

# Sunshine Act Meetings

Federal Register

Vol. 52, No. 6

Friday, January 9, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, January 14, 1987.

**LOCATION:** Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

**STATUS:** Open to the Public.

### MATTERS TO BE CONSIDERED:

*Program Overview: Electrical; Mechanical; Children's*

The staff will brief the Commission on an overview of activities on electrical, mechanical and children's products.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,  
*Deputy Secretary.*

January 7, 1987.

[FR Doc. 87-543 Filed 1-7-87; 12:14 pm]

BILLING CODE 6355-01-M

## CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Thursday, January 15, 1987.

**LOCATION:** Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

**STATUS:** Closed to the Public.

### MATTERS TO BE CONSIDERED:

*Compliance Status Report*

The staff will brief the Commission on the status of various compliance matters.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,  
*Deputy Secretary.*

January 7, 1987

[FR Doc. 87-544 Filed 1-8-87; 12:14 pm]

BILLING CODE 6355-01-M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Volume 52, No. 2, FR 384, Monday, January 5, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (eastern time) Monday, January 12, 1987.

**CHANGE IN THE MEETING:** 10:00 a.m. (eastern time) Tuesday, January 13, 1987.

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated: January 6, 1987.

Cynthia C. Matthews,  
*Executive Officer, Executive Secretariat.*

This Notice Issued January 6, 1987.

[FR Doc. 87-538 Filed 1-7-87; 11:44 am]

BILLING CODE 6750-06-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, January 6, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution regarding amendments to the delegations of authority relating to supervisory activities.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: January 7, 1987.

Federal Deposit Insurance Corporation,  
Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 87-568 Filed 1-8-87; 2:52 pm]

BILLING CODE 6714-01-M

## FEDERAL ENERGY REGULATORY COMMISSION

January 7, 1987.

The following notice of meeting is published pursuant to section 3(a) of the

Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

**TIME AND DATE:** January 14, 1986, 10:00 a.m.

**PLACE:** 825 North Capitol Street, NE., Room 9306, Washington, DC 20424.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

\* Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

**Consent Power Agenda, 849th Meeting—** January 14, 1987, Regular Meeting (10:00 a.m.)

CAP-1.

Project Nos. 3856-005 and 006, Guadalupe-Blanco River Authority

CAP-2.

Project No. 3228-005, Atlantic Power Development Corporation

CAP-3.

Project No. 5495-004, Hydro Resource Company

CAP-4.

Project No. 7449-001, town of Durham, New Hampshire

CAP-5.

Project No. 9778-001, Trafalgar Power, Inc.

CAP-6.

Project No. 9608-001, McCallum Hydro Enterprises

Project No. 9982-001, Bridgeport Hydraulic Company

CAP-7.

Project Nos. 7306-005 and 006, Arnold Irrigation District

CAP-8.

Project No. 6092-006, Western Hydro Electric, Inc.

CAP-9.

Project No. 5756-006, Mega Hydro, Inc.

CAP-10.

Project No. 662-000, Pinedale Power and Light Company

CAP-11.

Project No. 6032-000, Niagara Mohawk Power Corporation

Project No. 9706-000, Mechanicville Corporation

Project No. 5799-001, New York State Energy Research and Development Authority

CAP-12.

Project No. 8604-000, incorporated County of Los Alamos, New Mexico

Project No. 8493-000, Hydroelectric Development, Inc.

- CAP-13.  
Docket No. ER87-122-000, Boston Edison Company
- CAP-14.  
Docket Nos. ER82-545-000 and ER83-610-000, Public Service Company of Oklahoma and Southwestern Electric Power Company  
Docket Nos. ER82-546-000 and ER83-611-000, Central Power & Light Company and West Texas Utilities Company  
Docket No. ER83-635-000, Texas Utilities Electric Company  
Docket No. ER83-657-000 (Phase I), Houston Lighting and Power Company
- CAP-15.  
Docket No. ER86-370-001, New York State Electric & Gas Corporation
- CAP-16.  
Docket No. ER85-538-001, Gulf States Utilities Company
- CAP-17.  
Docket No. EL86-58-000, Louisiana Public Service Commission v. System Energy Resources, Inc. (formerly Middle South Energy, Inc.)  
Docket No. EL86-59-000, Louisiana Public Service Commission v. Middle South Services, Inc.
- CAP-18.  
Docket No. QF86-15-000, Calderon Energy Company
- Consent Miscellaneous Agenda*
- CAM-1.  
Docket No. RM84-14-025, deregulation and other pricing changes on January 1, 1985, under the Natural Gas Policy Act
- CAM-2.  
Docket Nos. RI83-9-001, 002 and GP83-11-001, Northern Natural Gas Company, division of Enron Corporation
- CAM-3.  
Docket No. GP86-22-001, Williston Basin Interstate Pipeline Company v. Arco Oil and Gas Company  
Docket No. SA86-15-001, Williston Basin Interstate Pipeline Company
- CAM-4.  
Docket No. RM85-1-180, regulation of natural gas pipelines after partial wellhead decontrol (Bishop Pipeline Corporation)
- CAM-5.  
Docket No. RM85-1-000, regulation of natural gas pipelines after partial wellhead decontrol (Process Gas Consumers Group)
- CAM-6.  
Docket No. RM87-10-000, delegation of authority to decide Freedom of Information Act and Government in the Sunshine Act appeals
- CAM-7.  
Docket No. RA86-2-000, Commonwealth Oil Refining Company, Inc.
- CAM-8.  
Docket No. RM86-12-000, generic determination of rate of return on common equity for public utilities
- Consent Gas Agenda*
- CAG-1.  
Docket Nos. RP87-16-001 and 002, El Paso Natural Gas Company
- CAG-2.  
Docket No. RP87-14-001, Algonquin Gas Transmission Company
- CAG-3.  
Docket Nos. RP87-15-001, 002, 003, 004 and 005, Trunkline Gas Company
- CAG-4.  
Docket Nos. TA87-1-51-002, 003, 004 and TA86-6-51-004, Great Lakes Gas Transmission
- CAG-5.  
Docket No. RP82-71-019, Northern Natural Gas Company, division of Enron Corporation
- CAG-6.  
Docket No. RP87-6-000, El Paso Natural Gas Company
- CAG-7.  
Docket Nos. ST86-922-000, ST82-424-000, ST82-476-000 and ST83-130-000, Sun Gas Transmission Company, Inc.
- CAG-8.  
Docket Nos. RP82-16-005 and 006, United Gas Pipe Line Company
- CAG-9.  
Docket No. RP86-71-000, Valley Gas Transmission, Inc.
- CAG-10.  
Omitted
- CAG-11.  
Docket Nos. RI74-188-090 and RI75-21-085, Independent Oil & Gas Association of West Virginia
- CAG-12.  
Docket Nos. CP85-710-002, 003 and 004, Northern Natural Gas Company, division of Enron Corporation
- CAG-13.  
Docket No. CP87-49-002, Distrigas of Massachusetts Corporation  
Docket No. CP87-50-000, Cabot Energy Supply Corporation
- CAG-14.  
Docket Nos. CP84-4-004, CP84-4-005, CP86-264-001, and CP86-264-003, Natural Gas Pipeline Company of America
- CAG-15.  
Docket No. CP 85-741-001, National Fuel Gas Supply Corporation  
Docket No. CI85-597-001, Empire Exploration, Inc.
- CAG-16.  
Docket No. CP85-826-002, CP86-95-002 and CP86-96-002, National Fuel Gas Supply Corporation  
Docket Nos. CP86-414-004, CP86-437-002, 004, CP86-556-001 and CP86-557-003, Natural Gas Pipeline Company of America  
Docket No. CP86-294-004, Northern Natural Gas Company, division of Enron Corporation
- CAG-17.  
Docket No. CP86-439-003, Southern Natural Gas Company
- CAG-18.  
Docket No. CP86-93-000, National Fuel Gas Supply Corporation
- CAG-19.  
Docket No. CP86-488-000, K N Energy, Inc.  
Docket Nos. CI84-470-001, CI84-472-001, CI84-473-001 and CI86-414-000, Plains Petroleum Company
- CAG-20.  
Docket No. CP86-377-000, Trunkline Gas Company
- CAG-21.  
Docket Nos. CP79-444-002 and CP81-474-002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
- CAG-22.  
Docket No. CP83-439-003, Southern Natural Gas Company
- CAG-23.  
Docket No. CP87-64-000, Southern Natural Gas Company
- I. Licensed Project Matters**
- P-1.  
Reserved
- II. Electric Rate Matters**
- ER-1.  
Docket No. ER87-23-000, Ocean State Power. Order on power sale agreements for the sale of capacity and corresponding energy from a 235 MW combined cycle gas-fired generating unit.
- ER-2.  
Docket No. ER81-177-001 (Phase I), Southern California Edison Company. Opinion on rate increase.
- ER-3.  
Docket No. EL85-47-000, John J. Byrne. Order on interlocking directorate.
- ER-4.  
Docket Nos. QF84-147-000 through 009, Alcon (Puerto Rico), Inc. Order on rehearing regarding an application for qualifying status of a cogeneration facility.
- ER-5.  
Docket No. QF86-23-000, Freeport-McMoran Inc. and Gunnison Capital, Ltd. Order on an application for certification of a proposed facility as a qualifying bottoming-cycle cogeneration facility.
- ER-6.  
Docket No. QF85-210-000, Pynoyl Corporation. Order on an application for certification as a qualifying small power production facility.
- ER-7.  
Docket No. QF85-511-000, Veterans Administration Central Office. Order on an application for certification of a facility as qualifying cogeneration facility.
- ER-8.  
Docket No. QF85-139-000, Antrim Mining, Inc. Order on an application for certification of qualifying status for a small power production facility.
- Miscellaneous Agenda*
- M-1.  
Reserved
- M-2.  
Docket No. RM87-11-000, proposed test for affiliated entities limitation under section 601(b)(1)(E) of Natural Gas Policy Act of 1978
- I. Pipeline Rate Matters**
- RP-1.  
(A) Docket Nos. RP86-32-000, 002, RP86-68-000 and 003, Northwest Central Pipeline Corporation. Order No. 436 rate settlement.  
(B) Docket No. CP86-631-000, Northwest Central Pipeline Corporation. Order No. 436 blanket certificate application.

(C) Docket Nos. CI86-594-000 and CI86-596-000, Northwest Central Pipeline Corporation. Related limited-term abandonment and blanket certificate.

RP-2.  
Omitted

RP-3.  
Omitted

## II. Producer Matters

CI-1.

Docket Nos. CI86-370-000 and CI86-373-000, Texas Gas Transmission Corporation

Docket Nos. CI86-378-000 and CI86-397-000, Arkla, Inc. (Exploration and production division) and Arkla Energy Marketing Company

Docket Nos. CI86-375-000 and CI86-408-000, Trunkline Gas Company

Docket Nos. CI86-447-000 and CI86-450-000, United Gas Pipeline Company

Docket Nos. CI86-451-000 and CI86-504-000, Natural Gas Pipeline Company of America

Docket Nos. CI86-510-000 and CI86-513-000, Tennessee Gas Pipeline Company, a division of Tenneco, Inc.

Docket Nos. CI86-637-000 and CI86-638-000, ANR Pipeline Company

Docket Nos. CI86-641-000 and CI86-642-000, Northwest Pipeline Corporation and Northwest Marketing Company

Docket Nos. CI86-737-000 and CI86-738-000, Arkla Energy Reserves. Basket order on applications for limited-term abandonments and limited-term blanket certificates with pre-granted abandonment.

CI-2.  
Omitted

## III. Pipeline Certificate Matters

CP-1.

Docket Nos. CP68-179-006, CP74-192-009, 010 and CP86-704-000, Florida Gas Transmission Company. Proposal for pooling gas entitlements; application for section 7(c) authorization to construct and operate facilities to increase capacity; request to modify previous abandonment order authorizing conversion of gas line to transport liquid petroleum products.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 87-564 Filed 1-7-87; 2:46 pm]

BILLING CODE 8717-01-M

## FOREIGN CLAIMS SETTLEMENT COMMISSION

The Foreign Claims Settlement

Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

### Date, Time, and Subject Matter

Oral Hearings on Objections to Decisions Issued Under the Ethiopian Claims Program

Thurs., Jan. 22, 1987 at 10:00 a.m.

E-023—Seventh-Day Adventist Church  
Thurs., Jan. 22, 1987 at 11:00 a.m.

E-013—Saba Habachy, et al.  
Thurs., Jan. 22, 1987 at 2:30 p.m.

Consideration of Proposed Decisions on claims under the Ethiopian Claims Program and Final Decisions on objections filed to Proposed Decisions on claims under the Ethiopian Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC, on January 7, 1987.

Judith H. Lock,  
Administrative Officer.

[FR Doc. 87-560 Filed 1-8-87; 3:36 pm]

BILLING CODE 4410-01-M

## NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, January 14, 1987.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Open.

### MATTERS TO BE CONSIDERED.

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.

3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Credit Union Rating System.
6. Examination of Overseas Branches of Federal Credit Unions.
7. Final Rule: § 748.2, NCUA Rules and Regulations, Bank Secrecy Act.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Wednesday, January 14, 1987.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

### MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under section 207 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
3. Board Briefings. Closed pursuant to exemptions (2), (6), (8), (9)(A)(ii) and (9)(B).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

### FOR MORE INFORMATION CONTACT:

Rosemary Brady, Secretary of the Board,  
Telephone (202) 357-1100.

Rosemary Brady,  
Secretary of the Board.

[FR Doc. 87-548 Filed 1-7-87; 1:52 pm]

BILLING CODE 7533-01-M

## POSTAL RATE COMMISSION

TIME AND DATE: 11:00 a.m. on Thursday, January 15, 1987.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To consider the Postal Service motion for reconsideration of Commission Order No. 733 in Docket Nos. C84-1 and C87-2.

### CONTACT PERSON FOR MORE

INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,  
Secretary.

[FR Doc. 87-499 Filed 1-8-87; 9:45 am]

BILLING CODE 7715-01-M

# Corrections

Federal Register

Vol. 52, No. 6

Friday, January 9, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1987; Additions and Deletion

#### Correction

In notice document 86-29028 appearing on page 46908 in the issue of Monday, December 29, 1986, make the following correction:

In the second column, under **Commodities**, the entry for "Coat, Women's Pajama" should read: Coat, Women's Pajama, 6532-01-222-6565, 6532-01-222-3116

BILLING CODE 1505-01-D

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1987; Proposed Additions and Deletion

#### Correction

In notice document 86-29029 beginning on page 46908 in the issue of Monday, December 29, 1986, make the following correction:

In the third column, under **Commodities**, in the entry for "Box Spring", in the second line, the number should read "7210-00-NIB-0006".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 74, 81, and 82

[Docket No. 83C-0127]

### Listing of D&C Red No. 8 and D&C Red No. 9 for Use in Ingested Drug and Cosmetic Lip Products and Externally Applied Drugs and Cosmetics

#### Correction

In rule document 86-27250 beginning on page 43877 in the issue of Friday, December 5, 1986, make the following corrections:

1. On page 43877, in the first column, in the next to last line of the **SUMMARY** and in the first line of **DATES**, "January 5, 1987" should read "January 6, 1987".

2. On page 43896, in the second column, in the first complete paragraph, in the 16th line, "January 5, 1987" should read "January 6, 1987".

#### § 81.10 [Corrected]

3. On page 43899, in the first column, in § 81.10(t), in the last line, "January 5, 1987" should read "January 6, 1987".

#### § 81.30 [Corrected]

4. On the same page, in the second column, in § 81.30, "January 5, 1987" should read "January 6, 1987" in the eighth line of paragraph (s)(1) and in the seventh line of paragraph (s)(2).

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Privacy Act of 1974; Proposed Changes to a System of Records

#### Correction

In notice document 86-26307 beginning on page 42158 in the issue of Friday, November 21, 1986, make the following correction:

On page 42159, in the first column, in the 30th line, "of" should read "to".

BILLING CODE 1505-01-D

# Registered Federal Report

---

Friday  
January 9, 1987

---

## Part II

### Environmental Protection Agency

---

40 CFR Part 85  
Control of Air Pollution From Motor  
Vehicles and Motor Vehicle Engines;  
Emission Control System Performance  
Warranty Regulations and Voluntary  
Aftermarket Part Certification Program;  
Proposed Rule

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 85**

[AMS-FRL-3071-3]

**Control of Air Pollution From Motor  
Vehicles and Motor Vehicle Engines;  
Emission Control System Performance  
Warranty Regulations and Voluntary  
Aftermarket Part Certification Program**
**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to amend the Emission Control System Performance Warranty regulations. In addition, EPA proposes to amend the Voluntary Aftermarket Part Certification Program. These proposals are made in response to the October 14, 1983 decisions of the United States Court of Appeals for the District of Columbia Circuit.<sup>1</sup> The court's decisions for the most part upheld the Performance Warranty and Aftermarket Parts Certification Regulations.<sup>2</sup> However, it cited four areas of the regulations where some revision was required.

