Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.l, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION ARES AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T08–033 is added to read as follows:

§ 165.T08–033 Safety Zones; Port Neches Riverfest, Neches River, Port Neches, TX.

(a) *Regulated Areas.* The following areas are safety zones:

(1) *Fireworks safety zone.* All waters of the Neches River, shore to shore, adjacent to Port Neches Park, Port Neches, TX, between a northern boundary at 30°00′00″ N and southern boundary at 29°59′42″ N. Those coordinates are based upon [NAD 83].

(2) *Boat race safety zone.* All waters of the Neches River, shore to shore, adjacent to Port Neches Park, Port Neches, TX, between a northern boundary at 30°00′12″ N and southern boundary at 29°59′36″ N. Those coordinates are based upon [NAD 83].

(b) *Enforcement dates.* (1) The fireworks safety zone in paragraph (a)(1) of this section will be enforced from 8 p.m. to 10 p.m. on May 10, 2003.

(2) The boat race safety zone in paragraph (a)(2) of this section will be enforced from 1 p.m. to 6 p.m. on May 10, 2003, and from 8 a.m. to 6 p.m. on May 11, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into the safety zones in this section is prohibited unless authorized by the Captain of the Port Port Arthur or a designated representative.

(2) Vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Port Arthur or a designated representative. They may be contacted via VHF Channel 16 or by telephone at 409–723–6500.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Port Arthur and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: April 2, 2003.

Eric A. Nicolaus,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. 03–11603 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL207–3; FRL–7487–5]

Approval and Promulgation of Implementation Plans; Illinois Emission Test Averaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to Illinois rules for averaging of emission tests. Illinois requested these revisions on October 9, 2001. For sources with steady emission rates, these revisions provide for assessing compliance with mass emission limits on the basis of an average of three test runs.

EPA proposed to approve these revisions on April 15, 2002, at 67 FR 18115. The Environmental Law & Policy Center and others submitted a comment letter objecting to this proposed approval. The comments observed that averaging three test runs yields a less stringent compliance test than assessing compliance based on each test run individually. The commenters thus view the submittal as an inappropriate relaxation. The comments further object that the State's rules provide for insufficient information on case-specific test protocol revisions to be able to judge how these revisions would affect test results.

EPA concludes that averaging of three mass measurement test runs is standard practice, and concludes that Illinois is formalizing its pre-existing approach and not relaxing its compliance assessments. EPA concludes further that Illinois has adopted an appropriate approach to differentiating between major and minor test method revisions and to addressing minor revisions.

DATES: This rule is effective on June 9, 2003.

ADDRESSES: Copies of the Illinois submittal and other information are available for inspection during normal business hours at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development

Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, (*summerhays.john@epa.gov*).

SUPPLEMENTARY INFORMATION:

This document is organized according to the following table of contents:

I. What Did EPA Propose?

EPA proposed to approve Illinois' test averaging rules. EPA proposed this action on April 15, 2002, at 67 FR 18115, based on a submittal by the Illinois Environmental Protection Agency on October 9, 2001.

Illinois' submittal includes a new part 283 of Title 35 of the Illinois Administrative Code, entitled General Procedures for Emissions Tests Averaging. A core feature of these rules is that evaluations of compliance of sources having relatively stable emissions with mass emission limits shall be on the basis of the average of three test runs whenever feasible. The rules further specify that the emissions tests must be in conformance with a test plan that the source must submit prior to compliance testing. Sources may request permission from IEPA to make minor deviations from the test plan. ''Minor deviations'' are defined in the rule to include only those testing procedures that do not affect the level of emissions measured and do not affect how other sources in the source category might be tested.

The averaging of three test runs is standard practice. Almost all air emission compliance tests in Illinois use methods given in Appendix A to Title 40 Code of Federal Regulations part 60 (40 CFR part 60). While EPA only requires these methods for assessing compliance with new source performance standards, in practice these methods are used nearly universally in evaluating compliance with limits applicable to older as well as newer sources. Averaging provisions for the 40 CFR part 60 methods are given in 40 CFR 60.8(f), stating that ''unless otherwise specified * * *, each performance test shall consist of three separate runs using the applicable test method * * * . For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply.'' Further text of 40 CFR 60.8(f) explains that compliance may be judged on the basis of an average of two test runs if for specified reasons a valid third test run cannot be obtained. These provisions represent standard practice in compliance assessments. EPA proposed to approve Illinois' rules because it judged them consistent with this standard practice.

It may be noted that visible emission tests are addressed somewhat differently from the mass emission tests addressed in 40 CFR 60.8. Visible emission tests, including opacity observations under Method 9 and tests of the duration of visible emissions under Method 22, involve many observations per hour (240 observations per hour in the case of Method 9), so that measurement uncertainty is addressed in these methods without averaging the results for multiple hours. That is, averaging of three test runs is standard practice only for mass emissions testing, where each test run produces only one mass emissions result. Illinois clearly intended its averaging of three test runs to apply only to mass emissions testing, and EPA's approval actions reflect that understanding.

