

FEDERAL IMMISSION CONTROL ACT

**in the version promulgated
on 26 September 2002 (BGBl. I p. 3830),
as last amended by Article 1
of the Act of 23 October 2007 (BGBl. I p. 2470)**

Information:

The promulgation of the revised version of the Federal Immission Control Act reflected the wording of the Act effective as of 26 September 2002. The following legal provisions were taken account of:

1. Act of 15 March 1974 (*BGBl. I p. 721, 1193*), the relevant parts of which came into force on 1 April 1974,
2. Article 287 No. 11 of the Act of 2 March 1974 (*BGBl. I p. 469*), in force from 1 January 1975, in the version of section 1 No. 14 of the Act of 15 August 1974 (*BGBl. I p. 1942*),
3. Act of 4 May 1976 (*BGBl. I p. 1148*), in force from 8 May 1976,
4. section 99 of the Act of 25 May 1976 (*BGBl. I p. 1253*), in force from 1 January 1977,
5. Article 45 of the Act of 14 December 1976 (*BGBl. I p. 3341*), in force from 1 January 1977,
6. Article 12 of the Act of 28 March 1980 (*BGBl. I p. 373*), in force from 1 July 1980,
7. section 174 subsection (5) of the Act of 13 August 1980 (*BGBl. I p. 1310*), in force from 1 January 1982,
8. Article 2 of the Act of 4 March 1982 (*BGBl. I p. 281*), in force from 1 April 1982,
9. Act of 4 October 1985 (*BGBl. I p. 1950*), in force from 13 October 1985,
10. Article 2 of the Act of 21 April 1986 (*BGBl. I p. 551, 895*), in force from 1 June 1986,
11. Article 34 of the Act of 24 April 1986 (*BGBl. I p. 560*), in force from 30 April 1986,
12. Article 2 of the Act of 25 July 1986 (*BGBl. I p. 1165*), in force from 1 January 1987,
13. Article 5 of the Third Competence Adjustment Ordinance (*Zuständigkeitsanpassungs-Verordnung*) of 26 November 1986 (*BGBl. I p. 2089*), effective as of 6 June 1986,
14. Article 4 No. 3 and Article 4 Nos. 1 and 2 of the Act of 12 February 1990 (*BGBl. I p. 205*), in force from 21 February 1990 and 1 August 1990 respectively,
15. Article 1 of the Third Act to Amend the Federal Immission Control Act of 11 May 1990 (*BGBl. I p. 870*), the relevant parts of which came into force on 1 September 1990.

The text printed hereafter also takes into account the amendments promulgated after the promulgation of the revised version.

Act
on the Prevention of Harmful Effects on the Environment
Caused by Air Pollution, Noise, Vibration
and Similar Phenomena
(Federal Immission Control Act - BImSchG)
(Bundes-Immissionsschutzgesetz)

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Part I
General Provisions

Section 1
Purpose of the Act

(1) It is the purpose of this Act to protect human beings, animals and plants, soil, water, the atmosphere as well as cultural objects and other material goods against any harmful effects on the environment and to prevent the emergence of any such effects.

(2) In the case of installations subject to licensing, this Act shall also

- ensure integrated prevention and control of any harmful effects on the environment caused by emissions to air, water and soil by securing the participation of the waste management sector in order to achieve a high level of protection for the environment as a whole and
- ensure protection and the taking of precautions against any hazards, significant disadvantages and significant nuisances caused in any other way.

Section 2
Scope of the Act

(1) The provisions of this Act shall apply to

1. the construction and operation of installations;
2. the production, marketing and importation of installations, fuels, substances and products made of any such substances, in conformity with sections 32 to 37;
3. the nature, equipment, operation and testing of motor vehicles including their trailers, and of railborne vehicles, aircraft and watercraft as well as of floating units and installations, in conformity with sections 38 to 40 and
4. the construction of public roads as well as of railways, magnetic levitation trains and tramways, in conformity with sections 41 to 43.

(2) The provisions of this Act shall not apply to airports, unless part VI is concerned, or to installations, equipment, facilities or nuclear fuels or other radioactive substances falling under the provisions of the Atomic Energy Act (*Atomgesetz*) or any ordinance issued thereunder, insofar as protection from the hazards of nuclear energy or from the harmful effects of ionising radiation is concerned. They shall furthermore not apply if Federal or *Land* regulations issued for the purpose of water protection or provisions of fertiliser or pesticide law stipulate otherwise.

Section 3 Definitions

(1) “Harmful effects on the environment” as used herein shall mean any immissions which, because of their nature, extent or duration, are likely to cause hazards, significant disadvantages or significant nuisances to the general public or the neighbourhood.

(2) “Immissions” as used herein shall mean any air pollution, noise, vibration, light, heat, radiation and similar effects on the environment which affect human beings, animals and plants, soil, water, the atmosphere as well as cultural objects and other material goods.

(3) “Emissions” as used herein shall mean any air pollution, noise, vibration, light, heat, radiation and similar phenomena originating from an installation.

(4) “Air pollution” as used herein shall mean any change in the natural composition of the air, especially through smoke, soot, dust, gases, aerosols, steam or odorous substances.

(5) “Installations” as used herein shall mean

1. any operating plants and other stationary facilities;
2. any machines, equipment and other non-stationary technical facilities as well as vehicles and craft unless they are subject to the provisions of section 38 below and
3. any premises used to store or deposit materials or to carry out work likely to cause emissions, with the exception of routes used for public transport.

(5a) An “establishment” as used herein shall mean the entire area under the control of an operator where hazardous substances within the meaning of Article 3 (4) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ EC 1997 No. L 10, p. 13) as modified by Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 (OJ EC No. L 345, p. 97) are present or planned to be present or will be present in one or more installations, including common or related infrastructures or activities including storage as defined in Article 3 (8) of the Directive in the quantities specified in Article 2 of the Directive, if there is reason to assume that the said hazardous substances are generated when certain industrial chemical processes get out of control; the establishments, hazards and activities referred to in Article 4 of Directive 96/82/EC shall be exempted from this provision.

(6) “Best available techniques” as used herein shall mean the state of development of advanced processes, establishments or modes of operation which is deemed to indicate the practical suitability of a particular technique for restricting emission levels to air, water or soil, for guaranteeing installations safety or for preventing or reducing any effects on the environment with a view to achieving a high level of protection for the environment as a whole. When determining the best available techniques, special consideration shall be given to the criteria listed in the Annex.

(7) Manufacture, processing or any other treatment shall be deemed to be equivalent to “production” as used herein; conveyance into the jurisdiction of this Act shall be deemed to be equivalent to “import” as used herein.

Part II
Construction and Operation of Installations

Chapter I
Installations Subject to Licensing

Section 4
Licensing

(1) The construction and operation of installations which, on account of their nature or operation, are particularly likely to cause harmful effects on the environment or otherwise endanger or cause significant disadvantages or significant nuisances to the general public or the neighbourhood, and the construction and operation of stationary waste disposal plants designed to store or treat wastes shall be subject to licensing. With the exception of waste disposal plants, installations which do not serve commercial purposes and are not used within the framework of business undertakings shall not be subject to licensing unless they are particularly likely to cause harmful effects on the environment caused by air pollution or noise. After hearing the parties concerned (section 51), the Federal Government shall specify by ordinance, with the consent of the *Bundesrat*, those types of installations which require licensing (installations subject to licensing); the ordinance may also provide that licensing is not required for any installation which, in its entirety or in essential parts specified in the ordinance, has been type-approved and constructed and operated in accordance with the type approval.

(2) Mining installations or parts thereof shall only be subject to licensing pursuant to subsection (1) above where they are constructed and operated above ground. No licence pursuant to subsection (1) above shall be required for open-pit installations and for any installations necessary for their operation or indispensable for their ventilation.

Section 5
Obligations of Operators of Installations
Subject to Licensing

(1) Installations subject to licensing shall be constructed and operated in such a way that, in order to ensure a high level of protection for the environment as a whole,

1. harmful effects on the environment or any other hazards, significant disadvantages and significant nuisances to the general public and the neighbourhood are avoided;
2. precautions are taken to prevent any harmful effects on the environment or any other hazards, significant disadvantages or significant nuisances, in particular by such measures as are appropriate according to the best available techniques;

3. wastes are avoided, unavoidable wastes are recovered, and non-recoverable wastes are disposed of without impairing the public welfare; wastes shall be deemed to be unavoidable if avoidance is not technically feasible or not reasonable; avoidance shall be deemed to be inadmissible if it leads to more adverse effects on the environment than would be the case with the option of recovery; recovery and disposal of wastes shall be based on the provisions of the Closed Substance Cycle and Waste Management Act (*Kreislaufwirtschafts- und Abfallgesetz*) and on any other provisions applicable to wastes;
4. economical and efficient energy use is ensured.

To fulfil the obligation to take precautions pursuant to the first sentence No. 2 above, installations subject to licensing that are covered by the Greenhouse Gas Emissions Trading Act (*Treibhausgas-Emissionshandelsgesetz*) shall comply with the requirements laid down in section 5 and section 6 subsection (1) of the Greenhouse Gas Emissions Trading Act. For such installations, requirements on the limitation of greenhouse gas emissions shall be admissible only where they serve the purpose of ensuring compliance with section 5 subsection (1) No. 1 by preventing any harmful effects on the environment from arising in the sphere of influence of the installation in question. For such installations, the objective of compliance with the obligation to ensure efficient energy use must not lead to requirements related to carbon dioxide emissions based on combustion or other processes in the installation that go beyond the requirements laid down in the Greenhouse Gas Emissions Trading Act.

(2) (Repealed)

(3) Installations subject to licensing shall be constructed, operated and closed down so as to ensure that even after cessation of operation,

1. no harmful effects on the environment or no other hazards, significant disadvantages and significant nuisances to the general public and the neighbourhood may be caused by such installation or the surrounding premises;
2. existing wastes are orderly and safely recovered or are disposed of without impairing the public welfare and
3. restoration of the site to proper condition is guaranteed.

Section 6 Prerequisites for Licensing

(1) A licence shall be granted if

1. it is ensured that the obligations arising from section 5 and from any ordinance issued under section 7 will be complied with and if
2. the construction and operation of such installation does not conflict with any other provisions under public law or any occupational safety and health concerns.

(2) In the case of installations which are operated in different modes or where different substances are used (multi-purpose or multi-substance installations), the licence shall, upon request, be extended to cover such different modes of operation and different substances if the prerequisites pursuant to subsection (1) above are fulfilled for all modes of operation and substances recorded.

Section 7
Ordinances Governing the Requirements for Installations
Subject to Licensing

(1) The Federal Government is authorised, after hearing the parties concerned (section 51), to require by ordinance, with the consent of the *Bundesrat*, that the construction, nature and operation of installations subject to licensing and their condition after cessation of operation, as well as their supervision by the operator, meet specific requirements in order to comply with the obligations ensuing from section 5, which means, in particular, that

1. such installations shall meet specific technical requirements;
2. the emissions released from the installations shall not exceed specific limit values;
- 2a. the use of energy shall meet certain requirements;
3. the operators of the installations shall take measurements, or have measurements taken, of emissions and immissions using methods to be specified in the ordinance; and
4. the operators of the installations shall provide for specific safety checks as well as specific audits of safety-related documents to be carried out by an expert pursuant to section 29a according to a procedure to be specified in the ordinance,
 - a) during the construction or else prior to the commissioning of the installation,
 - b) following the commissioning or any alteration within the meaning of section 15 or section 16,
 - c) at regular intervals or
 - d) at the time of or after cessation of operation,

except where provision is made for such checks in any ordinance issued under section 14 of the Equipment and Product Safety Act (*Geräte- und Produktsicherheitsgesetz*). When defining such requirements, account shall in particular be taken of any possible shift of adverse effects from one protected resource to another; a high level of protection shall be ensured for the environment as a whole.

(2) The ordinance may determine the degree to which the requirements set out in subsection (1) above as a precaution against any harmful effects on the environment must be met at the end of given transitional periods, insofar as less exacting requirements had been set forth in a provisional decision or a licence at the time of entry into force of the ordinance. When fixing the

duration of such transitional periods and defining any such requirements, special regard shall be paid to the nature, volume and hazardousness of the emissions originating from the installations as well as to the useful life and the characteristic technical features thereof. The first and second sentences above shall apply *mutatis mutandis* to installations which require notification under section 67 subsection (2) or section 67a subsection (1) or which, before entry into force of this Act, required such notification under section 16 subsection (4) of the Industrial Code (*Gewerbeordnung*).

(3) Where the ordinance establishes specific requirements pursuant to section 5 subsection (1) No. 2, it may give permission, with respect to such installations as are specified in subsection (2) above, for a deviation to be made from the requirements specified in subsections (1) and (2) above as a precaution against any harmful effects on the environment. This shall apply only if technical measures taken within the operator's or third parties' installations result in an overall reduction of emission levels for the same substances or for substances having a comparable impact on the environment which is substantially higher than any such reduction achieved by compliance with the requirements established on the basis of subsections (1) and (2) above, thus contributing to the advancement of the purpose referred to in section 1. The ordinance may furthermore determine whether and to what extent, for the purpose of performing intergovernmental agreements with states adjoining the Federal Republic of Germany, the second sentence above may equally apply to any such technical measures taken at installations located in such adjoining states.

(4) In order to implement binding decisions of the European Communities, the Federal Government may, for the purpose referred to in section 1 and with the consent of the *Bundesrat*, establish by ordinance specific requirements regarding the construction, nature and operation, cessation of operation and supervision by the operator of installations subject to licensing. For installations subject to licensing and falling under the scope of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ EC No. L182 p. 1), the Federal Government may, with the consent of the *Bundesrat*, define by ordinance the same requirements as are applicable to landfills within the meaning of section 3 subsection (10) of the Closed Substance Cycle and Waste Management Act (*Kreislaufwirtschafts- und Abfallgesetz*), in particular requirements for provision of security, for closure and for the technical and professional qualification of the operator.

(5) As far as the requirements specified in subsection (1) Nos. 1 to 4 above, also in conjunction with subsection (4) above, are concerned, reference may be made to generally accessible publications by expert bodies; for this purpose,

1. the ordinance shall indicate the date of such publication and specify its source of reference;
2. such publication shall be lodged in the archives of the German Patent and Trade Mark Office for safe custody, and reference thereto shall be made in the ordinance.

Section 8 Partial Licence

Upon application, a licence may be granted for construction of an installation or part of an installation or for construction and operation of part of an installation if

1. there is a legitimate interest in granting a partial licence;
2. the licensing requirements are fulfilled for the object applied for in the partial licence and
3. a preliminary assessment shows that there are no fundamental, irremovable obstacles to the construction and the operation of the entire installation with regard to fulfilling the licensing requirements.

The provisional overall assessment shall lose its binding character if any change in the factual or legal situation or any individual examinations within the framework of subsequent partial licences result in an assessment differing from the provisional overall assessment.