These areas of concern were: (1) the resolution of disputes between vehicle manufacturers and certified after market part manufacturers over warranty responsibility, (2) the certification of parts without specified emission-critical parameters such as specialty and add-on parts, (3) warranty denials based on the use of uncertified parts, and (4) labeling requirements for certified parts. The court also directed EPA to reconsider its rationale for rejecting the use of vehicle "short tests" for the certification of parts. This notice of proposed rulemaking (NPRM) proposed regulatory revisions intended to address the court's concerns and improve the regulatory program.

**DATES:** Public Comment: Comments on the NPRM must be submitted on or before April 9, 1987. The date and place of a public hearing will be announced shortly in the *Federal Register*. The public comment period will be open until at least 30 days after the hearing.

**ADDRESS:** Comments on the NPRM may be submitted to the U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery 1, West Tower Lobby, Waterside Mall, 401 M Street

<sup>1</sup> *Specialty Equipment Market Association (SEMA) versus. Ruckelshaus*, 720 F.2d 124; *Automotive Parts Rebuilders Association (APRA) v. EPA*, 720 F.2d 142.

<sup>2</sup> Code of Federal Regulations, Title 40, Part 85, Subpart V.

 SW., Washington, DC., 20460, Attn:  
Docket No. EN-84-08.

**FOR FURTHER INFORMATION CONTACT:**  
Michael Sabourin, Certification  
Division, U.S. Environmental Protection  
Agency, 2565 Plymouth Rd., Ann Arbor,  
MI 48105 (313) 668-4316.

**SUPPLEMENTARY INFORMATION:**
**I. Background**

Section 207(a)(1) of the Clean Air Act (the Act), requires motor vehicle manufacturers to warrant that each new vehicle is designed, built, and equipped to conform to the applicable Federal emission standards. The vehicle manufacturer must also warrant that the vehicle is free from defects which would cause the vehicle or engine to fail to conform to the applicable regulations within the useful life of the vehicle. Section 207(b) of the Act outlines the EPA's responsibilities for testing of vehicles in actual use to assure they meet applicable standards. That section also requires that any such testing regulations be accompanied by rules requiring vehicle manufacturers to warrant the performance of emission control devices or systems of any vehicles subject to in-use testing (the performance warranty) for the vehicles' entire useful lives. EPA promulgated these emission control system performance warranty regulations on May 22, 1980 (45 FR 34829).<sup>3</sup>

As required by section 207(a)(2) of the Act, EPA also promulgated regulations that allowed automotive part manufacturers to certify their parts as equivalent to original equipment manufacturer (OEM) parts. 45 FR 78448 (1980). Proper maintenance and use of a vehicle are prerequisites to section 207(b) performance warranty coverage. Thus, these voluntary self-certification regulations<sup>4</sup> provide a means for

<sup>3</sup> In the preamble to those regulations, EPA stated, "In general, the emission performance warranty will require a vehicle manufacturer to repair, at no charge to the owner, any emission control device or system which causes a vehicle to fail an EPA approved emission short test [see footnote 6] during its useful life if the owner is subject to a penalty or sanction under State or Federal law because of the short test failure, and if the owner has maintained and operated the vehicle in accordance with the manufacturer's written instructions." Emission performance warranty requirements are described in more detail in 40 CFR 85.2103.

<sup>4</sup> See 40 CFR Part 85, Subpart V. There is no requirement that aftermarket parts be certified. However, certified aftermarket parts must be honored by the vehicle manufacturer's warranty. To self-certify, the part manufacturer must meet the requirements of 40 CFR 85.2114 and 85.2115.

aftermarket part manufacturers to assert that their parts are functionally equivalent to OEM parts and, therefore, their use cannot be considered improper maintenance or use. Thus, consumers can use certified aftermarket parts on their vehicles without compromising the vehicles' capabilities to meet emissions standards and without jeopardizing their emission control performance warranties. The vehicle manufacturers are required by section 207(b) to honor warranties for vehicles with certified parts. However, under the existing regulations the certified part manufacturer is required to reimburse the vehicle manufacturer if the certified part caused the emission failure.

Vehicle manufacturers and part manufacturers challenged several aspects of the aftermarket part certification regulations and the emission control system performance warranty regulations.<sup>5</sup> On October 14, 1983, the United States Court of Appeals for the District of Columbia Circuit ruled on the petitions. The court's decision basically upheld the regulations. However, its decision made it necessary to consider amendments in the following areas:

A. The reimbursement mechanism between vehicle manufacturers and certified part manufacturers to resolve warranty disputes over certified parts;

B. The certification of specialty parts and the use of "short tests"<sup>6</sup> for the certification of parts;

C. The burden placed on the vehicle manufacturers by the requirement that they "present evidence that an uncertified part on a vehicle was defective, or not equivalent from an emission standpoint to an OEM part"<sup>7</sup> before the vehicle manufacturer could be free of warranty responsibility;

D. The permanency of labels or identification symbols on certified parts. (Although not required by the court, this proposal also addresses the issue of requiring unique identification symbols on the label.)

**II. Summary of Proposal**

A. Reimbursement procedures for warranty cost claims by vehicle manufacturers against certified aftermarket part manufacturers are proposed to be established. EPA proposes to

<sup>5</sup> *SEMA v. Ruckelshaus*, 720 F.2d 124; *APRA v. EPA*, 720 F.2d 142.

<sup>6</sup> The "short test" is an emission inspection performed on a vehicle that is operating in one or several steady state modes. Hydrocarbons (HC) and carbon monoxide (CO) are usually monitored by taking continuous raw concentration readings of the tailpipe exhaust.

<sup>7</sup> 40 CFR 85.2105 (b).

provide additional definitions and guidance for resolving disputed claims. In addition, disputes which cannot be informally resolved between manufacturers are proposed to be decided through independent binding arbitration. Each part and vehicle manufacturer seeking certification must agree to binding arbitration should a reimbursement dispute occur over the use of a certified aftermarket part. If any part or vehicle manufacturer refuses to participate in binding arbitration concerning a specific claim, that manufacturer will automatically lose the dispute.

If an independent arbitrator is used, EPA proposes that the losing party pay all arbitration costs in addition to vehicle repair costs incurred. If the judgment is against the vehicle manufacturer, it need only pay the arbitrator costs of the decision, since they have already absorbed the original repair costs. If the judgment is against the aftermarket part manufacturer, it must not only pay all arbitrator costs, but also reimburse the vehicle manufacturer for the original repair costs. If the judgment is not clearly against either party, the part manufacturer and vehicle manufacturer would share the cost of arbitration equally, or as the arbitrator otherwise determines is appropriate.

If the part manufacturer does not pay its costs under arbitration settlement (including any applicable original repair costs and arbitrator costs), EPA will decertify that part for use on all vehicle applications for which it is certified. The aftermarket part manufacturer could then be liable for all results of decertification as already specified in 40 CFR 85.2121.

B. Specialty part manufacturers had been excluded from the aftermarket part certification program. The Court directed EPA to reconsider inclusion of specialty parts into the part certification program. EPA proposes that the existing regulation be revised to allow both specialty and replacement parts to be certified under the same certification demonstration program. However, an additional option is being considered that would allow the vehicle manufacturer to deny warranty coverage for certified specialty (i.e., add-on, non-replacement) parts based on adequate demonstration that the specialty part caused the vehicle's emission failure. In these cases the consumer would go directly to the specialty part manufacturer for warranty reimbursement.

C. EPA proposes to expand the certification options for aftermarket part manufacturers. The current regulations

allow certification only for parts which have emission-critical parameters and performance criteria defined in the regulations. The proposed revision will allow certification via emissions testing for parts which do not have emission-critical parameters defined in the regulations. This will greatly expand the availability of the option to voluntarily certify aftermarket parts.

Moreover, EPA is proposing a simple emissions certification program which has been designed to maximize the range of parts that are eligible for certification. Necessary emission control has been assured while compliance demonstration costs are minimized. This proposal breaks emission-related aftermarket parts down into several categories for determining durability and emission performance. The first category corresponds to those parts which have defined emission-critical parameters, as in the current regulations. With these parameters defined, the functional performance of the part over its useful life can be evaluated using bench test procedures as detailed in the regulations. Functional performance criteria are used to determine certification and no actual emissions testing is required. Today's proposal does not include any new emission-critical parameters or changes to those already in the regulations.

The proposed revisions also address those parts which do not have emission-critical parameters and test procedures already defined in the regulations. A number of these parts could cause easily detectable driveability problems when their performance has deteriorated to a point where this performance deterioration could result in emissions noncompliance. Since it is likely the vehicle operator will have such a driveability problem corrected and thus, the part repaired or replaced, we do not believe that in-use emission noncompliance due to part deterioration will be a significant problem. Thus, the emission durability of such parts (defined in this proposal as "non-critical emission-related parts") need not be evaluated during the certification program. In most such cases only the emissions impact of installing the aftermarket part on the vehicle is a concern. For these parts, EPA proposes to allow the manufacturer to demonstrate certification compliance by emission testing an applicable vehicle in its original equipment configuration and then testing the vehicle with the aftermarket part installed. Compliance will be demonstrated if any increases in emission levels detected by the second test are not so great as to have caused the vehicle design to fail emission

standards based on the vehicle manufacturer's original vehicle certification test results. Thus, this proposal relies on the vehicle manufacturer's certification test results to establish the vehicle's useful life emission performance in its original equipment configuration, and the change in emission performance due to aftermarket part installation to determine whether the part would continue to allow useful life vehicle emission compliance.

Since the emission impact of these non-critical emission-related parts could vary from vehicle design to vehicle design, EPA proposes to allow worst-case testing as a means of minimizing the amount of emission testing required to certify a part for a variety of applications. The part manufacturer would select that vehicle application which would be expected to have the largest increase in emission levels due to the installation of the aftermarket part. The part could then be certified for all applications in which this increase in emission level would not have caused the certification vehicles to fail standards.

The third category includes other aftermarket parts without emission-critical parameters which may not cause driveability problems when their emissions performance is deteriorated. Thus, we cannot be sure that vehicle emission compliance in-use would continue for vehicles with these parts installed. These parts are defined in this proposal as "critical emission-related parts." These parts must be first durability tested before their emission compliance can be determined. In general, the part must first be aged to its useful life and then emission tested in the same manner described above for non-critical emission-related parts. This durability aging can be conducted on a vehicle according to the driving cycle typically used for vehicle certification or using an alternative driving cycle which the part manufacturer determines will be at least as representative of in-use operation. The aged part can then be placed on a low mileage test vehicle for the certification compliance test.

A fourth category of emission-related aftermarket parts (both critical and non-critical) may also cause emission deterioration of other, original equipment parts. This is due to the synergistic effects of the aftermarket parts or the operation of the original equipment part. In these cases it is important to not only account for the emission performance deterioration of the aftermarket part, but also any additional emission performance

degradation to the rest of the vehicle's emission-related components. In this limited case, it is necessary that the emission performance of the whole vehicle be characterized with the part installed. The vehicle must be aged for its full useful life with the aftermarket part installed and then emission tested for compliance. EPA proposes that the test vehicle must meet emission standards in its aged condition with the aged aftermarket part installed in order that the aftermarket part qualify for certification. EPA recognizes this aspect of the proposal could result in a substantial cost burden to the aftermarket part manufacturer. However, this full evaluation of the vehicle's useful life emission performance is necessary to assure satisfactory in-use vehicle emission performance. This is the same burden EPA places on vehicle manufacturers when they certify similar original equipment emission-related components. Further, EPA expects that the vast majority of aftermarket parts certified will not require this useful life vehicle emission compliance demonstration.

D. Current EPA regulations require a vehicle manufacturer, in order to avoid warranty repair, to demonstrate that an uncertified part caused an emission failure by showing that the uncertified part is defective or not equivalent to the original equipment part.

EPA proposes to revise the regulations to require instead that the vehicle manufacturer only demonstrate the defect or damage to the vehicle's engine or emission control system was caused by the uncertified part. This eliminates the vehicle manufacturer's burden of absolute proof that the uncertified part is defective or not equivalent to the original equipment part. Instead, the vehicle manufacturer will be required to pinpoint the uncertified part as the cause of failure via a written document to the customer listing a technical rationale supported by any evidence used in the determination.

E. EPA proposes to establish a better parts labeling scheme which will require the part manufacturer to identify its certified parts with durable and unique labels.

F. EPA proposes to reject "short tests" as a basis for parts certification.

### III. Discussion of Proposals

#### A. Reimbursement Plan

Under the existing regulations, a motor vehicle manufacturer must honor a consumer emission performance warranty claim, provided the vehicle has been properly maintained with

original equipment manufacturer (OEM) parts or certified aftermarket parts. However, the motor vehicle manufacturer can require reimbursement from the certified part manufacturer for "reasonable expenses" incurred in the repair of a vehicle if a "valid emission performance warranty claim" arose because of the use of the certified aftermarket part.<sup>8</sup> The existing regulations do not define the two terms "reasonable expense" and "valid emission performance warranty claim", nor do they specify a reimbursement plan for the manufacturers to follow in the event of a dispute between the two parties.

The Motor Vehicle Manufacturers Association (MVMA) and the Automotive Parts Rebuilders Association (APRA) contended in one lawsuit that the two terms, "reasonable expense" and "valid emission performance warranty claim," were too vague to provide meaningful guidance to part manufacturers and vehicle manufacturers, and the Court agreed. The Court required that EPA either apply its expertise in the area and define the terms within the regulations, or provide a forum in which the terms would be clarified through an adversarial process, such as arbitration.<sup>9</sup>

EPA has decided to propose general definitions for the terms "valid emission performance warranty" and "reasonable expenses" to provide meaningful guidance for part and vehicle manufacturers. At the same time, EPA recognizes that any individual case may require further interpretation of these two terms. EPA proposes that, where further disagreement occurs, the two terms be further clarified in a conflict resolution process, specifically, binding arbitration (discussed further below). However, establishing definitions for these two terms should minimize the misunderstanding between involved parties and reduce the number of occasions when binding arbitration will be necessary.

A "valid emission performance warranty claim" on a vehicle would be defined generally as one that meets the requirements outlined in section 207(b)(2) (A)-(C) of the Act. A claim would be considered as valid provided: (1) there is no evidence that the vehicle had not been properly maintained and operated in accordance with manufacturer instructions in a manner linked to the emission failure; (2) the vehicle failed to conform to applicable

emission standards as measured by an EPA-approved type of emissions warranty test during the useful life of a part related to emission control,<sup>10</sup> or exhibited physical failure during its useful life; and (3) in the case of a test failure, the owner is subject to a sanction as a result of the test failure.

The "reasonable expense" incurred due to the repair of a warranty failure caused by a certified aftermarket part would include the charges in any expense categories that would be considered payable by the involved vehicle manufacturer to its authorized dealer under a similar warranty situation where an OEM part was deemed the cause of failure. These expense categories include, but are not limited to, the cost of labor, materials, recordkeeping, and billing. The vehicle manufacturer, who has extensive experience with the evaluation of warranty claims from its dealer network for OEM parts, should make an evaluation of what is deemed reasonable and submit an itemized bill to the part manufacturer. The part manufacturers have the right to dispute any portion of the billing that they deem unreasonable.

While this guidance is still quite general, it will considerably narrow the areas of dispute between vehicle and part manufacturers. Moreover, EPA believes it is necessary to leave some latitude to resolve individual, diverse warranty cases on a case-by-case basis.

The MVMA and APRA had also contended that no dispute resolution mechanism was available for the manufacturers. The court ruled that "if reimbursement is to be a mandatory element of the certification program, then EPA must provide some forum for resolution of reimbursement disputes."<sup>11</sup> EPA is proposing these disputes be settled through independent binding arbitration.

The Agency intends that independent settlement between manufacturers will be the normal mechanism of resolution. However, for more serious disputes, independent binding arbitration would be required because it is a reasonable method for manufacturers to present a case and receive quick, impartial action on a decision. The following paragraphs outline an example of how an arbitration exchange could possibly take place. This is only a suggested venue

<sup>10</sup> Under section 207(b)(2) of the Act, the performance warranty covers the primary emission control devices or systems for the full useful life of the vehicles, but covers other emission-related parts only for two years or 24,000 miles, whichever comes first.

<sup>11</sup> *SEMA v. Ruckelshaus*, 720 F.2d at 139.

<sup>8</sup> 40 CFR 85.2117(b).

<sup>9</sup> *SEMA v. Ruckelshaus*, 720 F.2d at 139-140.

and comments on this example are welcome, as well as comments on how much detail should be incorporated in the final regulations.

