To amend the Clean Air Act to authorize the President to enter into agreements to provide regulatory credit for voluntary early action to mitigate greenhouse gas emissions.

IN THE SENATE OF THE UNITED STATES

OCTOBER 10 (legislative day, OCTOBER 2), 1998

Mr. CHAFEE (for himself, Mr. MACK, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Clean Air Act to authorize the President to enter into agreements to provide regulatory credit for voluntary early action to mitigate greenhouse gas emissions.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Credit for Voluntary Early Action Act”.

SEC. 2. PURPOSE.

The purpose of this Act is to encourage voluntary greenhouse gas emission mitigation actions by authorizing
the President to enter into binding agreements under
which entities operating in the United States will receive
credit, usable in any future domestic program that re-
quires mitigation of greenhouse gas emissions, for vol-
untary mitigation actions before 2008.

SEC. 3. CREDIT FOR VOLUNTARY GREENHOUSE GAS EMIS-
SION MITIGATION ACTIONS.

The Clean Air Act (42 U.S.C. 7401 et seq.) is amend-
ed by adding at the end the following:

“TITLE VII—CREDIT FOR VOL-
UNTARY GREENHOUSE GAS
EMISSION MITIGATION AC-
TIONS

“SEC. 701. DEFINITIONS.

“In this title:

“(1) CARBON RESERVOIR.—The term ‘carbon
reservoir’ means quantifiable nonfossil storage of
carbon in a natural or managed ecosystem or other
reservoir.

“(2) DOMESTIC.—The term ‘domestic’ means
within the territorial jurisdiction of the United
States.

“(3) DOMESTIC GREENHOUSE GAS REGU-
LATORY STATUTE.—The term ‘domestic greenhouse
gas regulatory statute’ means a Federal statute, en-
acted after the date of enactment of this title, that
imposes a quantitative limitation on domestic green-
house gas emissions, or taxes such emissions.

“(4) EARLY ACTION AGREEMENT.—The term
‘early action agreement’ means an agreement with
the United States entered into under section 702(a).

“(5) EXISTING SOURCE.—The term ‘existing
source’ means a source that emitted greenhouse
gases in the participant’s base period determined
under section 704.

“(6) FIRST COMPLIANCE PERIOD.—The term
‘first compliance period’ means the first period dur-
ing which a domestic greenhouse gas regulatory stat-
ute takes effect.

“(7) GREENHOUSE GAS.—The term ‘greenhouse
gas’ means—

“(A) carbon dioxide; and

“(B) to the extent provided by an early ac-
tion agreement—

“(i) methane;

“(ii) nitrous oxide;

“(iii) hydrofluorocarbons;

“(iv) perfluorocarbons; and

“(v) sulfur hexafluoride.
“(8) Greenhouse gas reduction credit.—
The term ‘greenhouse gas reduction credit’ means an authorization under a domestic greenhouse gas regulatory statute to emit 1 metric ton of greenhouse gas (expressed in terms of carbon dioxide equivalent) that is provided because of greenhouse gas emission reductions or carbon sequestration carried out before the first compliance period.

“(9) New source.—The term ‘new source’ means a source other than an existing source.

“(10) Own.—The term ‘own’ means to have direct or indirect ownership of an undivided interest in an asset.

“(11) Participant.—The term ‘participant’ means a person that enters into an early action agreement with the United States under this title.

“(12) Person.—The term ‘person’ includes a governmental entity.

“(13) Source.—The term ‘source’ means a source of greenhouse gas emissions.

“Sec. 702. Authority for early action agreements.

“(a) Authority.—

“(1) In general.—The President may enter into a legally binding early action agreement with any person under which the United States agrees to
provide greenhouse gas reduction credit usable beginning in the first compliance period, if the person takes an action that reduces greenhouse gas emissions or sequesters carbon before January 1, 2008.

