

**DOE's Legal Authority Regarding Transferable Credits:  
CEI Responds to EPICI—Again**

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**I. Background & Overview**

On September 20, 2002, the Electric Power Industry Climate Initiative (EPICI) submitted a supplemental comment to the Department of Energy (DOE) disputing the Natural Resources Defense Council's (NRDC) argument, presented in NRDC's June 5, 2002 comment, that DOE has no authority, under section 1605(b) of the 1992 Energy Policy Act, to provide transferable credits or baseline protection for "early voluntary" greenhouse gas reductions. On November 18, 2002, the Competitive Enterprise Institute (CEI) submitted a supplemental comment rebutting EPICI's criticism of NRDC's legal opinions. On March 3, 2003, Eric Holdsworth submitted a supplemental comment on behalf of EPICI responding to CEI's rebuttal.

The present paper examines EPICI's March 3 response. It finds that EPICI does not engage the substance of any of the arguments CEI presented in its November 18 comment. EPICI once again:

- Fails to identify any legal authority to award baseline protection and transferable credits applicable to a future carbon cap-and-trade program;
- Implausibly and erroneously suggests that even though Congress rejected a version of section 1605 that directed DOE to establish a crediting system, it nonetheless gave DOE authority to implement such a system;
- Misconstrues the purport of Senator Joe Lieberman's (D-Conn.) floor statement following final passage of the Energy Policy Act;
- Confuses the discretion DOE has in implementing a reporting system with authority to implement a baseline protection/crediting system;
- Confuses the absence of statutory prohibition against penalty protection and early credits with a grant of legislative authority to initiate such policies; and

- Tacitly concedes that DOE does not really have authority to protect companies' emission baselines or award early credits.

If implemented, the administration's transferable credit plan will create the institutional framework and lobbying incentives for energy rationing. A more inappropriate project for a Department of Energy is hard to imagine.

Advances in climate science counsel against alarmism, and even alarmists acknowledge that the Kyoto Protocol would be all economic pain for no environmental gain. If the United States embraces Kyoto-style energy rationing, it will not be because science and the public interest carried the day. More likely, it will be because transferable credits corrupted the politics of energy policy, and because industry groups who could have pulled the administration back from the brink chose instead to profit from its confusion.

## II. Commentary

EPICI's March 3, 2003 supplemental comment consists of seven paragraphs. Each paragraph is reproduced below in Arial font. Portions on which I comment are repeated in bold italics. CEI's comments are in Times New Roman font.

**Paragraph 1.** After the Electric Power Industry Climate Initiative (EPICI) submitted on September 25 [sic], 2002 supplemental legal authority comments to the Department of Energy (DOE) docket established on May 6, 2002 (see 67 *Fed. Reg.* 30370), another commenter, Marlo Lewis, submitted a lengthy paper that examines the EPICI comments. That paper apparently does not take issue with our contention that these two concepts, baseline protection and transferable credits, are separate and distinct, but concludes that they "ultimately have no application except as part of a regulatory (emissions cap-and-trade) program" and that "to set up a pre-regulatory crediting program via 'guidelines,' pursuant to no statutory authority, would not only be improper," it "would also be illegal."

*That paper apparently does not take issue with our contention that these two concepts, baseline protection and transferable credits, are separate and distinct,*

**CEI Comment:** EPICI's September 20, 2002 comment asserted, rather than explained, the importance of keeping the two "concepts," baseline protection and transferable credits, "separate and distinct." That comment also highlighted NRDC's agreement with EPICI that baseline protection and transferable credits are "distinct issues," just as EPICI's March 3, 2003 comment notes that CEI "does not take issue" with EPICI on this point. Evidently, this recondite definitional matter is a big deal to EPICI. It is not to CEI.

In most discussions of these issues—for example, the President's February 14, 2002 policy initiative; the Chafee-Lieberman-Lazio legislation of the 106<sup>th</sup> Congress; and publications of advocacy groups like Environmental Defense, Pew Center on Global

Climate Change, and World Resources Institute—baseline protection is the end to which transferable credits are a means. That is, the central rationale for credits is to protect early reducers from having to do double duty—reduce emissions from already lowered baselines—under a future climate policy.

CEI opposes the administration’s plan to award transferable credits for baseline protection. If implemented, it will fundamentally and unavoidably corrupt the politics of energy policy, for two reasons.