As an example of how the arbitration process could proceed, the vehicle manufacturer could initiate a certified aftermarket part warranty claim by sending a letter to the part manufacturer explaining why the certified part caused the failure (or multiple failures in the case of several vehicles equipped with the same part), and a billing for reasonable expenses incurred. The part manufacturer could be required to respond within 30 days by paying the claim or requesting a meeting to resolve any disagreement. A meeting or teleconference could occur within the next 14 days. A requirement could be established that the parties must talk on at least two occasions to attempt resolution before resorting to arbitration.

When arbitration is necessary, EPA proposes that the involved manufacturers attempt to select a mutually agreeable arbitrator to hear the case. If the manufacturers cannot set up an agreeable arbitration process within a reasonable time period (for example 120 days from the date of the vehicle manufacturer's initial reimbursement claim), then EPA will assume that task and select an independent arbitrator. When the arbitrator has been chosen, a convenient time and place for an arbitration hearing could be chosen from submitted preferences of the involved parties.

During the preparation before the hearing, the manufacturers would not correspond with the arbitrator. All evidence, witnesses, and summaries would be prepared for delivery at the hearing. All parties would have a right to representation by counsel; however, they would be required to notify the other side of such representation and file a copy of that notification with the arbitrator a reasonable number of days (perhaps 10 days) before the hearing.

The actual arbitration hearing would be similar to a court trial but much more informal. For example, an arbitrator tends to accept more evidence than would a judge. The burden of proof would be equal and both parties would be allowed to present their whole argument. The general format likely would be an opening statement, a discussion of the remedy sought, introduction of witnesses and documents, and a closing statement.

The arbitrator would then close the hearing (unless the contract states otherwise) and be allowed a specified time period to decide (e.g., 60-90 days). The arbitrator's power would end with

the rendering of the award, unless both parties want to reopen the case and restore the arbitrator's authority.

To avoid time delays and reduce costs, EPA suggests that the part and vehicle manufacturers could use their respective associations (MVMA, APRA, SEMA, etc.) to set up master arbitration contracts. The vehicle and part manufacturers may set up the contract independent of EPA involvement. Each manufacturer could then use the pre-established system with standardized guidelines when an arbitration dispute occurred. However, the establishment of such a contract would not be required.

The association representing the vehicle manufacturers and the association representing the part manufacturers could each be responsible for one half of any set costs or fees for establishing an arbitration contract. As an example, in a brochure printed by an arbitration association,<sup>12</sup> the cost for any individual claim brought to arbitration could be a percentage of the claim (about 3 percent) with a minimum incremental fee for each claim brought to arbitration (around 200 dollars). These arbitration association figures are supplied in the docket only as an example; EPA is not recommending any particular association.

If an independent arbitrator is used, the manufacturers would then be responsible for payment of all arbitration costs for each case. Individual case costs could be divided equally between all involved manufacturers; could be born by the losing party; or could be assigned by the arbitrator. EPA proposes that costs be borne by the losing party, if any. If the judgment is wholly against the vehicle manufacturer, it would need to pay only the arbitrator costs of the decision, since it would have already absorbed the original repair costs. If the judgment is wholly against the aftermarket part manufacturer, it must not only pay all arbitrator costs, but also reimburse the vehicle manufacturer for the original repair costs. If the arbitrator does not rule wholly in favor of either party, the parties could share the cost of arbitration equally or in some manner deemed appropriate by the arbitrator. Other division of cost options are considered in the EPA Issue Paper in the public docket. Comments or suggestions on the division of costs may be submitted to the docket.

<sup>12</sup> Information in this section referenced from *A Commercial Guide for Business People*, The American Arbitration Association. This document is in the docket.

If the part manufacturer does not pay for a lost arbitration settlement (including both original repair costs and its share of arbitrator costs), EPA proposes to decertify that part on all vehicle applications for which it is certified, subject to the outcome of any judicial review of the arbitrator's decision. The aftermarket part manufacturer could then be liable for all results of decertification specified in 40 CFR 85.2121. This includes mandatory notification by the manufacturer to all distributors of the part that it is no longer certified, and an offer to replace decertified parts in the customer's inventory with certified replacement parts. If unable to do this, the part manufacturer may be required, at the customer's request, to repurchase such inventory at a reasonable price. This could reflect negatively on the part manufacturer's marketing image and cost it in lost sales and settlements with distributors. There is a strong incentive, therefore, to pay for lost arbitration settlements subject to potential judicial review, to avoid the negative effect of decertification.

By requiring a binding arbitration mechanism EPA would provide a structured forum for the initial resolution of disputes. This forum would provide a reasoned decision both parties are bound to respect. However, this does not restrict the right of either party to appeal any such arbitration decision to an appropriate court. In the case of an appeal, it is anticipated that the court will review the arbitrator's decision (similar to an appellate review) as opposed to rehearing the entire case.

Two other forms of arbitration were considered and rejected for this proposal. They were independent non-binding arbitration and binding arbitration using EPA personnel. Those options are described further in the EPA Issue Paper in the docket.

Independent non-binding arbitration is less expensive than binding arbitration; however, it would not be as effective. There is little deterrence to the losing party to ignore the arbitrator's decision. Thus, this method increases the likelihood of court involvement with accompanying higher costs and delay of the dispute resolution. This option is not recommended.

Using binding arbitration by EPA personnel to resolve disputes is not necessarily within the Agency's mandate. Further, the technical knowledge required to make an appropriate decision is not unique to EPA personnel. Many public sources of this knowledge are available. The independent arbitrator can readily gain

this technical knowledge if he or she does not already have it. Finally, EPA does not have resources to carry out an arbitration function. Therefore, this option is not being proposed.

EPA has also considered two other options besides arbitration for resolving warranty reimbursement disputes. They are independent settlement and settlement through litigation.

Independent, informal, settlement between the part and vehicle manufacturers without involving EPA, an arbitration, or the court would be most advantageous, since this option is low cost and could potentially be concluded quickly. Thus, independent settlement is preferred and EPA expects this will be the normal mechanism followed. However, in some circumstances the incentive for the parties to cooperate may be insufficient or the perceived basis of the case may be differently viewed by the parties so that independent settlement will not result. Moreover, independent settlement alone probably would not satisfy the court order that EPA provide a forum for dispute resolution. This option is best incorporated with the binding arbitration option and is not recommended alone.

Settlement through litigation has the advantages of bringing the court's insight and expertise into the issue, eliminates EPA's role as referee, and the cost of litigation encourages the manufacturers to come to a settlement in the pre-trial phase. However, the judicial process is slower than arbitration and the cost of litigation may favor the party holding the better financial position. Therefore, this process as the only option to informal, cooperative settlement is not recommended. Rather, the interim step of going through binding arbitration before any court action is appropriate.

Comments are also invited on the options rejected as well as the proposals for warranty repair reimbursement. We especially seek comments on the appropriate detailed steps to be included in the regulations for binding arbitration.

#### B. Certification of Specialty Parts

The current regulations only allow certification of those parts, listed in the regulations, with emission critical parameters. These listed parts can be categorized as replacement parts, meaning parts that functionally duplicate the original equipment found on a vehicle leaving the production line. The remaining automotive parts which might be expected to affect emissions (including parts sometimes referred to as specialty and add-on parts) are not

covered by the existing aftermarket part certification regulations. Specialty parts consist of both modified replacement parts which alter or go beyond the original equipment included in a new vehicle and add-on parts that are not found on a vehicle when it leaves the production line.

The Specialty Equipment Market Association (SEMA) challenged the exclusion of specialty parts from the original certification program.<sup>13</sup> Although the court upheld the certification rules in general, it found that EPA's reasons for exclusion of specialty parts were insufficient and that EPA should reconsider this issue.<sup>14</sup> The court concluded that "unless the Agency offers persuasive reasons for its decision, specialty part manufacturers, at a minimum, should be allowed to participate in the certification program through the FTP method of certification."<sup>15</sup>

Although the current regulations provide for aftermarket certification via FTP<sup>16</sup> testing, this provision is available as an alternative certification procedure only for the thirteen replacement parts for which emission-critical parameters exist. Thus, the scope and the detail of the current FTP testing alternative are quite limited and are not sufficient for other aftermarket parts, including specialty parts. In this notice, EPA is proposing amendments to the FTP-based aftermarket part certification rules which will cover the certification of these other aftermarket replacement and specialty parts. Therefore, in conjunction with the amendments outlined below, EPA proposes to include specialty parts in its revised aftermarket part certification program.<sup>17</sup>

<sup>13</sup> *SEMA v. Ruckelshaus*, 720 F.2d at 135.

<sup>14</sup> *Id.* at 135-137.

<sup>15</sup> *Id.* at 137.

<sup>16</sup> The Federal Test Procedure (or "FTP") is a procedure for testing vehicles to determine if they meet federal emissions standards. It is more fully described in 40 CFR Part 86.

<sup>17</sup> An added benefit to certifying specialty parts is that the manufacturers and purchasers of certified specialty parts would be protected from potential liability for "tampering" violations under section 203(a) of the Clean Air Act in accordance with EPA's existing enforcement policy. Section 203(a) generally prohibits any person from causing, or any person in the automotive industry from, tampering with any emission control system device on a vehicle after its sale. Under EPA's enforcement policy, if a Federal environmental control agency expressly represents (e.g., by certification of a part) that reasonable basis exists that a given act will not adversely affect emissions performance, EPA will not regard the act as a violation of section 203(a).

#### Specialty Part Reimbursement

A supplemental option is being proposed at this time that would allow the vehicle manufacturer to deny warranty to any vehicle for which a certified specialty part was shown to have caused the emissions failure. Specialty parts are add-on parts that do not functionally duplicate any original equipment part and are therefore not necessary for the proper operation of the vehicle. Therefore, specialty parts are not installed for the express purpose of maintaining or repairing the vehicle, but add some additional function, or alter the original configuration of the vehicle in some way. In contrast, replacement parts functionally duplicate existing original equipment parts and can therefore be used for the maintenance and repair of the vehicle. Warranty coverage and reimbursement for replacement parts would be dealt with as described in the preceding section. However, for specialty parts, the owner would go directly to the part manufacturer for reimbursement for any permissible claim related to the specialty part. This procedure would be consistent with section 207(b) which states that no vehicle's warranty shall be made invalid "... on the basis of any part used in the maintenance or repair of a vehicle or engine if such part was certified as provided under subsection (a) (2)" (emphasis added).

Congress wanted to protect consumers who, in good faith, used non-OEM, but certified parts to properly maintain or repair their vehicle "... from being caught in the middle of disputes between vehicle and part manufacturers and to make it less risky for them to buy less expensive, non-original equipment parts."<sup>18</sup> For replacement parts, therefore, the vehicle manufacturer must honor the owner's warranty and seek reimbursement directly from the part manufacturer.

However, specialty parts are not used, in the strict sense, in the maintenance and repair of vehicles. In fact they typically alter the original configuration or calibration. A vehicle owner who has specialty parts installed on his or her vehicle is knowingly altering the original configuration and is, therefore, no longer using parts merely to maintain or repair the vehicle. Congress did not necessarily intend to preserve the original vehicle warranty of a consumer who knowingly uses a certified specialty part to alter the original manufacturer's emissions configuration.

<sup>18</sup> *APRA v. EPA*, 720 F.2d at 159.

Under the option being proposed, the vehicle manufacturer who has demonstrated that a certified specialty part is the cause of the failure of a vehicle to pass an emissions test may deny warranty coverage to that vehicle. Adequate demonstration would involve all of the assertions and objective evidence required for denial of an uncertified part warranty claim. (This demonstration is explained at length in Section C, below.) The owner of the vehicle would have to seek reimbursement directly from the specialty part manufacturer that certified the part.

This approach has many positive aspects. It upholds the literal intent of the Act by ensuring that the vehicle manufacturer warranty gives coverage for any certified part. At the same time it does not make the vehicle manufacturer liable for emission failures caused by the use of certified specialty parts which are not used solely for maintenance or repair, and which alter the original configuration or performance of the vehicle's emission-related systems. A different warranty would be given by the specialty part manufacturer, however, who has given reasonable assurance (through the certification process described below) that the part will not cause the vehicle to fail emission standards for the warranted useful life of the vehicle. Since the owners who purchase certified specialty parts are not just attempting to maintain or repair the emissions system of their vehicles, but are actively attempting to alter the original system, they are more likely to purchase the components regardless of the method they will have to use to seek warranty reimbursement than owners seeking merely to maintain or repair their vehicles.

Advantages and disadvantages of this option are discussed in more detail in the Issue Paper in the docket. Comments are invited on the feasibility of this option and on this proposed interpretation of the language in Section 207(b) of the Act and can be submitted to the same docket.

#### C. Proposed Rejection of Existing Short Tests and Other Non-FTP Tests.

In the court proceedings, SEMA challenged EPA's rejection of the use of short tests as a basis for certification.<sup>19</sup> The court found that EPA's explanation for the rejection of certification based on short tests was insufficient. The court acknowledged that there may be valid policy reasons for rejection of short

tests, although they had not been articulated by EPA in its original rulemaking.<sup>20</sup>

As discussed more fully below, after consideration, EPA still cannot justify part certification by short tests. Vehicle manufacturers are not held accountable only to short test standards. They are required in 40 CFR Part 86 to "certify" to the more stringent FTP procedures before they can begin selling vehicles. This is part of a comprehensive program envisioned by Congress to improve and protect air quality. EPA views the Inspection and Maintenance (I/M) program,<sup>21</sup> which relies on the short test, and the vehicle certification process, which relies on the FTP, as two necessary and related stages in the overall program envisioned by Congress. EPA has determined that there is a significant potential for increased emissions and a risk of increased noncompliance with vehicle emission standards in-use if aftermarket part certification using currently available short tests is allowed.<sup>22</sup>

Finally, although alternative short tests are being considered by EPA, EPA does not believe that alternative short tests have been developed which would eliminate these emission concerns.

Thus, the use of short tests for aftermarket part certification cannot be justified on an air quality or vehicle emission compliance basis. Rather the only possible justification would be the potential for less cost to the part manufacturer for certification. This might be significant given that at least some potential certifiers might be very small and so financially strapped that certification costs might be particularly burdensome. However, EPA believes that the difference in cost burden between the FTP and some acceptable short test would likely not be significant.

The principal issues considered by EPA in reaching these conclusions are: Congress' intent to lay the groundwork for a comprehensive motor vehicle emission control program when enacting sections 202, 206 and 207; the existing short tests capabilities; use of alternate short tests for certification; and, cost considerations. These four issues will be

discussed in detail in the following sections.

#### 1. Congress' Intent—A Comprehensive Motor Vehicle Emission Control Program

The court suggested that, if the vehicle manufacturer is liable for a performance warranty claim on the basis of short test results, part manufacturers should not be required to certify by the more stringent FTP, unless EPA has valid policy reasons to reject short tests for parts certification.<sup>23</sup> However, vehicle manufacturers are not held accountable *only* to compliance with the short test. In the statutory scheme under Title II, Congress envisioned for vehicles a comprehensive program to control air pollution. The first stage was intended to be the most rigorous, and to screen out poor vehicle designs prior to their production. To that end, vehicle manufacturers are required to "certify" under Section 206 by whatever testing EPA determines is necessary to demonstrate that vehicles and engines are capable of complying with all applicable emission standards throughout their useful lives. In order to certify, and receive EPA's approval to sell vehicles, the vehicle manufacturer must first demonstrate that the vehicle is capable of emission compliance as measured by the stringent FTP requirements. However, it is apparent that Congress determined that certification testing on test vehicles alone was not sufficient to ensure compliance by all vehicles in actual use and, therefore, laid the groundwork for subsequent compliance programs. The selective enforcement audit (SEA) program established under section 206(c) determines compliance of samples of vehicles as they come off the assembly line. In addition, EPA's in-use compliance (recall) program conducted in accordance with section 207(c), determines emission performance of samples of properly maintained and used vehicles during their useful lives. Both of these programs monitor emissions compliance using the full FTP cycle. Thus, Congress' decision to allow alternative testing procedures (i.e., short tests) under section 207(b) to establish warranty liability for vehicle manufacturers must be viewed in the context of the entire compliance program (certification, SEA, and recall) which assures that vehicles have been designed and built to meet the full FTP test standards.

Specifically, the short test was established in response to section 207(b)

<sup>19</sup> *Id.* at 135.

<sup>20</sup> *Id.* at 138.

<sup>21</sup> Inspection and Maintenance programs are mandatory emission short tests set up at a local level to monitor in-use vehicle emission performance in a particular area.

<sup>22</sup> The above programs are consistent with a longstanding EPA policy that even for compliance with anti-tampering regulations, parts manufacturers must have proof of demonstration of compliance with FTP emission requirements available on request. Mobile Source Enforcement Memorandum 1-A, June 25, 1974, "Interim Tampering Enforcement Policy", Office of Enforcement and General Counsel.