Section 8a Permission of Early Start

(1) In a licensing procedure, the licensing authority may, upon application, provisionally permit construction of an installation, including all measures necessary for ensuring its fitness for operation, to start even prior to the issue of a licence if

1. a decision in favour of the applicant for the licence can be expected;
2. such early start is in the public's interest or in the legitimate interest of the applicant and if
3. the applicant undertakes to compensate for any damage caused by construction of the installation prior to the decision and, if the project is not licensed, to restore the previous status quo.

(2) The permission may be revoked at any time. It may be made subject to compliance with certain obligations or be issued under the proviso that subsequent obligations be fulfilled. The competent authority may request the provision of security where this is necessary to ensure that the applicant meets his obligations.

(3) In a procedure for the issue of a licence pursuant to section 16 subsection (1), the licensing authority may provisionally permit the installation to be operated under the conditions set out in subsection (1) above if the alteration serves the purpose of meeting an obligation derived from this Act or from an ordinance issued under this Act.

Section 9 Provisional Decision

- (1) Upon application, a provisional decision may be rendered with regard to particular prerequisites for issue of a licence and the choice of the site for the installation in question, provided that the implications resulting from the proposed installation can be adequately assessed and that there exists a legitimate interest in the issue of such a provisional decision.
- (2) The provisional decision shall become invalid if the applicant fails to apply for a licence within two years from the date on which the provisional decision has become final; upon application, this term may be extended to up to four years.
- (3) The provisions of sections 6 and 21 shall apply *mutatis mutandis*.

Section 10 Licensing Procedure

- (1) Institution of the licensing procedure shall be subject to submission of a written application. Any drawings, explanations and other supporting documents required for verification purposes in accordance with section 6 shall be attached to the application. If the documents submitted are not sufficient for such verification, the applicant shall, if so requested by the competent authority, furnish additional documents within a reasonable period. If the application is submitted in electronic form, the competent authority may order the applicant to produce copies thereof and submit the documents to be attached to the application in written form as well.
- (2) Where documents presented contain business secrets, such documents shall be marked accordingly and submitted separately. The contents thereof must be described in sufficient detail to enable third parties to assess whether and to what extent they may be affected by the installation in question in so far as this can be done without disclosing the secret.
- (3) If the documents submitted are complete, the competent authority shall give public notice of the project in its official gazette and, additionally, either on the Internet or in local daily newspapers that are widely read in the area where the installation is to be constructed. With the exception of the documents referred to in subsection (2), first sentence, above, the application and the supporting documents as well as all reports and recommendations relevant to the decision which are available to the authority at the time of the public notice shall be laid open for public inspection for a period of one month following such notice. Additional information which may be relevant to the decision on the project's admissibility and becomes available to the competent authority only after the start of the inspection period shall be made public according to the provisions on access to environmental information. Objections against the project may be lodged in writing within two weeks after expiry of the inspection period. At the end of the objection period, no further objections shall be admissible unless they are based on special titles under civil law. Objections based on special titles under civil law shall be dealt with by the general courts of law.
- (4) The notice pursuant to subsection (3), first sentence, above shall

1. indicate the date when and the place where the application for the issue of a licence and the supporting documents will be laid open for public inspection;
2. invite those concerned to lodge any objections with an authority to be specified in the notice within the objection period; in this connection, reference shall be made to the legal consequences ensuing from subsection (3), third sentence, above;
3. fix a date for public discussion and announce that the public discussion is conducted on the basis of a discretionary decision by the licensing authority according to subsection (6) below and that all objections duly submitted will be discussed even in the event that the applicant or any person who has lodged objections should be absent;
4. point out that service of the decision regarding the objections raised may be replaced by a public notice.
5. (Repealed)

(5) The authority responsible for the issue of the licence (licensing authority) shall seek the opinion of all other authorities affected by the project. Insofar as a permission in accordance with other laws is required for the project itself or for any other projects in direct spatial or operational connection with it which may have effects on the environment and be of relevance to the issue of the licence, the licensing authority shall ensure full coordination of the permission procedures as well as of the substantive and collateral provisions.

(6) After expiry of the objection period, the licensing authority shall discuss all arguments submitted in time against the project with the applicant and with those who have raised them.

(6a) The application for a licence shall be decided upon within a period of seven months, in simplified procedures within a period of three months, after receipt of the application and the documents to be presented pursuant to subsection (1), second sentence, above. The competent authority may extend this period by three months, if this is necessary due to the difficult nature of the examination or for reasons attributable to the applicant. The reason for such an extension of the period shall be specified vis-à-vis the applicant.

(7) The final decision on the issue of a licence shall be notified in writing, including a written statement of the grounds, and be served on the applicant and on any person who has lodged objections as well as be made public notwithstanding the provisions of subsection (8) below. If service is not conducted according to subsection (8) below, the final decision shall be made public. Publication shall be conducted pursuant to subsection (8) below.

(8) Service of the licensing decision on the persons who have raised objections may be replaced by public notice. Publication shall take the form of notice being given of the mandatory part of the final decision and the necessary information on legal remedies, with subsection (3), first sentence, above applying *mutatis mutandis*; any additional obligations imposed shall be indicated. In that case, a copy of the complete decision shall be laid open for public inspection on the day following such notice for a period of two weeks. The public notice shall contain all details as to where and when the final decision and the statement of the grounds thereof may be inspected and copies thereof may be requested pursuant to the sixth sentence below. The final decision shall be deemed to be served, including on third parties who have not made any

objections, with the expiry of the inspection period; this information shall be included in the public notice. As soon as the public notice has been given, copies of the final decision including the statement of grounds may be requested in writing until the end of the response deadline by any person who has lodged objections.

(9) Subsections (1) to (8) above shall apply *mutatis mutandis* to the issue of a provisional decision.

(10) The Federal Government is authorised to regulate the licensing procedure by ordinance, with the consent of the *Bundesrat*; provision may be made in the ordinance for the procedure to be used for the licensing under the simplified procedure (section 19) as well as for the issue of a provisional decision (section 9), of a partial licence (section 8) and of a permission of an early start (section 8a). The ordinance shall also specify the requirements to be met by the licensing procedure for installations which have to undergo an environmental impact assessment pursuant to the Act on the Assessment of Environmental Impacts (*Gesetz über die Umweltverträglichkeitsprüfung*).

(11) The Federal Ministry of Defence is authorised to regulate by ordinance, in agreement with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and with the consent of the *Bundesrat*, the licensing procedure for installations serving national defence purposes, in derogation of subsections (1) to (9) above.

Section 10a (Repealed)

Section 11 **Objections by Third Parties in the Case of Partial Licences or Provisional Decisions**

Where a partial licence has been granted or a provisional decision has been rendered and where such partial licence or provisional decision has become final, third parties shall not be entitled, in any subsequent licensing procedure for construction and operation of the installation, to raise objections on the basis of facts which were presented in due time in the previous procedure or which could have been presented in view of the documents laid open for public inspection.

Section 12 **Collateral Licensing Provisions**

(1) The granting of a licence may be tied to specific conditions and obligations where this is necessary to warrant compliance with the licensing conditions referred to in section 6. In the case of waste disposal facilities within the meaning of section 4 subsection (1), first sentence, provision of security may be imposed to ensure compliance with the requirements of section 5 subsection (3).

(2) Upon application, the licence may be granted for a limited period. If an installation subject to licensing is intended for test purposes only, the licence may be granted with the proviso that it can be revoked.

(2a) With the consent of the applicant, the licence may be granted with the proviso that subsequent obligations may be imposed, insofar as this is to serve a more detailed specification of any requirements with regard to construction and operation of the installation at a point in time following the granting of the licence which have already been sufficiently defined and laid down in general terms in the licence. Under the conditions set out in the first sentence above, this provision shall also apply if the authority concerned fails to submit its comments in time.

(2b) In the case of section 6 subsection (2), the competent authority shall require the applicant to inform it without undue delay of the first-time production or use of a different substance under the permitted mode of operation.

(3) The partial licence may be granted for a limited period or with the proviso that it may be revoked or tied to specific conditions pending final decision on the granting of a licence.

Section 13

Licences and Other Official Decisions

The licence shall include other official decisions with a bearing on the installation, in particular licences under public law, approvals, grantings, permits and authorisations – with the exception of plan approvals, approvals of operation plans under mining law, official decisions based on nuclear law and permits and authorisations under water law pursuant to sections 7 and 8 of the Federal Water Act (*Wasserhaushaltsgesetz*).

Section 14

Exclusion of Civil-Law Claims to Protection against Abridgement of Legal Rights

Nobody shall have the right to request cessation of operation at any installation on grounds of civil-law claims to protection against the detrimental impacts emanating from a piece of land on neighbouring premises, if the civil-law claims are not based on specific titles and the licence for the installation has become final; it shall only be admissible to insist on precautionary measures to prevent the detrimental impacts. If such measures are not technically feasible according to the best available techniques or not economically viable, only compensation may be claimed.

Section 14a

Simplified Procedure for Bringing an Action

Unless the specific conditions of the case warrant a shorter period of time, the applicant may bring an action to an administrative court if his objection has not been decided upon within three months of lodging it.

Section 15

Alteration of Installations Subject to Licensing

(1) Any alteration to the location, nature or operation of an installation subject to licensing shall be notified to the competent authority in writing at least one month before this alteration is due to be undertaken, if the alteration may have an effect on any of the protected resources referred to in section 1 and no licence is applied for. This notification shall include documents as defined in section 10 subsection (1), second sentence, insofar as these documents may be necessary for determining whether the project requires licensing. The competent authority shall without undue delay inform the party carrying out the project of receipt of the notification and the enclosed documents in writing. Upon receipt of the notification, it shall, without undue delay, inform the party carrying out the project of the additional documents it needs in order to determine if the requirements pursuant to section 16 subsection (1) have been fulfilled. The first to fourth sentences above shall apply *mutatis mutandis* to installations which are subject to notification under section 67 subsection (2) or section 67a subsection (1) or which were subject to notification under section 16 subsection (4) of the Industrial Code (*Gewerbeordnung*) before entry into force of this Act.

(2) The competent authority shall examine without undue delay, but no later than one month after receipt of the notification and the documents required pursuant to subsection (1), second sentence, above, whether the alteration is subject to licensing. The party carrying out the project shall be allowed to perform the alteration as soon as the competent authority advises him that the alteration does not require licensing or if it does not comment on it within the period of time referred to in the first sentence above. Subsection (1), third sentence, above shall apply *mutatis mutandis* to any documents presented subsequently.

(3) If the operator plans to cease operation of an installation subject to licensing, he shall notify the competent authority without undue delay of the planned cessation and state the date of cessation. The notification shall also include documents on the measures which the operator plans to take in order to fulfil the obligations arising from section 5 subsection (3). The first and second sentences above shall apply *mutatis mutandis* to the installations described in subsection (1), fifth sentence, above.

(4) The exact details for the procedure pursuant to subsections (1) to (3) above may be covered in the ordinance pursuant to section 10 subsection (10).

Section 15a (Repealed)

Section 16 **Major Alteration of Installations** **Subject to Licensing**

(1) Any alteration of the location, nature or operation of an installation subject to licensing shall require a licence if the alteration may lead to adverse effects which may be of relevance with regard to the examination pursuant to section 6 subsection (1) No. 1 (major alteration); a licence shall be required under any circumstances if the alteration or extension of the operation of an installation subject to licensing reaches in itself the

capacity limits or installation sizes stated in the annex to the Ordinance on Installations Subject to Licensing (*Verordnung über genehmigungsbedürftige Anlagen*). A licence shall not be required if the adverse effects due to the alteration are obviously minor and fulfilment of the obligations arising from section 6 subsection (1) No. 1 can be guaranteed.

- (2) The competent authority shall refrain from giving public notice of the project and from laying open the application and the documents for public inspection if the party carrying out the project files an application to this effect and if there is no reason to fear any significant adverse effects on the protected resources referred to in section 1. This shall be deemed to be the case in particular where it is recognisable that these effects can be ruled out due to the measures taken or planned to be taken by the party carrying out the project or if the disadvantages are minor in relation to the comparable advantages in the individual case. If the major alteration refers to an installation subject to licensing in a simplified procedure, this major alteration shall also be licensed in a simplified procedure. Section 19 subsection (3) shall apply *mutatis mutandis*.
- (3) The application for a licence shall be decided upon within a period of six months or, in the case of subsection (2) above, within a period of three months. Section 10 subsection (6a), second and third sentences, shall apply *mutatis mutandis*.
- (4) The party carrying out the project may apply for a licence for any alteration subject to notification pursuant to section 15 subsection (1). This licence shall be granted in a simplified procedure; subsection (3) above and section 19 subsection (3) shall apply *mutatis mutandis*.
- (5) No licence is required if a licensed installation or parts of a licensed installation are to be replaced or substituted within the framework of the licence granted.

Section 17 Subsequent Orders

(1) In order to ensure that the obligations resulting from this Act or from any ordinance issued hereunder are met, orders may be issued following the granting of the licence or an alteration notified under section 15 subsection (1). If after the issue of such a licence or after an alteration notified under section 15 subsection (1), the protection of the general public or the neighbourhood against any harmful effects on the environment or any other hazards, significant disadvantages and significant nuisances turns out to be inadequate, the competent authority shall issue subsequent orders.

(1a) Before the issuance of a subsequent order pursuant to subsection (1), second sentence, above for the purpose of redefining limit values for emissions for installations referred to in the first column of the annex to the Ordinance on Installations Subject to Licensing (*Verordnung über genehmigungsbedürftige Anlagen*), public notice shall be given of the draft order. Section 10 subsections (3) and (4) Nos. 1 and 2 shall apply *mutatis mutandis* to the public notice. Objections may be lodged by persons whose interests are affected by the subsequent order or by associations meeting the requirements of section 3 subsection (1) or section 2 subsection (2) of the Act on Legal Remedies with Respect to the Environment (*Umwelt-Rechtsbehelfsgesetz*). Section 10

subsections (7) and (8) shall apply *mutatis mutandis* to the decision on the issue of the subsequent order.

(2) The competent authority shall not issue subsequent orders if such order would lack proportionality, above all if the effort needed to comply with the order is not commensurate with the desired effect; in this respect, special attention shall be paid to the nature, volume and hazardousness of the emissions originating from the installation and the immissions it causes as well as to the useful life and the characteristic technical features of the installation. Where a subsequent order is not permitted for lack of proportionality, the competent authority shall revoke the licence wholly or in part in accordance with the provisions of section 21 subsection (1) Nos. 3 to 5; section 21 subsections (3) to (6) shall apply.

(3) Where the requirements referred to in section 5 subsection (1) No. 2 are definitely laid down by ordinance, no subsequent orders shall be issued to impose any additional requirements as a precaution against harmful effects on the environment.