First, transferable credits will mobilize lobbying for energy rationing. Transferable credits attain full market value *only* under a Kyoto-style carbon cap. That is because, although many companies would love to sell carbon credits—especially if they can “earn” credits by reducing (or avoiding) emissions they would reduce (or avoid) anyway, in the normal course of business—few companies would want to buy credits unless constrained to do so by the necessity to meet a cap.<sup>1</sup> Since credits trading at \$4 to \$7 per ton today could be worth \$50 to \$100 per ton under a cap, every credit holder will have an incentive to lobby to make “voluntary” reductions mandatory.

Second, although touted as “voluntary” and “win-win” (good for business, good for the environment), transferable credits would create a coercive zero-sum game in which one company’s gain is another’s loss. Transferable credits provide baseline protection and have economic value only if they can be used to offset a company’s obligations under a future cap. A cap is an emissions “budget”—a legal limit on the quantity of emissions a specific sector or nation may lawfully release. If the cap is not to be exceeded, then the quantity of emission allowances available to companies in the mandatory period must be reduced by the number of credits awarded for “early” reductions in “voluntary” period. In other words, for every company that earns a credit for “early” reductions, there must be another that loses a credit under the cap.

Thus, transferable credits are, at bottom, a wealth transfer scheme. It is the essence of such programs to reallocate compliance period allowances from companies that do not take “early action” to those who do. Non-participants are penalized, forced in the mandatory period to either pay higher credit prices than would otherwise prevail or make deeper reductions than the cap would otherwise require. Once companies understand this dynamic, many will “volunteer” for “early action” just to avoid getting fleeced by rival firms later on. The predictable result is a surge in the number of companies holding Kyoto coupons that mature only under a cap.

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<sup>1</sup> Consider these remarks by Dupont’s Robert Routliffe, as reported in the March 17, 2003 edition of *Greenwire*: “As for carbon trading outside of Kyoto or another regulatory scheme, one industry analyst predicted that participation will be spotty and prices will likely remain low. ‘That is going to be a characteristic of any voluntary market. It’s hard to get folks to volunteer to spend money,’ said Robert Routliffe, manager of GHG emissions trading at DuPont.”

Neither EPICI nor any other commenter has explained the accounting procedures whereby DOE might provide baseline protection without issuing credits for “early” reductions. However, whether or not such a system is feasible, any baseline protection program would build a clientele for mandatory reductions, because, under a cap, firms enjoying such protection would gain a competitive advantage vis-à-vis other firms.

**Paragraph 2.** We disagree with the premise that these concepts “have no application” unless they are part of a regulatory cap and trade program and assume that the Administration also agrees fully with us, particularly in light of the President’s directives of February 2002 regarding both concepts. Those directives surely did not reference a cap and trade program, and we presume that none is contemplated.

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**CEI Comment:** My precise words (see Paragraph 1, above) were that baseline protection and transferable credits “*ultimately* have no application except as part of a regulatory (emissions cap-and-trade) program” (emphasis added). There really should be no dispute on this point. EPICI and others would not be asking for baseline protection and transferable credits if Kyoto did not exist and there were no political constituency for energy rationing. It is pointless to deny the obvious inherent linkage between a pre-regulatory transferable credits program and the regulatory scheme to which such credits would apply.

*We ... assume that the Administration also agrees fully with us, particularly in light of the President’s directives of February 2002 regarding both concepts. Those directives surely did not reference a cap and trade program, and we presume that none is contemplated.*

**CEI Comment:** The President implicitly referenced cap-and-trade when he directed DOE to ensure that companies registering emission reductions “are not penalized under a *future climate policy*” (emphasis added).

The fact that the President does not want cap-and-trade is small comfort, because on climate policy, the administration is a house divided:

- The President opposes the Kyoto Protocol. Yet his State Department refuses to renounce America’s participation as a signatory, despite acknowledging (when it renounced Bill Clinton’s signature on the Treaty of Rome establishing an International Criminal Court) that non-ratifying signatories remain treaty parties and, thus, are bound by customary international law not to act against the treaty’s purposes.
- The President opposes climate alarmism. Yet his Environmental Protection Agency (EPA) published the alarmist *Climate Action Report 2002* (CAR).

