

(b) If you have not filed a request for review by a Federal reviewing official on or before the effective date of this section and you have received an initial determination under subpart B of this part, we will process any request for additional administrative review filed after the effective date as either a request for reconsideration by the State agency or a request for hearing before an administrative law judge if your State uses the testing procedures under §§ 404.906 and 416.1406 of this title.

(c) This subpart will no longer be effective the day after a Federal reviewing official issues a decision on the last of the claims accepted for review under paragraph (a) of this section.

(d) If compelling evidence shows that the Federal reviewing official process is efficient, effective, and sustainable given available Agency resources, the Commissioner may reinstate the Federal reviewing official process by publishing a notice of proposed rulemaking in the **Federal Register**.

[FR Doc. E7-16071 Filed 8-14-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA-R06-OAR-2007-0651; FRL-8455-1]

Approval and Promulgation of Implementation Plans; Louisiana; Clean Air Interstate Rule Nitrogen Oxides Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Louisiana State Implementation Plan (SIP) submitted by the State of Louisiana on July 12, 2007, as the Louisiana Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_x) Trading Programs abbreviated SIP. We are proposing to approve Louisiana's CAIR NO_x Annual and Ozone Season Abbreviated SIP revision in parallel with the Louisiana Department of Environmental Quality's (LDEQ) rulemaking activities ("parallel processing"). The abbreviated SIP revision includes the Louisiana methodology for allocation of annual and ozone season NO_x allowances. EPA is proposing to determine that the Louisiana CAIR NO_x Trading Programs abbreviated SIP revision satisfies the applicable requirements of a CAIR abbreviated SIP revision. EPA is also

proposing to approve revisions to the Louisiana SIP that establish administrative reporting requirements for all Louisiana CAIR programs; these revisions were submitted on September 22, 2006, as part of the Louisiana CAIR Sulfur Dioxide (SO₂) Trading Program SIP. EPA is also proposing that the Louisiana CAIR NO_x Annual and Ozone Season Abbreviated SIP will satisfy Louisiana's Clean Air Act (CAA) Section 110(a)(2)(D)(i) obligations to submit a SIP revision that contains adequate provisions to prohibit air emissions from adversely affecting another State's air quality through interstate transport.

The intended effect of this action is to reduce NO_x emissions from the State of Louisiana that are contributing to nonattainment of the 8-hour ozone and PM_{2.5} National Ambient Air Quality Standards (NAAQS or standard) in downwind states. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before September 14, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2007-0651, by one of the following methods:

(1) *www.regulations.gov*: Follow the on-line instructions for submitting comments.

(2) *E-mail*: Mr. Jeff Robinson at robinson.jeffrey@epa.gov. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6 "Contact Us" Web site*: <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

(4) *Fax*: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), at fax number 214-665-6762.

(5) *Mail*: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

(6) *Hand or Courier Delivery*: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2007-0651. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh

floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Louisiana Department of Environmental Quality, Office of Environmental Quality Assessment, 602 N. Fifth Street, Baton Rouge, Louisiana 70802.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposal, please contact Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever any reference to "we," "us," or "our" is used, we mean EPA.

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I. What Action Is EPA Proposing?

On July 12, 2007, the State of Louisiana requested that EPA parallel process an abbreviated revision to the Louisiana SIP in conjunction with the LDEQ's rulemaking activities. The SIP revision consists of new regulations that establish the NO_x annual and ozone season allocation methodologies that are to be used instead of the Federal allocations in the Louisiana CAIR NO_x Annual and Ozone Season Federal Implementation Plans (FIP). The affected state regulations that we are proposing to approve today as part of the Louisiana CAIR NO_x Trading

Programs abbreviated SIP are enacted at Louisiana Administrative Code, Title 33, Part III, Chapter 5, Sections 506(A) and (B) (LAC 33:III.506(A) and (B)). EPA is proposing to determine that the Louisiana CAIR NO_x Trading Programs abbreviated SIP revision satisfies the applicable requirements of a CAIR abbreviated SIP revision at 40 CFR 51.123(p)(1) and (ee)(2). We are also at this time proposing to approve revisions to the Louisiana SIP at LAC 33:III.506 (D) and (E), submitted September 22, 2006, that establish administrative reporting requirements germane to all Louisiana CAIR programs. We had deferred action on these subsections in the Louisiana CAIR SO₂ rulemaking until we had the opportunity to review and act upon the Louisiana CAIR NO_x programs (see 72 FR 39741).

