

AMENDMENT NO. _____ Calendar No. _____

Purpose: To strike or modify provisions relating to better buildings, energy information for commercial buildings, water heaters, and voluntary verification programs for air conditioning, furnace, boiler, heat pump, and water heater products.

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

S. 720

To promote energy savings in residential buildings and industry, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by _____

Viz:

- 1 Strike subtitles D and E of title I.
- 2 Strike subtitle C of title IV.
- 3 Strike section 441 and insert the following:

1 **SEC. 441. VOLUNTARY VERIFICATION PROGRAMS FOR AIR**
2 **CONDITIONING, FURNACE, BOILER, HEAT**
3 **PUMP, AND WATER HEATER PRODUCTS.**

4 Section 326(b) of the Energy Policy and Conserva-
5 tion Act (42 U.S.C. 6296(b)) is amended by adding at
6 the end the following:

7 “(6) VOLUNTARY VERIFICATION PROGRAMS FOR
8 AIR CONDITIONING, FURNACE, BOILER, HEAT PUMP,
9 AND WATER HEATER PRODUCTS.—

10 “(A) RELIANCE ON VOLUNTARY PRO-
11 GRAMS.—For the purpose of periodic testing to
12 verify compliance with energy conservation
13 standards and Energy Star specifications estab-
14 lished under sections 324A, 325, and 342 for
15 covered products described in paragraphs (3),
16 (4), (5), (9), and (11) of section 322(a) and
17 covered equipment described in subparagraphs
18 (B), (C), (D), (F), (I), (J), and (K) of section
19 340(1), the Secretary and the Administrator of
20 the Environmental Protection Agency shall rely
21 on testing conducted by voluntary verification
22 programs that are recognized by the Secretary
23 in accordance with subparagraph (B).

24 “(B) RECOGNITION OF VOLUNTARY
25 VERIFICATION PROGRAMS.—

1 “(i) IN GENERAL.—Not later than
2 180 days after the date of enactment of
3 this paragraph, the Secretary shall initiate
4 a negotiated rulemaking in accordance
5 with subchapter III of chapter 5 of title 5,
6 United States Code (commonly known as
7 the ‘Negotiated Rulemaking Act of 1990’)
8 to develop criteria that have consensus
9 support for achieving recognition by the
10 Secretary as an approved voluntary
11 verification program.

12 “(ii) MINIMUM REQUIREMENTS.—The
13 criteria developed under clause (i) shall, at
14 a minimum, ensure that the voluntary
15 verification program—

16 “(I) is nationally recognized;

17 “(II) is operated by a third party
18 and not directly operated by a pro-
19 gram participant;

20 “(III) satisfies any applicable ele-
21 ments of—

22 “(aa) International Organi-
23 zation for Standardization stand-
24 ard numbered 17025; and

1 “(bb) any other relevant
2 International Organization for
3 Standardization standards identi-
4 fied and agreed to through the
5 negotiated rulemaking under
6 clause (i);

7 “(IV) at least annually tests
8 independently obtained products fol-
9 lowing the test procedures established
10 under this title to verify the certified
11 rating of a representative sample of
12 products and equipment within the
13 scope of the program;

14 “(V) maintains a publicly avail-
15 able list of all ratings of products sub-
16 ject to verification;

17 “(VI) requires the changing of
18 the performance rating or removal of
19 the product or equipment from the
20 program if testing determines that the
21 performance rating does not meet the
22 levels the manufacturer has certified
23 to the Secretary;

24 “(VII) requires new program
25 participants to substantiate ratings

1 through test data generated in accord-
2 ance with DOE regulations;

3 “(VIII) allows for challenge test-
4 ing of products and equipment within
5 the scope of the program;

6 “(IX) requires program partici-
7 pants to disclose the performance rat-
8 ing of all covered products and equip-
9 ment within the scope of the program
10 for the covered product or equipment;

11 “(X) provides to the Secretary—

12 “(aa) an annual report of all
13 test results, the contents of which
14 shall be determined through the
15 negotiated rulemaking process
16 under clause (i); and

17 “(bb) test reports, on the re-
18 quest of the Secretary or the Ad-
19 ministrator of the Environmental
20 Protection Agency, that note any
21 instructions specified by the man-
22 ufacturer or the representative of
23 the manufacturer for the purpose
24 of conducting the verification
25 testing, to be exempted from dis-

1 closure to the extent provided
2 under section 552(b)(4) of title
3 5, United States Code (commonly
4 known as the ‘Freedom of Infor-
5 mation Act’); and

6 “(XI) satisfies any additional re-
7 quirements or standards that the Sec-
8 retary and Administrator of the Envi-
9 ronmental Protection Agency shall es-
10 tablish consistent with this subpara-
11 graph.

