

111TH CONGRESS
1ST SESSION

H. R. 889

To amend title VI of the Public Utility Regulatory Policies Act of 1978 to establish a Federal energy efficiency resource standard for retail electricity and natural gas distributors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. MARKEY of Massachusetts introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title VI of the Public Utility Regulatory Policies Act of 1978 to establish a Federal energy efficiency resource standard for retail electricity and natural gas distributors, and for other purposes.

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 “Save American Energy
5 Act”.

1 **SEC. 2. ENERGY EFFICIENCY RESOURCE STANDARD FOR**
2 **RETAIL ELECTRICITY AND NATURAL GAS DIS-**
3 **TRIBUTORS.**

4 (a) IN GENERAL.—Title VI of the Public Utility Reg-
5 ulatory Policies Act of 1978 (16 U.S.C. 2601 and fol-
6 lowing) is amended by adding at the end the following:

7 **“SEC. 610. FEDERAL ENERGY EFFICIENCY RESOURCE**
8 **STANDARD FOR RETAIL ELECTRICITY AND**
9 **NATURAL GAS DISTRIBUTORS.**

10 “(a) STATEMENT OF FEDERAL POLICY.—The Fed-
11 eral energy efficiency resource standard established by this
12 section sets nationwide minimum levels of electricity and
13 natural gas savings to be achieved through utility effi-
14 ciency programs, building energy codes, appliance stand-
15 ards, and related efficiency measures. In light of the cost-
16 effective energy efficiency opportunities that exist across
17 the country in every sector of the economy, retail elec-
18 tricity distributors, retail natural gas distributors, and
19 States should additionally consider energy efficiency as a
20 resource in utility planning and procurement activities and
21 should seek to achieve all energy efficiency that is avail-
22 able at lower cost than energy supply options.

23 “(b) DEFINITIONS.—In this section:

24 “(1) AFFILIATE.—The term ‘affiliate’ when
25 used in relation to a person, means another person
26 which owns or controls, is owned or controlled by, or

1 is under common ownership control with, such per-
2 son, as determined under regulations promulgated
3 by the Secretary.

4 “(2) ASHRAE, ANSI, AND IESNA.—The terms
5 ‘ASHRAE’, ‘ANSI’, and ‘IESNA’ mean the Amer-
6 ican Society of Heating, Refrigerating and Air Con-
7 ditioning Engineers, the American National Stand-
8 ards Institute, and the Illuminating Engineering So-
9 ciety of North America, respectively.

10 “(3) BASE QUANTITY.—The term ‘base quan-
11 tity’, with respect to a retail electricity distributor or
12 retail natural gas distributor, means, for each year
13 for which a performance standard is established
14 under subsection (d), the average annual quantity of
15 electricity or natural gas delivered by the retail elec-
16 tricity distributor or retail natural gas distributor to
17 retail customers during the 2 calendar years imme-
18 diately preceding such year. In determining the base
19 quantity of a retail natural gas distributor, natural
20 gas delivered for purposes of electricity generation
21 shall be excluded.

22 “(4) CHP SAVINGS.—The term ‘CHP savings’
23 means—

24 “(A) CHP system savings from a combined
25 heat and power system that commences oper-

1 ation after the date of enactment of this sec-
2 tion; and

3 “(B) the increase in CHP system savings
4 from upgrading or replacing, after the date of
5 enactment of this section, a combined heat and
6 power system that commenced operation on or
7 before the date of enactment of this section.

8 “(5) CHP SYSTEM SAVINGS.—The term ‘CHP
9 system savings’ means the electric output, and the
10 electricity saved due to the mechanical output, of a
11 combined heat and power system, adjusted to reflect
12 any increase in fuel consumption by that system as
13 compared to the fuel that would have been required
14 to produce an equivalent useful thermal energy out-
15 put in a separate thermal-only system, as deter-
16 mined in accordance with regulations promulgated
17 by the Secretary.