The provisions of the Louisiana CAIR NO_x Annual and Ozone Season FIP at 40 CFR 52.984 require owners or operators of NO_x sources located in Louisiana to meet the Federal NO_x annual and ozone season trading programs found at 40 CFR part 97. These Federal trading programs' rules include provisions at 40 CFR 97.144(a) and 97.343(a) that if EPA approves the Louisiana abbreviated SIP revision for NO_x annual and ozone season allocation methodologies, then the Federal NO_x annual and ozone season allocation methodologies no longer apply. If EPA approves the Louisiana NO_x annual and ozone season allocation methodologies into the Louisiana SIP, then EPA under 40 CFR 52.984, 97.144(a), and 97.343(a) will not make allocations for the CAIR NO_x sources in Louisiana; the LDEQ will allocate NO_x annual and ozone season allowances using the Louisiana SIP rules.

Consequently, if EPA approves the Louisiana abbreviated SIP revision, EPA is not required to take any rulemaking action to change the Federal CAIR NO_x Annual and Ozone Season trading programs in 40 CFR part 97 or to change the Louisiana CAIR FIP for NO_x annual and ozone season emissions in 40 CFR 52.984. Rather EPA, by ministerial action, will note in Appendix A.1. to Subpart EE of 40 CFR Part 97, that Louisiana has an approved SIP revision for NO_x annual allowances. Similarly, EPA will note in Appendix A to Subpart EEEE of 40 CFR Part 97, that Louisiana has an approved SIP revision for NO_x ozone season allowances. Since the Federal CAIR NO_x Annual and Ozone Season trading programs' rules provide for automatic revision of the Louisiana CAIR FIP for NO_x annual and ozone season emissions upon approval of such an abbreviated SIP revision, the

Louisiana rules for NO_x annual and ozone season allowance allocations would apply, rather than the Federal rules governing allocations, upon the effective date of approval.

In addition, EPA is also proposing to approve a revision to Louisiana's SIP to address the "good neighbor" provisions of section 110(a)(2)(D)(i) of the CAA. This section of the Act requires each State to submit a SIP that prohibits emissions that could adversely affect another State. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to downwind nonattainment of the national ambient air quality standards (NAAQS), (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

Why are we "parallel processing" and how does it work?

The Louisiana CAIR NO_x Annual and Ozone Season FIP includes a NO_x allowance recordation deadline of September 30, 2007, at 40 CFR 97.153 and 97.353. As explained in the preamble of our April 28, 2006, promulgation of the CAIR FIPs, EPA will only record State allowance allocations if EPA has approved a full or abbreviated SIP for the State which specifies the allocation methodology (see 71 FR 25354). The State of Louisiana requested parallel processing of the Louisiana CAIR NO_x Trading Program Abbreviated SIP revision to expedite federal approval of the Louisiana NO_x annual and ozone season allocation methodology.

In order to expedite review, approval of this revision is being proposed under a procedure called "parallel processing" whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations (40 CFR part 51, Appendix V, section 2.3). If the State's proposed revision is substantially changed, EPA will evaluate those subsequent changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking on the revisions after responding to any submitted comments. Final rulemaking action by EPA will occur only after the SIP revision has been fully adopted by Louisiana and submitted formally to EPA for incorporation into the SIP. In addition, any action by the State resulting in undue delay in the adoption of the rules may result in a re-proposal altering the approvability of the SIP revision.

II. What Is the Regulatory History of CAIR and the CAIR FIP?

EPA promulgated the CAIR on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO₂, which is a precursor to PM_{2.5} formation, and/or NO_x, which is a precursor to both ozone and PM_{2.5} formation. For jurisdictions that contribute significantly to downwind PM_{2.5} nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO₂ and annual State-wide emission reduction requirements for NO_x. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets statewide emission reduction requirements for NO_x for the ozone season (defined at 40 CFR 97.302 as May 1st to September 30th). Under CAIR, States may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting and submitting for EPA approval any other control measures.