12 “(iii) FINDING REQUIRED FOR CES-
13 SATION OF RECOGNITION.—The Secretary
14 may only cease recognition of a voluntary
15 verification program as an approved pro-
16 gram described in subparagraph (A) on a
17 finding that the program is not meeting its
18 obligations for compliance through pro-
19 gram review criteria established under this
20 subparagraph.

21 “(iv) REVISIONS.—

22 “(I) IN GENERAL.—Major revi-
23 sions to voluntary verification pro-
24 gram criteria established under this
25 subparagraph shall only be made pur-

1 suant to a subsequent negotiated rule-
2 making in accordance with subchapter
3 III of chapter 5 of title 5, United
4 States Code (commonly known as the
5 ‘Negotiated Rulemaking Act of
6 1990’).

7 “(II) NONMAJOR REVISIONS.—

8 “(aa) IN GENERAL.—The
9 Secretary may make all other
10 nonmajor criteria revisions by
11 initiating a direct final rule in ac-
12 cordance with section
13 553(b)(3)(B) of title 5, United
14 States Code, on a determination
15 published in the Federal Register
16 that revisions to the criteria are
17 necessary and that substantive
18 opposition to the proposed revi-
19 sions is not expected.

20 “(bb) CONDITIONS FOR EF-
21 FECTIVENESS.—If the Secretary
22 does not receive adversarial com-
23 ments with respect to the deter-
24 mination published under item
25 (aa) during the 30-day-period fol-

1 lowing publication of that deter-
2 mination in the Federal Register,
3 the direct final rule shall have
4 the force and effect of law.

5 “(cc) WITHDRAWAL OF
6 FINAL RULE.—Receipt of any ad-
7 versarial comment with respect to
8 the determination published
9 under item (aa) shall require the
10 Secretary to withdraw the direct
11 final rule and publish—

12 “(AA) a notice of pro-
13 posed rulemaking pursuant
14 to section 553 of title 5,
15 United States Code; or

16 “(BB) a notice of pro-
17 posed rulemaking pursuant
18 to section 553 of title 5,
19 United States Code, that in-
20 cludes a determination that
21 revisions to the criteria are
22 necessary.

23 “(C) ADMINISTRATION.—

1 “(i) IN GENERAL.—The Secretary and
2 the Administrator of the Environmental
3 Protection Agency shall not require—

4 “(I) manufacturers to participate
5 in a voluntary verification program
6 described in subparagraph (A); or

7 “(II) participating manufacturers
8 to provide information that has al-
9 ready been provided to the Secretary
10 or the Administrator.

11 “(ii) LIST OF COVERED PRODUCTS.—
12 The Secretary or the Administrator of the
13 Environmental Protection Agency may
14 maintain a publicly available list of covered
15 products and equipment that distinguishes
16 between products that are, and are not
17 covered products and equipment verified
18 through a voluntary verification program
19 described in subparagraph (A);

20 “(iii) PERIODIC VERIFICATION TEST-
21 ING.—

22 “(I) IN GENERAL.—The Sec-
23 retary—

24 “(aa) shall not subject prod-
25 ucts or equipment that have been

1 verification tested under a vol-
2 untary verification program de-
3 scribed in subparagraph (A) to
4 periodic verification testing that
5 verifies the accuracy of the cer-
6 tified performance rating of the
7 products or equipment; but

8 “(bb) may test products or
9 equipment described in subclause
10 (I) if the testing is necessary—

11 “(AA) to assess the
12 overall performance of a vol-
13 untary verification program;

14 “(BB) to address spe-
15 cific performance issues;

16 “(CC) for use in updat-
17 ing test procedures and
18 standards; or

19 “(DD) for other pur-
20 poses consistent with this
21 title.

22 “(II) ADDITIONAL TESTING.—

23 The Secretary may subject products
24 or equipment described in subclause
25 (I) to periodic verification testing out-

1 side the restrictions of subclause
2 (I)(bb), if agreed to during the rule-
3 making described in subparagraph
4 (B)

5 “(D) EFFECT ON OTHER AUTHORITY.—
6 Nothing in this paragraph limits the authority
7 of the Secretary or the Administrator of the
8 Environmental Protection Agency to enforce
9 compliance with any law.”.