<sup>23</sup> *SEMA v. Ruckelshaus*, *supra*, 720 F.2d at 136.

which authorized EPA to establish additional testing procedures for vehicles in-use. It was developed to correlate reasonably with, and to supplement, the initial certification testing and to trigger manufacturers' performance warranty liability. When vehicles fail that additional testing, they must be repaired in order to achieve the emission performance intended by the certification process. The court upheld the appropriateness of the short test for that purpose. It is, therefore, reasonable to follow the same two-stage program for aftermarket parts in order to protect air quality, and to be consistent with the existing program for vehicles. Indeed, it is EPA's judgment that the air quality benefits intended by section 202 of the Act can only be attained through a comprehensive program of both FTP certification and assembly-line and in-use testing programs.

One of the primary purposes of the parts certification program authorized by section 207(a)(2) (in addition to protecting consumer's warranty rights and encouraging competition) is the attainment and maintenance of such motor vehicle emission reductions. It is very important, therefore, that the aftermarket part manufacturer who wishes to "certify" parts be held to requirements that will give reasonable assurance that the projected emission levels of vehicle certification will be maintained. In EPA's judgment, such reasonable assurance cannot be given by short tests alone.

Aftermarket part manufacturers wishing to certify their parts are in effect asking to take part in a program that has been established and implemented using the FTP test at the initial stage. Moreover, under section 207(a)(2), the only way a part manufacturer can certify the part is by demonstrating that the part will not cause any application vehicle to fail federal emission standards for the applicable useful life. This ensures the minimum level of noncompliance in-use that is necessary to maintain the emission control required by sections 202 and 206 of the Act.

However, as discussed more fully in the next section, compliance with the short test alone does not provide this assurance since the short test passes some vehicles that would fail the FTP. The short test is designed merely to screen for problems on vehicles with systems that have been designed and demonstrated to pass the full FTP test. The short test is effective only if there is assurance that vehicles when properly maintained are able to comply with the full FTP requirements. Compliance with

the performance warranty short test does not exempt the vehicle manufacturer from initial compliance with the certification standards using the FTP. This is consistent with the comprehensive motor vehicle program envisioned by Congress. Thus, to allow the part manufacturer to certify to short test standards only would undermine the existing certification requirements and would jeopardize attainment of the desired emission levels.

Consistent with the requirements placed on vehicle manufacturers, therefore, it is being proposed that aftermarket parts manufacturers be allowed to certify by use of FTP testing and not by use of the existing short test. However, during actual in-use operation, the certified parts will be subject to the same performance standards, measured by the short test, to which vehicle manufacturers are now subject. Thus, a parts manufacturer would be liable for a part that caused or contributed to a vehicle failing a short test (or protected from liability if the vehicle passed the short test) in the same way that a vehicle manufacturer would be.

## 2. Existing Short Tests

Emission tests must be administered in a reasonably short time frame for I/M program purposes in order to be practicably implemented. Thus, in developing the existing short tests, compromises were made which limit their ability to show that a particular vehicle or engine design will pass emission standards. For example, existing short tests are being used to monitor only exhaust HC and CO performance; they do not test for NOx or particulate exhaust emissions or evaporative HC emissions. In addition, in order to be used for I/M inspections (where the owner drives his vehicle into the inspection station for immediate test), the test by nature must be a hot cycle test. Therefore, it does not depict the high emission levels experienced during the cold start conditions of actual in-use operation as does the FTP. In addition, the typical short test is performed at idle in neutral or at some steady state load condition. In real life operation, vehicles are more often moving in transient load conditions (simulated in the FTP) which greatly affect the vehicle's actual emissions but are not evaluated by the typical short test. Moreover, to establish "reasonable correlation" with the FTP standards within these constraints, it was necessary to set up the I/M standards to limit errors of commission (short test failures of vehicles that would in fact pass the FTP standards). As a result, some vehicles that pass the short test

may fail the FTP (errors of omission). Indeed, the I/M tests typically fail only those vehicles which exceed emission standards by a wide margin and thus have a disproportionately high adverse impact on air quality.<sup>24</sup>

Certification of vehicles or parts has never been based on the "reasonable correlation" established by existing short tests. Rather, certification is based on the expectation of compliance in-use with FTP-based emission standards for properly maintained and used vehicles. In order to maintain the expected air quality benefits of the certification program, EPA is attempting to establish test procedures for parts that will assure that typical vehicles will continue to comply with the federal emission standards after the aftermarket parts are installed. To that end, EPA must strive to minimize errors of omission (short test passing of vehicles that would in actuality fail the FTP test) during the part certification process, which involves ensuring that none of the controlled emission constituents fails the applicable emission standards.

Simply tightening the short test standards could improve the ability of the short test to identify vehicles which would also fail on the FTP test. However, this is not a satisfactory remedy to the problems raised by using existing short tests. First, very stringent short test standards could erroneously "fail" many vehicle designs which in actuality would pass the FTP standards (increase errors of commission).<sup>25</sup> This would clearly not benefit aftermarket part manufacturers in their attempt to certify. Secondly, more stringent short test standards would be of no use in evaluating parts which affect operating conditions not simulated on the existing short test (for example, cold start or power enrichment of the fuel system are not evaluated on a hot start, steady-state test). Thus, designs which pass even extremely stringent short test standards could fail the FTP-based vehicle certification standards.

In conclusion, if existing short tests were used as a basis for certifying parts, EPA would find itself certifying parts that could result in significant failures

<sup>24</sup> *The Emission Effects of Misfueling Five 1981-82 Model Year Automobiles with Ten continuous Tankfuls of Leaded Gasoline*, R. Bruce Michael, Emission Control Technology Division, Environmental Protection Agency, August 1983, p. 11. Within this report, there are examples of vehicles that pass the short test, but significantly fail the FTP standards. A copy of this report is in the public docket.

<sup>25</sup> Even with the current short test standards, a statistically small percentage of vehicles may fail these standards that could pass if tested according to the FTP and its standards.

by vehicles to meet emission standards. This would be inconsistent with the directive of section 207(b)(2) and could have a potentially significant detrimental effect on air quality. Therefore, use of existing short tests for certification is deemed unacceptable at this time.

### 3. Alternative Short Tests Considered

EPA also considered the option of using new short tests for certification of aftermarket parts and has tentatively rejected the alternatives considered. To develop a new short test that has good correlation to the FTP cycle would require development of a test that evaluates cold start emissions, incorporates a transient cycle, uses a chassis dynamometer, and uses a constant volume sampler (CVS) or other system to measure mass emissions. This would take considerable time and effort, potentially making this option unavailable for at least several more years. The development costs would be high and the resulting test probably would be more complex and costly to conduct than the existing short tests. Consequently, the potential cost savings to the parts manufacturer (the primary reason for adopting such an option) could be considerably reduced.

EPA has considered one particular alternative short test option in great detail. This option would use exhaust concentration measurement equipment to measure, on a continuous basis, the concentration of HC, CO, and NO<sub>x</sub> in the exhaust stream at the tailpipe. This is in contrast to the FTP which uses a CVS to sample the exhaust stream in proportion to the total exhaust flow and thus allows measurement of the mass (rather than concentration) of exhaust pollutants emitted over the driving cycle. Equipment which will measure and record exhaust concentration levels is considerably less expensive than CVS equipment. Due to this lower equipment cost, a test using concentration measurement equipment should also cost less than a CVS test. This test cost savings would benefit the aftermarket part manufacturers.

However, no concentration-based test procedure has been developed yet which will result in equivalent stringency to the FTP test. The major problem with concentration measurements is that they do not account for exhaust flow rates. A vehicle with relatively low concentrations of pollutants in the exhaust stream, but high exhaust flow rates, could have an unacceptably high total mass of pollutant emissions per mile driven. On the other hand, a vehicle with higher concentrations but a lower

exhaust flow rate that more than compensates for the high concentrations would have lower total mass of pollutants per mile driven. Mass emissions testing is a more appropriate emission measurement than exhaust pipe concentrations when determining air quality impact. Since EPA is not aware of a reasonable method for accurately and inexpensively converting vehicle concentration measurements into equivalent mass emissions, EPA is not prepared to propose such a test procedure as an alternative to the FTP.

An alternative concentration-based scheme (considered by EPA) would not try to rely on prediction of mass emissions. Rather, the concentration levels of a properly performing representative vehicle in its OEM configuration would be compared to the concentration levels of the vehicle in its aftermarket part configuration. The aftermarket part would be presumed to have no significant impact on mass emissions if it did not result in an increase in average emission concentration over the entire test cycle. However, as noted above, the influence of exhaust flow rates could cause two vehicles with identical average concentrations to have significantly different mass emission rates. Because of this concern, EPA is not proposing this particular methodology. However, if based upon comments and information submitted to the docket, EPA is able to conclude that this problem with the use of an average concentration comparison can be reasonably overcome, EPA will reconsider this option for future proposal.

EPA also considered a short test alternative which would use CVS test equipment but would eliminate the cold start requirement of the FTP. While equipment costs would not be reduced, test cost could be reduced since the minimum ten hour vehicle soak portion of the FTP test sequence would be omitted. This might reduce the test cost by perhaps \$100 to \$200 per test and allow the vehicle to be immediately tested after vehicle delivery and pre-test preparation rather than waiting typically until the next day so as to perform a cold start test. However, such a test would be appropriate only for aftermarket parts which did not affect vehicle cold start emission performance. EPA does not know of any objective criteria which could be used to accurately predict whether a part affects FTP cold start emission performance except to run such a cold start test. Without such criteria to screen parts that might be eligible for proper emission performance evaluation

without a cold start, EPA cannot propose this alternative short test procedure at this time.

### 4. Cost Considerations

Part manufacturers have indicated that the cost of the FTP cycle may make it prohibitive for use in certification. Present cost of an exhaust emission FTP test is approximately \$600-900 per test.<sup>26</sup> With two tests per part (one test for the original vehicle configuration and one test with the part installed), the maximum emission tests cost to demonstrate compliance for certification is about \$1800 (exclusive of any development or durability test cost that would be incurred in any event). This should not be considered an unreasonable cost for certification, especially when considering the potential adverse impact improperly designed or manufactured parts could have on vehicle emissions. Further, as discussed above, potentially acceptable alternative short tests considered by EPA would be more expensive than the current short test, perhaps as much as \$250 or \$650 per test.<sup>27</sup> In any event, EPA believes that the current certification program minimizes testing cost. Some parts can be certified using emission-critical parameters and therefore be exempt from emissions testing and incur no emission test cost burden.

Other parts can be certified by testing a vehicle in its original equipment configuration and retesting with the aftermarket part installed. Coupled with worst case testing, relatively few emission tests are required to certify a part for many vehicle installation applications. Thus, the cost difference between the FTP and an acceptable short test should not make a significant difference in a manufacturer's financial ability to certify.

EPA cannot propose the use of current short tests, or those alternative short tests considered by EPA, due to their unacceptable correlation to emission standards for certification purposes. EPA also finds no substantial economic benefit to the use of a short test since the present FTP test cycle gives the required correlation with emission standards for certification purposes, at a cost which is sufficiently low and competitive with any acceptable alternative already considered by EPA. However, if comments recommend improved short test designs which

<sup>26</sup> "Cost of Alternate Short Tests", EPA Memo from M. Sabourin to R. Larson, August 7, 1986, in the public docket.

<sup>27</sup> Ibid.

demonstrate significant cost savings and no significant risk of degraded emission performance, and which overcome the problems described above, EPA is willing to consider incorporating those short test alternatives in the final rule or proposing such alternatives at a future time. In the interim, EPA proposes to rely on FTP-based decisions for aftermarket part certification.

#### D. Proposed Certification Options and Durability Requirements

EPA has developed an aftermarket part certification proposal which greatly expands the number and types of parts which might apply for certification. This expanded program is designed to assure that only parts with proven emission performance qualify for certification. At the same time, great care has been taken to minimize compliance demonstration costs.

To certify aftermarket parts, the part manufacturer must prove its part will operate properly (i.e., not cause emission failure or unacceptable performance, or safety problems)<sup>28</sup> for the warranted useful life of the vehicle in which the part is installed. This approach is consistent with the current regulations.

#### 1. Certification Using Emission-Critical Parameters

The current regulations provide two certification mechanisms. First, the manufacturer can use FTP test results to demonstrate that the installation of a part will not cause the vehicle to fail applicable emission standards. Alternatively the manufacturer can demonstrate performance equivalence of emission-critical parameters defined in the regulations. In either case, the part must be durability evaluated to assure that use of the parts will not cause vehicle emissions noncompliance during the full useful life of the vehicle.

At present, thirteen categories of replacement parts that are functionally equivalent to their corresponding OEM parts are allowed to certify by comparison of emission-critical parameters through the Voluntary Aftermarket Part Self-Certification Regulations.<sup>29</sup> Emission-critical parameters are those physical and functional characteristics of a part that control all significant effects of that part on the emissions output of the vehicle. The emission-critical parameters were

developed by examining the OEM parts of certified vehicles for their emission critical components and designs. Under this procedure, it is presumed that if functional and design equivalency exists between an aftermarket part and the emission critical aspects of an OEM part, use of the aftermarket part will result in similar vehicle emission performance. The comparable OEM part has been fully certified through a rigorous test program that requires the part to be durable for its warranted useful life and allows the vehicle to pass FTP testing throughout its useful life. In the regulations, the durability requirements for any particular aftermarket replacement part are listed in the appendix to Part 85, Subpart V, with that part's emission-critical parameters. These procedures were developed in a joint effort between EPA and the automotive aftermarket manufacturing industry.

EPA is proposing to expand the applicability of the aftermarket part regulations to also include specialty parts and replacement parts which do not have defined emission-critical parameters. It would not be possible to certify specialty parts at this time using the emission-critical parameter approach. There is no comparable OEM or other certified part from which the necessary design parameters can be modeled to assure emission compliance and durability. Further, it would be unrealistic to begin any intensive effort to establish emission parameters for these parts in this rulemaking. This would first require that the FTP-basis for certification be established for each part and then its emission-critical parameters and their performance criteria determined. Therefore, for the interim, certification by FTP testing is the proposed method of certification for specialty parts and other aftermarket parts which do not have defined emission-critical parameters. At a future date, as these parts are certified and emission-critical parameters are developed, it is likely that a new rulemaking will be opened to allow emission-critical parameter certification for these parts. An ever-increasing percentage of aftermarket parts can then be certified with proven durability and emission compliance performance based on the published emission-critical parameters.

For parts with emission-critical parameters and durability procedures defined in the regulations, the manufacturer is currently expected to routinely conform to these voluntary procedures. EPA proposes no change to these prescribed test procedures.

However, we are concerned with the current provision of § 85.2114(d)(2) allowing the manufacturer to determine and use test procedures other than those described in the regulations. Unless the manufacturer took great care to assure that such other test procedures were at least as stringent as the prescribed procedures, these other test procedures could result in erosion in the stringency of the regulations. The prescribed test procedures were developed in a cooperative effort between the industry and EPA, are technically appropriate and reasonably efficient. They were developed and placed in the regulations to save the manufacturer testing cost compared to the FTP-based alternative demonstration. There is little or no need for a manufacturer to use alternative test procedures for parts with defined emission-critical parameters.

Due to the concern about possible erosion in stringency, EPA proposes to amend the regulations to require EPA approval of alternative test and durability evaluation procedures for parts with defined emission-critical parameters and specific evaluation procedures included within the regulations. EPA will approve such an alternative if the manufacturer can demonstrate that the alternative procedure results in an improved technical evaluation of the part's useful life performance or results in a significant cost savings to the manufacturer compared to the specifically prescribed procedures with no loss in technical validity.

#### 2. Certification on the Basis of Emission Test Results

*a. Overview.*—The current regulations are only applicable to the thirteen parts with emission-critical parameters defined in the regulations. EPA is proposing to expand the applicability to include many other parts. These parts will not have emission-critical parameters defined in the regulations. Therefore, they must demonstrate certification by FTP testing. Further, durability evaluation procedures must also be defined. EPA proposes to adopt durability demonstration requirements commensurate with the expected likely impact on emission performance. Since durability demonstration can be expensive, we are proposing to have stringent requirements only for those parts which have a high potential for causing a vehicle to fail emission standards during its useful life. Other parts would have less stringent and less costly durability demonstration. Those parts least likely to result in in-use vehicle emissions noncompliance would

<sup>28</sup> The CAA, section 202(a)(4), states EPA's responsibility for not allowing use of devices or emission designs where the "... device, system, or element of design will cause or contribute to an unreasonable risk to public health, or safety in its operation or function."

<sup>29</sup> 45 FR 78448, November 25, 1980

be exempt from any durability demonstration.