II. What Did Commenters Say and What Is EPA's Response?

EPA received one letter commenting on its proposed rulemaking. This letter was co-signed by the Environmental Law & Policy Center, the American Lung Association of Metropolitan Chicago, and the Illinois Chapter of the Sierra Club. The following discussion is organized in comment-response format, presenting each issue or concern raised by the commenters followed by EPA's response.

Comment: The commenters observe that averaging results from three test runs provides a less stringent test of compliance than treating any one test run with excessive emissions as a violation. The commenters therefore consider Illinois' adoption of a rule providing for averaging of three test runs to be a relaxation of Illinois' rules. The commenters state that such a relaxation is impermissible under Clean Air Act section 110(l) and (for nonattainment areas) section 193 and under rules for prevention of significant deterioration unless special demonstrations of acceptability are provided.

Response: EPA agrees that averaging three test runs is less stringent than using each test run as an independent test of compliance. However, EPA does not agree that Illinois is in fact relaxing its compliance assessments.

As stated in Illinois' technical support document for its state rulemaking, ''The purpose of these * * * rules is to codify an existing Agency policy.'' Thus, compliance assessments after this rule change are no less stringent than compliance assessments before this rule change; Illinois used an average of three test runs to assess compliance before this rule change and will continue to use an average of three test runs after this rule change. Thus, this rule change merely formalized existing practice, and did not relax the procedures by which Illinois assesses compliance.

Similarly, approval of these rules into the State Implementation Plan (SIP) does not relax the approach EPA will use to assess compliance, since EPA's approach for assessing compliance before Illinois adopted these rules is the same as the approach it will use afterward, *i.e.* generally assessing compliance based on an average of three test runs.

Thus, Illinois' formalization of this practice does not represent a relaxation, since in fact Illinois and EPA will be assessing compliance in the same way after this revision as before. Since EPA does not consider this a relaxation, the provisions of sections 110(l) and 193 and the prevention of significant deterioration provisions do not apply.

The purpose of addressing compliance on the basis of a three run average is to address measurement uncertainty. Under normal circumstances, EPA believes that results from one test run do not provide sufficient reliability to demonstrate compliance or noncompliance with mass emission limits. Use of a three run average (or, when necessary and appropriate, at least a two run average) provides a better degree of confidence in the compliance assessment.

Comment: The commenters state that ''there are inadequate safeguards built into the rule to assure that averaging is only used to remedy random results that are a result of inaccurate test methods.'' The commenters cite example test results included in IEPA's testimony during its rule adoption process (test results of 201, 166, and 154 ppm, showing compliance on average with a 200 ppm limit). The commenters believe this testimony demonstrates that test result variability that IEPA views as reflecting testing variability in fact represents variability in source operations and source emission rates. The commenters believe this evidence contradicts IEPA's claims that its rule addresses modest variability in test results and not variability in source emission rates. The commenters believe that the rule allows sources to be treated as complying with applicable limits on average when in fact the sources are going in and out of compliance.

Response: Consecutive test runs on a facility that by objective measures is being operated in the same manner can yield test result differences like those

identified in IEPA's testimony. Thus, averaging three test runs is needed to improve the confidence level of the conclusion that the source is operating in or out of compliance.

Illinois' rules provide additional safeguards against finding compliance on average for a source that is moving in and out of compliance. These safeguards are based on restrictions that three run averaging is permissible only for sources with steady state emissions.

Comment: The commenters are concerned in particular that variations in emissions can arise from variations in source operations. The commenters observe that ''[i]t is not possible to define every operating parameter in the testing plan.'' As a result, the commenters conclude that the rule does not prevent facilities from either intentionally or unintentionally varying operations so that excessive emissions in one test run do not recur in the next test runs.

Response: Testing plans are generally designed with the most important operating parameters set to have maximum emissions. If variation of parameters not addressed in the testing plan were found to affect emissions significantly, this could signify that the test results do not truly assess whether the facility complies with the limit under the normal range of routine operating conditions. If so, an additional test may be required. However, in most cases, variations in results among test runs can be attributed largely to testing variability, such that the test provides a valid indication of whether the facility complies with the limit in routine operation.

Comment: The commenters object that ''insufficient information is included regarding the test plans for the commenters to determine whether * * * testing in accordance with a valid test plan will assure the reliability of emission test averaging.''

Response: Due to the variety of facilities to be tested, it is not possible for a testing rule to specify the parameters that would be necessary to address for every situation. Therefore, it is essential that a process be established by which the State, with EPA oversight, can evaluate each testing plan individually. EPA believes that the State's rule provides for proper governmental review of each testing plan on a case-by-case basis.

Comment: The commenters express concern about provisions for ''minor deviations'' from submitted test plans. In particular, the commenters state that the absence of a definition of the operating parameters in test plans results in insufficient guarantees against changes in critical parameters between test runs.