EPA found that Louisiana significantly contributed to nonattainment of the 8-hour ozone standard in Texas and the PM_{2.5} standard in Alabama, resulting in Louisiana being subject to the SO₂, NO_x annual, and NO_x ozone season requirements of CAIR. Louisiana submitted a SIP revision addressing the SO₂ requirements of CAIR on September 22, 2006. We approved this SIP revision through a direct final action on July 20, 2007 (72 FR 39741).¹ Today we are proposing to approve the abbreviated SIP revision addressing the Louisiana NO_x annual and ozone season requirements of CAIR with this rulemaking. There are no punitive consequences for Louisiana failing to

submit SO₂, NO_x Annual, and NO_x Ozone Season CAIR SIPs.

CAIR sets forth what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Act with regard to interstate transport for the 8-hour ozone and PM_{2.5} NAAQS. EPA made national findings (70 FR 21147), effective May 25, 2005, that the affected States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and PM_{2.5} NAAQS. These May 25, 2005, findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D), including the “good neighbor provision” at section 110(a)(2)(D)(i) which applies to interstate transport of certain emissions. Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated. On August 15, 2006, EPA issued guidance for SIP submissions that states should use to address the requirements of section 110(a)(2)(D)(i) for the 8-hour ozone and PM_{2.5} NAAQS.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. See 40 CFR 52.35 and 52.36. Each CAIR State is subject to the FIP until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR SO₂, NO_x Annual, and NO_x Ozone Season trading programs, as appropriate, found at 40 CFR part 97. The CAIR FIPs’ SO₂, NO_x Annual, and NO_x Ozone Season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO₂, NO_x annual, and NO_x ozone season) in all States covered by the CAIR FIPs’ or SIPs’ trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO_x allowances to sources in the state), while the CAIR FIPs remain in place for all other provisions. See 40 CFR 51.123(p)(1)–(3) and (ee)(1)–(3), 71 FR 25328 and 25339 (April 28, 2006).

On April 28, 2006, EPA published two more CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for PM_{2.5} and announced EPA’s final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements. On December 13, 2006, EPA published minor, non-substantive revisions that serve to clarify CAIR and the CAIR FIP.

III. What Are the General Requirements of CAIR and the CAIR FIP?

CAIR establishes State-wide emission budgets for SO₂ and NO_x and is to be implemented in two phases. The first phase of NO_x reductions starts in 2009 and continues through 2014, while the first phase of SO₂ reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_x and SO₂ starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or, (2) adopting other control measures of the State’s choosing and demonstrating that such control measures will result in compliance with the applicable State SO₂ and NO_x budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs. The December 13, 2006, revisions to CAIR and the CAIR FIPs were non-substantive and, therefore, do not affect EPA’s evaluation of a State’s SIP revision.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_x SIP Call trading programs in their CAIR NO_x ozone season trading programs. Louisiana was not subject to the NO_x SIP Call; therefore, the second exception is not applicable.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements

¹ Louisiana is subject to the CAIR SO₂ Federal Implementation Plan at 40 CFR 52.985 until EPA’s final action becomes effective on the Louisiana CAIR SO₂ Trading Program SIP revision. If no adverse comments are received on our direct final action by August 20, 2007, the Louisiana CAIR SO₂ Trading Program will be effective on September 18, 2007. We are not accepting comments on the Louisiana CAIR SO₂ Trading Program in this action; if you would like to comment on the Louisiana CAIR SO₂ Trading Program please follow the instructions at 72 FR 39741, Docket ID No. EPA–06–OAR–2006–0849.

by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. The provisions in the abbreviated SIP revision, if approved into a State's SIP, will not replace that State's CAIR FIP; however, the requirements for the CAIR FIPs at 40 CFR part 52 incorporate the provisions of the Federal CAIR trading programs in 40 CFR part 97. The Federal CAIR trading programs in 40 CFR part 97 provide that whenever EPA approves an abbreviated SIP revision, the provisions in the abbreviated SIP revision will be used in place of or in conjunction with, as appropriate, the corresponding provisions in 40 CFR part 97 of the State's CAIR FIP (e.g., the NO_x allowance allocation methodology).

