ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 62

[EPA–HQ–OAR–2016–0033; FRL–9945–01–OAR]

RIN 2060–AS84

Clean Energy Incentive Program Design Details

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is proposing design details of the Clean Energy Incentive Program (CEIP). The CEIP is a program that states have the option to adopt if they wish to incentivize certain early emission reduction projects under the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (also known as the Clean Power Plan Emission Guidelines (EGs)). The framework for the CEIP was established in the Clean Power Plan EGs, where the EPA also noted that the design details of the program would be developed in a follow-on action. This proposal addresses those design details. In addition, we are re-proposing the CEIP-related aspects of the proposed rate-based and mass-based model trading rules—referred to in this action as optional example regulatory text. This proposal is consistent with the Supreme Court's orders staying the Clean Power Plan during judicial review. The timing elements of the CEIP may be adjusted, if necessary, upon resolution of the petitions for review of the Clean Power Plan.

DATES: *Comments.* Comments must be received on or before August 29, 2016.

Public Hearing. The EPA will hold one public hearing on the CEIP design details proposed rule. The hearing will be held to accept oral comments on the proposal. The hearing will be held in Chicago, Illinois, on August 3, 2016. The hearing will begin at 9:00 a.m. Central Standard Time CST and will conclude at 8:00 p.m. (CST). There will be a lunch break from 12:00 p.m. to 1:00 p.m. and a dinner break from 5:00 p.m. to 6:00 p.m.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0033, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Instructions. Direct your comments on the CEIP Design Details proposed rule to Docket ID No. EPA–HQ–OAR–2016–0033. The EPA's policy is that all comments received will be included in the public docket and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email 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, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0033. The EPA has previously established a docket for the June 18, 2014, Clean Power Plan proposal under Docket ID No. EPA–HQ–OAR–2013–0602. 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 whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Public Hearing. The hearing will be held in Chicago, Illinois, on August 3, 2016; in the Lake Michigan Room, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard. The hearing will begin at 9:00 a.m. Central Standard Time CST and will conclude at 8:00 p.m. (CST). There will be a lunch break from 12:00 p.m. to 1:00 p.m. and a dinner break from 5:00 p.m. to 6:00 p.m.

To register to speak at the hearing, please use the online registration form available at *http://www.epa.gov/cleanpowerplan/clean-energy-incentive-program* or please contact Ms. Pamela Garrett at (919) 541–7966 or send an email to *publichearing@epa.gov.* The last day to pre-register to speak at the hearing will be Monday, August 1, 2016. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. Please note that registration requests received before the hearing will be confirmed by the EPA via email. We cannot guarantee that we can accommodate all timing requests and will provide requestors with the next available speaking time in the event that their requested time is taken. Please note that the time outlined in the confirmation email received will be the scheduled speaking time. Again, depending on the flow of the day, times may fluctuate. If you require the service of a translator or special accommodations such as audio description, we ask that you pre-register for the hearing by Friday, July 22, 2016, as we may not be able to arrange such accommodations without advance notice. Please note that any updates made to any aspect of the hearing will

be posted online at *http://www.epa.gov/cleanpowerplan.www.epa.gov/cleanpowerplan.* While the EPA expects the hearing to go forward as set forth previously, we ask that you monitor our Web site or contact Ms. Pamela Garrett at (919) 541–7966 or at *garrett.pamela@epa.gov* to determine if there are any updates to the information on the hearings. The EPA does not intend to publish a notice in the **Federal Register** announcing any such updates.

The hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who wish to register to speak at the hearing venue on the day of the hearing. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. The EPA plans for the hearing to run on schedule; however, due to on-site schedule fluctuations, actual speaking times may shift slightly.

Because this hearing will be held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by American Samoa, Illinois, Minnesota, Missouri, New Mexico, or the state of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

Attendees will be asked to go through metal detectors. To help facilitate this process, please be advised that you will be asked to remove all items from all pockets and place them in provided bins for screening; remove laptops, phones, or other electronic devices from their carrying case and place in provided bins for screening; avoid shoes with metal shanks, toe guards, or supports as a part of their construction; remove any metal belts, metal belt buckles, large jewelry, watches and follow the instructions of the guard if identified for secondary screening. Additionally, no weapons (*e.g.,* pocket knives) or drugs or drug paraphernalia (*e.g.,* marijuana) will be allowed in the building. We recommend that you arrive 20 minutes in advance of your speaking time to allow time to go through security and to check in with the registration desk.

FOR FURTHER INFORMATION CONTACT: Dr. Tina Ndoh, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–04), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2750; email address: *ndoh.tina@epa.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

ARP—Acid Rain Program
BSER—Best system of emission reduction
CAA—Clean Air Act
CHP—Combined heat and power
CBI—Confidential business information
CEIP—Clean Energy Incentive Program
CST—Central Standard Time
CO_2—Carbon dioxide
CVR—Conservation Voltage Reduction
EE—Energy efficiency
EGs—Emission Guidelines
EGU—Electric generating unit
EJ—Environmental justice
EM&V—Evaluation, measurement, and verification
EPA—Environmental Protection Agency
ERC—Emission rate credit
FPLG—Federal Poverty Level Guidelines
HUD—Department of Housing and Urban Development
ITC—Investment Tax Credit
M&V—Monitoring and verification
MWh—Megawatt-hour
NMTC—New Market Tax Credits
NTTAA—National Technology Transfer and Advancement Act
OMB—Office of Management and Budget
PRA—Paperwork Reduction Act
PTC—Production Tax Credit
RE—Renewable energy
RFA—Regulatory Flexibility Act
TSD—Technical Support Document
TTN—Technology Transfer Network
UMRA—Unfunded Mandates Reform Act
U.S.—United States
WAP—Weatherization Assistance Program
WHP—Waste heat to power
WWW—World Wide Web

Organization of This Document. The information in this preamble is organized as follows:

I. General Information

A. What should I consider as I prepare my comments for the EPA?

Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the following address: OAQPS Document Control Officer (Room C404 02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2016–0033. Clearly mark the part or all of the information that you claim to be CBI. For CBI on a disk or CD–ROM

that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Docket. The docket number for the proposed action is Docket ID No. EPA–HQ–OAR–2016–0033.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed action is available on the Internet through the EPA's Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of the proposed action at *http://www2.epa.gov/cleanpowerplan/regulatory-actions#regulations.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposed rule and key technical documents on the same Web site.

II. Background

A. What is the framework for the CEIP that was established in the final Clean Power Plan Emission Guidelines?

The CEIP is a program that states have the option to adopt if they wish to incentivize certain early emission reduction projects under the Carbon Pollution EGs for Existing Stationary Sources: Electric Utility Generating Units (also known as the Clean Power Plan EGs).[1] The EPA included the CEIP in the Clean Power Plan EGs in response to the many comments we received supporting the early action crediting concept we discussed in the Clean Power Plan proposed rule, *see* 79 FR 34918–34919 (June 18, 2014). Many stakeholders supported including a mechanism for recognizing early actions for the emission reductions they provide prior to the start of the performance period in 2022. The inclusion of the CEIP was also responsive to comments from stakeholders describing the disproportionate burdens that some communities already bear, and stating that all communities should have equal access to the benefits of clean and affordable energy. The CEIP framework provided in the final EGs offers a mechanism that enables states to incentivize early investments in wind and solar renewable energy (RE) generation,[2] as well as in demand-side energy efficiency (EE) projects in low-income communities that generate carbon-free megawatt hours (MWh) or reduce demand-side energy use during 2020 and/or 2021.[3]

In the final Clean Power Plan, the EPA finalized a requirement that states wishing to participate in the CEIP must indicate by September 6, 2016, at a minimum, their intention to participate in the CEIP. On February 9, 2016, the Supreme Court stayed the Clean Power Plan during the pendency of the litigation. As a result of the stay, states are not required to provide such notice by September 6, 2016. The EPA will provide further direction on submittal timing requirements, as well as any other adjustments in timing that may be needed, upon the resolution of the judicial petitions for review of the Clean Power Plan. We discuss in more detail the relationship of this action to the Supreme Court's stay in section II.C of this preamble. For purposes of this proposal, however, we will use the original dates in the Clean Power Plan and the CEIP, with the expectation that all timing issues will be dealt with upon the resolution of the litigation.

In the event that the EPA finalizes a federal plan for a state, it continues to be the EPA's intention that the CEIP will be available in that state. The EPA believes the optional example regulatory provisions we are proposing, as presumptively approvable for state use or adoption, could suitably function as the CEIP provisions in a potential federal plan. We solicit comments on this aspect of the proposal. However, the EPA will not promulgate a federal plan until some period of time after the petitions for review of the Clean Power Plan are resolved and the stay is lifted. The EPA lacks authority to promulgate a federal plan for a state in the absence of a finding by the Agency that a state has failed to submit a plan by a legal deadline or a final action disapproving a required state plan. During the pendency of the Supreme Court's stay, states are not obliged to submit plans and therefore the EPA could not take either such action or promulgate any final federal plan for any state under the Clean Power Plan EGs. As explained later in this action, there are also pathways whereby a state could implement the CEIP under a duly promulgated federal plan.

While the legal effectiveness of the Clean Power Plan is currently stayed, the EPA has determined that it is appropriate to move forward with the design details of the CEIP component of the Clean Power Plan at this time. States have the authority to continue moving forward on their own volition with the design of state plans, and the EPA retains the authority to continue working with states as they do so. For states that, at their own discretion, wish to continue plan development, this action will help them understand what must be included in a state plan if they wish to opt into the CEIP. In addition, the proposal is responsive to the states that requested EPA provide additional detail on the design details of the CEIP as soon as possible. The EPA acknowledged to the public in the October 23, 2015, notice of final rulemaking that it would need to take a future action on the CEIP because there are aspects of the CEIP that need to be completed in order for the program to be able to be implemented (80 FR 64830). Indeed, commenters on the model rules and federal plan proposal, including states, requested that the Agency expeditiously complete the design details of the CEIP. *See, e.g.,* Comment of Minnesota Public Utilities Commission (EPA–HQ–OAR–2015–0199–0363); Comment of Kyra L. Moore, Dir., State of Missouri Dep't of Natural Resources (EPA–HQ–OAR–2015–0199–0457); Hearing Testimony of Jeff Cappella, Western Clean Energy

[1] The Clean Power Plan establishes carbon dioxide (CO_2) emission standards for electric utility generating Units (EGUs) in states and tribal areas that have such units (called affected EGUs). In the Clean Power Plan and in this rulemaking, the term ''state'' generally encompasses the 50 states and the District of Columbia, U.S. territories, and any Indian Tribe that has been approved by the EPA pursuant to 40 CFR 49.9 as eligible to develop and implement a Clean Air Act (CAA) section 111(d) plan. Tribes with affected EGUs may, but are not required to, submit tribal plans to implement the EGs. The EPA would not implement the EGs through a federal plan in a tribal area without first making a necessary or appropriate finding under section 301(d). In the context of the CEIP, the term ''state'' will usually refer only to those states or Indian country areas of the contiguous U.S. that have affected EGUs under the Clean Power Plan EGs. We discuss the role of states and tribes without affected EGUs in section III.D of this preamble.

[2] Currently, eligible RE technologies are limited to wind and solar resources. However, please note that the Agency is proposing a limited expansion of eligibility to certain other zero-emitting, renewable technologies. *See section III.C.4 of this preamble.*

[3] Currently, eligible low-income community projects are limited to demand-side EE. However, please note that the Agency is proposing a limited expansion of eligibility to include solar projects implemented to serve low-income communities that provide direct electricity bill benefits to low-income community ratepayers. *See section III.C.5 of this preamble.*

Campaign (November 16, 2015) (EPA–HQ–OAR–2015–0199–0233–A1–06). It is prudent to propose this action now in order to assist those states that have decided to move forward and who are contemplating participation in the CEIP, so that they have the requisite tools and information for doing so. While this proposal generally will be helpful to those who are interested in participating in the CEIP, because the CEIP is an optional program, relies on voluntary measures, and will not become available to the states until the stay is lifted, this proposal will not disadvantage any party (including those who have decided to await the resolution of the litigation prior to acting to develop their state plans). Finally, we heard from many stakeholders that they would like an opportunity to comment on a more developed proposal regarding CEIP topics; the EPA is responding to those requests by issuing this proposal, which provides a new opportunity to submit comments on the CEIP topics addressed here and to review actual proposed rule language. In order to ensure that the EPA considers and responds to your comments on these CEIP topics, you must submit your comments on this proposal, following the process explained in section I.B of this preamble.

The CEIP is an incentive program in which both the states, should they elect to participate, and the EPA play a role. The program operates by means of states allocating or issuing early action compliance instruments—called early action allowances or early action emission rate credits (ERCs)—which are then matched by EPA with additional compliance instruments—called matching allowances or matching ERCs. States in turn provide these awarded matching compliance instruments to the providers of eligible CEIP RE and low-income community projects that received the early action allowances or early action ERCs from the state.

The EPA designed the CEIP to be an implementable option for states using mass-based plans and states using rate-based plans. The final Clean Power Plan specified the number of early action ERCs that a state may award to CEIP-eligible project providers per MWh of generation or savings achieved in 2020 and/or 2021 under a rate-based plan, but stated that the EPA would speak to the award of early action allowances under a mass-based plan in a future action. Awards of early action ERCs, and the EPA's proposed approach for the award of early action allowances, are discussed in section III.A of this preamble.

In the final Clean Power Plan, the EPA stated that, in the case of eligible CEIP solar and wind projects,[4] for every two MWh of energy generation, the state will provide an award of one early action ERC for a state adopting a rate-based plan (or an appropriate commensurate number of early action allowances for states adopting a mass-based plan), and the EPA will provide an award of one matching ERC (or an appropriate commensurate number of matching allowances). Thus, the total award to each eligible wind and solar project is made on a one-to-one basis for every one MWh of clean generation (either one ERC or an appropriate commensurate number of allowances for every one MWh of clean generation). In the case of eligible CEIP demand-side EE projects in low-income communities,[5] for every two MWh of energy savings, the state will provide an award of two early action ERCs (or an appropriate commensurate number of early action allowances), and the EPA will provide an award of two matching ERCs (or an appropriate commensurate number of matching allowances). Thus, the total award for low-income EE projects is made on a two-to-one basis for every one MWh of energy savings (either two ERCs or an appropriate commensurate number of allowances for every one MWh of energy savings). *See* 80 FR 64831, October 23, 2015.

The overall size of the EPA matching pool available to all CEIP-participating states has been set at 300 million short tons of CO_2, and the EPA will award matching allowances or matching ERCs from this pool in an amount not to exceed in the aggregate this limit (80 FR 64829). The 300 million ton matching pool, referred to in this preamble as the ''matching pool,'' will be apportioned among CEIP-participating states pro rata based on the amount of reductions from 2012 CO_2 emission levels the affected EGUs in each state are required to achieve relative to those in other CEIP-participating states.[6]

Eligible CEIP projects must be located in or benefit a state that has one or more affected EGUs with an approved final plan that includes requirements establishing its participation in the CEIP. For purposes of the CEIP, we propose that ''benefit'' a state means that the electricity is generated or saved with the intention to meet or reduce electricity demand in the CEIP-participating state.

Additionally, in the final Clean Power Plan, we stated that eligible projects must commence construction (in the case of solar and wind projects) or commence operations (in the case of low-income EE projects) following the submission of a final state plan, or September 6, 2018, for a state that chooses not to submit a final plan by that date. As discussed later in this preamble, we are proposing to adjust this timing requirement to remove final state plan submittal as a triggering event for eligibility.[7] In addition, the EPA did not define the terms ''commence construction'' or ''commence operation'' in regards to the CEIP in the final Clean Power Plan. In preparation for this action, we solicited public input on the appropriate definitions for these terms,[8] and we speak to those definitions in section III.C of this preamble.

A CEIP-participating state must include requirements in its plan for determining CEIP project eligibility and quantifying and verifying the MWh of generation or savings from an eligible project. These requirements must be consistent with the requirements included in the final Clean Power Plan EGs for the issuance of ERCs.[9] This includes requirements for demonstration of eligibility; evaluation, measurement, and verification (EM&V) plans; monitoring and verification (M&V) reports; and independent verification of project submittals. In addition, the state's plan must include a mechanism that ensures that the award of early action allowances or early action ERCs to CEIP-eligible parties will not impact the CO_2 emission performance of affected EGUs required to meet mass-based or rate-based CO_2 emission standards during the plan performance periods. This mechanism is not required to account for matching

[4] In this action, we are proposing a limited expansion of eligible RE resources to include geothermal and hydropower. See section III.C. of this action for additional discussion of the proposed limited RE expansion.

[5] In this action, we are proposing a limited expansion of eligible low-income community projects to include solar projects implemented to serve low-income communities in addition to demand-side EE projects. See section III.C. of this action for additional discussion of the expansion of eligible low-income community projects.

[6] See discussion of proposed apportionment method in section III.A *of this preamble.*

[7] We will continue to use September 6, 2018, as the putative eligibility start date under the CEIP for ''commence operation'' of low-income EE projects, while recognizing that in light of the Supreme Court's stay, this date, as well as the deadline for final state plan submittals, may need to be adjusted. The applicable eligibility date for ''commence commercial operation,'' which the EPA is proposing would replace the term ''commence construction'' with regard to RE projects, is discussed in section III.C of this preamble.

[8] See Clean Energy Incentive Program Next Steps (October 21, 2015) at *http://www.epa.gov/sites/production/files/2015-10/documents/ceip_next_steps_10_21_15.pdf.*

[9] See 40 CFR 60.5805 through 60.5835.

allowances or ERCs that may be issued to the state by the EPA.[10]

B. What are the statutory authorities for this action, including legal authority and basis for the CEIP?

The CEIP is an optional component of the Clean Power Plan, and the Clean Power Plan is an exercise of the EPA's authority under section 111(d) of the CAA, 42 U.S.C. 7411(d). The legal authority and rationale supporting the Clean Power Plan are discussed in the final rulemaking and accompanying Legal Memorandum. *See, e.g.,* 80 FR 64662, 64707–64710 (October 23, 2015). The rationale and legal authority for the CEIP in particular are also set forth in the final Clean Power Plan. *Id.* 64831–64832. Nothing in this action reopens the legal determinations or rationale set forth in the final Clean Power Plan.[11]

The EPA established the CEIP in the final Clean Power Plan EGs, and took final action with respect to certain key design parameters for the program while identifying other details of the program that would be determined through a future action. *See* 80 FR 64829–64832 (October 23, 2015). The Agency discussed mechanisms for recognizing and providing incentives for early action in the Clean Power Plan proposal and requested comment on design elements of different approaches, see 79 FR 34830, 34918–34919 (June 18, 2014). The Agency identified additional considerations regarding approaches to incentivize early action in a notice of data availability on which the public also had an opportunity to comment, *see* 79 FR 64543, 64545–64546 (October 30, 2014). The EPA established the CEIP in the final Clean Power Plan in response to overwhelmingly supportive comments from the public that the EGs should provide a mechanism for incentivizing and recognizing early action. In this action, the EPA is not reopening its decision to establish the CEIP, the maximum size of the matching pool, the requirement for states to include a mechanism in their plans that ensures that the award of early action allowances or early action ERCs will not impact the CO_2 emission performance of affected EGUs required to meet CO_2 emission standards under the Clean Power Plan EGs, any other design parameters not expressly opened for comment or proposal in this document, or its determination of legal authority and rationale for the CEIP provided in the preamble to the final Clean Power Plan EGs, *see* 80 FR 64831–64832. Additional information on the relationship between this action and the EGs, as well as the proposed federal plan and model trading rules, is provided in section II.C of this preamble.

The CEIP is optional for states; states are not required to implement this incentive program for early action. However, if a state does choose to participate in the CEIP, it must follow the requirements specified in the final Clean Power Plan EGs as well as any additional requirements that may be finalized through this rulemaking action. Additionally, as discussed in section II.C of this preamble, in instances of federal plan promulgation, the EPA's intent is that the CEIP would also be available. Even in the case of a federal plan, states would have an ability to implement the CEIP, but if they chose not to, the EPA would implement the CEIP in those states. Thus, we invite comment on the CEIP provisions we are proposing as optional example CEIP regulatory text, including to the extent that text may be applied by the EPA through a federal plan.

This action is undertaken pursuant to the authority in section 111(d) of the CAA, as well as the Agency's general rulemaking authority as necessary to carry out the functions of the CAA, 42 U.S.C. 7411(d), 7601(a). This rulemaking action is subject to the rulemaking provisions of the CAA set forth in section 307(d), 42 U.S.C. 7607(d). This action is nationally applicable because it would establish additional requirements for states that choose to opt into the CEIP.

The EPA's action in this proposal is consistent with, and the EPA's authority to proceed with this action is unaffected by, the Supreme Court's orders in *West Virginia, et al.* v. *EPA, et al.,* No. 15A773 (February 9, 2016). The Court granted applications for a stay of the Clean Power Plan EGs pending disposition of the Stay Applicants' petitions for review of the EGs in the U.S. Court of Appeals for the District of Columbia Circuit, including any subsequent review by the Supreme Court. That litigation is currently pending, and the Supreme Court's stay is in effect.

A stay has the effect of ''halting or postponing some portion of [a] proceeding, or [ ] temporarily divesting an order of enforceability.'' *Nken* v. *Holder,* 556 U.S. 418, 428 (2009). A stay is distinct from an injunction, which ''direct[s] the conduct of a particular actor.'' *Id.*

The EPA has not been enjoined by any court from continuing to work with state partners in the development of frameworks to reduce CO_2 emissions from affected EGUs.

This action proposes several changes and additions to the CEIP, which is an optional program, and proposes optional example regulatory text for use by states in the design of their plans. This is wholly consistent with the EPA's statutory authorities and the precedents discussed later in this preamble, and is consistent with and unaffected by the February 9, 2016 stay orders. A state may participate in the CEIP only after the EPA approves a required state plan or the EPA promulgates a federal plan for that state that includes the CEIP. These actions will not occur until sometime after the judicial stay has been lifted. Thus, this action is consistent with, and the EPA's authority to proceed with this action is unaffected by, the stay.

Furthermore, we note that in addition to its CAA section 111 and CAA section 301 authority to engage in this rulemaking, the EPA possesses multiple other authorities under the CAA that direct it to engage in capacity building and provide technical and financial assistance to states in order to effectuate the air pollution reduction objectives of the CAA.[12] These authorities typically support, but operate independently of, the CAA's regulatory mandates. Under section 102 of the CAA, for example, the EPA shall ''encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and . . . uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.'' 42 U.S.C. 7402(a). The EPA is also authorized under section 103 of the CAA to conduct a variety of research and development activities, render technical services, provide financial assistance to air pollution control agencies and other entities, and conduct and promote coordination of training for individuals—all for the purpose of the ''prevention and control of air pollution.'' 42 U.S.C. 7403(a).

[10] See 40 CFR 60.5737.

[11] The EPA intends for the CEIP to be considered severable from the remainder of the Clean Power Plan. As an optional program that is not required for achievability of the emission performance rates or equivalent state goals, the CEIP is in fact severable. Although the Agency believes, as explained in the preamble to the final EGs, that the CEIP provides a number of benefits, 80 FR 64829–64831, nonetheless, all other aspects of the Clean Power Plan would still be implementable in the absence of the CEIP.

[12] It is undisputed that CO_2, as a greenhouse gas, is an air pollutant under the CAA. *See Massachusetts* v. *EPA,* 549 U.S. 497, 528–532 (2007).

The EPA may, among other things, ''collect and disseminate, in cooperation with other Federal departments and agencies, and with other public and private agencies, institutions, and organizations having related responsibilities . . . information pertaining to air pollution and the prevention and control thereof.'' *Id.* § 7403(b). The CAA expressly authorizes the Agency to develop ''nonregulatory strategies . . . for preventing or reducing multiple air pollutants, including . . . carbon dioxide, from stationary sources, including fossil fuel power plants.'' *Id.* § 7403(g).

Taken together, these provisions both establish that the EPA has the authority, and illustrate why the EPA would have good reason, to continue coordinating and assisting in the development of CO_2 pollution prevention and control efforts of the states and local governments, even in light of the stay of the Clean Power Plan.

The EPA has proceeded under a similar understanding of its authority when CAA rules have been judicially stayed pending review in the past. When the D.C. Circuit Court stayed the Cross-State Air Pollution Rule (CSAPR), *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. December 30, 2011), the EPA proceeded to issue two rules making a number of revisions to the stayed rule. The EPA noted that its actions in revising the rule were ''consistent with and unaffected by the Court's Order staying the final [CSAPR]. Finalizing this action in and of itself does not impose any requirements on regulated units or states.'' 77 FR 10324, 10326 (February 21, 2012). Indeed, one of the changes the EPA undertook while the stay was in effect was a delay of the effective date of certain ''assurance provisions'' ''in order to neutralize a key uncertainty facing successful and potentially rapid program implementation following the current stay, such that sources can rely on *immediate activation* of a [CSAPR] allowance market.'' *Id.* at 10331 (emphasis added). In another set of revisions finalized in June of 2012, the EPA again took action making a number of important changes, including state budget adjustments and revision of set-aside accounts for new sources, while the stay of the rule was in effect. *See* 77 FR 34830 (June 12, 2012). Among other things, the EPA rejected a comment to revise the set-aside accounts for years for which the EPA had already recorded allowances in compliance accounts prior to the stay being issued. *Id.* at 34838–34839. The EPA explained that because the allowances were already recorded, they were freely available to their owners to be transferred or sold and may no longer be in the original owners' accounts. The Agency rejected the commenter's expansive interpretation that the judicial stay meant ''these allocations are no longer distributed for use.'' *Id.* Rather, in the EPA's view, the stay meant that ''sources are not required to hold allowances for compliance at this time,'' but that did not mean the allowances themselves did not remain in circulation. *Id.*

Similarly, when the D.C. Circuit Court stayed the nitrogen oxide (NO_X) state implementation (SIP) Call, issued under authority of CAA section 110(k)(5), *Michigan* v. *EPA,* No. 98–1497 (D.C. Cir. May 25, 1999), the Agency proceeded to institute direct federal regulation of the sources to achieve functionally the same result under CAA section 126(c). *See* Findings of Significant Contribution and Rulemaking on CAA section 126 Petitions for Purposes of Reducing Interstate Ozone Transport, 65 FR 2674, 2680 (January 18, 2000). In reviewing and upholding the EPA's direct federal regulation under CAA section 126, the D.C. Circuit Court addressed the issue of whether the EPA could proceed under CAA section 126 in light of the stayed NO_X SIP Call under CAA section 110. Noting that the ''congruence'' between the EPA's schedules for action under the separate provisions had been disrupted by its stay order, and that the conditions under which the EPA had originally deferred action under CAA section 126 were no longer present, the Court upheld the Agency's authority to proceed under CAA section 126 and deferred to the Agency's interpretation that the two provisions ''operate independently'' such that proceeding with regulation under CAA section 126 was not unlawful. *Appalachian Power Co. et al.* v. *EPA,* 249 F.3d 1032, 1045–48 (D.C. Cir. 2000). To be clear, the EPA is not proposing to institute direct regulation of the affected EGUs in this action nor is the Agency proposing to implement the CEIP while the stay is in effect. Rather, the court's analysis in *Appalachian Power* supports the Agency's view that a stay does not affect its ability to conduct activities that are not in themselves dependent for their authority on the effectiveness of the stayed action.[13]

While none of the Clean Power Plan's deadlines can be enforced while the stay remains in effect, at this point it is not clear whether and to what extent those deadlines will necessarily be tolled once the stay is lifted. Some of the stay applicants expressly requested that all of the Clean Power Plan's deadlines be tolled for the period between the Clean Power Plan's publication and the final disposition of their lawsuits. *See, e.g.,* Appl. of Util. & Allied Parties for Immediate Stay of Final Agency Action Pending Appellate Review 22. In its brief, the government interpreted that form of relief to be requested (either explicitly or implicitly) by all of the applicants, and it opposed the stay in part on the grounds that such relief would be ''extraordinary and unprecedented.'' Mem. for Fed. Resps. in Opp. 3; *see id.* 70–71. In their reply brief, the 29 State Applicants clarified that they were only seeking a ''straightforward'' Administrative Procedure Act stay that would merely ''temporarily divest[ ] [the Clean Power Plan] of enforceability,'' such that ''the States need not comply with any of the [Clean Power Plan's] deadlines *that will occur during this litigation.''* Reply of 29 States and State Agencies in Support of Appl. for Immediate Stay 29 (emphasis added). The States disagreed that granting the stay would necessarily require day-for-day tolling of every Clean Power Plan deadline for the period between the Clean Power Plan's publication and the conclusion of the lawsuit. *Id.* at 30. They stated that although such tolling ''would be appropriate as a matter of basic fairness,'' ''the exact shape of such an equitable disposition *need not be decided today.'' Id.* at 30 (emphasis added) (citing *Michigan* v. *EPA,* no. 98–1497, Dkt. 524995 (D.C. Cir. 1999), for an example of a case in which the Court of appeals decided whether and how to toll relevant deadlines *after* the challenged rule was upheld). The Supreme Court's orders granting the stay did not discuss the parties' differing views of whether and how the stay would affect the Clean Power Plan's deadlines, and did not expressly resolve that issue. In this context, the legal effect of the stay on the Clean Power Plan's deadlines is ambiguous, and the question of whether and to what extent tolling is appropriate will need to be resolved once the validity of the Clean Power Plan is finally adjudicated. At that point, the effect of the stay will be able to be assessed in light of all relevant circumstances.

