

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To establish a Federal energy efficiency resource standard for electricity and natural gas suppliers.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.**

**(no.)** \_\_\_\_\_

To provide for the modernization of the energy policy of the United States, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FRANKEN (for himself and Mr. HEINRICH)

Viz:

1 At the end of title I, add the following:

2 **Subtitle D—Energy Efficiency**  
3 **Resource Standard**

4 **SEC. 1301. ENERGY EFFICIENCY RESOURCE STANDARD FOR**  
5 **RETAIL ELECTRICITY AND NATURAL GAS**  
6 **SUPPLIERS.**

7 (a) IN GENERAL.—Title VI of the Public Utility Reg-  
8 ulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is  
9 amended by adding at the end the following:

1 **“SEC. 610. FEDERAL ENERGY EFFICIENCY RESOURCE**  
2 **STANDARD FOR RETAIL ELECTRICITY AND**  
3 **NATURAL GAS SUPPLIERS.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) BASE QUANTITY.—

6 “(A) IN GENERAL.—The term ‘base quan-  
7 tity’, with respect to a retail electricity supplier  
8 or retail natural gas supplier, means, for each  
9 calendar year for which a performance standard  
10 is established under subsection (c), the average  
11 annual quantity of electricity or natural gas de-  
12 livered by the retail electricity supplier or retail  
13 natural gas supplier to retail customers during  
14 the 3 calendar years immediately preceding the  
15 first year that compliance is required under  
16 subsection (c)(1).

17 “(B) EXCLUSION.—The term ‘base quan-  
18 tity’, with respect to a retail natural gas sup-  
19 plier, does not include natural gas delivered for  
20 purposes of electricity generation.

21 “(2) CUSTOMER FACILITY SAVINGS.—The term  
22 ‘customer facility savings’ means a reduction in end-  
23 use electricity or natural gas consumption (including  
24 waste heat energy savings) at a facility of an end-  
25 use consumer of electricity or natural gas served by

1 a retail electricity supplier or natural gas supplier,  
2 as compared to—

3 “(A) in the case of a new facility, con-  
4 sumption at a reference facility of average effi-  
5 ciency;

6 “(B) in the case of an existing facility,  
7 consumption at the facility during a base period  
8 of not less than 1 year;

9 “(C) in the case of new equipment that re-  
10 places existing equipment at the end of the use-  
11 ful life of the existing equipment, consumption  
12 by new equipment of average efficiency of the  
13 same equipment type, except that customer sav-  
14 ings under this subparagraph shall not be  
15 counted towards customer savings under sub-  
16 paragraph (A) or (B); and

17 “(D) in the case of new equipment that re-  
18 places existing equipment with remaining useful  
19 life—

20 “(i) consumption of the existing  
21 equipment for the remaining useful life of  
22 the equipment; and

23 “(ii) thereafter, consumption of new  
24 equipment of average efficiency.

1           “(3) ELECTRICITY SAVINGS.—The term ‘elec-  
2           tricity savings’ means reductions in electricity con-  
3           sumption achieved through measures implemented  
4           after the date of enactment of this section, as deter-  
5           mined in accordance with regulations promulgated  
6           by the Secretary, that are limited to—

7                   “(A) customer facility savings of elec-  
8                   tricity, adjusted to reflect any associated in-  
9                   crease in fuel consumption at the facility;

10                   “(B) reductions in distribution system  
11                   losses of electricity achieved by a retail elec-  
12                   tricity supplier, as compared to losses attrib-  
13                   utable to new or replacement distribution sys-  
14                   tem equipment of average efficiency, as defined  
15                   in regulations promulgated by the Secretary;

16                   “(C) CHP savings;

17                   “(D) codes and standards savings of elec-  
18                   tricity; and

19                   “(E) fuel switching energy savings that re-  
20                   sults in net savings of electricity.