A State submitting an abbreviated SIP revision, may submit limited SIP revisions to tailor the CAIR FIP's cap-and-trade programs to the state submitting the revision. An abbreviated SIP revision may establish certain applicability and allowance allocation provisions instead of or in conjunction with the corresponding provisions in the CAIR FIP's rules in that State. Specifically, an abbreviated SIP revision may:

(1) Include NO_x SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP's NO_x Ozone Season trading program;

(2) Provide for allocation of NO_x annual or ozone season allowances by the State, rather than the Administrator, and using a methodology chosen by the State;

(3) Provide for allocation of NO_x annual allowances from the CSP by the State, rather than by the Administrator, and using the State's choice of allowed, alternative methodologies; or

(4) Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP's cap-and-trade programs under the opt-in provisions in the CAIR FIP's rules.

With approval of an abbreviated SIP revision, the State's CAIR FIP remains in place, as tailored to sources in that State by the approved SIP revision.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's

submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO_x allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the State's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, Louisiana submitted an abbreviated SIP revision that addresses the allocation methodology for the NO_x Annual and Ozone Season programs. Louisiana previously submitted a full SIP revision to address the SO₂ requirements of CAIR.

V. What Is EPA's Analysis of Louisiana's CAIR NO_x Annual and Ozone Season Abbreviated SIP Revision?

A. State Budgets for NO_x Annual and Ozone Season Allowance Allocations

The CAIR NO_x annual and ozone season budgets for Louisiana were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu, for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_x budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the Louisiana NO_x annual and ozone season budgets from the regional budgets using Louisiana heat input data adjusted by fuel factors.

The CAIR SIP requirements and the Louisiana CAIR NO_x Annual FIP establish the NO_x annual budgets for Louisiana as 35,512 tons of NO_x annual emissions for 2009–2014 and 29,593 tons of NO_x annual emissions in 2015 and thereafter. Louisiana's submitted rules at LAC 33:III.506(A)(2) establish that the total amount of NO_x annual allowances allocated per control period shall not exceed the CAIR NO_x annual budget at 40 CFR 97.140. Therefore, the annual budgets as listed in 40 CFR 51.123 and 97.140 (35,512 tons in 2009–2014 and 29,593 tons in 2015 and thereafter) continue to apply.

The CAIR SIP requirements and the Louisiana CAIR NO_x Ozone Season FIP establish the NO_x ozone season budgets for Louisiana as 17,085 tons of NO_x ozone season emissions for 2009–2014 and 14,238 tons of NO_x ozone season emissions in 2015 and thereafter. Louisiana's rules at LAC 33:III.506(B)(2) establish that the total amount of NO_x ozone season allowances allocated per control period shall not exceed the CAIR NO_x ozone season budget at 40 CFR 97.340. Therefore the ozone season

budgets as listed in 40 CFR 51.123 and 97.340 (17,085 tons in 2009–2014 and 14,238 tons in 2015 and thereafter) continue to apply.

The Louisiana abbreviated SIP revision, being proposed today, does not affect the budgets for the NO_x annual and ozone season programs. These budgets are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the Louisiana CAIR NO_x Annual and Ozone Season FIPs. In short, the Louisiana abbreviated SIP revision only affects allocations of NO_x annual and ozone season allowances under the established budgets.

B. CAIR NO_x Annual and Ozone Season Cap-and-Trade Programs

The CAIR NO_x Annual and Ozone Season FIPs for the States largely mirror the structure of the NO_x SIP Call model-trading rule in 40 CFR part 96 subparts A through I. While the provisions of the NO_x Annual and Ozone Season FIPs are similar, there are some differences. For example, the NO_x Annual FIPs provide for a compliance supplement pool (CSP), which is discussed below and under which allowances may be awarded for early reductions of NO_x annual emissions.

EPA used the CAIR model trading rules as the basis for the SO₂, NO_x annual, and NO_x ozone season trading programs incorporated by reference into the States' CAIR FIPs. The CAIR FIPs' trading programs' rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model SO₂, NO_x annual trading, and NO_x ozone season trading rules and the respective CAIR FIPs' trading programs are designed to work together as integrated SO₂, NO_x annual, and NO_x ozone season trading programs.