Because it is currently unclear what adjustments, if any, will need to be made to implementation timing, the EPA is in general in this action maintaining the timing elements of the

[13] *See also Air Transp. Ass'n of Am.* v. *U.S. Dep't of Transp. et al.,* 613 F.3d 206, 209 (D.C. Cir. 2010) (upholding Federal Aviation Administration's institution of airport congestion pricing while ''slot auctions'' regulation to solve the same congestion problem was judicially stayed pending review).

CEIP that have already been finalized, recognizing that they may need to be adjusted in concert with other timing elements of the Clean Power Plan. In particular, we continue to refer to the period during which generation and savings may be eligible to earn early action allowances or ERCs as 2020 and 2021. We propose to retain the start date for project eligibility as September 6, 2018, for demand-side EE projects implemented in low-income communities, but are proposing a start date of January 1, 2020, for eligible CEIP RE projects, including those implemented in low-income communities. However, we propose to remove the alternative earlier date related to the date of final state plan submittal. These proposed changes are discussed in section III.C of this preamble. The decision not to propose further changes to the key timing elements of the CEIP in this action should not be taken to indicate any particular view or intention by the Agency regarding how the timelines for the Clean Power Plan overall may be impacted by the Supreme Court's stay.

C. How does this action relate to the final Clean Power Plan and proposed federal plan and model trading rules?

As noted previously, the EPA took final action in the Clean Power Plan to establish the CEIP, and finalized certain aspects of the CEIP at 40 CFR 60.5737, while identifying other details that it would address in a future action. *See* 80 FR 64829–64832, 64943. In the proposed federal plan and model trading rules for the Clean Power Plan, the EPA requested comment on a number of details for the CEIP that had been identified in the final EGs, and also proposed provisions to implement the CEIP under the federal plan and model trading rules. *See* 80 FR 65025–65026. In this action, we are proposing the design details we identified as needing to be addressed. We are also proposing several adjustments to the CEIP as finalized in the Clean Power Plan EGs, reflecting new information and feedback from stakeholders after the EGs were finalized. This action does not re-open those aspects of the CEIP as finalized that the EPA is not expressly proposing to change or requesting comment on. We are also re-proposing the CEIP-related aspects of the mass-based and rate-based model trading rules, which we characterize in this proposal as optional example regulatory text.[14] We are not re-proposing federal plan CEIP provisions, but request comment on the limited issue of the suitability of these more detailed, re-proposed optional example CEIP provisions for possible use in a federal plan.[15]

In the proposed federal plan and model trading rules for the Clean Power Plan, the EPA expressed its intent to implement the CEIP in states that may become subject to a federal plan; *see* 80 FR 64978 (October 23, 2015). The Agency proposed a mass-based and a rate-based approach to implementing the CEIP as part of the federal plan.[16] *See* 80 FR 65066–65067 (proposing a CEIP set-aside as part of a mass-based plan at 40 CFR 62.16235(e)); *id.* at 65092–65093 (proposing a rate-based CEIP program at 40 CFR 62.16431). As was generally the case for the federal plan and model trading rules, these proposed federal plan provisions also served as proposed model rule provisions that would be presumptively approvable if adopted in state plans. *See generally* 80 FR 64973.

The EPA has determined to remove these CEIP provisions from the larger model trading rules rulemaking, and to re-propose optional example regulatory text for the CEIP as part of this proposal. With regard to the proposed federal plans, the EPA is not re-proposing CEIP federal plan provisions in this action, but invites comment on the presumptively approvable example approach, including to the extent it provides additional detail on the approach that EPA could take in a federal plan. As proposed in this action, this example text provides greater specificity than the October 23, 2015 proposal on the requirements that may be included in any potential future federal plan CEIP.[17] The Agency believes it is administratively simpler and more convenient for the public to be able to review and comment on any optional example regulatory text related to the CEIP in conjunction with all of the other CEIP design details being proposed in this action. Thus, this action constitutes, in part, a re-proposal of optional example CEIP provisions, replacing and superseding the proposed CEIP provisions that were included in the model trading rules published in the **Federal Register** on October 23, 2015. The EPA invites comments on this re-proposed optional example regulatory text as an approach states or the EPA could take in state or federal plans, respectively.

In some instances, those proposed provisions are being re-proposed without significant changes; in others, proposed CEIP revisions to the EGs presented in this action necessitated corresponding changes to the mass- and rate-based optional example regulatory text. However, the October 2015 proposal did not contain specific proposals for certain design details that are now being proposed here. The EPA intends to finalize the CEIP optional example rule text included in this action in conjunction with the finalization of the other CEIP design details proposed in this action. We do not intend to include the CEIP optional example rule text as part of the finalized model trading rules. Nonetheless, the finalized CEIP optional example rule provisions could be integrated with the finalized mass-based or rate-based model trading rules when EPA finalizes this CEIP rulemaking, where a state chooses to implement the CEIP. Thus, the CEIP optional example rule text is being proposed in the same subpart of the Code of Federal Regulations as the full model trading rules, in order to facilitate states wishing to adopt a model rule that includes the CEIP.

Since the CEIP is an optional program, should the Agency not be able to approve a state's CEIP, the Agency believes that the provisions would be severable and not impact the Agency's ability to approve the remainder of a state's final plan submission. In addition, because the CEIP is an optional program, the Agency does not anticipate that it would promulgate a partial federal plan addressing the CEIP in the circumstance where a state plan is approvable but its CEIP provisions are not. However, consistent with what we stated in the October 2015 federal plan and model trading rules proposal, the EPA continues to intend to implement the CEIP if it were to promulgate a full federal plan for a particular state, *see* 80 FR 64978.

In addition, in the event that the EPA promulgates CEIP provisions as part of a federal plan for a particular state, the state may subsequently be able to take over the implementation of the CEIP through one of two separate mechanisms. The state may either take a delegation of the federal plan (or a partial delegation covering just the CEIP), or the state may submit a partial

[14] We are not re-proposing any aspects of the model rules that are un-related to the CEIP.

[15] In the fall of 2015, during the federal plan and model trading rules proposal comment period, the EPA, through informal outreach efforts, received feedback from stakeholders that a separate regulatory action on the design details of the CEIP was appropriate.

[16] For the purposes of a rate-based federal plan, the EPA notes that as currently proposed, demand-side energy-efficiency measures may only be awarded ERCs in the context of the CEIP.

[17] The EPA does not intend to finalize any provisions related to implementation of the CEIP as part of a federal plan until the actual promulgation of a federal plan, which would not occur until lifting of the stay and an EPA determination of a subsequent failure of a state to timely submit a plan or EPA disapproval of a state plan.

state plan for implementation of the CEIP upon EPA's approval.

The general process for delegation of federal plans under section 111(d) was explained in the October 2015 proposal, *see* 80 FR 65032–33. The EPA is not proposing any changes to this existing process, and we recognize the ability of states with a federal plan in place to take a delegation of the CEIP, similar to other section 111 federal regulations. A delegation of the CEIP would generally mean that a state with adequate resources and legal authority would operate the CEIP, subject to the EPA's oversight and except for any functions that the EPA may retain for itself upon delegation. Eligible project providers would come to the state agency with the delegated EPA authority in order to present applications and submittals under the CEIP, and the state would review these applications and submittals and issue early action ERCs or allocate early action allowances. In delegating the CEIP, the EPA would follow its existing New Source Performance Standards (NSPS) delegations guidance and the EPA Delegations Manual, Delegation 7–139, ''Implementation and Enforcement of 111(d)(2) and 111(d)(2)/129(b)(3) federal plans,'' which, among other things, call for the state to enter into a memorandum of agreement with the relevant EPA Regional Administrator, in order to take delegation of the program. *See* 80 FR 65032–33.

States may also be in a position to take over direct implementation of the CEIP in their own right through a partial state plan. As we proposed in the October 2015 federal plan and model trading rules proposal, the EPA may approve partial state plans to implement a portion of the EGs under section 111(d). The EPA specifically recognized that certain aspects of the Clean Power Plan implementation may be appropriate for states to handle through a partial state plan, for instance, decisions as to the method of allocation of allowances under a mass-based federal plan. *See id.* at 65027–65029. We believe the CEIP is similarly a program under the Clean Power Plan that could be appropriately submitted and administered by a state operating under an otherwise-federal plan. Unlike a delegation, a partial state plan requires a submission process for EPA approval as for a full state plan, including a demonstration of adequate legal authority and that procedural requirements, such as public notice and opportunity to comment on the partial state plan, are satisfied.

Finally, we note that in the October 23, 2015, model trading rules and federal plan proposal the EPA requested comment on a number of details regarding CEIP program design that were not limited to the federal plan and model trading rules, but pertained to general design parameters or details not addressed in the final EGs. *See* 80 FR 65025–65026. These topics related to CEIP requirements that would be applicable to all states opting to participate in the program (*i.e.,* these issues would not be limited to model trading rules or federal plans). The bulk of this proposal is dedicated to addressing these topics through a set of additional provisions in the EGs at 40 CFR 60.5737.

The EPA values the comments related to the topics that have been submitted to date, both on the October 23, 2015, proposal as well as to the CEIP non-regulatory docket that closed on December 15, 2015. We have reviewed and considered the comments submitted through the federal plan and model trading rules rulemaking docket that closed on January 21, 2016, as well as the non-regulatory docket. These comments have informed various aspects of this proposal. We encourage those who have submitted comments already on the CEIP to re-submit those comments and/or any updated or additional comments through the comment submittal process for this rulemaking proposal. We heard from many stakeholders that they would like an opportunity to comment on a more developed proposal regarding these CEIP topics; the EPA is responding to those requests by issuing this proposal, which provides a new opportunity to submit comments on the CEIP topics addressed here. In order to ensure that the EPA considers and responds to your comments on these CEIP topics, you must submit your comments on this proposal, following the process explained in the section titled **ADDRESSES**.

D. What key comments were received during the informal feedback process?

In an effort to obtain stakeholder feedback on the CEIP, the EPA engaged in broad outreach activities. Approximately 750 stakeholders (potential project providers, environmental justice (EJ) groups, community groups, state and local governments, tribes and environmental non-governmental organizations) participated in at least one of four listening sessions on the CEIP. These listening sessions were part of an overall outreach effort that also included two workshops focused on community concerns, dozens of stakeholder meetings, conference appearances and one-on-one discussions since August 2015 that helped to inform this proposal.

Additionally, the EPA opened a non-regulatory docket (EPA–HQ–OAR–2015–0734) requesting pre-proposal input on the design details of the CEIP covered in this package. Specifically, the EPA requested input on the following: (1) What the EPA should consider when defining criteria, terms and requirements under the CEIP; (2) what the EPA should consider regarding the timing and distribution of EPA matching allowances or ERCs under the CEIP; and (3) what the EPA should consider when designing the mechanics of the CEIP. The non-regulatory docket received more than 5,000 comments.

While not within the scope of our requests, many commenters supported the inclusion of the CEIP in the Clean Power Plan. These commenters stated, however, that the CEIP project eligibility start date tied to submission of a final state plan, and the limitation of CEIP matching awards for eligible energy savings or generation to the years 2020 and 2021 only, were too restrictive. With regard to the project eligibility start date, commenters asserted that RE and EE projects take time to design, implement and begin generating/saving MWh, especially those that are developed with, by, and for low-income households and communities. Again, while not all of these topics are within the scope of this action, in response to some of these concerns, the EPA is proposing a modification to make clear when eligibility may begin for projects, as discussed further in section III.C of this preamble.

With regard to apportionment of the EPA matching pool of allowances and ERCs among the states, the majority of commenters felt that the pro-rata distribution method identified in the final Clean Power Plan EGs, whereby each state's share is based on the amount of reductions from 2012 levels the affected EGUs in the state are required to achieve relative to those in the other CEIP-participating states (80 FR 64830; October 23, 2015), was the appropriate apportionment method. Some commenters suggested that, rather than apportioning the matching pool among the states, the pool should instead be available on a first-come, first served basis to eligible CEIP project developers, regardless of where such projects take place. The EPA agrees with the majority of commenters that supported a state-by-state apportionment, as the Agency believes this is consistent with the state plan structure of the Clean Power Plan, and it ensures that all states that choose to

participate in the CEIP have access to the additional allowances and ERCs supplied by the matching pool. Therefore, the EPA is proposing in this action the size of the matching pool for each state, in line with the pro-rata distribution methodology previously described (*see tables 1 and 2* in section III.A of this preamble). The EPA has provided the calculations supporting these numbers in a technical support document (TSD) in the docket for this proposal.[18]

Some commenters stated that the EPA matching pool of 300 million short tons of CO_2 should be divided evenly into two reserves: one reserve for wind and solar projects, and another reserve for low-income EE projects. Others supported a different division, largely commenting that a greater share of the matching pool should be reserved for low-income EE projects. There was also strong support for allowing flexibility for states to decide the size of the two reserves. The EPA has considered those comments and proposes that the matching pool should be divided evenly into two reserves, but seeks comment on several other approaches for distributing the pool as discussed further in section III.A.

With regard to the definition of low-income community, many commenters suggested each state should have flexibility to choose the definition(s) that may be employed by project providers seeking early action awards from the state. Commenters supported the use of definitions of low-income currently used by other federal incentive programs, such as 80 percent of the area median income,[19] Department of Housing and Urban Development (HUD) criteria,[20] Empowerment Zones criteria,[21] or an annual income at or below 200 percent of the federal poverty level.[22] However, other commenters suggested that states should not be allowed this flexibility, and rather that the EPA should provide a definition that all states must use. Many of the definitions referenced by commenters address ''low-income'' at the individual household level. By contrast, some commenters stated that a geographically based definition (*i.e.,* Census tract- or neighborhood-level, or zip codes with above-average concentrations of low-income individuals) is most appropriate, and allows for the most comprehensive approach to program delivery; other commenters stated CEIP plans should not geographically restrict or allow the exclusion of low-income households within a state, as such an exclusion would create a disparate impact and unduly harm low-income households. Some commenters stated that a hybrid approach that would include both geographically based definitions as well as household level definitions would be most appropriate to ensure that low-income communities, as well as low-income residents that are not within low-income communities are both eligible to receive CEIP matching awards for EE projects. A few commenters stated that the double-match for energy-efficiency projects should be extended beyond low-income communities, and also be made available for minority populations and in Indian Country. The EPA further discusses the definition of ''low-income,'' for purposes of implementing the CEIP in section III.B.

With regard to the criteria for eligible EE projects in low-income communities, commenters suggested that eligibility go beyond single family residential projects and that states should consider additional factors such as economic development and job creation when prioritizing EE and RE projects. Requirements for CEIP-eligible projects are discussed in section III.C of this preamble.

Although the EPA did not request comment on the types of RE projects that should be eligible for consideration, several commenters requested that, in addition to wind and solar resources, the EPA consider including geothermal, biomass and hydropower, as well as other generating technologies such as combined heat and power (CHP) and waste heat to power (WHP). One commenter requested that nuclear generation be considered as an eligible RE technology, however, several other commenters explicitly stated that the EPA should not consider nuclear as an eligible RE technology. The Agency also received several petitions for reconsideration on the final Clean Power Plan requesting that the scope of CEIP eligibility be expanded.[23] In this action, we are proposing a limited expansion of the list of CEIP-eligible RE technologies beyond wind and solar, to two other renewable, zero-emitting technologies: Geothermal and hydropower (We note these technologies were also considered in the formulation of building block 3 of the BSER. *See* 80 FR 64807, October 23, 2015). Commenters also suggested expanding eligibility of low-income projects to include certain RE technologies, such as solar, that could benefit low-income communities in the same way that energy efficiency projects can. We agree that low-income communities can benefit from additional incentives for solar resources, similar to the benefits that would be realized for EE. We also recognize that deployment of RE projects in low-income communities face barriers similar to those faced by low-income EE projects. Accordingly, we are proposing that solar projects implemented to serve low-income communities that provide direct electricity bill benefits to low-income community ratepayers would be eligible for CEIP awards from the low-income community reserve, and that such projects would be eligible for the same (two-for-one) CEIP incentive available to low-income EE projects. Discussions on these proposed provisions are located in sections III.C.4 and III.C.5 of this preamble.

Commenters requested that the EPA provide early guidance on a methodology for representing the 300 million short tons of CO_2 EPA matching pool in the form of ERCs, which are denominated in MWh. Such guidance is provided in section III.A of this preamble. Commenters also supported flexibility for states to identify the mechanism used for tracking MWh generated or avoided by eligible CEIP projects.

The majority of commenters asserted that EM&V requirements used to quantify CEIP-eligible MWh generated or saved should be flexible and transparent, should not be overly burdensome (*i.e.,* the cost of the EM&V should be balanced with the accuracy and reliability of the results), should not present a significant disincentive to participation in the CEIP, and that states that already have robust quantification and verification processes in place should be allowed to rely on these processes. Additionally, there was some support for independent verification of the EM&V methods, procedures, and assumptions used to quantify MWh for eligible CEIP projects (*i.e.,* independent verification of EM&V plans as well as subsequent M&V reports). These commenters suggested that the EPA should be responsible for developing

[18] See TSD titled ''Apportionment of the Matching Pool among the States''.

[19] HUD.GOV, FY 2015 Income Limits, *https://www.huduser.gov/portal/datasets/il/il15/index.html.*

[20] *et seq.*

[21] Programs of HUD, *http://portalhud.gov/hudportal/HUD%3Fsrc%3D/hudprograms/empowerment_zones.*

[22] Federal Poverty Guidelines, February 2015, *http://familiesusa.org/product/federal-poverty-guidelines.*

[23] While there is some overlap in this action on this and several other issues relating to the CEIP raised by the petitions for reconsideration, the Agency continues to review, and is not acting on, these or any other aspects of the petitions for reconsideration of the Clean Power Plan at this time.

and maintaining a list of approved independent verifiers, and some suggested that EPA should provide template EM&V plans and M&V reports. Section III.B discusses state plan requirements for distribution of early action allowances or ERCs, including considerations for EM&V of CEIP-eligible MWh.

The EPA also received comments on what, if any, reapportionment process should take place for EPA matching allowances or ERCs that a state is eligible to receive, but that the state does not ultimately access because it chooses not to opt in to the CEIP, or the CEIP provisions of its otherwise approved state plan are disapproved by the EPA. Commenters were nearly evenly divided on whether these ''extra'' matching allowances or ERCs should be reapportioned to CEIP-participating states on a pro-rata basis, or whether they should be made available to CEIP-participating states on a first-come, first-served basis, based on state awards of early action allowances or ERCs to eligible CEIP projects. Other commenters stated that EPA matching allowances or ERCs that are apportioned to a state, but ultimately are not used by that state because it chooses not to opt in to the CEIP, should not be reapportioned among CEIP-participating states. Based on some stakeholder concerns and further consideration by the Agency, the EPA is not including provisions for reapportionment among states in this proposal. See section III.A of this preamble for a discussion on the reasons for excluding reapportionment provisions for any remaining CEIP credits, and a request for comment on whether reapportionment should be included in the CEIP.

Many commenters supported broad geographic eligibility for participation in the CEIP, including supporting the inclusion of projects located in states, tribal lands and territories without affected EGUs, or for whom the EPA has not yet established goals under the Clean Power Plan EGs. Please see section III.D for a discussion on CEIP participation for states, tribes and territories for which the EPA has not established goals.

III. Clean Energy Incentive Program Design Details

In this section, we discuss the proposed design details for several elements of the CEIP. Section III.A presents the proposed provisions for matching allowances and ERCs to be issued by the EPA from the matching pool of 300 million short tons of CO_2 emissions. This includes a discussion of how EPA proposes to translate the pool into matching allowances and matching ERCs; the number of allowances or ERCs that may be allocated or issued by a state to a CEIP-eligible project provider per MWh generated or saved; the division of the EPA matching pool into a reserve for RE projects and a reserve for low-income community projects; the apportionment of the EPA matching pool among the states; and whether to include reapportioning EPA matching allowances and ERCs among CEIP-participating states.

Section III.B of this preamble discusses requirements for states that choose to participate in the CEIP. It includes requirements for allocation of early action allowances or issuance of early action ERCs by a state; requirements for a proposed process by which EPA matching allowances or matching ERCs would be awarded; options for meeting the requirement finalized in the Clean Power Plan EGs to maintain the stringency of mass-based or rate-based CO_2 emission performance by affected EGUs when implementing the CEIP; the requirement for a state to select one or more existing definitions of ''low-income community'' for purposes of implementing the CEIP; and requirements addressing the potential improper allocation or issuance of early action allowances or early action ERCs by a state.

Section III.C of this preamble discusses requirements for CEIP-eligible projects, including eligible RE projects and eligible low-income community projects. This includes a proposal to clarify the term ''project'' to also include programs that deploy eligible RE technologies and implement demand-side EE. It also includes a proposal to clarify the definition of ''commence construction'' as applied to RE projects, as well as a discussion of the option for a state to use an Agent for reviewing CEIP project applications, allocating early action allowances, and issuing early action ERCs. In addition, this section proposes the expansion of eligible CEIP RE projects to include, in addition to wind and solar, two other RE technologies: Geothermal and hydropower. The section also proposes an expansion of technologies implemented in low-income communities that would be eligible to receive a two-for-one CEIP award. Specifically, we propose that solar projects implemented to serve low-income communities that provide direct electricity bill benefits to low-income community ratepayers also be eligible for a two-for-one award in addition to the demand-side EE technologies that are already included. For this reason, we now refer to this reserve as the 'low-income community' reserve instead of the former 'demand-side EE' reserve. Finally, this section proposes that states have flexibility to determine the types of demand-side EE projects they may deem eligible for CEIP awards (such as projects for residences and non-profit commercial buildings, or transmission and distribution projects that reduce electricity use on the customer side of the meter), so long as they are implemented in communities that meet the state's approved definition(s) for ''low-income community.''

Section III.D of this preamble discusses CEIP participation for states, tribes and territories for which the EPA has not established goals in the Clean Power Plan EGs. This includes a proposal that may further enhance the ability of project providers located in Indian country without affected EGUs to participate in the CEIP, a request for comment on how to determine the appropriate portion of the matching pool that should be apportioned to the non-contiguous states and territories, if they choose to participate in the CEIP, and a discussion of how eligible CEIP projects developed in states without affected EGUs may receive early action allowances or ERCs from another state that has chosen to participate in the CEIP.

A. Provisions for Matching Allowances and ERCs To be Issued by the EPA From the 300 Million Short Ton Pool

As discussed in section II.A of this preamble, the EPA established an overall matching pool of 300 million short tons of CO_2 to be made available for states participating in the CEIP. Participating states that allocate early action allowances or issue early action ERCs are able to receive matching allowances or matching ERCs from the EPA from this matching pool. In this action, we are proposing a methodology to determine a state's pro rata share of the matching pool for both mass- and rate-based programs. The EPA is proposing to use this methodology to determine the amount of matching allowances or ERCs that will be available to each CEIP-participating state. We are also proposing that a state may only allocate or issue early action allowances or ERCs to eligible CEIP projects in a total amount not to exceed the number of matching ERCs or allowances that are apportioned to the state.[24]

[24] The EPA notes that, while a mass-based state may not allocate from its CEIP early action set-aside a number of allowances larger than the number of matching allowances available to the state, such a state could choose to create an additional allowance

Continued

Additionally, this action proposes a division of the matching pool that would establish the portion of the matching pool available to each CEIP-participating state for awards to eligible CEIP RE projects, and the portion of the matching pool available to each CEIP-participating state for awards to eligible CEIP low-income community projects.

1. The Size of the EPA Matching Pool in Terms of Allowances and ERCs

As stated in the preamble of the final Clean Power Plan, the EPA determined that the matching pool of 300 million short tons of CO_2 emissions was an appropriate reflection of the CO_2 emission reductions that could be achieved in 2020 and 2021 through additional early investment in technologies with zero associated CO_2 emissions, 80 FR 64830. We recite this information as it is relevant to our calculation of the size of the pool in terms of allowances and ERCs, but we are not reopening the size of the matching pool as finalized in the EGs. To estimate short tons of CO_2, the EPA projected that potential additional early investment in wind and solar could result in 400 million MWh of clean generation in 2020 and 2021, and applied the assumption that each MWh displaces approximately 0.8 short tons of CO_2 from carbon-emitting generation per MWh of clean energy generation.[25] 400 million MWh multiplied by 0.8 short tons of CO_2 per MWh results in 320 million tons. The EPA applied a conservative downward adjustment to this calculation to set the size of the matching pool at 300 million short tons.

The EPA is using the relationship between tons of CO_2 and allowances that was established in the final Clean Power Plan EGs in order to determine the overall amount of matching allowances available through the EPA matching pool. Under a mass-based state plan, an allowance represents a limited authorization to emit one ton of CO_2. The matching pool was established in the EGs at 300 million short tons of CO_2, which would be equivalent to 300 million allowances. Thus, the EPA matching pool, in the form of allowances, will be equal to 300 million allowances.

