

111TH CONGRESS  
1ST SESSION

# S. 548

To amend 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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 9, 2009

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend 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”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that, in light of the cost-effective en-  
8       ergy efficiency opportunities that exist across the United

1 States in every sector of the economy, retail electricity dis-  
 2 tributors, retail natural gas distributors, and States  
 3 should—

4 (1) consider energy efficiency as a resource in  
 5 utility planning and procurement activities; and

6 (2) seek to achieve all energy efficiency that is  
 7 available at lower cost than traditional energy supply  
 8 options.

9 **SEC. 3. PURPOSE.**

10 The purpose of this Act and the amendments made  
 11 by this Act is to establish a Federal energy efficiency re-  
 12 source standard that sets nationwide minimum levels of  
 13 electricity and natural gas savings to be achieved through  
 14 utility efficiency programs, building energy codes, appli-  
 15 ance standards, and related efficiency measures.

16 **SEC. 4. ENERGY EFFICIENCY RESOURCE STANDARD FOR**  
 17 **RETAIL ELECTRICITY AND NATURAL GAS DIS-**  
 18 **TRIBUTORS.**

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

22 **“SEC. 610. FEDERAL ENERGY EFFICIENCY RESOURCE**  
 23 **STANDARD FOR RETAIL ELECTRICITY AND**  
 24 **NATURAL GAS DISTRIBUTORS.**

25 “(a) DEFINITIONS.—In this section:

1           “(1) AFFILIATE.—The term ‘affiliate’, when  
 2           used with respect to a person, means another person  
 3           that owns or controls, is owned or controlled by, or  
 4           is under common ownership control with, the person,  
 5           as determined under regulations promulgated by the  
 6           Secretary.

7           “(2) ANSI.—The term ‘ANSI’ means the  
 8           American National Standards Institute.

9           “(3) ASHRAE.—The term ‘ASHRAE’ means  
 10          the American Society of Heating, Refrigerating and  
 11          Air Conditioning Engineers.

12          “(4) BASE QUANTITY.—

13               “(A) IN GENERAL.—The term ‘base quan-  
 14               tity’, when used with respect to a retail elec-  
 15               tricity distributor or retail natural gas dis-  
 16               tributor, means, for each year for which a per-  
 17               formance standard is established under sub-  
 18               section (c), the average annual quantity of elec-  
 19               tricity or natural gas delivered by the retail  
 20               electricity distributor or retail natural gas dis-  
 21               tributor to retail customers during the 2 cal-  
 22               endar years immediately preceding the applica-  
 23               ble year.

24               “(B) EXCLUSION.—The term ‘base quan-  
 25               tity’, when used to determine the base quantity

1 of a retail natural gas distributor, does not in-  
2 clude natural gas delivered for purposes of elec-  
3 tricity generation.

4 “(5) CHP.—The term ‘CHP’ means combined  
5 heat and power.

6 “(6) CHP SAVINGS.—The term ‘CHP savings’  
7 means—

8 “(A) CHP system savings from a combined  
9 heat and power system that commences oper-  
10 ation after the date of enactment of this sec-  
11 tion; and

12 “(B) the increase in CHP system savings  
13 from upgrading or replacing, after the date of  
14 enactment of this section, a combined heat and  
15 power system that commenced operation on or  
16 before the date of enactment of this section.

17 “(7) CHP SYSTEM SAVINGS.—The term ‘CHP  
18 system savings’ means the electric output, and the  
19 electricity saved due to the mechanical output, of a  
20 combined heat and power system, adjusted to reflect  
21 any increase in fuel consumption by that system as  
22 compared to the fuel that would have been required  
23 to produce an equivalent useful thermal energy out-  
24 put in a separate thermal-only system, as deter-

1        mined in accordance with regulations promulgated  
2        by the Secretary.

3            “(8) CODES AND STANDARDS SAVINGS.—

4            “(A) IN GENERAL.—The term ‘codes and  
5        standards savings’ means a reduction in end-  
6        use electricity or natural gas consumption in  
7        the service territory of a retail electricity dis-  
8        tributor or a retail natural gas distributor as a  
9        result of the adoption and implementation, after  
10       the date of enactment of this section, of new or  
11       revised appliance and equipment efficiency  
12       standards or building energy codes.