Louisiana is subject to the CAIR FIPs for 8-hour ozone and PM_{2.5}. These CAIR FIPs for Louisiana, at 40 CFR 52.984 and 52.985, require owners or operators of each NO_x and SO₂ CAIR source located in Louisiana to meet the requirements of the Federal CAIR NO_x Annual, NO_x Ozone Season, and SO₂ trading programs in 40 CFR part 97. Consistent with the flexibility given to States, States may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of its CAIR FIPs' trading programs. The July 12, 2007, submission from Louisiana is such an abbreviated SIP revision and is for the NO_x annual and ozone season trading programs. Louisiana submitted a full SIP revision

for the SO₂ trading program on September 22, 2006.

C. Applicability Provisions for Non-EGU NO_x SIP Call Sources

In general, the CAIR FIPs' trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. Because Louisiana was not included in the NO_x SIP Call trading program, Louisiana does not have or need the option of expanding the applicability provisions of the CAIR NO_x Ozone Season Trading Program to include non-EGU NO_x SIP Call sources.

D. NO_x Annual and Ozone Season Allowance Allocations

Under the NO_x allowance allocation methodology in the CAIR model trading rules and in the CAIR FIPs' trading programs, NO_x annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIPs' NO_x Annual and Ozone Season trading programs also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIPs' provisions provide States with the flexibility to establish a different NO_x allowance allocation methodology that will be used to allocate allowances to sources in a State if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_x allowance allocation methodologies, States have flexibility with regard to:

- (1) The cost to recipients of the allowances, which may be distributed for free or auctioned;
- (2) The frequency of allocations;
- (3) The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
- (4) The use of allowance set-asides and, if used, their size.

Consistent with the flexibility given to States in their CAIR FIPs' provisions, Louisiana has chosen to replace the provisions of the Louisiana CAIR NO_x

Annual and Ozone Season FIPs concerning the allocation of NO_x annual and ozone season allowances with its own methodology. The LDEQ requested assistance from the Louisiana Public Service Commission (LPSC) to determine the impact of CAIR implementation on Louisiana electricity ratepayers. Through this study and extensive stakeholder involvement, LDEQ developed and approved regulations that will allocate NO_x allowances at no cost to the CAIR subject units in Louisiana. Accordingly, the LDEQ has approved provisions establishing the NO_x annual and ozone season allocation methodologies at LAC Title 33, Part III, Chapter 5, Sections 506 (A) and (B), respectively.

Section 506(A) establishes the allocation methodology for the NO_x annual allowances. This section replaces 40 CFR 97.141 and 97.142 as promulgated by EPA on April 28, 2006. All remaining provisions of the Federal NO_x Annual Trading Program at 40 CFR Part 97, Subparts AA-HH continue to apply to Louisiana CAIR sources. Similarly, Section 506(B) establishes the allocation methodology for the NO_x ozone season allowances. Section 506(b) replaces 40 CFR 97.341 and 97.342 as promulgated by EPA on April 28, 2006. All remaining provisions of the Federal NO_x Ozone Season Trading Program at 40 CFR Part 97, Subparts AAAA-HHHH continue to apply to CAIR-subject sources in Louisiana.

The Louisiana NO_x annual and ozone season allocation methodologies are structured identically. The CAIR units in Louisiana are first divided into non-utility or utility unit categories. Non-utility units are those electric generating units that have not been certified by the LPSC or approved by a municipal authority, a process under which the unit is certified as being in the public convenience and necessity. Utility units are those units identified by the LPSC or a municipal authority as electric generating units that produce power for the public convenience and necessity. The utility unit category is further subdivided based on number of years of operating data before the allocation submittal deadline to EPA. The utility units without three years of operating data prior to the allocation submittal deadline to EPA are allocated allowances as certified units. All other utility units with three or more years of operating data are allocated allowances as utility units.

