

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AK24

#### Testimony Certified or Under Oath

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its adjudication regulation that requires written and oral testimony to be certified or given under oath or affirmation in most cases. VA believes that the global requirements in this regulation are no longer necessary to establish the credibility of most testimony offered in support of a claim for benefits. Removal of this regulation will help to streamline the claims process without affecting program integrity.

**DATES:** Comments must be received on or before September 30, 2002.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Office of Regulations Management (O2D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC, 20420; or fax comments to (202) 273-9289; or e-mail comments to [OGCRegulations@mail.va.gov](mailto:OGCRegulations@mail.va.gov).

Comments should indicate that they are submitted in response to "RIN 2900-AK24". All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC, 20420, telephone (202) 273-7228. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The current regulation on testimony is found at 38 CFR 3.200. It provides that all oral testimony be given under oath or affirmation and that all written testimony submitted in support of a claim for service connection of a disability or death be certified or given under oath or affirmation. Oddly, the regulation does not require that written testimony submitted in connection with a claim for disability or death pension be certified or given under oath or affirmation. The need for this regulation is now being called into question because of recent changes in the claims process which streamline the

acceptance of evidence and require an assessment of credibility in all cases.

The current regulation was created at a time when VA required all evidence and testimony to be in writing or presented orally at a personal hearing. It has changed very little in the last 40 years. But the Veterans Benefits Administration (VBA) is now accepting evidence by fax, e-mail and telephone in addition to written and oral testimony in an effort to streamline the claims process. Any attempt to require formal certification in such cases would only delay the decision making process.

When deciding a claim for disability or death benefits, VBA decision makers routinely make assessments of credibility with respect to evidence presented in support of the claim. This is true regardless of whether any written or oral testimony was certified or given under oath or affirmation. Since these credibility assessments are routinely made, it is unnecessary to require certification or the swearing of oaths or affirmations in all cases. This does not mean that claimants cannot submit certified written testimony or swear oaths or affirmations in connection with oral testimony. Indeed, a claimant may believe that such certification or swearing increases the degree of credibility that may be assigned by a decision maker. For this reason VBA will not prohibit swearing or certification. It will just no longer require it in all cases.

Although the global requirement is being removed, there are other regulations in part 3 which require sworn testimony or certification of evidence in specific instances (see for example § 3.103(c)(2) concerning sworn testimony at personal hearings). The regulations covering those specific instances are not being removed or amended by this proposed action and will remain in effect.

VBA believes that the burden imposed upon claimants for benefits, as well as the administrative burden imposed upon VA itself, entailed by a requirement that claimants swear to oral evidence, or that they certify all written statements, in support of an entitlement to benefits, is too great to justify its retention-especially where evidence is transmitted over the telephone or fax machine. In light of the fact that VA will still retain the ability to discover and deal with fraudulently given statements, the burden of administration outweighs the benefit of retention in this case. In contrast, the burden of administering an oath at an already-convened Regional Office (RO) hearing is minimal, in comparison with the benefit achieved

through formally impressing on the witness the need for truthfulness.

This rulemaking reflects VA's goal of making government more responsive, accessible, and comprehensible to the public. The Plain Language Regulations Project was developed as a long-term comprehensive project to reorganize and rewrite in plain language the adjudication regulations in part 3 of title 38, Code of Federal Regulations. This proposed removal is part of a series of proposed revisions to those regulations.

#### Unfunded Mandates

The Unfunded Mandates Reform Act, Public Law 104-4, March 22, 1995, requires (in section 202) agencies to assess anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This proposal would have no consequential effect on state, local, or tribal governments.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

#### Regulatory Flexibility Act

The Secretary certifies that the adoption of this proposal would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The proposal does not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance Program Numbers

The catalog of Federal Domestic Assistance program numbers for this proposal are 64.100, 64.101, 64.104, 64.105, 64.109, 64.100, and 64.127.

#### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: June 26, 2002.

**Anthony J. Principi,**  
*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

**PART 3—ADJUDICATION****Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

**§ 3.200 [Removed]**

2. Section 3.200 is removed.

[FR Doc. 02–19327 Filed 7–30–02; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[LA–63–1–7563; FRL–7253–2]

**Approval and Promulgation of Implementation Plans; Louisiana; Control of Emission of Nitrogen Oxides from Lean Burn Engines Within the Baton Rouge Ozone Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed approval.