The EPA is using the relationship between MWh and ERCs that was established in the final Clean Power Plan EGs, along with an adjustment identical to that applied when setting the matching pool at 300 million short tons, in order to determine the overall number of matching ERCs available through the EPA matching pool. Under a rate-based state plan, each MWh of generation or savings from an eligible resource that meets all applicable requirements of the EGs may be issued one ERC by a state. The EPA is proposing to establish the size of the matching pool, in the form of ERCs, based on the projection of 400 million MWh of wind and solar generation in 2020 and 2021, with the application of the same conservative downward adjustment the EPA used to adjust 320 million short tons of CO_2 emissions downward to 300 million short tons in setting the size of the matching pool in the final Clean Power Plan. As follows, the EPA proposes that the size of the matching pool, in the form of ERCs, will be equal to 375 million ERCs.

The establishment of the matching pool in terms of both allowances and ERCs does not have any bearing on the final Clean Power Plan's provisions that allowances from a mass-based emission budget trading program may not be used for compliance in a rate-based emission trading program and that ERCs may not be used for compliance in a mass-based emission budget trading program. Allowances and ERCs are distinct tradable compliance instruments used by states implementing mass-based and rate-based emission standards, respectively, and are not interchangeable under the Clean Power Plan EGs, *see* 40 CFR 60.5750(d); *id.* 60.5790(a); 80 FR 64839. Using a single multiplication factor on a one-time basis to represent the matching pool in both forms—allowances and ERCs—is done simply for the limited purpose of providing for the implementation of the CEIP in the context of either a mass-based or a rate-based emission trading program.

2. Awards for CEIP-eligible MWh, in Terms of ERCs and Allowances

The final Clean Power Plan EGs specified the ERC award ratios (both by a state and the EPA) for MWh of generation or energy savings achieved by an eligible project under the CEIP.[26] These award ratios would be applied by a state with a rate-based state plan that chooses to implement the CEIP. Specifically, eligible CEIP RE projects may receive an award of two ERCs for every two MWh of clean energy generated. This award is based on the issuance of one early action ERC by the state and the award of one matching ERC by the EPA. In addition, eligible low-income community projects are eligible for a ''double'' award of four ERCs for every two MWh of energy savings. This award is based on the issuance of two early action ERCs by the state and the award of two matching ERCs by the EPA.

For example, if a CEIP-eligible RE project generates 50 MWh in 2020, the project would be eligible to receive 25 early action ERCs from the state and 25 matching ERCs from the EPA, for a total award of 50 ERCs. As another example, if a CEIP-eligible low-income community project saves 50 MWh in 2020, the project would be eligible to receive 50 early action ERCs from the state and 50 matching ERCs from the EPA, for a total award of 100 ERCs.

While the final Clean Power Plan EGs specified the ERC award ratios for CEIP-eligible MWh that may be used by rate-based states, we stated that the Agency would propose in a future action the allowance award ratios for CEIP-eligible MWh that mass-based states may use. As follows, in this action the EPA is proposing that the allocation of early action allowances by a state, and the award of matching allowances by the EPA, will be based on a 0.8 short tons of CO_2/MWh factor. As discussed previously in this section, this is the same factor applied by the EPA when it established the size of the matching pool of 300 million short tons of CO_2 emissions (see 80 FR 64830).

For eligible CEIP RE projects under a mass-based program, the proposed 0.8 short tons of CO_2/MWh factor would result in a total of 0.8 allowances awarded for every one MWh. Again, with half of the total award being made by the state in the form of allocated early action allowances, and the other half of the award being made by the EPA in the form of matching allowances, both the state and EPA would provide 0.4 allowances for each MWh generated, for a total of 0.8 allowances.[27] For example, if a CEIP-eligible wind project generates 50 MWh in 2020, the total potential combined award available from the state and the EPA would be 40 allowances (*i.e.,* 50 MWh $\times$ 0.8 short tons CO_2/MWh). The project would be eligible to receive an allocation of 20 early action allowances from the state and award of 20 matching

set-aside from which it could allocate allowances to incentivize additional early investments in RE or EE. In general, a state has full discretion to allocate its allowances as it sees fit.

[25] 0.8 short tons of CO_2 per MWh is approximately the CO_2 emission intensity of all affected sources in 2012. See Data File: Goal Computation Appendix 1–5, TSD to the Clean Power Plan Final Rule titled Emission Performance Rate and Goal Computation.

[26] These provisions are discussed in section VIII.B.2 of the preamble to the final EGs (80 FR 64830, October 23, 2015). See also 40 CFR 60.5737(b) of the EGs.

[27] Allowances may only be allocated or awarded in whole-allowance increments.

allowances from the EPA, for a total award of 40 allowances.

Given the two-to-one award available to low-income community projects, for each MWh of CEIP-eligible energy savings or generation from a low-income community project under a mass-based program, a CEIP project provider would be eligible to receive 0.8 early action allowances from the state and 0.8 matching allowances from the EPA, for a total award of 1.6 allowances per MWh. For example, if a CEIP-eligible low-income community project saves 50 MWh in 2020, the total combined award available to the project would be 80 allowances (*i.e.,* 50×0.8 short tons CO_2/MWh $\times 2$ (to account for the two-to-one award ratio, per MWh of energy savings)). The project would be eligible to receive an allocation of 40 early action allowances from the state and an award of 40 matching allowances from the EPA, for a total award of 80 allowances.

3. Division of the Matching Pool of 300 Million Short Tons of CO_2 Emissions Into a Reserve for RE Projects and a Reserve for Low-Income Community Projects

In the final Clean Power Plan EGs, the EPA expressed its intent to divide the matching pool of 300 million short tons of CO_2 emissions into a RE reserve for wind and solar projects, and a reserve for low-income demand-side EE projects, (80 FR 64829, October 23, 2015). As presented in section III.C of this preamble, in this action, the EPA is proposing that the RE reserve would also accommodate CEIP awards (on a one-to-one basis) to geothermal and hydropower projects and that the low-income community reserve would also accommodate CEIP awards (on a two-to-one basis) to solar projects implemented to serve low-income communities. After taking account of this proposal to include geothermal and hydropower projects as eligible for the RE reserve, and solar projects implemented to serve low-income communities as eligible for the low-income community reserve, the EPA is proposing, consistent with the intent stated in the final Clean Power Plan EGs, that the matching pool be divided evenly between the two reserves, with 50 percent of the matching pool (150 million allowances, or 187.5 million ERCs) made available for eligible CEIP RE projects and 50 percent of the matching pool (150 million allowances, or 187.5 million ERCs) made available for eligible CEIP low-income community projects.

The EPA is proposing that a CEIP-participating state may allocate early action allowances or issue early action ERCs up to an amount equivalent to the number of matching allowances or matching ERCs the state is eligible to receive from the EPA for each reserve, as listed in tables 1 and 2 of this preamble. Allowances or ERCs that are designated for one reserve may not be re-designated for the other reserve, (*e.g.,* allowances that are reserved for low-income community projects may not be reallocated to the RE reserve or vice versa).

The proposal for the 50 percent/50 percent apportionment is based in part upon the EPA's analysis of the potential MWh that may be achieved by wind, solar, geothermal, hydropower, and low-income EE projects in 2020 and 2021, as well as upon stakeholder feedback regarding the appropriate apportionment between these two reserves.

As discussed in section III.C of this preamble, the EPA is proposing to replace the term ''commence construction'' for CEIP-eligible RE projects with the term ''commence commercial operation,'' as well as to make an associated change in the date of project eligibility to on or after January 1, 2020. The EPA is not reopening the decision to set the size of the CEIP matching pool at 300 million short tons. However, we note that even under the proposed changes to project eligibility, and the updated assumptions as discussed in the TSD to this action titled ''Renewable Energy and Low Income Energy Efficiency Potential,'' the EPA projects that energy generation from potentially eligible CEIP wind, solar, geothermal and hydropower projects will not exceed 400 million MWh in 2020 and 2021 combined. Thus, even if the EPA were considering a change in the magnitude of the CEIP (which it is not), new information and assumptions at this point would not lead the Agency to a different result in terms of the appropriate size of the CEIP matching pool, in light of the objectives for the CEIP identified in the final EGs, 80 FR at 64829–64832.

Further, the EPA proposes, in line with the discussion in the final EGs, that 50 percent of the matching pool would be the appropriate amount to apportion to the RE reserve. With regard to wind and solar potentials, at the time of promulgation of the Clean Power Plan EGs, the EPA projected that the deployment rates for wind and solar energy would remain relatively modest in the years leading up to the start of the interim plan performance period (*i.e.,* no greater than the combined historic maximum deployment rates experienced for wind in 2012 and for solar in 2014).[28] Subsequent to finalization of the CPP, Congress extended tax credits for wind and solar resources. It is likely that the extension of the wind and solar tax credits in December 2015, as well as the May 5, 2016 IRS guidelines extending the Production Tax Credit (PTC) Continuity Safe Harbor from 2 years to 4 years, may also impact the development of wind and solar projects that commence commercial operation in 2020 onward.[29] Nonetheless, the EPA continues to believe that one half of the total size of the CEIP matching pool remains the appropriate amount to incentivize the qualifying RE technologies—wind, solar, geothermal and hydropower—in light of the multiple purposes and scale of the CEIP.

At the same time, the EPA believes that the remaining 50 percent of the CEIP matching pool remains the appropriate size for the low-income community reserve, leaving a more-than adequate margin to accommodate large-scale deployment of both demand-side EE projects and solar projects implemented to serve low-income communities. As discussed in section III.C of this preamble, the EPA is proposing to clarify the term ''commence operation'' for CEIP-eligible low-income demand-side EE projects, and to make a change in the date of eligibility for such projects such that they may commence operation on or after September 6, 2018. In addition, also as discussed in section III.C of this preamble, the EPA is proposing to replace the term ''commence construction'' for CEIP-eligible RE projects (including solar projects implemented to serve low-income communities) with the term ''commence commercial operation'' and to make an associated change in the eligibility date for such projects to January 1, 2020.[30]

[28] See TSD to the Final Clean Power Plan titled ''Greenhouse Gas Mitigation Measures,'' Docket ID No. EPA–HQ–OAR–2013–0602.

[29] *See:* Consolidated Appropriations Act, 2016 (H.R. 2029, Sec. 301 and Sec. 303) (Dec. 18, 2015). This legislation extended the expiration date for the Production Tax Credit (PTC) for qualified facilities that use wind to produce electricity, as well as permission for PTC-eligible wind facilities to claim the Investment Tax Credit (ITC) in lieu of the PTC, through the end of 2019 (Sec. 301). The Act also extended the expiration date for the ITC tax credit for qualified solar energy equipment that generates electricity until January 2, 2022 (Sec. 303). *See also:* Internal Revenue Service Notice 2016–31, May 5, 2016.

[30] As explained above in Section II.B, the decision not to propose further changes to the key timing elements of the CEIP in this action should not be taken to indicate any particular view or intention by the Agency regarding how the timelines for the Clean Power Plan overall may be impacted by the Supreme Court's stay.

Given these assumptions, and also as explained in detail in the TSD to this action titled ''Renewable Energy and Low Income Energy Efficiency Potential,'' the EPA estimates that energy savings from potentially eligible CEIP low-income demand-side EE projects could reach up to 39 million MWh in 2020 and 2021 combined, thus absorbing approximately ten percent of the matching allowances or ERCs provided by the EPA in the matching pool. The EPA estimates that generation from solar projects implemented to serve low-income communities could reach up to 8 million MWh in 2020 and 2021 combined, thus absorbing approximately an additional two percent of the matching allowances or ERCs provided by the EPA in the matching pool.

Given that eligible low-income community projects may receive CEIP awards on a two MWh to one MWh basis (as discussed in section III.A of this preamble), with half of the award coming from the state, and half of the award coming from the EPA, these 39 million MWh of low-income energy efficiency savings and 8 million MWh of solar generation implemented to serve low-income communities would be eligible to receive approximately 47 million matching ERCs, or 38 million matching allowances.

In light of this analysis, and in agreement with stakeholder comment that the EPA should apportion the matching allowances and ERCs evenly between a reserve for RE projects and a reserve for low-income community projects, the EPA is proposing that the matching pool be divided evenly between the two reserves, with 50 percent of the matching pool (150 million allowances, or 187.5 million ERCs) made available for RE projects and 50 percent of the matching pool (150 million allowances, or 187.5 million ERCs) made available for low-income community projects.

This apportionment is appropriate for several policy and technology-driven reasons. The apportionment achieves the policy objective of the CEIP, which is to ensure incentives for deployment of additional projects in both reserves (RE projects as well as low-income community projects). Whereas some stakeholders requested that we apportion the matching pool such that low-income community projects be eligible to receive more than 50 percent of the matching pool, our analyses do not support the need for a reserve for low-income community projects larger than 150 million allowances/187.5 million ERCs in order to meet demand during the CEIP period, even with the two-to-one award for such projects. However, the EPA requests information and data that may support a larger reserve for low-income community projects.

The proposal would also add solar projects implemented to serve low-income communities as eligible low-income community CEIP projects. This expansion of the CEIP scope in low-income communities promotes emission reductions and will help these communities better harness the benefits of energy efficiency and solar resources. More specifically, this expansion of the CEIP scope will provide low-income communities a greater opportunity to reach the full scale of opportunity presented by the reserve of matching allowances and ERCs for low-income community projects.

The EPA further believes that the 50-50 apportionment is an appropriate choice based on the rapidly evolving pace of technology and consumer demand for energy in the United States. Several analysts have noted that the electric power sector will undergo transformative changes from a number of factors, particularly lower costs for distributed generation, technology improvements in RE resources, and rapid innovation in energy efficiency technologies (*e.g.,* lighting and temperature controls). For example, a 2016 first quarter update from the Federal Energy Regulatory Commission (FERC) shows that RE made up almost all new capacity added in the United States so far this year—constituting 99% of the new generation capacity in service.[31] These changes are occurring at a rapid pace and support the view that the CEIP apportionment should provide incentives and room for continued growth in both renewables and energy efficiency projects in low-income communities.

The apportionment of the two reserves, on a state-by-state basis, is included in tables 1 and 2.[32] The EPA further proposes that a state may not transfer matching allowances or ERCs between these two reserves in its state-level apportionment. In other words, should one reserve become fully subscribed, the state would not be permitted to move matching allowances or ERCs into it from the other reserve. Rather, as stated in the Clean Power Plan EGs, the EPA will retire matching allowances or ERCs that remain in each of the state's two reserves following January 1, 2023 (See 80 FR 64803, October 23, 2015). Such a retirement is appropriate given that the intent of the matching pool is to incentivize early actions in 2020 and 2021, and matching allowances and ERCs in this pool should not be available to award to actions from 2022 onward, during the performance periods under the Clean Power Plan EGs.

The EPA seeks comment on all aspects of the proposed 50 percent/50 percent division of the 300 million short ton matching pool into a reserve for RE projects and a reserve for low-income community projects. In particular, the EPA seeks comment on the extent to which the recent extension of the federal tax credits for wind and solar resources will help to meet the CEIP's objectives with respect to promoting increased deployment of RE resources, including wind and solar, over the period leading up to 2022. The EPA notes that DOE's National Renewable Energy Laboratory has published an analysis which found that with these tax credits in place, roughly 100 gigawatts of additional wind and solar capacity would be added by the end of 2021.[33] Similar analyses have been conducted by third parties. Therefore, the EPA seeks comment on whether it is appropriate, in light of the tax credit extensions, to include in the CEIP a mechanism that would limit the number of early action and matching allowances or ERCs that may be available to wind and solar projects that may not require additional incentives for deployment, and on how to best design such a mechanism.[34] One potential approach would be to apportion less than 50 percent (*e.g.,* 30 percent or 25 percent) of the 300 million short ton matching pool to the reserve for eligible RE projects. Some stakeholders have suggested that another approach would be to exclude projects from CEIP eligibility that are benefitting from the Investment Tax Credit (ITC) or PTC from CEIP eligibility. In response to this stakeholder feedback, we request

[31] Federal Energy Regulatory Commission (FERC). March 2016. Energy Infrastructure Update; Office of Energy Projects. Page 4. Accessed on June 14 at *http://www.ferc.gov/legal/staff-reports/2016/mar-infrastructure.pdf.*

[32] In section III.D of this preamble, we discuss potential participation options for noncontiguous states and territories and for tribes without affected EGUs. Pro rata shares proposed in this action do not reflect potential shares that may be apportioned to these groups pending comments.

[33] *http://www.nrel.gov/docs/fy16osti/65571.pdf.*

[34] The EPA acknowledges that geothermal technologies are eligible for a permanent 10 percent tax credit. However, because analysis indicates that these technologies will likely not be widely deployed during the 2020–2021 timeframe, we do not believe it is necessary to constrain the number of early action and matching allowances or ERCs that may be available to geothermal projects. For a projection of constant geothermal generation in 2020 and 2021, see *http://www.eia.gov/forecasts/aeo/data/browser/<#/?id=16-AEO2016&cases=ref2016~ref_no_cpp&sourcekey=0.*

comment on whether and how to implement limitations on CEIP participation for wind and solar resources that benefit from the ITC or PTC. For example, a state could request, as part of a wind or solar project's CEIP eligibility application that it submit a certification that it is not benefitting from the PTC or ITC. Further the EPA seeks comment on whether the project should still be allowed to receive CEIP awards if it only receives a partial tax credit. The EPA seeks comment on this and other approaches a state could use to ensure that a wind or solar project submitting an eligibility application for a CEIP award is not also receiving tax incentives. We also solicit comment on whether and how any considerations of impacts of the PTC or ITC should impact apportionment for the RE reserve. The EPA is also seeking comment on an alternative apportionment of the reserves, which would set a ''floor'' on the portion of the matching pool that would be available for RE projects and low-income community projects and leave a portion of the matching pool available to be apportioned at the states' discretion. For example, 40 percent of every state's pro rata share could be reserved for RE projects and 40 percent could be reserved for low-income community projects, with the remaining 20 percent to be awarded at the state's discretion to any CEIP-eligible project type.

4. Apportionment of the Matching Pool Among the States: Allowances and ERCs Available in the RE and Low-Income Community Reserves

The final Clean Power Plan EGs expressed the EPA's intent to apportion the 300 million ton matching pool among states based on the amount of reductions from 2012 levels the affected EGUs in the state are required to achieve relative to those in other participating states (80 FR 64830, October 23, 2015). Tables 1 and 2 show the state-level shares that result from this calculation approach, including the number of allowances (of the 300 million allowance total) or ERCs (of the 375 million ERC total) that would be available to a CEIP-participating state depending on the choice of a mass-based or rate-based state plan. See the TSD to this action, titled ''Apportionment of the Matching Pool among the States,'' for further discussion of the calculation approach.

As discussed in section III.A, the EPA proposes to divide each state's share of the matching pool into a portion for RE projects and a portion for low-income community projects. An apportionment between the two reserves of 50 percent for RE and 50 percent for low-income community projects is shown in tables 1 and 2 of this preamble. The EPA is proposing that only those states with EGUs subject to the final Clean Power Plan EGs and that have submitted a final plan with approved CEIP provisions, as well as those states for whom the EPA may implement a federal plan, will receive an apportionment of the matching pool that the EPA is making available under the CEIP.[35] However, we do note that eligible projects outside of the boundaries of CEIP-participating states may still be eligible for award of early action and matching allowances or ERCs, so long as that project provides a benefit to the state issuing the award.

TABLE 1—PROPOSED STATE SHARES OF MATCHING POOL

[Allowances][36]

State/tribe	Available matching allowances (mass-based plan states)		
	Renewable energy reserve (50%)	Low-income community reserve (50%)	Total share (100%)
Alabama	4,683,458	4,683,458	9,366,916
Arizona	2,579,426	2,579,426	5,158,852
Arkansas	3,280,844	3,280,844	6,561,688
California	328,268	328,268	656,536
Colorado	3,334,788	3,334,788	6,669,576
Connecticut	104,122	104,122	208,244
Delaware	207,588	207,588	415,176
Florida	4,845,372	4,845,372	9,690,744
Georgia	4,133,434	4,133,434	8,266,868
Idaho	22,392	22,392	44,784
Illinois	8,953,081	8,953,081	17,906,162
Indiana	8,631,114	8,631,114	17,262,228
Iowa	3,286,774	3,286,774	6,573,548
Kansas	3,173,445	3,173,445	6,346,890
Kentucky	7,429,292	7,429,292	14,858,584
Lands of the Fort Mojave Tribe	8,827	8,827	17,654
Lands of the Navajo Nation	2,434,598	2,434,598	4,869,196
Lands of the Uintah and Ouray Reservation	263,264	263,264	526,528
Louisiana	2,246,141	2,246,141	4,492,282
Maine	31,109	31,109	62,218
Maryland	1,459,162	1,459,162	2,918,324
Massachusetts	255,705	255,705	511,410
Michigan	5,591,791	5,591,791	11,183,582
Minnesota	3,004,354	3,004,354	6,008,708

[35] See section III.D for a discussion of pathways by which tribes and states without affected EGUs, as well as states and territories for which the EPA has not yet finalized emission goals under the Clean Power Plan, may participate in the CEIP.

[36] As discussed in section III.D of this document, shares that may be provided to states and territories where goals have yet to be established would be distributed from the 300 million short ton matching pool, if the Agency moves forward with those options. Once the values for these shares are determined, if at all, table 1 would be updated to reflect the shares for all states, territories and tribes receiving CEIP matching allowances. We anticipate that the overall total share of the CEIP matching pool needed for states and territories where goals have yet to be established would be no more than five percent of the total pool (or about 15 million allowances).

TABLE 1—PROPOSED STATE SHARES OF MATCHING POOL—Continued

[Allowances] [36]

State/tribe	Available matching allowances (mass-based plan states)		
	Renewable energy reserve (50%)	Low-income community reserve (50%)	Total share (100%)
Mississippi	535,959	535,959	1,071,918
Missouri	5,656,983	5,656,983	11,313,966
Montana	1,965,515	1,965,515	3,931,030
Nebraska	2,222,542	2,222,542	4,445,084
Nevada	504,431	504,431	1,008,862
New Hampshire	161,696	161,696	323,392
New Jersey	669,007	669,007	1,338,014
New Mexico	1,234,572	1,234,572	2,469,144
New York	836,656	836,656	1,673,312
North Carolina	4,011,884	4,011,884	8,023,768
North Dakota	3,225,953	3,225,953	6,451,906
Ohio	7,182,558	7,182,558	14,365,116
Oklahoma	3,100,508	3,100,508	6,201,016
Oregon	231,529	231,529	463,058
Pennsylvania	7,559,018	7,559,018	15,118,036
Rhode Island	53,511	53,511	107,022
South Carolina	2,479,202	2,479,202	4,958,404
South Dakota	396,310	396,310	792,620
Tennessee	3,267,125	3,267,125	6,534,250
Texas	15,600,288	15,600,288	31,200,576
Utah	2,101,783	2,101,783	4,203,566
Virginia	2,079,819	2,079,819	4,159,638
Washington	1,127,151	1,127,151	2,254,302
West Virginia	5,260,335	5,260,335	10,520,670
Wisconsin	3,590,805	3,590,805	7,181,610
Wyoming	4,656,486	4,656,486	9,312,972
Total	149,999,975	149,999,975	299,999,950

TABLE 2—PROPOSED STATE SHARES OF MATCHING POOL

[Emission rate credits] [37]

State/tribe	Available matching ERCs (rate-based plan states)		
	Renewable energy reserve (50%)	Low-income community reserve (50%)	Total share (100%)
Alabama	5,854,323	5,854,323	11,708,646
Arizona	3,224,283	3,224,283	6,448,566
Arkansas	4,101,055	4,101,055	8,202,110
California	410,335	410,335	820,670
Colorado	4,168,485	4,168,485	8,336,970
Connecticut	130,153	130,153	260,306
Delaware	259,485	259,485	518,970
Florida	6,056,715	6,056,715	12,113,430
Georgia	5,166,792	5,166,792	10,333,584
Idaho	27,991	27,991	55,982
Illinois	11,191,352	11,191,352	22,382,704
Indiana	10,788,892	10,788,892	21,577,784
Iowa	4,108,467	4,108,467	8,216,934
Kansas	3,966,806	3,966,806	7,933,612
Kentucky	9,286,616	9,286,616	18,573,232
Lands of the Fort Mojave Tribe	11,034	11,034	22,068
Lands of the Navajo Nation	3,043,247	3,043,247	6,086,494
Lands of the Uintah and Ouray Reservation	329,080	329,080	658,160
Louisiana	2,807,677	2,807,677	5,615,354
Maine	38,886	38,886	77,772
Maryland	1,823,952	1,823,952	3,647,904
Massachusetts	319,632	319,632	639,264
Michigan	6,989,739	6,989,739	13,979,478
Minnesota	3,755,443	3,755,443	7,510,886
Mississippi	669,949	669,949	1,339,898

TABLE 2—PROPOSED STATE SHARES OF MATCHING POOL—Continued

[Emission rate credits] [37]

State/tribe	Available matching ERCs (rate-based plan states)		
	Renewable energy reserve (50%)	Low-income community reserve (50%)	Total share (100%)
Missouri	7,071,229	7,071,229	14,142,458
Montana	2,456,894	2,456,894	4,913,788
Nebraska	2,778,178	2,778,178	5,556,356
Nevada	630,539	630,539	1,261,078
New Hampshire	202,121	202,121	404,242
New Jersey	836,258	836,258	1,672,516
New Mexico	1,543,216	1,543,216	3,086,432
New York	1,045,820	1,045,820	2,091,640
North Carolina	5,014,855	5,014,855	10,029,710
North Dakota	4,032,441	4,032,441	8,064,882
Ohio	8,978,197	8,978,197	17,956,394
Oklahoma	3,875,635	3,875,635	7,751,270
Oregon	289,411	289,411	578,822
Pennsylvania	9,448,773	9,448,773	18,897,546
Rhode Island	66,889	66,889	133,778
South Carolina	3,099,003	3,099,003	6,198,006
South Dakota	495,387	495,387	990,774
Tennessee	4,083,907	4,083,907	8,167,814
Texas	19,500,360	19,500,360	39,000,720
Utah	2,627,229	2,627,229	5,254,458
Virginia	2,599,773	2,599,773	5,199,546
Washington	1,408,939	1,408,939	2,817,878
West Virginia	6,575,419	6,575,419	13,150,838
Wisconsin	4,488,506	4,488,506	8,977,012
Wyoming	5,820,607	5,820,607	11,641,214
Total	187,499,975	187,499,975	374,999,950

5. Provisions for Reapportioning Matching Allowances and ERCs Among CEIP-Participating States

The preamble to the final Clean Power Plan EGs indicated that, following receipt of final state plans, the EPA would execute a reapportionment of matching allowances or ERCs among the states, if it proves necessary. However, some stakeholders during the informal outreach period raised concerns around the timing in which the EPA would know that additional matching allowances or ERCs are available for reapportionment and whether a later reapportionment would be capable of addressing remaining unmet-demand for eligible CEIP projects. The EPA agrees that timing considerations may create a degree of uncertainty that makes reapportionment among states inappropriate. Additionally, as discussed in section III.A, the wind and solar tax credit extensions could also impact the imperative for reapportionment. Therefore, the EPA is not including reapportionment provisions in the CEIP.

