

Environmental Protection Agency

§ 95.2

AUTHORITY: 42 U.S.C. 7609; Sec. 104, Pub. L. 103-182, 107 Stat. 2057, 2064.

SOURCE: 59 FR 67638, Dec. 30, 1994, unless otherwise noted.

§ 95.1 Definitions.

(a) As used in this part, all terms not defined in this section shall have the meaning given them by the Act.

(b) *Act* means the Clean Air Act, as amended (42 U.S.C. §§ 7401-7671).

(c) *Agency* means the Environmental Protection Agency.

(d) *Administrator* means the Administrator of the Environmental Protection Agency.

§ 95.2 Petition for mandatory license.

(a) Any party required to comply with sections 111, 112 or 202 of the Act (42 U.S.C. 7411, 7412 or 7521) may petition to the Administrator for a mandatory patent license pursuant to section 308 of the Act (42 U.S.C. 7608), under a patent that the petitioner maintains is necessary to enable the petitioner to comply with Sections 111, 112 or 202 of the Act.

(b)(1) Each petition shall be signed by the petitioner and shall state the petitioner's name and address. If the petitioner is a corporation, the petition shall be signed by an authorized officer of the corporation, and the petition shall indicate the state of incorporation. Where the petitioner elects to be represented by counsel, a signed notice to that effect shall be included with the petition at the time of filing.

(2) Each petition shall include a copy of the patent under which a mandatory patent license is sought. The petition shall identify all current owners of the patent and shall include a copy of all assignment documents relevant to the patent that are available from the United States Patent and Trademark Office.

(3) Each petition must identify any person whose interest the petitioner believes may be affected by the grant of the license to which the petition is directed.

(4) Each petition must contain a concise statement of all of the essential facts upon which it is based. No particular form of statement is required. Each petition shall be verified by the petitioner or by the person having the

best knowledge of such facts. In the case of facts stated on information and belief, the source of such information and grounds of belief shall be given. The statement of facts shall include the following:

(i) An identification of the provisions of the Act and/or regulations thereunder that the petitioner maintains petitioner will be able to comply with if the petitioner is granted the patent license that is the subject of the petition;

(ii) An identification of the nature and purpose of the petitioner's intended use of the patent license;

(iii) An explanation of the relationship between the patented technology and the activities to which petitioner proposes to apply the patented technology, including an estimate of the effect on such activities stemming from the grant or denial of the patent license;

(iv) A summary of facts demonstrating that the patent under which a mandatory patent license is sought is being used or is intended for public or commercial use;

(v) An explanation of why a mandatory patent license is necessary for the petitioner to comply with the requirements of sections 111, 112 or 202 of the Act, and why the patented technology is not otherwise available;

(vi) An explanation of why there are no other reasonable alternatives for accomplishing compliance with sections 111, 112 or 202 of the Act;

(vii) An explanation of why the unavailability of a mandatory patent license may result in a substantial lessening of competition or a tendency to create a monopoly in any line of commerce in any section of the United States;

(viii) A summary of efforts made by the petitioner to obtain a patent license from the owner of the patent, including the terms and conditions of any patent license proposed by petitioner to the patent owner; and

(ix) The terms, if any, on which the owner of the patent has proposed to grant the petitioner a patent license.

(5) Each petition shall include a proposed patent license that states all of the terms and conditions that the petitioner proposes for the patent license.