21           “(4) NATURAL GAS SAVINGS.—The term ‘nat-  
22           ural gas savings’ means reductions in natural gas  
23           consumption from measures implemented after the  
24           date of enactment of this section, as determined in

1 accordance with regulations promulgated by the Sec-  
2 retary, that are limited to—

3 “(A) customer facility savings of natural  
4 gas, adjusted to reflect any associated increase  
5 in electricity consumption or consumption of  
6 other fuels at the facility;

7 “(B) reductions in leakage, operational  
8 losses, and consumption of natural gas fuel to  
9 operate a gas distribution system, achieved by  
10 a retail natural gas supplier, as compared to  
11 similar leakage, losses, and consumption during  
12 a base period of not less than 1 year;

13 “(C) codes and standards savings of nat-  
14 ural gas; and

15 “(D) fuel switching energy savings that re-  
16 sults in net savings of natural gas.

17 “(5) RETAIL ELECTRICITY SUPPLIER.—

18 “(A) IN GENERAL.—The term ‘retail elec-  
19 tricity supplier’ means, for any given calendar  
20 year, an electric utility that sells not less than  
21 1,000,000 megawatt hours of electric energy to  
22 electric consumers for purposes other than re-  
23 sale during the preceding calendar year.

24 “(B) INCLUSIONS AND LIMITATIONS.—For  
25 purposes of determining whether an electric

1 utility qualifies as a retail electricity supplier  
2 under subparagraph (A)—

3 “(i) deliveries by any affiliate of an  
4 electric utility to electric consumers for  
5 purposes other than resale shall be consid-  
6 ered to be deliveries by the electric utility;  
7 and

8 “(ii) deliveries by any electric utility  
9 to a lessee, tenant, or affiliate of the elec-  
10 tric utility shall not be considered to be de-  
11 liveries to electric consumers.

12 “(6) RETAIL NATURAL GAS SUPPLIER.—

13 “(A) IN GENERAL.—The term ‘retail nat-  
14 ural gas supplier’ means, for any given calendar  
15 year, a local distribution company (as defined  
16 in section 2 of the Natural Gas Policy Act of  
17 1978 (15 U.S.C. 3301)), that delivered to nat-  
18 ural gas consumers more than 5,000,000,000  
19 cubic feet of natural gas for purposes other  
20 than resale during the preceding calendar year.

21 “(B) INCLUSIONS AND LIMITATIONS.—For  
22 purposes of determining whether a person  
23 qualifies as a retail natural gas supplier under  
24 subparagraph (A)—

1                   “(i) deliveries of natural gas by any  
2                   affiliate of a local distribution company to  
3                   consumers for purposes other than resale  
4                   shall be considered to be deliveries by the  
5                   local distribution company; and

6                   “(ii) deliveries of natural gas to a les-  
7                   see, tenant, or affiliate of a local distribu-  
8                   tion company shall not be considered to be  
9                   deliveries to natural gas consumers.

10                  “(b) ESTABLISHMENT OF PROGRAM.—

11                   “(1) REGULATIONS.—Not later than 1 year  
12                   after the date of enactment of this section, the Sec-  
13                   retary shall, by regulation, establish a program to  
14                   implement and enforce the requirements of this sec-  
15                   tion, including by—

16                   “(A) defining the terms ‘CHP savings’,  
17                   ‘code and standards savings’, ‘combined heat  
18                   and power system’, ‘cost-effective’, ‘fuel switch-  
19                   ing energy savings’, ‘reporting period’, ‘third-  
20                   party efficiency provider’, and ‘waste heat en-  
21                   ergy savings’;

22                   “(B) establishing measurement and  
23                   verification procedures and standards that  
24                   count only measures and savings that are addi-

1 tional to business-as-usual customer purchase  
2 practices;

3 “(C) establishing requirements under  
4 which retail electricity suppliers and retail nat-  
5 ural gas suppliers shall—

6 “(i) demonstrate, document, and re-  
7 port the compliance of the retail electricity  
8 suppliers and retail natural gas suppliers  
9 with the performance standards under sub-  
10 section (c); and

11 “(ii) estimate the impact of the stand-  
12 ards on current and future electricity and  
13 natural gas use in the service territories of  
14 the suppliers;

15 “(D) establishing requirements governing  
16 applications for, and implementation of, dele-  
17 gated State administration under subsection  
18 (e); and

19 “(E) establishing rules to govern transfers  
20 of electricity or natural gas savings between  
21 suppliers and third-party efficiency providers  
22 serving the same State and between suppliers  
23 and third-party efficiency providers serving dif-  
24 ferent States.