Response: The range of circumstances requiring minor deviations from planned testing procedures is as wide as the range of relevant operating parameters. Furthermore, the minor deviations authorized here generally apply to the entire set of test runs, typically to address site-specific circumstances where the state finds that the full test may be run under conditions deviating slightly from the planned conditions without affecting the results of the test. An example of a minor deviation would be an incinerator that is operating slightly cooler than was anticipated in the test plan, in circumstances where the alternate temperature does not significantly affect emissions. For the range of facilities covered by this general testing rule, the need for minor deviations from standard testing methods is inevitable, and yet the range of necessary deviations cannot be predicted or readily defined. The need for government concurrence with the minor deviation is a safeguard against deviations pursued to underrepresent emissions. Thus, Illinois has adopted a reasonable approach to addressing site-specific circumstances where minor modifications of testing procedures are appropriate.

Comment: The commenters believe that variations in results among test runs should not be assumed to reflect imprecision in test results. The commenters observe that variations in operating parameters as well as plant equipment and malfunctions are just as likely as variations resulting from test imprecision.

Response: Illinois reviews test reports to assess whether circumstances arose during the test that would significantly affect emissions. Tests done during a facility malfunction or during other abnormal operations significantly affecting emissions would generally not be in accordance with the test plan, and the test would not be considered a valid test. In most cases, it is reasonable to attribute most of the variations among results among three test runs to testing uncertainties.

Comment: The commenters express concern that facilities, who get ''benefit of the assumption * * * of imprecise testing methods'' are ''also responsible for maintaining the testing equipment and conducting the test.''

Response: The comment seems intended to imply a concern that the facility operators have an incentive to maintain the testing equipment poorly and conduct the test imprecisely. In fact, most tests are done by contractors, whose livelihoods depend on conducting tests as reliably as possible. Even for facility-run tests, greater imprecision does not benefit the facility, since imprecision does not preferentially lead to a lower average emission value. On the contrary, greater imprecision increases the risk that a complying facility could have three test runs with average emissions above the applicable limit.

Comment: The commenters recommend alternatives to averaging of three test runs. The commenters recommend that more than three test runs be conducted. The commenters further recommend that the State (and EPA) be granted the discretion to evaluate test results ''with outliers examined on a case by case basis to determine if they were a violation in fact or if it was a failure of testing methods.'' The commenters also suggest the possibility of conducting multiple tests with different testing equipment and the possibility of operators ''running the facility with emissions further within the limits''.

Response: Illinois' rule seeks to establish standard practice for conducting and evaluating tests. Illinois makes the recommended choice in stipulating that mass emission tests shall generally consist of three test runs. Illinois further applies standard, recommended practice by averaging the results of the test runs, thereby improving the reliability of the conclusions drawn. Illinois (and EPA) retain the option to require further tests if variability in test results or other factors indicate that the conducted test does not adequately assess whether the facility complies with applicable limits under all operating conditions. It would be inappropriate for Illinois to require use of multiple sets of testing equipment on a routine basis or to require facilities to emit below the applicable limit by an amount that reflects testing uncertainties.

The discretion that the commenters recommend, for examining outliers on a case by case basis, is in fact granted in the rule. In examining test results, Illinois (and EPA) examine the variability from run to run and assess whether operating conditions were held constant. If Illinois (or EPA) concludes that operating conditions varied, causing significant variations in emissions, the rules provide for a conclusion that the facility did not have steady state emissions and therefore did not qualify for averaging of three test runs. More generally, if Illinois (or EPA) simply concludes that the variations exceed those attributable to normal testing uncertainties, Illinois (or EPA) may find that the test is unreliable and

request a retest. If, on the other hand, the variation in test results is judged to reflect normal variability in test measurements, then the rule provides for averaging of three test runs, as is appropriate to enhance the reliability of the results.

III. EPA Action

EPA is approving the revisions to Illinois' rules for emissions averaging. EPA concludes that these rules codify standard practice in preparation and review of test plans and in averaging of three test runs in assessing compliance with mass emission limits.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state rules as meeting Federal requirements and imposes no additional requirements beyond those imposed under state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: April 11, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons set out in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(164) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(164) On October 9, 2001, the State of Illinois submitted new rules regarding emission tests.

(i) Incorporation by reference.

(A) New rules of 35 Ill. Admin. Code Part 283, including sections 283.110, 283.120, 283.130, 283.210, 283.220, 283.230, 283.240, and 283.250, effective September 11, 2000, published in the Illinois Register at 24 Ill. Reg. 14428.

(B) Revised section 283.120 of 35 Ill. Admin. Code, correcting two typographical errors, effective September 11, 2000, published in the Illinois Register at 25 Ill. Reg. 9657.

* * * * *

[FR Doc. 03–11471 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[FRL–7496–2]

RIN 2050–AF05

Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule clarifies a provision included in recent amendments to the Comprehensive