Moreover, his EPA and Office of Science and Technology Policy refuse to disavow the CAR even though it violates Federal Data Quality Act standards of objectivity and utility, and even though disavowal would demolish a key premise of the carbon dioxide lawsuit of the state attorneys general.<sup>2</sup>

- The President wants to replace the Kyoto Protocol’s absolute tonnage targets, which are anti-growth, with emission intensity targets, which can accommodate growth. Yet his February 2002 initiative proposes to award transferable credits for “real” (i.e., tonnage) reductions—ratifying, rather than replacing, the Kyoto framework.
- Finally, although the President has always opposed Kyoto, his administration initially advocated Kyoto-like controls on carbon dioxide emissions from power plants. Free-market and conservative groups had to mount a full-court press to talk the administration out of that mistake.

In short, the administration’s record on climate policy is one of confusion, inconsistency, and bureaucratic moonlighting. DOE’s advocacy of a crediting scheme comes straight out of the Environmental Defense-Pew-Lieberman playbook. If implemented, that scheme will create the institutional framework and lobbying incentives for energy rationing. A more inappropriate project for a Department of Energy is hard to imagine. EPICI ought to demand that DOE take a sobriety test. Instead, it plays the part of enabler.

**Paragraph 3.** We disagree with the paper’s contention that guidelines could not give recognition to these concepts and that DOE is legally incapable, in revising the Energy Policy Act (EPA) section 1605(b) guidelines and improving the existing database/registry, to provide such recognition of these two concepts.

*[G]uidelines could ... give recognition to these concepts ... provide such recognition of these two concepts.*

**CEI Comment:** The issue is not whether DOE’s revised 1605(b) guidelines could “give recognition” to “concepts.” Rather, the issue is whether DOE has legal authority—in the President’s words of February 14, 2002—“to *ensure* that businesses and individuals that

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<sup>2</sup> In their June 4, 2003 lawsuit, the attorneys general of Maine, Massachusetts, and Connecticut argue that EPA, as lead agency in producing the CAR, has already made a scientific determination that carbon dioxide emissions endanger public health and welfare—the trigger for regulatory action under section 108 of the Clean Air Act. The CAR, however, is based on two non-representative climate models—the “hottest” (Canadian Climate Center) and “wettest” (UK Hadley Center) out of some 26 models administration officials might have used. Moreover, as Virginia State Climatologist Patrick Michaels discovered and National Atmosphere and Ocean Administration scientist Thomas Karl confirmed, those models could not replicate past U.S. temperature trends better than could a table of random numbers. At once biased and useless, the CAR flunks Federal Data Quality Act (FDQA) standards of objectivity and utility. Disavowing the CAR as incompatible with FDQA would demolish a key premise of the AGs’ lawsuit. Yet the administration seems determined to preserve its alarmist report, going so far as to deny that the CAR is “information” subject to review under the FDQA.

register reductions *are not penalized* under a future climate policy, and to *give transferable credits* to companies that can show real emissions reductions” (emphases added). The issue is whether 1605(b) authorizes DOE to hand out regulatory offsets applicable to a “future climate policy” like Kyoto. As CEI’s November 18, 2002 paper noted, 1605(b) contains no hint or trace of such authority.

**Paragraph 4.** First, as to the question whether “guidelines” could give “recognition” to these two distinct concepts, we simply note that section 1605(b) provides that the Secretary “shall ... issue guidelines for the voluntary collection and reporting of information on sources of greenhouse gases” and that the EIA “shall develop forms for voluntary reporting under the guidelines” and “establish a data base comprised” of the voluntarily reported information. While the section is silent on public access and disclosure of the collected or reported information, DOE and the Energy Information Administration (EIA) have interpreted these provisions to provide for public disclosure of the information, subject to EPAct subsection 1605(b)(3) on confidentiality. Indeed, EIA publishes the information annually (see EIA report *Voluntary Reporting of Greenhouse Gases 2000* (Feb. 2002)). To our knowledge, there is nothing in EPAct subsections 1605(a) or (b), the current guidelines or any other relevant law applicable to DOE and EIA that would preclude EIA from including “recognition” of these concepts as part of that annual publication.

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**CEI Comment:** EPICI’s point here is that silence is not prohibition. Just as EIA was not precluded by the EPAct’s silence from publishing the emissions reduction information reported to it, so, EPICI suggests, EIA is not precluded by the EPAct’s silence from instituting a baseline-protection/crediting system. That is a complete non sequitur, because authority to publish information is *clearly implied* in subsections 1605(b)(3) and (4), whereas authority to protect baselines or award credits is not implied in any provisions of 1605.

