5.

(2) Where the certification system operates, or uses, an electronic database for the purpose of proving that the requirements pursuant to Art. 17 para. 1 are fulfilled in connection with supply of bioliquids, then such recognition may refer to such a database.

(3) Proof to the effect that the requirements named in para. 1 have been fulfilled must be provided via submission of suitable documents. The competent authority may require additional documents, in addition to those submitted, and, in the framework of the recognition procedure, may conduct on-site inspections of certification systems where such inspections are necessary with regard to the decision on the application pursuant to para. 1. An on-site inspection in another Member State of the European Union, or in a third country, shall be carried out only if the other country agrees to the inspection.

(4) The recognition may contain changes or additions to the certification system, especially of the standards for specification of the requirements pursuant to Arts. 4 through 8, or it may be subsequently supplemented with additional requirements, if such changes or additions are needed in order to ensure that the requirements pursuant to para. 1 are fulfilled.

(5) Such recognition may be combined with recognition pursuant to an ordinance, on requirements pertaining to sustainable production of biomass for use as biofuels, issued on the basis of Art. 37d para. 2 no 3 and no 4 and para. 3 no 2 of the Federal Immission Control Act and of Art. 66 para. 1 no 11a letters a and b of the Energy Taxation Act (Energiesteuer-gesetz), in their relevant applicable versions.

(6) The recognition may be restricted to

1. individual types of biomass,
2. individual countries or states,
3. individual requirements pursuant to Arts. 4 through 8 or
4. the operation of an electronics database for purposes of proving that, in supply of bioliquids, the requirements pursuant to Art. 17 para. 1 are fulfilled.

In the case of a restriction pursuant to sentence 1 no 3 or 4, the competent authority may determine that the certification system shall be considered recognised only in combination with another certification system.

Art. 34

Procedures for recognition

(1) In recognition of certification systems, the competent authority shall provide for public participation. The draft version of the certification system, and information about the relevant recognition procedure, shall be published in the Electronic Federal Gazette. Natural and legal persons, and other associations – especially associations for the promotion of environmental protection – shall have the opportunity, throughout a six-week period following such publication, to submit a pertinent written response to the competent authority. The expiry date of such period shall be announced in the publication pursuant to sentence 2. Opinions received from the public within the available relevant period shall be taken appropriately into account, by the competent authority, in its decision regarding acceptance of the certification system.

(2) The recognition procedure may be carried out via a unified agency, pursuant to the provisions of the Administrative Procedures Act (Verwaltungsverfahrensgesetz).

(3) If the competent authority has not decided within a six-month period, the recognition shall be considered issued.

(4) Notwithstanding disclosure to the applicant, the recognition shall be promulgated in the electronic Federal Law Gazette. In such promulgation, a summary description must be provided of the course of the recognition procedure, and of the reasons and considerations upon which the recognition is based. The applicant's justified interests shall be respected.

Art. 35

Content of recognition

The recognition of a certification system must include the following information:

1. a unique registration number,
2. the date of recognition,
3. in cases referred to in Art. 33 para. 2, the name of the electronic database that must be used for the purpose of proving that the requirements pursuant to Art. 17 have been fulfilled, and
4. restrictions pursuant to Art. 33 para. 6.

Art. 36**Subsequent changes in recognition**

Changes in a recognised certification system shall be announced to the competent authority. Significant changes in a recognised certification system are subject to separate recognition; Arts. 33 and 34 shall be applied mutatis mutandis.

Art. 37**Expiry of recognition**

(1) The recognition of a certification system shall expire when it is withdrawn, revoked, otherwise suspended, terminated via termination of a relevant period or otherwise disposed of.

(2) The expiry of a recognition, and the reason for the expiry pursuant to para. 1, shall be promulgated by the competent authority in the Electronic Federal Gazette.

Art. 38**Revocation of recognition**

The recognition of a certification system is to be revoked if the proper execution of pertinent tasks under this Ordinance is no longer assured. In particular, a recognition shall be revoked, if

1. one of the conditions pursuant to Art. 33 para. 1 is not, or is no longer, fulfilled, or
2. the certification system does not fulfil its obligations pursuant to Art. 39, or does not fulfil them correctly, completely or on time.

The recognition may also be revoked if the possibility of on-site inspection is not assured. In review pursuant to sentence 2 no 1, experience gained by certification bodies and interfaces, with the certification system, and the reports pursuant to Art. 52 and Art. 53 para. 2 no 3, may be taken into account. The provisions of the Administrative Procedures Act (Verwaltungsverfahrensgesetz) with regard to withdrawal and revocation of administrative acts, shall, otherwise, not be affected.

Art. 39**Reports and communications**

(1) Certification systems must electronically transmit to the competent authority the following information for each calendar year, by 28 February of the following calendar year, and, otherwise, upon request:

1. list of all interfaces, companies and suppliers that, in production or supply of biomass under this Ordinance, use this certification system, along with information as to by which certification body they are checked, and
2. list of all measures that have been taken, with regard to interfaces, companies or suppliers that do not, or that no longer, fulfil the requirements under this Ordinance or pursuant to the certification system.

(2) Certification systems must electronically transmit to the competent authority, on a monthly basis, any changes in the lists pursuant to para. 1.

(3) Certification systems must publish, on their Web sites, all certificates of interfaces that apply their specifications.

Art. 40

Recognised certification systems, on the basis of the Biofuel Sustainability Ordinance

Certification systems shall also be considered recognised if, and insofar as, they are recognised on the basis of an ordinance, on requirements pertaining to sustainable production of biomass for use as biofuels, issued on the basis of Art. 37d para. 2 no 3 and no 4 and para. 3 no 2 of the Federal Immission Control Act and of Art. 66 para. 1 no 11a letters a and b of the Energy Taxation Act (Energiesteuergesetz), in their relevant applicable versions.

Art. 41

Other recognised certification systems

Certification systems shall also be considered recognised, if and insofar as they have been recognised

1. b the Commission of the European Communities, on the basis of Article 18 para. 4 sub-paragraph 2 sentence 1 of Directive 2009/28/EC, or
2. i a bilateral or multilateral agreement that the European Community has concluded with a third country,

as a certification system for specifying the requirements pursuant to Art. 17 paras. 2 through 6 of Directive 2009/28/EC.

Section 5
Certification bodies

Sub-section 1
Recognition of certification bodies

Art. 42
Recognised certification bodies

Recognised certification bodies within the meaning of this Ordinance include the following:

1. Certification bodies, if and insofar as they have been recognised pursuant to Art. 43 para. 1 or Art. 60 para. 1,
2. Certification bodies pursuant to Art. 56, and
3. Certification bodies pursuant to Art. 57.

