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# EPA

*In this issue:*

## **CLIENT ALERT: EPA PROPOSES DESIGN DETAILS FOR THE CLEAN POWER PLAN'S CLEAN ENERGY INCENTIVE PROGRAM**

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On June 30, 2016, EPA published its proposed Clean Energy Incentive Program (CEIP) Design Details, with comments due on August 29, 2016.<sup>1</sup> EPA has issued this proposal in response to stakeholder comments.<sup>2</sup>

EPA proposes certain design details and presumptively approvable regulatory text, including measurement and verification reports and requirements for eligibility applications, that a state or tribe may incorporate into its plan.

### **Background**

The CEIP is a component of EPA's Clean Power Plan (CPP)<sup>3</sup> and is a voluntary program to incentivize certain early emission reduction projects. States may elect to include the CEIP as part of their State Implementation Plan (SIP). For those states that fail to submit an approvable SIP, EPA intends to implement a federal plan that includes the CEIP election.

The CPP compliance period runs from 2022 to 2030.<sup>4</sup> The CEIP incentivizes early investments in renewable energy (RE) and energy efficiency (EE) in low-income communities by allowing states to reward early emissions allowances (in a mass-based plan) or Emission Rate Credits (ERCs) (in a rate-based plan) to eligible projects that generate CO<sub>2</sub>-free MWh or reduce end-use demand during 2020 and/or 2021, which will be matched by EPA-issued allowances or ERCs.<sup>5</sup>

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<sup>1</sup> Clean Energy Incentive Program Design Details, [81 Fed. Reg. 42,940](#) (proposed June 30, 2016).

<sup>2</sup> This includes comments on the proposed model trading rules, on EPA's October 2015 CEIP Next Steps document (available at [http://www2.epa.gov/sites/production/files/2015-10/documents/ceip\\_next\\_steps\\_10\\_21\\_15.pdf](http://www2.epa.gov/sites/production/files/2015-10/documents/ceip_next_steps_10_21_15.pdf)), and from EPA's outreach sessions.

<sup>3</sup> Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, [80 Fed. Reg. 64,662](#) (Oct. 23, 2015).

<sup>4</sup> 80 Fed. Reg. at 64,666. In February 2016, the Supreme Court issued a stay on the Clean Power Plan. In the current proposal, EPA acknowledges the stay, and states that it will provide "further direction on . . . any [] adjustments in timing that may be needed, upon the resolution of the judicial petitions for review." 81 Fed. Reg. at 42,942.

<sup>5</sup> 81 Fed. Reg. at 42,942.

## The Proposal

EPA's CEIP proposal provides some changes to and some additional details on the CEIP. In response to stakeholder requests to expand the list of eligible RE projects, EPA now proposes to include geothermal and hydropower, in addition to solar and wind, in the list of CEIP-eligible RE technologies.<sup>6</sup> EPA is proposing to expand the projects eligible for an additional matching incentive to include the development of solar generation in low-income communities.

EPA also proposes to clarify certain definitions related to CEIP eligibility. RE projects must "commence commercial operation" and EE projects must "commence operations" during 2020 or 2021 to be eligible for matching.<sup>7</sup> EPA would allow states and tribes flexibility in establishing the definition of "low-income community" (certain existing federal definitions would be presumptively approvable).<sup>8</sup>

In the CPP, EPA established that it would award matching CEIP ERCs and allowances in an amount equal to up to 300 million short tons of carbon emissions.<sup>9</sup> Here, EPA proposes to allocate to each state and tribe a pro rata share of the match pool based on the amount of reduction that the state/tribe needs to achieve relative to other states/tribes.<sup>10</sup> EPA proposes to retire (and not reallocate) any ERCs or allowances designated to states or tribes that elect not to participate in the CEIP.<sup>11</sup> EPA also proposes to divide the matching pool evenly between low-income community projects (EE and solar) and RE projects, and to prohibit matches designated in one pool from being re-designated into the other.<sup>12</sup>

EPA proposes to allow states or tribes that do not have any affected electric generating units to also participate in the CEIP, but only if the eligible project is located in Indian country within the borders of a state that elects to participate in the CEIP, or if the project "benefits" a state that elects to participate in the CEIP.<sup>13</sup>

## Timing of CEIP Implementation

In the CPP EPA required that if a state wanted to participate in the CEIP, it would need to indicate this by September 6, 2016.<sup>14</sup> However, in response to the Supreme Court stay, EPA has declared that

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<sup>6</sup> 81 Fed. Reg. at 42,948.

<sup>7</sup> 81 Fed. Reg. at 42,963-64.

<sup>8</sup> 81 Fed. Reg. at 42,961.

<sup>9</sup> 80 Fed. Reg. at 64,830. EPA proposes that allocation of allowances will be based on a 0.8 short ton of CO<sub>2</sub> per MWh factor.

<sup>10</sup> 81 Fed. Reg. at 42,974-75 (Tables 5 & 6 to Subpart UUUU of Part 60).

<sup>11</sup> 81 Fed. Reg. at 42,955.

<sup>12</sup> 81 Fed. Reg. at 42,951.

<sup>13</sup> 81 Fed. Reg. at 42,968 & n.103.

<sup>14</sup> 80 Fed. Reg. at 64,669.

states are no longer required to meet this deadline. EPA plans to provide further direction on the specific deadline once the petitions for review are resolved. EPA asserts that “it is appropriate to move forward with the design details of the CEIP” at this time in spite of the stay.<sup>15</sup> EPA notes that states may continue moving forward with state plan design, and EPA has the authority to continue working with states in this regard.

## Next Steps

EPA plans to hold a public hearing on this proposed rule in Chicago, IL, on August 3, 2016.<sup>16</sup> Written comments are due on August 29, 2016, absent an extension of the comment period. **If you commented on the CEIP in another docket, EPA requests that you resubmit your comments (with any revisions to address the additional details in the proposal) here to ensure full consideration.**

*For more information about the CEIP, the CPP, and other developments in related rulemakings, please visit Spiegel’s blog at <http://consideringthegrid.com/>.*

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<sup>15</sup> 81 Fed. Reg. at 42,942.

<sup>16</sup> Information about registering to present at the hearing is in the *Federal Register* notice, 81 Fed. Reg. at 42,940.