Let’s look at the text. Subsection (3) states: “CONFIDENTIALITY.—Trade secret and commercial or financial information that is privileged or confidential shall be protected as provided in section 552 (b)(4) of title 5, United States Code.” This caveat would have no point unless Congress anticipated and desired EIA to publish information. Subsection (4) states: “ESTABLISHMENT OF DATA BASE.—Not later than 18 months after the date of the enactment of this Act, the Secretary through the Administrator of the Energy Information Administration shall establish a data base comprised of information voluntarily reported under this subsection. *Such information may be used by the reporting entity to demonstrate achieved reductions of greenhouse gases*” (emphasis added).” How

in the world could companies use the information they report to “demonstrate achieved reductions” unless the database is public information?

EPICI is grasping at straws. Unlike the authority to publish information, the authority to protect baselines or award credits is not implicit in any component of 1605(b). Silence is not prohibition, but neither is it authority to do whatever Congress has not prohibited. Courts do not presume that Congress has delegated power to an agency simply because the statute does not expressly withhold such power (*American Petroleum Institute v. EPA*, 52 F.3d 1113, 1120, D.C. Cir. 1995). Moreover, as the Supreme Court has emphasized, “Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* [by its silence] to enact statutory language that it has earlier discarded in favor of other language” (*INS v Cardoza-Fonseca*, 480 U.S. 421, 442-43, 1987). As CEI noted in its November 18, 2002 comment, when Congress adopted the EAct, it considered and rejected provisions to establish an emissions reduction crediting system.

***First, as to the question whether “guidelines” could give “recognition” to these two distinct concepts ... there is nothing in EAct subsections 1605(a) or (b), the current guidelines or any other relevant law applicable to DOE and EIA that would preclude EIA from including “recognition” of these concepts as part of that annual publication.***

**CEI Comment:** Again, the question at issue is not whether EIA’s guidelines can give “recognition” to “concepts,” but whether EIA, via guidelines, can “**ensure** that businesses and individuals that register reductions **are not penalized** under a future climate policy, and to **give transferable credits** to companies that can show real emissions reductions.” Although EPICI struggles to maintain the fiction that EIA has such authority, its real position is more modest. EPICI’s continual refrain about “concepts” and “recognition” boils down to this: Nothing in the law precludes EIA from revising its “annual publication” in ways that a future Congress **may** find useful **if** it decides **both** to enact a cap-and-trade program **and** to give credit under the cap for past reductions. This admission against interest is exactly where EPICI ended up in its September 20, 2002 comment. In that document, EPICI stated:

By their very nature, they [“recognition or certification” of reported reductions] are non-binding. What they offer is an opportunity for reporting entities to demonstrate their past actions and persuade the government if and when some future policy is debated in one or both of these two branches of government.

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In the final analysis, EPICI agrees with NRDC and CEI that DOE has no authority to protect baselines or award credits. All DOE has authority to do is “recognize” or “certify” reported reductions so reporting entities have an “opportunity” to “persuade” policymakers to provide baseline protection and transferable credits “if and when” a future cap-and-trade program is “debated.” Why EPICI bothers to challenge NRDC and CEI after effectively throwing in the towel is unclear. Perhaps EPICI believes that, once

EIA starts to “certify” reported reductions, industry will clamor for legislation authorizing baseline protection and transferable credits.

**Paragraph 5.** Second, as to the question of legal authority for DOE to revise current guidelines to provide such recognition, we refer to our letter and enclosure of September 25 [sic], 2002, which discuss this issue of legal authority at length and conclude that there is ample authority to recognize and apply these two concepts. Our conclusions are based on the legislative history of section 1605, particularly the work of the House-Senate Conference Committee; subsection 1605(b)(4), which states that the information voluntarily reported “may be used by the reporting entity to demonstrate achieved reductions” of greenhouse gases; and the general authority contained in the DOE Organization Act. Referenced also was the Framework Convention on Climate Change (FCCC), which the U.S. signed and ratified in 1992 prior to the enactment of the EPAct. Clearly, the FCC and section 1605 are in accord in encouraging voluntary actions to reduce and report reductions, avoidance and sequestration.

