

105TH CONGRESS
2D SESSION

S. 2617

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.

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to encourage voluntary
8 greenhouse gas emission mitigation actions by authorizing

1 the President to enter into binding agreements under
 2 which entities operating in the United States will receive
 3 credit, usable in any future domestic program that re-
 4 quires mitigation of greenhouse gas emissions, for vol-
 5 untary mitigation actions before 2008.

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

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

10 **“TITLE VII—CREDIT FOR VOL-**
 11 **UNTARY GREENHOUSE GAS**
 12 **EMISSION MITIGATION AC-**
 13 **TIONS**

14 **“SEC. 701. DEFINITIONS.**

15 “In this title:

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

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

23 “(3) DOMESTIC GREENHOUSE GAS REGU-
 24 LATORY STATUTE.—The term ‘domestic greenhouse
 25 gas regulatory statute’ means a Federal statute, en-

1 acted after the date of enactment of this title, that
2 imposes a quantitative limitation on domestic green-
3 house gas emissions, or taxes such emissions.

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

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

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

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

17 “(A) carbon dioxide; and

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

20 “(i) methane;

21 “(ii) nitrous oxide;

22 “(iii) hydrofluorocarbons;

23 “(iv) perfluorocarbons; and

24 “(v) sulfur hexafluoride.

1 “(8) GREENHOUSE GAS REDUCTION CREDIT.—
2 The term ‘greenhouse gas reduction credit’ means
3 an authorization under a domestic greenhouse gas
4 regulatory statute to emit 1 metric ton of green-
5 house gas (expressed in terms of carbon dioxide
6 equivalent) that is provided because of greenhouse
7 gas emission reductions or carbon sequestration car-
8 ried out before the first compliance period.

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

11 “(10) OWN.—The term ‘own’ means to have di-
12 rect or indirect ownership of an undivided interest in
13 an asset.

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

17 “(12) PERSON.—The term ‘person’ includes a
18 governmental entity.

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

21 **“SEC. 702. AUTHORITY FOR EARLY ACTION AGREEMENTS.**

22 “(a) AUTHORITY.—

23 “(1) IN GENERAL.—The President may enter
24 into a legally binding early action agreement with
25 any person under which the United States agrees to

1 provide greenhouse gas reduction credit usable be-
2 ginning in the first compliance period, if the person
3 takes an action that reduces greenhouse gas emis-
4 sions or sequesters carbon before January 1, 2008.

5 “(2) REQUIREMENTS.—An early action agree-
6 ment entered into under paragraph (1) shall meet
7 either—

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

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

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

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

18 **“SEC. 703. ENTITLEMENT TO GREENHOUSE GAS REDUC-**
19 **TION CREDIT FOR EARLY ACTION.**

20 “(a) IN GENERAL.—

21 “(1) INTERNATIONAL ACTIVITIES.—

22 “(A) INTERNATIONALLY CREDITABLE AC-
23 TIONS.—A participant shall receive greenhouse
24 gas reduction credit under an early action

1 agreement if the participant takes an action
2 that—

3 “(i) reduces greenhouse gas emissions
4 or sequesters carbon before January 1,
5 2008; and

6 “(ii) under any applicable inter-
7 national agreement, will result in an addi-
8 tion to the United States quantified emis-
9 sion limitation for the first compliance pe-
10 riod.

11 “(B) UNITED STATES INITIATIVE FOR
12 JOINT IMPLEMENTATION.—

13 “(i) IN GENERAL.—Subject to clause
14 (ii), an early action agreement may provide
15 that a participant shall be entitled to re-
16 ceive greenhouse gas reduction credit for a
17 greenhouse gas emission reduction or car-
18 bon sequestration that—

19 “(I) is not creditable under sub-
20 paragraph (A); and

21 “(II) is for a project accepted be-
22 fore 2000 under the United States
23 Initiative for Joint Implementation.

24 “(ii) LIMITATION ON PERIOD IN
25 WHICH CREDIT MAY BE EARNED.—No

1 greenhouse gas reduction credit may be
2 earned under this subparagraph after the
3 earlier of—

4 “(I) the earliest date on which
5 credit may be earned for a greenhouse
6 gas emission reduction, carbon seques-
7 tration, or comparable project under
8 an applicable international agreement;
9 or

10 “(II) December 31, 2007.