18 “(6) CODES AND STANDARDS SAVINGS.—

19 “(A) IN GENERAL.—The term ‘codes and
20 standards savings’ means a reduction in end-
21 use electricity or natural gas consumption in a
22 retail electricity distributor or a retail natural
23 gas distributor’s service territory as a result of
24 the adoption and implementation, after the date
25 of enactment of this section, of new or revised

1 appliance and equipment efficiency standards or
2 building energy codes.

3 “(B) BASELINES.—In calculating codes
4 and standards savings—

5 “(i) the baseline for calculating sav-
6 ings from building codes shall be the 2006
7 International Energy Conservation Code
8 for residential buildings and the ASHRAE/
9 ANSI/IESNA Standard 90.1–2004 for
10 commercial buildings, or the relevant State
11 building code in effect on date of enact-
12 ment of this section, whichever is more
13 stringent; and

14 “(ii) the baseline for calculating sav-
15 ings from appliance standards shall be the
16 average efficiency of new appliances in the
17 relevant category or categories prior to
18 adoption and implementation of the new
19 standard.

20 “(7) COMBINED HEAT AND POWER SYSTEM.—

21 The term ‘combined heat and power system’ means
22 a system that uses the same energy source both for
23 the generation of electrical or mechanical power and
24 the production of steam or another form of useful
25 thermal energy, provided that—

1 “(A) the system meets such requirements
2 relating to efficiency and other operating char-
3 acteristics as the Secretary may promulgate by
4 regulation; and

5 “(B) the net wholesale sales of electricity
6 by the facility will not exceed 50 percent of
7 total annual electric generation by the facility.

8 “(8) COST-EFFECTIVE.—The term ‘cost-effec-
9 tive’, with respect to an energy efficiency measure,
10 means that the measure achieves a net present value
11 of economic benefits over the life of the measure,
12 both directly to the energy consumer and to the
13 economy, that is greater than the net present value
14 of the cost of the measure over the life of the meas-
15 ure, both directly to the energy consumer and to the
16 economy.

17 “(9) CUSTOMER FACILITY SAVINGS.—The term
18 ‘customer facility savings’ means a reduction in end-
19 use electricity or natural gas consumption (including
20 recycled energy savings) at a facility of an end-use
21 consumer of electricity or natural gas served by a re-
22 tail electricity distributor or natural gas distributor,
23 as compared to—

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

4 “(B) in the case of an existing facility,
5 consumption at such facility during a base pe-
6 riod (which shall not be less than 1 year); or

7 “(C) in the case of new equipment, regard-
8 less of whether the new equipment replaces ex-
9 isting equipment at the end of the useful life of
10 the existing equipment, consumption by new
11 equipment of average efficiency of the same
12 equipment type, provided that customer savings
13 under this subparagraph shall not be counted
14 towards customer savings under subparagraph
15 (A) or (B).

16 “(10) ELECTRICITY SAVINGS.—The term ‘elec-
17 tricity savings’ means reductions in electricity con-
18 sumption achieved through measures implemented
19 after the date of enactment of this section, as deter-
20 mined in accordance with regulations promulgated
21 by the Secretary, limited to—

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

1 “(B) reductions in distribution system
2 losses of electricity achieved by a retail elec-
3 tricity distributor, as compared to losses attrib-
4 utable to new or replacement distribution sys-
5 tem equipment of average efficiency (as defined
6 in regulations to be promulgated by the Sec-
7 retary);

8 “(C) CHP savings; and

9 “(D) codes and standards savings of elec-
10 tricity.

11 “(11) NATURAL GAS SAVINGS.—The term ‘nat-
12 ural gas savings’ means reductions in natural gas
13 consumption from measures implemented after the
14 date of enactment of this section, as determined in
15 accordance with regulations promulgated by the Sec-
16 retary, limited to—

17 “(A) customer facility savings of natural
18 gas, adjusted to reflect any associated increase
19 in electricity consumption or consumption of
20 other fuels at the facility;

21 “(B) reductions in leakage, operational
22 losses, and consumption of natural gas fuel to
23 operate a gas distribution system, achieved by
24 a retail natural gas distributor, as compared to
25 similar leakage, losses, and consumption during

1 a base period (which shall not be less than 1
2 year); and

3 “(C) codes and standards savings of nat-
4 ural gas.