1           “(2) COORDINATION WITH STATE PROGRAMS.—

2           In establishing and implementing this section, the  
3           Secretary shall, to the maximum extent practicable,  
4           preserve the integrity and incorporate best practices  
5           of existing State energy efficiency programs.

6           “(c) PERFORMANCE STANDARDS.—

7           “(1) COMPLIANCE OBLIGATION.—Not later  
8           than May 1 of the calendar year immediately fol-  
9           lowing each reporting period—

10           “(A) each retail electricity supplier shall  
11           submit to the Secretary a report, in accordance  
12           with regulations promulgated by the Secretary,  
13           demonstrating that the retail electricity supplier  
14           has achieved cumulative electricity savings (ad-  
15           justed to account for any attrition of savings  
16           measures implemented in prior years) in each  
17           calendar year that are equal to the applicable  
18           percentage of the base quantity of the retail  
19           electricity supplier; and

20           “(B) each retail natural gas supplier shall  
21           submit to the Secretary a report, in accordance  
22           with regulations promulgated by the Secretary,  
23           demonstrating that it has achieved cumulative  
24           natural gas savings (adjusted to account for  
25           any attrition of savings measures implemented

1 in prior years) in each calendar year that are  
 2 equal to the applicable percentage of the base  
 3 quantity of such retail natural gas supplier.

4 “(2) STANDARDS FOR 2017 THROUGH 2030.—  
 5 For each of calendar years 2017 through 2030, the  
 6 applicable percentages are as follows:

| “Calendar Year | Cumulative Electricity Savings Percentage | Cumulative Natural Gas Savings Percentage |
|----------------|---|---|
| 2017           | 1.00                                      | 0.50                                      |
| 2018           | 2.00                                      | 1.25                                      |
| 2019           | 3.00                                      | 2.00                                      |
| 2020           | 4.25                                      | 3.00                                      |
| 2021           | 5.50                                      | 4.00                                      |
| 2022           | 7.00                                      | 5.00                                      |
| 2023           | 8.50                                      | 6.00                                      |
| 2024           | 10.00                                     | 7.00                                      |
| 2025           | 11.50                                     | 8.00                                      |
| 2026           | 13.00                                     | 9.00                                      |
| 2027           | 14.75                                     | 10.00                                     |
| 2028           | 16.50                                     | 11.00                                     |
| 2029           | 18.25                                     | 12.00                                     |
| 2030           | 20.00                                     | 13.00.                                    |

7 “(3) SUBSEQUENT YEARS.—

8 “(A) CALENDAR YEARS 2031 THROUGH  
 9 2040.—Not later than December 31, 2028, the  
 10 Secretary shall promulgate regulations estab-  
 11 lishing performance standards (expressed as ap-  
 12 plicable percentages of base quantity for both  
 13 cumulative electricity savings and cumulative

1 natural gas savings) for each of calendar years  
2 2031 through 2040.

3 “(B) REQUIREMENTS.—The Secretary  
4 shall establish standards under this paragraph  
5 at levels reflecting the maximum achievable  
6 level of cost-effective energy efficiency potential,  
7 taking into account—

8 “(i) cost-effective energy savings  
9 achieved by leading retail electricity sup-  
10 pliers and retail natural gas suppliers;

11 “(ii) opportunities for new codes and  
12 standard savings;

13 “(iii) technology improvements; and

14 “(iv) other indicators of cost-effective  
15 energy efficiency potential including dif-  
16 ferences between States.

17 “(C) MINIMUM PERCENTAGE.—In no case  
18 shall the applicable percentages for any cal-  
19 endar year be less than the applicable percent-  
20 ages for calendar year 2030.

21 “(4) DELAY OF SUBMISSION FOR FIRST RE-  
22 PORTING PERIOD.—

23 “(A) IN GENERAL.—Notwithstanding  
24 paragraphs (1) and (2), for the 2017 reporting  
25 period, the Secretary may accept a request from

1 a retail electricity supplier or a retail natural  
2 gas supplier to delay the required submission of  
3 documentation of all or part of the required  
4 savings for up to 2 years.