The EPA also recognizes that there may be administrative challenges that may not support reapportioning of matching allowance/ERCs to states participating in the CEIP. From an administrative perspective, reapportioning CEIP allowances/ERCs after the known CEIP participants are determined, but before the CEIP program begins, may not be feasible depending on when state plans are submitted and approved, including approvable CEIP provisions. In addition, if a reapportionment were to occur, it could occur when the state has already begun to implement its CEIP, thus providing an element of uncertainty for states and project providers.

Reapportionment of matching allowances/ERCs may also influence a state's decision to opt-in to the CEIP, based on considerations that neighboring states could receive additional matching allowances/ERCs if the state chooses not to opt-in to the program. This could be perceived as a 'double-disadvantage': Not only is the state electing to not receive matching allowances/ERCs, it is also electing to have other states' matching allowance/ERC shares increased. This consideration could lead to a perverse incentive for a state to opt-in to the program in an effort to shield their original share of the matching pool from reapportionment, but not follow through on program implementation. Lastly, the EPA expects that most states will opt to take advantage of the benefits provided by the CEIP, and therefore as such, do not expect a large pool of remaining matching allowances or ERCs would be available for reapportionment. In lieu of reapportioning matching allowances or matching ERCs that are not claimed by a state that chooses not to opt-in to the CEIP, the EPA would simply retire these unclaimed matching allowances or ERCs on January 1, 2023.

Although we are not including reapportionment provisions in this proposal, we are seeking comment on whether these provisions should be included. In the case of reapportionment, only those states with

[37] As discussed in section III.D of this document, shares that may be provided to states and territories where goals have yet to be established would be distributed from the 300 million short ton matching pool, if the Agency moves forward with those options. Once the values for these shares are determined, if at all, table 2 would be updated to reflect the shares for all states, territories and tribes receiving CEIP matching ERCs. We anticipate that the overall total share of the CEIP matching pool needed for states and territories where goals have yet to be established would be no more than five percent of the total pool (or about 18.75 million ERCs).

approved state plans that include approved CEIP provisions, and states for whom the EPA is implementing the federal plan, would be eligible to receive a final apportionment of matching allowances or ERCs from the EPA. States that choose not to participate in the CEIP, or states with approved state plans that do not contain approved CEIP provisions, would not be eligible to receive an apportionment. If a state elects not to participate in the CEIP or the CEIP provisions of a state's approved state plan are disapproved, the matching allowances or ERCs listed for that state in tables 1 and 2 of this preamble would be reapportioned to the other states that are participating in the CEIP via an approved state plan with approved CEIP provisions, or via a federal plan. This reapportionment would be executed on a pro-rata basis, using the same calculation method used to establish the initial apportionment of matching allowances/ERCs among the states.[38] Any matching allowances or ERCs that were not awarded from a state's matching allowance or ERC apportionment by January 1, 2023 would be retired by the EPA. The EPA requests comment on whether to include reapportionment provisions, and the methodology that should be used for reapportioning matching allowances or ERCs.

B. Requirements for States That Choose to Participate in the CEIP

State plans that include implementation of the CEIP must meet certain requirements to ensure effective administration of the state's CEIP. Several basic requirements have already been established in the final EGs at 40 CFR 60.5737. This section summarizes those requirements and also proposes additional requirements necessary for implementation of a state CEIP and the related award of EPA matching allowances or ERCs. This section also discusses relevant proposed optional example rule provisions for the CEIP, which would constitute a presumptively approvable approach for meeting these CEIP requirements.[39] In the discussion that follows, we present requirements for allocation of early action allowances or issuance of early action ERCs by a state. Section III.B.2 discusses a proposed process by which EPA matching allowances or ERCs would be awarded. Section III.B.3 reviews the requirement finalized in the Clean Power Plan EGs to maintain the stringency of mass-based or rate-based CO_2 emission performance by affected EGUs when implementing the CEIP, and proposes a method for meeting this requirement for mass-based plans and rate-based plans. Section III.B.4 proposes how states may define ''low-income community'' for purposes of implementing the CEIP. Section III.B.5 proposes requirements for addressing potential improper allocation or issuance of early action allowances or early action ERCs, respectively.

1. State Plan Requirements for Distribution of Early Action Allowances or ERCs

A state plan that implements the CEIP must include requirements that specify the process for application for, and allocation/issuance of, early action allowances or ERCs under the CEIP, as applicable.[40] [41] Many of these requirements were included in the final EGs at 40 CFR 60.5737, and unless otherwise noted, this action does not re-open these requirements. (We discuss these requirements solely to help identify what new or revised requirements we are proposing, and to provide an overall view of all the requirements.) However, this action proposes several changes and enhancements to these requirements. If the changes proposed in this action are finalized, then taken together, these requirements would include:

—Eligibility requirements for projects under the CEIP, including the definition(s) of low-income community a state intends to use to make CEIP awards to low-income community projects;
—Requirements for submission of project eligibility [42] applications to the state for the allocation/issuance of early action allowances or early action ERCs, demonstrating the eligibility of the project under the CEIP, including an EM&V plan for the project;
—Requirements for submission of M&V reports to the state, containing monitored and verified MWh generation or savings results for a project;
—Requirements for submission of accompanying verification reports by an accredited independent verifier, for both eligibility applications and M&V reports; [43]
—Requirements for accreditation of independent verifiers and conduct of independent verifiers;
—State allocation or issuance of early action allowances or early action ERCs, based on quantified and verified MWh;
—Tracking system capabilities and infrastructure necessary to support state administration of the CEIP; [44]
—Actions to be taken if early action allowances or early action ERCs are found to have been improperly issued;
—A mechanism for ensuring maintenance of CO_2 emission performance by affected EGUs, considering state implementation of the CEIP; [45]

We note the requirement in the final EGs, which we are not reopening, that if a final state plan includes CEIP provisions, the entire plan, including the CEIP, is subject to the requirements for meaningful engagement and public comment. In addition, the EPA is proposing in this action that a state plan must not prohibit an eligible CEIP project from receiving early action allowances or ERCs on the basis that the project is located in Indian country.

Many of the requirements listed previously were established in the final Clean Power Plan EGs (80 FR 64692). This proposal includes additions and

[38] See TSD titled ''Apportionment of the Matching Pool among the States''.

[39] The EPA requests comment on the use of the proposed optional CEIP example rule provisions as suitable regulatory text in the event of implementation of a federal plan CEIP.

[40] States with rate-based state plans would issue early action ERCs; states with mass-based state plans would allocate early action allowances.

[41] Consistent with provisions in the Clean Power Plan emissions guidelines at 80 FR 64906, section VIII.K.2.b, a state may empower an agent to act on its behalf when administering the CEIP. A state agent is a party acting on behalf of the state, based on authority vested in it by the state, pursuant to the legal authority of the state. A state could designate an agent to provide certain limited administrative services, or could choose to vest an agent with greater authority. Where an agent issues an ERC or allowance on behalf of the state, such issuance would have the same legal effect as issuance of an ERC or allowances by the state.

[42] CEIP-eligible project types are discussed in section III.C of this proposal.

[43] While submitted separately by an independent verifier, a verification report constitutes part of an eligibility application and M&V report.

[44] Following the proposal of the Clean Power Plan, the EPA received a number of comments from states and stakeholders about the value of the EPA's support in developing and/or administering tracking systems to support state administration of emission trading programs. The EPA is exploring options for providing such support and is conducting a scoping assessment of tracking system support needs and functionality. This scoping assessment will consider support that could assist states with implementation of the CEIP, should a state choose to include the CEIP in a state plan.

[45] As established in the Clean Power Plan EGs (and not re-opened here), any state that chooses to participate in the CEIP must demonstrate in its plan that it has a mechanism in place that enables issuance of early action ERCs or early action allowances in a manner that would have no impact on the aggregate emission performance of affected EGUs required to meet rate-based or mass-based CO_2 emission standards during the compliance periods (80 FR 64831). For a mass-based program, maintenance of stringency is addressed through the established emission budget for affected EGUs, as discussed in this section. The mechanism by which rate-based states may meet this requirement is discussed in this section.

revisions to certain requirements in the final Clean Power Plan EGs necessary to allow for implementation of the CEIP. This action proposes no changes to, and does not in any way re-open, any aspects of the final Clean Power Plan other than those expressly proposed or on which we expressly request comment, and all such potential changes are solely related to the CEIP. We are also proposing optional example regulatory text for the CEIP, which when finalized, would provide presumptively approvable approaches for implementing the CEIP by a state as part of a mass-based emission budget trading program or a rate-based emission trading program.[46] The EPA has structured the proposed optional example regulatory text for the CEIP in a manner that would enable it to be integrated with the proposed model trading rules for mass-based and rate-based emission trading programs.[47] The CEIP optional example regulatory text in this proposal replaces proposed provisions for the CEIP included in the October 23, 2015, model trading rules proposal. In addition, the EPA requests comment on utilizing this presumptively approvable optional example regulatory text as CEIP provisions under a federal plan.

As finalized in the Clean Power Plan EGs, states opting into the CEIP must include requirements in their plans for allocation or issuance of early action allowances or early action ERCs, respectively, that meet the requirements for the issuance of ERCs (see final rule preamble, section VIII.K.2, and regulatory text at 40 CFR 60.5737(e)). Such a requirement applies to both mass-based and rate-based state plans including the CEIP, as the CEIP is based on eligible MWh of energy savings or RE generation, and these MWh must be quantified and verified appropriately in order to demonstrate eligibility for awards of early action and matching allowances or ERCs. Where relevant, the proposed CEIP optional example regulatory text cross-references applicable provisions in the proposed mass-based and rate-based model trading rules, respectively, that address such requirements.[48] The EPA is proposing two sets of CEIP optional example regulatory text—one set of provisions for inclusion in a mass-based trading program, and one set of provisions for inclusion in a rate-based trading program. As a result, each set of proposed CEIP optional example regulatory text makes relevant cross references to provisions in the proposed mass-based and rate-based model trading rules. These cross references include references to provisions in the proposed mass-based and rate-based model trading rules that would, in the Agency's view (pending its review of public comments and ultimate finalization of the model trading rules), meet the requirements in the final EGs for the process for state issuance of ERCs. (The final EGs themselves are not re-opened with respect to the requirements for ERC issuance.) This includes provisions in the proposed mass-based and rate-based model trading rules that address: Requirements for eligibility applications (including EM&V plans),[49] EM&V requirements for different types of eligible projects and programs,[50] M&V reports,[51] verification reports (included with both eligibility applications and M&V reports), requirements for independent verifiers,[52] and provisions that address potential improper issuance of ERCs or improper allocation of allowances.[53]

The state plan requirements for implementation of the CEIP summarized previously apply regardless of whether a state is allocating early action allowances under a mass-based emission budget trading program or issuing early action ERCs under a rate-based emission trading program. In addition, these provisions must specify requirements for eligible projects under the CEIP, including the requirement that EE projects are implemented in ''low-income communities.'' [54] These provisions must also include requirements for the quantification and verification of MWh results, as well as a two-step administrative process for determination of project eligibility and allocation or issuance of either early action allowances or ERCs. These requirements, for rate-based and mass-based programs, respectively, are discussed in the sections that follow.

a. Requirements for State Plans that Include Mass-Based Emission Budget Trading Programs

Where a state plan includes a mass-based emission budget trading program, the plan will need to include requirements that support the allocation of early action allowances under the state CEIP. A number of these are additional requirements that are not necessary under an approvable mass-based emission budget trading program that does not include a state CEIP. However, many of these additional requirements are similar to those that would be entailed for the administration of allowance set-asides to address potential leakage to new sources in the absence of the CEIP, if the state chooses such set-asides as the means for addressing potential leakage. In general, administering an allowance set-aside involves provisions to address entities that are eligible to receive allowances from a set-aside and specification of the method for allocating allowances from the set-aside. As a result, to the extent that a state decides to implement one or more allowance set-asides as part of its plan, even in the absence of the CEIP, a similar framework to the one summarized previously would likely be established in many cases.

These additional requirements include regulatory provisions that address the eligibility of resources for state allowance allocation under the CEIP, and the process for such allocation, including: Requirements for submission of eligibility applications, which include EM&V plans; requirements for EM&V; requirements for submission of periodic M&V reports; requirements for accreditation of independent verifiers; requirements for independent verifier reports (which must accompany both eligibility applications and M&V reports); and necessary tracking system capabilities that provide for the required two-step process for application for early action allowances that is consistent with the required two-step process for the issuance of ERCs.

In addition, the requirements for allocation of early action allowances under a state CEIP must include provisions for how allowances will be allocated based on the number of quantified and verified MWh reported by an eligible resource (*i.e.,* the MWh-to-allowance award ratios for CEIP-eligible RE, and low-income community projects). The EPA is proposing that early action allowances allocated under a state CEIP must be allocated in conformance with the provisions included in section III.A of this preamble.

[46] While the proposed optional example regulatory text provides a presumptively approvable approach for a state's participation in the CEIP, the EPA recognizes that states may choose alternate approaches, provided they meet the requirements for CEIP participation included in amendments to the Clean Power Plan EGs included in this action, once finalized.

[47] 80 FR 64966–65116 (October 23, 2015)

[48] The cross-referenced provisions themselves are not re-proposed by this action.

[49] *See id.* at 64998.

[50] *See id.* at 65002.

[51] *See id.* at 65096.

[52] *See id.* at 65001.

[53] *See id.* at 64998.

[54] Section III.B discusses low-income definitions.

b. Requirements for State Plans that Include Rate-Based Emission Trading Programs

Where a state is implementing a rate-based emission trading program, the state plan will include necessary provisions for the issuance of ERCs, as previously described. These are the same requirements that are necessary to support state issuance of early action ERCs under the CEIP. As a result, the state plan would require limited additional requirements in order to implement the CEIP, beyond those required for a rate-based state plan in general. These additional requirements include provisions establishing the eligibility of projects under the CEIP and provisions to address maintenance of CO_2 emission performance by affected EGUs, as described in section III.B.3. In addition, an approvable state plan that includes a rate-based emission trading program will already include an identified tracking system that has the necessary capabilities and infrastructure to support the issuance of early action ERCs.

2. Process for the Award for EPA Matching Allowances or ERCs

The EPA is proposing that state plan requirements for the request of EPA matching allowances or ERCs must be consistent with the following process.

The EPA is proposing that it will establish an EPA matching allowance or ERC account for each state in the relevant tracking system for each state mass-based emission budget trading program (in the case of matching allowances) and rate-based emission trading program (in the case of matching ERCs). The EPA proposes to grant states the ability to transfer EPA matching allowances or ERCs from the EPA matching account, on behalf of the EPA, under the conditions described later in this preamble.

The state plan must specify the conditions under which the state will authorize such transfers of EPA matching allowances or ERCs from the EPA matching account to the designated account of an eligible CEIP project. Those state plan provisions must specify that a transfer of EPA matching allowances or ERCs may only occur subsequent to a state allocation or issuance of early action allowances or ERCs, in accordance with requirements for such state early action awards specified in the state plan; must be made in accordance with the award ratios established in the EGs (and specified in the state plan); and must correspond with the number of early action allowances or ERCs allocated or issued to an eligible CEIP project. The EPA is also proposing that, when awarding matching allowances or ERCs on behalf of the EPA, a state must assign a vintage for each awarded matching allowance or ERC that corresponds to the vintage of the related early action allowance or ERC on the basis of which the matching allowance or ERC was awarded.[55] The EPA requests comment on this provision.

The state plan must adequately describe how the tracking system used to administer the state mass-based emission budget trading program or rate-based emission trading program will provide transparent public access to transfers of EPA matching allowances or ERCs from the EPA matching account. This includes tracking system access to CEIP project documentation related to the state allocation or issuance of early action allowances or ERCs, respectively. Furthermore, the tracking system must provide a mechanism for tracking the awarded EPA matching allowances or ERCs back to the relevant CEIP project documentation, and documentation of the state award of early action allowances or ERCs for which the EPA matching award was made.[56] The EPA notes that such requirements are consistent with the tracking system requirements in the EGs for the issuance of ERCs. In addition, the EPA is proposing optional example regulatory text for the CEIP that specifies this required process under both a mass-based emission budget trading program and a rate-based emission trading program.

These state plan provisions must specify that the state will transfer EPA matching allowances or ERCs from the EPA matching account on a regular established schedule, and no sooner than 60 days from the date of the relevant state award of early action allowances or early action ERCs for an eligible CEIP project. Prior to this date, the EPA may place a hold on state transfers from the EPA matching account, if it has questions about the proper state allocation of early action allowances or issuance of early action ERCs consistent with the requirements and process established in the approved state plan, or if there is evidence of potential improper state awards. The EPA believes that this approach balances streamlined implementation of the CEIP with appropriate safeguards to ensure the integrity of the CEIP. The EPA requests comment on this provision to provide for a delay between allocation or issuance of early action allowances or ERCs and the award of matching allowances or ERCs.

3. Addressing Requirement To Maintain Stringency of Mass-Based or Rate-Based Emission Performance

The Clean Power Plan EGs require that states opting in to the CEIP include in their state plans a mechanism that ensures that the allocation of early action allowances or issuance of early action ERCs to CEIP-eligible parties will not impact the CO_2 emission performance of affected EGUs required to meet rate-based or mass-based CO_2 emission standards during the plan performance periods.[57] This mechanism is not required to account for matching ERCs or allowances that may be issued to the state by the EPA.[58] This section proposes approaches for such mechanisms, for both mass-based emission budget trading programs and rate-based emission trading programs. Several commenters provided suggestions for how to address stringency maintenance for early action allowances allocated or early action ERCs issued. Commenters generally supported the inclusion of requirements that stringency must be maintained. Several commenters stated that EPA should not adjust state goals during the compliance period as a mechanism for maintaining stringency and that doing so may be too complicated of a methodology. For rate-based plans,

[55] For an ERC, ''vintage'' refers to the calendar year in which the MWh on which issuance of the ERC is based occurred. For an allowance, ''vintage'' refers to the emission budget year of the allowance. Both ERCs and allowances may be banked for future use without limitation, as established in the final CPP. Borrowing of allowances is not allowed under the final CPP. For allowances, this means that only allowances for budget years that fall within a current or past compliance period may be used to demonstrate compliance. Borrowing is also prohibited for ERCs, but is not relevant from a practical standpoint, as ERCs may only be issued after quantification and verification of MWh generation or savings. As a result, by default, borrowing of ERCs is not possible.

[56] This includes access to the eligibility application for the relevant CEIP resource, the relevant M&V report on which the state award of early action allowances or ERCs is based, related independent verifier reports (for the eligibility application and relevant M&V report), and documentation of the state award of early action allowances or ERCs.

[57] For a description of this requirement, see the preamble to the final Clean Power Plan EGs at 80 FR 64830–64831 and the final rulemaking regulatory text at 40 CFR 60.5737(c).

[58] In addition, for states adopting a state measures plan type, we note that the EGs require inclusion of a federally enforceable backstop and associated implementing measures such as triggers based on reported emissions. See 40 CFR 60.5740(a)(3)(i). The EPA is proposing here that any trigger for the backstop required by the EGs for a state measures plan would not need to include or account for emissions authorized per EPA-awarded matching allowances under the CEIP. The EPA solicits comments on this proposal and any alternatives.

several commenters suggested that EPA include provisions that account for early action ERCs and either allow for retirement of ERCs that would have been issued during the compliance period or require a 'discounting' or adjustment factor be applied to ERCs issued during the compliance period.

a. Addressing Maintenance of Stringency for Mass-Based Programs

Addressing maintenance of stringency under a mass-based state plan is straightforward. A state must address this plan requirement by implementing the CEIP through an allowance set-aside from the established state emission budget. Since allowances are being distributed from a finite emission budget, allocation of allowances from that budget for CEIP early actions cannot result in an increase in the allowable CO_2 emissions from the fleet of affected EGUs when complying with their emission standards.[59] Stringency is therefore maintained by the structure of an emission budget trading program, because the emission budget is established under the state plan and early action allowances related to a state CEIP are allocated from that emission budget.[60] As a result, the state-established emission budget is not increased as a result of the state allocation of allowances from a CEIP set-aside. The EPA further proposes that early action allowances must be allocated only from a state's emission budget established for the first interim step plan performance period (*i.e.,* 2022–2024).

b. Addressing Maintenance of Stringency for Rate-Based Programs

For a rate-based emission trading program included in a state plan implementing the CEIP, addressing the plan requirement to maintain the stringency of CO_2 emission performance requires a different mechanism than that required under a mass-based program. The very nature of a rate-based approach, which does not limit total emissions, poses certain challenges for demonstrating that stringency will be maintained.

In this program context, the state is implementing the CEIP by issuing early action ERCs for MWh of generation or savings achieved by CEIP-eligible projects during 2020 and/or 2021, before the plan performance period begins in 2022.[61] These early action ERCs may be used by affected EGUs to comply with a rate-based CO_2 emission standard during the plan performance period.

State-issued early action ERCs for CEIP-eligible MWh generation or savings in 2020 and/or 2021 will result in a larger total number of potential ERCs available for use by affected EGUs than would have otherwise been available in the absence of the CEIP. As finalized in the EGs, a state plan must account for these early action ERCs during the plan performance period, or there will be an impact on the aggregate CO_2 emission performance achieved by affected EGUs during the plan performance period when complying with their rate-based CO_2 emission standards. For purposes of fulfilling this plan requirement, the EPA is proposing that, for each early action ERC a state issues under the CEIP, the state must, during the interim plan performance period, either permanently withhold (*i.e.,* not issue) one ERC for a quantified and verified MWh achieved by an eligible ERC resources, or permanently retire one unused ERC[62] such that it cannot be used for CPP compliance. Unless such an adjustment is applied during the plan performance period to account for the issuance of early action ERCs, this total increase in potential available ERCs would allow affected EGUs to emit more CO_2 than would occur through the application of the CO_2 emission performance levels or state rate-based CO_2 goal during the plan performance period beginning in 2022.

As described later in this preamble, the EPA is proposing a specific presumptively approvable approach that rate-based states opting in to the CEIP may choose to use to meet the plan requirement to maintain the stringency of CO_2 emission performance by affected EGUs. (The EPA anticipates that it would use this approach if the EPA were to implement the CEIP under a rate-based federal plan.) The EPA is also soliciting comment on other approaches that could be considered presumptively approvable in a rate-based state plan that includes the CEIP.

The proposed presumptively approvable approach is as follows: A rate-based state opting in to the CEIP would apply an adjustment factor to all quantified and verified MWh from eligible ERC resources that are achieved during the first interim step (2022–2024) of the plan performance period, to account for the number of early action ERCs issued by a state under the CEIP for MWh achieved during 2020 and/or 2021. The state would apply this adjustment factor to the quantified and verified MWh reported by each eligible ERC resource, regardless of whether that resource received early action ERCs under the CEIP. This presumptively approvable approach would enable a state to fully account for the issuance of early action ERCs during the first interim step (2022–2024) of the plan performance period (*i.e.,* the number of early action ERCs issued by the state would be equal to the number of quantified and verified MWh from eligible ERC resources for which ERCs would be permanently withheld during the first interim step of the plan performance period), and thus demonstrate that its state plan is maintaining the stringency of CO_2 emission performance by affected EGUs.

The adjustment factor to be used in the presumptively approvable approach is determined by the following equation:

$$\text{Adjustment Factor} = 1 - \frac{\text{State Issued CEIP Early Action ERCs} \Big/ \text{Adjustment Period}}{\text{Quantified \& Verified MWh During Reporting Year}}$$

[59] Under an emission budget trading program, the emission standard that applies to an individual affected EGU is a requirement to surrender allowances equal to reported CO_2 emissions for a given compliance period. Allowances are generally allocated in an amount that equals the CO_2 emission budget (*i.e.,* the CO_2 emission constraint that applies to the combined group of affected EGUs subject to the program).

[60] To meet the requirement to maintain stringency, the state plan must allocate early action allowances from within the established emission budget. The state may not increase the budget.

[61] Outside the context of the CEIP, ERCs may only be issued by a state for MWh of generation or savings by eligible resources that occur in 2022 and subsequent years (*i.e.,* during the plan performance period). Thus, in contrast with the discretion available to states implementing a mass-based program to allocate allowances for early action outside the context of the CEIP (though without the availability of any EPA matching allowances), states implementing a rate-based program may not issue ERCs for early action other than through the CEIP. This result is a natural consequence of the requirements for eligible resources that can be issued ERCs established in 40 CFR 60.5800 and is not open for comment in this action.

[62] ERCs that can be retired for this purpose may be produced by eligible ERC resources within the state or in other states that share the same rate-based approach (*i.e.* CO_2 emission performance levels or a state rate-based CO_2 goal). They may also be early action ERCs issued under the CEIP.

Where:

- State-Issued CEIP Early Action ERCs = the total number of early action ERCs issued by a state under the CEIP, for eligible MWh achieved in 2020 and/or 2021
- Adjustment Period = 3, the number of years in the first interim step of the plan performance period (2022–2024), to which the adjustment factor will be applied to address maintenance of CO_2 emission performance stringency
- Quantified and Verified MWh During Reporting Year = The total number of quantified and verified MWh reported by all eligible ERC resources to a state for a specific year of the first interim step of the plan performance period (2022–2024)

This equation calculates the adjustment factor (a fraction) that a rate-based state opting in to the CEIP would apply to the total quantified and verified MWh reported to that state by each individual eligible ERC resource for actions undertaken during the first interim step of the plan performance period (2022–2024). Once applied, this factor ''adjusts'' the number of ERCs that an eligible ERC resource may receive for actions undertaken during the first interim step of the plan performance period, to account for the early action ERCs the state issued to CEIP-eligible providers for MWh achieved in 2020 and/or 2021.

The following is an example calculation of the adjustment factor, for a scenario that assumes that 300 early action ERCs are issued by a state under the CEIP, and that, during the year 2022 (the first year of the first interim step period), all eligible ERC resources report 1,000 MWh to the state:

$$\text{Adjustment Factor} = 1 - \frac{300/3}{1{,}000} = 0.9$$

Based on application of the adjustment factor, each eligible ERC resource would receive a number of ERCs equal to the MWh it reported, multiplied by the adjustment factor of 0.9. In aggregate, all eligible ERC resources would receive 900 ERCs total for the 1,000 MWh total they reported in 2022.[63] The 100 MWh of quantified and verified MWh achieved by the eligible ERC resources, but for which the state did not issue ERCs, are applied toward the state's demonstration that it maintained the stringency of rate-based CO_2 emission performance during 2022.

