

§ 95.3

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

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

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AUTHORITY: 42 U.S.C. 7401, 7403, 7410, and 7601.

SOURCE: 63 FR 57514, Oct. 27, 1998, unless otherwise noted.

Subpart A—NO_x Budget Trading Program General Provisions

§ 96.1 Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_x Budget Trading Program for State implementation plans as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with requirements of this part as a matter of federal law only to the extent a State that has jurisdiction over the unit incorporates by reference provisions of this part, or otherwise adopts such requirements of this part,

and requires compliance, the State submits to the Administrator a State implementation plan including such adoption and such compliance requirement, and the Administrator approves the portion of the State implementation plan including such adoption and such compliance requirement. To the extent a State adopts requirements of this part, including at a minimum the requirements of subpart A (except for § 96.4(b)), subparts B through D, subpart F (except for § 96.55(c)), and subparts G and H of this part, the State authorizes the Administrator to assist the State in implementing the NO_x Budget Trading Program by carrying out the functions set forth for the Administrator in such requirements.

§ 96.2 Definitions.

The terms used in this part shall have the meanings set forth in this section as follows:

Account certificate of representation means the completed and signed submission required by subpart B of this part for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_x Budget units at such source or sources with regard to matters under the NO_x Budget Trading Program.

Account number means the identification number given by the Administrator to each NO_x Allowance Tracking System account.

Acid Rain emissions limitation means, as defined in § 72.2 of this chapter, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the CAA.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means the determination by the permitting authority or the Administrator of the number of NO_x allowances to be initially credited to a NO_x Budget unit or an allocation set-aside.

Automated data acquisition and handling system or DAHS means that component of the CEMS, or other emissions monitoring system approved for use under subpart H of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart H of this part.

Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

CAA means the CAA, 42 U.S.C. 7401, *et seq.*, as amended by Pub. L. No. 101-549 (November 15, 1990).

Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

Combustion turbine means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 96.5, for a unit that is a NO_x Budget unit under § 96.4 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in § 96.5 or subpart I of this part, for a unit that is not a NO_x Budget unit under § 96.4 on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under § 96.4 shall be the unit's date of commencement of commercial operation.

Commence operation means to have begun any mechanical, chemical, or