Art. 43
Recognition of certification bodies

(1) A certification body shall be recognised, upon application, if it

1. provides the following information:
 - a. the names and addresses of the relevant responsible persons,
 - b. the countries or states in which it carries out tasks pursuant to this Ordinance,
2. proves that it
 - a. has the expertise, equipment and infrastructure needed for the performance of its duties,
 - b. has a sufficient number of suitably qualified and experienced staff, and,
 - c. with regard to the performance of the tasks entrusted to it, is independent of all relevant certification systems, interfaces, companies and suppliers, and is free of all conflicts of interest,
3. fulfils the requirements pursuant to the standard DIN EN 45011, edition of March 1998, carries out its conformity assessments pursuant to the provisions of standard ISO/IEC Guide 60, edition of September 2004, and carries out inspections in accor-

dance with the requirements of the standard DIN EN ISO 19011, edition of December 2002*,

4. has obligated itself, in writing, pursuant to Annex 5 no 1 letter e, and
5. has a valid address within a Member State of the European Union or within another country that is a party to the Agreement on the European Economic Area.

(2) Proof to the effect that the requirements pursuant to para. 1 are fulfilled shall be provided by presentation of suitable documents relative to the certification body's operational resources, organisation and staff. In the case of certification bodies operated by at least two environmental verifiers, the requirements pursuant to para. 1 no 3 shall be considered fulfilled. The competent authority may require additional documents, in addition to those submitted, and, in the framework of the recognition procedure, may conduct on-site inspections of certification bodies where such inspections are necessary with regard to the decision on the application pursuant to para. 1. Art. 33 para. 3 sentence 3 shall be applied *mutatis mutandis*.

(3) Restrictions may be imposed subsequently on a recognition if this is needed to assure that a certification body carries out its duties properly.

(4) Such recognition may be combined with recognition pursuant to an ordinance, on requirements pertaining to sustainable production of biomass for use as biofuels, issued on the basis of Art. 37d para. 2 no 3 and no 4 and para. 3 no 2 of the Federal Immission Control Act and of Art. 66 para. 1 no 11a letters a and b of the Energy Taxation Act (Energiesteuer-gesetz), in their relevant applicable versions.

(5) The recognition may be restricted to

1. individual types of biomass, or
2. individual countries or states.

Art. 44

Procedures for recognition

Art. 34 para. 2 and para. 3 shall be applied to the recognition procedure *mutatis mutandis*. The competent authority shall promulgate the recognition in the Electronic Federal Gazette.

* All DIN, ISO/IEC und DIN EN ISO standards to which this Ordinance refers are available from Beuth-Verlag GmbH, Berlin, and are securely archived at the German Patent and Trade Mark Office (DPMA) in Munich.

Art. 45
Content of recognition

The recognition of a certification body must include the following information:

1. a unique registration number,
2. the date of recognition, and
3. restrictions pursuant to Art. 43 para. 5.

Art. 46
Expiry of recognition

(1) The recognition of a certification body shall expire when it is withdrawn, revoked, otherwise suspended, terminated via termination of a relevant period or otherwise disposed of. It shall also expire if the certification body does not take up its work within one year following the issuance of the first recognition, or if, since taking up its work, it has not carried out its duties for more than one year.

(2) The expiry of a recognition, and the reason for the expiry pursuant to para. 1, shall be promulgated by the competent authority in the Electronic Federal Gazette.

Art. 47
Revocation of recognition

The recognition of a certification body is to be revoked if the proper execution of pertinent tasks under this Ordinance is no longer assured. In particular, a recognition shall be revoked, if

1. one of the conditions pursuant to Art. 43 para. 1 is not, or is no longer, fulfilled, or
2. the certification body does not fulfil its obligations pursuant to Arts. 48 through 54, or does not fulfil them correctly, completely or on time.

The recognition may also be revoked if the possibility of on-site inspection is not assured. The provisions of the Administrative Procedures Act (Verwaltungsverfahrensgesetz) with regard to withdrawal and revocation of administrative acts, shall, otherwise, not be affected.

Sub-section 2

Tasks of certification bodies

Art. 48

Keeping and use of directories of interfaces

Certification bodies must keep a directory of all interfaces to whom they have issued certificates. In each case, such a directory must contain at least the names, addresses and registration numbers of the interfaces concerned. Certification bodies must update their directories on an ongoing basis.

Art. 49

Control of interfaces

A certification body shall check, no later than six months following issuance of the first certificate, and, otherwise, at least once per year, whether the interfaces continue to fulfil the conditions for issuance of a certificate pursuant to Art. 26. The competent authority may, if it has reasonable grounds for suspicion, and especially on the basis of reports pursuant to Art. 52, rule that an interface must be monitored at shorter intervals; this also applies in the cases referred to by Art. 26 para. 2 sentence 2.

Art. 50

Control of cultivation

Certification bodies that issue certificates to interfaces pursuant to Art. 2 para. 3 no 1 shall check, on the basis of suitable criteria, whether the companies/operations, named by the interfaces, in which biomass is cultivated or harvested for purposes of bioliquids production fulfil the requirements pursuant to Arts. 4 through 7. The nature and frequency of inspections pursuant to sentence 1 must be determined especially in accordance with an assessment of the risk that irregularities and violations could occur with regard to fulfilment of these requirements. At least 5 percent of the relevant companies must be checked per year.

Art. 51

Control of cultivation in the case of sustainable agricultural management

Where biomass is cultivated for the purpose of bioliquids production, within the framework of agricultural activities in a Member State of the European Union, fulfilment of the requirements pursuant to Art. 7 shall be considered to have been proven if the relevant companies

1. receive direct payments pursuant to Regulation (EC) no 73/2009 or subsidies for area-oriented measures pursuant to Article 36 letter a nos i through v and letter b nos i, iv and v of Council Regulation (EC) no 1698/2005 of 20 September 2005 on support

for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277 of 21 October 2005, p. 1) that obligate them to fulfil Cross-Compliance requirements, or

2. are registered as organisations pursuant to Regulation (EC) no 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 114 of 24 April 2001, p. 1), in the applicable version.

Only 3 percent of such companies must be checked annually pursuant to Art. 50; and inspections shall be confined to determining whether the companies fulfil the requirements pursuant to Arts. 4 through 6.

Art. 52

Reports on inspections

In every instance after it completes an inspection, a certification body must prepare a report that, in particular, includes the result of the inspection. If the inspection has shown that the interface, the company or the supplier has not fulfilled the requirements pursuant to this Ordinance, the report must be transmitted electronically, without delay following the completion of the inspection, to the competent authority.