13           “(B) BASELINES.—In calculating codes  
14        and standards savings—

15           “(i) the baseline for calculating sav-  
16        ings from building codes shall be the 2006  
17        International Energy Conservation Code  
18        for residential buildings and the ASHRAE/  
19        ANSI/IESNA Standard 90.1 (2004) for  
20        commercial buildings, or the applicable  
21        State building code in effect on the date of  
22        enactment of this section, whichever is  
23        more stringent; and

24           “(ii) the baseline for calculating sav-  
25        ings from appliance standards shall be the

1 average efficiency of new appliances in the  
2 applicable 1 or more categories prior to  
3 adoption and implementation of the new  
4 standard.

5 “(9) COMBINED HEAT AND POWER SYSTEM.—

6 The term ‘combined heat and power system’ means  
7 a system that uses the same energy source both for  
8 the generation of electrical or mechanical power and  
9 the production of steam or another form of useful  
10 thermal energy, if—

11 “(A) the system meets such requirements  
12 relating to efficiency and other operating char-  
13 acteristics as the Secretary may promulgate by  
14 regulation; and

15 “(B) the net wholesale sales of electricity  
16 by the facility will not exceed 50 percent of  
17 total annual electric generation by the facility.

18 “(10) COST-EFFECTIVE.—The term ‘cost-effec-  
19 tive’, when used with respect to an energy efficiency  
20 measure, means that the measure achieves a net  
21 present value of economic benefits over the life of  
22 the measure, both directly to the energy consumer  
23 and to the economy, that is greater than the net  
24 present value of the cost of the measure over the life

1 of the measure, both directly to the energy consumer  
 2 and to the economy.

3 “(11) CUSTOMER FACILITY SAVINGS.—The  
 4 term ‘customer facility savings’ means a reduction in  
 5 end-use electricity or natural gas consumption (in-  
 6 cluding recycled energy savings) at a facility of an  
 7 end-use consumer of electricity or natural gas served  
 8 by a retail electricity distributor or natural gas dis-  
 9 tributor, as compared to—

10 “(A) in the case of new equipment that re-  
 11 places existing equipment at the end of the use-  
 12 ful life of the existing equipment, consumption  
 13 by new equipment of average efficiency;

14 “(B) in the case of new equipment that re-  
 15 places existing equipment with remaining useful  
 16 life—

17 “(i) consumption of the existing  
 18 equipment for the remaining useful life of  
 19 the equipment; and

20 “(ii) thereafter, consumption of new  
 21 equipment of average efficiency;

22 “(C) in the case of a new facility, con-  
 23 sumption at a reference facility of average effi-  
 24 ciency; or

1           “(D) in the case of energy savings meas-  
 2           ures at a facility not covered by subparagraphs  
 3           (A) through (C), consumption at the facility  
 4           during a base year.

5           “(12) ELECTRICITY SAVINGS.—The term ‘elec-  
 6           tricity savings’ means reductions in electricity con-  
 7           sumption achieved through measures implemented  
 8           after the date of enactment of this section, as deter-  
 9           mined in accordance with regulations promulgated  
 10          by the Secretary, through—

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

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

20           “(C) CHP savings; and

21           “(D) codes and standards savings of elec-  
 22          tricity.

23           “(13) IESNA.—The term ‘IESNA’ mean the  
 24          Illuminating Engineering Society of North America.

1           “(14) NATURAL GAS SAVINGS.—The term ‘nat-  
2           ural gas savings’ means reductions in natural gas  
3           consumption from measures implemented after the  
4           date of enactment of this section, as determined in  
5           accordance with regulations promulgated by the Sec-  
6           retary, through—

7                   “(A) customer facility savings of natural  
8                   gas, adjusted to reflect any associated increase  
9                   in electricity consumption or consumption of  
10                  other fuels at the facility;

11                  “(B) reductions in leakage, operational  
12                  losses, and consumption of natural gas fuel to  
13                  operate a gas distribution system, achieved by  
14                  a retail natural gas distributor, as compared to  
15                  similar leakage, losses, and consumption during  
16                  a base period (which shall not be less than 1  
17                  year); and

18                  “(C) codes and standards savings of nat-  
19                  ural gas.

20           “(15) POWER POOL.—The term ‘power pool’  
21           means an association of 2 or more interconnected  
22           electric systems that is recognized by the Commis-  
23           sion as having an agreement to coordinate oper-  
24           ations and planning for improved reliability and effi-

1       ciencies, including a Regional Transmission Organi-  
2       zation or an Independent System Operator.

3           “(16) RECYCLED ENERGY SAVINGS.—The term  
4       ‘recycled energy savings’ means a reduction in elec-  
5       tricity or natural gas consumption that results from  
6       a modification of an industrial or commercial system  
7       that commenced operation before the date of enact-  
8       ment of this section, in order to recapture electrical,  
9       mechanical, or thermal energy that would otherwise  
10      be wasted, as determined in accordance with regula-  
11      tions promulgated by the Secretary.