“(2) REQUIREMENTS.—An early action agreement entered into under paragraph (1) shall meet either—

“(A) the requirements for early action agreements under sections 703 through 706; or

“(B) in the case of a participant described in section 707, the requirements of that section.

“(b) DELEGATION.—The President may delegate any authority under this title to any Federal department or agency.

“(c) REGULATIONS.—The President may promulgate such regulations (including guidelines) as are appropriate to carry out this title.

“SEC. 703. ENTITLEMENT TO GREENHOUSE GAS REDUCTION CREDIT FOR EARLY ACTION.

“(a) IN GENERAL.—

“(1) INTERNATIONAL ACTIVITIES.—

“(A) INTERNATIONALLY CREDITABLE ACTIONS.—A participant shall receive greenhouse gas reduction credit under an early action
agreement if the participant takes an action that—

“(i) reduces greenhouse gas emissions or sequesters carbon before January 1, 2008; and

“(ii) under any applicable international agreement, will result in an addition to the United States quantified emission limitation for the first compliance period.

“(B) United States Initiative for Joint Implementation.—

“(i) In general.—Subject to clause (ii), an early action agreement may provide that a participant shall be entitled to receive greenhouse gas reduction credit for a greenhouse gas emission reduction or carbon sequestration that—

“(I) is not creditable under subparagraph (A); and

“(II) is for a project accepted before 2000 under the United States Initiative for Joint Implementation.

“(ii) Limitation on period in which credit may be earned.—No
greenhouse gas reduction credit may be
earned under this subparagraph after the
earlier of—

“(I) the earliest date on which
credit may be earned for a greenhouse
gas emission reduction, carbon sequestr-
ation, or comparable project under
an applicable international agreement;
or


“(2) DOMESTIC ACTIVITIES.—

“(A) EMISSION REDUCTIONS.—A partici-
pant shall receive greenhouse gas reduction
credit under an early action agreement if, dur-
ing the 1999 through 2007 period—

“(i) the participant’s aggregate green-
house gas emissions from domestic sources
that are covered by the early action agree-
ment; are less than

“(ii) the sum of the participant’s an-
nual source baselines during that period as
determined under section 704.

“(B) SEQUESTRATION.—For the purpose
of receiving greenhouse gas reduction credit
under subparagraph (A), the amount by which
aggregate net carbon sequestration for the
1999 through 2007 period in a participant’s do-
mestic carbon reservoirs covered by an early ac-
tion agreement exceeds the sum of the partici-
pant’s annual reservoir baselines for calendar
years 1999 through 2007 shall be treated as a
greenhouse gas emission reduction.

“(C) Section 1605 Activity.—An early
action agreement may provide that a partici-
pant shall be entitled to receive 1 ton of green-
house gas reduction credit for each ton of
greenhouse gas emission reductions or carbon
sequestration for the 1991 through 1998 period
from domestic activities that—

“(i) are—

“(I) reported before January 1,
1999, under section 1605 of the En-
13385); or

“(II) carried out and reported
under a Federal agency program to
implement the Climate Change Action
Plan; and

“(ii) are verified (in accordance with
section 706) as—
“(I) being accurately reported;
“(II) not being double-counted;
and
“(III) representing actual reductions in greenhouse gas emissions or in actual net carbon sequestration.

“(3) EXTENSION.—The parties to an early action agreement may extend the 1999 through 2007 period during which greenhouse gas reduction credit may be earned under the early action agreement, if Congress permits such an extension by law enacted after the date of enactment of this title.

“(b) AWARD OF GREENHOUSE GAS REDUCTION CREDIT.—

“(1) NOTIFICATION OF PROVISIONAL CREDIT.—The President shall annually notify each participant of the quantity of greenhouse gas reduction credit provisionally earned under an early action agreement.

“(2) AWARD OF FINAL CREDIT.—Effective on January 1, 2008, a participant shall be entitled to receive 1 ton of greenhouse gas reduction credit for each 1 ton that is creditable under subsection (a).
SEC. 704. BASELINE AND BASE PERIOD.