5 “(12) POWER POOL.—The term ‘power pool’
6 means an association of 2 or more interconnected
7 electric systems that is recognized by the Commis-
8 sion as having an agreement to coordinate oper-
9 ations and planning for improved reliability and effi-
10 ciencies, including a Regional Transmission Organi-
11 zation or an Independent System Operator.

12 “(13) RECYCLED ENERGY SAVINGS.—The term
13 ‘recycled energy savings’ means a reduction in elec-
14 tricity or natural gas consumption that results from
15 a modification of an industrial or commercial system
16 that commenced operation before the date of enact-
17 ment of this section, in order to recapture electrical,
18 mechanical, or thermal energy that would otherwise
19 be wasted, as determined in accordance with regula-
20 tions promulgated by the Secretary.

21 “(14) REPORTING PERIOD.—The term ‘report-
22 ing period’ means—

23 “(A) calendar year 2012; and

24 “(B) each successive 2-calendar-year pe-
25 riod thereafter.

1 “(15) RETAIL ELECTRICITY DISTRIBUTOR.—

2 “(A) IN GENERAL.—The term ‘retail elec-
3 tricity distributor’ means, for any given cal-
4 endar year, an electric utility that owns or oper-
5 ates an electric distribution facility and, using
6 the facility, delivered not less than 1,500,000
7 megawatt-hours of electric energy to electric
8 consumers for purposes other than resale dur-
9 ing the most recent 2-calendar-year period for
10 which data are available.

11 “(B) INCLUSIONS AND LIMITATIONS.—For
12 purposes of determining whether an electric
13 utility qualifies as a retail electricity distributor
14 under subparagraph (A)—

15 “(i) deliveries by any affiliate of an
16 electric utility to electric consumers for
17 purposes other than resale shall be consid-
18 ered to be deliveries by such electric utility;
19 and

20 “(ii) deliveries by any electric utility
21 to a lessee, tenant, or affiliate of such elec-
22 tric utility shall not be treated as deliveries
23 to electric consumers.

24 “(16) RETAIL NATURAL GAS DISTRIBUTOR.—

1 “(A) IN GENERAL.—The term ‘retail nat-
2 ural gas distributor’ means, for any given cal-
3 endar year, a local distribution company, as
4 that term is defined in section 2(17) of the
5 Natural Gas Policy Act of 1978 (15 U.S.C.
6 3301(17)), that delivered to natural gas con-
7 sumers more than 5,000,000,000 cubic feet of
8 natural gas during the most recent 2-calendar-
9 year period for which data are available.

10 “(B) INCLUSIONS AND LIMITATIONS.—For
11 purposes of determining whether a person
12 qualifies as a retail natural gas distributor
13 under subparagraph (A)—

14 “(i) deliveries of natural gas by any
15 affiliate of a local distribution company to
16 consumers for purposes other than resale
17 shall be considered to be deliveries by such
18 local distribution company; and

19 “(ii) deliveries of natural gas to a les-
20 see, tenant, or affiliate of a local distribu-
21 tion company shall not be treated as deliv-
22 eries to natural gas consumers.

23 “(17) THIRD-PARTY EFFICIENCY PROVIDER.—
24 The term ‘third-party efficiency provider’ means any
25 retailer, building owner, energy service company, fi-

1 nancial institution or other commercial, industrial or
2 non-profit entity that is capable of providing elec-
3 tricity savings or natural gas savings in accordance
4 with the requirements of subsections (e) and (f).

5 “(c) ESTABLISHMENT OF PROGRAM.—

6 “(1) REGULATIONS.—Not later than 1 year
7 after the date of enactment of this section, the Sec-
8 retary shall, by regulation, establish a program to
9 implement and enforce the requirements of this sec-
10 tion, including—

11 “(A) measurement and verification proce-
12 dures and standards under subsection (f);

13 “(B) requirements by which retail elec-
14 tricity distributors and retail natural gas dis-
15 tributors shall demonstrate, document, and re-
16 port their compliance with the performance
17 standards specified in subsection (d) and esti-
18 mate the impact of the standards on current
19 and future electricity and natural gas use in
20 such distributors’ service territories; and

21 “(C) requirements governing applications
22 for, and implementation of, delegated State ad-
23 ministration under subsection (h).