After determining the non-utility or utility status of a unit, the LDEQ proceeds with the calculation of allowances; the non-utility unit allocations are made first under both the

annual and ozone season trading programs. The allocation methodology for non-utility units is found at sections 506(A)(2)(a) and 506(B)(2)(a). For the NO_x annual trading program, the non-utility unit NO_x allowances will equal the average of the actual NO_x annual emissions of the three calendar years immediately preceding the year in which the allocations are submitted to EPA. For the NO_x ozone season trading program, the non-utility unit NO_x allowances equal the average of the actual NO_x ozone season emissions of the three calendar years immediately preceding the year that allocations are submitted to EPA. The actual NO_x emissions data used in both the annual and ozone season trading programs is the emissions inventory data reported pursuant to LAC 33:III.919; if emissions inventory data is not available then data from the Acid Rain Program will be substituted. The exception is that the allowances submitted to EPA in 2007 will be based on emissions inventory data from 2002, 2003, and 2004.

Once the non-utility unit allowances have been subtracted from the total state budget identified in sections 506(A)(2) and (B)(2), the utility units are allocated allowances proportionally based on heat input data. Certified units (utility units with less than three years of operating data before the allocation submittal deadline) are allocated based on converted heat input as specified in section 506(A)(2)(b) and 506(B)(2)(b). A certified unit will be allocated allowances for the control period in which the unit will begin operation and for each successive control period for which no NO_x allowances have been previously allocated until three years of operating data are available before the allocation submittal deadline. The converted heat input for the certified unit is calculated from the gross electrical output as stated in the documentation for the LPSC or municipal authority certification process. Utility units (those units with three or more years of operating data before the allocation submittal deadline) are allocated allowances based on the adjusted heat input according to sections 506(A)(2)(c) and 506(B)(2)(c). The exception is that the allowances submitted to EPA in 2007 will use the average of the control period adjusted heat input data from 2002, 2003, and 2004. The unit's adjusted heat input is calculated by multiplying the control period heat input for the unit by 100 percent if the unit is coal-fired, by 60 percent if the unit is oil-fired, and by 40 percent if the unit is not coal- or oil-fired. A unit's control period heat input,

status as coal-fired or oil-fired, and total tons of NO_x emissions during a control period are determined in accordance with 40 CFR Part 97 and reported pursuant to LAC 33:III.919.

Sections 506(A)(3) and (B)(3) establish the dates by which the LDEQ must submit NO_x annual and ozone season allocations to EPA for recordation in CAIR compliance accounts. No later than April 30, 2007, the LDEQ submits to EPA the CAIR NO_x annual and ozone season allowance allocations for the control periods 2009, 2010, and 2011. By October 31, 2008, for the year 2012, and by October 31 of each year thereafter, the LDEQ will submit to EPA the NO_x annual and ozone season allowance allocations for the control period in the fourth year after the year of the applicable deadline for allocation submission. LDEQ submitted NO_x annual and ozone season allowances for control periods 2009, 2010, and 2011 on April 27, 2007.

The Louisiana abbreviated SIP revision, being proposed today, satisfies the requirements for abbreviated SIP allocation flexibility at 51.123(p)(1) and (ee)(2). The provisions discussed above ensure that the LDEQ will not allocate more than the state budget in any given control period and that the allocations are submitted to EPA by the allocation submittal deadline.

E. Allocation of NO_x Allowances from the Compliance Supplement Pool

The CSP provides an incentive for early reductions in NO_x annual emissions. The CSP consists of 200,000 CAIR NO_x annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the State's share of the projected emission reductions under CAIR; Louisiana's share of the CSP is 2,251 NO_x allowances. States may distribute CSP allowances (one allowance for each ton of early reduction) to sources that make NO_x reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR and the Louisiana CAIR NO_x Annual FIP's provisions allocate 2,251 NO_x allowances to the Louisiana CSP (under 40 CFR 51.123 and 97.143) and establish specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those States.

Consistent with the flexibility given to States in the CAIR FIPs, Louisiana has chosen not to modify the CSP allocation methodology in the CAIR NO_x annual federal trading program. Therefore, EPA will continue to administer the CSP allocations pursuant to the methodology at 40 CFR 97.143.

F. Individual Opt-In Units

The opt-in provisions of CAIR and the States CAIR FIPs' provisions allow for certain non-EGUs (*i.e.*, boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (*i.e.*, opt into) the CAIR trading programs. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance holding and emissions monitoring and reporting requirements as other units subject to that CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the States' CAIR FIPs' trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the States' CAIR FIPs' opt-in provisions become effective in a State only if the State's abbreviated SIP revision adopts the opt-in provisions. The State may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The State also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for its CAIR FIP's trading programs to be implemented in the State without the ability for units to opt into the programs.