12          “(17) REPORTING PERIOD.—The term ‘report-  
13      ing period’ means—

14           “(A) calendar year 2012; and

15           “(B) each successive 2-calendar-year pe-  
16      riod thereafter.

17          “(18) RETAIL ELECTRICITY DISTRIBUTOR.—

18           “(A) IN GENERAL.—The term ‘retail elec-  
19      tricity distributor’ means, for any given cal-  
20      endar year, an electric utility that owns or oper-  
21      ates an electric distribution facility and, using  
22      the facility, delivered not less than 1,500,000  
23      megawatt-hours of electric energy to electric  
24      consumers for purposes other than resale dur-

1 ing the most recent 2-calendar-year period for  
2 which data are available.

3 “(B) ADMINISTRATION.—For purposes of  
4 determining whether an electric utility qualifies  
5 as a retail electricity distributor under subpara-  
6 graph (A)—

7 “(i) deliveries by any affiliate of an  
8 electric utility to electric consumers for  
9 purposes other than resale shall be consid-  
10 ered to be deliveries by the electric utility;  
11 and

12 “(ii) deliveries by any electric utility  
13 to a lessee, tenant, or affiliate of the elec-  
14 tric utility shall not be treated as deliveries  
15 to electric consumers.

16 “(19) RETAIL NATURAL GAS DISTRIBUTOR.—

17 “(A) IN GENERAL.—The term ‘retail nat-  
18 ural gas distributor’ means, for any given cal-  
19 endar year, a local distribution company (as  
20 that term is defined in section 2 of the Natural  
21 Gas Policy Act of 1978 (15 U.S.C. 3301)), that  
22 delivered to natural gas consumers more than  
23 5,000,000,000 cubic feet of natural gas during  
24 the most recent 2-calendar-year period for  
25 which data are available.

1           “(B) ADMINISTRATION.—For purposes of  
 2           determining whether a person qualifies as a re-  
 3           tail natural gas distributor under subparagraph  
 4           (A)—

5                   “(i) deliveries of natural gas by any  
 6                   affiliate of a local distribution company to  
 7                   consumers for purposes other than resale  
 8                   shall be considered to be deliveries by the  
 9                   local distribution company; and

10                   “(ii) deliveries of natural gas to a les-  
 11                   see, tenant, or affiliate of a local distribu-  
 12                   tion company shall not be treated as deliv-  
 13                   eries to natural gas consumers.

14           “(20) THIRD-PARTY EFFICIENCY PROVIDER.—  
 15           The term ‘third-party efficiency provider’ means any  
 16           retailer, building owner, energy service company, fi-  
 17           nancial institution or other commercial, industrial or  
 18           nonprofit entity that is capable of providing elec-  
 19           tricity savings or natural gas savings in accordance  
 20           with subsections (d) and (e).

21           “(b) ESTABLISHMENT OF PROGRAM.—

22                   “(1) REGULATIONS.—Not later than 1 year  
 23                   after the date of enactment of this section, the Sec-  
 24                   retary shall, by regulation, establish a program to

1       implement and enforce the requirements of this sec-  
2       tion, including—

3               “(A) measurement and verification proce-  
4               dures and standards under subsection (e);

5               “(B) requirements under which retail elec-  
6               tricity distributors and retail natural gas dis-  
7               tributors shall demonstrate, document, and re-  
8               port compliance with the performance stand-  
9               ards established under subsection (c) and esti-  
10              mate the impact of the standards on current  
11              and future electricity and natural gas use in the  
12              service territories of the retail electricity dis-  
13              tributors and retail natural gas distributors, re-  
14              spectively; and

15              “(C) requirements governing applications  
16              for, and implementation of, delegated State ad-  
17              ministration under subsection (g).

18              “(2) COORDINATION WITH STATE PROGRAMS.—  
19              In establishing and implementing the program estab-  
20              lished under this section, the Secretary shall, to the  
21              maximum extent practicable, preserve the integrity,  
22              and incorporate the best practices, of existing State  
23              energy efficiency programs.