24 “(2) COORDINATION WITH STATE PROGRAMS.—

25 In establishing and implementing this program, the

1 Secretary shall, to the extent practicable, preserve
2 the integrity, and incorporate best practices, of ex-
3 isting State energy efficiency programs.

4 “(d) PERFORMANCE STANDARDS.—

5 “(1) COMPLIANCE OBLIGATION.—Not later
6 than April 1 of the calendar year immediately fol-
7 lowing each reporting period—

8 “(A) each retail electricity distributor shall
9 submit to the Secretary a report, in accordance
10 with regulations issued by the Secretary, dem-
11 onstrating that it has achieved cumulative elec-
12 tricity savings (adjusted to account for any at-
13 trition of savings measures implemented in
14 prior years) in each calendar year that are
15 equal to the applicable percentage, established
16 under paragraph (2), (3), or (4) of this sub-
17 section, of the base quantity of such retail elec-
18 tricity distributor; and

19 “(B) each retail natural gas distributor
20 shall submit to the Secretary a report, in ac-
21 cordance with regulations issued by the Sec-
22 retary, demonstrating that it has achieved cu-
23 mulative natural gas savings (adjusted to ac-
24 count for any attrition of savings measures im-
25 plemented in prior years) in each calendar year

1 that are equal to the applicable percentage, es-
 2 tablished under paragraph (2), (3), or (4) of
 3 this subsection, of the base quantity of such re-
 4 tail natural gas distributor.

5 “(2) STANDARDS FOR 2012 THROUGH 2020.—
 6 For calendar years 2012 through 2020, the applica-
 7 ble percentages are as follows:

“Calendar Year	Cumulative Electricity Savings Percentage	Cumulative Natural Gas Savings Percentage
2012	1.00	0.75
2013	2.00	1.50
2014	3.25	2.50
2015	4.50	3.50
2016	6.00	4.75
2017	7.50	6.00
2018	10.00	7.25
2019	12.50	8.50
2020	15.00	10.00

8 “(3) SUBSEQUENT YEARS.—

9 “(A) CALENDAR YEARS 2021 THROUGH
 10 2030.—Not later than December 31, 2018, the
 11 Secretary shall promulgate regulations estab-
 12 lishing performance standards (expressed as ap-
 13 plicable percentages of base quantity for both
 14 cumulative electricity savings and cumulative
 15 natural gas savings) for calendar years 2021
 16 through 2030.

1 “(B) SUBSEQUENT EXTENSIONS.—Except
2 as provided in subparagraph (A), not later than
3 December 31 of the penultimate reporting pe-
4 riod for which performance standards have been
5 set under this paragraph, the Secretary shall
6 promulgate regulations establishing perform-
7 ance standards (expressed as applicable per-
8 centages of base quantity for both cumulative
9 electricity savings and cumulative natural gas
10 savings) for the 10-calendar-year period fol-
11 lowing the last calendar year for which perform-
12 ance standards previously were set.

13 “(C) REQUIREMENTS.—The Secretary
14 shall set standards under this paragraph at lev-
15 els reflecting the maximum achievable level of
16 cost-effective energy efficiency potential, taking
17 into account cost-effective energy savings
18 achieved by leading retail electricity distributors
19 and retail natural gas distributors, opportuni-
20 ties for new codes and standard savings, tech-
21 nology improvements, and other indicators of
22 cost-effective energy efficiency potential. In no
23 case shall the applicable percentages for any
24 calendar year be lower than those for calendar
25 year 2020 (including any increase in the stand-

1 ard for calendar year 2020 pursuant to para-
2 graph (4)).