11 “(2) DOMESTIC ACTIVITIES.—

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

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

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

23 “(B) SEQUESTRATION.—For the purpose
24 of receiving greenhouse gas reduction credit
25 under subparagraph (A), the amount by which

1 aggregate net carbon sequestration for the
2 1999 through 2007 period in a participant’s do-
3 mestic carbon reservoirs covered by an early ac-
4 tion agreement exceeds the sum of the partici-
5 pant’s annual reservoir baselines for calendar
6 years 1999 through 2007 shall be treated as a
7 greenhouse gas emission reduction.

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

15 “(i) are—

16 “(I) reported before January 1,
17 1999, under section 1605 of the En-
18 ergy Policy Act of 1992 (42 U.S.C.
19 13385); or

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

24 “(ii) are verified (in accordance with
25 section 706) as—

1 “(I) being accurately reported;
2 “(II) not being double-counted;
3 and
4 “(III) representing actual reduc-
5 tions in greenhouse gas emissions or
6 in actual net carbon sequestration.

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

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

15 “(1) NOTIFICATION OF PROVISIONAL CREDIT.—
16 The President shall annually notify each participant
17 of the quantity of greenhouse gas reduction credit
18 provisionally earned under an early action agree-
19 ment.

20 “(2) AWARD OF FINAL CREDIT.—Effective on
21 January 1, 2008, a participant shall be entitled to
22 receive 1 ton of greenhouse gas reduction credit for
23 each 1 ton that is creditable under subsection (a).

1 **“SEC. 704. BASELINE AND BASE PERIOD.**

2 “(a) SOURCE BASELINE.—A participant’s annual
3 source baseline for each of calendar years 1999 through
4 2007 shall be equal to the participant’s average annual
5 greenhouse gas emissions from domestic sources covered
6 by the participant’s early action agreement during a 1996
7 through 1998 base period, adjusted for the calendar year
8 as provided in subsections (a)(2), (c)(1), and (c)(2) of sec-
9 tion 705.

10 “(b) RESERVOIR BASELINE.—A participant’s annual
11 reservoir baseline for each of calendar years 1999 through
12 2007 shall be equal to the average level of carbon stocks
13 in carbon reservoirs covered by the participant’s early ac-
14 tion agreement for a 1996 through 1998 base period, ad-
15 justed for the calendar year as provided in section
16 705(c)(1).

17 “(c) ALTERNATIVE BASE PERIODS.—

18 “(1) DATA UNAVAILABLE OR UNREPRESENTA-
19 TIVE.—The regulations promulgated under section
20 702(c) may specify a base period other than 1996
21 through 1998 that will be applicable if adequate
22 data are not available to determine a 1996 through
23 1998 baseline or if such data are unrepresentative.

24 “(2) ELECTIONS.—The regulations promul-
25 gated under section 702(c) may permit a participant
26 to elect a base period earlier than 1996 through

1 1998 (not to include any year earlier than 1990) to
 2 reflect voluntary reductions made before January 1,
 3 1996.

4 “(3) SECTION 1605 ACTIVITY.—Except as other-
 5 wise provided by the regulations promulgated under
 6 section 702(c), if an election is made for a base pe-
 7 riod earlier than 1996 through 1998, no greenhouse
 8 gas reduction credit shall be available under section
 9 703(a)(2)(C).

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

12 “(a) SOURCES.—

13 “(1) IN GENERAL.—

14 “(A) COVERED SOURCES.—Except as oth-
 15 erwise provided in this subsection, a partici-
 16 pant’s early action agreement shall cover all do-
 17 mestic greenhouse gas sources that the partici-
 18 pant owns as of the date on which the early ac-
 19 tion agreement is entered into.

20 “(B) EXCLUSIONS.—The regulations pro-
 21 mulgated under section 702(c) (or the terms of
 22 an early action agreement) may exclude from
 23 coverage under an early action agreement—

24 “(i) small or diverse sources owned by
 25 the participant; and

1 “(ii) sources owned by more than 1
2 person.