This proposed presumptively approvable approach for maintaining stringency in a rate-based program provides a number of advantages. First, the approach provides a transparent way of demonstrating that the number of ERCs issued by a state under the CEIP is being fully accounted for during the plan performance period. Second, the proposed approach applies the same adjustment factor to all eligible ERC resources. This approach would provide greater assurance that early action ERCs are fully accounted for during the plan performance period than if an adjustment was only applied to the eligible ERC resources that received early action ERCs. It is uncertain that there would be sufficient MWh of energy generation or savings achieved by these resources during the plan performance period to fully account for the early action ERCs that were issued to those individual CEIP projects and providers.[64] Third, this approach would not substantially dilute the incentive provided to eligible resources that receive early action ERCs, in keeping with the goal of the CEIP to drive early action.

The EPA understands that there is a potential disadvantage to this approach. This method of applying the adjustment factor to all eligible ERC resources would reduce the number of ERCs issued to eligible ERC resources that did not participate in the CEIP, relative to their total quantified and verified MWh during the plan performance period. These eligible ERC resources would not have received early action incentives through the CEIP, yet would see a reduction in the potential incentives they could receive during the plan performance period. Nonetheless, the EPA also notes that such an incentive structure could provide further encouragement for projects and programs to participate in the CEIP, if it were implemented through a state plan.

The EPA seeks comment on this proposed presumptively approvable approach, including the timing for and duration of the adjustment period to be incorporated into the adjustment factor equation. The EPA also requests comment on alternative approaches the agency could consider as presumptively approvable methods to maintain the stringency of CO_2 emission performance achieved by affected EGUs during the plan performance period under a rate-based emission trading program that includes the CEIP. These could include approaches by which a state would withhold or retire ERCs during the first interim step of the plan performance period in an amount equal to the number of early action ERCs issued by the state under the CEIP for MWh achieved during 2020 and/or 2021. Additionally, we request information on mechanisms for ensuring that stringency is met with any alternative presumptively approvable approaches suggested.

4. Requirement To Establish a Definition of ''Low-Income Community'' for Purposes of Implementing the CEIP

A key element of the CEIP as finalized in the EGs is the establishment of incentives specific to projects implemented in low-income communities. As discussed in the final EGs, the additional incentive offered for low-income community projects is an effort to help overcome historical barriers to the deployment of energy efficiency projects in low-income communities (80 FR 64831). Incentivizing these projects will place affected EGUs in a better position to meet their emission reduction obligations under the EGs and improve the cost of implementation of the EGs, consistent with Congress' design in section 111 of the CAA. At the same time, the Agency believes that a focus on low-income communities will also deliver economic and environmental benefits to a more expansive set of underserved populations, including

[63] If application of the adjustment factor resulted in a total calculated number of MWh that ends with a fractional value of a MWh remaining (*e.g.,* 900.7 MWh), the EPA is proposing that the number of MWh for which ERCs may be issued would be rounded down to the nearest integer (*e.g.,* 900). Such rounding is necessary, as ERCs may only be issued in whole MWh increments.

[64] The ongoing operation of individual projects or programs that are eligible for issuance of ERCs is subject to uncertainty. Projects or programs might be terminated, or might choose to suspend their application for the issuance of ERCs going forward, for multiple potential reasons unrelated to a state plan. Furthermore, the quantified and verified MWh of electricity generation or savings from an individual project or program could vary significantly from year to year, for a number of potential reasons. Therefore, it is uncertain that the projects or programs that received early action ERCs under the CEIP would cumulatively report quantified and verified MWh during the first 3 years of the plan performance period equal to or greater than the number of quantified and verified MWh reported for 2020 and 2021.

low-income, minority and tribal communities.[65]

Proposing how states may develop their definition of ''low income community'' is a critical part of this action. In the context of the CEIP, the EPA is interpreting the term ''community'' in a manner consistent with the Council on Environmental Quality's *Environmental Justice Guidance Under the National Environmental Policy Act* which states ''In identifying low-income populations, agencies may consider as a community either a group of individuals living in geographic proximity to one another, or a set of individuals . . . where either type of group experiences common conditions of environmental exposure or effect.'' [66]

In establishing requirements for a definition of ''low-income community,'' the EPA considered several key principles. One principle is a desire to establish requirements that are clear and easy for states to implement as they develop their plans. The EPA believes that use of existing federal, state, and local definitions will provide the most clarity and ease of implementation. Another principle for the Agency is that a state's definition should provide transparency and consistency for all stakeholders with an interest in the CEIP, including project providers and communities that may benefit from implementation of CEIP-eligible projects. To further these principles, the EPA emphasizes that, by establishing clear definitions for a ''low-income community'' in the state plan, a state can make the process easier to implement and more transparent for all parties. Additional guidance on low-income community project eligibility is discussed in section III.C of this preamble.

A state plan that includes implementation of the CEIP must establish eligibility requirements for projects under the CEIP, including a requirement that eligible CEIP low-income community projects must be implemented in a low-income community.[67] We propose that a state choosing to participate in the CEIP must include in its state plan one or more definitions of low-income community that the state will apply to evaluate whether proposed EE and solar projects are implemented in low-income communities in that state. During the public outreach sessions for the CEIP and the comment period for the CEIP non-regulatory docket, the EPA heard from many commenters who supported enabling states to use existing low-income definitions, allowing both geographic and household-based definitions, allowing flexibility to address rural and urban areas of each state, and recognizing the existing public benefit programs being run by states and utilities.[68] The EPA agrees with those commenters. Due to the short-term (two-year) nature of the CEIP, and since existing program providers have experience with evaluating and implementing EE and RE projects in low-income communities, the EPA recognizes the value of building on successful existing local, state and federal programs that serve low-income communities rather than the Agency creating a new definition of ''low-income community.'' Finally, the Agency recognizes the variability in state economic and demographic conditions, and the range of experiences that local, state and federal agencies have in administering low-income programs, including low-income energy programs. As a result, the EPA is proposing that it will neither create a new definition nor provide a single definition of low-income community that it will require states to use. Rather, the EPA proposes to provide states with the flexibility to use existing local, state or federal definitions that best suit their specific economic and demographic conditions while ensuring that eligible projects and programs receiving incentives are benefitting low-income communities. Local, state or federal definitions are considered existing if they were established prior to the publication of the final Clean Power Plan EGs on October 23, 2015. Routine updates of underlying federal or state data do not constitute a new definition for the purposes of this action.

It is reasonable to enable a state to include more than one definition of ''low-income'' in its state plan, to allow eligibility for a range of different types of programs (*e.g.,* housing vs. commercial) and geographic scale (*e.g.,* household vs. geographic boundary). Requiring a state to use only one could exclude projects that would be entirely consistent with the purposes of the Clean Power Plan EGs. There are many examples of existing federal definitions, including, but not limited to, geographic-based definitions, such as the New Market Tax Credits (NMTC) [69] and the HUD Qualified Census Tracts,[70] and household-based definitions, such as the Department of Energy's Weatherization Assistance Program (WAP) Income Guidelines [71] and the Federal Poverty Level Guidelines (FPLG).[72]

The EPA is proposing that these federal level definitions (NMTC, HUD Qualified Census Tracts, WAP, and the FPLG) are each presumptively approvable definitions that may be used in final state plans.[73] The EPA is requesting comment on other federal level definitions that could be included as presumptively approvable. At the state level, definitions may include established utility program definitions that have public utility commission (PUC) or state energy office (SEO) approval, eligibility requirements for state tax credits or incentives, or qualification for state administered benefit programs, among others. At the local level, definitions may include established utility program definitions administered by a municipality, a public power entity, a rural electric cooperative or other analogous utility provider not subject to state oversight. Examples of state and utility administered low-income EE and solar programs are discussed in section III.C of this preamble.

If a state includes more than one definition, it must have clear and consistent criteria for applying the multiple definitions. For instance, a state may use one definition for one type of program and another definition for another type of program, but it should not choose between the definitions for a specific program in such a way that would allow for arbitrary inclusion or exclusion of individual projects.

During the public outreach sessions on the CEIP in the fall of 2015, commenters raised concerns about the appropriateness of using state-based definitions. Specifically, some commenters stated that some state-specific definitions may either exclude some low-income electricity consumers or be overly inclusive of higher-income households or institutions that do not serve low-income residents. The EPA is requesting further comment on these

[65] For more information about the link between minority and low-income communities please see Section V *Community and Environmental Justice Considerations.*

[66] Council on Environmental Quality's *Environmental Justice Guidance Under the National Environmental Policy Act, Appendix A* (December 1997). *http://www3.epa.gov/environmentaljustice/resources/policy/ej_guidance_nepa_ceq1297.pdf.*

[67] See the Final Clean Power EGs at section 60.5737(a)(4) and (b)(2) (80 FR 64943).

[68] See CEIP non-regulatory docket at EPA–HQ–OAR–2015–0734.

[69] *https://www.irs.gov/pub/irs-utl/atgnmtc.pdf.*

[70] *https://www.huduser.gov/portal/datasets/qct.html.*

[71] *http://energy.gov/eere/wipo/downloads/wpn-15-3-2015-poverty-income-guidelines-and-definition-income.*

[72] *https://aspe.hhs.gov/2015-poverty-guidelines.*

[73] See section III.C for information on requirements for eligible EE projects.

concerns as well as potential remedies to address these concerns.

Additionally, some commenters have expressed concerns over needing appropriate safeguards to ensure that low-income communities are the beneficiaries of eligible CEIP energy-efficiency projects. Some commenters have suggested that states consider limiting the total population within a state that could be considered as 'low-income'. Others have suggested that states consider evaluating the number of high-income households that would be included under their proposed definition of low-income. Another commenter asked that states consider whether restrictions on the types of commercial and transmission and distribution projects are appropriate, (*e.g.,* whether the entities are public, private, or not-for-profit). In response to these concerns, the EPA is also requesting comment on restrictions or safeguards that may be needed to ensure that projects receiving incentives from the low-income community reserve are limited to those that benefit low-income communities.

The EPA requests comments on the suitability for a federal plan of the existing federal definitions listed previously (specifically: NMTC, HUD Qualified Census Tracts, WAP, and the FPLG), as well as any existing state or local definitions for programs in that state. This would be consistent with the flexibility granted to states under a state plan, as discussed previously.

As a state contemplates possible definitions of ''low-income community'' it may be appropriate to consider the range of factors specific to the state that impact the energy burden [74] on low income ratepayers (*e.g.,* disparities in median income across the state, utility prices, EJ concerns, or state median income in comparison with national median income). This can help states select a definition that maximizes inclusion of communities and households in which there are significant energy burdens and barriers to energy efficiency programs.

5. Requirements Addressing Potential Improper Allocation or Issuance of Early Action Allowances or ERCs

The EPA is proposing that state plans implementing the CEIP must include requirements for actions that will be taken if early action allowances or ERCs are improperly allocated or issued by the state.[75] Improper issuance by a state could occur as a result of error or misrepresentation by a CEIP-eligible resource. Because the EPA would also be awarding matching allowances or ERCs on the basis of state-issued early action allowances or ERCs, the EPA is proposing that the improper issuance provisions in a state plan that implements the CEIP must apply to both the state-issued early action allowances or ERCs and the corresponding EPA matching allowances or ERCs that are awarded.

The EPA is proposing that if a state or the EPA finds that any early action state allowances or ERCs have been improperly allocated or issued, then the EPA will bar award of matching allowances or ERCs to those projects that received improperly allocated or issued early action allowances or early action ERCs.[76] As described in section III.B of this preamble, in such an instance the EPA would place a hold on a state's matching allowance or ERC account, preventing the transfer of EPA matching allowances by the state from the EPA account to the account of the eligible CEIP resource at issue.

In the case where matching allowances or ERCs are awarded on the basis of improperly allocated or issued early action allowances or ERCs, the EPA is proposing that the EPA matching allowances or ERCs must be subject to requirements in a state plan that address improper allocation or issuance. The EPA has determined this approach is necessary because the EPA matching allowances or ERCs are compliance instruments that are indistinct from state-issued early action allowances or ERCs, and the award of the EPA matching instruments is predicated on the proper issuance of the state instruments. Both the state-issued compliance instrument and the EPA matching compliance instrument may be used by an affected EGU to comply with either a mass-based emission standard (allowances) or a rate-based emission standard (ERCs).

The EPA is proposing that state plans must include requirements specifying how improper allocation or issuance of early action allowances or ERCs will be addressed. The EPA is proposing that these plan requirements must apply to both state-allocated early action allowances and state-issued early action ERCs, as well as to the matching allowances or ERCs awarded by the EPA.

Where a state plan includes a rate-based emission trading program, the final Clean Power Plan EGs include requirements that a state plan must include provisions that address the improper issuance of ERCs.[77] The proposed rate-based model trading rule includes presumptively approvable provisions related to the improper issuance of ERCs.[78]

We propose that these finalized EGs provisions (which have already been promulgated and are not being reopened) and the corresponding proposed model rule provisions, are equally appropriate and would suffice for purposes of improper state issuance of early action ERCs under the CEIP.

Thus, the EPA is proposing that where a state implements the CEIP, those same provisions addressing state-issued early action ERCs in an approvable plan must also apply to any related EPA-awarded matching ERCs. Where any early action ERCs are found to be improperly issued by a state, the same requirements must apply to the matching EPA ERCs awarded on the basis of the original state-issued ERCs.

Where a state plan includes a mass-based emission budget trading program, the EPA is proposing to amend the final Clean Power Plan EGs to require that a state plan must include provisions like those in a rate-based plan under the EGs to address the improper state allocation of early-action allowances under a state CEIP. While mass-based plans under the EGs are required to include provisions for adjustment in the case of incorrect allocations, *see* 40 CFR 60.5815(d), the rules for improper issuance of ERCs under rate-based plans under the EGs are different. *See* 40 CFR 60.5790(c)(3); *id.* 60.5805(g), (h). Neither of these sets

[74] Energy burden is defined broadly as the burden placed on household incomes by the cost of energy, or more simply, the ratio of energy expenditures to household income. Nationally, the energy burden for households that qualified for federal low-income weatherization programs in 2014 was 16.3%, while the energy burden for non-eligible households was 3.5%. Expenditures on electricity represent a portion of the larger energy burden. *http://weatherization.ornl.gov/pdfs/ORNLTM2014_133.pdf.*

[75] This section uses the term ''state-issued'' to refer to both state allocation of early action allowances and state issuance of early action ERCs.

[76] The EPA award of matching allowances or ERCs is not considered EPA endorsement that such allowances or ERCs were properly allocated or issued in accordance with state plan requirements. Such allowances or ERCs are still subject to a potential subsequent finding that they were improperly allocated or issued, in accordance with the requirements in an approved state plan.

[77] See the EGs at 40 CFR 60.5790(c)(3); *id.* 60.5805(g) and (h). The potential for improper issuance of ERCs by a state is discussed in the preamble to the final EGs rule at section VIII.K.2.d (80 FR 64907, October 23, 2015).

[78] Provisions to address improper issuance of ERCs are discussed in the preamble to the proposed federal plan and model trading rules (80 FR 65000, October 23, 2015). See also, proposed rule text at 40 CFR 62.16450 of the rate-based model trading rule.

of requirements are being reopened. The EPA is proposing, however, that the rate-based approach would apply for purposes of the CEIP in both mass-based and rate-based state plans.

This is due to the availability of the matching allowances under the CEIP. State allocation of early action allowances under the CEIP is the necessary predicate for the award of EPA matching allowances, which would functionally expand the emission budget for affected EGUs under the state plan. These EPA matching allowances that are awarded to the state, if based on improper allocation by the state under its CEIP set aside, could potentially erode the integrity of a mass-based emission trading program under the Clean Power Plan.[79]

Because of the distinctions between the impact of state-allocated early action allowances and the award of EPA matching allowances described previously, the EPA is proposing an approach for mass-based state plans where a state plan must include provisions comparable to the improper issuance provisions for ERCs in a rate-based program that apply to the EPA matching allowances. A state plan could include different requirements that apply for the improperly state-allocated early action allowances under the CEIP. Under this proposed approach, application of the improper allocation provisions in an approved state plan would be triggered based on a finding by the state or the EPA that early action allowances were improperly allocated by the state under the CEIP. The remedies under the improper allocation provisions would address the EPA matching allowances, which resulted in a functional expansion of the state emission budget.

C. Requirements for CEIP-Eligible Projects

In the final EGs, we specified certain criteria for eligible projects, including the date after which eligible RE projects must ''commence construction'' and the date after which eligible EE projects must ''commence operation.'' 40 CFR 60.5737. We requested comment in the proposed model trading rules and federal plan on what, if any, additional criteria should apply to determine eligibility for CEIP projects. 80 FR 65026. Accordingly, we are proposing to clarify the eligibility criteria for CEIP projects, guided by the objectives for the CEIP identified in the final Clean Power Plan, *see* 80 FR at 64829–64832, as well as the importance of ensuring simplicity in plan development and ease in implementation of this time-limited program.

We received significant input from a wide range of stakeholders about requirements for eligible CEIP projects. We considered this feedback carefully in developing this proposal. In this action, we propose to clarify the term ''project'' as used in the Clean Power Plan EGs for purposes of the CEIP. Additionally, in this action we propose to replace the definition of ''commence construction'' as applied to eligible RE projects, as well as to clarify the definition of ''commence operations'' as applied to eligible low-income EE projects. We are also proposing to remove the existing language from Section 60.5815, paragraph (c) of the Clean Power Plan EGs which pertained to EM&V requirements for the CEIP allowance set-aside, as duplicative, and we are clarifying and consolidating the EM&V requirements for eligible CEIP projects in this action.

1. Definition of ''Project'' for Purposes of the CEIP

The Clean Power Plan EGs specify that solar and wind, as well as low-income EE, ''projects,'' are eligible for the award of early action allowances and ERCs under the CEIP.[80] The EPA is proposing to clarify that the current term ''project'' also encompasses programs that result in the deployment of CEIP-eligible solar, wind, geothermal or hydropower generating capacity and the implementation of CEIP-eligible EE or solar programs in low-income communities (*i.e.,* programs that deploy eligible projects). This clarification is simply to better reflect the EPA's intent and to maintain consistency with the approach in the Clean Power Plan EGs for issuance of ERCs, which refers to ''eligible resources,'' a general term which encompasses both projects and programs.[81] The term ''eligible resource'' provides for the eligibility of both individual projects and programs for the issuance of ERCs, provided the project or program involves energy generation or savings from an eligible resource.[82] To clarify the term eligible project, the EPA proposes to add a new defined term, ''eligible CEIP resource,'' to the final Clean Power Plan EGs (at 40 CFR 60.5880) and make related conforming amendments to the CEIP provisions in the EGs (at section 60.5737). In addition, as used throughout this preamble, the term ''project'' as it refers to projects eligible under the CEIP, also refers to programs that implement such projects. Consistent with the final emissions guidelines provisions for ERC issuance, an eligibility application submitted by a project provider under the CEIP may represent either an individual EE/RE project or multiple projects implemented as part of program (*i.e.,* it is not necessary for each project implemented as part of a larger program to submit its own eligibility application).

2. Definition of ''Commence Construction'' and ''Commence Operations'' for Purposes of the CEIP

In this action the EPA is proposing to replace the term ''commence construction'' for CEIP-eligible RE projects with the term ''commence commercial operation,'' as well as to clarify the term ''commence operations'' for CEIP-eligible low-income community projects. The Agency believes that ''commence commercial operation'' is more consistent with the intent of the Clean Power Plan EGs. In addition, the Agency wishes to avoid any confusion with the term ''commence construction'' as used in other contexts under sections 111 and 112 of the CAA.

The Agency heard from several commenters during the CEIP outreach sessions and in comments submitted to the non-regulatory docket that ''commence construction'' could be understood to encompass such activities as entering into contracts for eligible RE projects. If this were the Agency's intent, according to these stakeholders, then the effect would be to render many RE projects ineligible as a result of early project development activities that may have occurred prior to the start date of eligibility. This was not the intent of the Agency, and we believe it is appropriate to correct this terminology to more accurately reflect the Agency's intent; that is, RE projects (including those in low-income communities) should be eligible to participate in the CEIP if they commence commercial operation on or after the eligibility start date. By replacing the term ''commence construction'' with ''commence commercial operation,'' the EPA would be taking an approach to eligibility for RE projects that is consistent with the

[79] In the case of improperly allocated allowances, the allocation by the state would not be appropriately based on actual MWh of generation or savings from eligible resources under the CEIP, and related avoided CO_2 emissions prior to the beginning of the plan performance period. At the same time, the EPA matching allowances would expand the emission budget under the state emission budget trading program.

[80] See 40 CFR 60.5737(a) and (b).

[81] See definition of ''eligible resource'' at 40 CFR 60.5880.

[82] See the preamble to the final Clean Power Plan EGs, at section VIII.K.2.b (80 FR 64906–64907) and section VIII.K.2.f (80 FR 64907), and the EGs at 40 CFR 60.5800(a).

approaches that have been used in prior programs, such as the Acid Rain Program (ARP). In the ARP, the term ''commence commercial operation'' means ''to have begun to generate electricity for sale, including the sale of test generation,'' *see, e.g.,* 40 CFR 72.2.

With respect to the term ''commence operations'' for CEIP-eligible demand-side EE projects implemented in low-income communities, the EPA is proposing to establish a definition that is consistent with the proposed replacement of ''commence construction'' with ''commence commercial operation'' discussed previously. That is, the EPA is proposing that the term ''commence operations'' be defined as the date that a CEIP-eligible low-income community demand-side EE project is delivering quantifiable and verifiable electricity savings.[83] This means the date when the eligible CEIP low-income community demand-side EE project's electricity savings begin and are measureable is the date when the project commenced operation for the purpose of CEIP eligibility. Additionally, the term ''commercial'' is excluded from the ''commence operations'' term used for eligible EE projects implemented in low-income communities, as ''commercial'' is used as a qualifier to describe when electricity is available for sale or to generate electricity that receives financial credit through net metering or equivalent policies (as in the case of power generation), not when it is saved (as in the case of EE projects).

In light of the proposed corrected terminology from ''commenced construction'' to ''commenced commercial operations'', the EPA is proposing to revise the date for eligible CEIP RE projects (including those implemented in low-income communities) to commence commercial operation to January 1, 2020, or commence operations, in the case of low-income demand-side EE projects, to September 6, 2018. First, the proposal to no longer use the date of final state plan submittal as a potential eligibility start-date would remove a source of uncertainty given the Supreme Court's stay of the Clean Power Plan EGs in *West Virginia, et al.* v. *EPA, et al.,* No. 15A773 (February 9, 2016). Because the effectiveness of deadlines for state plan submittals is currently stayed, it may not make sense at this point to continue to tie CEIP project eligibility to plan submissions. However, as discussed previously, while we are retaining the putative timing aspects of the CEIP in general in discussing this proposal, the Agency recognizes that adjustments may be needed upon the resolution of the litigation. *See* discussion in section II.B of this preamble.

Second, in the case of RE projects looking to become eligible CEIP projects, the date of January 1, 2020 for eligibility for projects that have commenced commercial operations reflects the initial intent of the timing finalized in the Clean Power Plan EGs. The previous language that based eligibility timing on when a project ''commenced construction'' considered the build-out time that would be required from the time of a project's initial conception. Since the CEIP is designed primarily to encourage additional renewable deployment, establishing a date of January 1, 2020 supports the overarching goal of the CEIP to encourage such deployment.

For eligible CEIP low-income community demand-side EE projects, some commenters have requested that the EPA should allow an expanded ramp-up period for projects. Commenters stated that while energy efficiency programs can be deployed quickly, adequate ramp-up time must be allowed to thoughtfully design and target programs, and to achieve desired levels of volume. The EPA agrees with this comment, and the additional time needed for adequate design and targeting of eligible CEIP low-income community demand-side EE projects is reflected in the eligibility date of September 6, 2018. Additionally, we agree with commenters' assertions that eligible CEIP low-income community demand-side EE projects need ramp-up time to ensure that they realize the full benefits of the CEIP following project deployment.

Given that the CEIP project eligibility approach included in the final Clean Power Plan EGs was tied to commencement of construction after submission of a state plan, and that there may be additional relevant factors not considered here, EPA seeks comment on whether the proposed approach described above, the approach included in the final Clean Power Plan EGs, or a combination of the two approaches, would best serve the goals of the CEIP.

3. Option to use an Agent for reviewing CEIP project applications, allocating early action allowances, and issuing early action ERCs. As discussed in section III.B of this preamble, a state plan that implements the CEIP must specify a process for application, and allocation/issuance of, early action allowances or ERCs under the CEIP to eligible project providers. The proposed rate- and mass-based model trading rules include related provisions that, when finalized, would constitute a presumptively approvable approach for meeting relevant EGs requirements (80 FR 64966–65116), and the EPA is proposing optional example provisions in this action to cross-reference those provisions under the CEIP.

This process, defined by the state in its plan requirements, may be implemented by the state itself, or alternatively the state may delegate this function to a qualified agent. The ability to rely on agents is discussed further in the final Clean Power Plan EGs at 80 FR 64906.[84] The EPA is not proposing any specific requirements with respect to the use of agents in this action, nor reopening the issue of a state's ability to rely on agents under the EGs. We simply observe here that the use of agents would also be appropriate under the CEIP for similar purposes.

In the event of a federal plan, the EPA anticipates that it would serve the same role as the state, and thus the EPA, or an agent(s) it may designate, would review project applications and reports of quantified and verified MWh in advance of allocating early action and matching allowances, and issuing early action and matching ERCs to eligible project providers.

4. Eligible CEIP RE projects. In 40 CFR 60.5737 of the final EGs, the EPA established that eligible CEIP RE project types are those that ''generate metered MWh from any type of wind or solar resources.'' In order to streamline the requirements for eligible CEIP wind and solar resources, as well as to clarify the requirements for geothermal and

[83] For infrastructure projects such as conservation voltage reduction (CVR) that deliver end-use energy efficiency in residences and buildings, it is common practice to test circuit performance by switching voltage optimization controls ''on'' and ''off'' for a continuous period of time (typically a year) to collect baseline data for quantification of savings during the performance period. Similar to the Agency's intent that wind and solar projects not be penalized for project development activities that occur prior to commencing commercial operations, voltage management of a circuit solely for the purpose of testing prior to ''commencing operations'' does not render a circuit ineligible for participation in the CEIP. Similarly, a limited duration or one-time control of voltage during a peak demand incident does not render a circuit ineligible for participation in the CEIP.

[84] As described in the Clean Power Plan EGs, an agent is a party acting on behalf of the state, based on authority vested in it by the state, pursuant to the legal authority of the state. A state could designate an agent to provide certain limited administrative services, or could choose to vest an agent with greater authority. Where an agent issues an ERC on behalf of the state, such issuance would have the same legal effect as issuance of an ERC by the state. In the context of the CEIP, such an agent may also be vested with the authority to issue allowances. Where an agent issues an allowance on behalf of the state, such issuance would have the same legal effect as issuance of an allowance by the state.

hydropower resources we are proposing to add to the list of CEIP-eligible resources, the EPA is proposing in this rule to change the project eligibility requirements so that eligible CEIP RE projects must generate wind, solar, geothermal or hydropower renewable electricity measured in MWh consistent with the requirements of 60.5830(c)(1) of the final CPP EGs: The generation data must be physically measured on a continuous basis. These RE resources may include utility-scale or distributed projects, and must be grid-connected. In the case of solar power generation, solar resources could be solar photovoltaic or concentrating solar power technologies.