3 “(4) MIDCOURSE REVIEW AND ADJUSTMENT OF
4 STANDARDS.—Not later than December 31, 2014,
5 and at 10-year intervals thereafter, the Secretary
6 shall review the most recent standards established
7 under paragraph (2) or (3) and shall, by regulation,
8 increase the standards if the Secretary determines
9 that additional cost-effective energy efficiency poten-
10 tial is achievable, taking into account the factors
11 identified in paragraph (3)(C). If the Secretary re-
12 vises standards pursuant to this paragraph, the reg-
13 ulations shall provide adequate lead time to ensure
14 that compliance with the increased standards is fea-
15 sible.

16 “(5) DELAY OF SUBMISSION FOR FIRST RE-
17 PORTING PERIOD.—Notwithstanding paragraphs (1)
18 and (2), for the 2012 reporting period, the Secretary
19 may accept a request from a retail electricity dis-
20 tributor or a retail natural gas distributor to delay
21 the required submission of documentation of some or
22 all of the required savings for up to 2 years. The re-
23 quest for delay shall include a plan for coming into
24 full compliance by the end of the 2013–2014 report-
25 ing period.

1 “(e) TRANSFERS OF ELECTRICITY OR NATURAL GAS
2 SAVINGS.—

3 “(1) BILATERAL CONTRACTS FOR SAVINGS
4 TRANSFERS.—Subject to the limitations of this para-
5 graph, a retail electricity distributor or retail natural
6 gas distributor may use electricity savings or natural
7 gas savings purchased, pursuant to a bilateral con-
8 tract, from another retail electricity distributor or
9 retail natural gas distributor, a State, or a third-
10 party efficiency provider to meet the applicable per-
11 formance standard under subsection (d).

12 “(2) REQUIREMENTS.—Electricity or natural
13 gas savings purchased and used for compliance pur-
14 suant to this paragraph shall be—

15 “(A) measured and verified in accordance
16 with the procedures specified under subsection
17 (f);

18 “(B) reported in accordance with sub-
19 section (d); and

20 “(C) achieved within the same State as is
21 served by the retail electricity distributor or re-
22 tail natural gas distributor.

23 “(3) EXCEPTION.—Notwithstanding paragraph
24 (2)(C), a State regulatory authority may authorize a
25 retail electricity distributor or a retail natural gas

1 distributor regulated by such State regulatory au-
2 thority to purchase savings achieved in a different
3 State, provided that—

4 “(A) such savings are achieved within the
5 same power pool; and

6 “(B) the State regulatory authority that
7 regulates the purchaser oversees the measure-
8 ment and verification of the savings pursuant to
9 the procedures and standards applicable in the
10 purchaser’s State.

11 “(4) REGULATORY APPROVAL.—Nothing in this
12 paragraph shall limit or affect the authority of a
13 State regulatory authority to require a retail elec-
14 tricity distributor or retail natural gas distributor
15 that is regulated by such State regulatory authority
16 to obtain such State regulatory authority’s author-
17 ization or approval of a contract for transfer of sav-
18 ings under this paragraph.

19 “(5) LIMITATIONS.—In the interest of opti-
20 mizing achievement of cost-effective efficiency poten-
21 tial, the Secretary may prescribe such limitations as
22 the Secretary determines appropriate with respect to
23 the proportion of a retail electricity or natural gas
24 distributor’s compliance obligation, under the appli-
25 cable performance standards under subsection (d),

1 that may be met using electricity or natural gas sav-
2 ings that are purchased under this paragraph.

3 “(f) MEASUREMENT AND VERIFICATION OF SAV-
4 INGS.—The regulations promulgated pursuant to sub-
5 section (b) shall include—

6 “(1) procedures and standards for defining and
7 measuring electricity savings and natural gas sav-
8 ings that can be counted towards the performance
9 standards set forth in subsection (d), which shall—

10 “(A) specify the types of energy efficiency
11 and energy conservation measures that can be
12 counted;

13 “(B) require that energy consumption esti-
14 mates for customer facilities or portions of fa-
15 cilities in the applicable base and current years
16 be adjusted, as appropriate, to account for
17 changes in weather, level of production, and
18 building area;

19 “(C) account for the useful life of meas-
20 ures;

21 “(D) include deemed savings values for
22 specific, commonly-used measures;

23 “(E) allow for savings from a program to
24 be estimated based on extrapolation from a rep-
25 resentative sample of participating customers;