***Our conclusions are based on the legislative history of section 1605, particularly the work of the House-Senate Conference Committee;***

**CEI Comment:** As noted above and in CEI’s November 18, 2002 comment, when Congress enacted section 1605, it considered and rejected provisions directing EIA to implement a baseline-protection/crediting system. EPICI again fails to acknowledge the obvious implication of this critical fact of legislative history—EIA has no authority to institute a baseline-protection/crediting program.

***subsection 1605(b)(4), which states that the information voluntarily reported “may be used by the reporting entity to demonstrate achieved reductions” of greenhouse gases;***

**CEI Comment:** EPICI continues to confuse accounting with crediting. Obviously, DOE could not award credits unless it operated a database and reporting system enabling companies to “demonstrate achieved reductions.” However, authority to operate a database/reporting system in no way entails or implies authority to award credits. To borrow EPICI’s terminology, it is important to keep these two “concepts”—emissions reduction *accounting* and emissions reduction *crediting*—“separate and distinct.”

***and the general authority contained in the DOE Organization Act. Referenced also was the Framework Convention on Climate Change (FCCC), which the U.S. signed and ratified in 1992 prior to the enactment of the EPAct.***

**CEI Comment:** Here, as in its September 20, 2002 comment, EPICI invokes the DOE Organization Act without analysis or explanation. EPICI does not cite any provisions to show where and how the DOE Organization Act authorizes baseline protection or transferable credits. As for the FCCC, it is not self-executing, and here, as in its



September 20 comment, EPICI does not cite any statute enacted pursuant to the FCCC that authorizes DOE to provide penalty protection or credits.

**Paragraph 6.** Contrary to the views expressed in the Lewis paper, EPICI did not rely on remarks made on final passage of EPAct by Democratic Sen. Lieberman for these legal authority conclusions. EPICI did take note of those remarks because they were relevant to the changes made in the Conference Committee to the House and Senate versions of section 1605 that afforded greater “discretion” in the implementation of the new subsection (b) of section 1605. As we noted in footnote 5 of our enclosure to our September 25 [sic], 2002, supplemental comment, a Republican conferee who was a signatory of the Conference Committee’s reported bill, Rep. Carlos Moorhead, made similar remarks on final House passage of the bill when he said the conference report survived “with less detail and more discretion for the Administration.” 138 *Cong. Rec.* H11438 (daily ed. Oct. 5, 1992). Both remarks are supportive of the EPICI view that the final bill that was enacted clearly was revised from the pre-conference versions by 1) shifting from a call for rulemaking to guidelines and 2) discarding 11 specific provisions, including provisions on crediting and double counting, in favor of far more general language. In our view, the Lieberman/Moorhead descriptions of the final version of the law that it was “streamlined” and entailed “less detail and more discretion” are accurate and quite appropriate. They are sound and valuable legislative history in support of the EPICI conclusion that the revised section 1605 provides “more discretion in the program’s administration.”

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**CEI Comment:** EPICI’s September 20, 2002 comment reproduces most of Sen. Lieberman’s floor statement and discusses its alleged implications on five consecutive pages. It quotes one sentence by Rep. Moorhead, in a footnote. Nonetheless, let’s grant that EPICI merely ‘took note’ of Lieberman’s remarks. The real issue is whether those remarks (and Moorhead’s) mean what EPICI suggests they mean.

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*general language. In our view, the Lieberman/Moorhead descriptions of the final version of the law that it was “streamlined” and entailed “less detail and more discretion” are accurate and quite appropriate.*

**CEI Comment:** In its September 20, 2002 comment, EPICI suggested that “more discretion” included the discretion to transform the 1605(b) reporting program into a baseline-protection/crediting system. That reading of the statute has no support in the plain text of 1605(b), its logical implications, or its legislative history. In fact, it is not supported by Senator Lieberman’s floor statement, which described 1605(b) as establishing a “data base” and “simple accounting mechanism.”

As noted in CEI’s November 18, 2002 comment, if we compare the House version with the final version, we find that the “streamlining” occurs in what was section 1605(b) of the House version, which lists 11 types of reductions *eligible to receive credits*. In 1605(b)(1)(B) as enacted, those are summarized (“streamlined”) as types of reductions *eligible to be reported*. However, the House version of 1605(a), which provides “opportunities for entities to receive official certification of net greenhouse gas emission reductions relative to the baseline for purposes of receiving credit against any future Federal requirements that may apply to greenhouse gas emissions,” is not summarized or “streamlined” in 1605(b) as enacted. The conferees simply deleted that language.