3 “(2) NEW SOURCES.—

4 “(A) IN GENERAL.—The regulations pro-
5 mulgated under section 702(c) may provide that
6 an early action agreement may provide for an
7 annual addition to a participant’s source base-
8 line to account for new sources owned by the
9 participant.

10 “(B) AMOUNT OF ADDITION.—The amount
11 of an addition under subparagraph (A) shall re-
12 flect the emission performance of the most effi-
13 cient commercially available technology for
14 sources of the same type as a new source (de-
15 termined as of the date on which the early ac-
16 tion agreement is entered into).

17 “(b) OPT-IN PROVISIONS.—

18 “(1) OPT-IN FOR OTHER OWNED SOURCES.—
19 Domestic sources owned by a participant that are
20 not required to be covered under subsection (a) may
21 be covered under an early action agreement at the
22 election of the participant.

23 “(2) OPT-IN FOR CARBON RESERVOIRS.—

24 “(A) IN GENERAL.—An early action agree-
25 ment may provide that domestic carbon res-

1 ervoirs owned by a participant may be covered
2 under the early action agreement at the election
3 of the participant.

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

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

22 “(c) ACCOUNTING RULES.—

23 “(1) TRANSFERS.—If ownership of a source or
24 carbon reservoir covered by an early action agree-
25 ment is transferred to or from the participant—

1 “(A) in the case of a source, the source’s
2 emissions shall be adjusted to reflect the trans-
3 fer for the base period and each year for which
4 greenhouse gas reduction credit is claimed; and

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

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

9 “(ii) the carbon reservoir’s net carbon
10 sequestration shall be adjusted to reflect
11 the transfer for each year for which green-
12 house gas reduction credit is claimed.

13 “(2) DISPLACEMENT OF EMISSIONS.—An early
14 action agreement shall contain effective and work-
15 able provisions that ensure that only net emission
16 reductions will be credited under section 703 in cir-
17 cumstances in which emissions are displaced from
18 sources covered by an early action agreement to
19 sources not covered by an early action agreement.

20 “(3) PERIOD OF COVERAGE.—Emissions from
21 sources and net carbon sequestration in carbon res-
22 ervoirs shall be covered by an early action agreement
23 for the 1999 through 2007 period, except as pro-
24 vided under paragraph (1) or by the regulations pro-
25 mulgated under section 702(e).

1 “(4) PARTIAL YEARS.—An early action agree-
2 ment shall contain appropriate provisions for any
3 partial year of coverage of a source or carbon res-
4 ervoir.

5 **“SEC. 706. MEASUREMENT AND VERIFICATION.**

6 “An early action agreement shall provide that the
7 participant, in accordance with the regulations promul-
8 gated under section 702(c)—

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

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

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

18 “In the case of a participant that manufactures or
19 constructs for sale to end-users equipment or facilities
20 that emit greenhouse gases, the President may enter into
21 an early action agreement that does not meet the require-
22 ments of sections 703 through 705, if the President deter-
23 mines that—

24 “(1) an early action agreement that meets the
25 requirements of those sections is infeasible;

1 “(2) an alternative form of agreement would
2 better carry out this title; and

3 “(3) an agreement under this section would
4 achieve tonnage reductions of greenhouse gas emis-
5 sions that are comparable to reductions that would
6 be achieved under an agreement that meets the re-
7 quirements of those sections.

8 **“SEC. 708. TRADING AND POOLING.**

9 “(a) TRADING.—A participant may—

10 “(1) purchase earned greenhouse gas reduction
11 credit from and sell the credit to any other partici-
12 pant; and

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

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

20 **“SEC. 709. RELATIONSHIP TO FUTURE DOMESTIC GREEN-
21 HOUSE GAS REGULATORY STATUTE.**

22 “(a) IN GENERAL.—An early action agreement shall
23 not bind the United States to adopt (or not to adopt) any
24 particular form of domestic greenhouse gas regulatory

1 statute, except that an early action agreement shall pro-
2 vide that—

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

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

23 “(b) LIMITATION.—Nothing in this title authorizes
24 aggregate greenhouse gas emissions from domestic sources
25 in an amount that exceeds any greenhouse gas emission

1 limitation applicable to the United States under an inter-
2 national agreement that has been ratified by the United
3 States and has entered into force.”.

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