(3a) The competent authority shall refrain from issuing subsequent orders where a plan submitted by the operator provides for technical measures to be taken at the operator's or any other party's installations which result in a reduction of emission levels for the installations concerned which is substantially higher than the aggregate of reductions which would be attainable by issuing subsequent orders for the performance of the obligations ensuing from this Act or from any ordinance issued hereunder, thus promoting the advancement of the purpose referred to in section 1. This shall not apply where the operator is already required to reduce emissions on the basis of a subsequent order pursuant to subsection (1) above or an obligation pursuant to section 12 subsection (1) or where a subsequent order is to be issued pursuant to subsection (2), second sentence, above. Such offsetting measures shall only be permitted for substances of the same type or substances having a comparable impact on the environment. The first, second and third sentences above shall also apply to installations not ready for operation for which a licence covering construction and operation has already been granted or for which specific requirements pursuant to section 5 subsection (1) No. 2 have been laid down in a provisional decision or a partial licence. The implementation of the measures provided for in such a plan shall be ensured by means of an order.

(4) If the performance of the order calls for a major alteration in the location, nature or operation of the installation and if the order does not contain any definitive instructions as to how it is to be performed, such alteration shall be subject to licensing in accordance with section 16.

(4a) In the case of waste disposal facilities within the meaning of section 4 subsection (1), first sentence, provision of security may be imposed to ensure compliance with the requirements of section 5 subsection (3).

(5) Subsections (1) to (4a) above shall apply *mutatis mutandis* to installations which are subject to notification under section 67 subsection (2) or which were subject to notification under section 16 subsection (4) of the Industrial Code (*Gewerbeordnung*) before entry into force of this Act.

Section 18

Expiry of the Licence

(1) The licence shall expire if

1. construction and operation of the installation have not been commenced within a reasonable period fixed by the licensing authority or if
2. the installation has no longer been operated for a period of more than three years.

(2) Furthermore, the licence shall expire if the requirement to obtain a licence has ceased to exist.

(3) The licensing authority may extend the periods specified in subsection (1) above for good cause, provided that this is without prejudice to the purpose of this Act.

Section 19 Simplified Procedure

(1) An ordinance issued under section 4 subsection (1), third sentence, may provide for a simplified procedure for the licensing of installations of specific types or sizes if this is compatible with the protection of the general public and the neighbourhood given the nature, extent and duration of the harmful effects on the environment and of any other hazards, significant disadvantages and significant nuisances caused by such installations. The first sentence above shall apply *mutatis mutandis* to waste disposal installations.

(2) Section 10 subsections (2), (3), (4), (6), subsection (7), second and third sentences, subsections (8) and (9) as well as sections 11 and 14 shall not apply to the simplified procedure.

(3) Notwithstanding subsections (1) and (2) above, the licence shall not be granted in a simplified procedure, if the party carrying out the project so requests.

Section 20 Prohibition, Closure and Dismantling

(1) If the operator of an installation subject to licensing fails to comply with an additional condition or an enforceable subsequent order or a definitive obligation ensuing from an ordinance issued under section 7, and if any such condition, order or obligation has a bearing on the nature or operation of the installation, the competent authority may, completely or in part, prohibit operation pending compliance with the condition, order or obligation ensuing from the ordinance issued under section 7 .

(1a) The competent authority shall, completely or in part, prohibit commissioning or continued use of an installation subject to licensing which as an establishment or part of an establishment serves commercial purposes or is used within the framework of business undertakings when and if the measures taken by the operator to prevent major accidents within the meaning of Article 3 (5) of Council Directive 96/82/EC or to limit the consequences of such accidents are clearly inadequate. The competent authority may, completely or in part, prohibit commissioning or continued use of an installation as defined in the first sentence above if the operator fails to

submit in time the communications, reports or other information required by any ordinance issued to transpose Directive 96/82/EC.

(2) The competent authority shall order to close down or dismantle any installation constructed, operated or materially altered without the required licence to do so. It shall order the dismantling of the installation where the general public or the neighbourhood cannot be adequately protected in any other way.

(3) The competent authority may prohibit the continued operation of an installation subject to licensing by the operator or any person in charge of operation if there are proven facts supporting their incompetence to observe the legal provisions concerning the protection against any harmful effects on the environment and if such prohibition is necessary to ensure the public welfare. Upon application, the operator of the installation may be granted permission to have the installation operated by some other person who warrants normal operation of the installation. Such permission may be subject to specific conditions.

Section 21 **Revocation of the Licence**

(1) Even after having become final, a licence duly granted under this Act may only be revoked wholly or in part for any future operation if

1. the licence has been granted with the proviso that it may be revoked pursuant to section 12 subsection (2), second sentence, or subsection (3);
2. the licence has been granted subject to a specific condition which the beneficiary has either failed to comply with or has failed to comply with within the time-limit set;
3. by virtue of facts having occurred subsequently, the licensing authority were entitled to refuse to grant such a licence and if non-revocation might put the public interest at risk;
4. by virtue of a revised legal provision, the licensing authority were entitled to refuse to grant such a licence, where the operator has not yet made use of the licence, and if non-revocation might put the public interest at risk;
5. this helps to prevent or eliminate any serious impairments of the public welfare.

(2) If the licensing authority obtains knowledge of any facts justifying revocation of a licence, such revocation shall only be admissible within a period of one year after such facts have become known.

(3) When revoked, the licence shall become invalid as soon as the revocation takes effect, unless the licensing authority specifies a later date.

(4) If a licence is revoked in any of the cases referred to in subsection (1) Nos. 3 to 5 above, the licensing authority shall, if so requested, compensate the party concerned for the financial prejudice suffered as a result of his trusting in the continued validity of the licence, where

such trust is deemed to be worthy of protection. However, any such financial prejudice suffered shall not be compensated beyond the value of the interest which the party concerned has in the continuance of the licence. The financial prejudice subject to compensation shall be fixed by the licensing authority. Any claims may only be filed within a period of up to one year; such period shall start as soon as the licensing authority has given notice to the parties concerned.

(5) The *Länder* may deviate from the provision specified in subsection (4), first sentence, above, in respect of the party liable for payment of compensation.

(6) Any disputes arising out of the payment of compensation may be settled in a court of general jurisdiction.

(7) Subsections (1) to (6) above shall not apply if a licence challenged by a third party is revoked during the preliminary proceedings or during legal proceedings in an administrative court, insofar as this remedies any such objection or action.

Chapter II
Installations not Subject to
Licensing

Section 22
Obligations of Operators of Installations
not Subject to Licensing

(1) Installations not subject to licensing shall be constructed and operated in such a way that

1. harmful effects on the environment which are avoidable with the use of the best available techniques are prevented;
2. harmful effects on the environment which are unavoidable with the use of the best available techniques are kept to a minimum and
3. wastes produced during the operation of such installations can be properly disposed of.

The Federal Government is authorised, after hearing the parties concerned (section 51), to determine by ordinance, with the consent of the *Bundesrat*, which installations the requirements of section 5 subsection (1) No. 3 shall apply to *mutatis mutandis* on grounds of the nature or volume of all or individual wastes.

In the case of installations which do not serve commercial purposes and are not used within the framework of business undertakings, the obligation referred to in the first sentence above shall only apply where its aim is to prevent or limit any harmful effects on the environment caused by air pollution or noise.

(2) Nothing herein contained shall affect any other legal provisions under public law.

Section 23
Requirements Concerning the Construction, Nature and Operation of Installations not
Subject to Licensing

(1) The Federal Government is authorised, after hearing the parties concerned (section 51), to require by ordinance, with the consent of the *Bundesrat*, that the construction, nature and operation of installations not subject to licensing meet specific requirements in order to protect the general public and the neighbourhood from any harmful effects on the environment and - where these installations serve commercial purposes or are used within the framework of business undertakings and are establishments or parts of establishments – to prevent major accidents within the meaning of Article 3 (5) of Council Directive 96/82/EC and limit the consequences of such accidents for humans and the environment, as well as take precautions against such harmful effects on the environment, which means, in particular, that

1. such installations shall meet specific technical requirements;

2. the emissions released from the installations shall not exceed specific limit values;
3. the operators of the installations shall take measurements of emissions and immissions using methods to be specified in the ordinance, or have such measurements taken by an agency to be specified in the ordinance;
4. the operators of specific installations shall without undue delay notify the competent authority of the commissioning or of any alteration of the installation which may be relevant for meeting the obligations defined in the ordinance and
 - 4a. within an appropriate period of time prior to the construction, commissioning or any alteration of the installation which may be relevant for meeting the obligations defined in the ordinance, the operators of installations which are establishments or parts of establishments shall notify the competent authority of commissioning or alteration and that
5. certain installations may only be operated after certification from an expert nominated publicly by the authority responsible under *Land* law has been submitted stating that the installation meets the requirements of the ordinance or of a type approval pursuant to section 33.

The ordinance pursuant to the first sentence above may also define the requirements that experts have to satisfy with regard to their technical qualification, reliability and technical equipment. Section 7 subsection (5) shall apply *mutatis mutandis* to the requirements set out in the first sentence Nos. 1 to 3 above;

(1a) For specific installations not subject to licensing an ordinance pursuant to subsection (1) above may stipulate that upon request by the party carrying out the project, a procedure for granting a licence pursuant to section 4 subsection (1), first sentence, in conjunction with section 6 shall be completed. If an application pursuant to the first sentence above is made, the provisions on installations subject to licensing, rather than the provisions on installations not subject to licensing, shall be applied to the installation concerned. Section 19 subsections (2) and (3) shall apply *mutatis mutandis* to this procedure.

(2) Where the Federal Government does not make use of this authorisation, the *Land* governments are authorised to lay down by ordinance provisions in accordance with subsection (1) above. The *Land* governments may delegate such authorisation to one or several supreme *Land* authorities.

Section 24

Orders on a Case-by-Case Basis

The competent authority may, on a case-by-case basis, issue such orders as are necessary to ensure compliance with section 22 and the ordinances issued under this Act. If the objective of any such order can also be achieved by a measure intended for occupational safety and health, such measure shall be ordered.

Section 25 Prohibition

(1) If the operator of an installation fails to comply with an enforceable official order pursuant to section 24, first sentence, the competent authority may, completely or in part, prohibit the operation of the installation pending compliance with the order.

(1a) The competent authority shall, completely or in part, prohibit commissioning or continued use of an installation not subject to licensing which as an establishment or part of an establishment serves commercial purposes or is used within the framework of business undertakings when and if the measures taken by the operator to prevent major accidents within the meaning of Article 3 (5) of Council Directive 96/82/EC or to limit the consequences of such accidents are clearly inadequate. The competent authority may, completely or in part, prohibit commissioning or continued use of an installation as defined in the first sentence above if the operator fails to submit in time the communications, reports or any other information required by any ordinance issued to transpose Directive 96/82/EC.

(2) If the harmful effects on the environment caused by an installation threaten the life or health of human beings or valuable material assets, the competent authority shall, completely or in part, prohibit the construction or operation of the installation where the general public or the neighbourhood cannot be adequately protected in any other way.

Chapter III Determination of Emissions and Immissions, Safety Checks

Section 26 Measurements Taken for Special Reasons

The competent authority may order that the operator of an installation subject to licensing or, insofar as section 22 applies, of an installation not subject to licensing, shall have the nature and type of the emissions released from such installation and the immissions occurring within the sphere of influence of such installation determined by one of the agencies designated by the authority responsible pursuant to *Land* law if there is reason to fear that harmful effects on the environment may be caused by the installation. The competent authority is authorised to specify details regarding the type and extent of the measurements to be made and regarding the presentation of the results thereof.

Section 27 Emission Declaration

(1) The operator of an installation subject to licensing shall, within a period to be fixed by the authority or on the date stipulated by the ordinance issued under subsection (4) below, provide the competent authority with information on the type and volume and the spatial and temporal distribution of the air pollutants emitted from the installation within a specified period, including the conditions governing such emission (emission declaration); he shall update the

emission declaration in accordance with the ordinance referred to in subsection (4) below. Section 52 subsection (5) shall apply *mutatis mutandis*. The first sentence above shall not apply to operators of installations causing only minor air pollution.

(2) Sections 93 and 97, section 105 subsection (1), section 111 subsection (5) in conjunction with section 105 subsection (1) as well as section 116 subsection (1) of the Fiscal Code (*Abgabenordnung*) shall not apply to the information and documents obtained pursuant to subsection (1) above. This shall not apply where the tax authorities need such information for the institution of proceedings on grounds of a fiscal offence and the ensuing tax assessment proceedings, for the prosecution of which there is a compelling public interest, or where false information has been given deliberately by the person required to give such information or by any other person acting on his behalf.

(3) The content of the emission declaration shall be disclosed to third parties upon request. No details of the emission declaration shall be published or disclosed to third parties if these could be used to draw conclusions concerning business secrets. When submitting the emission declaration, the operator shall specify to the competent authority which of the details contained in the emission declaration would allow such conclusions to be drawn, substantiating these assertions.

(4) The Federal Government is authorised to establish by ordinance, with the consent of the *Bundesrat*, the content, scope, form and time of the emission declaration, the procedure to be observed when determining emissions and the deadline for completing the update of the emission declaration. Provision shall also be made in such ordinance as to which of the operators of installations subject to licensing are to be exempted from the obligation to submit an emission declaration pursuant to subsection (1), third sentence, above. In addition, to ensure compliance with any obligations arising from binding decisions of the European Communities, the ordinance may require the competent authorities to provide the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety with emission data from the emission declarations, to be forwarded via the authorities responsible under *Land* law at a previously determined time.

Section 28 **Initial and Recurrent Measurements** **in the Case of Installations Subject to Licensing**

In the case of installations subject to licensing, the competent authority may,

1. after the commissioning or after an alteration within the meaning of section 15 or section 16, and after that,
2. at the end of any three-year period,

issue orders pursuant to section 26 even in the absence of the requirements specified therein. If, in view of the type, volume and hazardousness of the emissions released from the installation, the authority deems it necessary to carry out measurements even during the period specified in No. 2 above, it shall allow, upon application by the operator, the

immission control officer to carry out the measurements, provided that he has the requisite technical qualification, reliability and technical equipment for such purpose.

Section 29 **Continuous measurements**

(1) In the case of installations subject to licensing, the competent authority may order specific emissions or immissions to be determined continuously by means of measurement loggers in lieu of individual measurements pursuant to section 26 or section 28 or in addition to such measurements. In the case of installations with substantial mass flows of air pollutants, orders pursuant to the first sentence above shall be issued, taking into account the type and hazardousness of these substances, if, owing to the nature of the installation, the possibility of exceeding the emission limits specified in any legal provisions adopted, conditions imposed or orders issued cannot be ruled out.

(2) In the case of installations not subject to licensing, the competent authority may, where section 22 applies, order specific emissions or immissions to be determined continuously by means of measurement loggers in lieu of individual measurements pursuant to section 26 or in addition to such measurements, if this is deemed necessary to establish whether or not the installation causes any harmful effects on the environment.

Section 29a **Orders Regarding Safety Checks**

(1) The competent authority may order the operator of an installation subject to licensing to entrust one of the experts designated by the authority responsible under *Land* law with the performance of certain safety checks as well as of audits of safety-related documents. The order may provide for such checks and audits to be carried out by either the hazardous incidents officer (section 58a), a licensed supervisory body pursuant to section 17 subsection (1) of the Equipment and Product Safety Act (*Geräte- und Produktsicherheitsgesetz*) or an expert appointed pursuant to any ordinance issued for installations pursuant to section 2 subsection (7) of the Equipment and Product Safety Act, provided that these have the requisite technical qualification, reliability and technical equipment for such purpose; the same applies to experts appointed pursuant to section 36 subsection (1) of the Industrial Code (*Gewerbeordnung*) who can furnish proof of their specific professional qualification in the field of safety checks. The competent authority is authorised to prescribe details regarding the type and scope of such safety checks and the presentation of the result thereof.