Art. 53

Other reports and communications

(1) Certification bodies must electronically transmit to the competent authority, without delay, copies of all of the following proofs:

1. proofs of compliance with sustainability requirements for all interfaces they have certified,
2. additions pursuant to Art. 19,
3. certificates pursuant to Art. 26 para. 1 and para. 2, and
4. certifications pursuant to Art. 58 no 1 letter b.

A certification body may delegate, to the interface, the obligation to transmit copies of proofs of compliance with sustainability requirements, pursuant to sentence 1 no 1, to the competent authority.

(2) Certification bodies must electronically transmit to the competent authority the following information for each calendar year, by 28 February of the following calendar year, and, otherwise, upon request, the following reports and information:

1. an excerpt of the interface directory pursuant to Art. 48, and a list of all other companies and suppliers that they check, broken down by certification systems,
2. a list of all inspections of interfaces, companies and suppliers that they have carried out in the calendar year, broken down by certification systems, with the exception of inspections that have been reported on pursuant to Art. 52 sentence 2, and
3. a report on their experience with the certification systems they use; this report must include all facts that could be of importance for assessment of whether the certification systems continue to fulfil the conditions for recognition pursuant to Art. 33.

Art. 54

Archiving; handling of information

(1) Certification bodies must archive results of inspections, and copies of all certificates that they issue on the basis of this Ordinance, for a period of at least ten years.

(2) Where certification bodies carry out tasks under this Ordinance, they shall be considered agencies required to provide information pursuant to Art. 2 para. 1 no 2 of the Environmental Information Act (Umweltinformationsgesetz) of 22 December 2004 (Federal Law Gazette I p. 3704), within the scope of application of the Environmental Information Act (Umweltinformationsgesetz).

Sub-section 3

Monitoring of certification bodies

Art. 55

Control and measures

(1) The competent authority shall monitor the certification bodies recognised pursuant to this Ordinance. Art. 33 para. 3 sentence 3 shall be applied mutatis mutandis.

(2) The competent authority may issue the directives, with regard to certification bodies, that are necessary to eliminate shortcomings and prevent future shortcomings. In particular, it may determine that a staff member of a certification body, due to a lack of impartiality, expertise or reliability, shall no longer be permitted to check whether the requirements pursuant to this Ordinance are fulfilled.

(3) Where environmental verifiers are recognised as certification bodies pursuant to this Ordinance, monitoring and measures carried out by the responsible agency pursuant to the En-

vironmental Audit Act (Umweltauditgesetz), above and beyond those specified in para. 1 and para. 2, shall not be affected.

Sub-section 4
Other recognised certification bodies

Art. 56

Recognised certification bodies, on the basis of the Biofuel Sustainability Ordinance

(1) Certification bodies shall also be considered recognised if, and insofar as, they are recognised on the basis of an ordinance on requirements pertaining to sustainable production of biomass for use as biofuels, issued on the basis of Art. 37d para. 2 no 3 and no 4 and para. 3 no 2 of the Federal Immission Control Act and of Art. 66 para. 1 no 11a letters a and b of the Energy Taxation Act (Energiesteuergesetz), in their relevant applicable versions.

(2) Subsections 2 and 3 of this section shall be applied mutatis mutandis, except where other provisions arise via the ordinance named in para. 1.

Art. 57

Other recognised certification bodies

(1) Certification bodies shall also be considered recognised, if and insofar as they have been recognised

1. by the Commission of the European Communities,
2. by another Member State of the European Union, or
3. in a bilateral or multilateral agreement that the European Community has concluded with a third country,

as certification bodies for binding monitoring of fulfilment of the requirements pursuant to Art. 17 paras. 2 through 5 of Directive 2009/28/EC, and they also perform tasks, under this Ordinance, in a certification system that is recognised under this Ordinance.

(2) Subsections 2 and 3 of this section shall be applied mutatis mutandis only insofar as this does not conflict with provisions of the Commission of the European Communities or of the pertinent bilateral or multilateral agreement.

Section 6

Special and transitional provisions pertaining to proof

Art. 58

Proof of fulfilment of requirements pertaining to the energy crop bonus

Only the following types of certifications to the effect that bioliquids fulfil the requirements pursuant to Art. 10 shall be recognised:

1. proofs of compliance with sustainability requirements recognised pursuant to Art. 14 paras. 1 through 3, insofar as
 - a) they contain the information pursuant to Art. 18 para. 1 no 5 letter b, or
 - b) such information is provided via an additional certification
 - aa) from the interface pursuant to Art. 15 para. 3 or
 - bb) from a certification body that is recognised under this Ordinance;if such certification is issued by an interface, such interface shall be subject to checking pursuant to Art. 49, or
2. proofs of compliance from environmental verifiers pursuant to Art. 59 para. 1.

Art. 59

Provision of proof by environmental verifiers

(1) In the case of bioliquids used for electricity production no later than 31 December 2011, fulfilment of the requirements pursuant to this Ordinance may also be proven, to the grid system operator, via a certification from an environmental verifier.

(2) A certification pursuant to para. 1 must contain the following information:

1. the confirmation that the requirements pursuant to Arts. 4 through 8 are fulfilled, and, in the event that a claim to the energy crop bonus is made, that the requirements pursuant to Art. 10 are also fulfilled,
2. the complete records of production and supply, and the confirmation that the origins of the bioliquids have been proven in keeping with Art. 16,
3. the energy content of the relevant quantity of bioliquids, in megajoules,
4. the greenhouse-gas-emissions savings potential of the bioliquids, in grams of carbon dioxide equivalents per megajoule of bioliquids (g CO_{2eq}/MJ), and

5. in the case of calculation of the greenhouse-gas-emissions savings potential pursuant to Art. 8 para. 3, the actual values, broken down by the individual production and supply steps, in grams of carbon dioxide equivalents per megajoule (g CO_{2eq}/MJ) of bioliquids.

(3) Where the competent authority has recognised certification systems under this Ordinance, environmental verifiers, in issuing certifications pursuant to para. 1 and para. 2, should apply the standards of a relevant certification system.

(4) Where a certification pursuant to para. 1 is issued for the first time, the relevant environmental verifier must notify the competent authority of such issuance. Prior to any first-time issuance of a certification for biomass cultivated outside of the Member States of the European Union and of the other countries that are parties to the Agreement on the European Economic Area, the relevant environmental verifier must also declare, in writing to the competent authority, his or her willingness to also tolerate supervision in execution of inspections outside of the Member States of the European Union, pursuant to the Environmental Audit Act (Umweltauditgesetz). Art. 33 para. 3 sentence 3 shall be applied mutatis mutandis.