1 “(F) include procedures for counting CHP
2 savings and recycled energy savings;

3 “(G) establish methods for calculating
4 codes and standards energy savings, including
5 the use of verified compliance rates;

6 “(H) count only measures and savings that
7 are additional to business-as-usual practices;

8 “(I) except in the case of codes and stand-
9 ards savings, ensure that the retail electricity
10 distributor or retail natural gas distributor
11 claiming the savings played a significant role in
12 achieving the savings (including through the ac-
13 tivities of a designated agent of the distributor
14 or through the purchase of transferred savings);

15 “(J) avoid double-counting of savings used
16 for compliance with this section, including
17 transferred savings; and

18 “(K) include savings from programs ad-
19 ministered by the retail electric or natural gas
20 distributor that are funded by State, Federal,
21 or other sources; and

22 “(2) procedures and standards for third-party
23 verification of reported electricity savings or natural
24 gas savings.

25 “(g) ENFORCEMENT AND JUDICIAL REVIEW.—

1 “(1) REVIEW OF RETAIL DISTRIBUTOR RE-
2 PORTS.—The Secretary shall review each report sub-
3 mitted to the Secretary by a retail electricity dis-
4 tributor or retail natural gas distributor under sub-
5 section (d) to verify that the applicable performance
6 standards under subsection (d) have been met. In
7 determining compliance with the applicable perform-
8 ance standards, the Secretary shall exclude reported
9 electricity savings or natural gas savings that are
10 not adequately demonstrated and documented, in ac-
11 cordance with the regulations issued under sub-
12 sections (d), (e), and (f).

13 “(2) PENALTY FOR FAILURE TO DOCUMENT
14 ADEQUATE SAVINGS.—If a retail electricity dis-
15 tributor or a retail natural gas distributor fails to
16 demonstrate compliance with an applicable perform-
17 ance standard under subsection (d), or to pay to the
18 State an applicable alternative compliance payment
19 under subsection (h)(4), the Secretary shall assess
20 against the retail electricity distributor or retail nat-
21 ural gas distributor a civil penalty for each such fail-
22 ure in an amount equal to, as adjusted for inflation
23 in accordance with such regulations as the Secretary
24 may promulgate—

1 “(A) \$100 per megawatt-hour of electricity
2 savings or alternative compliance payment that
3 the retail electricity distributor failed to achieve
4 or make, respectively; or

5 “(B) \$10 per million Btu of natural gas
6 savings or alternative compliance payment that
7 the retail natural gas distributor failed to
8 achieve or make, respectively.

9 “(3) OFFSETTING STATE PENALTIES.—The
10 Secretary shall reduce the amount of any penalty
11 under paragraph (2) by the amount paid by the rel-
12 evant retail electricity distributor or retail natural
13 gas distributor to a State for failure to comply with
14 the requirements of a State energy efficiency re-
15 source standard during the same compliance period,
16 provided that the State standard is comparable in
17 type to the Federal standard established under this
18 section and is more stringent than the applicable
19 performance standards under subsection (d).

20 “(4) ENFORCEMENT PROCEDURES.—The Sec-
21 retary shall assess a civil penalty, as provided under
22 paragraph (1), in accordance with the procedures
23 described in section 333(d) of the Energy Policy and
24 Conservation Act of 1954 (42 U.S.C. 6303).

1 “(5) JUDICIAL REVIEW.—Any person who will
2 be adversely affected by a final action taken by the
3 Secretary under this section, other than the assess-
4 ment of a civil penalty, may use the procedures for
5 review described in section 336(b) of the Energy
6 Policy and Conservation Act (42 U.S.C. 6306). For
7 purposes of this paragraph, references to a rule in
8 section 336(b) of the Energy Policy and Conserva-
9 tion Act shall be deemed to refer also to all other
10 final actions of the Secretary under this section
11 other than the assessment of a civil penalty.