*They are sound and valuable legislative history in support of the EPICI conclusion that the revised section 1605 provides “more discretion in the program’s administration.”*

**CEI Comment:** As CEI explained in its November 18, 2002 comment, precisely because conferees intended the 1605(b) program to capture data rather than protect baselines, they gave EIA more discretion in implementation. It is only when voluntary reductions generate credits that potentially confer competitive advantage on some firms at the expense of others that it becomes necessary to have rigorous and consistent accounting standards and practices. Thus, it was entirely appropriate for the House version of 1605, which provided for a crediting system, to prescribe “by rule” 11 specific features of the proposed GHG registry. In contrast, administrative “discretion” in the development of flexible “guidelines” was appropriate to encourage reporting under various voluntary programs that do not award credits.

**Paragraph 7.** We also note rather extensive comments in the Lewis paper about bills introduced, but never enacted, during the 105<sup>th</sup> and 106<sup>th</sup> Congresses by Sen. Lieberman and others regarding “early credit” proposals. The paper asks why the Senator championed such legislation in those Congresses, if the authority already existed for these two concepts in EPAct. Not knowing the intent of the Senator, we would not presume to reply to this rhetorical question. However, we understand that those bills (S. 2617 and S. 547) were decidedly regulatory in nature, which is exactly the opposite result achieved by the Conference Committee in adopting a revised section 1605. In fact, S. 2617 was an amendment to

the Clean Air Act and depended on the issuance by the President of numerous regulations. S. 547, while not an amendment to that Act, also required the promulgation of regulations. Moreover, EAct was enacted in the 102d Congress. References to introduced bills in later Congresses can have no bearing on the meaning and legislative history of a prior enactment.

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**CEI Comment:** As CEI's November 18, 2002 comment pointed out, even though President Clinton and Vice President Gore supported credit for early reductions, they never attempted to implement a crediting program via administrative action, nor did Sen. Lieberman ever call upon the Clinton-Gore Administration to use 1605(b) authority to provide baseline protection or transferable credits. Sen. Lieberman was an architect of the 1605(b) program, and Senators are not in the habit of introducing legislation to authorize the president to do things that they believe he already has authority to do. Therefore, I do presume that Lieberman twice introduced early credit legislation because it was as obvious to him as it was to Environmental Defense, the Pew Center on Global Climate Change, and the International Climate Change Partnership that 1605 provides no authority to protect baselines or award credits.

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**CEI Comment:** As noted above, it would be inappropriate for DOE (or any agency) to award regulatory offsets applicable against a future carbon cap-and-trade program on the basis of flexible "guidelines." The fact that 1605 as enacted is not a regulatory provision is *prima facie* evidence that it does not authorize baseline protection or transferable credits.

*Moreover, EAct was enacted in the 102d Congress. References to introduced bills in later Congresses can have no bearing on the meaning and legislative history of a prior enactment.*

**CEI Comment:** EPICI here criticizes as a technical legal point what I offered as a matter of common sense. Sen. Lieberman introduced early credit legislation in the 105<sup>th</sup> and 106<sup>th</sup> Congresses. The bill gained only 12 co-sponsors in its second go-round. Rep. Rick Lazio's (R-N.Y.) House companion bill attracted just 15 co-sponsors. Neither bill ever came to a vote in committee, much less on the House or Senate floor. To claim that

1605(b) authorizes DOE to award transferable credits is tantamount to asserting that Congress implicitly enacted the substance of the Lieberman-Lazio legislation in 1992—a thesis no informed commenter would defend.

### **III. Conclusion**

The administration's crediting plan comes straight out of the Environmental Defense-Pew-Clinton-Gore-Lieberman playbook. If implemented, that plan will create the institutional framework and lobbying incentives for energy rationing. A more inappropriate project for a Department of Energy is hard to imagine. EPICI ought to demand that DOE take a sobriety test. Instead, it plays the part of enabler.

Advances in climate science counsel against alarmism, and even alarmists acknowledge that Kyoto would be all economic pain for no environmental gain. If the United States embraces Kyoto-style energy rationing, it will not be because science and the public interest carried the day. More likely, it will be because transferable credits corrupted the politics of energy policy, and because industry groups who could have pulled the administration back from the brink chose instead to profit from its confusion.