**SUMMARY:** The EPA is proposing approval of rules into the Louisiana State Implementation Plan (SIP). In this rulemaking we are proposing to approve, by parallel processing, revisions proposed on April 8, 2002, by the State of Louisiana to the Nitrogen Oxides (NO<sub>x</sub>) rules for stationary internal combustion engines/lean burn engines (lean burn engines), within the Baton Rouge (BR) ozone nonattainment area (the April 8, 2002, SIP revision). The State of Louisiana proposed the April 8, 2002, SIP revision to regulate NO<sub>x</sub> emissions from lean burn engines within the BR ozone nonattainment area. Section one of this document explains more about this approval. The April 8, 2002, SIP revision will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the BR area.

The EPA is proposing approval of these SIP revisions to regulate emissions of NO<sub>x</sub> as meeting the requirements of the Federal Clean Air Act (the Act).

**DATES:** Comments must be received on or before August 30, 2002.

**ADDRESSES:** Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, and shar.alan@epa.gov.

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Throughout this document “we,” “us,” and “our” means EPA.

**1. What Are We Proposing To Approve?**

On February 27, 2002, the Governor of Louisiana, submitted rule revisions to LAC 33:III, Chapter 22, “Control of Emissions of Nitrogen Oxides,” (AQ215), as a revision to the Louisiana SIP for point sources of NO<sub>x</sub> in the BR area and its Region of Influence. We published our proposal to approve the February 27, 2002 SIP revision in a separate **Federal Register** (67 FR 48095, July 23, 2002).

On April 8, 2002, the Governor of Louisiana submitted rule revisions to LAC:33:III, Chapter 22, “Control of Emissions of Nitrogen Oxides,” (AQ224), as a revision to the Louisiana SIP for lean burn engines in the BR ozone nonattainment area. The BR area constitutes the 5 ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge (40 CFR 81.319). This SIP revision concerns Reasonably Available Control Technology (RACT) for lean burn engines in these 5 parishes. RACT is defined as the lowest emission

limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. See 44 FR 53761, September 17, 1979.

On April 8, 2002, the Governor of Louisiana submitted a letter to us requesting that we propose approval of their rule revision concerning RACT for lean burn engines through “parallel processing.” See 40 CFR part 51, Appendix V for more information on “parallel processing.” The State of Louisiana submitted this revision to us as a part of the NO<sub>x</sub> reductions needed for the BR area to attain the 1-hour ozone standard. These NO<sub>x</sub> reductions will assist the BR area to attain the 1-hour ozone standard.

We are proposing to process and approve the April 8, 2002, SIP revision at the same time as the State is accepting comments and finalizing this rule revision. We refer to this method of simultaneously processing and approving a State’s proposed rule revision as “parallel processing.” We have based our proposed parallel approval on the State’s proposal dated April 8, 2002. If the State’s final rule revision is significantly different from its April 8, 2002, revision we will re-propose our rulemaking on the revision.

We are proposing approval of this rule revision under Part D, and section 182(c) of the Act because Louisiana is relying on these NO<sub>x</sub> reductions to demonstrate attainment of the 1-hour ozone standard in the BR 1-hour ozone nonattainment area.

**2. What Is the Current Applicability Size Limit for Lean Burn Engines Within the BR Area?**

The current applicability size limit for lean burn engines in the BR ozone nonattainment area, is set at 1500 horse power (Hp) or more. The NO<sub>x</sub> emission specification for lean burn engines operating in the BR ozone nonattainment area is 4 grams per Hp-hour. For more information on how the emission specification is derived, please see the docket for this proposed action.

**3. What Does the Proposed SIP Revision for Lean Burn Engines in the BR Area Say?**

The State’s proposed SIP revision will lower the applicability size limit for lean burn engines operating within the BR ozone nonattainment area (5 parishes) from 1500 Hp or more to 320 Hp or more. However, the NO<sub>x</sub> emission specification for lean burn engines operating within the BR ozone nonattainment area will remain unchanged at 4 grams per Hp-hour. See