The limitation of eligible CEIP RE technologies to wind and solar in the Clean Power Plan EGs was based partially on the concern from commenters on the Clean Power Plan proposal that there could be an unintended shift in investment away from RE to natural gas, and partially on the fact that these technologies—in addition to being essential for longer-term climate strategies—generally can be deployed with shorter lead times than other technologies (*See* 80 FR 64831). Therefore, wind and solar would be readily available for participation during the two-year CEIP period. However, the extension of the PTC and ITC tax credits following the promulgation of the Clean Power Plan EGs has led some stakeholders to suggest that wind and solar projects that receive PTC or ITC benefits should be excluded from CEIP eligibility. This is because one of the objectives of the CEIP is to incentivize reductions in emissions that might not otherwise have occurred, and projects receiving tax credits may already be induced by those incentives rather than the CEIP. These tax credits are discussed more fully in section III.A of this preamble, where we also request comment on whether and how to implement limitations on CEIP participation for wind and solar resources that receive ITC or PTC benefits.

In addition, stakeholders have noted that other types of clean generating technologies, in addition to wind and solar, could be deployed during the CEIP timeframe,[85] and therefore, should also be included as eligible for the CEIP. Specifically, some commenters requested that the EPA consider other renewables such as geothermal and hydropower. Other stakeholders have called for all of the technologies the EPA recognized as potentially creditable in state plans under the final EGs, including qualified biomass, CHP, WHP, and nuclear projects, to be CEIP creditable. The Agency also received several petitions for reconsideration on the final Clean Power Plan requesting that the scope of CEIP technology eligibility be expanded.[86]

The EPA believes that our initial determination of criteria for eligible technologies remains appropriate, and, therefore, are retaining those criteria. The criteria we identified in the final Clean Power Plan that drove our determination of eligible technology types for the CEIP were that they are zero-emitting and essential to longer term climate strategies, and require lead times of relatively shorter duration given the time-limited nature of the CEIP and to counteract the potential shift in investment from RE to natural gas in the lead up to the start of the interim performance period. See 80 FR 64831.

As noted in section II.D. of this preamble, some commenters requested that other RE technologies, including geothermal, biomass, hydropower, as well as other generating technologies such as combined heat and power (CHP) and waste heat to power (WHP) be considered as eligible technologies for the CEIP. While we do not believe that it is appropriate to expand the list of eligible CEIP technologies to include all those suggested by commenters, we believe that two other RE technologies, specifically geothermal and hydropower, meet the criteria for CEIP eligibility that were identified in the final CPP. Thus, in this action we are proposing to expand the list of CEIP-eligible RE technologies beyond wind and solar resources alone only to two other zero-emitting technologies: Geothermal and hydropower.[87] The EPA believes stakeholders are correct that these two technologies, like wind and solar, are capable of contributing to long-term climate change strategies, and can be implemented on the time-scales relevant to the CEIP. *See* 80 FR 64831. Expected growth in these technologies may be lower than wind and solar, 80 FR at 64808, but this would not be a reason for excluding them. Any scale or type of wind and solar project, as finalized in the EGs, would remain eligible for the CEIP, assuming other eligibility requirements are met.[88] The EPA is only proposing the expansion of eligible CEIP RE projects to include geothermal and hydropower. We solicit comment on whether any additional technologies meet the criteria identified for eligible RE technologies: Specifically, whether there are additional renewable technologies that are zero-emitting and essential to longer term climate strategies, require investment and deployment lead times of relatively shorter duration given the time-limited nature of the CEIP, and counteract the potential shift in investment from RE to natural gas in the lead up to the start of the interim performance period.

5. Eligible CEIP low-income community projects. The Clean Power Plan EGs established that demand-side energy efficiency projects implemented in low-income communities would be eligible for the two-to-one CEIP incentive. This section discusses eligible low-income EE projects, and also presents a proposal that solar projects implemented to serve low-income communities that provide direct electricity bill benefits to low-income ratepayers also be eligible for the two-to-one incentive.

Demand-side energy efficiency refers to an extensive array of technologies, practices and measures that are applied throughout all sectors of the economy to reduce electricity demand while providing the same, and sometimes better, level and quality of service.[89] The EPA is proposing that states have flexibility to determine the types of demand-side EE projects they may deem eligible for CEIP awards, so long as they are implemented in communities that meet the state's approved definition(s) for ''low-income community.'' Such projects may be implemented as part of an EE program (*i.e.,* implemented by regulated electric distribution utilities or other private providers), which could play a key role in generating early action ERCs or allowances. Specifically, states

[85] See document titled ''Summary of feedback received during the CEIP listening sessions, Fall 2015'' in the docket associated with this action, as well as the CEIP non-regulatory docket at EPA–HQ–OAR–2015–0734.

[86] While there is some overlap in this action on this and several other issues relating to the CEIP raised by the petitions for reconsideration, the Agency continues to review, and is not acting on, these or any other aspects of the petitions for reconsideration of the Clean Power Plan at this time.

[87] *See* 80 FR 64807 and also the TSD to the final Clean Power Plan titled ''GHG Mitigation Measures.''

[88] ''Any type'' of wind or solar resource is already eligible under the CEIP as finalized in the EGs, 80 FR at 64943, and the EPA is not reopening this determination.

[89] A number of demand-side EE measures are discussed in the TSD to the Clean Power Plan Final Rule titled ''Demand-Side Energy Efficiency,'' August 2015, available at *https://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-technical-documents.* Typical examples of energy efficiency measures in homes include: Air and duct sealing, increased insulation in walls and attics, highly efficient equipment for heating and air conditioning (*e.g.,* air- and ground-source heat pumps, high efficiency furnaces, etc.), and highly efficient appliances (*e.g.,* refrigerators, television sets, etc.).

may deem residential and commercial projects to be eligible for CEIP awards, as well as transmission and distribution improvements that reduce electricity consumption on the customer side of the meter (such as conservation voltage reduction). The EPA notes that in some instances multi-family housing, group homes, shelters or other temporary housing may be considered commercial entities for utility billing purposes. Excluding these commercial entities from CEIP could keep these residential ratepayers from being eligible under CEIP. Additionally, our experience has been that small businesses, organizations and institutions that work with low-income residents often face similar energy risks (*e.g.,* large bills, disproportionate energy spending, shutoff threats) and experience the same barriers (*e.g.,* lack of capital, lack of expertise, split incentives for renters) as the residential sector. High energy expenses hamper their ability to provide clients with energy, health, educational, housing, legal and other services. Thus, the EPA believes all of these types of EE projects can be designed to benefit low-income communities and ratepayers, and all have the potential to encourage investment in demand-side energy efficiency projects (in part by offsetting the higher barriers to deployment for such projects in those communities), for the purpose of achieving emissions reductions at affected EGUs, in accordance with the purposes of the CEIP, 80 FR 64832. For residential projects, the EPA recommends that the state consider projects that adhere to the health and safety standards established by the Department of Energy's Weatherization Assistance Program or comparable standards. For commercial EE projects, the EPA recommends that a state consider projects that reduce electricity demand in buildings and institutions that provide critical services (*e.g.,* community centers, street lighting, health clinics, etc.) within or to low-income communities and/or households. For transmission and distribution improvement projects that reduce energy consumption on the customer side of the meter, the EPA recommends that a state consider improvements that significantly reduce consumer electricity demand within the boundaries of a low-income community or within low-income households. EPA requests comment on the inclusion of commercial and transmission and distribution projects, and on whether there should be any restrictions on the types of commercial and/or transmission and distribution projects that may qualify.

The Department of Energy, in cooperation with industry, has developed a suite of quality assurance resources that address work quality, training and workforce certification. The EPA has also developed resources to assist program managers with implementing residential and commercial energy efficiency programs under the auspices of the ENERGY STAR program as well as resources that address indoor air quality and energy efficiency. These resources are applicable to all energy efficiency retrofit programs, including low-income, regardless of design, administration or scope. States are encouraged to consider use of DOE's *Guidelines for Home Energy Professionals* [90] and DOE's *Better Buildings Workforce Guidelines* [91] as well as EPA's *Guidance and Tools for Protecting IAQ During Building Upgrades,*[92] and ENERGY STAR's resources for residential and commercial energy efficiency.[93]

A number of states have already implemented successful low-income EE projects and programs that can serve as examples to other states as they consider the project types that may be possible through the CEIP. We present examples of two of these projects in section III.C of this preamble.

The EPA is proposing to include solar projects implemented to serve low-income communities that provide direct electricity bill benefits to low-income community ratepayers as eligible for the two-to-one matching award from the reserve established for low-income EE projects. This would be a change from the CEIP provisions included in the Clean Power Plan EGs, which limited projects eligible for the two-to-one match to low-income EE projects alone. However, during the outreach sessions in the fall of 2015, stakeholders suggested solar projects in low-income communities face many of the same barriers to deployment as do EE projects, and provide the same environmental benefit in terms of displacing carbon-emitting generation. Based on such input from stakeholders and other information, the EPA believes that solar technology—particularly distributed, rooftop, or community solar—is particularly well suited among zero-emitting RE resources to implementation in low-income communities, as it is relatively affordable compared to other distributed RE technologies, it is already widely available for installation, and the primary barriers to deployment are economic rather than technical. Enabling such projects to receive the two-to-one match would serve the same basic purpose of improving cost impacts and expanding compliance opportunities for affected EGUs under the Clean Power Plan. In addition, as discussed in section III.A of this preamble, the EPA's preliminary analysis shows that the MWh savings potential for eligible low-income EE projects is relatively low even with the CEIP as a driver, and as a result it may be appropriate to enable equally beneficial solar projects implemented in low-income communities to be eligible for awards from the matching allowance/ERC reserve for low-income community projects.

By including such provisions in the CEIP, any type of solar project implemented to serve a low-income community that provides direct electricity bill benefits to low-income community ratepayers would be eligible for a two-to-one award from the low-income community reserve of the matching pool.

Some of the types of solar projects that the EPA envisions could qualify for awards from the low-income community reserve include roof-top solar and community-owned solar projects.[94] A number of states have already implemented successful solar projects that can serve as examples to other states as they consider the project types that may be possible through the CEIP. We present an example of one of these projects in section III.C of this preamble.

The EPA solicits comment on the types of solar technologies and programs that could be eligible for the low-income community reserve of the matching pool, and how states may be able to determine benefits delivered to low-income community ratepayers. We also solicit comment on whether wind generation, geothermal, or hydropower may provide similar ratepayer benefits to low-income communities. The intent of the low-income community reserve in the matching pool is to make awards available to projects that provide direct electricity bill benefits to low-income ratepayers, and the EPA's objective is to

[90] *http://energy.gov/eere/wipo/guidelines-home-energy-professionals.*

[91] *https://www4.eere.energy.gov/workforce/projects/workforceguidelines.*

[92] *https://www.epa.gov/indoor-air-quality-iaq/health-energy-efficiency-and-climate-change.*

[93] *https://www.energystar.gov/.*

[94] The following links provide examples of several existing programs: *http://solar.gwu.edu/research/bridging-solar-income-gap; http://www.cesa.org/assets/2014-Files/Clean-Energy-for-Resilient-Communities-Report-Feb2014.pdf. https://www.solarelectricpower.org/media/422095/community-solar-design-plan_web.pdf.*

ensure that any program that has access to this pool fulfills this criterion.

a. Examples of EE and RE projects implemented in low-income communities. This section presents three examples of low-income EE and RE programs currently underway in states around the country: Energy Outreach Colorado (EOC), the PECO Conservation Voltage Reduction Program, and the Multifamily Affordable Solar Housing (MASH) Program in California. These examples may be of assistance to states exploring the development of EE and RE programs in low-income communities.[95]

The first example is EOC, an independent non-profit organization that works to ensure all Coloradans can meet their home energy needs through emergency bill payment and furnace repair assistance, energy efficiency improvements, consumer behavior change and advocacy for the energy needs of low-income households.[96] EOC's Affordable Housing Weatherization Program serves affordable multi-family housing properties across the state that have five or more units, are centrally heated, and where 67 percent of the residents are at or below 200 percent of the federal poverty level. EOC also developed the Nonprofit Energy Efficiency Program, which offers facility energy efficiency grants to non-profit organizations serving low-income individuals and families. The program helps nonprofit organizations reduce energy expenses in their own commercial buildings so that they can allocate more of their operating budgets to community services. Since its creation in 1989, EOC has saved low-income utility customers 19,200 MWh of electricity, thereby reducing or avoiding almost 16,000 metric tons of CO_2 emissions.[97]

The second example is the PECO Conservation Voltage Reduction (CVR) program, a program implemented in the state of Pennsylvania to achieve load reductions through changes in voltage regulation parameters at the substation/transformer level.[98] National standards for voltage generally require electricity to be delivered to consumers between 114 and 126 Volts. Due to transmission line losses, power is transmitted at the higher end of that range to ensure all customers receive the minimum voltage. However, many homes receive more voltage than they need, resulting in higher energy use and higher bills. By adjusting voltage to the lower end of its acceptable range, customers save energy because some equipment operates more efficiently at lower voltage. Since the efficiency opportunity is implemented by the utility, all customers on the affected feeders benefit with no need for household level action. During a 4-month period from February through May 2010, PECO manually lowered voltage by one percent across its system (involving approximately 84 substations, 220 distribution transformers, and 6400 circuits). Reported gross energy savings were 25,630 MWh/yr for low-income customers and 38,445 MWh/year for government and non-profit customers, resulting in reductions of approximately 45,000 metric tons of CO_2.[99]

The last example is the Multifamily Affordable Solar Housing (MASH) Program, overseen by the California Public Utilities Commission. This program has brought solar energy to thousands of multifamily building owners and tenants across the state. MASH offers an up-front rebate to offset the costs of new solar energy systems for qualified, existing multifamily low-income housing. The program uses ''virtual net metering'' to allow the tenants to benefit from lower electricity bills due to the energy generated by the solar energy system. From 2008 to 2015, MASH has led to the installation of more than 23 MW of solar capacity across nearly 360 projects[100] serving more than 6,500 low-income households.[101] In buildings that have implemented virtual net metering, tenants' electricity bills have fallen by an average of about $480 over the first year. According to a third-party evaluation of the program, the MASH solar energy systems avoided more than 27,450 tons of CO_2 emissions from 2011 to 2013.[102]

D. CEIP Participation for States, Tribes, and Territories for Which the EPA Has Not Established Goals

1. Participation for Tribes Without Affected EGUs

Many tribes have expressed interest in participating in the CEIP even though they do not have EGUs subject to the Clean Power Plan EGs. These tribes have the potential to develop RE and low-income community projects that could qualify as eligible CEIP projects. As finalized in the EGs, such projects would in general be able to apply and receive early action allowances or early action ERCs through state plans that include the CEIP. However, several tribes have expressed concern that requiring tribes to participate in the CEIP by applying for early action ERCs or allowances from CEIP-participating states would infringe upon their sovereign rights. In addition, some stakeholders have expressed concern that without explicit direction to deploy projects on tribal lands, project providers will opt to invest in CEIP-eligible projects only on the lands of CEIP-participating states, and not on tribal lands. Lastly, tribes have also expressed concern that in order to remain competitive in wind and solar deployment, they must consider CEIP participation as part of their strategy.

The EPA does not agree that the CEIP would result in an infringement on tribal sovereignty, because neither the Clean Power Plan nor the CEIP impose legal obligations on tribes without affected EGUs or authorize states to impose such obligations. Rather, the Clean Power Plan and the CEIP provide

[95] These examples are illustrative only. More information on these examples is available on the EPA Web page titled ''Climate and Energy Resources for State, Local and Tribal Governments'' at *https://www.epa.gov/statelocalclimate/bringing-benefits-energy-efficiency-and-renewable-energy-low-income-communities.* Although we believe these programs are successful and worthy of replication, the EPA has not determined if they would qualify for awards under the CEIP.

[96] See *http://www.energyoutreach.org/.*

[97] MWh savings data are from personal communications with Jennifer Gremmert, Energy Outreach Colorado, January 2016. CO_2 savings were calculated using the 2012 eGRID non-baseload CO_2 emissions rate for the WECC Rockies subregion (1822.65 lbs CO_2/MWh). See EPA's Emissions & Generation Resource Integrated Database (eGRID) at *https://www.epa.gov/sites/production/files/2015–10/documents/egrid2012_summarytables_0.pdf,* Table 3.

[98] Source: Final Annual Report to the Pennsylvania Public Utility Commission for the Period June 2011 through May 2012, Program Year 3, For Pennsylvania Act 129 of 2008 Energy Efficiency and Conservation Plan, Prepared by Navigant Consulting, Inc. for PECO, November 15, 2012.

[99] MWh savings data are from the Final Annual Report to the Pennsylvania Public Utility Commission for the Period June 2011 through May 2012, Program Year 3, For Pennsylvania Act 129 of 2008 Energy Efficiency and Conservation Plan, Prepared by Navigant Consulting, Inc. for PECO, November 15, 2012. *https://www.peco.com/CustomerService/RatesandPricing/RateInformation/Documents/PDF/New%20Filings/ACT%20129%20EECP.pdf.* CO_2 savings were calculated using the 2010 eGRID non-baseload CO_2 emissions rate for the RFC East subregion (1562.72 lbs CO/MWh). See EPA's Emissions & Generation Resource Integrated Database (eGRID) at *https://www.epa.gov/sites/production/files/2015-01/documents/egrid_9th_edition_v1-0_year_2010_summary_tables.pdf,* Table 3.

[100] California Solar Statistics. Application status page, MASH program. *https://www.californiasolarstatistics.ca.gov/reports/application_status/?source=mash.*

[101] California Public Utilities Commission, 2015. Multifamily Affordable Solar Housing Semiannual Progress Report, July 31, 2015. *http://www.cpuc.ca.gov/General.aspx?id=3752.*

[102] Navigant, 2015. California Solar Initiative—Biennial Evaluation Studies for the Single-Family Affordable Solar Homes (SASH) and Multifamily Affordable Solar Housing (MASH) Low-Income Programs Impact and Cost-Benefit Analysis Program Years 2011–2013. Prepared for California Public Utilities Commission.

opportunities for projects located on tribal lands to voluntarily seek credit through a state plan that regulates affected EGUs. Further, the EPA wishes to clarify that an eligible project that is located in Indian country within the borders of a state, solely for the purposes of the CEIP, is considered to be ''located'' in the state, in order to facilitate such projects' eligibility to voluntarily seek early action allowances or early action ERCs under the CEIP. In other words, the EPA does not require that a project fulfill a ''benefit'' demonstration in addition to meeting the grid-connection requirement, solely because it is located in Indian country.[103] The fact that projects located in Indian country may voluntarily seek crediting under a state plan does not constitute an approval of a state plan as applied in Indian country. The plan of a surrounding state merely provides an opportunity for projects located in Indian country to voluntarily participate in the CEIP by applying to such state for credits. This clarification may address some concerns about the ability of projects located in Indian country to be eligible for the CEIP.

Nonetheless, the EPA invites comment on an approach that may further enhance the ability of project providers located in Indian country without affected EGUs to participate in the CEIP. The approach for which we seek comment would be to include as a condition of participation in the CEIP a requirement that state plans may not disqualify an otherwise eligible CEIP project on the basis that it is located in Indian country or in any way apply different requirements to applications for CEIP projects located in Indian country. This approach would provide tribes and project developers in Indian country with assurance that their projects will be given the same consideration as all other projects that are located in or benefit a CEIP-participating state. In such a scenario, a project in Indian country would be eligible for an early action award from the state, and the complementary matching award from the EPA.

The EPA also invites comment on other possible approaches that may enable CEIP-eligible projects located in Indian country to participate in the CEIP.

[103] Where a project provider in Indian country seeks to apply for early action allowances or early action ERCs under the CEIP in a state other than the one in which that Indian country is located, then that project would need to meet the ''benefit'' test, in the same way that a project located in a different state from the one it is applying to would need to meet that test.

2. Participation for Non-Contiguous States and Territories

As stated in the final Clean Power Plan, the EPA did not finalize emission guidelines for the fossil-fuel fired EGUs in Alaska, Hawaii, Guam or Puerto Rico because of the lack of suitable data and analytic tools needed to develop area-appropriate building block targets (*See* 80 FR 64825; October 23, 2015). The EPA is still in the process of assessing the achievability of emissions reductions for the affected EGUs in these remaining jurisdictions and thus has not taken further action to finalize emission guidelines for them.

The EPA acknowledges that project providers that may be located in non-contiguous states and territories are interested in the opportunity to participate in the CEIP. The Agency recognizes that these projects should have opportunities and access to the same early action incentives as the contiguous states. However, the Agency believes such opportunities can only be available at the point that emissions guidelines are put in place for these jurisdictions. Projects in these non-contiguous jurisdictions are not connected to the contiguous U.S. electrical grid and cannot be said to be located in or benefit a CEIP state, and are thus ineligible to generate either ERCs or early action ERCs or early action allowances under the final Rule and this proposal. 40 CFR 60.5800(a)(2). *See also id.* 60.5737 (both as finalized and as proposed to be amended by this action, requiring CEIP projects to be located in or benefit the state operating the CEIP program).

Nonetheless, the EPA anticipates making available CEIP participation for these remaining states and territories when the Agency finalizes emission guidelines for fossil-fuel fired EGUs in these states and territories. The EPA anticipates that matching allowances or ERCs for noncontiguous states and territories would be apportioned from the existing matching pool of 300 million short tons of CO_2 emissions. Therefore, as noted in section III.A of this preamble, the total amount of CEIP matching allowances or ERCs apportioned among the rest of the states would be reduced accordingly, albeit only by a small percentage, likely no more than 5 percent.

The EPA is taking comment on how to determine the appropriate portion of the matching pool that should be apportioned to the non-contiguous states and territories, if they choose to participate in the CEIP. The EPA could attempt to estimate the pro rata share of the matching pool for each of the non-contiguous states and territories with affected EGUs before the emission performance goals have been finalized for these jurisdictions. The Agency requests comment on approaches that could be used to estimate the appropriate share for these locations while their goals are still undetermined. Alternatively, the EPA could defer apportioning the matching allowances or ERCs to these states and territories until such time when their emission performance goals are established. At that future time, the matching shares would be calculated by applying the methodology described in this action and the matching shares apportioned to the contiguous states would be adjusted. The EPA is soliciting comments on both of these approaches.

3. Participation for States Without Affected EGUs

For the contiguous U.S. states, the EPA is providing the opportunity for participation in the CEIP only for those states with approved state plans and those states that may become subject to a federal plan. Since states without affected EGUs do not have an obligation to submit a state plan for EPA approval under CAA section 111(d), there is no clear path for inclusion of these states in the CEIP.

However, eligible projects developed in those states without affected EGUs may apply for and receive early action allowances or ERCs from another state that has chosen to participate in the CEIP. The developers of such eligible RE and low-income community projects may receive early action allowances or ERCs from another state, so long as the project benefits the state providing the award and that state has an approved final plan establishing its participation in the CEIP. The final EGs recognized the potential CEIP eligibility of projects that ''benefit'' a state even if they are not located in that state. 80 FR 64830. In the Clean Power Plan, however, we did not explain what ''benefit'' means in the context of the CEIP. For purposes of the CEIP, we propose that ''benefit'' a state means that the electricity is generated or saved with the intention to meet or reduce electricity demand in the CEIP participating State.

This approach is intended to parallel the approach to providing ERCs to RE projects that are located in a mass-based plan state for use in compliance under a rate-based plan. 40 CFR 60.5800(a)(3)(ii). A project could meet this test by submitting documentation such as a power purchase agreement, see 80 FR 64913.

IV. Community and Environmental Justice Considerations

As discussed in the Clean Power Plan EGs, the additional incentive offered for low-income community projects by the CEIP, in addition to supporting affected EGU compliance and reducing costs by rewarding emission reduction measures that occur earlier than the performance period under the EGs, will help overcome historic barriers to the deployment of energy efficiency and solar projects in low-income communities. Bringing these energy efficiency and solar projects to low-income communities can also provide low-income ratepayer benefits (80 FR 64831).

In response to stakeholder concerns during the outreach session that the program does not explicitly direct its benefits towards EJ communities, the EPA examined the characteristics of different communities that may benefit from the CEIP, and our analysis demonstrates that by making EE projects in low-income communities eligible for the CEIP, the projects can also provide benefits to other underserved populations, including minority communities. A complete discussion of the methodology and results reported in this section is available in the TSD to this action titled ''Community and Environmental Justice Considerations''.

We performed two analyses to look at how minority populations could be assisted by energy efficiency projects or programs that may be located in low-income populations.[104] Both analyses use data collected by the U.S. Census Bureau.

For the first analysis we examined, on a national level, the relationship between low-income and minority populations. Income and race data are drawn from the U.S. Census Bureau's Report, Income and Poverty in the United States: 2014.[105] For the purpose of this analysis, we define low-income individuals as having family income less than twice the federal poverty level, and we define minority as all racial categories identified in the report except ''White, not Hispanic.'' Using these definitions, in 2014, 33 percent of the U.S. population was low-income while 38 percent was minority. However, in the U.S., approximately half (47 percent), of those individuals who identify as minority are also low-income.

While the first analysis focused on the overlap between income and race at the national-level, we also investigated the geographic overlap between low-income and minority populations, because, as noted in section III.B of this preamble, the EPA expects that both household-based definitions and geographically-based definitions may be used to identify eligible projects in ''low-income communities''. The second analysis compares demographic data by Census block group using the 2008–2012 American Community Survey (ACS) five-year summary file, available through EPA's EJSCREEN tool.[106] The block group is a geographic unit used by the U.S. Census Bureau and is generally defined to contain between 600 and 3,000 people. For this analysis, a low-income household is one with an income less than two times the federal poverty level, while the term ''minority'' includes individuals who identify themselves as one of any racial categories except ''White, not Hispanic.'' For this second analysis, we used two approaches for defining a low-income and minority block group. The first approach defines low-income and minority block groups based on how they compare to national shares of the population in these categories, while the second approach defines these relative to state shares of the population in these categories. Nationally, in 2014, 33 percent of the population are low-income while 38 percent are minority; if the percentage of the population in a block group exceeded the national percentage of the population that is low-income or minority, it was considered low-income or minority respectively. If a block group exceeded both these percentages, then we classified that block group as both low-income and minority. We found that, using these national percentages, 70 percent of minority block groups are also low-income.

In the second approach, for each state, we used the pre-calculated means for low-income and minority populations in that state, available in the EJSCREEN data files. We compared the share of the population that is low-income or minority in each block group to that state's mean. If a block group exceeded the state mean for low-income or minority, then it was considered low-income or minority, respectively. We found that 70 percent of minority block groups are also low-income, which is the same as was found using the national percentages.

These analyses support a conclusion that providing fully one half of the CEIP incentives to the low-income community reserve will provide additional benefits to EJ communities, and will be an important tool to bring the public health and economic advantages of clean energy to traditionally overburdened communities. We welcome comments on this analysis and the elements of the CEIP from this perspective.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action raises novel legal or policy issues. As noted earlier, the EPA took final action in the Clean Power Plan to establish the framework for the CEIP, while identifying other design details that it would address in a future action. For example, in the final Clean Power Plan, the Agency established the CEIP framework, including the overall size of the matching pool available to CEIP-participating states and the matching award the EPA will make to qualifying RE and low-income community projects per MWh of electricity generation or savings.