(2) Orders may be issued for such checks to be performed

1. at a specific date during the construction of the installation or else before commissioning of the installation;
2. at a specific date after commissioning;
3. at regular intervals;
4. in the event of cessation of operation or

5. if there is any evidence to suggest that certain safety-related requirements are not met.

The first sentence above shall apply *mutatis mutandis* in the case of an alteration within the meaning of section 15 or section 16.

(3) The operator shall submit the results of the safety checks to the competent authority no later than one month after completion of the checks; he shall present the results without delay if this is deemed necessary for averting imminent dangers.

Section 30 **Costs of Measurements and Safety Checks**

The costs for the determination of emissions and immissions as well as for the safety checks shall be borne by the operator of the installation. In the case of installations not subject to licensing, the operator shall bear the costs for measurements carried out pursuant to section 26 or section 29 subsection (2) only if it becomes evident from the measurements that

1. certain conditions imposed or orders issued in accordance with the provisions of this Act or of any ordinance issued hereunder have not been complied with or that
2. the issue of orders or the setting of conditions in accordance with the provisions of this Act or of any ordinance issued hereunder is necessary.

Section 31 **Information regarding Emissions and Immissions Measured**

The operator of an installation shall, if so requested, inform the competent authority of the result of any measurements taken by virtue of an order given pursuant to section 26, 28 or 29 and shall keep the recordings of the measuring equipment pursuant to section 29 in safe custody for five years. The competent authority may prescribe the mode of transmission of such results. The results of the monitoring of emissions submitted to the authority shall be made accessible to the general public in accordance with the provisions of the Environmental Information Act (*Umweltinformationsgesetz*) with the exception of section 12 of that Act; *Land* authorities are subject to *Land* regulations.

Section 31a (Repealed)

Part III
Nature of Installations, Substances, Products, Fuels and Lubricants; Biofuels

Chapter I
Nature of Installations, Substances, Products, Fuels and Lubricants

Section 32
Nature of Installations

(1) The Federal Government is authorised, after hearing the parties concerned (section 51), to require by ordinance, with the consent of the *Bundesrat*, that series-produced parts of operating plants and of other stationary facilities as well as the installations referred to in section 3 subsection (5) No. 2 and series-produced parts thereof shall not be placed on the market or imported, be it commercially or within the framework of business undertakings, unless they satisfy specific requirements for the protection against harmful effects on the environment caused by air pollution, noise or vibration. In the ordinances pursuant to the first sentence above, it may in particular be provided that

1. the emissions released from the installations or the series-produced parts thereof shall not exceed certain values;
2. the installations or the series-produced parts thereof shall comply with certain technical requirements for the control of emissions.

Emission values pursuant to the second sentence No. 1 above may also be fixed for some future date after the entry into force of the ordinance, with due regard to the latest technological developments. As far as the requirements specified in the first, second and third sentences above are concerned, section 7 subsection (5) shall apply *mutatis mutandis*.

(2) It may furthermore be required by ordinance that the installations or the series-produced parts thereof shall not be placed on the market or imported, be it commercially or within the framework of business undertakings, unless they carry a label indicating the amount of emissions they cause.

Section 33
Type Approval

(1) In order to protect the environment from any harmful effects and to take precautionary action against any harmful effect on the environment, the Federal Government, after hearing the parties concerned (section 51), is authorised, by ordinance and with the consent of the *Bundesrat*,

1. to stipulate that installations as described in section 3 subsection (5) No. 1 or 2, or specific parts thereof, may be approved in general after type approval testing and that the type approval may be linked to additional requirements concerning the construction and operation of the installations;

2. to require that specific series-produced installations or specific series-produced parts thereof shall not be placed on the market, be it commercially or within the framework of business undertakings, unless this type of installation or type of part has been approved in general and the installation or the part corresponds to the approved type design;
3. to regulate the type approval procedure;
4. to stipulate which fees and expenses must be paid for the type approval; the fees charged shall only serve to cover the personnel and operating expenses incurred in connection with the tests which include in particular the costs of experts, test equipment and test materials as well as the cost for developing suitable test procedures and for exchanging experience; provision may be made for a fee to be raised even if testing was not commenced at all or not completed, if responsibility for the reasons for this lies with the party having applied for the testing; the rate of the fee shall depend on the average number of hours which an expert spends on the different tests required for the type of installation in question; matters such as cost exemption, definition of the parties entitled to receive fees and of the parties obliged to pay fees, the extent to which expenses must be reimbursed and the way in which costs must be charged may all be regulated by the ordinance in derogation of the provisions of the Act on Administrative Expenses (*Verwaltungskostengesetz*) of 23 June 1970 (BGBl. I p. 821).

(2) The type approval shall only be made conditional upon compliance with the requirements set out in section 32 subsections (1) and (2) or in other ordinances, as well as upon provision of proof concerning the level of emissions from the installation or the part thereof.

Section 34 **Nature of Fuels and Lubricants**

(1) The Federal Government is authorised, after hearing the parties concerned (section 51), to require by ordinance, with the consent of the *Bundesrat*, that fuels, lubricants or any additives thereto shall not be produced, placed on the market or imported, be it commercially or within the framework of business undertakings, unless they meet certain requirements for the protection against any harmful effects on the environment caused by air pollution. In any ordinance pursuant to the first sentence above, it may in particular be provided that

1. any natural constituents of fuels or lubricants or any additives thereto pursuant to the first sentence above which, when used for the intended purpose, are deemed to give rise to air pollution or obstruct measures aimed at combating air pollution shall not be added or shall not exceed a certain maximum content;
 - 1a. additives to fuels or lubricants shall not contain any of a list of substances which are deemed to give rise to air pollution or obstruct measures aimed at combating air pollution, or shall only contain special compositions of these substances;
2. fuels or lubricants pursuant to the first sentence above shall contain certain additives which help limit the formation of air pollution;

3. fuels, lubricants or any additives thereto pursuant to the first sentence above shall undergo special treatment which helps limit the formation of air pollution;
4. anyone who produces or imports liquid fuels, lubricants or any additives thereto or in any other way moves them into the jurisdiction of this Act, be it commercially or within the framework of business undertakings, shall notify the competent supreme Federal authority of
 - a) any additives to such liquid fuels or lubricants that are composed of chemical elements other than carbon, hydrogen and oxygen, and
 - b) any details still to be particularised of the type and quantity used and the potentially harmful effects of these additives or any combustion products thereof on the environment.

Such requirements as are referred to in the second sentence above may also be fixed for some future date after the entry into force of the ordinances, taking into account the latest technological developments. Section 7 subsection (5) shall apply *mutatis mutandis* to the requirements set out in the first, second and third sentences above.

(2) The Federal Government is authorised to establish by ordinance, with the consent of the *Bundesrat*,

1. that for imports of fuels, lubricants or any additives thereto for which requirements pursuant to subsection (1), first sentence, above have been established, a written statement by the manufacturer indicating the nature of such fuels, lubricants or additives thereto must be submitted to the customs authorities, and subsequently carried along during conveyance until the consignment has reached its first place of destination and kept available at the place of destination until the consignment is dispatched therefrom;
2. that the importer must file this written statement with his business records;
3. which details regarding the nature of the fuels, lubricants or additives thereto must be given in the written statement;
4. that any fuels, lubricants or additives thereto pursuant to subsection (1), first sentence, above, when moved into the jurisdiction of this Act, except for customs exclaves, must be notified by the importer, upon being moved, to the competent authorities at the place of destination;
5. that in the case of storage of any such fuels, lubricants or additives thereto pursuant to subsection (1), first sentence, above, tank voucher registers must be kept, indicating the suppliers of the fuels, lubricants or additives thereto pursuant to subsection (1), first sentence, above;
6. that anyone who sells any substances or additives thereto pursuant to subsection (1), first sentence, above to consumers, be it commercially or within the framework of

business undertakings, must label them in a clearly visible and easily readable manner, indicating the specific properties and

7. that anyone who places any substances or additives thereto pursuant to subsection (1), first sentence, above on the market, be it commercially or within the framework of business undertakings, must inform the party liable to label such items pursuant to No. 6 above of any such specific properties.

Section 35 **Nature of Substances and Products**

(1) The Federal Government is authorised, after hearing the parties concerned (section 51), to require by ordinance, with the consent of the *Bundesrat*, that certain substances or products therefrom which, when used for the intended purpose or incinerated for the purpose of disposal or recovery of particular constituents, are likely to cause harmful effects on the environment caused by air pollution, shall not be produced, imported or otherwise placed on the market, be it commercially or within the framework of business undertakings, unless they meet certain requirements regarding their composition and the process used for their production with a view to affording protection against any such harmful effects on the environment caused by air pollution. The authorisation contained in the first sentence above shall not refer to installations, fuels, vehicles and craft.

(2) Such requirements as are specified in subsection (1), first sentence, above may also be fixed for some future date after the entry into force of the ordinance, taking into account the latest technological developments. Section 7 subsection (5) shall apply *mutatis mutandis* to the requirements set out in subsection (1) and subsection (2), first sentence, above.

(3) Where this is compatible with the protection of the general public from any harmful effects on the environment caused by air pollution, the ordinance pursuant to subsection (1) above may, in lieu of the requirements regarding the composition and the production process, require these substances and products to be labelled in a clearly visible and easily readable manner, indicating that harmful effects on the environment may arise in the case of normal use for the intended purpose or during incineration or that particular types of use can prevent such harmful effects.

Section 36 **Exports**

The ordinances issued under sections 32 to 35 may require that the provisions concerning production, importation and placing on the market shall not apply to installations, substances, products and fuels which are intended for delivery into areas outside the jurisdiction of this Act.

Section 37 **Implementation of Intergovernmental Agreements and of Decisions of the European Communities**

In order to implement any obligations arising from intergovernmental agreements or binding decisions of the European Communities, the Federal Government may, for the purpose referred to in section 1 and with the consent of the *Bundesrat*, require by ordinance that no installations, substances, products or fuels shall be placed on the market, be it commercially or within the framework of business undertakings, unless they meet certain requirements in accordance with sections 32 to 35. In an ordinance pursuant to the first sentence above which serves the purpose of implementing binding decisions of the European Communities on measures for controlling emissions of gaseous pollutants and air pollutant particles from combustion engines for off-road vehicles and machines, the Federal Office for Motor Traffic (*Kraftfahrt-Bundesamt*) may be designated as licensing authority and, in this capacity, be subjected to the technical supervision of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety.

Chapter II Biofuels

Section 37a

Minimum Share of Biofuels in the Total Quantity of Fuels placed on the Market

(1) Anyone who, be it commercially or within the framework of business undertakings, markets fuels (petrol or diesel) subject to taxes under section 2 subsection (1) Nos. 1 and 4 of the Energy Tax Act (*Energiesteuergesetz*) of 15 July 2006 (*BGBI. I p. 1534*) in its current version, shall ensure that the total quantity of fuel placed on the market over one calendar year contains a minimum share of biofuels according to subsection (3) below. Fuel shall be deemed to be placed on the market when energy taxes arise pursuant to section 8 subsection (1), section 9 subsection (1), section 11 subsection (6), first sentence, section 14 subsections (1) to (3), section 15 subsection (1) or (2), also in conjunction each with section 15 subsection (4), section 19, section 22 subsection (1) or section 23 subsection (1) or (2) of the Energy Tax Act. The sale of petrol and diesel to the *Bundeswehr* for defence purposes or the purpose of compliance with multilateral obligations shall not be deemed to constitute marketing within the meaning of the first and second sentences. The same shall apply to the purchase of petrol and diesel by the *Bundeswehr* for one of the purposes stated in the third sentence above. Troops stationed in Germany under international treaties as well as agencies the *Bundeswehr* or those troops use to fulfil their respective missions shall be treated as equivalent to the *Bundeswehr*. The sale of fuel owned by the Association for Oil Stockpiling (*Erdölbevorratungsverband*) due to a release pursuant to section 30 subsection (1), also in conjunction with subsection (2), of the Oil Stockpiling Act (*Erdölbevorratungsgesetz*), by the Association for Oil Stockpiling, members of the Association for Oil Stockpiling or third parties as well as subsequent sales shall not be deemed to constitute marketing within the meaning of the first and second sentences above. The same shall apply to the sale of fuel in the cases referred to in the sixth sentence above by members of the Association for Oil Stockpiling or third parties if the sale is taking place in the framework of delegations pursuant to section 5 subsection (2) of the Oil Stockpiling Act (*Erdölbevorratungsgesetz*) as well as for subsequent sales. The sale of compensatory quantities to underserved companies for the purpose of supply compensation within the meaning of section 1 subsection (1) of the Mineral

Oil Compensation Ordinance (*Mineralölausgleichs-Verordnung*) of 13 December 1985 (*BGBI. I p. 2267*) as last amended by Article 49 of the Act of 21 December 2000 (*BGBI. I p. 1956*) in their current versions shall not be deemed to constitute marketing within the meaning of the first and second sentences above.

(2) The obligated party according to subsection 1, first and second sentences, above shall be the party liable to pay taxes within the meaning of the Energy Tax Act. Notwithstanding the first sentence above, in the cases referred to in section 7 subsection (4), first sentence of the Energy Tax Act, the obligated party shall be the third party (depositor). In the cases referred to in section 14 subsections (1) and (3) of the Energy Tax Act, solely the owner of the selling tax warehouse shall be deemed to be under obligation within the meaning of the first sentence above. In the cases referred to in section 14 subsection (2) of the Energy Tax Act, the owner of the receiving tax warehouse or, if no such tax warehouse exists, the authorised receiving party within the meaning of section 11 subsection (3) of the Energy Tax Act shall be deemed to be under obligation within the meaning of the first sentence above. In the cases referred to in section 22 subsection (1) of the Energy Tax Act, solely the party which is the first to perform one of the actions mentioned therein shall be deemed to be under obligation within the meaning of the first sentence above.

(3) Obligated parties according to subsection 1, first and second sentences, above in conjunction with subsection (2) above (obligated parties) placing diesel on the market shall ensure a share of diesel-replacing biofuels of at least 4.4 per cent. Obligated parties placing petrol on the market shall ensure a share of petrol-replacing biofuels of at least 1.2 per cent for the year 2007, of at least 2 per cent for the year 2008, of at least 2.8 per cent for the year 2009 and of at least 3.6 per cent from the year 2010 on. Notwithstanding the first and second sentences above, the minimum share of biofuels in the total quantity of petrol and diesel placed on the market by an obligated party shall be 6.25 per cent in the year 2009, 6.75 per cent in the year 2010, 7.0 per cent in the year 2011, 7.25 per cent in the year 2012, 7.5 per cent in the year 2013, 7.75 per cent in the year 2014 and 8.0 per cent from the year 2015 on. The third sentence shall apply *mutatis mutandis* to obligated parties marketing exclusively petrol or exclusively diesel. In the cases referred to in the first, second and fourth sentences above, the minimum shares of biofuels refer to the energy content of the total quantity of petrol or diesel plus the biofuel share, in the cases referred to in the third sentence above to the energy content of the total quantity of petrol and diesel plus the biofuel share. The total quantities according to the fifth sentence above shall be adjusted for the quantities for which tax relief according to section 47 subsection (1) No. 1 or 2 of the Energy Tax Act has been granted.