Consistent with the flexibility given to States in the FIPs' provisions, Louisiana has chosen not to allow non-EGUs to participate in the Louisiana CAIR FIP

NO_x Annual and Ozone Season trading programs.

VI. What Is EPA's Analysis of the Section 110(a)(2)(D)(i) Requirements?

The Louisiana CAIR NO_x Trading Program abbreviated SIP revision submitted on July 12, 2007, also addressed the requirements of section 110(a)(2)(D)(i) of the CAA with respect to 8-hour ozone and PM_{2.5}. This SIP revision contains provisions that address significant contribution, interference with maintenance, prevention of significant deterioration, and protection of visibility by following approaches described and explained in EPA's August 15, 2006 memorandum, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards."

Louisiana addresses the "significant contribution" and "interference with maintenance" requirements by complying with the requirements of CAIR. EPA promulgated CAIR on May 12, 2005, and concluded that the States will meet their section 110(a)(2)(D)(i) obligations to address the "significant contribution" and "interference with maintenance" requirements by complying with the CAIR requirements. Louisiana has addressed these first two elements by requiring Louisiana CAIR sources to participate in the EPA-administered NO_x annual, NO_x ozone season, and SO₂ cap-and-trade programs; Louisiana incorporated by reference the CAIR model rules for the SO₂ Trading program and has submitted an abbreviated SIP revision that establishes the NO_x annual and ozone season allocation methodologies for use in the Louisiana CAIR NO_x annual and ozone season FIP. Participation in the NO_x annual, NO_x ozone season, and SO₂ trading programs will reduce emissions from the state that would contribute significantly to nonattainment or interfere with the maintenance of the ozone and particulate matter NAAQS in any downwind state.

Louisiana addresses the "prevention of significant deterioration" requirement through their Prevention of Significant Deterioration (PSD) and New Source Review (NSR) programs. Section 110(a)(2)(D)(i)(II) requires States to submit SIPs that contain adequate provisions prohibiting "any source or other type of emission activity within the State from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan

for any other State * * * to prevent significant deterioration of air quality.”

For ozone, Louisiana has confirmed that major sources in Louisiana are subject to the approved PSD and NSR programs that implement the ozone standard. Additionally, Louisiana has promulgated rule revisions to address requirements of the Phase II Ozone Rule, and this rule is included in the State's 2006 General SIP revisions proposed on April 20, 2007. For PM_{2.5} standards, Louisiana has confirmed that major sources in Louisiana are subject to the approved PSD and NSR programs implemented in accordance with EPA's interim guidance which allows the use of PM₁₀ as a surrogate for PM_{2.5} in the PSD and NSR programs.

Louisiana addresses the “protection of visibility” requirement through the regional haze program. Section 110(a)(2)(D)(i)(II) contains a requirement for all States to submit SIPs that contain adequate provisions prohibiting “any source or other type of emission activity within the State from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State * * * to protect visibility.”

EPA has previously found that all States contain sources whose emissions are reasonably anticipated to impact visibility adversely in one or more Class I areas. Pursuant to this finding, States are currently under an obligation to submit SIPs that contain measures to address regional haze, including a long-term strategy to address visibility impairment for each Class I area which may be affected by emissions from a State. The States and Regional Planning Organizations are currently engaged in the task of identifying those Class I areas impacted by each State's emissions and developing strategies for addressing regional haze to be included in the States' regional haze SIPs. These SIP submissions are due no later than December 17, 2007. Louisiana intends to submit a regional haze SIP by the submittal deadline to satisfy its obligation to “protect visibility” under section 110(a)(2)(D)(i).

As a result, EPA believes that it is currently premature to determine whether State SIPs for 8-hour ozone or PM_{2.5} contain adequate provisions to prohibit emissions that interfere with SIP measures in other States designed to protect visibility. Accordingly, EPA believes that Louisiana does not need to make a substantive SIP submission to address the “protect visibility” requirement of section 110(a)(2)(D)(i)(II) for the 8-hour ozone and PM_{2.5} NAAQS at this point in time.