The basic scheme requires the manufacturer to test a vehicle in its original equipment configuration and to repeat the test with the aftermarket part installed. The emissions levels are compared to the vehicle certification results obtained for the vehicle in its original equipment configurations. Any increase in emissions due to aftermarket part installation should not be great enough to have caused the vehicle to have failed emission standards when the vehicle was certified.

Certain parts cause driveability problems when their operation significantly deteriorates. These parts are expected to be replaced or repaired in-use to correct the driveability problem. For these parts, no durability evaluation is proposed to be required as long as the part manufacturer can demonstrate that the part will not increase the deterioration of the vehicle's other emission-related components. EPA proposes that the part manufacturer test the part in those applications expected to have the highest emission increase. Compliance will be demonstrated if this maximum emission increase is not greater than the difference between the original vehicle certification results and the standard. These results and standards are published annually by the EPA.

Other parts, while not increasing the deterioration of other emission-related components, will not cause such driveability problems and therefore their automatic replacement in-use is unlikely. These parts must be durability evaluated for their full warranted lives before being emission tested.

The final subset of the aftermarket parts may cause the vehicle's other emission-related components to excessively deteriorate. For this final subset of parts, EPA proposes durability evaluation for the full useful life of the vehicle. Compliance would be demonstrated via emission testing of the aged vehicle with the aged part installed.

b. *Non-critical emission-related parts which do not increase deterioration of other emission-related components.* EPA proposes that for specialty parts and replacement parts which do not have emission-critical parameters defined in the regulations, the manufacturer should first determine whether the part is a non-critical emission-related (non-CER) part.

Non-CER parts are emission-related parts which, when significantly deteriorated or failed create an emissions compliance concern, and which will also have an adverse impact

on driveability, performance, or fuel economy significant enough to be easily detectable. Due to the decrease in performance, the driver would likely seek repair. Thus, the deteriorated or failed part would be generally repaired or replaced. Since in-use repairs and replacement would be generally done, the part does not have to be independently durability tested in order to demonstrate compliance.

There are two categories on non-CER parts: those that may cause greater deterioration in the emission performance of the vehicle's other emission-related parts compared to the OEM configuration (even if the aftermarket part is functioning properly as designed) and those that do not cause any such greater deterioration. This section deals with this latter category of non-CER parts. EPA proposes that for these non-CER parts, durability aging not be required.

EPA proposes that the aftermarket part manufacturer determine whether its parts might lead to additional deterioration of the vehicle's other emission-related components. The emission-related components include not only those components installed for the specific purpose of controlling emissions (such as exhaust gas recirculation valves) but also those other components, systems, or elements of design which must function appropriately to assure continued vehicle emission compliance (such as the fuel metering system).

The manufacturer must document the technical rationale it used to determine that the part will not cause accelerated deterioration to other emission-related components of the vehicle. This technical rationale should show that the candidate part has no significant physical or operational effect on the other emission-related systems. For example, the vehicle manufacturer might use OMS Advisory Circular No. 17F in its showing that the catalytic converter system was not adversely affected. The candidate part's effect on each major system must be addressed separately in the technical rationale. These major systems include but are not necessarily limited to the fuel system, the air injection system, the computer control system (including the oxygen sensor), the exhaust gas recirculation system, the evaporative emissions system, and the catalytic converter system.

Certification compliance of such a part can be determined by testing a vehicle application in its OEM configuration and in its aftermarket part configuration. Certification would be allowed if any increase in emissions resulting from the aftermarket part was

less than or equal to the allowable margin that the vehicle manufacturer had when the OEM configuration was certified (that is, in the case of light-duty vehicles, the difference between the 50,000 mile certification emission levels and the standards). If the difference between OEM and aftermarket configuration test results is not greater than this allowable margin, the part will have demonstrated conformance to the basic constraint of the aftermarket part certification program: installation of the part would not be expected to cause vehicle emission noncompliance.

To minimize test costs, EPA recommends that the aftermarket part manufacturer demonstrate compliance via a worst case analysis. The worst case emissions compliance decision would be determined by selecting as a test vehicle that configuration from among the various applications which would be expected to have the greatest increase in emissions as a result of the aftermarket part's installation. Using this worst case change in emission, the worst case compliance decision would be determined by selecting the certification test vehicle from the various applications which has 50,000-mile emission certification levels closest to the standards. The combination of greatest change in emission and smallest vehicle compliance margin allows the certification of the other applications considered in the analysis but not actually emission tested.

It should be noted that the above described scheme does not require that the specific test vehicle actually meet emission standards when used by an aftermarket part manufacturer. Requiring the aftermarket part manufacturer to procure a complying vehicle could be more difficult and add a substantial cost requirement, especially when certifying a part for installation on older model year vehicles. This additional cost is unnecessary since the above scheme provides for a certification stringency analogous to that experienced by the OEM.

As preliminary guidance, a list of parts that should be considered as CER parts is included here to aid the part manufacturer by pointing to particular components that EPA considers have little chance of being identified as non-CER parts. For parts not appearing on this list, manufacturers will be required to make an appropriate technical decision even when further EPA guidance is not available. EPA requests suggestions and technical rationale for adding components to this list. Based on comments received to the docket this list may be expanded. The following

components are currently defined in 40 CFR 86.088-25 as critical emission-related components and therefore are not eligible for the non-CER durability exemption:

1. Catalytic converter.
2. Air injection system components.
3. Electronic engine control unit and its associated sensors (including oxygen sensor if installed) and actuators.
4. Exhaust gas recirculation system (including all related filters and control valves).
5. Positive crankcase ventilation valve.
6. Evaporative emission system (excluding canister air filter).
7. Particulate trap or trap-oxidizer system.

c. Critical emission-related parts which do not increase deterioration of other emission-related components. Not all emission-related parts cause unacceptable driveability problems when they deteriorate or fail. These other emission-related parts are called critical emission-related (CER) parts. CER parts were defined in 50 FR 10649 (March 15, 1985) as, ". . . those components which are designed primarily for emission control, or whose failure may result in no significant impairment (or perhaps even an improvement) in performance, driveability, and/or fuel economy as determined by the Administrator." Therefore, the consumer would have no way of knowing that emission failure had occurred. Without this knowledge of failure, it is likely the owner would continue to drive the vehicle with a failed part which could cause vehicle emission noncompliance. Therefore, it is necessary in the certification program to evaluate the impact of the part on vehicle emission performance over the full useful life of the part.

As was the case for non-CER parts, there are two types of CER parts—those that may cause greater deterioration in the emission performance of the vehicle's other emission-related parts compared to the OEM configuration (even if the aftermarket part is functioning properly as designed) and those that do not cause any such greater deterioration. This section of the proposal deals with this latter category of CER parts. The manufacturer should determine if its CER part affects deterioration of other emission-related components in the same manner as previously described for non-CER parts.

Since a part can be installed on a vehicle at very low mileage, it is necessary to evaluate the part for the full useful life of the vehicle or such lesser amount as the vehicle manufacturer recommends for OEM part replacement. This period would then be the warranted useful life of the

aftermarket part (see part III.D.3 of this notice).

EPA proposes that for parts potentially affecting exhaust emissions, durability aging should be conducted by installing the part on an appropriate vehicle and driving the vehicle for the part's useful life over the durability cycle specified in 40 CFR Part 86, Appendix IV. The manufacturer may use an alternative durability cycle if it determines that the alternative cycle is at least as representative of typical in-use operation as the cycle described in this Appendix IV. Since the part may deteriorate differently depending on the vehicle application in which it is installed, EPA recommends that the manufacturer durability test the part in its "worst case" application. This worst case application is that application which is likely to result in the greatest deterioration in the part's emission performance compared to other applications.

Since these CER parts have been documented to not cause accelerated deterioration of other emission-related components, it is not necessary that the vehicle used for durability testing also be used for demonstrating emission compliance. Alternatively, the aftermarket part manufacturer may choose to demonstrate emission compliance of the aged part on another test vehicle. Again, however, useful life compliance of the test vehicle with the aftermarket part installed must be determined. The useful life emissions of the vehicle with the aged part installed should not exceed emissions standards for the part to demonstrate compliance.

So as not to require the test vehicles to be at or beyond their useful lives, EPA is proposing to allow the aftermarket part manufacturer to use a test vehicle before the end of its useful life. The vehicle would be tested in its OEM configuration and in the configuration with the aged aftermarket part installed. Any increase in emission levels cannot be greater than the allowable margin the vehicle had then originally certified. This is the same compliance demonstration scheme as used for non-CER parts, except the non-CER part need not be durability aged prior to emission testing. Again, EPA recommends using worst case analysis in order to minimize testing costs. The worst case analysis for CER parts would select emission test vehicles in the same manner as the manufacturer would for non-CER part certification described earlier. This worst case emission test vehicle may be different than the worst case durability vehicle.

d. Emission-related parts which may increase deterioration of other

emission-related components. EPA expects that manufacturers will be able to determine that the great majority of their non-CER and CER parts will not accelerate deterioration of other emission-related components. In such cases, the parts can be evaluated independent of their impact on these other components. This allows the less stringent and less costly durability alternatives described above. When the manufacturer either knows that its aftermarket part is likely to cause additional deterioration to other vehicle emission-related components, or at least cannot determine that this will not occur, there is a reasonable chance that, with the part installed, a specific vehicle might fail emission standards during its useful life. Due to these synergistic effects, the total vehicle system must be durability aged and emission tested with the part installed.

EPA proposes to model aftermarket part durability evaluation of this subset of parts after the durability program now in place for vehicle certification. For parts expected to affect exhaust emissions, EPA proposes the aftermarket part manufacturer evaluate the part's impact on vehicle emission performance by installing the part on any vehicle selected from the engine family and model year upon which the part is to be used. The vehicle then accumulates mileage according to the driving cycle described in 40 CFR Part 86, Appendix IV or an alternative driving cycle which the manufacturer determines is at least as representative of typical in-use operation as the Appendix IV driving cycle. As in the case of vehicle manufacturers seeking certification of a vehicle with such a component installed, the emission performance of a vehicle with the part installed must be evaluated for the useful life of the vehicle since a part could be installed on a vehicle when it is practically new. Therefore, for light-duty vehicles the total mileage to be accumulated is 50,000 miles. EPA proposes that vehicle and component maintenance during durability evaluation will be that allowed for vehicle certification in 40 CFR Part 86. For parts which the vehicle manufacturer recommends be replaced before 50,000 miles, the equivalent aftermarket part can be replaced with a duplicate new aftermarket part at or after the recommended mileage point and mileage accumulation corresponding to that recommended for the OEM part. Aftermarket part manufacturers may, at their option, conduct emission tests to monitor the vehicles' performance during this mileage accumulation.

To demonstrate certification compliance, EPA proposes to require the aftermarket part manufacturer to then have an FTP test conducted on the durability vehicle with the aged part installed. If the vehicle meets standards, then the part has demonstrated compliance. This procedure of durability evaluation followed by emission performance testing is to be completed for each engine family and model year application the aftermarket part manufacturer wishes to certify. By proposing these procedures for aftermarket part manufacturers, we are recommending the same compliance demonstration requirements as placed on a vehicle manufacturer when certifying a similar OEM part. EPA recognizes that this is a stringent requirement but necessary because of the impact on the total vehicle's emission control performance.

*e. Special cases.* The above discussion describes the general program EPA is proposing today for aftermarket part certification. However, three special cases warrant separate proposals.

*Light-duty truck part durability*—Light-duty vehicles have a useful life of 50,000 miles. Light-duty trucks on the other hand have a useful life of 120,000 miles. Also, while the light-duty vehicle certification program requires vehicle durability mileage accumulation according to the 40 CFR Part 86, Appendix IV driving cycle, the light-duty truck certification requirements do not. Rather the vehicle manufacturer can determine and apply a technically appropriate methodology for evaluating light-duty truck emissions durability. The longer useful life for light-duty trucks affects aftermarket part manufacturers when certifying parts that potentially increase the deterioration of other emission-related components. As described earlier, EPA is proposing that the part manufacturer evaluate the emissions impact of such parts over the full useful life of the vehicle, or 120,000 miles in the case of light-duty trucks. Similarly, for CER parts with replacement intervals greater than 50,000 miles, EPA is proposing that the manufacturer evaluate durability of the part for that longer interval for its light-duty truck applications. On the other hand, non-CER parts and CER parts with recommended replacement intervals of 50,000 miles or less would be durability evaluated in the same manner for both light-duty vehicle and light-duty truck applications.

EPA considered allowing aftermarket part manufacturers the flexibility to determine a technically appropriate,

alternative durability procedure for light-duty truck designs. To do so, the part manufacturer would have to determine an alternative to Appendix IV operation which appropriately evaluates the total system of emission-related components. However, aftermarket part manufacturers generally have that degree of design knowledge only for their individual parts. Therefore, they are not necessarily technically capable of determining an alternative methodology to Appendix IV vehicle mileage accumulation which would accurately and quantitatively evaluate both a part's durability and its synergistic effects on other emission-related components.

EPA recognizes, however, that 120,000 miles of vehicle durability evaluation is likely to be extremely costly for potential aftermarket part certifiers and would typically represent a greater durability expense than vehicle manufacturers experience if certifying a similar part. Therefore, EPA proposes to require the aftermarket part manufacturer to only conduct a maximum of 50,000 miles of vehicle emissions durability testing for its light-duty truck applications. Emission compliance for the remaining useful life would be determined by extrapolating to 120,000 miles results from emission tests conducted during that 50,000 miles of durability mileage accumulation. In order to allow this extrapolation, EPA proposes to require the manufacturer to use good engineering judgment, supported by test data if necessary, to predict any additional light-duty truck emission deterioration between 50,000 and 120,000 miles. Since it is not expected that total system durability will improve with the aftermarket part installed, the 50,000 to 120,000 mile deterioration is proposed to be at least as large as the vehicle manufacturer used in certifying the light-truck in its original equipment configuration. This durability method should provide reasonable assurance of light-truck useful life emission compliance.

*Evaporative emission control system durability*—For aftermarket parts which the manufacturer determines should only affect evaporative emission performance (that is, parts which in no way interact with exhaust emission-related components), EPA proposes durability requirements similar to those in place for vehicle certification. Evaporative system deterioration is probably not so much a function of vehicle mileage accumulation as it is other factors, such as system diurnal cycling. Consequently, simple vehicle mileage accumulation is likely not a

satisfactory test of evaporative system deterioration. Therefore, EPA proposes to allow the aftermarket parts manufacturer to determine and document the appropriate methodology for durability evaluation of its evaporative emission control system parts and their synergistic effect on OEM evaporative emission components. As specified in the current regulations, compliance with the evaporative emission standards would be determined after completing durability evaluation by performing the evaporative emission portion of the FTP on the vehicle with the part installed.

*Parts which affect on-board diagnostic systems*—EPA proposes that no manufacturer may certify a part that would alter or render ineffective the on-board diagnostic system of any application vehicle. Although such a part may not cause the vehicle to fail emissions standards during the vehicle's useful life, it would defeat the vehicle's original ability to warn the driver when a malfunction has occurred in the original equipment design. This could lead to excess emissions due to lack of prompt repair. Further, this could place an unfair burden on the vehicle manufacturer and the vehicle owner to repair additional damage to the vehicle that may have been avoided had the driver been warned by a warning indicator that there was a problem with the vehicle's emission system.

A part may be certified that properly integrates with the existing diagnostic system. However, the activation of a dash warning light by a certain part's failure is not sufficient demonstration to warrant durability exemption as a non-CER part. Most OEM parts presently must undergo aging to prove durability for the full useful life of the vehicle despite their ability to activate an on-board warning light in case of failure (e.g., oxygen sensor). In addition, the driver may be inclined to ignore a malfunction warning light if the vehicle continues to run properly, whereas when a non-CER part malfunctions, the driver will be inclined to repair the problem since the part's failure generally is accompanied by driveability, performance, and/or fuel economy problems.

*f. Self-certification.* EPA proposes that the voluntary aftermarket part certification program continue to be conducted primarily as a self-certification program by the part manufacturer, and with little direct involvement by EPA. For example, EPA proposes to require the aftermarket part manufacturer to determine if its part is a CER part and thus subject to durability

aging or a non-CER part which does not increase the deterioration of other emission-related components and is thus exempt from durability aging. However, durability aging represents extra cost and time before certification. Thus, the manufacturer has an incentive to avoid these costs and time delays by determining that its part is non-CER and exempt from durability aging. Conceivably, this could bias the manufacturer and result in an inappropriate decision. Therefore, EPA proposes to provide an opportunity for EPA review and approval of these decisions prior to certification. This auditing provision should go a long way toward encouraging the manufacturer to make the most technically appropriate decision.