Art. 60

Proof via preliminary recognition

(1) The competent authority may recognise certification systems and certification bodies on a preliminary basis if conclusive review of the conditions pursuant to Art. 33 para. 1 and Art. 43 para. 1 is not possible, although the relevant conditions are likely, with an acceptable degree of probability, to be fulfilled. In preliminary recognition of certification systems, Art. 33 para. 1 no 1 shall not be affected, Art. 34 para. 1 shall not be applied, and Art. 34 para. 3 shall be applied with the additional condition that the relevant period shall be three months. In preliminary recognition of certification bodies, Art. 43 para. 1 nos 1, 4 and 5 shall not be affected.

(2) Preliminary recognition shall be limited to a term of twelve months.

(3) No legal claims to preliminary recognition shall be recognised.

(4) Certification systems and certification bodies may not derive any legal claims from preliminary recognition.

Part 4**Central register of installations and of pertinent information****Art. 61****Register of installations**

The competent authority shall keep a central register of all installations in which bioliquids are used for electricity production (register of installations).

Art. 62**Registration obligations**

Operators of installations that use biomass for electricity production must register their installations in the register of installations.

Art. 63**Content of registration**

An application for registration must include the following information:

1. the name and address of the installation operator,
2. the location of the installation,
3. the installation's electrical and thermal output,
4. the planned or actual date of the installation's commissioning,
5. the type and quantity of the bioliquids that are to be used or that are actually used, and
6. the name and address of the operator of the network to which the electricity-production installation has been, or will be, connected.

Art. 64**Time of registration**

(1) Registration in the register of installations must be applied for before the relevant installation is commissioned.

(2) In derogation of para. 1, registration of installations commissioned before 1 January 2010 must be applied for by 30 June 2010.

(3) The relevant date pursuant to para. 1 and para. 2 is the date on which the complete application is received by the competent authority.

(4) The competent authority shall certify the date pursuant to para. 3, to the installation operator, without delay upon receiving the complete application.

Art. 65

Late registration

Electricity from installations for which registration is not applied for until after the time named in Art. 64 is not eligible, during the time until the relevant application is submitted, for the payment of the basic tariff pursuant to Art. 27 para. 1 of the Renewable Energy Sources Act (EEG) or of the energy crop bonus pursuant to Art. 27 para. 4 no 2 of the Renewable Energy Sources Act (EEG). Late applications do not have the effect of permanently cancelling the energy crop bonus pursuant to no VII.1 of Annex 2 of the Renewable Energy Sources Act (EEG).

Art. 66

Information registry

Art. 67

Cross-checking of data

(1) The competent authority shall cross-check data in the register of installations and the registry of information, both within the context of that registry and with all data available to the agency responsible for biofuels pursuant to Art. 37d para. 1 of the Federal Immission Control Act.

(2) In the case of proofs of compliance with sustainability requirements pursuant to Art. 23, the competent authority may cross-check data against data of the authority or agency that has issued such proofs. Art. 77 sentence 2 shall not be affected.

Art. 68

Measures of the competent authority

The competent authority must communicate the following to the operator of the grid system to which the electricity-production installation is connected, where such information is of relevance to the bioliquids used in the installation:

1. violations of obligations to provide information pursuant to Art. 13,
2. data contradictions that have been identified in the framework of data cross-checking, and
3. other doubts with regard to

- a. the effectiveness of a proof of compliance with sustainability requirements, a certificate or a certification, or
- b. the correctness of the facts presented in such documents.

Art. 69

Facilitator ("Clearingstelle")

(1) If the installation operator and the grid system operator, for the purpose of resolving disputes regarding the effectiveness of a proof under this Ordinance, resort to the facilitator ("Clearingstelle") pursuant to Art. 57 of the Renewable Energy Sources Act, the facilitator shall obtain a pertinent opinion from the competent authority.

(2) For each calendar year, by 28 February of the following calendar year and for the first time as of 28 February 2011, the facilitator shall submit a report to the competent authority on procedures pursuant to para. 1. The justified interests of parties to such procedures must be respected.

Part 5

Data collection and processing, reporting obligations, authority procedure

Art. 70

The competent authority's right to receive information

The competent authority may require additional information from installation operators, certification bodies and interfaces; in the case of certification systems, from the persons pursuant to Art. 33 para. 1 no 1 letter a; and in the cases referred to in Art. 59, from environmental verifiers, where additional information is required for the purposes of

1. fulfilling the tasks under this Ordinance,
2. monitoring whether the requirements pursuant to this Ordinance are being fulfilled, or
3. fulfilling reporting obligations of the Federal Republic of Germany with regard to organs of the European Union.

Art. 71**Reporting obligations of the competent authority**

The competent authority shall evaluate this Ordinance regularly and shall submit, to the Federal Government, a report on relevant experience for the first time as of 31 December 2010 and, thereafter, on an annual basis.

Art. 72**Reporting obligations of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU)**

On the basis of the reports pursuant to Art. 71, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall report to the Commission of the European Communities, in the framework of reports pursuant to Art. 22 of Directive 2009/28/EC, on

1. fulfilment of the requirements under this Ordinance, and
2. sustainability impacts of production of the bioliquids used for electricity production in the Federal Republic of Germany.

Such reports must also assess whether use of bioliquids for electricity production is socially responsible.

Art. 73**Data transmission**

(1) Where such is necessary for execution of this Ordinance, the competent authority may provide information to

1. the following Federal authorities:
 - a. Federal Ministry of Finance,
 - b. Federal Ministry of Food, Agriculture and Consumer Protection,
 - c. Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, and
 - d. the above ministries' subordinate authorities, and especially to the agency responsible for biofuels pursuant to Art. 37d para. 1 of the Federal Immission Control Act,
2. authorities of other Member States of the European Union and of third countries and their other agencies pursuant to Art. 23 para. 1 nos 1 through 3, and

3. organs of the European Union.

(2) Provision of personal data to the agencies pursuant to para. 1 no 1 shall be permissible only under the conditions set forth in Art. 15 of the Federal Data Protection Act (Bundesdatenschutzgesetz). Provision of such data to the agencies pursuant to para. 1 nos 2 and 3 shall be permissible only under the conditions set forth in Arts. 4b and 4c of the Federal Data Protection Act (Bundesdatenschutzgesetz).