24              “(c) PERFORMANCE STANDARDS.—

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

4                   “(A) each retail electricity distributor shall  
5                   submit to the Secretary a report, in accordance  
6                   with regulations promulgated by the Secretary,  
7                   demonstrating that the retail electricity dis-  
8                   tributor has achieved cumulative electricity sav-  
9                   ings (adjusted to account for any attrition of  
10                  savings measures implemented in prior years)  
11                  in each calendar year that are least equal to the  
12                  applicable percentage, established under para-  
13                  graph (2), (3), or (4), of the base quantity of  
14                  the retail electricity distributor; and

15                  “(B) each retail natural gas distributor  
16                  shall submit to the Secretary a report, in ac-  
17                  cordance with regulations promulgated by the  
18                  Secretary, demonstrating that the retail natural  
19                  gas distributor has achieved cumulative natural  
20                  gas savings (adjusted to account for any attri-  
21                  tion of savings measures implemented in prior  
22                  years) in each calendar year that are at least  
23                  equal to the applicable percentage, established  
24                  under paragraph (2), (3), or (4), of the base  
25                  quantity of the retail natural gas distributor.

1           “(2) STANDARDS FOR 2012 THROUGH 2020.—  
 2           For purposes of paragraph (1), for each of calendar  
 3           years 2012 through 2020, the applicable percentages  
 4           shall be 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.

5           “(3) SUBSEQUENT YEARS.—

6           “(A) CALENDAR YEARS 2021 THROUGH  
 7           2030.—Not later than December 31, 2018, the  
 8           Secretary shall promulgate regulations estab-  
 9           lishing performance standards (expressed as ap-  
 10          plicable percentages of base quantity for both  
 11          cumulative electricity savings and cumulative  
 12          natural gas savings) for each of calendar years  
 13          2021 through 2030.

14          “(B) SUBSEQUENT EXTENSIONS.—Except  
 15          as provided in subparagraph (A), not later than  
 16          December 31 of the penultimate reporting pe-  
 17          riod for which performance standards have been

1 established under this paragraph, the Secretary  
 2 shall promulgate regulations establishing per-  
 3 formance standards (expressed as applicable  
 4 percentages of base quantity for both cumu-  
 5 lative electricity savings and cumulative natural  
 6 gas savings) for the 10-calendar-year period fol-  
 7 lowing the last calendar year for which perform-  
 8 ance standards previously were established.

9 “(C) REQUIREMENTS.—

10 “(i) IN GENERAL.—Subject to clause  
 11 (ii), the Secretary shall establish standards  
 12 under this paragraph at levels that reflect  
 13 the maximum achievable level of cost-effec-  
 14 tive energy efficiency potential, taking into  
 15 account—

16 “(I) cost-effective energy savings  
 17 achieved by leading retail electricity  
 18 distributors and retail natural gas dis-  
 19 tributors;

20 “(II) opportunities for new codes  
 21 and standard savings;

22 “(III) technology improvements;  
 23 and

24 “(IV) other indicators of cost-ef-  
 25 fective energy efficiency potential.

1 “(ii) MINIMUM PERCENTAGE.—In no  
 2 case shall the applicable percentages for  
 3 any calendar year be lower than the appli-  
 4 cable percentage for calendar year 2020  
 5 (including any increase in the standard for  
 6 calendar year 2020 pursuant to paragraph  
 7 (4)).

8 “(4) MIDCOURSE REVIEW AND ADJUSTMENT OF  
 9 STANDARDS.—

10 “(A) IN GENERAL.—Not later than De-  
 11 cember 31, 2014, and at 10-year intervals  
 12 thereafter, the Secretary shall—

13 “(i) review the most recent standards  
 14 established under paragraph (2) or (3);  
 15 and

16 “(ii) by regulation, increase the stand-  
 17 ards if the Secretary determines that addi-  
 18 tional cost-effective energy efficiency po-  
 19 tential is achievable, taking into account  
 20 the factors described in paragraph (3)(C).

21 “(B) LEAD TIME.—If the Secretary revises  
 22 standards under this paragraph, the regulations  
 23 shall provide adequate lead time to ensure that  
 24 compliance with the increased standards is fea-  
 25 sible.

1           “(5) DELAY OF SUBMISSION FOR FIRST RE-  
2       PORTING PERIOD.—

3           “(A) IN GENERAL.—Notwithstanding  
4       paragraphs (1) and (2), for the 2012 reporting  
5       period, the Secretary may accept a request from  
6       a retail electricity distributor or a retail natural  
7       gas distributor to delay the required submission  
8       of documentation of part or all of the required  
9       savings for up to 2 years.

10          “(B) PLAN.—The request for delay shall  
11       include a plan for coming into full compliance  
12       by the end of the 2013–2014 reporting period.