12 “(h) STATE ADMINISTRATION.—

13 “(1) IN GENERAL.—Upon receipt of an applica-
14 tion from the Governor of a State (including, for
15 purposes of this subsection, the Mayor of the Dis-
16 trict of Columbia), the Secretary may delegate to the
17 State the administration of this section within the
18 State’s territory if the Secretary determines that the
19 State will implement an energy efficiency program
20 that meets or exceeds the requirements of this sec-
21 tion, including—

22 “(A) achieving electricity savings and nat-
23 ural gas savings at least as great as those re-
24 quired under the applicable performance stand-
25 ards established under subsection (d);

1 “(B) reviewing reports and verifying elec-
2 tricity savings and natural gas savings achieved
3 in the State (including savings transferred from
4 outside the State); and

5 “(C) collecting any alternative compliance
6 payments under paragraph (4) of this sub-
7 section and using such payments to implement
8 cost-effective efficiency programs.

9 “(2) SECRETARIAL DETERMINATION.—The Sec-
10 retary shall make a substantive determination ap-
11 proving or disapproving a State application, after
12 public notice and comment, within 180 days of re-
13 ceipt of a complete application.

14 “(3) ALTERNATIVE MEASUREMENT AND
15 VERIFICATION PROCEDURES AND STANDARDS.—As
16 part of an application submitted under paragraph
17 (1), a State may request to use alternative measure-
18 ment and verification procedures and standards to
19 those specified in subsection (f), provided the State
20 demonstrates that such alternative procedures and
21 standards provide a level of accuracy of measure-
22 ment and verification at least equivalent to the Fed-
23 eral procedures and standards promulgated under
24 subsection (f).

25 “(4) ALTERNATIVE COMPLIANCE PAYMENTS.—

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

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

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

20 “(B) USE OF PAYMENTS.—Alternative
21 compliance payments collected by a State pur-
22 suant to paragraph (4) shall be used by the
23 State to administer its delegated authority
24 under this section and to implement cost-effec-

1 tive energy efficiency programs. Such programs
2 shall—

3 “(i) to the extent feasible, achieve
4 electricity savings and natural gas savings
5 in the State sufficient to make up the def-
6 icit associated with the alternative compli-
7 ance payments; and

8 “(ii) be measured and verified in ac-
9 cordance with the applicable procedures
10 and standards under subsection (f) or
11 paragraph (3) of this subsection, as the
12 case may be.

13 “(5) REVIEW OF STATE IMPLEMENTATION.—

14 “(A) PERIODIC REVIEW.—Every 2 years,
15 the Secretary shall review State implementation
16 of this section for conformance with the re-
17 quirements of this section in approximately one-
18 half of the States that have received approval
19 under this subsection to administer the pro-
20 gram, such that each State shall be reviewed at
21 least every 4 years. To facilitate such review,
22 the Secretary may require the State to submit
23 a report demonstrating its conformance with
24 the requirements of this section, including—

1 “(i) reports submitted by retail elec-
2 tricity distributors and retail natural gas
3 distributors to the State demonstrating
4 compliance with applicable performance
5 standards;

6 “(ii) the impact of such standards on
7 projected electricity and natural gas de-
8 mand within the State;

9 “(iii) an accounting of the State’s use
10 of alternative compliance payments and the
11 resulting electricity savings and natural
12 gas savings achieved; and

13 “(iv) such other information as the
14 Secretary determines appropriate.

15 “(B) REVIEW UPON PETITION.—Notwith-
16 standing subparagraph (A), upon receipt of a
17 public petition containing credible allegation of
18 substantial deficiencies, the Secretary shall
19 promptly review a State’s implementation of
20 delegated authority under this section.

21 “(C) DEFICIENCIES.—If deficiencies are
22 found in a review under this paragraph, the
23 Secretary shall notify the State and direct it to
24 correct such deficiencies and to report to the
25 Secretary on progress within 180 days of the

1 receipt of review results. If the deficiencies are
2 substantial, the Secretary shall—

3 “(i) disallow such reported savings as
4 the Secretary determines are not credible
5 due to deficiencies;

6 “(ii) re-review the State not later than
7 2 years after the original review; and

8 “(iii) if substantial deficiencies remain
9 uncorrected after the review provided for
10 under clause (ii), revoke the authority of
11 such State to administer the program es-
12 tablished under this section.