Art. 74

Responsibility

The Federal Agency for Agriculture and Food (BLE) shall be responsible for

1. recognition of regulations pursuant to Art. 8 para. 3 sentence 3 no 2 letter b, their promulgation pursuant to Art. 8 para. 3 sentence 4 and promulgations pursuant to Annex 1 no 10 sentence 2 and Annex 2 no 3 sentence 3,
2. receipt of proofs pursuant to Art. 13,
3. the promulgation of an electronic database, and, where such database is not operated by a certification body or other legal or natural entity, operation of such database pursuant to Art. 17 para. 2 no 2,
4. promulgation pursuant to Art. 21 para. 1 sentence 2,
5. issuance of partial proofs of compliance with sustainability requirements pursuant to Art. 24,
6. recognition and monitoring of certification systems pursuant to Part 3 Section 4 and to Art. 60,
7. recognition and monitoring of certification bodies pursuant to Part 3 Section 5 subsections 1 through 3 and to Art. 60,
8. receipt of notifications and declarations pursuant to Art. 59 para. 4,
9. the keeping of a central register of installations and information pursuant to Part 4,
10. obtaining information pursuant to Art. 70,
11. the reports pursuant to Art. 71,
12. transmission of data pursuant to Art. 73,
13. publication of samples and forms pursuant to Art. 76 para. 2,
14. receipt of declarations pursuant to Art. 78 para. 2 no 2, and

15. execution of this Ordinance, with the exception, otherwise, of Art. 4 para. 4 sentence 1 variant 2.

Art. 75

Procedures with regard to the competent authority

The official language shall be German. All applications submitted to the competent authority, and all proofs, certifications, reports and other documents transmitted to the competent authority, must be in German or must be accompanied by a translation into German. Art. 23 para. 2 sentences 2 through 4 of the Administrative Procedures Act (Verwaltungsverfahrensgesetz) shall be applied mutatis mutandis.

Art. 76

Sample documents, and forms

(1) Without prejudice to Art. 18 para. 2 and Art. 24 para. 1 sentence 5, prepared forms and sample forms shall also be used for the following documents:

1. the certificates pursuant to Art. 26,
2. the reports and communications pursuant to Arts. 52 and 53, and
3. the certifications pursuant to Art. 58 para. 1 letter b and Art. 59 para. 1.

(2) The competent authority shall publish the relevant forms and sample forms, and promulgate the proper format for electronic data transmission, both in the Electronic Federal Gazette and on its Web site. It may publish translations in the Electronic Federal Gazette, and on its Web site, of proofs of compliance with sustainability requirements and partial proofs of compliance with sustainability requirements that have been prepared in English, or some other language, in accordance with the sample in Annex 3 or 4.

Art. 77**External communications**

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be responsible for all communication with the authorities of other Member States and third countries, and with the organs of the European Union. By agreement of the Federal Ministry of Food, Agriculture and Consumer Protection (BMELV), it may transfer responsibility for communication with the competent ministries and authorities of other Member States of the European Union and of third countries, and with the organs of the European Union, to the Federal Agency for Agriculture and Food (BLE).

Part 6**Transitional and final provisions****Art. 78****Transitional provisions**

(1) This Ordinance shall not be applied to bioliquids used for electricity production before 1 January 2010.

(1a) In the case of bioliquids used for electricity production after 31 December 2009 and before 1 January 2011, the fulfilment of the requirements pursuant to Art. 3 para. 1 nos 1 and 2 and Art. 10 shall be considered to have been proven if the installation operator furnishes proof, to the grid system operator, that the raw material from which the bioliquids have been made has been harvested before 1 January 2010. In the case of bioliquids used for electricity production before 1 July 2010, the harvest of the raw material before 1 January 2010 shall be considered to have been proven. The furnishing of proof is, otherwise, not bound to the furnishing of proof pursuant to Part 3 of this Ordinance.

(2) Otherwise, this Ordinance shall be applied to bioliquids used for electricity production after 31 December 2009, and before 1 January 2011, only in conjunction with the following constraints:

1. Art. 8 para. 4 sentence 2 shall not be applied;
2. the requirements pursuant to Art. 17 para. 1 shall also be deemed fulfilled if all suppliers that have received the bioliquids report to the competent authority, electronically and without delay, the forwarding of bioliquids to a third party. To this end, they must provide the following information to the competent authority:
 - a. the number of the proof of compliance with sustainability requirements, or partial proof of compliance with sustainability requirements, issued for the received biomass,

- b. the quantity and nature of the received biomass, and the place and time at which they received the biomass in question,
- c. the quantity and nature of the forwarded biomass, and the place and time at which they forwarded the biomass in question,
- d. the name and address of the supplier to whom they forwarded the biomass,
- e. fulfilment of the requirements pursuant to Art. 17 para. 1.

Art. 79

Entry into force

(1) Art. 24 and Art. 34 para. 2 shall enter into force on 1 January 2010.

(2) Otherwise this Ordinance shall enter into force on 24 August 2009.

Method for calculating greenhouse-gas-emissions savings potentials, on the basis of actual values

1. The greenhouse-gas emissions from the production, supply and use of bioliquids (bioliquids and fossil fuels) shall be calculated as follows:

$$E = e_{ec} + e_l + e_p + e_{td} + e_u - e_{sca} - e_{ccs} - e_{ccr} - e_{ee}$$

where:

E = total emissions from the use of the bioliquids,

e_{ec} = emissions from production of the relevant raw materials, and especially in cultivation and harvesting of the biomass from which the bioliquids are produced,

e_l = annualised emissions resulting from carbon-stock changes caused by land-use change,

e_p = emissions from processing,

e_{td} = emissions from transport and distribution,

e_u = emissions from the use of the bioliquids,

e_{sca} = emissions savings from soil carbon accumulation via improved agricultural management,

e_{ccs} = emissions savings from capture and geological storage of carbon dioxide,

e_{ccr} = emissions savings from carbon dioxide capture and replacement,

e_{ee} = emissions savings from excess electricity from cogeneration.

Emissions from the manufacture of machinery and equipment shall not be taken into account.

2. Greenhouse gas emissions from liquid fuels (E) shall be expressed in terms of grams of CO₂ equivalent per megajoule of liquid fuel (g CO_{2eq}/MJ).

3. (not used).

4. Greenhouse gas emission savings from use of bioliquids shall be calculated as:

$$SAVING = (E_F - E_B)/E_F$$

where:

E_B = total emissions from the bioliquids,

E_F = total emissions from the fossil fuel comparator.

5. The greenhouse gases taken into account for the purposes of no 1 shall be carbon dioxide (CO₂), nitrous oxide (N₂O) and methane (CH₄). For the purpose of calculating CO₂ equivalence, those gases shall be valued as follows:

CO₂: 1

N₂O: 296

CH₄: 23

6. Emissions from the extraction or cultivation of raw materials (e_{ec}) shall include emissions from the extraction or cultivation process itself; from the collection of raw materials; from waste and leakages; and from the production of chemicals or products used in extraction or cultivation. Capture of CO₂ in the cultivation of raw materials shall be excluded. Estimates of emissions from cultivation may be derived from the use of averages calculated for smaller geographical areas than those used in the calculation of the default values, as an alternative to using actual values.