(4) The minimum share of biofuels required by subsection (3) may be ensured by blending biofuels with petrol or diesel or by placing pure biofuels on the market. Compliance with the obligations under subsection (1), first and second sentences, in conjunction with subsection (3) may be transferred to a third party by written contract. The contract shall contain quantity related information on the obligation entered into by the third party as well as information on the commitment period and the type of fuel for which the transfer is valid. Biofuel quantities which exceed the minimum share prescribed by subsection (3) above for a certain calendar year and for which no tax relief according to section 50 subsections (1) to (5) of the Energy Tax Act has been applied for shall be credited, on demand, against the minimum share of the subsequent year. This shall not apply insofar as certain biofuel quantities according to the fourth sentence above have been credited, on the basis of information pursuant to section 37c

subsection (1), fourth sentence, against the contractually assumed fulfilment of an obligated party's obligations according to the second and third sentences.

Section 37b **Definitions, Requirements to be met by Biofuels**

Notwithstanding sentences 2 to 7 below, biofuels constitute energy products entirely produced from biomass within the meaning of the Biomass Ordinance (*Biomasseverordnung*) of 21 June 2001 (*BGBI. I* p. 1234) as amended by the Ordinance of 9 August 2005 (*BGBI. I* p. 2419) in their current versions. Energy products partially produced from biomass shall be deemed to constitute biofuel to the amount of this share. Fatty acid methyl esters (biodiesel) shall be deemed to constitute biofuel to the full extent if they are produced by esterification of vegetable or animal oils or fats which in turn constitute biomass within the meaning of the Biomass Ordinance and if their properties comply at least with the requirements set in DIN EN 14214 (as of November 2003). Bioethanol shall only be deemed to constitute biofuel in the case of ethyl alcohol ex CN (combined nomenclature) subheading 2207 10 00 according to section 1 subsection (4) of the Energy Tax Act with an alcohol content of at least 99 per cent by volume, the properties of which comply at least with the requirements set in draft DIN EN 15376 (as of May 2006). The fourth sentence above shall apply *mutatis mutandis* to the amount of bioethanol contained in energy products consisting in part of bioethanol. Vegetable oil shall only be deemed to constitute biofuel if its properties comply at least with the requirements set in provisional norm DIN V 51605 (as of July 2006). Shall be deemed equal to the fuels according to sentences 1 to 6 above such fuels as comply with a different norm or technical specification in force in a different member state of the European Union or a different contracting party to the Agreement on the European Economic Space, insofar as these norms or technical specifications are in keeping with the norms referred to in sentences 1 to 6 above and guarantee a like level of quality to comply with the same climate-related requirements. Biogenous oils hydrated in a refining process jointly with mineral oil-derived oils as well as energy products with a bioethanol content of less than 70 per cent by volume to which bioethanol-containing products of CN subheading 3824 90 99 are added and biogas shall not be credited against fulfilment of obligations arising from section 37a subsection (1), first and second sentences, in conjunction with section 37a subsection (3). Starting 1 January 2012, energy products within the meaning of the first sentence above produced entirely or partially from animal oils or fats shall no longer be credited against fulfilment of obligations arising from section 37a subsection (1), first and second sentences, in conjunction with section 37a subsection (3). The Federal Ministry of Finance shall publish the energy content of the different biofuels as well as changes in their energy content. The norms referred to in sentences 3, 4 and 6 above, to be purchased from the *Beuth Verlag GmbH* of Berlin, have been deposited in the archives of the German Patent and Trade Mark Office (*Deutsches Patent- und Markenamt*).

Section 37c **Requirements concerning Notification and Charges**

(1) Obligated Parties shall notify the competent authority until 15 April of each year of the quantities of petrol and diesel and the quantities of biofuels marketed in the previous calendar year, the latter in relation to the different biofuels affected. The notification shall also include the name of the obligated party's company, the place of the branch or headquarters in charge

of the marketing, the corresponding addresses as well as the name and address of the person empowered to act as a representative. Insofar as compliance with the obligations under section 37a subsection (4), second sentence, has been transferred to a third party, the obligated party shall additionally submit the information required under section 37a subsection (4), third sentence, and present a copy of the contract signed with the third party. In this case the third party shall indicate the quantities of biofuels marketed under his contractual obligations in relation to the different biofuels affected. The competent authority shall issue a registration number to each obligated party and run an electronic register containing the information required for all obligated parties pursuant to the first to fourth sentences above.

(2) Insofar as an obligated party fails to comply with an obligation under section 37a subsection (1), first and second sentences, in conjunction with section 37a subsection (3), the competent authority shall impose charges for the missing quantity of biofuel calculated on the basis of the energy content. In the cases referred to in section 37a subsection (3), first or third sentence, also in conjunction with section 37a subsection (3), fourth sentence, the amount of the charge shall be €9 per gigajoule. In the cases referred to in section 37a subsection (3), second sentence, the amount of the charge shall be €43 per gigajoule. In the cases referred to in section 37a subsection (3), third sentence, also in conjunction with section 37a subsection (3), fourth sentence, the charge shall not be imposed for those missing quantities of biofuel for which the second or third sentences above already require a charge to be imposed. Insofar as in the case of section 37a subsection (4), second sentence, the third party fails to comply with his contractual obligation, the competent authority shall impose charges on the obligated party.

(3) Insofar as an obligated party has failed to notify the information required pursuant to subsection (1), first and third sentences, to the competent authority or has failed to do so properly, the competent authority shall appraise the quantities of petrol or diesel and biofuel placed on the market by the obligated party during the previous calendar year. This appraisal shall constitute the irrefutable basis for the obligation pursuant to 37a subsection (1), first and second sentences, in conjunction with section 37a subsection (3). There shall be no appraisal insofar as the obligated party notifies the required information during the hearing on the assessment notice pursuant to subsection (2), first sentence, in conjunction with subsection (2), second or third sentence. Insofar as a third party has failed to properly notify the information required pursuant to subsection (1), fourth sentence, the competent authority shall assume that the third party has failed to comply with the obligation he has entered into. The fourth sentence shall not apply insofar as the third party notifies the required information during the hearing on the assessment notice for the obligated party pursuant to subsection (2), fifth sentence.

(4) In the cases referred to in section 37a subsection (2), second sentence, the owner of the tax warehouse shall notify the quantities of petrol and diesel plus the biofuel share marketed for each obligated party to the competent main customs office together with the monthly energy tax return.

(5) With a view to subsections (1) to (4) above the provisions of the Tax Code (*Abgabenordnung*) applicable to excise duties shall apply *mutatis mutandis*. Notifications pursuant to subsections (1) and (4) above shall be deemed to constitute tax returns within the meaning of the Tax Code. In the cases referred to in subsection (2), the obligated party shall be heard before charges are imposed.

Section 37d **Competent Body, Ordinances**

(1) A competent body shall be set up within the remit of the Federal Ministry of Finance in order to monitor compliance with obligations under section 37a and to fulfil the missions regulated in section 37c. The Federal Ministry of Finance shall be authorised to designate the competent body.

(2) The Federal Government shall be authorised to issue, after hearing the parties concerned (section 51), without requiring the consent of the *Bundesrat*, an ordinance in order to

1. establish that certain products, taking into account current technological advances, are deemed to constitute biofuels also in derogation of section 37b, first to sixth sentences, or to establish, in derogation of section 37b, first to sixth sentences, that certain products do not constitute or are no longer deemed to constitute biofuels to the full extent, or to regulate, in derogation of this provision to which degree biogenous oils within the meaning of section 37b, eighth sentence, can be credited against fulfilment of the obligations stated therein,
2. establish that the share, expressed in terms of volume, of a certain type of biofuel according to Number 1 above or to section 37b, first to seventh sentences, in the total sale of fuels in the context of fulfilment of obligations under section 37a subsection (1), first and second sentences, in conjunction with section 37a subsection (3) shall be calculated by multiplying the effectively marketed quantity of the respective biofuel with a certain calculation factor to be determined taking into account the greenhouse gas balance of the respective biofuel.
3. stipulate that biofuels shall only be credited against fulfilment of obligations under section 37a subsection (1), first and second sentences, in conjunction with section 37a subsection (3), if it can be proved that the production of the biomass used meets certain requirements as to a sustainable use of agricultural lands or the protection of natural habitats or if biofuels have a certain CO₂ reduction potential,
4. define the requirements for the purposes of Number 3 above,
5. change the charge pursuant to section 37c subsection (2), second or third sentence, in order to ensure a similar economic burden for all obligated parties in case the price level of fuels changes.

(3) The Federal Ministry of Finance shall be authorised to decree by ordinance, in agreement with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, without requiring the consent of the *Bundesrat*, more detailed provisions for the implementation of sections 37a to 37c as well as of the ordinances based on subsection (2) above, and in particular to determine therein further details

1. regarding the procedure to be applied for ensuring and monitoring compliance with the quota obligations in the cases referred to in section 37a subsection (4), second and third sentences, and with respect to the data required for determining the minimum shares of biofuel,
2. regarding the supporting documents required and the monitoring of compliance with the requirements to be met by biofuels as well as the sampling required for that purpose.

Part IV
Nature and Operation of Vehicles and Craft,
Construction and Alteration of Roads and Railtracks

Section 38
Nature and Operation of Vehicles and Craft

(1) The nature of motor vehicles including their trailers and of railborne vehicles, aircraft and watercraft as well as of floating units and installations shall be such that in the case of use for the intended purpose, the emissions resulting from their participation in traffic do not exceed the limits which must be observed to ensure protection from harmful effects on the environment. They must be operated in such a manner that any avoidable emissions are prevented and any unavoidable emissions are kept to a minimum.

(2) The Federal Ministry of Transport, Building and Urban Affairs and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall, after hearing the parties concerned (section 51), establish by ordinance, with the consent of the *Bundesrat*, the requirements to be met regarding the nature, equipment, operation and testing of such vehicles, craft and installations, as defined in subsection (1), first sentence, above, to ensure protection from any harmful effects on the environment, also where such vehicles, craft and installations are subject to current Federal traffic regulations. In this respect, emission limits may also be fixed for some future date after the entry into force of the ordinance, taking into account technological developments.

(3) Section 7 subsection (5) shall apply *mutatis mutandis* to the requirements set out in subsection (2) above.

Section 39
Implementation of Intergovernmental Agreements and of Decisions of the European Communities

In order to implement any obligations arising from intergovernmental agreements or binding decisions of the European Communities, the Federal Ministry of Transport, Building and Urban Affairs and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may, for the purpose referred to in section 1 and with the consent of the *Bundesrat*, require by ordinance that the vehicles and craft specified in section 38 shall satisfy particular requirements as regards their nature, equipment, testing and operation. Section 7 subsection (5) shall apply *mutatis mutandis* to the requirements set out in the first sentence above.

Section 40
Traffic Restrictions

(1) The competent road traffic authority shall restrict or ban motor vehicle traffic in accordance with relevant road traffic regulations, if such is provided for by a clean air plan or

action plan issued under section 47 subsection (1) or (2). The road traffic authority may, in agreement with the competent authority responsible for immission control, grant exemptions from any bans or restrictions on motor vehicle traffic, if so required by overriding and unpostponable reasons related to the common good.

(2) The competent road traffic authority may restrict or ban motor vehicle traffic on certain roads or in certain areas in accordance with relevant road traffic regulations, where such motor vehicle traffic contributes to pollution levels exceeding the immission values laid down in ordinances issued under section 48a subsection (1) and where the authority responsible for immission control deems this necessary in view of local conditions, in order to reduce any harmful effects on the environment caused by air pollution or prevent the formation thereof. Traffic-related and urban planning aspects shall be duly taken into account. Section 47 subsection (6), first sentence, shall remain unaffected.

(3) The Federal Government is authorised, after hearing the parties concerned (section 51), to decree by ordinance, with the consent of the *Bundesrat*, that motor vehicles with low pollutant emissions are or may be wholly or in part exempted from traffic bans and to determine the relevant criteria for that purpose and the official marking of these motor vehicles. Such ordinance may also determine that certain journeys or persons are or may be exempted if so required by the common good or by unpostponable and overriding reasons related to an individual's interests.

Sections 40a to 40e
(Repealed)

Section 41
Roads and Railtracks

(1) Notwithstanding section 50, provision shall be made in the case of construction or major alteration of public roads as well as of railways, magnetic levitation trains and tramways that this does not involve any harmful effects on the environment caused by traffic noise which is avoidable with the use of the best available techniques.

(2) Subsection (1) above shall not apply where the costs of the protective measure would not be commensurate with the desired protection goal.

Section 42

Compensation for Sound-Proofing Measures

(1) Where the immission limits laid down in section 43 subsection (1) first sentence No. 1 are exceeded in a case referred to in section 41, the owner of the buildings affected thereby shall be entitled to claim adequate financial compensation from the person(s) responsible for the construction of the infrastructure, except where such impairment is deemed to be reasonable in view of the specific purpose for which the buildings are used. This shall also apply to any buildings which had already been approved by the supervisory building authority when the pertinent plans were laid open for public inspection in the course of the plan approval procedure or when the draft development plans including the road system plans were laid open for public inspection.

(2) The compensation to be paid for sound-proofing measures at the buildings shall cover the actual expenditure incurred where such expenditure is within the limits imposed by an ordinance issued under section 43 subsection (1), first sentence, No. 3. Nothing herein contained shall affect any other legal provisions establishing more extensive compensation payments.

(3) If the person(s) responsible for the construction of the infrastructure and the person(s) affected thereby fail to reach agreement on the amount of compensation payable, the authority competent under *Land* law shall, upon application by one of the parties concerned, fix such compensation by written notice. In all other respects, the expropriation laws of the *Länder* shall apply *mutatis mutandis* to such procedure.

Section 43

Ordinance Issued by the Federal Government

(1) The Federal Government is authorised, after hearing the parties concerned (section 51), to adopt by ordinance, with the consent of the *Bundesrat*, any such provisions as are necessary to implement section 41 and section 42 subsections (1) and (2), especially with respect to

1. specific limits which must not be exceeded so as to warrant the protection of the neighbourhood from any harmful effects on the environment caused by noise, as well the procedure to be used to measure emissions or immissions;
2. specific technical requirements regarding the construction of roads, railways, magnetic-levitation trains and tramways so as to prevent any harmful effects on the environment caused by noise and
3. the type and extent of any sound-proofing measures at buildings needed to protect the environment from any harmful effects caused by noise.

In the ordinances referred to in the first sentence above, due regard shall be paid to the characteristic features of railborne traffic.