Even in those cases where EPA did not choose to exercise its auditing option and accepted the manufacturer's independent determination, the manufacturer will have an incentive to make technically appropriate durability decisions. The Agency would not likely bring action for civil penalties as a result of a determination made by the manufacturer in good faith, even if EPA disagrees with it. However, if such an incorrect determination were made by a part manufacturer (e.g., if the part experiences excessive failures or causes deterioration to original emission components before warranted mileage), the part would be decertified on all application vehicles for which it is certified and the part manufacturer could be liable for all results of decertification specified in 40 CFR § 85.2121. This includes notification to all distributors of the part that it is no longer certified and an offer to replace decertified parts in the customer's inventory with certified replacement parts. If unable to provide replacement certified parts, the part manufacturer may be required, at the customer's request, to repurchase such inventory at a reasonable price. These actions could reflect negatively on the part manufacturer's marketing image and cost it in lost sales and settlements with distributors. There is a strong incentive, therefore, to rightly characterize parts to be certified to avoid the negative effect of decertification.

*g. Alternatives considered.* In structuring the durability and emission compliance demonstration requirements as recommended above, EPA has tried to balance the emissions risk against the complexity and cost of the certification requirements. The less likely the potential impact on in-use emissions, the less the evaluation and demonstration burden placed on the certifying

manufacturer. EPA has considered additional options which would expand upon this concept to allow even more durability and test options depending on the likely impact on in-use emissions.

This greater flexibility has been recommended by SEMA. Included in the docket and analyzed in the EPA Issue Paper are two specific SEMA suggestions. Both suggestions recommend varying levels of stringency for certification of various parts depending on the parts' similarity in design and function to OEM parts and their potential impact on emission performance. The types of certification suggested were: (1) engineering evaluation; (2) parameter comparison bench testing; (3) comparison of feedback control system operation; (4) back-to-back emission testing (testing a vehicle without, then again with, the aftermarket part) on a pre-described cycle monitoring tailpipe emissions by continuous raw analysis; (5) emission testing using only one portion of the FTP cycle; (6) full FTP emission testing.

In evaluating SEMA's suggested procedure, and a similar alternative developed by EPA (and described in the Issues Paper in the docket), EPA does see some merit in some form of certification by hierarchy. This allows full FTP certification for parts that are harder to characterize or more critical to emission performance, while not penalizing parts that are easy to characterize or likely to have relatively less potential to significantly affect emissions. At the same time, we feel that there are several issues which make this alternative impracticable at this time. First, engineering evaluation is a broad conceptual term which leaves much room for interpretation and subjectivity. EPA is proposing limited use of engineering judgment as it affects part durability evaluation. However, SEMA's recommendation greatly expands its use. The resultant degree of subjectivity is inappropriate for these regulations. Further clarification and strict narrowing of application would be needed.

Second, the method for making parameter comparisons would have to be developed and analyzed in detail since this is a very critical concern in determining whether the procedure is practicable and adequately evaluates components. Again, "bench test" is a conceptual term; specific test procedures would have to be developed and compared to FTP results for the same type of parts to see if the tests are adequate.

Third, SEMA suggests that a part can be proven to have equivalent emission

control impact to an OEM part by observing its impact on the vehicle's feedback control system. However, there are many elements of the vehicle's emission control design which are not monitored by the feedback control system. An aftermarket part could affect these elements of design and thus adversely affect vehicle emission performance.

Fourth, as discussed earlier a test to adequately measure emissions using continuous concentration analysis has not yet been developed. It is unlikely that a mass-equivalent methodology for using concentration measurements can be developed in the near future. A separate set of equally stringent concentration-based exhaust emission standards would be equally difficult and time consuming to develop. Therefore, this portion of SEMA's recommendation does not appear practical enough for consideration at this time.

EPA appreciates that the cost of the FTP could be significant to some small aftermarket part manufacturers and has incorporated features in this proposal which minimize the number of tests. Nevertheless, further cost saving options warrant thoughtful consideration. For the options considered by EPA, however, the technical difficulties associated with adequately assuring emission compliance do not seem resolvable in the near term. Therefore, no short test options are proposed. As discussed earlier, the Agency is willing to further consider short test options if generally supported by the industry and if the technical hurdles such as outlined above appear resolvable in an effective way.

The durability and emission test proposals described above are summarized in flow chart form in Attachment I to this preamble.

Comments are requested on the specific durability and emission compliance test procedures discussed above including the procedures for determining durability and emission test requirements.

### 3. Warranty Requirements

EPA proposes to clarify the existing requirement (40 CFR 85.2117) that all aftermarket parts to be certified must be warranted by the part manufacturer not to cause emission noncompliance for the remaining warranted useful life of the vehicle on which it is installed. This warranty does not excuse the OEM's responsibility to honor a valid warranty claim as discussed in section III(A) of this preamble. Since some parts may be installed on a vehicle with low mileage, the part manufacturer generally should

be prepared to warrant these parts for the full useful life of the vehicle (potentially 50,000 miles). In the case of replacement parts, however, the part must be warranted for at least the useful life of the equivalent OEM component if that is less than the useful life of the vehicle.

In addition, the Agency proposes a minimum "acceptable quality" warranty that the part manufacturer must agree to in order to certify (as specified in 40 CFR 85.2117(a) and (a)(2) in the proposed regulation revisions). Vehicle manufacturers do not require replacement of emission-related maintenance parts more frequently than 2 years/24,000 miles. Thus, the technology exists for all OEM emission-related parts to last at least that long. It is reasonable to adopt such a minimum useful life requirement to assure that only acceptable quality parts which the manufacturer will stand behind obtain EPA certification. EPA has determined that implementation of an "acceptable quality" warranty, in addition to an emission warranty, is appropriate to provide added customer protection when the remaining warranted useful life of the vehicle is less than 2 years/24,000 miles. This provision would require the manufacturer to warrant that the part will perform its intended function in a reasonable and acceptable manner for at least 2 years or 24,000 miles, whichever comes first.

#### *E. Denial of a Consumer Warranty Claim Based on the use of an Uncertified Replacement Part*

The existing regulations are intended to implement Congress' mandate (in section 207 of the Clean Air Act) that vehicle manufacturers not be allowed to deny warranty claims when a properly installed and certified part is used for repair or maintenance. To deny a warranty claim for the use of an uncertified part, the current regulations require the vehicle manufacturer to present evidence that the uncertified part was either defective in materials or workmanship, or not equivalent from an emissions standpoint to the original equipment part.<sup>30</sup> Further, the uncertified part must be relevant to the failure for any warranty denial to occur.<sup>31</sup> The Motor Vehicle Manufacturers Association (MVMA) and APRA in their legal challenges to the regulation claimed that EPA reached "... beyond its authority in forcing them to carry this burden of proof (of demonstrating equivalency) before they

may deny a warranty claim."<sup>32</sup> The Court cautioned EPA not to "shift . . . the burden of demonstrating equivalency . . . to the vehicle manufacturers" but permitted EPA to ". . . require vehicle manufacturers to submit a statement (or other evidence) indicating why an uncertified part was relevant to the vehicles' emission failure."<sup>33</sup>

While the vehicle manufacturer can be expected to demonstrate that the uncertified part caused the emissions failure, it is considerably more difficult to prove that the uncertified part was defective or not equivalent to an OEM part. EPA proposes to reword this section of the regulations to allow the manufacturer to deny a warranty claim based on the demonstration that the defect in or damage to the vehicle's emission system was caused by the uncertified part.<sup>34</sup> Further, the manufacturer must make a good faith assertion that the removal of the uncertified part and the repair, replacement, or recalibration of any OEM part that was replaced or subsequently damaged by the uncertified part will repair the emissions failure. The manufacturer would provide the consumer with a written copy of the manufacturer's technical argument and warranty denial and a list of available "objective evidence" upon which the manufacturer has based the decision. This evidence would then be made available to the consumer upon request.

This approach is consistent with the Court's decision.<sup>35</sup> It provides that the manufacturer not only make assertions, but also make available any "objective evidence" that the uncertified part caused a defect in or damage to the emission control system. However, this approach does not require the vehicle manufacturer to prove that the uncertified part is non-equivalent to OEM components of similar function, and does not involve any testing or data development. By defining the vehicle manufacturer's burden, this approach provides the consumer (and EPA when necessary) with the available evidence to evaluate the manufacturer's claims.

The Court indicated that it will depend on EPA's expertise to decide what is the permissible information required for the vehicle manufacturer to demonstrate that the uncertified part was relevant to the emissions failure.<sup>36</sup>

EPA is proposing that the vehicle manufacturer provide both written assertions and a list of available "objective evidence" (described below) used in the warranty denial determination as an adequate demonstration of cause.

For example, the vehicle manufacturer would provide to the consumer a written assertion that the uncertified part was the cause of a vehicle's emission test failure due to the part's own failure and/or subsequent damage to other engine or emissions components caused by the uncertified part. Alternatively, the vehicle manufacturer could assert that the uncertified part was installed improperly and therefore caused failure to the vehicle emissions system. However, in this second case, as under the current regulations, a warranty cannot be denied based on improper installation by an OEM-authorized facility since the consumer who, in good faith, had his/her vehicle repaired at an authorized facility should have assurance that they will not lose their warranty. In addition, the written assertion would state that the removal of the uncertified part and the reinstallation and recalibration of any OEM part that was replaced or subsequently damaged by the uncertified part would be expected to repair the emissions failure.

As discussed above, the vehicle manufacturer also would provide the consumer with a list of all objective evidence. Any evidence used by the vehicle manufacturer in the warranty denial would be deemed available information and should be accessible to the consumer upon request under this rule. Some examples of what might constitute "objective evidence" (but not limited to these examples) are:

- a. Past vehicle manufacturer data showing similar phenomena.
- b. List of all warranty claims of a similar nature.
- c. All diagnostic data collected on the vehicle for which the determination was made.
- d. List of any recall information pertaining to any subsequently damaged components.
- e. Any further information directly impacting the decision being made.

These criteria do not require any testing or development of data, but make available to the consumer (and EPA, if necessary) any pre-existing data or information used by the manufacturer in his determination, as a basis for the consumer to evaluate the vehicle manufacturer's claims. If the vehicle manufacturer claims other components have been subsequently damaged, the vehicle manufacturer would have to

<sup>30</sup> 40 CFR 85.2105(b)(1)

<sup>31</sup> 40 CFR 85.2104(h)(3)

<sup>32</sup> *APRA v. EPA*, 720 F.2d at 157.

<sup>33</sup> *Ibid.*, at 158, n. 63.

<sup>34</sup> This would be consistent with the consumer warranty provisions of the Magnuson-Moss Act. See 16 CFR 700.10(c).

<sup>35</sup> *APRA v. EPA*, 720 F.2d at 158, n. 63.

<sup>36</sup> *Ibid.*

specify which components were affected and how the uncertified part had caused the damage. This information must be provided in writing to the consumer along with any objective evidence used in the determination.

EPA proposes to extend coverage in this section to both certified and uncertified specialty parts, in addition to uncertified replacement parts. In each case, the vehicle manufacturer could deny a warranty claim if the part can be related to the emissions failure according to the above criteria. The consumer is also in a position to challenge the manufacturer's assertions by restoring the vehicle using certified OEM parts and repeating the emission test.

The proposed rules should relieve the vehicle manufacturer from any burden of proof that the uncertified part is not equivalent from an emissions standpoint to an OEM part, while attempting to assure that the consumer is treated fairly.

In an attempt to thoroughly explore a range of possible alternatives in this issue, EPA did consider four other options which the Agency found inadequate. Option 1 would call for EPA certification testing of suspect uncertified parts. This removes the burden of proof from the vehicle manufacturer that the uncertified part was defective; however, it transfers that burden to EPA. The purpose of the voluntary certification program is to give the aftermarket part manufacturer a forum to certify its part as functionally equivalent to the existing OEM or other certified part. Option 1 eliminates the part manufacturer's incentive to certify its own parts since EPA would have to test them when a claim arises. It would not be necessary for the part manufacturer to directly challenge the vehicle manufacturer for a warranty denial claim blamed on an uncertified part since EPA would be determining the part's impact. In addition to this negative program impact, this option could require resources well beyond those which EPA would be able to commit to such a project to complete the evaluation in a timely manner. Therefore, this option is unacceptable.

Option 2 would allow warranty denial based solely on the use of an uncertified part. This lifts the burden of proof from the manufacturer, but also greatly discourages the use of aftermarket parts and could therefore be deemed anti-competitive.<sup>37</sup> Thus, this option is rejected.

Option 3 goes a step beyond Option 2 by requiring that the manufacturer not only identify a part as uncertified, but assert that the uncertified part caused the failure. While requiring a basis for the OEM's denial, this option lifts from the vehicles manufacturer the burden of proof that the uncertified part was faulty or not equivalent to an OEM part. In so doing, however, it does not give the consumer any recourse to test the vehicle manufacturer's claim. This option is viewed as insufficient since allowing denial of a warranty without any objective proof is subject to abuse by the manufacturer. Furthermore, the Court indicated that EPA could require evidence that shows that part was the cause of the emission failure.<sup>38</sup> Option 3 is therefore rejected.

Option 4 builds on Option 3. It would require that the manufacturer not only assert that the emissions failure was caused by the uncertified part, but also assert that removing the uncertified part and restoring the vehicle to the OEM configuration with OEM parts will allow the vehicle to pass the short test. Although this option approaches what EPA would deem as adequate information, the consumer would not yet have sufficient information to intelligently decide whether the denial should be contested. The proposed approach is similar to Option 4 except in the amount of information available to the consumer. In addition to the assertion requirements, under the proposal the vehicle manufacturer must supply the consumer with any objective evidence used in the warranty denial determination.

#### *F. Denial of a Warranty Claim Based on the Use of a Certified Specialty Part*

If EPA adopts its proposal to have purchasers of certified specialty parts go directly to the part manufacturer for warranty repair, the vehicle manufacturer could then deny a warranty claim if the emissions failure is due to the use of the certified specialty part. EPA proposes that the vehicle manufacturer use the same procedures for determining and documenting its warranty denial as proposed for uncertified parts.

#### *G. Labeling and Identification of Certified Parts*

The MVMA contended that EPA's regulations did not provide adequate procedures for identifying the manufacturers of defective parts. The vehicle manufacturers cannot recover their reimbursable expenses if they are

unable to identify the certified part manufacturer. MVMA challenged two aspects of EPA's label and identification regulations. First, MVMA argued that an identification symbol be permanent. Secondly, MVMA argued that EPA should require that part manufacturers use manufacturer unique symbols, to aid in identification of the part manufacturer. On the first subject, EPA conceded the validity of the argument and the Court agreed.

The Court dismissed MVMA's second objection (lack of a unique symbol requirement) on the technical ground that MVMA had failed to raise the issue during the NPRM comment period. However, EPA agrees with MVMA's desire for a unique symbol requirement, and it is included in this proposal. EPA proposes to require that all labels be durable through the useful life of the part as specified by the manufacturer. This NPRM also proposes to require the part manufacturer to use a unique symbol if the manufacturer's name (or the name of the party responsible for reimbursement to a vehicle manufacturer for a defective part) is not placed on a certified part.

An alternative to using a unique symbol is for EPA to issue a number for each certification submittal. The part manufacturer would be required to place the number on the part (with the same restrictions as for the name), and if the vehicle manufacturer needed to identify the part manufacturer it could contact EPA for the list. The list could also be published periodically. EPA requests comments on this type of labeling system. Based on these comments and further analyses, EPA may adopt this option in addition to or in replacement of the proposal to require the manufacturer's name or unique symbol on the part.

#### **IV. Reporting and Recordkeeping Requirements**

These proposed revisions to the existing regulations would impose some new reporting and recordkeeping requirements on aftermarket part manufacturers that choose to take advantage of the certification program, as well as the vehicle manufacturers. The addition of a reimbursement mechanism will require recordkeeping. The certification program will be extended to include specialty part manufacturers and to participate they will need to keep records and report certification. The new requirements for labeling may increase some manufacturer material expenses. The Agency does not believe the additional reporting and recordkeeping

<sup>37</sup> Such an option likely would also violate the Magnuson-Moss Act. See 16 CFR 700.10(c).

<sup>38</sup> *Ibid.*

requirements are burdensome. An economic impact analysis was prepared for the original rulemaking and is contained in the Central Docket EN-79-8. The document concluded that the regulations did not pose a significant cost to the parties involved. The modifications being proposed here insignificantly affect that cost.

The information collection requirements contained in the rule which this notice proposes to amend have been cleared previously by OMB under control number 2060-0085. The changes to the information requirements proposed in this notice have been submitted to OMB for review under the Paperwork Reduction Act of 1980, 5 U.S.C. 3501 et seq. Comments on these information collection requirements should be submitted to the Office of Information and Regulatory Affairs of OMB—marked Attention: Desk Officer for EPA.