5 “(B) PLAN FOR COMPLIANCE.—The re-  
6 quest for delay under subparagraph (A) shall  
7 include a plan for coming into full compliance  
8 by the end of the 2018–2019 reporting period.

9 “(5) APPLYING UNUSED SAVINGS TO FUTURE  
10 YEARS.—If savings achieved in a year exceed the  
11 performance standards specified in this subsection,  
12 any savings in excess of the performance standards  
13 may be applied toward performance standards speci-  
14 fied for future years.

15 “(d) ENFORCEMENT AND JUDICIAL REVIEW.—

16 “(1) REVIEW OF RETAIL SUPPLIER REPORTS.—

17 “(A) IN GENERAL.—The Secretary shall  
18 review each report submitted to the Secretary  
19 by a retail electricity supplier or retail natural  
20 gas supplier under subsection (c) to verify that  
21 the applicable performance standards under  
22 subsection (c) have been met.

23 “(B) EXCLUSION.—In determining compli-  
24 ance with the applicable performance standards  
25 under subsection (c), the Secretary shall ex-

1           clude reported electricity savings or natural gas  
2           savings that are not adequately demonstrated  
3           and documented, in accordance with the regula-  
4           tions promulgated under subsections (b) and  
5           (c).

6           “(2) PENALTY FOR FAILURE TO DOCUMENT  
7           ADEQUATE SAVINGS.—If a retail electricity supplier  
8           or a retail natural gas supplier fails to demonstrate  
9           compliance with an applicable performance standard  
10          under subsection (c), or to pay to the State an appli-  
11          cable alternative compliance payment under sub-  
12          section (e)(3), the Secretary shall assess against the  
13          retail electricity supplier or retail natural gas sup-  
14          plier a civil penalty for each failure in an amount  
15          equal to, as adjusted for inflation in accordance with  
16          such regulations as the Secretary may promulgate—

17                 “(A) \$100 per megawatt hour of electricity  
18                 savings or alternative compliance payment that  
19                 the retail electricity supplier failed to achieve or  
20                 make, respectively; or

21                 “(B) \$10 per million Btu of natural gas  
22                 savings or alternative compliance payment that  
23                 the retail natural gas supplier failed to achieve  
24                 or make, respectively.

1           “(3) OFFSETTING STATE PENALTIES.—The  
2           Secretary shall reduce the amount of any penalty  
3           under paragraph (2) by the amount paid by the rel-  
4           evant retail electricity supplier or retail natural gas  
5           supplier to a State for failure to comply with the re-  
6           quirements of a State energy efficiency resource  
7           standard during the same compliance period.

8           “(4) ENFORCEMENT PROCEDURES.—The Sec-  
9           retary shall assess a civil penalty, as provided under  
10          paragraph (2), in accordance with the procedures  
11          described in section 333(d) of the Energy Policy and  
12          Conservation Act of 1954 (42 U.S.C. 6303).

13          “(e) STATE ADMINISTRATION.—

14                 “(1) IN GENERAL.—Upon receipt of an applica-  
15                 tion from the Governor of a State (including the  
16                 Mayor of the District of Columbia), the Secretary  
17                 may delegate to the State responsibility for admin-  
18                 istering this section within the territory of the State  
19                 if the Secretary determines that the State will imple-  
20                 ment an energy efficiency program that meets or ex-  
21                 ceeds the requirements of this section.

22                 “(2) SECRETARIAL DETERMINATION.—Not  
23                 later than 180 days after the date on which a com-  
24                 plete application is received by the Secretary, the  
25                 Secretary shall make a substantive determination

1 approving or disapproving a State application, after  
2 public notice and comment.