(2) Section 7 subsection (5) shall apply *mutatis mutandis* to the requirements set out in subsection (1) above.

Part V
Monitoring and Improving Air Quality, Clean Air Plans and Noise Abatement Plans

Section 44
Monitoring Air Quality

(1) In order to monitor air quality, the competent authorities shall conduct tests at regular intervals in accordance with the requirements of the ordinances pursuant to section 48a subsection (1) or subsection (1a).

(2) The *Land* governments or the competent authorities they designate are authorised to establish by ordinance test areas where the nature and extent of air pollution which is not covered by subsection (1) above and which may cause harmful effects on the environment must be determined either over a specified period or continuously and where the circumstances that are conducive to the development and dispersion of the air pollution must be investigated.

Section 45
Improving Air Quality

The competent authorities shall take the necessary measures to ensure compliance with the immission values laid down in an ordinance pursuant to section 48a. These include in particular plans pursuant to section 47.

- (2) The measures pursuant to subsection (1) above
- a) shall be in line with an integrated approach for the protection of air, water and soil;
 - b) shall not contravene any provisions for the protection of health and safety in the workplace;
 - c) shall not cause significant impairment to the environment in other Member States.

Section 46
Emission inventory

The competent authorities shall prepare emission inventories where this is necessary to implement binding decisions of the European Communities.

Section 46a
Information of the Public

The public shall be provided with relevant information on air quality as required by any ordinances pursuant to section 48a subsection (1). The competent authority shall without undue delay announce to the public any non-compliance with alert thresholds determined as immission values in ordinances pursuant to section 48a subsection (1) through radio, television, the press or in other ways.

Section 47
Clean Air Plans, Action Plans, *Land Ordinances*

(1) If the immission limits specified in an ordinance pursuant to section 48a subsection (1), including any margins of tolerance defined therein, are exceeded, the competent authority shall draw up a clean air plan that defines the necessary measures for achieving a durable reduction of air pollution and conforms to the requirements of the ordinance.

(2) If there is a risk that the immission limits or alert thresholds defined in an ordinance pursuant to section 48a subsection (1) are exceeded, the competent authority shall draw up an action plan defining the measures to be taken in the short term. The measures defined in the action plan shall be such as to ensure that the risk of these values being exceeded is reduced or that the period during which these values are exceeded is shortened. Actions plans may be part of clean air plans pursuant to subsection (1) above.

(3) If there is evidence that immission values laid down in an ordinance issued under section 48a subsection (1a) are not complied with, or if any other harmful effects on the environment are to be expected in an area subject to investigation pursuant to section 44 subsection (2), the competent authority may draw up a clean air plan. When drawing up such plans, attention shall be paid to the objectives of regional planning; due regard shall be paid to the principles and other requirements of regional planning.

(4) The measures shall, on the basis of the respective contribution to the total emissions and in accordance with the principle of proportionality, be applied to all those emitters who are partly responsible for immission values being exceeded or for any other harmful effects on the environment caused in an area subject to investigation pursuant to section 44 subsection (2). Where plans pursuant to subsections (1) and (2) above involve any road traffic measures, these shall be adopted in agreement with the competent road construction and road traffic authorities. Where any immission values are exceeded with regard to more than one pollutant, a plan covering all relevant pollutants shall be drawn up. Where immission values are exceeded due to emissions caused outside the planning area, the competent authority responsible for that area shall also draw up such a plan in the cases referred to in subsections (1) and (2) above.

(5) The plans to be drawn up pursuant to subsections (1) to (4) above shall meet the requirements laid down in section 45 subsection (2). The public shall take part in drawing up such plans. The plans shall be made accessible to the public. The participation of the public in drawing up clean air plans pursuant to subsection (1) above is governed by subsection (5a) below.

(5a) The competent authority shall ensure participation of the public in drawing up or changing clean air plans pursuant to subsection (1) above. The drawing up of a clean air plan or changes to such a plan as well as information on the procedure of public participation shall be made public in an official gazette and in other appropriate ways. The proposed new or changed clean air plan shall be laid open for public inspection for the period of one month; comments may be addressed in writing to the competent authority until two weeks after the end of the inspection period; the deadline shall be announced in the public notice pursuant to the second sentence above. The competent authority shall take due account of the comments made within the deadline when deciding on the adoption of the plan. The competent authority

shall give public notice of the adopted plan in an official gazette and in other appropriate ways. the public notice shall describe the area concerned and give an overview of the most important measures. A copy of the plan including a description of the procedure of public participation and a statement of the grounds on which the decision was based shall be laid open for public inspection for a period of two weeks. This subsection shall not apply in case the clean air plan pursuant to subsection (1) above is a plan for which a strategic environmental impact assessment is mandatory under the Act on the Assessment of Environmental Impacts (*Gesetz über die Umweltverträglichkeitsprüfung*).

(6) The measures laying down plans pursuant to subsections (1) to (4) above shall be enforced by orders issued or any other decisions taken by the competent public administrative authorities in conformity with this Act or any other applicable legal provisions. Where such plans contain any specific decisions under planning law, the competent planning bodies shall take these into consideration in their planning activities.

(7) If there is a risk that any immission limits specified in an ordinance pursuant to section 48a subsection (1) are exceeded, the *Land* governments or the authorities designated by them are authorised to require by ordinance that in certain areas to be specified, it shall not be permissible

1. to operate certain non-stationary installations,
2. to construct certain stationary installations,
3. to operate certain non-stationary or stationary installations unless they are operated at fixed times only or meet more stringent technical requirements or
4. to use certain fuels in such installations or to use them on a larger scale,

where such installations or fuels are likely to contribute to the immission values being exceeded. Subsection (4), first sentence, above and section 49 subsection (3) shall apply *mutatis mutandis*.

Part VI **Noise Abatement Planning**

Section 47a **Scope of Part VI**

This part shall apply to environmental noise to which humans are exposed in particular in built-up areas, in public parks or other quiet areas in an agglomeration, in quiet areas in open country, near schools, hospitals and other noise-sensitive buildings and areas. It shall not apply to noise that is caused by the exposed person himself, noise from domestic activities, noise created by neighbours, noise at workplaces or noise inside means of transport or due to military activities in military areas.

Section 47b **Definitions**

For the purposes of this Act:

1. “environmental noise” shall mean unwanted or harmful outdoor sound, created by human activities, including noise emitted by means of transport, road traffic, rail traffic, air traffic and from sites of industrial activity;
2. “agglomeration” shall mean an area having a population in excess of 100 000 persons and a population density in excess of 1000 persons per square kilometre;
3. “major road” shall mean a federal road, a *Land* road or any other international road which has more than 3 million vehicle passages a year;
4. “major railway” shall mean a railway in accordance with the General Railways Act (*Allgemeines Eisenbahngesetz*) which has more than 30 000 train passages a year;
5. “major airport” shall mean a civil airport which has more than 50 000 movements a year, a movement being a take-off or a landing, excluding those purely for training purposes on light aircraft.

Section 47c Noise Mapping

- (1) No later than 30 June 2007, the competent authorities shall have produced noise maps showing the situation in the preceding calendar year for agglomerations with more than 250 000 inhabitants as well as for major roads with more than six million vehicle passages a year, major railways with more than 60 000 train passages a year and major airports. No later than 30 June 2012 and thereafter every five years, they shall have produced noise maps for all agglomerations as well as all major roads and major railways.
- (2) The noise maps shall satisfy the minimum requirements laid down in Annex IV to Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (OJ EC L 189 p. 12) and shall contain the data to be sent to the Commission in accordance with Annex VI to Directive 2002/49/EC.
- (3) The competent authorities shall cooperate with the competent authorities of other EU Member States on noise mapping near borders.
- (4) The noise maps shall be reviewed, and revised if necessary, at least every five years after the date of their preparation.
- (5) No later than 30 June 2005, and thereafter every five years, the competent authorities shall inform the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety or the body it designates, of the agglomerations with more than 250 000 inhabitants, the major roads with more than 6 million vehicle passages a year, the major railways with more than 60 000 train passages a year and the major airports. No later than 31 December 2008, they shall inform the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety or the body it designates of all the agglomerations as well as all the major roads and major railways.
- (6) The competent authorities shall communicate information from the noise maps as required by the ordinance issued under section 47f to the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety or the body it designates.

Section 47d Noise Action Plans

- (1) No later than 18 July 2008, the competent authorities shall have drawn up noise action plans designed to manage noise issues and effects for

1. places near the major roads with more than 6 million vehicle passages a year, major railways with more than 60 000 train passages a year and major airports,

2. agglomerations with more than 250 000 inhabitants.

No later than 18 July 2013, they shall have drawn up noise action plans for all agglomerations as well as all major roads and major railways. The measures defined within the plans are at the discretion of the competent authorities, but should notably address, also taking into account the existence of several noise sources, priorities which may be identified by the exceeding of any relevant limit values or by other criteria and apply in particular to the most important areas as established by noise mapping.

(2) The noise action plans shall meet the minimum requirements of Annex V to Directive 2002/49/EC and shall contain the data to be sent to the Commission in accordance with Annex VI to Directive 2002/49/EC. Such plans shall also aim to protect quiet areas against an increase in noise.

(3) The public shall be consulted about proposals for noise action plans. It shall be given early and effective opportunities to participate in the preparation and review of the noise action plans. The results of that participation shall be taken into account. The public shall be informed on the decisions taken. Reasonable time-frames shall be provided allowing sufficient time for each stage of public participation.

(4) Section 47c subsection (3) shall apply *mutatis mutandis*.

(5) The noise action plans shall be reviewed, and revised if necessary, when a major development occurs affecting the noise situation, and at least every five years after being established.

(6) Section 47 subsection (3), second sentence, and subsection (6) shall apply *mutatis mutandis*.

(7) The competent authorities shall communicate information from the noise action plans as required by the ordinance issued under section 47f to the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety or the body it designates.

Section 47e Competent authorities

(1) Competent authorities within the meaning of this Part of the Act are the municipalities or the authorities competent in accordance with *Land* law, unless otherwise provided for below.

(2) The supreme *Land* authorities or the bodies they designate shall be responsible for communications in accordance with section 47c subsections (5) and (6) as well as in accordance with section 47d subsection (7).

(3) The Federal Railways Office (*Eisenbahn-Bundesamt*) shall be responsible for establishing the noise maps for the federal railway infrastructure in accordance with section 47c, for designating the major railways in accordance with section 47c subsection (5), for communicating the information in accordance with section 47c subsection (6) and for informing the public on noise maps in accordance with section 47f subsection (1), first sentence, No. 3.

Section 47f Ordinances

(1) After hearing the parties concerned (section 51), the Federal Government shall adopt by ordinance, with the consent of the *Bundesrat*, additional rules to transpose directive 2002/49/EC into German law, in particular rules

1. on the definition of noise indicators and their application,
2. on computation methods for noise indicators and assessment methods for harmful effects,
3. on the information of the public on competent authorities and on noise maps and noise action plans,
4. on criteria for the establishment of measures in noise action plans.

Insofar as the Commission adapts, in accordance with Article 12 of Directive 2002/49/EC, its Annex I point 3, Annex II and Annex III to technical and scientific progress in accordance with the procedure provided for in Article 13 (2) of Directive 2002/49/EC, the first sentence shall also apply.

(2) After hearing the parties concerned (section 51), the Federal Government shall adopt by ordinance, with the consent of the *Bundesrat*, additional rules

1. on the format and the contents of noise maps and noise action plans,
2. on data collection und data transmission.

Part VI
Joint Provisions

Section 48
Administrative Provisions

(1) After hearing the parties concerned (section 51), the Federal Government shall issue, with the consent of the *Bundesrat*, general administrative provisions for the implementation of this Act and of the ordinances issued by the Federal Government hereunder, concerning in particular

1. immission values which must not be exceeded in the light of the purpose defined in section 1;
2. emission limits the exceeding of which is avoidable with the use of the best available techniques;
3. the method to be used to determine emissions and immissions;
4. the measures to be taken by the competent authority with respect to installations for which provision may be made in an ordinance pursuant to section 7 subsection (2) or (3), due regard being paid to the requirements specified therein.

When defining such requirements, any possible shift of adverse effects from one protected resource to another shall be taken into account; a high level of protection shall be ensured for the environment as a whole.

(2) After hearing the parties concerned (section 51), the Federal Ministry of Finance shall issue, in agreement with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and the Federal Ministry of Food, Agriculture and Consumer Protection, without requiring the consent of the *Bundesrat*, general administrative provisions for the implementation of sections 37a, 37b and 37c and of the ordinances issued under section 37d.

Section 48a
Ordinances on Emission and Immission Values

(1) In order to implement any binding decisions of the European Communities, the Federal Government may, for the purpose referred to in section 1 and with the consent of the *Bundesrat*, issue ordinances governing the establishment of immission and emission values, including the methods to be used to determine these values, and the measures to ensure compliance with these values as well as the monitoring and measuring thereof. Such ordinances may also regulate the way in which the public is to be informed.

(1a) Above and beyond implementing binding decisions of the European Communities, the Federal Government may, for the purpose referred to in section 1 and with the consent of the *Bundesrat*, issue ordinances governing the establishment of immission values for further pollutants, including the methods to be used to determine these values, and the measures to

ensure compliance with these values as well as the monitoring and measuring thereof. Such ordinances may also regulate the way in which the public is to be informed.

(2) The measures laid down in any ordinance issued under subsection (1) above shall be enforced by means of orders or any other decisions to be issued by the competent public administrative authorities under this Act or any other legal provisions; where decisions under planning law are required, the competent planning bodies shall decide whether and to what extent such planning is to be taken into consideration.

(3) In order to implement any binding decisions of the European Communities, the Federal Government may, for the purpose referred to in section 1 and with the consent of the *Bundesrat*, issue ordinances governing the duties of public authorities and vest them with powers for collecting, processing and utilising personal data, insofar as these are required for evaluating and controlling the requirements set out in the decisions.

Section 48b **Participation of the *Bundestag* in Issuing Ordinances**

Ordinances issued under section 7 subsection (1), first sentence, No. 2, section 23 subsection (1), first sentence, No. 2, section 43 subsection (1), first sentence, No. 1, section 48a subsection (1) and section 48a subsection (1a) of this Act shall be forwarded to the *Bundestag*. This shall be done prior to their forwarding to the *Bundesrat*. The ordinances may be amended or rejected by the *Bundestag*. The decision of the *Bundestag* shall be forwarded to the Federal Government. If the *Bundestag* has not dealt with the ordinance within three weeks in session after its submission, the unaltered ordinance shall be forwarded to the *Bundesrat*.

Section 49 **Protection of Specific Areas**

(1) The *Land* governments are authorised to require by ordinance that in certain areas to be specified which require special protection against any harmful effects on the environment caused by air pollution or noise, it shall not be permissible

1. to operate certain non-stationary installations,
2. to construct certain stationary installations,
3. to operate certain non-stationary or stationary installations unless they are operated at fixed times only or meet more stringent technical requirements or
4. to use certain fuels in such installations or to use them on a larger scale,

where such installations or fuels are likely to cause harmful effects on the environment caused by air pollution or noise which are not compatible with the specific protective needs of these areas and where the air pollution and noise cannot be prevented by imposing additional conditions.