#### V. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation should be considered non-"major" because it meets none of the conditions for a major regulation. It will have an annual effect on the economy of less than \$100 million. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions. Nor will there be any significant adverse effects

on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket for this rulemaking; Docket No. EN-84-08. The EPA's Central Docket Section (A-130) is located at 401 M Street SW., Washington, DC, 20460.

#### VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a proposed regulation will have a significant impact on a substantial number of small entities so as to require a preliminary regulatory flexibility analysis.

Since these proposed revisions affect a voluntary program, I hereby certify that this proposed regulation will not have a significant adverse impact on a substantial number of small entities. In large part, this proposal responds to a request by the specialty equipment manufacturers to also be included in this voluntary program. This request has been satisfied with a reasonable cost program.

EPA has designed this proposal to minimize certification demonstration costs while at the same time providing necessary assurance of adequate

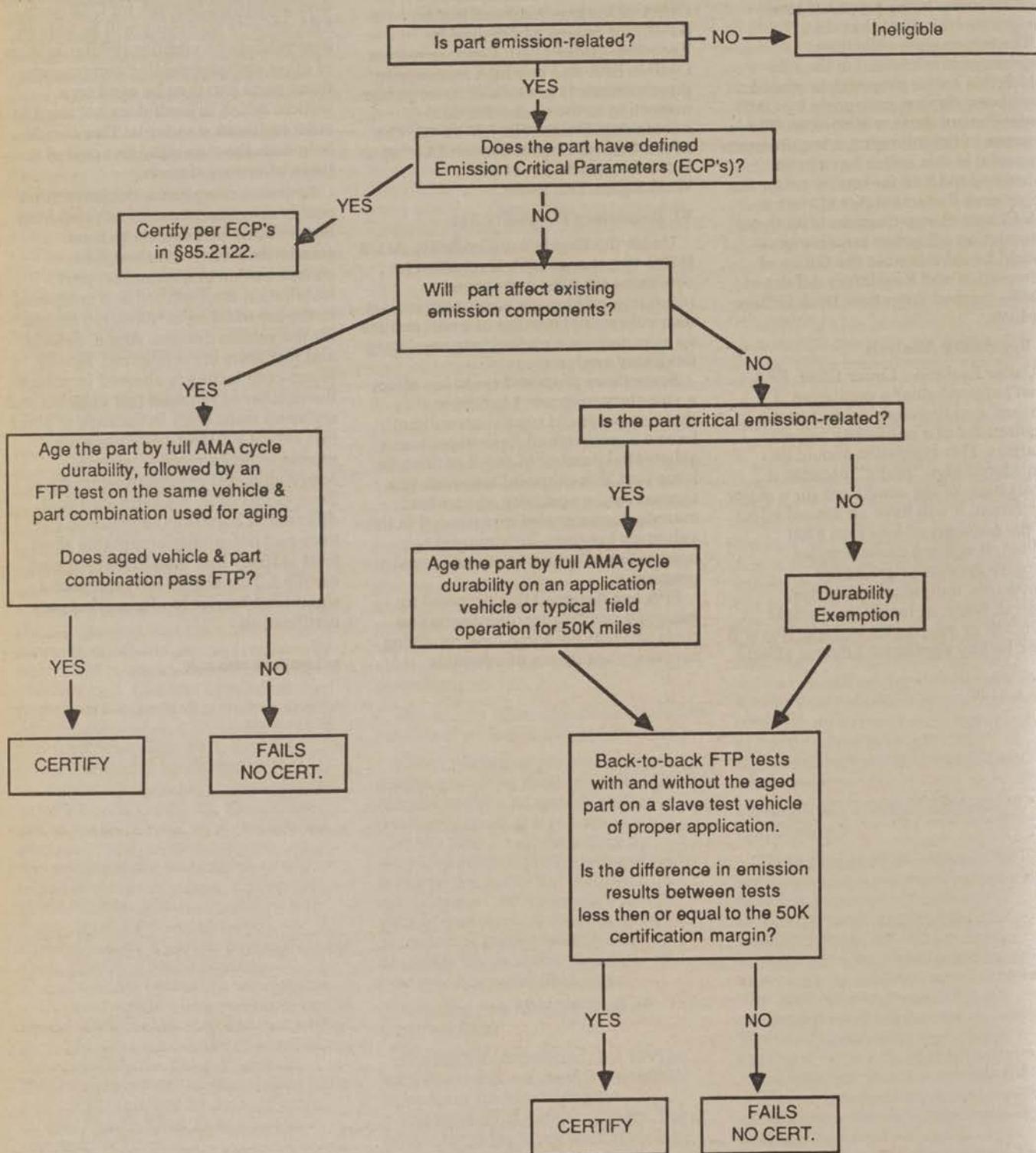
emission control. Two measures have been proposed to reduce durability costs. First, for non-CER components, in-use repair or replacement is assumed, exempting these parts from any independent certification durability demonstration. Second, for CER parts, EPA expects that many will be able to demonstrate no additional deterioration of other emission-related components; these parts can then be aged on a vehicle which in itself does not need to meet emission standards. This should help limit the durability test cost of these aftermarket parts.

Emission compliance demonstration cost is also minimized by not requiring the emission test vehicle to meet standards. Rather the change in emissions due to aftermarket part installation is quantified and compared to the pre-existing certification margin for the vehicle designs. Again, vehicle and test costs are minimized. Finally, worst-case testing is allowed to reduce the number of required test vehicles and emission tests. Only in the case of short test versus FTP test costs were we unable to find a more economic, acceptable cost-reduction alternative. Even in this case, the estimated cost differential between the required FTP tests and potentially acceptable short tests is likely less than \$1,500 per part certified. This should not represent a significant barrier to aftermarket part certification.

BILLING CODE 6550-50-M

Attachment I

Aftermarket Parts Certification Procedure



## APPENDIX—EXPLANATION OF SPECIFIC CHANGES

Section	Change	Reason
1. Part 85, Authority	None	
2. Subpart V	Nomenclature change from "Director" to "Division Director," from "Director's" to "Division Director's," and from "Deputy Assistant Administrator" to "Office Director."	For clarification and new designation or responsibility.
3. Section 85.2102:		
(a)(14)	Add paragraph to define "Replacement Part."	Clarification.
(a)(15)	Add paragraph to define "Specialty Parts."	Clarification.
(a)(16)	Add paragraph to define "Objective Evidence."	Clarification.
4. Section 85.2105:		
Title	Change from "Replacement Parts" to "Aftermarket Parts."	Expanded to include specialty parts.
(a)	Revise language to identify exception in paragraph (b)....	To alert reader to exception to this statement that disallows denial of warranty to certified parts.
(b)	Revised language to establish new criteria for vehicle manufacturers warranty denial.	In response to court order.
5. Section 85.2106:		
(e)(2)	Revise language to establish criteria link.....	Clarifies with respect to § 85.2105(b).
(f)	Correct line 10 from "to" to "of." .....	Typographical error.
(h)	Add language to identify part manufacturer's responsibility.	Establish consumer recourse.
6. Section 85.2107:		
(c)	Revise language to exempt certified specialty parts .....	Expanded to included specialty parts.
(e)	Add language to identify reimbursement language.....	To be consistent with § 85.2117.
(f)	Add language to include warranty denial of certified specialty parts.	Expanded for consideration of specialty parts.
7. Section 85.2110:		
(b)	Revise language to correct mailing address from "EN-397" to "EN-397F" and correct Office name.	Division is now under a new office.
8. Section 85.2112:		
Introduction	Revise by deleting language that limits regulation to parts with emission-critical parameters.	To open regulation to all emission-related after-market parts.
9. Section 85.2113:		
(e)	Change language from "Deputy Assistant Administrator" to "Office Director."	Responsibility change.
(g)	Change language from "Director" to "Division Director."	Clarification.
(l)-(r)	Add language to define new concepts.....	Clarification of new terms used in these revisions.
10. Section 85.2114	Revise language in entire section to explain the certification process.	To make certification available to all aftermarket parts requires these new testing methods.
11. Section 85.2115:		
(a)(1)(iii)	Revise language to include submission of durability test information.	To be consistent with new durability requirements presented in § 85.2114.
(a)(1)(viii)	Revise language to identify new requirements.....	To include information about new durability requirements and exemption requirements.
(a)(4)	Revise language to change address from "EN-340" to "EN340F."	Change of address.
12. Section 85.2116:		
(a)(4)	Revise language to change from "§ 85.2114(c)" to "§ 85.2114(e)."	Redesignation required by changes made to § 85.2114.
(a)(7)	Revised language to add the word "or" to the end of the paragraph.	To accommodate addition of new information in paragraph (a)(8).
(a)(8)	Add language that facilitates possible inadequacy of durability documentation.	To accommodate inclusion of new durability demonstration requirements.
13. Section 85.2117:	Revised language to cover warranty requirements for all aftermarket parts.	To accommodate the expansion of the regulation to cover all aftermarket parts.
14. Section 85.2119:		
(a)	Revise language to require that label be durable and readable for the defined useful life of the part.	This is a new requirement.
(b)	Revise language to change from "identification" to "unique identification."	To include the new requirement of label uniqueness.
15. Section 85.2121:		
(a)(1)(ii)(c)	Add language that allows decertification for improper durability demonstration.	To increase incentive to part manufacturers to perform appropriate durability demonstration.
(a)(1)(vii)	Add language that allows decertification when adequate documentation to support durability demonstration is not submitted or insufficient.	To increase incentive to part manufacturers to submit information required for proper evaluation.

**List of Subjects in 40 CFR Part 85**

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: December 23, 1986.

Lee M. Thomas,  
Administrator.

For the reasons set out in the preamble, 40 CFR Part 85 is proposed to be amended as follows:

**PART 85—[AMENDED]**

1. The authority for Part 85 continues to read as follows:

**Authority:** Sec. 203, 207, 208, and 301 (a), Clean Air Act, as amended (42 U.S.C. 7522, 7541, 7542, and 7601 (a)).

2. Subpart V is amended by making a nomenclature change in each occurrence in the entire subpart from "Director" to "Division Director", from "Director's" to "Division Director's", and from "Deputy Assistant Administrator" to "Office Director."

3. Section 85.2102 is amended by adding paragraphs (a)(14), (a)(15), and (a)(16) to read as follows:

**§ 85.2102 Definitions.**

(a) \* \* \*

(14) "Replacement Part" means a part used only for maintenance or repair which functionally duplicates, from an emissions standpoint, the original equipment part it is replacing.

(15) "Specialty Part" means either a modified replacement part which alters or goes beyond the original equipment included in a new vehicle or an add-on part which is not found on a vehicle when it leaves the production line.

(16) "Objective Evidence" means pre-existing test or field data, warranty claims, recall information, or any other pre-existing information used to support a claim.

4. Section 85.2105 is amended by revising the section heading, and by revising paragraphs (a) and (b) to read as follows:

**§ 85.2105 Aftermarket parts.**

(a) Except as provided in paragraph (b) of this section, no emission performance warranty claim shall be denied on the basis of the use of a properly installed certified part in the maintenance or repair of a vehicle.

(b) Except as provided in § 85.2104(h), a vehicle manufacturer may deny an emission performance warranty claim on the basis of an uncertified replacement part used in the maintenance or repair of a vehicle, or on the basis of a certified or uncertified specialty part, if the vehicle manufacturer can demonstrate that the

defect or damage to the vehicle's emission control system resulting in the vehicle's failure to meet emission standards was caused by use of the part. To deny a warranty claim, the vehicle manufacturer shall submit a written document to the vehicle owner that:

(1) Establishes a causal connection between the emissions short test failure and use of the part, and,

(2) Asserts that:

(A) Removal of the part and installation of any comparable certified or original equipment part previously removed or replaced during installation of the uncertified (or certified specialty) part will resolve the observed emissions failure in the vehicle, or,

(B) Use of the part has caused subsequent damage to other specified certified emission control components such that replacement of these components would also be necessary to resolve the observed vehicle emissions failure, and

(3) Lists all objective evidence relevant to the emissions failure that was used in the determination to deny warranty. This evidence must be made available to the vehicle owner or EPA upon request, and

(4) The owner is unable to rebut the evidence.

5. Section 85.2106 is amended by revising paragraphs (e)(2) and (f) by adding paragraph (h) to read as follows:

**§ 85.2106 Warranty claim procedures.**

(e) \* \* \*

(2) Provide the owner, in writing with an explanation of the basis upon which the claim is being denied according to all criteria specified in § 85.2105(b).

(f) Failure to notify an owner within the required time period (as determined under paragraph (d) of this section) for reasons that are not attributable to the vehicle owner or events which are not beyond the control of the vehicle manufacturer or the repair facility, shall result in the vehicle manufacturer being responsible for repairing the vehicle free of charge to the vehicle owner.

(h) If a warranty claim for a certified specialty part has been successfully denied by the vehicle manufacturer under paragraph (b) of § 85.2105, the manufacturer of the specialty part shall honor its warranty as provided in § 85.2117(b).

6. Section 85.2107 is amended by revising paragraph (c) and adding paragraphs (e) and (f) to read as follows

**§ 85.2107 Warranty remedy.**

(c) The remedy provided under paragraph (a) of this section shall include the repair or replacement of certified parts (except certified specialty parts).

(e) The vehicle manufacturer may seek reimbursement for repair costs incurred when a certified replacement part is determined to be the cause of emissions failure in accordance with the criteria in § 85.2117.

(f) The vehicle manufacturer may deny warranty for a failure caused by a certified or uncertified specialty part or an uncertified replacement part in accordance with the criteria in § 85.2105.

7. Section 85.2110 is amended by revising paragraph (b) to read as follows:

**§ 85.2110 Submission of owners' manuals and warranty statements to EPA.**

(b) All materials described in paragraph (a) of this section shall be sent to: Director, Field Operation and Support Division (EN-397F), Office of Mobile Sources, Environmental Protection Agency, 401 "M" Street SW., Washington, DC 20460.

8. Section 85.2112 is revised to read as follows:

**§ 85.2112 Applicability.**

The provisions of §§ 85.2112 through 85.2122 apply to all emission-related automotive aftermarket parts which are to be installed in or on 1968 and later model year vehicles.

9. Section 85.2113 is amended by revising paragraphs (e) and (g) and adding paragraphs (l) through (r) to read as follows:

**§ 85.2113 Definitions.**

(e) "Office Director" means the Director of the Office of Mobile Sources of the Agency or his or her delegate.

(g) "Division Director" means the Director of the Manufacturer's Operations Division of the Office of Mobile Sources of the Agency or his or her delegate.

(l) "Replacement Part"—is as defined in § 85.2102(a)(14).

(m) "Specialty Parts"—is as defined in § 85.2102(a)(15).

(n) "Objective Evidence"—is as defined in § 85.2102(a)(16).

(o) "Critical Emission-Related Components" means those components which are designed primarily for

emission control and whose failure may result in a significant increase in emissions accompanied by no significant impairment in performance, driveability, and/or fuel economy as determined by the Administrator.

(p) "Non-Critical Emission-Related Components" means those emission-related components for which any emissions failure caused by these components affects the driveability, performance, and/or fuel economy of the vehicle at a level detectable by the driver and likely to result in near term repair of failing components and correction of the emissions failure.

(q) "Valid Emission Performance Warranty Claim" means one in which there is no evidence that the vehicle had not been properly maintained and operated in accordance with manufacturer instructions; the vehicle failed to conform to applicable emission standards as measured by an EPA-approved type of emissions warranty test during its useful life, or exhibited physical failure during its useful life; and, the owner is subject to sanction as a result of test failure.

(r) "Reasonable Expense" means any expense incurred due to the repair of a warranty failure caused by a non-original equipment certified part, including all charges in any expense categories that would be considered payable by the involved vehicle manufacturer to its authorized dealer under a similar warranty situation where an original equipment part was the cause of the failure. The expense categories shall include but are not limited to the cost of labor, materials, recordkeeping, and billing.

10. Section 85.2114 is revised to read as follows:

**§ 85.2114 Basis of certification.**

(a) An automotive aftermarket part manufacturer may certify a part either:

(1) On the basis of demonstrating conformance of that part with all of the relevant Emission-Critical Parameters set forth for that part in § 85.2122; or,

(2) On the basis of performing emission and durability tests in each applicable vehicle configuration for which the part is to be certified in accordance with the requirements of this section.

(b) The only emission test which can be used to obtain certification pursuant to paragraph (a)(2) of this section is the Federal Test Procedure as set forth in the applicable portions of 40 CFR Part 86 (except as provided in paragraph (b)(6) of this section). Certification testing for aftermarket parts shall be carried out in the following way:

(1) For parts certifying under aging requirements in paragraph (e)(7) of this section, at least one emission test is required. The test(s) shall be performed according to the Federal Test Procedure on the same vehicle (set to the vehicle manufacturer's specifications) and part that was previously aged in accordance with paragraph (e)(7) of this section. The results of all tests performed shall be averaged for each emission constituent. The average values will be used to determine compliance, as described in paragraph (b)(4)(i) of this section, with the applicable emission standards.