3 “(3) ALTERNATIVE COMPLIANCE PAYMENTS.—

4 “(A) IN GENERAL.—As part of an applica-  
5 tion submitted under paragraph (1), a State  
6 may permit retail electricity suppliers or retail  
7 natural gas suppliers to pay to the State, by  
8 not later than May 1 of the calendar year im-  
9 mediately following the applicable reporting pe-  
10 riod, an alternative compliance payment in an  
11 amount equal to, as adjusted for inflation in ac-  
12 cordance with such regulations as the Secretary  
13 may promulgate, not less than—

14 “(i) \$50 per megawatt hour of elec-  
15 tricity savings needed to make up any def-  
16 icit with regard to a compliance obligation  
17 under the applicable performance stand-  
18 ard; or

19 “(ii) \$5 per million Btu of natural gas  
20 savings needed to make up any deficit with  
21 regard to a compliance obligation under  
22 the applicable performance standard.

23 “(B) USE OF PAYMENTS.—Alternative  
24 compliance payments collected by a State under  
25 subparagraph (A) shall be used by the State to

1 administer the delegated authority of the State  
2 under this section and to implement cost-effective  
3 energy efficiency programs that—

4 “(i) to the maximum extent prac-  
5 ticable, achieve electricity savings and nat-  
6 ural gas savings in the State sufficient to  
7 make up the deficit associated with the al-  
8 ternative compliance payments; and

9 “(ii) can be measured and verified in  
10 accordance with the applicable procedures  
11 and standards under subsection (b)(1)(B).

12 “(4) REVIEW OF STATE IMPLEMENTATION.—

13 “(A) PERIODIC REVIEW.—Every 2 years,  
14 the Secretary shall review State implementation  
15 of this section for conformance with the re-  
16 quirements of this section in approximately ½  
17 of the States that have received approval under  
18 this subsection to administer the program, so  
19 that each State shall be reviewed at least every  
20 4 years.

21 “(B) REPORT.—To facilitate the review  
22 under subparagraph (A), the Secretary may re-  
23 quire the State to submit a report dem-  
24 onstrating the conformance of the State with  
25 the requirements of this section.

1 “(C) DEFICIENCIES.—

2 “(i) IN GENERAL.—In completing a  
3 review under this paragraph, if the Sec-  
4 retary finds deficiencies, the Secretary  
5 shall—

6 “(I) notify the State of the defi-  
7 ciencies;

8 “(II) direct the State to correct  
9 the deficiencies; and

10 “(III) require the State to report  
11 to the Secretary on progress made by  
12 not later than 180 days after the date  
13 on which the State receives notice  
14 under subclause (I).

15 “(ii) SUBSTANTIAL DEFICIENCIES.—If  
16 the deficiencies are substantial, the Sec-  
17 retary shall—

18 “(I) disallow the reported elec-  
19 tricity savings or natural gas savings  
20 that the Secretary determines are not  
21 credible due to deficiencies;

22 “(II) re-review the State not  
23 later than 2 years after the date on  
24 which the original review was com-  
25 pleted; and

1                   “(III) if substantial deficiencies  
2                   remain uncorrected after the review  
3                   provided for under subclause (II), re-  
4                   voke the authority of the State to ad-  
5                   minister the program established  
6                   under this section.

7           “(f) INFORMATION AND REPORTS.—In accordance  
8 with section 13 of the Federal Energy Administration Act  
9 of 1974 (15 U.S.C. 772), the Secretary may require any  
10 retail electricity supplier, retail natural gas supplier, third-  
11 party efficiency provider, or any other entity that the Sec-  
12 retary determines appropriate, to provide any information  
13 the Secretary determines appropriate to carry out this sec-  
14 tion.

15           “(g) STATE LAW.—Nothing in this section dimin-  
16 ishes or qualifies any authority of a State or political sub-  
17 division of a State to adopt or enforce any law or regula-  
18 tion respecting electricity savings or natural gas savings,  
19 including any law or regulation establishing energy effi-  
20 ciency requirements that are more stringent than those  
21 under this section, except that no State law or regulation  
22 shall relieve any person of any requirement otherwise ap-  
23 plicable under this section.”.

24           (b) CONFORMING AMENDMENT.—The table of con-  
25 tents of the Public Utility Regulatory Policies Act of 1978

- 1 (16 U.S.C. prec. 2601) is amended by adding at the end
- 2 of the items relating to title VI the following:

“Sec. 609. Rural and remote communities electrification grants.

“Sec. 610. Federal energy efficiency resource standard for retail electricity and natural gas suppliers.”.