This action proposes design details of the CEIP that are consistent with the framework established in the final Clean Power Plan. Given that the framework of the CEIP has already been established in the Clean Power Plan EGs, the design details proposed in this action are not expected to result in significant costs, benefits, or economic impacts, beyond those associated with the Clean Power Plan EGs.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities

[104] As discussed in section III.B of this preamble, a state that chooses to participate in the CEIP must include in its state plan one or more definitions of low-income community. In the analysis described in this section, the income level that defines a low-income household or community is illustrative, in order to demonstrate the correlation between low-income households and EJ communities. The use of this income level for this analysis is not intended to limit a state's definition of a low-income household or community for the purposes of implementing the CEIP. In addition to being the income level used in EJSCREEN to identify a low-income household, it is also the definition of poverty used in the U.S. Census Bureau's *Income and Poverty in the United States* report that includes the largest share of the U.S. population.

[105] DeNavas-Walt, Carmen and Bernadette D. Proctor, U.S. Census Bureau, Current Population Reports, P60–252, Income and Poverty in the United States: 2014, U.S. Government Printing Office, Washington, DC, 2015.

[106] EJSCREEN, *http://www.epa.gov/ejscreen*.

contained in the existing part 75 and 98 regulations (40 CFR part 75 and 40 CFR part 98) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0626 and 2060–0629, respectively. There are no additional recordkeeping and reporting activities for this action that occur during the current reporting period covered by the existing ICR.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. As previously discussed, the CEIP is an optional program that offers incentives for voluntary early actions involving RE and low-income energy efficiency. This action will not impose any requirements on small entities. Instead, this action proposes requirements that would need to be met by states in the event that states voluntarily opt into the CEIP under the Clean Power Plan. In the event of a federal plan, EPA continues to intend that it would implement the CEIP directly. Even where a state chooses to participate in the CEIP, small entities would not be subject to requirements except to the extent that they wish to voluntarily apply to receive early action ERCs or allowances, in which case certain conditions would apply.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The costs involved in this action are imposed only by voluntary participation in an optional program. UMRA generally excludes from the definition of ''federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. The EPA believes, however, that this proposed rule may be of significant interest to state and local governments. Consistent with the EPA's policy to promote communications between the EPA and state and local governments, the EPA consulted with state and local officials early in the process of developing the Clean Power Plan EGs to permit them to have meaningful and timely input into its development.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. There are no substantial costs imposed on tribes, and no actions taken that preempt tribal law. Thus, consultation under Executive Order 13175 is not required for this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials during the development of this action. The EPA invited all tribes to government-to-government consultations and held consultations with the Forest County Potawatomi Indian Community, Navajo Nation, Ute Tribe of Uintah and Ouray Reservation, Blue Lake Rancheria and Gila River Indian Community. We also held technical and informational meetings with the Navajo Nation and the Ute Tribe of Uintah and Ouray Reservation. Additionally, the EPA held outreach and information workshops geared towards tribal audiences in Las Vegas, NV, Farmington, NM, and Tuba City, AZ.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not meet the definition in section 2–202.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The CEIP was finalized in the final Clean Power Plan, and this action provides design details for the program. The design details do not incorporate any provisions that are expected to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action will not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples as specified in Executive Order 12898 (59 FR 7629; February 16, 1994) establishes federal executive policy on EJ. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA defines EJ as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

The EPA has conducted extensive outreach and engagement with EJ and tribal communities as we have developed this proposed rule. Section V of this preamble, titled Community and Environmental Justice Considerations, provides details on the outreach and engagement efforts conducted. The goal of these efforts was two-fold: First, the Agency sought to provide EJ and tribal communities with background information on the CEIP; and second, the Agency sought input from both groups on key provisions of the program.

Whereas one priority of the CEIP is to overcome barriers to deployment of energy efficiency projects in low-income communities, thus, achieving emission reductions and providing compliance benefits to affected EGUs by providing these incentives in low-income communities, we believe that there will be considerable benefits provided to EJ and tribal communities. Our analysis indicates that by making the CEIP available to low-income populations, there is a significant segment of the population identified as minority, linguistically isolated, less than high school diploma, or under age 5 or over age 64 (factors typically considered when assessing EJ concerns), that are also potentially eligible to benefit from the CEIP. The full EJ analysis conducted for this proposal is summarized in section V of this preamble and details can be found in the document,

Environmental Justice Consideration for the Clean Energy Incentive Program (CEIP) Design Details, located in the docket for this proposed rulemaking.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practices and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 62

Environmental protection, Administrative practices and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 16, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is proposed to be amended and title 40, chapter I, part 62 of the Code of the Federal Regulations, as proposed to be amended at 80 FR 64966, October 23, 2015, is proposed to be further amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

■ 2. Section 60.5737 is revised to read as follows:

§ 60.5373 What is the Clean Energy Incentive Program and how do I participate?

(a) This section establishes the Clean Energy Incentive Program (CEIP). Participation in this program is optional. Under the CEIP, States may allocate early action allowances or issue early action emission rate credits (ERCs) to projects in paragraphs (a)(1) and (2) of this section.

(1) Early action allowances or ERCs may be issued to Eligible CEIP renewable energy (RE) projects that generate electricity during calendar years 2020 or 2021.

(2) Early action allowances or ERCs may be issued to eligible CEIP low-income community projects that reduce electricity end-use or generate electricity and serve a low-income community during calendar years 2020 or 2021.

(b) For the CEIP the matching pool of allowances and ERCs for each State is specified in Tables 5 and 6 of this subpart.

(1) A State that participates in the CEIP, in accordance with the requirements of this section, will award on behalf of the EPA, matching allowances or ERCs, as applicable under its plan, from the State's apportioned matching allowances or ERCs specified in Tables 5 or 6 of subpart UUUU, as applicable.

(2) Each State's apportionment in tables 5 and 6 of this subpart is divided into a reserve of matching allowances or ERCs that may be awarded to eligible CEIP RE projects, and a reserve that may be awarded to eligible CEIP low-income community projects. Matching allowances or ERCs in each reserve may be awarded by a State on behalf of the EPA only for the eligible CEIP project type specified for the reserve.

(3) Any matching allowances or ERCs that are not awarded by January 1, 2023 will be retired by the EPA.

(c) If you participate in the CEIP, your plan must include the requirements in paragraphs (c)(1) through (10) of this section.

(1) Requirements that define the CEIP projects that will be eligible under your State's CEIP and that meet the requirements included in paragraphs (d) and (e) of this section.

(2) Requirements that restrict early action allowances to be allocated, or early action ERCs to be issued, only for electricity generation or savings achieved by eligible CEIP projects on or after January 1, 2020, and no later than December 31, 2021.

(3) Requirements for the process for the allocation of early action allowances, or the issuance of early action ERCs, to eligible CEIP projects that meet the requirements of § 60.5805 for ERC eligible resources.

(4) Requirements for a tracking system that meets the requirements of § 60.5810 in the case of a rate-based plan or § 60.5820 in the case of a mass-based plan.

(5) Requirements for EM&V plans that meet the requirements of § 60.5830.

(6) Requirements for monitoring and verification (M&V) reports that meet the requirements of § 60.5835.

(7) A mechanism that ensures that the issuance of early action allowances or ERCs would have no impact on the emission performance by affected EGUs required to meet rate-based or mass-based emission standards during the interim and final performance periods. Where a state issues early action ERCs, the mechanism must account for the issued early action ERCs on a one-for-one basis during the first step of the interim period.

(8) The definition(s) of ''low-income community'' you will apply to determine eligibility of CEIP low-income community projects. You must select a definition(s) that exists under a federal law, or under a state or local law in your state, or under a utility-administered program in your state, as of October 23, 2015. Routine updates of underlying federal, state or local data do not constitute a new definition for the purposes of this section.

(i) You may select different definitions for low-income community eligibility that consider geographic scale and/or different types of projects, but you must apply the selected definitions consistently across the State.

(ii) [Reserved]

(9) Requirements for recordkeeping and reporting that are consistent with the applicable requirements in § 60.5860(c) and (d). Where requirements at § 60.5860(c) refer to ERCs, such requirements must also apply, as applicable under your plan, to early action ERCs, matching ERCs, early action allowances, and matching allowances under the CEIP. Where requirements in § 60.5860(d) refer to ERCs or allowances, such requirements must also apply, as applicable under your plan, to early action ERCs, matching ERCs, early action allowances, and matching allowances under the CEIP.

(10) Your plan must not prohibit an eligible CEIP project from receiving early action ERCs or allowances on the basis that the project is located in Indian country.

(d) An RE project must meet the requirements in paragraphs (d)(1) through (4) of this section to be considered an eligible CEIP RE project.

(1) The project must be connected to and deliver energy to the electric grid in the contiguous United States.

(2) The project must either:

(i) Be located in a State participating in the CEIP, including Indian country within the borders of a State participating in the CEIP; or

(ii) Benefit a State participating in the CEIP or Indian country within the borders of a State participating in the CEIP.

(3) The project must commence commercial operation on or after January 1, 2020.

(4) The project must generate electricity from a wind, solar, geothermal, or hydropower RE resources, measured in MWh consistent with the requirements of 60.5830(c)(1).

(e) A low-income community demand-side EE project must meet the requirements of paragraphs (e)(1) through (5) of this section to be

considered an eligible CEIP low-income community project. A low-income community renewable energy project must meet the requirements of paragraphs (e)(2) and (e)(5) through (8) of this section to be considered an eligible CEIP low-income community project.

(1) The project must save electricity in residences or buildings that are connected to the electric grid in the contiguous United States.

(2) The project must either:

(i) Be located in a State participating in the CEIP, including Indian country within the borders of a State participating in the CEIP; or

(ii) Benefit a State or Indian country within the borders of a State participating in the CEIP.

(3) The project must commence operation on or after September 6, 2018.

(4) The project must save electricity measured in MWh consistent with the requirements of § 60.5830(c)(2).

(5) The project must be implemented in a ''low-income community'' as defined in your plan for purposes of the CEIP and consistent with the requirements in paragraph (c)(8) of this section.

(6) The project must be connected to and deliver energy to the electric grid in the contiguous United States.

(7) The project must commence commercial operation on or after January 1, 2020.

(8) The project is a solar RE resource and is implemented to serve a low-income community, by providing direct electricity bill benefits to low-income community ratepayers. Such a project would be eligible for an award from the low-income community reserve of the matching pool for the energy generation that exclusively benefits low-income ratepayers, measured in MWh consistent with the requirements of § 60.5830(c)(1).

(f) Upon the EPA's approval of your plan that includes approved CEIP provisions, or upon promulgation of a federal plan for your State that includes the CEIP, the EPA will deposit your apportioned matching allowances or ERCs, as listed in tables 5 and 6 of subpart UUUU, into an account within your EPA-approved or EPA-administered tracking system. Following your allocation or issuance of early action allowances or ERCs to an eligible CEIP project provider, you must then award to the project provider matching allowances or ERCs on behalf of the EPA, according to paragraphs (f)(1) through (3) of this section.

(1) You must award matching allowances or ERCs on behalf of the EPA from your account no sooner than 60 days following State allocation or issuance of early action allowances or ERCs to a project provider.

(2) The EPA retains the authority to obtain documentation from you at any time to determine that your allocation of early action allowances or issuance of early action ERCs is in accordance with the requirements of this section.

(3) The EPA retains the authority to place a hold on your account, preventing the award of matching allowances or ERCs to an eligible CEIP project provider, if the EPA believes that you did not allocate early action allowances or issue early action ERCs in accordance with the requirements of this section.

(g) You must allocate early action allowances or issue early action ERCs, and you must award matching allowances or award matching ERCs on behalf of the EPA, according to paragraphs (g)(1) and (2) of this section.

(1) Allocation of early action allowances and award of matching allowances, is based on a 0.8 short ton of CO_2 per MWh factor, such that:

(i) For eligible CEIP RE projects, you must calculate early action allowances and matching allowances to be allocated and awarded to the project provider according to the following equations:

$$Early\ Action\ Allowances = 0.8\left(^{short\ ton}/_{MWh}\right) \times \frac{MWh\ generated}{2}$$

$$Matching\ Allowances = 0.8\left(^{short\ ton}/_{MWh}\right) \times \frac{MWh\ generated}{2}$$

Where:

Early Action Allowances = Allowances, denominated in short tons, allocated by the State rounded down to the nearest whole integer.

Matching Allowances = Allowances, denominated in short tons, awarded by the EPA rounded down to the nearest whole integer.

MWh generated = MWh generated by the eligible CEIP RE project.

(ii) For eligible CEIP low-income community projects, you must calculate early action allowances and matching allowances to be allocated and awarded to the project provider according to the following equations:

$$Early\ Action\ Allowances = 1.6\left(^{short\ ton}/_{MWh}\right) \times \frac{MWh\ saved\ or\ generated}{2}$$

$$Matching\ Allowances = 1.6\left(^{short\ ton}/_{MWh}\right) \times \frac{MWh\ saved\ or\ generated}{2}$$

Where:

Early Action Allowances = Allowances, denominated in short tons, allocated by the State rounded down to the nearest whole integer.

Matching Allowances = Allowances, denominated in short tons, awarded by the EPA rounded down to the nearest whole integer.

MWh saved or generated = MWh saved or generated by the eligible CEIP low-income project.

(2) Early action and matching ERCs will be issued and awarded such that:

(i) For every two MWh of electricity generated by an eligible CEIP RE project, you must issue one early action ERC to the project provider, and award on behalf of the EPA one matching ERC to the project provider.

(ii) For every two MWh in end-use electricity savings achieved by an eligible CEIP low-income community project, you must issue two early action ERCs to the project provider, and award on behalf of the EPA two matching ERCs to the project provider.

(3) A State may only allocate early action allowances from its established emission budget for the 2022–2024 interim step period.

(4) When awarding matching allowances or ERCs on behalf of the EPA, a State must assign a vintage for each awarded matching allowance or ERC that corresponds to the vintage of the related early action allowance or ERC on the basis of which the matching allowance or ERC was awarded.

(5) A State may only allocate or issue early action allowances or ERCs to eligible CEIP projects in a total amount not to exceed the number of matching allowances or ERCs apportioned to the State in Tables 5 or 6 of this subpart.

§ 60.5800 [Amended]

■ 3. Amend § 60.5800, paragraph (a) introductory text, by removing the text ''ERCs'' and adding the words ''Except as provided in § 60.5737, ERCs'' in its place.

§ 60.5815 [Amended]

■ 4. Amend § 60.5815 by removing and reserving paragraph (c).

■ 5. Amend § 60.5860 by revising paragraphs (d) introductory text and (d)(6) to read as follows:

§ 60.5860 What applicable monitoring, recordkeeping, and reporting requirements do I need to include in my plan for affected EGUs?

* * * * *

(d) Your plan must require the owner or operator of an affected EGU covered by your plan to include in a report submitted to you at the end of each compliance period the information in paragraphs (d)(1) through (6) of this section.

* * *

(6) If the owner or operator of an affected EGU is complying with an emission standard by using allowances, they must include in the report a list of all unique allowance serial numbers that were retired in the compliance period, and, for each allowance, the date an allowance was surrendered and retired.

* * * * *

■ 6. Amend § 60.5865 by adding paragraph (e) to read as follows:

§ 60.5865 What are my recordkeeping requirements?

* * * * *

(e) If your plan includes the CEIP, you must keep records of all information relied upon in support of any demonstration of CEIP requirements and supporting documentation, including records of all data submitted by a CEIP project provider, and submitted by the owner or operator of each affected EGU, that is used to determine compliance with each affected EGU emission standard or requirements in an approved State plan, consistent with the affected EGU requirements listed in § 60.5860. You must keep such records at a minimum for 10 years from the date the record is submitted to you. Each record must be in a form suitable and readily available for expeditious review.

■ 7. Amend § 60.5870 by revising paragraph (a) and adding paragraph (h) to read as follows:

§ 60.5870 What are my reporting and notification requirements?

(a) In lieu of the annual report required under § 60.25(e) and (f) of this part, you must report the information in paragraphs (b) through (f) and, if your plan includes the CEIP, (i) of this section.

* * * * *

(h) If your plan includes the CEIP, you must submit a report that includes the following information due no later than July 1, 2023: A list of all unique early action emission rate credit or early action allowance serial numbers that were issued or allocated by you for MWh from eligible CEIP projects from January 1, 2020 through December 31, 2021 (including all matching emission rate credit or allowance serial numbers) and identification information about each CEIP project sufficient to demonstrate that it is qualified to be issued or allocated such early action emission rate credits or early action allowances, and any other information specified in your plan.

■ 8. Section 60.5880 is amended by adding, in alphabetical order, the definitions for ''Benefit a state'', ''Commence operation'', ''Commence commercial operation'', ''Early action allowance'', ''Early action emission rate credit or early action ERC'', ''Eligible CEIP project'', ''Eligible CEIP low-income community project'', ''Eligible CEIP renewable energy (RE) project'', ''Matching allowance'', and ''Matching emission rate credit or matching ERC'' to read as follows:

§ 60.5880 What definitions apply to this subpart?

* * * * *

Benefit a state, for purposes of the CEIP, means that electricity is generated or saved by an eligible CEIP project with the intention to meet or reduce electricity demand in the CEIP participating State or Indian country located within the borders of the CEIP participating State.

* * * * *

Commence operation means, for the purposes of the CEIP, the date that a demand-side EE project is delivering quantifiable and verifiable electricity savings.

Commence commercial operation means, for the purposes of the CEIP, the date that a RE project begins to generate electricity for sale, including the sale of test generation, or to generate electricity that receives financial credit through net metering or equivalent policies.

* * * * *

Early action allowance means an allowance allocated by a state under the CEIP, in accordance with § 60.5737(c) through (e) and (g).

Early action emission rate credit or early action ERC means a tradable compliance instrument that meets the requirements of § 60.5790(c), except that, instead of meeting the requirements of § 60.5790(c)(2)(iii), it meets the requirements of § 60.5737(d) or (e) and is issued by a State or its agent through an EPA-approved ERC tracking system that meets the requirements of § 60.5790, or by the EPA through an EPA-administered tracking system.

Eligible CEIP project means a project that meets the requirements of § 60.5737(d) or (e). A ''project,'' for purposes of the CEIP, may include a program that aggregates multiple projects.

Eligible CEIP low-income community project means a project that meets the requirements of § 60.5737(e). A ''project,'' for purposes of the CEIP, may include a program that aggregates multiple projects.

Eligible CEIP renewable energy (RE) project means a project that meets the requirements of § 60.5737(d). A ''project,'' for purposes of the CEIP, may include a program that aggregates multiple projects.

* * * * *

Matching allowance means an allowance awarded by the EPA, or by a State on behalf of the EPA, in accordance with 60.5737(f) through (g), based on the state allocation of an early action allowance under the CEIP.

Matching emission rate credit or matching ERC means an ERC awarded by the EPA, or by a State on behalf of the EPA, in accordance with § 60.5737(f) through (g), based on the state issuance of an early action ERC under the CEIP.

* * * * *

■ 9. Add Tables 5 and 6 to Subpart UUUU of part 60 to read as follows:

TABLE 5 TO SUBPART UUUU OF PART 60—STATE SHARES OF MATCHING POOL

[Allowances]

State/tribe	Available matching allowances (mass-based plan states)		
	Renewable energy reserve (50%)	Low-income community reserve (50%)	Total share (100%)
Alabama	4,683,458	4,683,458	9,366,916
Arizona	2,579,426	2,579,426	5,158,852
Arkansas	3,280,844	3,280,844	6,561,688
California	328,268	328,268	656,536
Colorado	3,334,788	3,334,788	6,669,576
Connecticut	104,122	104,122	208,244
Delaware	207,588	207,588	415,176
Florida	4,845,372	4,845,372	9,690,744
Georgia	4,133,434	4,133,434	8,266,868
Idaho	22,392	22,392	44,784
Illinois	8,953,081	8,953,081	17,906,162
Indiana	8,631,114	8,631,114	17,262,228
Iowa	3,286,774	3,286,774	6,573,548
Kansas	3,173,445	3,173,445	6,346,890
Kentucky	7,429,292	7,429,292	14,858,584
Lands of the Fort Mojave Tribe	8,827	8,827	17,654
Lands of the Navajo Nation	2,434,598	2,434,598	4,869,196
Lands of the Uintah and Ouray Reservation	263,264	263,264	526,528
Louisiana	2,246,141	2,246,141	4,492,282
Maine	31,109	31,109	62,218
Maryland	1,459,162	1,459,162	2,918,324
Massachusetts	255,705	255,705	511,410
Michigan	5,591,791	5,591,791	11,183,582
Minnesota	3,004,354	3,004,354	6,008,708
Mississippi	535,959	535,959	1,071,918
Missouri	5,656,983	5,656,983	11,313,966
Montana	1,965,515	1,965,515	3,931,030
Nebraska	2,222,542	2,222,542	4,445,084
Nevada	504,431	504,431	1,008,862
New Hampshire	161,696	161,696	323,392
New Jersey	669,007	669,007	1,338,014
New Mexico	1,234,572	1,234,572	2,469,144
New York	836,656	836,656	1,673,312
North Carolina	4,011,884	4,011,884	8,023,768
North Dakota	3,225,953	3,225,953	6,451,906
Ohio	7,182,558	7,182,558	14,365,116
Oklahoma	3,100,508	3,100,508	6,201,016
Oregon	231,529	231,529	463,058
Pennsylvania	7,559,018	7,559,018	15,118,036
Rhode Island	53,511	53,511	107,022
South Carolina	2,479,202	2,479,202	4,958,404
South Dakota	396,310	396,310	792,620
Tennessee	3,267,125	3,267,125	6,534,250
Texas	15,600,288	15,600,288	31,200,576
Utah	2,101,783	2,101,783	4,203,566
Virginia	2,079,819	2,079,819	4,159,638
Washington	1,127,151	1,127,151	2,254,302
West Virginia	5,260,335	5,260,335	10,520,670
Wisconsin	3,590,805	3,590,805	7,181,610
Wyoming	4,656,486	4,656,486	9,312,972
Total	149,999,975	149,999,975	299,999,950

TABLE 6 TO SUBPART UUUU OF PART 60—STATE SHARES OF MATCHING POOL

[Emission rate credits]

State/tribe	Available matching ERCs (rate-based plan states)		
	Renewable energy reserve (50%)	Low-income community reserve (50%)	Total share (100%)
Alabama	5,854,323	5,854,323	11,708,646
Arizona	3,224,283	3,224,283	6,448,566
Arkansas	4,101,055	4,101,055	8,202,110
California	410,335	410,335	820,670
Colorado	4,168,485	4,168,485	8,336,970
Connecticut	130,153	130,153	260,306
Delaware	259,485	259,485	518,970
Florida	6,056,715	6,056,715	12,113,430
Georgia	5,166,792	5,166,792	10,333,584
Idaho	27,991	27,991	55,982
Illinois	11,191,352	11,191,352	22,382,704
Indiana	10,788,892	10,788,892	21,577,784
Iowa	4,108,467	4,108,467	8,216,934
Kansas	3,966,806	3,966,806	7,933,612
Kentucky	9,286,616	9,286,616	18,573,232
Lands of the Fort Mojave Tribe	11,034	11,034	22,068
Lands of the Navajo Nation	3,043,247	3,043,247	6,086,494
Lands of the Uintah and Ouray Reservation	329,080	329,080	658,160
Louisiana	2,807,677	2,807,677	5,615,354
Maine	38,886	38,886	77,772
Maryland	1,823,952	1,823,952	3,647,904
Massachusetts	319,632	319,632	639,264
Michigan	6,989,739	6,989,739	13,979,478
Minnesota	3,755,443	3,755,443	7,510,886
Mississippi	669,949	669,949	1,339,898
Missouri	7,071,229	7,071,229	14,142,458
Montana	2,456,894	2,456,894	4,913,788
Nebraska	2,778,178	2,778,178	5,556,356
Nevada	630,539	630,539	1,261,078
New Hampshire	202,121	202,121	404,242
New Jersey	836,258	836,258	1,672,516
New Mexico	1,543,216	1,543,216	3,086,432
New York	1,045,820	1,045,820	2,091,640
North Carolina	5,014,855	5,014,855	10,029,710
North Dakota	4,032,441	4,032,441	8,064,882
Ohio	8,978,197	8,978,197	17,956,394
Oklahoma	3,875,635	3,875,635	7,751,270
Oregon	289,411	289,411	578,822
Pennsylvania	9,448,773	9,448,773	18,897,546
Rhode Island	66,889	66,889	133,778
South Carolina	3,099,003	3,099,003	6,198,006
South Dakota	495,387	495,387	990,774
Tennessee	4,083,907	4,083,907	8,167,814
Texas	19,500,360	19,500,360	39,000,720
Utah	2,627,229	2,627,229	5,254,458
Virginia	2,599,773	2,599,773	5,199,546
Washington	1,408,939	1,408,939	2,817,878
West Virginia	6,575,419	6,575,419	13,150,838
Wisconsin	4,488,506	4,488,506	8,977,012
Wyoming	5,820,607	5,820,607	11,641,214
Total	187,499,975	187,499,975	374,999,950

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 10. The authority citation for part 62 continues to read as follows:

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

Subpart MMM—Greenhouse Gas Emissions Mass-Based Model Trading Rule for Electric Utility Generating Units That Commenced Construction on or Before January 8, 2014

■ 11. Revise § 62.16231, as proposed to be added at 80 FR 65062 (October 23, 2015), to read as follows:

§ 62.16231 How will the optional Clean Energy Incentive Program be administered?

(a) The CEIP will be administered according to the procedures in this section and those sections hereby cross-referenced in this section if the State elects to participate in the CEIP program. If the State does not elect to participate in the CEIP, the provisions

included in this section and those sections hereby cross-referenced in this section, solely with respect to implementation of a CEIP program, shall not apply.

(b) The State will allocate early action allowances for electricity generation or savings achieved in the calendar years 2020 or 2021 to eligible CEIP projects that meet the requirements of § 62.16245 (c)(2) to be classified as an eligible CEIP RE project or eligible CEIP demand-side EE project.

(c) The State will allocate early action allowances to eligible CEIP projects up to the amounts specified for the Renewable Energy Reserve and the Low-Income Community Reserve, respectively, for the State in Table 4 of this subpart and pursuant to the requirements set forth in § 62.16235(e).

(d) The State will award matching allowances on behalf of the EPA from the State's account of matching allowances. Matching allowance awards will be made according to the ratio set forth in paragraph (e) of this section, and in an amount up to the amounts specified for the Renewable Energy Reserve and Low-Income Community Reserve, respectively, for the State as established in Table 5 of subpart UUUU of Part 60 of this chapter.