7. Annualised emissions from carbon stock changes caused by land use change (e_l) shall be calculated by dividing total emissions equally over 20 years. For the calculation of those emissions the following rule shall be applied:

$$e_l = (CS_R - CS_A) \times 3\,664 \times 1/20 \times 1/P - e_B$$

where

e_l = annualised greenhouse gas emissions from carbon stock change due to land-use change (measured as mass of CO₂-equivalent per unit of bioliquid energy),

CS_R = the carbon stock per unit area associated with the reference land use (measured as mass of carbon per unit area, including both soil and vegetation). The reference land use on reference areas shall be the land use as of the reference date or 20 years before the raw material was obtained, whichever was the later,

CS_A = the carbon stock per unit area associated with the actual land use (measured as mass of carbon per unit area, including both soil and vegetation). In cases where the carbon stock accumulates over more than one year, the value attributed to CS_A shall be the estimated stock per unit area after 20 years or when the crop reaches maturity, whichever the earlier,

P = the productivity of the crop (measured as bioliquid energy per unit area per year); and

e_B = Bonus of 29 g CO_{2eq}/MJ bioliquid if biomass is obtained from restored degraded land under the conditions provided for in no 8.

8. The bonus of 29 g CO_{2eq}/MJ shall be attributed if evidence is provided that the land:

a) was not in use for agriculture or any other activity as of the reference date; and

b) falls into one of the following two categories:

aa) severely degraded land, including such land that was formerly in agricultural use, or

bb) heavily contaminated land.

The bonus of 29 g CO_{2eq}/MJ shall apply for a period of no more than 10 years from the date of conversion of the land to agricultural use, provided that a steady increase in carbon stocks as well as a sizable reduction in erosion phenomena for land pursuant to sentence 1 letter b double letter aa are ensured and that soil contamination for land pursuant to double letter bb is reduced.

9. The categories pursuant to no 8 sentence 1 letter b shall be defined as follows:

a) "severely degraded land" is land

aa) that, for a significant period of time, has either been significantly salinated, or

bb) that has presented significantly low organic matter content

and that has been severely eroded, and

b) "heavily contaminated land" is land that is unfit for the cultivation of food and feed due to soil contamination.

Land pursuant to no 8 sentence 1 letter b shall include all land that has been recognised, by a decision of the Commission of the European Communities, on the basis of Art. 18 para. 4 sub-paragraph 4 of Directive 2009/28/EC, as severely degraded or heavily contaminated.

10. As soon as the Commission of the European Communities, acting on the basis of Annex V Part C no 10 sentence 1 of Directive 2009/28/EC, has prepared guidelines for calculation of land carbon stocks, such guidelines shall be used as a basis for calculation of land carbon stocks pursuant to this Annex. The competent authority shall promulgate the content of such guidelines in the Electronic Federal Gazette.

11. Emissions from processing (e_p) shall include emissions from the processing itself; from waste and leakages; and from the production of chemicals or products used in processing. In accounting for the consumption of electricity not produced within the bioliquid production

plant, the greenhouse gas emission intensity of the production and distribution of that electricity shall be assumed to be equal to the average emission intensity of the production and distribution of electricity in a defined region. By derogation from sentence 2, producers may use an average value for an individual electricity production plant for electricity produced by that plant, if that plant is not connected to the electricity grid.

12. Emissions from transport and distribution (e_{td}) shall include emissions from the transport and storage of raw and semi-finished materials and from the storage and distribution of finished materials. Sentence 1 shall not apply to emissions from transport and distribution that are to be taken into account under no 6.

13. Emissions from bioliquids in use (e_u) shall be taken to be zero for bioliquids.

14. Emission savings from carbon capture and geological storage (e_{ccs}) that have not already been accounted for in e_p shall be limited to emissions avoided through the capture and sequestration of emitted CO₂ directly related to the extraction, transport, processing and distribution of the liquid fuel.

15. Emission savings from carbon capture and replacement (e_{ccr}) shall be limited to emissions avoided through the capture of CO₂ of which the carbon originates from biomass and which is used to replace fossil-derived CO₂ used in commercial products and services.

16. Emission savings from excess electricity from cogeneration (e_{ee}) shall be taken into account in relation to the excess electricity produced by fuel production systems that use cogeneration except where the fuel used for the cogeneration is a co-product other than an agricultural crop residue. In accounting for that excess electricity, the size of the cogeneration unit shall be assumed to be the minimum necessary for the cogeneration unit to supply the heat that is needed to produce the fuel. The greenhouse gas emission saving associated with that excess electricity shall be taken to be equal to the amount of greenhouse gas that would be emitted when an equal amount of electricity was generated in a power plant using the same fuel as the cogeneration unit.

17. Where a fuel production process produces, in combination, the fuel for which emissions are being calculated and one or more other products (co-products), greenhouse gas emissions shall be divided between the fuel or its intermediate product and the co-products in proportion to their energy content. The energy content shall be determined by lower heating value in the case of co-products other than electricity.

18. For the purposes of the calculation referred to in no 17, the emissions to be divided shall be $e_{ec} + e_l$ + those fractions of e_p , e_{td} and e_{ee} that take place up to and including the process step at which a co-product is produced. If any allocation to co-products has taken place at an earlier process step in the life-cycle, the fraction of those emissions assigned in the last such process step to the intermediate fuel product shall be used for this purpose instead of the total of those emissions.

In the case of bioliquids, all co-products, including electricity that does not fall under the scope of no 16, shall be taken into account for the purposes of that calculation, except for ag-

agricultural crop residues, including straw, bagasse, husks, cobs and nut shells. Co-products that have a negative energy content shall be considered to have an energy content of zero for the purpose of the calculation.

Wastes, agricultural crop residues, including straw, bagasse, husks, cobs and nut shells, and residues from processing, including crude glycerine (glycerine that is not refined), shall be considered to have zero life-cycle greenhouse gas emissions up to the process of collection of those materials.

In the case of fuels produced in refineries, the unit of analysis for the purposes of the calculation referred to in no 17 shall be the refinery.

19. For bioliquids used for electricity production, for the purposes of the calculation referred to in no 4, the fossil fuel comparator E_F shall be 91 g CO_{2eq}/MJ.

For bioliquids used for cogeneration, for the purposes of the calculation referred to in no 4, the fossil fuel comparator E_F shall be 85 g CO_{2eq}/MJ.