(2) The *Land* governments are authorised to designate by ordinance specific areas in which a considerable increase in air pollution is to be feared during weather conditions characterised by poor air circulation. Provision may be made in such ordinance that in such areas,

1. non-stationary or stationary installations may be operated at fixed times only or
2. fuels which are particularly likely to cause air pollution shall not be used in such installations or may be used on a limited scale only,

as soon as public notice is given by the competent authority of any such weather conditions.

(3) This shall not affect any powers under *Land* law delegated to local authorities or associations of local governments in respect of the issue of by-laws governing the protection of the public against any harmful effects on the environment caused by air pollution or noise.

Section 50 Planning

In the case of regional planning projects and associated measures, the land earmarked for specific types of use shall be zoned in such a manner that harmful environmental effects and the effects of major accidents in establishments within the meaning of Article 3 No. 5 of Directive 96/82/EC are kept to a minimum on areas that are exclusively or predominantly used for residential purposes as well as on any other areas worthy of protection, in particular publicly used areas, important transport infrastructure, areas used for recreation and areas that are particularly valuable or sensitive with respect to nature conservation and publicly used buildings. In the case of regional planning projects and associated measures carried out in areas in which the immission limits specified in ordinances pursuant to section 48a subsection (1) are not exceeded, one aspect to be taken into account shall be maintenance of optimum air quality.

Section 51 Hearing of the Parties Concerned

Where the issue of ordinances and general administrative provisions requires a hearing of the parties concerned, an ad-hoc group shall be heard which is to be constituted in each individual case from representatives of the parties directly affected, the scientific community and, where applicable, the business community and the transport sector, as well as of the supreme *Land* authorities responsible for immission control.

Section 51a Installations Safety Commission (*Kommission für Anlagensicherheit*)

(1) An Installations Safety Commission shall be set up at the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety to render expert advice to the Federal Government or the competent Federal Ministry.

(2) The Installations Safety Commission shall identify potential ways and means of perfecting installations safety through its expert opinions delivered at regular intervals as well as on the occasion of certain events. It also proposes rules in line with the state of safety technology (safety rules), taking into consideration existing rules for other protection objectives. After hearing the supreme *Land* authority responsible for installations safety, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may publish these rules in the Federal Gazette (*Bundesanzeiger*). The Installations Safety Commission reviews the published safety rules at appropriate intervals, at least every five years, to determine if they are still state of the art.

(3) Members of the Installations Safety Commission shall be named in agreement with the Federal Ministry of Labour and Social Affairs and shall include, apart from representatives of the Federal authorities concerned and of the *Land* authorities responsible for immission control and occupational safety and health, in particular representatives of the scientific community, environmental organisations, trade unions, experts pursuant to section 29c and approved monitoring bodies pursuant to section 17 subsection (5) of the Equipment and Product Safety Act (*Geräte- und Produktsicherheitsgesetz*), the employers' liability insurance associations, the business community as well as members of the commissions set up under section 24 of the Ordinance on Occupational Safety (*Betriebsicherheitsverordnung*) and under section 21 of the Hazardous Substances Ordinance (*Gefahrstoffverordnung*).

(4) The Installations Safety Commission shall elect its chair from among its members and shall adopt its own rules of procedure. The rules of procedure and the election of the chairman are subject to the approval of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, to be given in agreement with the Federal Ministry of Labour and Social Affairs.

Section 51b **Ensuring Service of Documents**

The operator of an installation subject to licensing shall ensure that any documents addressed to him within the jurisdiction of this Act can be served on him. If the documents can only be received via a proxy, the operator shall present the name of the proxy to the competent authority.

Section 52 **Supervision**

(1) The competent authorities shall supervise the implementation of this Act and of any ordinance issued hereunder. They shall review any licences as defined in section 4 at regular intervals and, where necessary, update them by means of subsequent orders pursuant to section 17. A review pursuant to the second sentence above shall in any case be performed if

1. there is evidence that the protection of the neighbourhood and of the general public is not sufficient and that the emission limits specified in the licence have to be reviewed or redefined;

2. major changes in the best available techniques allow a significant reduction of emissions;
3. improvements in operating safety are required, especially through the use of other methods, or if
4. it is so required by any new environmental provisions.

(2) Owners and operators of installations as well as owners and holders of premises where such installations are operated shall grant the staff members of the competent authority and any person commissioned by them free access to the premises and, where the prevention of imminent danger to law and order so requires, to their private accommodation, and enable such persons to carry out tests including the determination of emissions and immissions and, finally, furnish the information and produce the supporting documents that these persons need to perform their duties. The fundamental right of inviolability of the home as laid down in section 13 of the Basic Law (*Grundgesetz*) shall be restricted in this regard. Operators of installations for which an immission control officer or a hazardous incidents officer has been appointed shall call in that officer, if so requested by the competent authority, to assist in any supervisory action to be taken in accordance with the first sentence above. Within the scope of the obligations pursuant to the first sentence above, the owners and operators of such installations shall provide personnel and auxiliary materials, especially fuels and drive assemblies.

(3) Subsection (2) above shall apply *mutatis mutandis* to owners and holders of installations, materials, products, fuels and lubricants insofar as these are subject to sections 37a to 37d or to the provisions of the ordinance issued under sections 32 to 35, 37 or 37d. Such owners and holders shall permit samples to be taken at random by staff members of the competent authority and any person commissioned by such staff members, provided that this is necessary for the fulfilment of their duties.

(4) Any costs incurred by tests carried out in the course of the licensing procedure shall be borne by the applicant. Any costs incurred by random sampling pursuant to subsection (3) above, including the analysis thereof, shall be borne by the party liable to furnish information. Any costs for other supervisory measures taken pursuant to subsection (2) or (3) above shall be borne by the party liable to furnish information unless the measure is aimed at measuring emissions and immissions or supervising an installation not subject to licensing outside the supervisory system pursuant to the Twelfth Ordinance on the Implementation of the Federal Immission Control Act (*Zwölfte Verordnung zur Durchführung des Bundes-Immissionsschutzgesetzes*); in such cases, the costs incurred shall only be imposed on the party liable to furnish information if it becomes obvious from such investigations that

1. conditions imposed or orders issued under this Act or under ordinances issued hereunder have not been complied with or that
2. such conditions or orders are necessary.

(5) The party liable to furnish the information may refuse to answer any questions which would render this party or any of its dependants referred to in section 383 subsection (1)

Nos. 1 to 3 of the Code of Civil Procedure (*Zivilprozessordnung*) liable to criminal prosecution or to proceedings under the Act on Administrative Offences (*Gesetz über Ordnungswidrigkeiten*).

(6) Where the implementation of this Act or any ordinance issued hereunder requires determination of immission levels, even the owners and holders of premises which are not used for the operation of installations shall grant the staff members of the competent authorities and any person commissioned by them free access to the premises and, where the prevention of imminent danger to law and order so requires, also to their private accommodation, and enable them to carry out tests. The fundamental right of inviolability of the home as laid down in section 13 of the Basic Law (*Grundgesetz*) shall be restricted in this regard. When exercising such powers as are referred to in the first sentence above, due account shall be taken of the legitimate concerns of the owners and holders of the premises; any damage sustained shall be compensated by the *Land* concerned or, in the case of section 59 subsection (1), by the Federal Government. If such damage was the unavoidable result of the supervisory action and if such action involved orders by the competent authority against the operator of an installation, the latter shall be liable to indemnify the *Land* or the Federal Government for such compensation paid.

(7) Sections 93, 97, 105 subsection (1), section 111 subsection (5) in conjunction with section 105 subsection (1) and section 116 subsection (1) of the Fiscal Code (*Abgabenordnung*) shall not apply to any information and documents obtained pursuant to subsections (2), (3) and (6) above. This shall not apply where the tax authorities need such information for the institution of proceedings on the ground of a fiscal offence and for tax assessment proceedings ensuing therefrom, the prosecution of which constitutes a compelling public interest, or where any deliberately false information by the person liable to furnish such information or by any other person acting on his behalf is involved.

Section 52a **Obligation to Furnish Information** **on the Organisation of the Enterprise**

(1) If in the case of a corporation, the board entitled to represent such corporation consists of several members, or if in the case of a partnership, several partners are entitled to represent the partnership, notice shall be given to the competent authority as to which of these persons performs the duties of operator of an installation subject to licensing on behalf of the corporation or partnership in accordance with the regulations governing the management authority, such duties being incumbent on the said operator pursuant to this Act and any ordinance or general administrative provision issued hereunder. Nothing contained herein shall affect the collective responsibility of the members of the board or the partners in question.

(2) The operator of the installation subject to licensing or, by virtue of his management authority, the person to be notified pursuant to subsection (1), first sentence, above, shall inform the competent authority about the way of ensuring that the provisions and orders for protecting against any harmful effects on the environment and any other hazards, significant disadvantages and significant nuisances are observed during operation.

Section 53 **Appointment of an Immission Control Officer**

(1) Operators of installations subject to licensing shall appoint one or several officers responsible for immission control (immission control officers) if this is deemed necessary in view of the type and size of the installations on account of

1. the emissions released by the installations;
2. technical problems concerning emission control or
3. the susceptibility of the products, if used for the intended purpose, to causing any harmful effects on the environment due to air pollution, noise or vibrations.

After hearing the parties concerned (section 51), the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall specify by ordinance, with the consent of the *Bundesrat*, the types of installations subject to licensing whose operators are required to appoint immission control officers.

(2) The competent authority may order that operators of any installations subject to licensing for which the appointment of an immission control officer is not expressly required by ordinance, as well as operators of installations not subject to licensing appoint one or several immission control officers if, in the individual case, the necessity to require such appointment ensues from the aspects specified in subsection (1), first sentence, above.

Section 54 **Duties**

(1) The immission control officer shall advise the operator and the staff members on all matters that may be of relevance for immission control. He is authorised and required

1. to work towards the development and introduction of
 - a) environmentally compatible processes, including processes for the prevention or proper and safe recovery of wastes resulting from operation or their disposal as waste, and for the utilisation of any waste heat produced,
 - b) environmentally compatible products, including processes for recovery and re-use;
2. to cooperate in developing and introducing environmentally compatible processes and products, especially by appraising the environmental compatibility of such processes and products;
3. unless this is a task incumbent on the hazardous incidents officer pursuant to section 58b subsection (1), second sentence, No. 3, to ensure compliance with the provisions of this Act and any ordinance issued hereunder as well as fulfilment of the

conditions and obligations imposed, especially by controlling the operating plant at regular intervals, measuring emissions and immissions, notifying any defects observed and submitting proposals on measures to remedy such defects;

4. to instruct the staff members on the harmful environmental effects caused by their installation and on suitable equipment and measures to prevent such effects, taking into account the obligations ensuing from this Act or any ordinance issued hereunder.

(2) The immission control officer shall give the operator an annual account setting out the measures taken and proposed pursuant to subsection (1), second sentence, Nos. 1 to 4 above.

Section 55 Operator's Obligations

(1) The operator shall appoint the immission control officer in writing, stating the full particulars of the duties incumbent on the officer. The operator shall notify the competent authority without undue delay of the appointment of the immission control officer and the particulars, including any changes in the scope of duties, and of revocation of the appointment. A copy of the notification shall be handed over to the immission control officer.

(1a) The operator shall inform the works council or staff council prior to the appointment of the immission control officer, stating the full particulars of the duties incumbent on the officer. The same applies in the event of any changes in the immission control officer's scope of duties and in the case of revocation of the appointment.

(2) The operator shall not appoint anyone as immission control officer who does not have the requisite technical qualification and reliability to properly perform the duties incumbent on such officer. If any facts become known to the competent authority indicating that the immission control officer in charge does not have the requisite technical qualification or reliability, the authority may insist upon the appointment of another immission control officer by the operator. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is authorised, after hearing the parties concerned (section 51), to prescribe by ordinance, with the consent of the *Bundesrat*, the standards to be set in respect of the immission control officer's technical qualification and reliability.

(3) Where several immission control officers are appointed, the operator shall ensure the necessary coordination of the duties incumbent on such officers, especially by setting up an environmental protection committee. The same applies if any other officers are appointed under any other legal provisions in addition to one or more immission control officers. The operator shall furthermore ensure close cooperation between such other officers and any persons entrusted with matters of occupational safety and health.

(4) The operator shall support the immission control officer in the performance of his duties and in particular, where necessary for such performance, provide him with support personnel as well as with rooms, facilities, equipment and other means and enable him to take part in training courses.

Section 56
Opinion on Operator's Decisions

- (1) Before taking any decisions regarding the introduction of processes and products as well as any investment decisions, the operator shall obtain the immission control officer's opinion on such decisions if these are deemed to be of relevance for immission control.
- (2) Such opinion shall be obtained in due time so that proper account can be taken thereof in any decision taken pursuant to subsection (1) above; it shall then be submitted to the agency which decides on the introduction of processes and products or the investment in question.

Section 57
Right of Submission

The operator shall ensure by means of internal organisational measures that the immission control officer can submit his proposals or objections directly to the executive management if he is unable to reach agreement with the plant manager in charge and if he considers a decision by the executive management imperative in view of the particular importance of the matter at issue. If the immission control officer is unable to reach agreement with the executive management on any measure proposed by him within the scope of his duties, he shall be given a detailed explanation of the reasons for their rejection of such measure.

Section 58
Non-discrimination, Protection against Dismissal

- (1) The immission control officer shall not be discriminated against on grounds arising out of the performance of the duties entrusted to him.
- (2) If the immission control officer is an employee of the operator liable to appoint such officer, a dismissal shall not be admissible unless there are established facts entitling the operator to terminate such employment for good cause without any period of notice. After revocation of the immission control officer's appointment, dismissal shall not be admissible within a period of one year from the end of such appointment, unless there are any established facts justifying such dismissal by the operator for good cause without any period of notice.

Section 58a
Appointment of a Hazardous Incidents Officer

- (1) Operators of installations subject to licensing shall appoint one or several hazardous incidents officers if this is deemed necessary in view of the type and size of the installations on account of the potential hazards arising from any disruption of normal operation and affecting the general public and the neighbourhood. After hearing the parties concerned (section 51), the Federal Government shall specify by ordinance the types of installations subject to licensing whose operators are required to appoint hazardous incidents officers.

(2) The competent authority may order that operators of any installations subject to licensing for which the appointment of a hazardous incidents officer is not expressly required by ordinance appoint one or several hazardous incidents officers if, in the individual case, the necessity to require such appointment ensues from the aspect specified in subsection (1), first sentence, above.

Section 58b **Duties of the Hazardous Incidents Officer**

(1) The hazardous incidents officer shall advise the operator on all matters that may be of relevance for the safety of the installation. He is authorised and required

1. to work towards the improvement of the installation's safety;
2. to inform the operator without undue delay of any disruption of normal operation made known to him which could result in hazards for the general public or the neighbourhood;
3. to ensure compliance with the provisions of this Act and any ordinance issued hereunder and the fulfilment of the conditions and obligations imposed with a view to preventing a disruption of normal operation of the installation, especially by controlling the operating plant at regular intervals, notifying any defects observed and submitting proposals on measures to remedy these defects;
4. to notify the operator without undue delay of any defects concerning precautionary and preventive fire control and technical assistance.