(e) The State will allocate early action allowances and award matching allowances on behalf of the EPA as follows. Allocation of early action allowances and award of matching allowances, is based on a 0.8 short ton of CO_2 per MWh factor, such that:

(1) For eligible CEIP RE projects, early action allowances and matching allowances to be allocated and awarded to the project provider will be calculated according to the following equations:

$$Early\ Action\ Allowances = 0.8\left(^{short\ ton}/_{MWh}\right) \times \frac{MWh\ generated}{2}$$

$$Matching\ Allowances = 0.8\left(^{short\ ton}/_{MWh}\right) \times \frac{MWh\ generated}{2}$$

Where:

Early Action Allowances = Allowances, denominated in short tons, allocated by the state rounded down to the nearest whole integer.

Matching Allowances = Allowances, denominated in short tons, awarded by the state on behalf of the EPA, rounded down to the nearest whole integer.

MWh generated = MWh generated by the eligible CEIP RE project.

(2) For eligible CEIP low-income community projects, the State will calculate early action allowances and matching allowances to be allocated and awarded to the project provider according to the following equations:

$$Early\ Action\ Allowances = 1.6\left(^{short\ ton}/_{MWh}\right) \times \frac{MWh\ saved\ or\ generated}{2}$$

$$Matching\ Allowances = 1.6\left(^{short\ ton}/_{MWh}\right) \times \frac{MWh\ saved\ or\ generated}{2}$$

Where:

Early Action Allowances = Allowances, denominated in short tons, allocated by the State rounded down to the nearest whole integer.

Matching Allowances = Allowances, denominated in short tons, awarded by the State on behalf of the EPA, rounded down to the nearest whole integer.

MWh saved or generated = MWh saved or generated by the CEIP low-income community project.

■ 12. Revise § 62.16235 paragraph (e) and Table 4, as proposed to be added at 80 FR 65063 (October 23, 2015), to read as follows:

§ 62.16235 What are the statewide mass-based emission goals, renewable energy set-asides, output-based set-asides, and Clean Energy Incentive Program early action set-asides?

* * * * *

(e) The state will set aside a portion of allowances for a Clean Energy Incentive Program Set-Aside covered under this subpart. The Clean Energy Incentive Program Set-Aside will contain the amount of allowances for the state shown in Table 4 of this section. Such amount will be reserved from the state's total emission budget for the first compliance period (2022–2024) as established in Table 1 of this subpart.

TABLE 4 TO SUBPART MMMM OF PART 62—CLEAN ENERGY INCENTIVE PROGRAM SET-ASIDE

[Allowances]

State/tribe	CEIP set-aside (mass-based plan states)		
	Renewable energy reserve (50%)	Low-income community reserve (50%)	Total set-aside (100%)
Alabama	4,683,458	4,683,458	9,366,916
Arizona	2,579,426	2,579,426	5,158,852
Arkansas	3,280,844	3,280,844	6,561,688
California	328,268	328,268	656,536

TABLE 4 TO SUBPART MMMM OF PART 62—CLEAN ENERGY INCENTIVE PROGRAM SET-ASIDE—Continued

[Allowances]

State/tribe	CEIP set-aside (mass-based plan states)		
	Renewable energy reserve (50%)	Low-income community reserve (50%)	Total set-aside (100%)
Colorado	3,334,788	3,334,788	6,669,576
Connecticut	104,122	104,122	208,244
Delaware	207,588	207,588	415,176
Florida	4,845,372	4,845,372	9,690,744
Georgia	4,133,434	4,133,434	8,266,868
Idaho	22,392	22,392	44,784
Illinois	8,953,081	8,953,081	17,906,162
Indiana	8,631,114	8,631,114	17,262,228
Iowa	3,286,774	3,286,774	6,573,548
Kansas	3,173,445	3,173,445	6,346,890
Kentucky	7,429,292	7,429,292	14,858,584
Lands of the Fort Mojave Tribe	8,827	8,827	17,654
Lands of the Navajo Nation	2,434,598	2,434,598	4,869,196
Lands of the Uintah and Ouray Reservation	263,264	263,264	526,528
Louisiana	2,246,141	2,246,141	4,492,282
Maine	31,109	31,109	62,218
Maryland	1,459,162	1,459,162	2,918,324
Massachusetts	255,705	255,705	511,410
Michigan	5,591,791	5,591,791	11,183,582
Minnesota	3,004,354	3,004,354	6,008,708
Mississippi	535,959	535,959	1,071,918
Missouri	5,656,983	5,656,983	11,313,966
Montana	1,965,515	1,965,515	3,931,030
Nebraska	2,222,542	2,222,542	4,445,084
Nevada	504,431	504,431	1,008,862
New Hampshire	161,696	161,696	323,392
New Jersey	669,007	669,007	1,338,014
New Mexico	1,234,572	1,234,572	2,469,144
New York	836,656	836,656	1,673,312
North Carolina	4,011,884	4,011,884	8,023,768
North Dakota	3,225,953	3,225,953	6,451,906
Ohio	7,182,558	7,182,558	14,365,116
Oklahoma	3,100,508	3,100,508	6,201,016
Oregon	231,529	231,529	463,058
Pennsylvania	7,559,018	7,559,018	15,118,036
Rhode Island	53,511	53,511	107,022
South Carolina	2,479,202	2,479,202	4,958,404
South Dakota	396,310	396,310	792,620
Tennessee	3,267,125	3,267,125	6,534,250
Texas	15,600,288	15,600,288	31,200,576
Utah	2,101,783	2,101,783	4,203,566
Virginia	2,079,819	2,079,819	4,159,638
Washington	1,127,151	1,127,151	2,254,302
West Virginia	5,260,335	5,260,335	10,520,670
Wisconsin	3,590,805	3,590,805	7,181,610
Wyoming	4,656,486	4,656,486	9,312,972
Total	149,999,975	149,999,975	299,999,950

■ 13. Amend § 62.16240 as proposed to be added at 80 FR 65067 (October 23, 2015), by adding paragraph (b)(3) to read as follows:

§ 62.16240 When are allowances allocated?

* * * * *

(b) * * *

(3) *Clean Energy Incentive Program set-aside.* By October 15, 2021 and October 15, 2022, the state will allocate allowances from the Clean Energy Incentive Program set-aside, based on quantified and verified MWh that occurred during the preceding calendar year, and will subsequently award matching allowances according to § 62.16245(c)(5).

* * * * *

■ 14. Amend § 62.16245 as proposed to be added at 80 FR 65068 (October 23, 2015), by adding paragraph (c) to read as follows:

§ 62.16245 How are set-aside allowances allocated?

* * * * *

(c)(1) *Clean Energy Incentive Program.* The State will establish a Clean Energy Incentive Program set-aside as set forth in § 62.16235(e), and allocate CO_2 allowances from the set-aside as outlined in this section.

(2) *Eligible CEIP projects.* To be eligible to receive allowances from the Clean Energy Incentive Program set-aside, and related EPA matching

allowances, an eligible CEIP project must meet the requirements in paragraphs (c)(2)(i) of this section for an eligible CEIP RE project and (c)(2)(ii) of this section for an eligible CEIP low-income community project. Any project that does not meet the applicable requirements of paragraphs (c)(2)(i) or (ii) of this section cannot receive allowances from the Clean Energy Incentive Program set-aside and related EPA matching allowances.

(i) An eligible CEIP RE project is a project that meets the requirements of paragraphs (c)(2)(i)(A) through (D) of this section.

(A) The project must be connected to and deliver energy to the electric grid in the contiguous United States.

(B) The project must either:

(1) Be located in a state participating in the CEIP, including Indian country within the borders of a State participating in the CEIP; or

(2) Benefit a state participating in the CEIP or Indian country within a state participating in the CEIP.

(C) The project must commence commercial operation on or after January 1, 2020.

(D) The project must generate electricity from a wind, solar, geothermal, or hydropower RE resources, measured in MWh consistent with the requirements of § 62.16260(c)(1) or (2) as applicable.

(ii) A low-income community demand-side EE project must meet the requirements of paragraphs (c)(2)(ii)(A) through (E) of this section to be considered an eligible CEIP low-income community project. A low-income community renewable energy project must meet the requirements of paragraphs (c)(2)(ii)(B) and (c)(2)(ii)(E) through (H) of this section to be considered an eligible CEIP low-income community project.

(A) The project must save electricity in residences or buildings that are connected to the electric grid in the contiguous United States.

(B) The project must either:

(1) Be located in a state participating in the CEIP, including Indian country within the borders of a state participating in the CEIP; or

(2) Benefit a state participating in the CEIP or Indian country within a state participating in the CEIP.

(C) The project must commence operation on or after September 6, 2018.

(D) The project must save electricity measured in MWh consistent with the requirements of § 62.16260(c)(7).

(E) The project must be implemented in a ''low-income community'' as defined under paragraph (c)(2)(iii) of this section.

(F) The project must be connected to and deliver energy to the electric grid in the contiguous United States.

(G) The project must commence commercial operation on or after January 1, 2020.

(H) The project is a solar RE resource and is implemented to serve a low-income community, by providing direct electricity bill benefits to low-income community ratepayers. Such a project would be eligible for an award from the low-income community reserve of the matching pool for the energy generation that exclusively benefits low-income ratepayers, measured in MWh consistent with the requirements of § 60.5830(c)(1) of this chapter.

(iii) For an eligible CEIP low-income community project, the project eligibility application must identify which one of the following definitions is used to establish the ''low-income community'' that the project will serve:

(A) The definition of low-income used by the New Market Tax Credit Program;

(B) The definition of low-income used by the Department of Housing and Urban Development's Qualified Census Tracts;

(C) The definition of low-income used by the Department of Energy's Weatherization Assistance Program Income Guidelines; or

(D) The definition of low-income used by the Federal Poverty Level Guidelines.

(3) *General account requirements.* In order to receive an allocation of allowances from the Clean Energy Incentive Program set-aside, the project provider must establish a general account in the tracking system as provided in § 62.16320(c).

(4) *Allocation of set-aside allowances.* The process and requirements for allocation of CEIP set-aside allowances, and the related award of EPA matching allowances are set forth in paragraphs (c)(4)(i) through (ii) of this section.

(i) *Eligibility application.* To receive set-aside allowances, and the related award of EPA matching allowances, the authorized account representative of an eligible CEIP project must submit an eligibility application to the state that demonstrates that the requirements of paragraph (c)(2) of this section are met and includes the following information:

(A) Identification of the authorized account representative of the eligible CEIP project, including the authorized account representative's name, address, email address, telephone number, and allowance tracking system account number;

(B) Project identification information under paragraph (a)(3)(i)(B) of this section, to the extent applicable, and information demonstrating that the project meets the criteria of paragraph (c)(2) of this section, and paragraph (a)(2)(v) of this section;

(C) Certification required under paragraph (a)(3)(ii)(C) of this section;

(D) An EM&V plan required under paragraph (a)(3)(ii)(D) of this section that meets the requirements of § 62.16260;

(E) Verification report from an accredited independent verifier who meets the requirements of § 62.16275 and § 62.16280 and that meets the requirements of paragraph (a)(3)(ii)(E) of this section and § 62.16270.

(F) The authorization under paragraph (a)(3)(ii)(F) of this section;

(G) The statement required under paragraph (a)(3)(ii)(G) of this section.

(ii) *Monitoring and Verification Report.* To receive set-aside allowances, and the related award of EPA matching allowances, following the year in which the electricity generation or savings occurred, the authorized account representative must submit to the state the monitoring and verification information required under paragraph (a)(4) of this section that meets the requirements of § 62.16265. A monitoring and verification report must be submitted to the state by no later than September 15 of the applicable calendar year.

(5) *Allocation of Clean Energy Incentive Program allowances.* Upon the state's approval of the monitoring and verification information submitted for an eligible CEIP project, the State will transfer allowances from the CEIP set-aside into the general account for the authorized account representative of the eligible CEIP project. Allowances will only be allocated from the CEIP set-aside based on quantified and verified electricity generation or savings from an eligible CEIP project that occurred on or after January 1, 2020, and no later than December 31, 2021. No earlier than 60 days from the date of the allocation of allowances from the CEIP set-aside, the state will award matching allowances on behalf of the EPA. The state will transfer matching allowances from the state's account of matching allowances into the general account for the authorized account representative of the eligible CEIP project, in accordance with § 62.16231(e). Matching allowances awarded will be assigned the same allowance vintage as the related early action allowances that were allocated by the state. Early action allowances will not be allocated, and matching allowances will not be awarded, on the basis of a monitoring and verification report submitted after September 15, 2022. Any matching allowances that are

not awarded by January 1, 2023, will be retired by the state on behalf of the EPA.

(6) *Revocation of qualification status of an eligible CEIP project.* The process for revocation of qualification status under § 62.16250 applies to eligible CEIP projects.

(7) *Error adjustments or misstatements, and suspension of allowance issuance.* The process for error adjustments or misstatement, and suspension of allowance issuance under § 62.16255 applies to eligible CEIP projects.

(8) *Recordkeeping and Reporting Requirements.* The reporting and recordkeeping requirements for the owner or operator of an affected EGU under § 62.16360(a)(1)(vi) and 62.16365(a)(2)(iv), respectively, that apply to the use for compliance of set-aside allowances also apply to allowances that were allocated from the Clean Energy Incentive Program set-aside and the related matching allowances that were awarded by the State on behalf of the EPA.

■ 15. Amend § 62.16375, as proposed to be added at 80 FR 65085 (October 23, 2015), by adding, in alphabetical order, the definitions for ''Benefit a state'', ''Commence operation'', ''Commence commercial operation'', ''Early action allowance'', ''Eligible CEIP project'', ''Eligible CEIP low-income community project'', ''Eligible CEIP renewable energy (RE) project'', and ''Matching allowance'' to read as follows:

§ 62.16375 What definitions apply to this subpart?

* * * * *

Benefit a state, for purposes of the CEIP, has the same meaning as defined in subpart UUUU of part 60 of this chapter.

* * * * *

Commence operation, for purposes of the CEIP, has the same meaning as defined in subpart UUUU of part 60 of this chapter.

Commence commercial operation, for purposes of the CEIP, has the same meaning as defined in subpart UUUU of part 60 of this chapter.

* * * * *

Early action allowance has the same meaning as defined in subpart UUUU of part 60 of this chapter.

Eligible CEIP project has the same meaning as defined in subpart UUUU of part 60 of this chapter.

Eligible CEIP low-income community project has the same meaning as defined in subpart UUUU of part 60 of this chapter.

Eligible CEIP renewable energy (RE) project has the same meaning as defined in subpart UUUU of part 60 of this chapter.

* * * * *

Matching allowance has the same meaning as defined in subpart UUUU of part 60 of this chapter.

* * * * *

Subpart NNN—Greenhouse Gas Emissions Rate-Based Model Trading Rule for Electric Utility Generating Units That Commenced Construction on or Before January 8, 2014

■ 16. Revise § 62.16431, as proposed to be added at 80 FR 65092 (October 23, 2015), to read as follows:

§ 62.16431 How will the optional Clean Energy Incentive Program be administered?

(a) The Clean Energy Incentive Program (CEIP) will be administered according to the procedures in this section and those sections hereby cross-referenced in this section if the State elects to participate in the CEIP. If the state does not elect to participate in the CEIP, the provisions included in this section and those sections hereby cross-referenced in this section, solely with respect to implementation of a CEIP, shall not apply.

(b) The state will issue early action ERCs for electricity generation or savings achieved in the calendar years 2020 or 2021 to eligible CEIP projects that meet the requirements of § 62.16435 (d) to be classified as an eligible CEIP RE project or an eligible CEIP low-income community project.

(c) The state will issue early action ERCs to eligible CEIP projects up to the amounts specified for the Renewable Energy Reserve and the Low-Income Reserve, respectively, for the State in Table 4 of this subpart and pursuant to the requirements set forth in this section.

(d) The state will award matching ERCs on behalf of the EPA from the State's account of matching ERCs. Matching ERC awards will be made according to the ratio set forth in paragraph (e) of this section, and in an amount up to the amounts specified for the Renewable Energy Reserve and Low-Income Reserve, respectively, for the state as established in Table 6 of subpart UUUU of Part 60 of this chapter.

(e) The issuance of early action ERCs by the state, and the award of matching ERCs by the state on behalf of the EPA, will be executed according to paragraphs (e)(1) and (2) of this section.

(1) For eligible CEIP RE projects that generate metered MWh of electricity: For every two MWh generated, the project will receive one early action ERC and one matching ERC.

(2) For eligible CEIP low-income community projects: For every two MWh in end-use electricity savings achieved or for every two MWh of electricity generated, the project will receive two early action ERCs and two matching ERCs.

(f) The process for ERC issuance provided in § 62.16445, the requirements for evaluation, measurement, and verification in § 62.16455, the requirements for monitoring and verification reports in § 62.16460, the requirements for independent verifiers in §§ 62.16470 through 62.16480, and the requirements for verification reports in § 62.16465, shall apply to the issuance of early action ERCs to eligible CEIP projects and shall also be the basis for the award of matching ERCs to eligible CEIP projects.

(1) The process for revocation of qualification status under § 62.16440 shall apply.

(2) The process for error adjustments or misstatement, and suspension of ERC issuance under § 62.16450 shall apply.

(3) The reporting requirements of § 62.16555 and the recordkeeping requirements of § 62.16560 shall apply with respect to both early action ERCs issued by the state and matching ERCs awarded by the state on behalf of the EPA.

TABLE 1 TO § 62.16431—CLEAN ENERGY INCENTIVE PROGRAM EARLY ACTION EMISSION RATE CREDITS

State/tribe	Available early action ERCs (rate-based plan states)		
	Renewable energy reserve (50%)	Low-income community reserve (50%)	Total early action ERCs (100%)
Alabama	5,854,323	5,854,323	11,708,646
Arizona	3,224,283	3,224,283	6,448,566
Arkansas	4,101,055	4,101,055	8,202,110
California	410,335	410,335	820,670
Colorado	4,168,485	4,168,485	8,336,970
Connecticut	130,153	130,153	260,306
Delaware	259,485	259,485	518,970
Florida	6,056,715	6,056,715	12,113,430
Georgia	5,166,792	5,166,792	10,333,584
Idaho	27,991	27,991	55,982
Illinois	11,191,352	11,191,352	22,382,704
Indiana	10,788,892	10,788,892	21,577,784
Iowa	4,108,467	4,108,467	8,216,934
Kansas	3,966,806	3,966,806	7,933,612
Kentucky	9,286,616	9,286,616	18,573,232
Lands of the Fort Mojave Tribe	11,034	11,034	22,068
Lands of the Navajo Nation	3,043,247	3,043,247	6,086,494
Lands of the Uintah and Ouray Reservation	329,080	329,080	658,160
Louisiana	2,807,677	2,807,677	5,615,354
Maine	38,886	38,886	77,772
Maryland	1,823,952	1,823,952	3,647,904
Massachusetts	319,632	319,632	639,264
Michigan	6,989,739	6,989,739	13,979,478
Minnesota	3,755,443	3,755,443	7,510,886
Mississippi	669,949	669,949	1,339,898
Missouri	7,071,229	7,071,229	14,142,458
Montana	2,456,894	2,456,894	4,913,788
Nebraska	2,778,178	2,778,178	5,556,356
Nevada	630,539	630,539	1,261,078
New Hampshire	202,121	202,121	404,242
New Jersey	836,258	836,258	1,672,516
New Mexico	1,543,216	1,543,216	3,086,432
New York	1,045,820	1,045,820	2,091,640
North Carolina	5,014,855	5,014,855	10,029,710
North Dakota	4,032,441	4,032,441	8,064,882
Ohio	8,978,197	8,978,197	17,956,394
Oklahoma	3,875,635	3,875,635	7,751,270
Oregon	289,411	289,411	578,822
Pennsylvania	9,448,773	9,448,773	18,897,546
Rhode Island	66,889	66,889	133,778
South Carolina	3,099,003	3,099,003	6,198,006
South Dakota	495,387	495,387	990,774
Tennessee	4,083,907	4,083,907	8,167,814
Texas	19,500,360	19,500,360	39,000,720
Utah	2,627,229	2,627,229	5,254,458
Virginia	2,599,773	2,599,773	5,199,546
Washington	1,408,939	1,408,939	2,817,878
West Virginia	6,575,419	6,575,419	13,150,838
Wisconsin	4,488,506	4,488,506	8,977,012
Wyoming	5,820,607	5,820,607	11,641,214
Totals	187,499,975	187,499,975	374,999,950

(g) To account for the State issuance of early action ERCs to eligible CEIP projects, the quantified and verified MWh from any eligible resource during the first interim step period (2022 through 2024) that are the basis for the issuance of ERCs will be adjusted according to paragraphs (g)(1) and (2) of this section.

(1) Quantified and verified MWh reported by an eligible resource will be multiplied by an adjustment factor calculated in accordance with paragraph (g)(2) of this section. When applying the adjustment factor, the calculated number of MWh for which ERCs may be issued by the State is rounded down to the nearest integer.

(2) The adjustment factor will be determined by the following equation:

$$\text{Adjustment Factor} = 1 - \frac{\text{State Issued Early Action ERCs} / \text{Adjustment Period}}{\text{Quantified \& Verified MWh During Reporting Year}}$$

Where:

State-Issued Early Action ERCs = the total number of early action ERCs issued by the state under the CEIP

Adjustment Period = 3, the number of years during the first interim step of the interim performance period

Quantified and Verified MWh During Reporting Year = The total number of quantified and verified MWh reported by all eligible resources that occurred during a respective year during the first interim step period

■ 17. Amend § 62.16435, as proposed to be added at 80 FR 65093 (October 23, 2015), by adding paragraph (d) to read as follows:

§ 62.16435 What eligible resources qualify for generation of ERCs in addition to affected EGUs?

* * * * *

(d)(1) If a State chooses to establish a CEIP under § 62.16431, then eligible CEIP projects are those that meet the requirements of paragraph (d)(2) of this section.

(2) To be eligible to receive early action ERCs from the CEIP, and related EPA matching ERCs, an eligible CEIP project must meet the requirements in paragraph (d)(2)(i) of this section for an eligible CEIP RE project and paragraph (d)(2)(ii) of this section for an eligible CEIP low-income community project. Any project that does not meet the applicable requirements of paragraphs (d)(2)(i) or (ii) of this section cannot be issued early action ERCs and awarded related EPA matching ERCs.

(i) An eligible CEIP RE project is a project that meets the requirements or paragraphs (d)(2)(i)(A) through (D) of this section.

(A) The project must be connected to and deliver energy to the electric grid in the contiguous United States.

(B) The project must either:

(1) Be located in a State participating in the CEIP, including Indian country within the borders of a state participating in the CEIP; or

(2) Benefit a state participating in the CEIP or Indian country within a State participating in the CEIP.

(C) The project must commence commercial operation on or after January 1, 2020.

(D) The project must generate electricity from a wind, solar, geothermal, or hydropower RE resources, measured in MWh consistent with the requirements of § 62.16455(c)(1) or (2), as applicable.

(ii) A low-income community demand-side EE project must meet the requirements of paragraphs (d)(2)(ii)(A) through (E) of this section to be considered an eligible CEIP low-income community project. A low-income community renewable energy project must meet the requirements of paragraphs (d)(2)(ii)(B) and (d)(2)(ii)(E) through (H) of this section to be considered an eligible CEIP low-income community project.

(A) The project must save electricity in residences or buildings that are connected to the electric grid in the contiguous United States.

(B) The project must either:

(1) Be located in a state participating in the CEIP, including Indian country within the borders of a State participating in the CEIP; or

(2) Benefit a state participating in the CEIP or Indian country within a state participating in the CEIP.

(C) The project must commence operation on or after September 6, 2018.

(D) The project must save electricity measured in MWh consistent with the requirements of § 62.16455(c)(7).

(E) The project must be implemented in a ''low-income community'' as defined under paragraph (d)(2)(iii) of this section.

(F) The project must be connected to and deliver energy to the electric grid in the contiguous United States.

(G) The project must commence commercial operation on or after January 1, 2020.

(H) The project is a solar RE resource and is implemented to serve a low-income community, by providing direct electricity bill benefits to low-income community ratepayers. Such a project would be eligible for an award from the low-income community reserve of the matching pool for the energy generation that exclusively benefits low-income ratepayers, measured in MWh consistent with the requirements of § 60.5830(c)(1) of this chapter.

(iii) For an eligible CEIP low-income community project the project eligibility application must identify which one of the following definitions is used to establish the ''low-income community'' that the project will serve:

(A) The definition of low-income used by the New Market Tax Credit Program;

(B) The definition of low-income used by the Department of Housing and Urban Development's Qualified Census Tracts;

(C) The definition of low-income used by the Department of Energy's Weatherization Assistance Program Income Guidelines; or

(D) The definition of low-income used by the Federal Poverty Level Guidelines.

■ 18. Amend § 62.16445, as proposed to be added at 80 FR 65094 (October 23, 2015), by adding paragraph (g) to read as follows:

§ 62.16445 What is the process for issuance of ERCs?

* * * * *

(g) *Clean Energy Incentive Program early action ERCs.* Upon the state's approval of the monitoring and verification information submitted for an eligible CEIP project, the state will issue early action ERCs, and transfer those early action ERCs into the general account for the authorized account representative of the eligible CEIP project. Early action ERCs will only be issued based on quantified and verified electricity generation or savings from an eligible CEIP project that occurred on or after January 1, 2020, and no later than December 31, 2021. No earlier than 60 days from the date of the issuance of early action ERCs, the state will award matching ERCs on behalf of the EPA. The state will transfer matching ERCs from the State's account of matching ERCs into the general account for the authorized account representative of the eligible CEIP project, in accordance with § 62.16431(d) and (e). Early action ERCs will not be issued, and matching ERCs will not be awarded, on the basis of a monitoring and verification report submitted after September 15, 2022. Any matching ERCs that are not awarded by January 1, 2023, will be retired by the state on behalf of the EPA.

■ 19. Amend § 62.16570, as proposed to be added at 80 FR 65110 (October 23, 2015), by adding, in alphabetical order, definitions for ''Benefit a state'', ''Commence operation'', ''Commence commercial operation'', ''Early action emission rate credit or early action ERC'', ''Eligible CEIP project'', ''Eligible CEIP low-income community project'', ''Eligible CEIP RE project'', and ''Matching emission rate credit or matching ERC'' to read as follows:

§ 62.16375 What definitions apply to this subpart?

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Benefit a state, for purposes of the CEIP, has the same meaning as defined

in subpart UUUU of part 60 of this chapter.

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Commence operation, for purposes of the CEIP, means the definition as defined in subpart UUUU of part 60 of this chapter.

Commence commercial operation, for purposes of the CEIP, means the definition as defined in subpart UUUU of part 60 of this chapter.

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Early action emission rate credit or early action ERC means the definition as defined in subpart UUUU of part 60 of this chapter.

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Eligible CEIP project means the definition as defined in subpart UUUU of part 60 of this chapter.

Eligible CEIP low-income community project means the definition as defined in subpart UUUU of part 60 of this chapter.

Eligible CEIP renewable energy (RE) project means the definition as defined in subpart UUUU of part 60 of this chapter.

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Matching emission rate credit or matching ERC means the definition as defined in subpart UUUU of part 60 of this chapter.

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