Default values for calculating greenhouse-gas-emissions savings potentials

1. Default values for bioliquids

a) Disaggregated default values for cultivation (e_{ec} pursuant to the definition in Annex 1):

	Bioliquid production pathway	Default greenhouse gas emissions (g CO_{2eq}/MJ)
aa)	Sugar beet ethanol	12
bb)	Wheat ethanol	23
cc)	Corn (maize) ethanol, produced in a Member State of the European Union	20
dd)	Sugar cane ethanol	14
ee)	Rape seed biodiesel	29
ff)	Sunflower biodiesel	18
gg)	Soybean biodiesel	19
hh)	Palm oil biodiesel	14
ii)	Waste vegetable or animal oil biodiesel, with the exception of animal oils produced from animal by-products classified as category 3 material in accordance with Regulation (EC) no 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ L 273 of 10 October 2002, p. 1)	0
jj)	Hydrotreated vegetable oil from rape seed	30
kk)	Hydrotreated vegetable oil from sunflower	18
ll)	Hydrotreated vegetable oil from palm oil	15
mm)	Pure vegetable oil from rape seed	30

nn)	Pure palm oil (process with methane capture at the oil mill), except where another value results via no 3	15,5
oo)	Pure soybean oil, except where another value results via no 3	20,9

b) Disaggregated default values for processing, including excess electricity ($e_p - e_{ee}$ pursuant to the definition in Annex 1):

	Bioliqid production pathway	Default greenhouse gas emissions (g CO_{2eq}/MJ)
aa)	Sugar beet ethanol	26
bb)	Wheat ethanol (process fuel not specified)	45
cc)	Wheat ethanol (lignite as process fuel in CHP plant)	45
dd)	Wheat ethanol (natural gas as process fuel in conventional boiler)	30
ee)	Wheat ethanol (natural gas as process fuel in CHP plant)	19
ff)	Wheat ethanol (straw as process fuel in CHP plant)	1
gg)	Corn (maize) ethanol, produced in a Member State of the European Union (natural gas as process fuel in CHP plant)	21
hh)	Sugar cane ethanol	1
ii)	Rape seed biodiesel	22
jj)	Sunflower biodiesel	22
kk)	Soybean biodiesel	26
ll)	Palm oil biodiesel (process fuel not specified)	49
mm)	Palm oil biodiesel (process with methane capture at the oil mill)	18
nn)	Waste vegetable or animal oil biodiesel	13
oo)	Hydrotreated vegetable oil from rape seed	13
pp)	Hydrotreated vegetable oil from sunflower	13
qq)	Hydrotreated vegetable oil from palm oil (process not specified)	42
rr)	Hydrotreated vegetable oil from palm oil (process with methane capture at the oil mill)	9
ss)	Pure vegetable oil from rape seed	5
tt)	Pure palm oil (process with methane capture at the oil mill), except where another value results via no 3	4,9
uu)	Pure soybean oil, except where another value results via no 3	11,9

c) Disaggregated default values for transport and distribution (e_{td} pursuant to the definition in Annex 1):

	Bioliqid production pathway	Default greenhouse gas emissions (g CO_{2eq}/MJ)
aa)	Sugar beet ethanol	2
bb)	Wheat ethanol	2
cc)	Corn (maize) ethanol, produced in a Member State of the European Union	2
dd)	Sugar cane ethanol	9
ee)	Rape seed biodiesel	1
ff)	Sunflower biodiesel	1
gg)	Soybean biodiesel	13
hh)	Palm oil biodiesel	5
ii)	Waste vegetable or animal oil biodiesel	1
jj)	Hydrotreated vegetable oil from rape seed	1
kk)	Hydrotreated vegetable oil from sunflower	1
ll)	Hydrotreated vegetable oil from palm oil	5
mm)	Pure vegetable oil from rape seed	1
nn)	Pure palm oil (process with methane capture at the oil mill), except where another value results via no 3	5
oo)	Pure soybean oil, except where another value results via no 3	13

d) Total default values for cultivation, processing, transport and distribution:

	Bioliqid production pathway	Default greenhouse gas emissions (g CO_{2eq}/MJ)
aa)	Sugar beet ethanol	40
bb)	Wheat ethanol (process fuel not specified)	70
cc)	Wheat ethanol (lignite as process fuel in CHP plant)	70
dd)	Wheat ethanol (natural gas as process fuel in conventional boiler)	55
ee)	Wheat ethanol (natural gas as process fuel in CHP plant)	44
ff)	Wheat ethanol (straw as process fuel in CHP plant)	26
gg)	Corn (maize) ethanol, produced in a Member State of the European Union (natural gas as process fuel in CHP plant)	43
hh)	Sugar cane ethanol	24
ii)	Rape seed biodiesel	52
jj)	Sunflower biodiesel	41
kk)	Soybean biodiesel	58

ll)	Palm oil biodiesel (process not specified)	68
mm)	Palm oil biodiesel (process with methane capture at the oil mill)	37
nn)	Waste vegetable or animal oil biodiesel	14
oo)	Hydrotreated vegetable oil from rape seed	44
pp)	Hydrotreated vegetable oil from sunflower	32
qq)	Hydrotreated vegetable oil from palm oil (process not specified)	62
rr)	Hydrotreated vegetable oil from palm oil (process with methane capture at the oil mill)	29
ss)	Pure vegetable oil from rape seed	36
tt)	Pure palm oil (process with methane capture at the oil mill), except where another value results via no 3	25,4
uu)	Pure soybean oil, except where another value results via no 3	45,8

2. Estimated default values for future bioliquids that were not on the market, or were only on the market in negligible quantities, as of the reference date

a) Disaggregated default values for cultivation (e_{ec} pursuant to the definition in Annex 1):

	Bioliqid production pathway	Default greenhouse gas emissions (g CO_{2eq}/MJ)
aa)	Wheat straw ethanol	3
bb)	Waste wood ethanol	1
cc)	Farmed wood ethanol	6
dd)	Waste wood Fischer-Tropsch diesel	1
ee)	Farmed wood Fischer-Tropsch diesel	4
ff)	Waste wood dimethyl ether (DME)	1
gg)	Farmed wood DME (dimethyl ether)	5
hh)	Waste wood methanol	1
ii)	Farmed wood methanol	5

b) Disaggregated default values for processing, including excess electricity ($e_p - e_{ee}$ pursuant to Annex 1):

	Bioliqid production pathway	Default greenhouse gas emissions (g CO_{2eq}/MJ)
aa)	Wheat straw ethanol	7
bb)	Wood ethanol	17
cc)	Wood Fischer-Tropsch diesel	0
dd)	Wood DME (dimethyl ether)	0

ee)	Wood methanol	0
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c) Disaggregated default values for transport and distribution (e_{td} pursuant to the definition in Annex 1):

