

function properly only if the component or service so identified is used in connection with such engine; and

(B) The Administrator finds that such a waiver is in the public interest.

(iv) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to the engine that the engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emission standards prescribed under section 213 of the Act. This label or tag shall also contain information relating to control of emissions as prescribed under §94.212.

(b) The manufacturer bears all cost obligation any dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer to a dealer through franchise or other agreement is prohibited.

(c) If a manufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Act.

#### APPENDIX I TO PART 94—EMISSION-RELATED ENGINE PARAMETERS AND SPECIFICATIONS

- I. Basic Engine Parameters—Reciprocating Engines.
  1. Compression ratio.
  2. Type of air aspiration (natural, Roots blown, supercharged, turbocharged).
  3. Valves (intake and exhaust).
    - a. Head diameter dimension.
    - b. Valve lifter or actuator type and valve lash dimension.
  4. Camshaft timing.
    - a. Valve opening—intake exhaust (degrees from TDC or BDC).
    - b. Valve closing—intake exhaust (degrees from TDC or BDC).
  5. Ports—two stroke engines (intake and/or exhaust).
    - a. Flow area.

- b. Opening timing (degrees from TDC or BDC).
  - c. Closing timing (degrees from TDC or BDC).
- II. Intake Air System.
  1. Roots blower/supercharger/turbocharger calibration.
  2. Charge air cooling.
    - a. Type (air-to-air; air-to-liquid).
    - b. Type of liquid cooling (engine coolant, dedicated cooling system).
  3. Performance (charge air delivery temperature (°F) at rated power and one other power level under ambient conditions of 80 °F and 110 °F, and 3 minutes and 15 minutes after selecting rated power, and 3 minutes and 5 minutes after selecting other power level).
  4. Temperature control system calibration.
  5. Maximum allowable inlet air restriction.
- III. Fuel System.
  1. General.
    - a. Engine idle speed.
  2. Fuel injection—compression ignition engines.
    - a. Control parameters and calibrations.
    - b. Transient enrichment system calibration.
    - c. Air-fuel flow calibration.
    - d. Altitude compensation system calibration.
    - e. Operating pressure(s).
    - f. Injector timing calibration.
- IV. Engine Cooling System.
  1. Thermostat calibration.
- V. Exhaust System.
  1. Maximum allowable back pressure.
- VI. Exhaust Emission Control System.
  1. Air injection system.
    - a. Control parameters and calibrations.
    - b. Pump flow rate.
  2. EGR system.
    - a. Control parameters and calibrations.
    - b. EGR valve flow calibration.
  3. Catalytic converter system.
    - a. Active surface area.
    - b. Volume of catalyst.
    - c. Conversion efficiency.
    - d. Backpressure.
- VII. Crankcase Emission Control System.
  1. Control parameters and calibrations.
  2. Valve calibrations.
- VIII. Auxiliary Emission Control Devices (AECD).
  1. Control parameters and calibrations.
  2. Component calibration(s).

#### PART 95—MANDATORY PATENT LICENSES

- Sec.
- 95.1 Definitions.
  - 95.2 Petition for mandatory license.
  - 95.3 Findings prior to application to Attorney General.
  - 95.4 Limitations on mandatory licenses.

## 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.

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(6) Petitions shall be addressed to the Assistant Administrator for Air and Radiation, Mail Code 6101, U.S. Environmental Protection Agency, Washington, DC 20460.

(c) Petitions that do not include all of the information required in paragraph (b) of this section shall be returned to the petitioner. The petitioner may supplement the petition and re-submit the petition.

(d) If the Administrator, or the Administrator's designee, finds that the criteria in § 95.3 are not met, or otherwise decides to deny the petition, a denial of the petition shall be sent to the petitioner, along with an explanation of the reasons for the denial.

(e) If the Administrator, or the Administrator's designee, finds that the criteria in § 95.3 are met and decides to apply to the Attorney General for a patent license under section 308 of the Act, notice of such application shall be given to the petitioner, along with a copy of the application sent to the Attorney General.

#### § 95.3 Findings prior to application to Attorney General.

The Administrator, or the Administrator's designee, may apply to the Attorney General for a mandatory patent license pursuant to section 308 of the Act (42 U.S.C. 7608) either in response to a petition under § 95.2 or on the Administrator's or designee's own initiative, only after expressly finding that each one of the following mandatory criteria is met:

(a) The application is for a patent license covering no more than one patent;

(b) The party to whom the proposed patent license is to be granted has presented the Administrator or designee with evidence that such party has made reasonable efforts to obtain a patent license from the patent owner with terms similar to the license terms to be proposed in the application to the Attorney General;

(c) The patent under which a patent license is sought in the application to the Attorney General is being used or is intended for public or commercial use;

(d) The mandatory patent license is necessary for a party to comply with

the requirements of sections 111, 112 or 202 of the Act (42 U.S.C. 7411, 7412 or 7521);

(e) The patented technology is not otherwise reasonably available, and there are no other reasonable alternatives for accomplishing compliance with sections 111, 112 or 202 of the Act (42 U.S.C. 7411, 7412 or 7521); and

(f) 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.

#### § 95.4 Limitations on mandatory licenses.

(a) If the Administrator, or the Administrator's designee, decides to apply to the Attorney General for a mandatory patent license in accordance with § 95.3, the application shall include a proposed patent license with the following limitations:

(1) The scope and duration of the patent license shall be limited to that necessary to permit the proposed licensee to comply with the requirements the Act;

(2) The patent license shall be non-exclusive;

(3) The patent license shall be non-assignable, except with that part of the enterprise or goodwill that enjoys the license;

(4) The patent license shall be for use of the licensed technology in the United States only;

(5) The patent license shall extend only to those uses necessary to enable the licensee to comply with sections 111, 112 or 202 of the Act (42 U.S.C. 7411, 7412 or 7521);

(6) The patent license shall provide for termination, subject to adequate protections of the legitimate interests of the licensed party, when the circumstances that made the compulsory patent license necessary cease to exist and are unlikely to recur; and

(7) The patent license shall provide for adequate remuneration that takes into account the economic value of the license.

(b) The Administrator, or the Administrator's designee, may decide as appropriate to include additional conditions, terms or limitations on the

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scope of the patent license for which application is made to the Attorney General.