(a) Source Baseline.—A participant’s annual source baseline for each of calendar years 1999 through 2007 shall be equal to the participant’s average annual greenhouse gas emissions from domestic sources covered by the participant’s early action agreement during a 1996 through 1998 base period, adjusted for the calendar year as provided in subsections (a)(2), (c)(1), and (c)(2) of section 705.

(b) Reservoir Baseline.—A participant’s annual reservoir baseline for each of calendar years 1999 through 2007 shall be equal to the average level of carbon stocks in carbon reservoirs covered by the participant’s early action agreement for a 1996 through 1998 base period, adjusted for the calendar year as provided in section 705(c)(1).

(c) Alternative Base Periods.—

(1) Data unavailable or unrepresentative.—The regulations promulgated under section 702(c) may specify a base period other than 1996 through 1998 that will be applicable if adequate data are not available to determine a 1996 through 1998 baseline or if such data are unrepresentative.

(2) Elections.—The regulations promulgated under section 702(c) may permit a participant to elect a base period earlier than 1996 through
1998 (not to include any year earlier than 1990) to reflect voluntary reductions made before January 1, 1996.

“(3) SECTION 1605 ACTIVITY.—Except as otherwise provided by the regulations promulgated under section 702(c), if an election is made for a base period earlier than 1996 through 1998, no greenhouse gas reduction credit shall be available under section 703(a)(2)(C).

“SEC. 705. SOURCES AND CARBON RESERVOIRS COVERED BY EARLY ACTION AGREEMENTS.

“(a) Sources.—

“(1) In General.—

“(A) Covered Sources.—Except as otherwise provided in this subsection, a participant’s early action agreement shall cover all domestic greenhouse gas sources that the participant owns as of the date on which the early action agreement is entered into.

“(B) Exclusions.—The regulations promulgated under section 702(c) (or the terms of an early action agreement) may exclude from coverage under an early action agreement—

“(i) small or diverse sources owned by the participant; and
“(ii) sources owned by more than 1 person.

“(2) New sources.—

“(A) In general.—The regulations promulgated under section 702(c) may provide that an early action agreement may provide for an annual addition to a participant’s source baseline to account for new sources owned by the participant.

“(B) Amount of addition.—The amount of an addition under subparagraph (A) shall reflect the emission performance of the most efficient commercially available technology for sources of the same type as a new source (determined as of the date on which the early action agreement is entered into).

“(b) Opt-in provisions.—

“(1) Opt-in for other owned sources.—Domestic sources owned by a participant that are not required to be covered under subsection (a) may be covered under an early action agreement at the election of the participant.

“(2) Opt-in for carbon reservoirs.—

“(A) In general.—An early action agreement may provide that domestic carbon res-
ervoirs owned by a participant may be covered
under the early action agreement at the election
of the participant.

“(B) COVERAGE.—Except in the case of
small or diverse carbon reservoirs owned by the
participant (as provided in the regulations pro-
mulgated under section 702(e)), if a participant
elects to have domestic carbon reservoirs cov-
ered under the early action agreement, all of
the participant’s domestic carbon reservoirs
shall be covered under the early action agree-
ment.

“(3) OPT-IN FOR SOURCES AND CARBON RES-
ERVOIRS NOT OWNED BY PARTICIPANT.—Any source
or carbon reservoir not owned by the participant, or
any project that decreases greenhouse gas emissions
from or sequesters carbon in such a source or car-
bon reservoir, may be covered by an early action
agreement, with the consent of each owner of the
source or carbon reservoir and in accordance with
the regulations promulgated under section 702(e).