13 “(6) CALLS FOR REVISION OF STATE APPLICA-
14 TIONS.—As a condition of maintaining its delegated
15 authority to administer this section, the Secretary
16 may require a State to submit a revised application
17 under paragraph (1) if the Secretary has—

18 “(A) promulgated new or revised perform-
19 ance standards under subsection (d);

20 “(B) promulgated new or substantially re-
21 vised measurement and verification procedures
22 and standards under subsection (f); or

23 “(C) otherwise substantially revised the
24 program established under this section.

1 “(i) INFORMATION AND REPORTS.—In accordance
2 with section 13 of the Federal Energy Administration Act
3 of 1974 (15 U.S.C. 772), the Secretary may require any
4 retail electricity distributor, any retail natural gas dis-
5 tributor, any third-party efficiency provider, or such other
6 entities as the Secretary deems appropriate, to provide any
7 information the Secretary determines appropriate to carry
8 out this section.

9 “(j) STATE LAW.—Nothing in this section shall di-
10 minish or qualify any authority of a State or political sub-
11 division of a State to adopt or enforce any law or regula-
12 tion respecting electricity savings or natural gas savings,
13 including any law or regulation establishing energy effi-
14 ciency requirements more stringent than those under this
15 section, provided that no such law or regulation may re-
16 lieve any person of any requirement otherwise applicable
17 under this section.

18 “(k) PROGRAM REVIEW.—

19 “(1) NATIONAL ACADEMY OF SCIENCES RE-
20 VIEW.—The Secretary shall enter into a contract
21 with the National Academy of Sciences under which
22 the Academy shall, not later than July 1, 2017, and
23 every 10 years thereafter, submit to the Secretary
24 and to Congress a comprehensive evaluation of all

1 aspects of the program established under this sec-
2 tion, including—

3 “(A) an evaluation of the effectiveness of
4 the program, including its specific design ele-
5 ments, in increasing the efficiency of retail nat-
6 ural gas and electricity distribution and con-
7 sumption;

8 “(B) the opportunities for additional tech-
9 nologies and sources of efficiency that have
10 emerged since enactment of this section;

11 “(C) the program’s impact on the reli-
12 ability of electricity and natural gas supply;

13 “(D) the net benefits or costs of the pro-
14 gram to the national and State economies, in-
15 cluding effects on electricity and natural gas de-
16 mand and prices, economic development bene-
17 fits of investment, environmental benefits, and
18 avoided costs related to environmental and con-
19 gestion mitigation investments that otherwise
20 would have been required;

21 “(E) an assessment of the benefits and
22 costs of increasing the performance standards
23 established under subsection (d) of this section;

24 “(F) the feasibility, advantages, and dis-
25 advantages of alternative models for dem-

1 onstrating compliance with a Federal energy ef-
2 ficiency resource standard, including estab-
3 lishing a national trading system for energy ef-
4 ficiency credits or demonstrating compliance
5 through actual reductions in delivery or sales of
6 electricity and natural gas, rather than on pro-
7 gram savings; and

8 “(G) recommendations regarding potential
9 changes to this section, to regulations and pro-
10 cedures for implementing this section, or to re-
11 lated public policies.

12 “(2) RECOMMENDATIONS TO CONGRESS.—Not
13 later than January 1, 2018, and every 10 years
14 thereafter, the Secretary shall transmit to the Com-
15 mittee on Energy and Commerce of the United
16 States House of Representatives and the Committee
17 on Energy and Natural Resources of the United
18 States Senate a report making recommendations for
19 modifications and improvements to the program es-
20 tablished under this section and any related pro-
21 grams, including an explanation of the inconsis-
22 tencies, if any, between the Secretary’s recommenda-
23 tions and those included in the National Academy of
24 Sciences evaluation under paragraph (1).”.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table
2 of contents of the Public Utility Regulatory Policies Act
3 of 1978 (16 U.S.C. 2601 and following) is amended by
4 adding at the end of the items relating to title VI the fol-
5 lowing:

“Sec. 610. Federal energy efficiency resource standard.”.

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