	Bioliqid production pathway	Default greenhouse gas emissions (g CO_{2eq}/MJ)
aa)	Wheat straw ethanol	2
bb)	Waste wood ethanol	4
cc)	Farmed wood ethanol	2
dd)	Waste wood Fischer-Tropsch diesel	3
ee)	Farmed wood Fischer-Tropsch diesel	2
ff)	Waste wood DME (dimethyl ether)	4
gg)	Farmed wood DME (dimethyl ether)	2
hh)	Waste wood methanol	4
ii)	Farmed wood methanol	2

d) Total default values for cultivation, processing, transport and distribution:

	Bioliqid production pathway	Default greenhouse gas emissions (g CO_{2eq}/MJ)
aa)	Wheat straw ethanol	13
bb)	Waste wood ethanol	22
cc)	Farmed wood ethanol	25
dd)	Waste wood Fischer-Tropsch diesel	4
ee)	Farmed wood Fischer-Tropsch diesel	6
ff)	Waste wood DME (dimethyl ether)	5
gg)	Farmed wood DME (dimethyl ether)	7
hh)	Waste wood methanol	5
ii)	Farmed wood methanol	7

3. Community framework (subsidiarity)

The default values listed in no 1 letter a double letters nn and oo, no 1 letter b double letters tt and uu, no 1 letter c double letters nn and oo and no 1 letter d double letters tt and uu shall not apply for bioliquids used for electricity production after 31 December 2010. For bioliquids used for electricity production prior to 1 January 2011, the default values in sentence 1 shall apply only insofar as the Commission of the European Communities has not published default values for such bioliquids on the basis of Article 19 para. 7 of Directive 2009/28/EG in the Official Journal of the European Union. The Federal Agency for Agriculture and Food (BLE) shall promulgate such default values in the electronic Federal Law Gazette.

Annex 3 and Annex 4

Important notice: Annex 3 and Annex 4 contain samples of a proof of compliance with sustainability requirements (pursuant to Art. 18 para. 2) and of a partial proof of compliance with sustainability requirements (pursuant to Art. 24 para. 1). English versions of these samples will be published on the website of the Federal Agency for Agriculture and Food (BLE), <http://www.ble.de>.

**Annex 5
(to Art. 33 para. 1)****Substantial requirements pertaining to certification systems**

1. Certification systems shall contain regulations with regard to at least

- a) the manner in which the requirements pursuant to Arts. 4 through 8 are specified for, and implemented in, the production, transport and distribution of the bioliquids, taking account of a mass balance system in accordance with Art. 16; the manner in which compliance with such requirements, by interfaces, cultivation operations and other relevant operations and transporters and distributors, is monitored;
- b) which requirements interfaces, including all companies/operations they have engaged, either directly or indirectly, with production, transport or distribution of biomass, where such companies/operations are not themselves interfaces, must fulfil in order for a certificate to be issued, especially
 - aa) what documents they must submit to the certification body as proof that they fulfil the requirements pursuant to Arts. 4 through 8,
 - bb) the required content and extent of the documentation pursuant to Art. 26 para. 1 no 4, the manner in which the risk of erroneous documentation in the levels "high", "medium" and "low" is to be assessed and the manner in which interfaces and other companies/operations, without regard to Art. 39 para. 3, are obligated to treat such documentation confidentially and not make it available to third parties,
 - cc) which measurements have to be taken for calculation of the greenhouse-gas-emissions savings potential pursuant to Art. 8, and how precise such measurements must be,
 - dd) the manner in which it is ensured, in cases in which a certification body determines that a company/operation or an interface does not, or no longer, fulfils the requirements pursuant to this Ordinance, that the company/operation or interface is sanctioned via suitable measures. Suitable

sanctions may, in particular, include informing all other certification bodies and interfaces for which such information is relevant, and

- ee) what procedure interfaces pursuant to Art. 15 para. 3 must use for issuing proofs of compliance with sustainability requirements,
- c) what requirements certification bodies that have obligated themselves to fulfil the requirements of this certification system must fulfil, and especially
 - aa) the manner in which they must prove that they fulfil the requirements pursuant to Art. 43 para. 1 no 2,
 - bb) what procedure certification bodies must use in issuing certificates, and
 - cc) the manner in which certification bodies control the interfaces, the operations that cultivate or harvest the biomass and the transporters and distributors pursuant to Arts. 49 through 51,
- d) what other measures are foreseen for the purpose of ensuring transparency and guarding against abuse and fraud,
- e) that the certification bodies and interfaces that have obligated themselves to fulfil the requirements of this certification system, and including all companies/operations they have engaged, either directly or indirectly, with production, transport or distribution of bioliquids, where such companies are not themselves interfaces, shall obligate themselves, in writing,
 - aa) to fulfil the requirements of this certification system and, in the case of an interface, the requirements pursuant to Art. 26 para. 1,
 - bb) in the case of a certification body, grant the staff of the competent authority, as well as persons commissioned by that authority, and, in the case of an interface and including all companies/operations they have engaged, either directly or indirectly, with production, transport or distribution of bioliquids, grant staff of a certification body named by this certification system, the right
 - aaa) to enter premises; business, operations and storage facilities; and transport equipment; during hours of business and operations,
 - bbb) to conduct inspections,
 - ccc) to inspect and review all printed/written and electronic business documents, and to make copies of such documents,
 - ddd) to request required information, and
 - eee) to take samples;

such rights shall refer to all sites at which the certification body or the interface carry out an activity in connection with production, transport or distribution of biomass for which a guarantee of compliance with sustainability requirements under this Ordinance is required, and

- f) the countries or states to which the requirements pursuant to letters a through e refer.

2. Certification systems must ensure that fulfilment of the requirements under this Ordinance does not represent an excessive administrative burden for smallholder farmers, producer organisations and cooperatives. To this end, in justified cases, such entities may deviate from the requirements pursuant to Part 4 of this Ordinance.

3. Certification systems may contain regulations on use of an electronic database for proving fulfilment of the requirements pursuant to Arts. 16 and 17.

4. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), in cooperation with the Federal Ministry for Food, Agriculture and Consumer Protection (BMELV), may specify the requirements pursuant to nos 1 through 4 by means of a reference system and may promulgate such requirements in the Electronic Federal Gazette. Sentence 1 does not apply to the data that the Commission of the European Communities, acting on the basis of Article 18 para. 3 subparagraph 3 of Directive 2009/28/EC, defines for the purpose that the economic operators submit these information to the Member States.