“(c) ACCOUNTING RULES.—

“(1) TRANSFERS.—If ownership of a source or
carbon reservoir covered by an early action agree-
ment is transferred to or from the participant—
“(A) in the case of a source, the source’s emissions shall be adjusted to reflect the transfer for the base period and each year for which greenhouse gas reduction credit is claimed; and

“(B) in the case of a carbon reservoir—

“(i) the carbon reservoir’s carbon stocks shall be adjusted to reflect the transfer for the base period; and

“(ii) the carbon reservoir’s net carbon sequestration shall be adjusted to reflect the transfer for each year for which greenhouse gas reduction credit is claimed.

“(2) Displacement of emissions.—An early action agreement shall contain effective and workable provisions that ensure that only net emission reductions will be credited under section 703 in circumstances in which emissions are displaced from sources covered by an early action agreement to sources not covered by an early action agreement.

“(3) Period of coverage.—Emissions from sources and net carbon sequestration in carbon reservoirs shall be covered by an early action agreement for the 1999 through 2007 period, except as provided under paragraph (1) or by the regulations promulgated under section 702(c).
“(4) PARTIAL YEARS.—An early action agreement shall contain appropriate provisions for any partial year of coverage of a source or carbon reservoir.

“SEC. 706. MEASUREMENT AND VERIFICATION.

“An early action agreement shall provide that the participant, in accordance with the regulations promulgated under section 702(c)—

“(1) shall annually measure, track, and publicly report greenhouse gas emissions for the term of the early action agreement; and

“(2) shall establish procedures for measurement and reporting of emissions, emission reductions, and carbon sequestration by qualified independent third party entities.

“SEC. 707. AUTHORITY TO ENTER INTO AGREEMENTS THAT ACHIEVE COMPARABLE REDUCTIONS.

“In the case of a participant that manufactures or constructs for sale to end-users equipment or facilities that emit greenhouse gases, the President may enter into an early action agreement that does not meet the requirements of sections 703 through 705, if the President determines that—

“(1) an early action agreement that meets the requirements of those sections is infeasible;
“(2) an alternative form of agreement would better carry out this title; and

“(3) an agreement under this section would achieve tonnage reductions of greenhouse gas emissions that are comparable to reductions that would be achieved under an agreement that meets the requirements of those sections.

“SEC. 708. TRADING AND POOLING.

“(a) TRADING.—A participant may—

“(1) purchase earned greenhouse gas reduction credit from and sell the credit to any other participant; and

“(2) sell the credit to any person that is not a participant.

“(b) POOLING.—The regulations promulgated under section 702(c) may permit pooling arrangements under which a group of participants agree to act as a single participant for the purpose of entering into an early action agreement.

“SEC. 709. RELATIONSHIP TO FUTURE DOMESTIC GREENHOUSE GAS REGULATORY STATUTE.

“(a) IN GENERAL.—An early action agreement shall not bind the United States to adopt (or not to adopt) any particular form of domestic greenhouse gas regulatory
statute, except that an early action agreement shall pro-
vide that—

“(1) greenhouse gas reduction credit earned by
a participant under an early action agreement shall
be provided to the participant in addition to any oth-
ernwise available authorizations of the participant to
emit greenhouse gases in the first compliance period
under a domestic greenhouse gas regulatory statute;
and

“(2) if the allocation of authorizations under a
domestic greenhouse gas regulatory statute to emit
greenhouse gases in the first compliance period is
based on the level of a participant’s emissions in a
historic period that is later than the participant’s
base period under the participant’s early action
agreement, any greenhouse gas reduction credit to
which the participant was entitled under the early
action agreement for domestic greenhouse gas reduc-
tions during that historic period shall, for the pur-
pose of that allocation, be added back to the partici-
 pant’s greenhouse gas emissions level for the historic
period.

“(b) LIMITATION.—Nothing in this title authorizes
aggregate greenhouse gas emissions from domestic sources
in an amount that exceeds any greenhouse gas emission
limitation applicable to the United States under an international agreement that has been ratified by the United States and has entered into force.”.