(2) For parts certifying under aging requirements in paragraph (e)(8) of this section, upon completion of aging one FTP test shall be performed with the previously aged after market part installed, and one FTP test shall be performed without the part installed on the same vehicle. If more than two tests are performed, an equivalent number of tests must be performed with and without the aftermarket part. The results of all tests performed with the part installed shall be averaged and the results of all tests performed without the part installed shall be averaged for each emission constituent. The average values will be used to determine compliance, as described in paragraph (b)(4)(ii) of this section, with the applicable emission standards.

(3) For parts determined by the part manufacturer (with appropriate technical rationale) to affect only evaporative emissions performance, upon completion of a durability demonstration in accordance with paragraph (e)(9) of this section, one evaporative emissions portion of the FTP test shall be performed with the previously aged aftermarket part installed and the same test shall be performed without the part installed on the same vehicle. If more than two tests are performed, an equivalent number of tests must be performed with and without the aftermarket part installed. The results of all tests performed with the part installed shall be averaged and the results of all tests performed without the part installed shall be averaged for each emission constituent. The average values will be used to determine compliance, as described in paragraph (b)(4)(ii) of this section, with the applicable evaporative emission standards.

(4) The test results must demonstrate that the proper installation of the certified aftermarket part will not cause the vehicle to fail to meet any applicable Federal emission requirements under section 202 of the Act:

(i) For parts described in paragraph (b)(1) of this section, for which the

applicable warranted mileage as determined under § 85.2116(a) is:

(A) 50,000 miles or less, the test results shall meet all applicable federal emission requirements under section 202 of the Act;

(B) Over 50,000 miles, the 50,000 mile test results shall be projected out to the warranted mileage point using a deterioration factor deemed appropriate by the part manufacturer but not to be less than the original vehicle manufacturer's certification deterioration factor corresponding to the engine family of the test vehicle. The results shall meet all the requirements under section 202 of the Act.

(ii) For parts described in paragraphs (b)(2) and (b)(3) of this section for which the applicable warranted mileage as determined under § 85.2117(a) is:

(A) 50,000 miles or less, the difference in FTP emission results between the tests with the previously aged aftermarket part installed and the test without the aftermarket part installed shall be less than or equal to the corresponding difference in emission results between the applicable certification emission standards and the 50,000 mile projected emission results of the corresponding vehicle certification emission-data vehicle.

(B) Over 50,000 miles, the 50,000 mile test results from each test shall be projected out to the warranted mileage point using a deterioration factor deemed appropriate by the part manufacturer but not to be less than the vehicle manufacturer's certification deterioration factor corresponding to the engine family of the test vehicle. At this projected mileage point, the difference in FTP emission results between the tests with the aftermarket part installed and the tests without the aftermarket part installed shall be less than or equal to the corresponding difference in emission results between the applicable certification emission standards and the useful life mileage projected emission results of the corresponding vehicle certification emission-data vehicle.

(iii) The test vehicle selected for certification testing in accordance with paragraphs (b)(1), (b)(2), and (b)(3) of this section is not required to meet federal emission standards. However, the vehicle shall have representative emissions performance that is close to the standards and have no obvious emission defects. It shall be tuned properly and set to original manufacturer's specifications before testing is performed.

(5) Prior to certification testing as provided in paragraphs (a) and (b) of this section, the actual part used for

certification testing, determined to be representative under paragraph (c)(4) of this section, shall be aged as provided in paragraph (e) of this section.

(6) The following portions of the Federal Test Procedure are not required to be performed when certifying a part in accordance with paragraph (a)(2) of this section:

(i) The evaporative emissions portion if the manufacturer of the part has a reasonable basis for believing that the use of the part has no effect on the vehicle's evaporative emissions;

(ii) The exhaust emissions portion if the part manufacturer has a reasonable basis for believing that the part affects only the evaporative emissions of a vehicle; and

(iii) Other portions therein which the part manufacturer believes are not relevant, provided that the part manufacturer has requested and been granted a waiver in writing by the Division Director for excluding such portion.

(7) For the purpose of certifying parts on the basis of emission and durability testing for use in vehicle or engine configurations other than those tested under paragraph (a)(2) of this section, there must be a showing set out in the notification of intent to certify that the configuration tested represents the "worst case" with respect to emissions of those configurations for which the results are to be applicable.

(i) Such a showing shall include:

(A) A technical discussion that supports the conclusion that the configuration tested represents the worst case, and

(B) All data that support the above conclusion.

(ii) The worst case configuration shall be that configuration which is least likely to meet the applicable emission standards among those configurations for which the emission test results under paragraph (a)(2) of this section are to be applied. This determination:

(A) Shall be based on a technical judgement by the manufacturer of the impact of the particular design or calibration of a particular parameter or combination of parameters and/or an analysis of appropriate data, and

(B) Shall only be applicable for configurations that are required to meet the same or less stringent (higher) emission standards than those applicable to the configuration tested.

(c) An aftermarket part may be certified in accordance with § 85.2114(a)(1) only if the part's emission-critical parameters as set forth in § 85.2122(a) are equivalent to those of the original equipment or previously certified part it is to replace.

(1) A part that replaces more than one part may be certified in accordance with § 85.2114(a)(1) only if the part meets the applicable parameters of § 85.2122 for each part or parts which the aftermarket part is to replace. If a part is to replace more than one part or an entire system, compliance must be demonstrated for all emission critical parameters involved, except those which relate solely to the interface between the parts being replaced by the modified part.

(2) Compliance with the Emission-Critical Parameters may be demonstrated by compliance with the relevant Test Procedure and Criteria specified in the Appendix to this Subpart V.

(3) An aftermarket part manufacturer may certify a part on the basis of conformance with all Emission-Critical Parameters only after the part manufacturer has performed such tests, analyses, or other procedures necessary to ascertain with a high degree of certainty the emission-critical parameter specifications and tolerances for the original equipment or previously certified part for which an equivalent certified part is to be used.

(i) If information is available to identify the applicable emission-critical parameters, the prospective certifier must use such information.

(ii) If sampling and analysis of original equipment or previously certified parts is relied upon, the prospective certifier must use sound statistical sampling techniques to ascertain the mean and range of the applicable emission parameters.

(4) Certification in accordance with § 85.2114(a)(1) or (2) must be based upon tests utilizing representative production aftermarket parts selected in a random manner in accordance with accepted statistical procedures.

(d) Only emission-related components shall be certified pursuant to this subpart. The Administrator shall deny certification to parts determined not to be emission-related.

(e) Before a part may be certified pursuant to this subpart, evidence must exist to demonstrate that the part will not cause a vehicle to exceed emission standards during the full interval for which the part is to be certified.

(1) For parts for which the comparable original equipment part has no scheduled replacement, this interval shall be the useful life of the motor vehicle or motor vehicle engine.

(2) If any provision of 40 CFR Part 86 establishes a minimum replacement or service interval for a part during vehicle or engine certification, then no aftermarket part of that type may be

certified with a shorter replacement or service interval.

(3) If a Recommended Durability Procedure is contained in the Appendix to this Subpart V for a part, then that test shall be used to demonstrate the durability of the part.

(4) To demonstrate durability for all parts for which no Recommended Durability Procedure is contained in the Appendix, procedures for durability demonstration are provided in paragraphs (e)(5) through (e)(9) of this section.

(5) The part manufacturer may submit a document that asserts, based on adequate technical rationale, that the candidate part will not contribute to additional deterioration of original emission components of any application vehicle. This technical rationale shall show that the candidate part has no significant physical or operational effect on the major emission systems of the vehicle. The part's effect on each major emission system must be addressed separately in the technical rationale.

(6) If the part manufacturer is unable to determine a reasonable basis for believing that use of the part to be certified will not cause additional deterioration to existing emission-related original equipment parts, the part shall be certified as provided in paragraph (e)(7) of this section.

(7) If the condition of paragraph (e)(5) of this section is not met, the following durability demonstration is required:

(i) For parts with a warranted useful life mileage of less than or equal to 50,000 miles, the test part shall be aged using the durability driving cycle provided in Part 86, Appendix IV, or an alternate cycle that the aftermarket part manufacturer has determined is at least as representative as typical in-use operation, to a mileage equivalent to the warranted useful life mileage on each applicable vehicle for which the part is to be certified (except as provided in paragraph (b)(7) of this section).

(ii) For parts with a warranted useful life mileage of greater than 50,000 miles, the test part shall be aged using the durability driving cycle provided in Part 86, Appendix IV, or an alternate cycle that the aftermarket part manufacturer has determined is at least as representative of typical in-use operation, to 50,000 miles on each applicable vehicle for which the part is to be certified (except as provided in paragraph (b)(7) of this section).

(iii) Upon completion of paragraphs (e)(7)(i) or (e)(7)(ii) of this section, the same aged part shall be tested on the same vehicle on which it was aged according to the procedures provided in

paragraph (b)(1) and (b)(3) of this section.

(8) If the condition of paragraph (e)(5) of this section is met, the following durability demonstration is required:

(i) Critical emission-related components shall be aged using the durability driving cycle provided in Part 86, Appendix IV, or an alternate cycle that the aftermarket part manufacturer has determined is at least as representative of typical in-use operation, to a mileage equivalent to the highest warranted useful life mileage of all application vehicles for which the part is to be certified. For parts with a warranted useful life mileage of greater than 50,000 miles, the test part shall be aged for 50,000 miles. The aged part will be used for certification testing as provided in paragraph (b)(2) of this section.

(ii) Non-critical emission-related components shall be exempt from aging based on a document submitted by the part manufacturer giving adequate demonstration that the part will be replaced at failure under normal operating conditions due to poor driveability, poor performance, and/or poor fuel economy (on-board diagnostics or use of warning indicators as covered in paragraph (g) of this section is not adequate demonstration that the certified part will be replaced). A representative part, as described in paragraph (c)(4) of this section, shall be used for certification as provided in paragraph (b)(2) of this section.

(9) For parts which only affect evaporative emissions performance, the aftermarket part manufacturer shall determine and document the appropriate durability demonstration. The aged part will be tested in accordance with paragraph (b)(3) of this section.

(10) The Administrator reserves the right to review any application to determine if the submitted documents adequately demonstrate durability. If a part manufacturer has not received an EPA response to an application for certification within 40 days, the application is accepted as submitted. However, acceptance of the documents required under paragraph (e)(5) through (e)(9) of this section is not an exemption from later decertification under the guidelines of § 85-2121.

(f) Installation of any certified part shall not result in the removal or rendering inoperative of any original equipment component other than the component being replaced, require the readjustment of any other component other than the original manufacturer specifications, cause or contribute to an unreasonable risk to the public health,

welfare or safety, or result in any additional range of parameter adjustability or accessibility to adjustment than that of the vehicle manufacturer's parts.

(g) Installation of any certified part shall not alter or render inoperative the on-board diagnostic system incorporated by the original equipment manufacturer. The certified part may integrate with the existing diagnostic system if it does not alter or render inoperative the system. However, use of on-board diagnostics or warning indicators to show part failure is *not* sufficient to classify a part as non-critical emission-related for purposes of certification as provided in paragraph (e)(8)(ii) of this section.

11. Section 85.2115 is amended by revising paragraphs (a)(1)(iii), (a)(1)(viii), and (a)(4) to read as follows:

**§ 85.2115 Notification of intent to certify.**

(a) \* \* \*

(1) \* \* \*

(iii) A description of the tests and methods utilized to demonstrate compliance with §§ 85.2114(a)(1) and 85.2114(c); except that, if the procedure utilized is recommended in the Appendix, then only a statement to this effect is necessary. If certification is sought in accordance with § 85.2114(a)(2), all durability documentation and results required under § 85.2114(e)(5) through (e)(9) of this section, and the results of all emission tests performed as provided in § 85.2114(b), shall be included. A description of all statistical methods and analyses used to determine the emission-critical parameters of the original equipment parts and compliance of the certified part(s) with those parameters including numbers of parts tested, selection criteria, means, variance, etc.

\* \* \* \* \*

(viii) The information required pursuant to § 85.2114(b)(7), (e)(5), and (e)(8)(ii) if applicable; and

\* \* \* \* \*

(4) The notification shall be submitted to: Director, Manufacturer's Operations Division (EN340F), 401 M Street SW., Washington, DC 20460.

\* \* \* \* \*

12. Section 85.2116 is amended by revising paragraphs (a)(4) and (a)(7) and by adding paragraph (a)(8) to read as follows:

**§ 85.2116 Objections to certification.**

(a) \* \* \*

(4) The durability requirement of § 85.2114(e) has not been complied with:

\* \* \* \* \*

(7) Information and/or data required to be in the notification of intent to certify as provided by § 85.2115 have not been provided; or,

(8) Documentation submitted under § 85.2114(e)(5) or (e)(9) was determined inadequate for durability exemption.

\* \* \* \* \*

13. Section 85.2117 is revised to read as follows:

**§ 85.2117 Warranty.**

(a) As a condition of certification, the aftermarket part manufacturer shall warrant that if the certified part is properly installed it will not cause a vehicle to exceed Federal emission requirements as adjudged by an emission test approved by EPA under section 207(b)(1) of the Act, and:

(1) Except as provided in paragraph (a)(2) of this section this warranty shall extend for the longer of the remaining useful life of all application vehicles or for the same period specified for an equivalent original equipment component, if any.

(2) The certified aftermarket part shall be warranted for a minimum of 2 years or 24,000 miles whichever comes first, if this period exceeds the remaining useful life defined in paragraph (a)(1) of this section.

(b) For specialty parts, the part manufacturer's minimum obligation under this warranty is to provide reimbursement to the vehicle owner upon receipt of a valid warranty claim for all reasonable expenses incurred as a result of repairs performed to the owner's vehicle for emission failure caused by the use of the certified specialty part.

(c) For replacement parts, the part manufacturer's minimum obligation under this warranty shall be to reimburse vehicle manufacturers for all reasonable expenses incurred as a result of honoring a valid emission performance warranty claim which arose because of the use of the certified replacement part.

(1) The reimbursement process is initiated when the vehicle manufacturer provides to the parts manufacturer a valid emission performance warranty claim establishing why the part was the cause of an emissions failure, and containing a bill for all reasonable expenses incurred to repair any defect or damage caused by the certified replacement part.

(2) The part manufacturer shall respond within 30 days to contest the claim or the claim will be considered valid and payment must be made to the vehicle manufacturer.

(3) If a claim is contested on a timely basis, the involved manufacturers shall have discussions to attempt resolution on at least two occasions, the first to occur within 14 days of reimbursement denial by the part manufacturer.

(4) If a contested claim is not resolved by discussion between the involved manufacturers within 30 days of reimbursement denial, the dispute shall be decided by using independent binding arbitration.

(5) The loser of the arbitration settlement is liable for all direct arbitration costs and the reasonable expenses incurred due to the original repairs involving the part in question.

(6) If either involved manufacturer refuses to participate in the arbitration process, that party loses arbitration.

(7) If a part manufacturer refuses to pay a lost arbitration settlement, the involved part will be decertified as per § 85.2121, provided that if the part manufacturer seeks judicial review of the arbitration decision, decertification will be withheld pending the outcome of judicial review.

(d) Nothing in this section precludes a part manufacturer from expanding its

warranty to include reimbursement to any additional parties it desires.

14. Section 85.2119 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 85.2119 Labeling requirements.**

(a) Except for those components specified in paragraph (b) of this section, each part certified pursuant to these regulations shall have "Certified to EPA Standards" and the name of the aftermarket part manufacturer or other party designated to determine the validity of warranty claims placed on the part. The name of the aftermarket part manufacturer or other party (as referred to above) must be made durable and readable for the defined useful life of the part.

(b) In lieu of the information contained in paragraph (a) of this section, the part may contain unique identification markings that can be used to refer to the information required in paragraph (a) of this section. A description of the marking and notification that such marking is intended in lieu of the information required above must be made to the

Agency in the Notification of Intent to Certify.

\* \* \* \* \*

15. Section 85.2121 is amended by adding paragraphs (a)(1)(ii)(C) and (a)(1)(vii) to read as follows:

**§ 85.2121 Decertification.**

(a) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(C) The procedures used for part aging for durability demonstration were not in substantial compliance with the durability cycle required by § 85.2114(e).

\* \* \* \* \*

(vii) Documentation required to support the type of durability demonstration used for a part under § 85.2114(e):

(A) Were not submitted for the part, or

(B) Were insufficient to justify a claim of durability exemption status.

\* \* \* \* \*

[FR Doc. 87-134 Filed 1-8-87; 8:45 am]

BILLING CODE 6560-50-M