VII. Proposed Action

EPA is proposing to approve a revision to the Louisiana SIP, the Louisiana CAIR NO_x Trading Programs Abbreviated SIP revision, submitted on July 12, 2007, by the State of Louisiana (LAC 33:III.506(A) and (B)). We are also proposing to approve revisions to the Louisiana SIP establishing administrative reporting requirements for all Louisiana CAIR programs; these revisions were submitted with the Louisiana CAIR SO₂ Trading Program on September 22, 2006 (LAC 33:III.506(D) and (E)). Louisiana is covered by the CAIR NO_x Annual and Ozone Season FIPs, which require participation in the EPA-administered CAIR FIP cap-and-trade programs for NO_x annual and ozone emissions. Under this abbreviated SIP revision and consistent with the flexibility given to Louisiana in its CAIR NO_x Annual and Ozone Season FIPs' provisions, the Louisiana provisions for allocating allowances under the Louisiana CAIR FIPs' NO_x annual and ozone season trading program are proposed as part of the Louisiana SIP. EPA has determined that the abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p)(1) and (ee)(2) with regard to NO_x annual and ozone season allowance allocations. EPA is not proposing any changes to the Louisiana CAIR NO_x Annual and Ozone Season FIPs' provisions, except to the extent that if we finalize the proposed Louisiana CAIR NO_x Trading Programs abbreviated SIP, then EPA, by ministerial action, will note in Appendix A.1. to Subpart EE of 40 CFR Part 97, that Louisiana has an approved SIP revision providing for NO_x annual allowance allocations. Similarly, EPA will note in Appendix A to Subpart EEEE of 40 CFR Part 97, that Louisiana has an approved SIP revision providing for NO_x ozone season allowance allocations. Since 40 CFR part 97 provides for automatic revision of the Louisiana CAIR FIP for NO_x annual and ozone season emissions (under 40 CFR 52.984) upon approval of such an abbreviated SIP revision, the Louisiana rules for NO_x annual and ozone season allowance allocations would apply, rather than the Federal rules governing allocations, upon the effective date of approval.

EPA is also proposing that this revision adequately addresses the required elements of 110(a)(2)(D)(i), with the exception of the protect visibility requirement. This requirement will be re-evaluated after the regional haze SIP revision is completed and submitted to EPA.

VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by 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 proposes to approve 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 proposed 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 proposed 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 proposes to approve a state rule implementing a Federal standard and indicates that approval will result in ministerial changes to the appropriate appendices of the CAIR FIP's trading rules, and does not alter the relationship or the distribution of power and responsibilities established in the Act. The EPA interprets Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety

risks such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it would approve a state rule implementing a Federal standard. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Because this proposed rule merely approves a state rule implementing a Federal standard, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 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.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 97

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 7, 2007.

Richard E. Greene,

Regional Administrator, EPA Region 6.

[FR Doc. E7–16044 Filed 8–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–8455–4]

Arkansas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Arkansas has applied to EPA for Final Authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final Authorization to the State of Arkansas. In the “Rules and Regulations” section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by September 14, 2007.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator (6PD–O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Arkansas during normal business hours at the following locations: EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533; Arkansas Department of Environmental Quality 8101 Interstate 30, Little Rock, Arkansas 72219–8913, (501) 682–0876. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the “Rules and Regulations” section of this **Federal Register**.

Dated: July 25, 2007.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E7–16012 Filed 8–14–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–325; FCC 07–33]

Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules to address issues that were left unresolved in the Commission's *Second Report and Order*, FCC 07–33. Specifically, the Commission seeks comment on how to ensure that the amount of subscription-based radio service is limited, whether the Commission can and should impose spectrum fees on portions of the digital bandwidth used by broadcasters to provide subscription services, whether statutory requirements and subscription regulations should apply to subscription-based services, whether any new public interest requirements should be imposed on digital audio broadcasters, whether enhanced public disclosure rules should apply to radio stations, and whether the rules regarding unattended stations should be reviewed and modified.

DATES: Comments for this proceeding are due on or before October 15, 2007; reply comments are due on or before November 13, 2007.

ADDRESSES: You may submit comments, identified by MM Docket No. 99–325, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People With Disabilities: Contact the FCC to request reasonable accommodations (accessible format