(2) The hazardous incidents officer shall give the operator an annual account setting out the measures taken and proposed pursuant to subsection (1), second sentence, Nos. 1 to 3 above. He shall furthermore keep written records of any measures taken by him in connection with the performance of his duties pursuant to subsection (1), second sentence, No. 2 above. He shall keep such records in safe custody for at least five years.

Section 58c **Operator's Obligations and Rights** **towards the Hazardous Incidents Officer**

(1) The operator's obligations specified in sections 55 and 57 shall apply *mutatis mutandis* to the hazardous incidents officer; provision may be made in any ordinance issued under section 55 subsection (2), third sentence, for the standards to be set with respect to a hazardous incidents officer's technical qualification and reliability.

(2) Before taking any investment decisions and before planning any operating facilities and introducing working processes and working materials, the operator shall obtain the hazardous incidents officer's opinion on such decisions if these are deemed to be of relevance for the safety of the installation. Such opinion shall be obtained in due time so that proper account

can be taken thereof in any decision taken pursuant to the first sentence above; it shall then be submitted to the agency which takes such decisions.

(3) The operator may vest the hazardous incidents officer with powers of decision for the elimination and limitation of the effects of any disruption of normal operation which may give, or has given, rise to hazards for the general public and the neighbourhood.

Section 58d
**Non-discrimination of the Hazardous Incidents Officer,
Protection against Dismissal**

Section 58 shall apply *mutatis mutandis* to the hazardous incidents officer.

Section 58e
Facilities for Audited Company Sites

To encourage private self-responsibility for companies featuring on a list pursuant to Article 6 in conjunction with Article 7 (2) first sentence of 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 EC No. L 114 p. 1), the Federal Government is authorised to introduce, by ordinance, with the consent of the *Bundesrat*, facilities concerning the content of the application documents for the licensing procedure as well as facilities concerning supervision requirements, insofar as the requirements in this regard contained in Regulation (EC) No. 761/2001 are equivalent to the requirements for supervision and for application documents laid down in this Act or in any ordinance issued hereunder, or insofar as such equivalence is ensured by the ordinance in accordance with the provision contained in this sentence. Any ordinance issued pursuant to the first sentence above may include further prerequisites for the use or withdrawal of facilities or for the full or partial suspension of facilities, if the prerequisites for the granting of such facilities are no longer met. Administrative facilities may be granted if the environmental verifier has verified compliance with environmental requirements without detecting any violations and has certified this result in a validation certificate. Facilities may in particular be introduced for the following:

1. calibrations, measurements, examinations;
2. measurement reports and any other reports and communications of measuring results;
3. duties of immission protection and hazardous incidents officers;
4. reporting duties concerning organisation of the establishment and
5. frequency of official supervision.

Section 59
Jurisdiction for Installations Serving National Defence Purposes

The Federal Government is authorised to require by ordinance, with the consent of the *Bundesrat*, that in the case of installations serving national defence purposes the enforcement of this Act and of any ordinance issued hereunder shall come within the jurisdiction of Federal authorities.

Section 60
Exemptions for Installations Serving National Defence Purposes

(1) The Federal Ministry of Defence may grant exemptions from the provisions of this Act and from any ordinance issued hereunder for installations serving national defence purposes referred to in section 3 subsection (5) Nos. 1 and 3 and, in individual cases, also for specific types of installations if any compelling reasons regarding national defence or the fulfilment of intergovernmental commitments so require. Due regard shall also be paid to the aspect of protection from any harmful effects on the environment.

(2) In the case of installations pursuant to section 3 subsection (5) No. 2 which according to their design are exclusively intended for use by the *Bundeswehr* (Federal Armed Forces), the *Bundeswehr* may deviate from the provisions of this Act and any ordinance issued hereunder if any compelling reasons regarding the fulfilment of its specific functions so require. As regards installations referred to in section 3 subsection (5) No. 2 which are intended for use within the scope of the foreign armed forces stationed in the Federal Republic of Germany under international agreements, these forces may deviate from the provisions of this Act and any ordinance issued hereunder if any compelling reasons regarding the fulfilment of their specific functions so require.

Section 61
(Repealed)

Section 62
Administrative Offences

(1) An administrative offence shall be deemed to have been committed by anyone who, wilfully or negligently,

1. constructs an installation without having obtained the licence required under section 4 subsection (1);
2. contravenes any ordinance issued under section 7 or any enforceable order issued under any such ordinance, provided that this ordinance refers to this provision concerning administrative fines for a specific offence;
3. fails to comply with an enforceable obligation pursuant to section 8a subsection (2), second sentence, or section 12 subsection (1) or fails to do so correctly, completely or in time;
4. materially alters the location, nature or operation of an installation subject to licensing without having obtained the licence required under section 16 subsection (1);
5. fails to comply with an enforceable order pursuant to section 17 subsection (1), first or second sentence, both in conjunction with subsection (5) of that section, section 24,

first sentence, section 26 subsection (1), section 28, first sentence, or section 29, or fails to do so correctly, completely or in time;

6. operates an installation contrary to an enforceable prohibition pursuant to section 25 subsection (1);
7. contravenes any ordinance issued under sections 23, 32, 33 subsection (1) No. 1 or 2, sections 34, 35, 37, 38 subsection (2), section 39 or section 48a subsection (1), first or second sentence, or subsection (1a) or (3) of that section or any enforceable order issued under any such ordinance where such ordinance refers to this provision concerning administrative fines in respect of a specific offence;
- 7a. contrary to section 38 subsection (1), second sentence, fails to operate motor vehicles and their trailers not licensed for traffic on public roads, railborne vehicles, aircraft or watercraft or floating units and installations in such a manner that any avoidable emissions are prevented and any unavoidable emissions are kept to a minimum or
8. constructs a stationary installation contrary to any ordinance issued under section 49 subsection (1) No. 2 or any enforceable order issued under such ordinance, where such ordinance refers to this provision concerning administrative fines in respect of a specific offence;
9. contrary to section 37c subsection (1), first to third sentences, fails to notify the information referred to therein to the competent authority, or fails to do so correctly, completely or in time or fails to present a copy of the contract signed with the third party or fails to do so in time;
10. contrary to section 37c subsection (1), fourth sentence, fails to communicate the information referred to therein to the competent authority as required.

(2) An administrative offence shall furthermore be deemed to have been committed by anyone who, wilfully or negligently,

1. contrary to section 15 subsection (1) or (3), fails to give notification or fails to do so correctly, completely or in time;
- 1a. contrary to section 15 subsection (2), second sentence, makes an alteration;
2. contrary to section 27 subsection (1), first sentence, in conjunction with any ordinance issued under subsection (4), first sentence, above, fails to submit or update an emission declaration or fails to do so correctly, completely or in time;
3. contrary to section 31, first sentence, fails to inform the competent authority of the result of the measurements or fails to keep the recordings of the measuring equipment in safe custody;
4. contrary to section 52 subsection (2), first, third or fourth sentence, also in conjunction with subsection (3), first sentence, or subsection (6), first sentence, of that section, fails to furnish any information or fails to do so correctly, completely or in time, or

fails to tolerate any measure indicated, produce any supporting documents or call in any persons commissioned, or contravenes any other obligations referred to therein;

5. contrary to section 52 subsection (3), second sentence, fails to permit samples to be taken at random;
6. fails to notify pursuant to section 67 subsection (2), first sentence, or fails to do so correctly, completely or in time or
7. contrary to section 67 subsection (2), second sentence, fails to submit any documents or fails to do so correctly, completely or in time.

(3) Anyone who commits any such administrative offence shall be liable to payment of a fine of up to €50,000 in the cases referred to in subsection (1) above, and up to €10,000 in the cases referred to in subsection (2) above.

(4) In the cases referred to in subsection (1) Nos. 9 and 10, the competent authority shall constitute the administrative authority within the meaning of section 36 subsection (1) No. 1 of the Act on Administrative Offences (*Gesetz über Ordnungswidrigkeiten*).

Section 62a
(Repealed)

Sections 63 to 65
(Repealed)

Part VII
Final Provisions

Section 66
Continuance of Provisions

(1) (Repealed)

(2) Pending the entry into force of appropriate regulations or general administrative provisions issued under this Act, the General Administrative Provision on Building Noise Abatement - Noise Immissions - (*Allgemeine Verwaltungsvorschrift zum Schutz gegen Baulärm – Geräuschimmissionen*) of 19 August 1970 (Supplement to the Federal Gazette (*Bundesanzeiger*) No. 160 of 1 September 1970), shall be authoritative.

Section 67
Transitional Provision

(1) Any licence granted under section 16 or section 25 subsection (1) of the Industrial Code (*Gewerbeordnung*) prior to the entry into force of this Act shall have continued validity as a licence under this Act.

(2) Any installation subject to licensing which at the time of entry into force of the ordinance referred to in section 4 subsection (1), third sentence, has been constructed or materially altered or whose construction or major alteration has been commenced, shall be notified to the competent authority within three months after the entry into force of the ordinance unless the installation was subject to licensing pursuant to section 16 subsection (1) or section 25 subsection (1) of the Industrial Code or has been notified pursuant to section 16 subsection (4) of the Industrial Code. Within two months after such notification, the competent authority shall be provided with documents pursuant to section 10 subsection (1) concerning the type, location, volume and mode of operation of the installation at the time of entry into force of the ordinance referred to in section 4 subsection (1), third sentence.

(3) The liability to notify pursuant to subsection (2) above shall not be applicable to non-stationary installations which may be licensed on the basis of the simplified procedure (section 19).

(4) Any ongoing procedures shall be brought to an end in conformity with the provisions of this Act and the legal provisions and administrative provisions based hereon.

(5) Insofar as any new requirements have been laid down in section 5 of this Act by the Act on the Implementation of the EIA Amendment Directive, the IPPC Directive and other EC Directives for the Protection of the Environment (*Gesetz zur Umsetzung der UVP-Änderungsrichtlinie, der IVU-Richtlinie und weiterer EG-Richtlinien zum Umweltschutz*) of 27 July 2001 (BGBl. I p. 1950), these requirements shall be met no later than 30 October 2007 by any installations which were in operation at the time of entry into force of that Act or whose construction had been begun at that time. The first sentence above and the provisions applicable until entry into force of the Act referred to in the first sentence above shall apply to any installations for which a complete licensing application had been submitted at the time of entry into force of the Act referred to in the first sentence above in accordance with the provisions applicable until then.

(6) Licences granted under this Act for installations handling

1. genetically altered micro-organisms;
2. genetically altered cell cultures, except where intended for regeneration into plants;
3. constituents or metabolic products of micro-organisms referred to in No. 1 above or cell cultures referred to in No. 2 above, where they contain biologically active recombinant nucleic acid;

with the exception of installations which exclusively serve research purposes, shall have continued validity even after the entry into force of a specific law covering the field of genetic engineering. Subsection (4) above shall apply *mutatis mutandis*.

(7) Official approval of a plan or licence under the Waste Act (*Abfallgesetz*) shall continue to be valid under this Act. An installation notified to the authorities under the Waste Act shall be deemed to have been notified under this Act. Waste disposal installations whose plans have not been officially approved under the Waste Act or have not been licensed or notified shall be notified to the competent authority without undue delay. Subsection (2), second sentence, above shall apply *mutatis mutandis*.

(8) Section 27 shall continue to apply in the version applicable on 14 October 1996 for the emission declarations to be submitted for 1996.

(9) Building permits for wind turbines with an overall height of more than 50 meters that had been issued by 1 July 2005 are considered to be permits within the meaning of this Act. Permits issued for wind farms in accordance with this Act are considered to be permits for the individual wind turbines. Permitting procedures for wind turbines that had become final before 1 July 2005, shall be completed in accordance with the requirements of the Ordinance on Installations Subject to Licensing (*Verordnung über genehmigungsbedürftige Anlagen*) and of Annex 1 to the Act on the Assessment of Environmental Impacts (*Gesetz über die Umweltverträglichkeitsprüfung*), the first sentence above applying to building permits issued in this context. In case a procedure pursuant to the third sentence above is turned into a court action to compel issuance of a permit under this Act, this change is considered to be relevant.

(10) Section 47 subsection (5), fourth sentence, and subsection (5a) above shall apply to procedures for drawing up or changing clean air plans pursuant to section 47 which have been initiated after 25 June 2005.

Section 67a **Transitional Arrangement Resulting from** **the Establishment of German Unity**

(1) In the territory specified in section 3 of the Unification Treaty (*Einigungsvertrag*), an installation subject to licensing which was constructed before 1 July 1990 or whose construction was commenced before that date shall be notified to the competent authority within six months from that date. Such notification shall be accompanied by documentation on the nature, size and mode of operation of such installation.

(2) In the territory specified in section 3 of the Unification Treaty, the granting of a licence for the construction and operation, or for major alterations to the location, nature or operation, of an installation subject to licensing may not be withheld on grounds that an immission value has been exceeded due to an existing immission load if

1. the additional load is but minor and the immission load within the area of influence of the installation is expected to be reduced significantly within five years after licensing or if
2. installations are shut down or improved in connection with the project and this results in a reduction of the existing immission load which, on an annual average, is at least twice as large as the additional load caused by the new installation.

(3) Where the Technical Instructions on Air Quality Control (*Technische Anleitung zur Reinhaltung der Luft*) of 27 February 1986 (GMBI. pp. 95, 202) provide for any measures aimed at retrofitting existing installations by a fixed date, the periods resulting therefrom shall be extended by one year for the territory specified in section 3 of the Unification Treaty; the period shall commence on 1 July 1990.

Sections 68 to 72
(Amendment of Legal Provisions,
Transition of References,
Repeal of Provisions)

Section 73
Provisions concerning the Administrative Procedure

The provisions contained in this Act and enacted hereunder concerning the administrative procedure must not be derogated from under *Land* law.

Annex (to section 3 subsection (6))

Criteria for Determining Best Available Techniques

Criteria to be taken into account when determining best available techniques, bearing in mind the cost and benefit of any measures considered and the principles of precaution and prevention, all in relation to installations of a given type, shall in particular include the following:

1. the use of low-waste technology;
2. the use of less hazardous substances;
3. the furthering of recovery and recycling of the substances generated and used in the processes and, where appropriate, of the waste produced;
4. comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;
5. technological advances and changes in scientific knowledge and understanding;
6. the nature, effects and volume of the emissions concerned;
7. the commissioning dates for new or existing installations;
8. the length of time needed to introduce the best available technique;
9. the consumption and nature of raw materials (including water) used in the process and their energy efficiency;
10. the need to prevent or reduce to a minimum the overall impact of the emissions on humans and the environment and the risks to them;
11. the need to prevent accidents and to minimize the consequences for humans and the environment;
12. the information published by the Commission of the European Communities pursuant to Article 16 (2) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ EC No. L 257, P. 26) or by international organisations.