13          “(d) TRANSFERS OF ELECTRICITY OR NATURAL GAS  
14       SAVINGS.—

15          “(1) BILATERAL CONTRACTS FOR SAVINGS  
16       TRANSFERS.—Subject to the other provisions of this  
17       subsection, a retail electricity distributor or retail  
18       natural gas distributor may use electricity savings or  
19       natural gas savings purchased, pursuant to a bilat-  
20       eral contract, from another retail electricity dis-  
21       tributor or retail natural gas distributor, a State, or  
22       a third-party efficiency provider to meet the applica-  
23       ble performance standard under subsection (c).

1           “(2) REQUIREMENTS.—Electricity or natural  
2           gas savings purchased and used for compliance pur-  
3           suant to this subsection shall be—

4                   “(A) measured and verified in accordance  
5                   with the procedures specified under subsection  
6                   (e);

7                   “(B) reported in accordance with sub-  
8                   section (e); and

9                   “(C) achieved within the same State as is  
10                  served by the retail electricity distributor or re-  
11                  tail natural gas distributor.

12           “(3) EXCEPTION.—Notwithstanding paragraph  
13           (2)(C), a State regulatory authority may authorize a  
14           retail electricity distributor or a retail natural gas  
15           distributor regulated by the State regulatory author-  
16           ity to purchase savings achieved in a different State,  
17           if—

18                   “(A) the savings are achieved within the  
19                   same power pool; and

20                   “(B) the State regulatory authority that  
21                   regulates the purchaser oversees the measure-  
22                   ment and verification of the savings pursuant to  
23                   the procedures and standards applicable in the  
24                   State of the purchaser.

1           “(4) REGULATORY APPROVAL.—Nothing in this  
 2           subsection limits or affects the authority of a State  
 3           regulatory authority to require a retail electricity  
 4           distributor or retail natural gas distributor that is  
 5           regulated by the State regulatory authority to obtain  
 6           the authorization or approval of the State regulatory  
 7           authority for a contract for transfer of savings  
 8           under this subsection.

9           “(5) LIMITATIONS.—In the interest of opti-  
 10          mizing achievement of cost-effective efficiency poten-  
 11          tial, the Secretary may prescribe such limitations as  
 12          the Secretary determines appropriate with respect to  
 13          the proportion of the compliance obligation of a re-  
 14          tail electricity or natural gas distributor, under the  
 15          applicable performance standards under subsection  
 16          (c), that may be met using electricity or natural gas  
 17          savings that are purchased under this subsection.

18          “(e) MEASUREMENT AND VERIFICATION OF SAV-  
 19          INGS.—The regulations promulgated under subsection (b)  
 20          shall include—

21               “(1) procedures and standards for defining and  
 22               measuring electricity savings and natural gas sav-  
 23               ings that can be counted towards the performance  
 24               standards established under subsection (c), which  
 25               shall—

1           “(A) specify the types of energy efficiency  
2           and energy conservation measures that can be  
3           counted;

4           “(B) require that energy consumption esti-  
5           mates for customer facilities or parts of facili-  
6           ties in the applicable base and current years be  
7           adjusted, as appropriate, to account for changes  
8           in weather, level of production, and building  
9           area;

10          “(C) account for the useful life of meas-  
11          ures;

12          “(D) include considered savings values for  
13          specific, commonly used measures;

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

17          “(F) include procedures for counting CHP  
18          savings and recycled energy savings;

19          “(G) establish methods for calculating  
20          codes and standards savings, including the use  
21          of verified compliance rates;

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

24          “(I) except in the case of codes and stand-  
25          ards savings, ensure that the retail electricity

1 distributor or retail natural gas distributor  
 2 claiming the savings played a significant role in  
 3 achieving the savings (including through the ac-  
 4 tivities of a designated agent of the distributor  
 5 or through the purchase of transferred savings);

6 “(J) avoid double-counting of savings used  
 7 for compliance with this section, including  
 8 transferred savings; and

9 “(K) include savings from programs ad-  
 10 ministered by the retail electric or natural gas  
 11 distributor that are funded by State, Federal,  
 12 or other sources; and

13 “(2) procedures and standards for third-party  
 14 verification of reported electricity savings or natural  
 15 gas savings.

16 “(f) ENFORCEMENT AND JUDICIAL REVIEW.—

17 “(1) REVIEW OF RETAIL DISTRIBUTOR RE-  
 18 PORTS.—

19 “(A) IN GENERAL.—The Secretary shall  
 20 review each report submitted to the Secretary  
 21 by a retail electricity distributor or retail nat-  
 22 ural gas distributor under subsection (c) to  
 23 verify that the applicable performance stand-  
 24 ards under that subsection have been met.

“(B) EXCLUSIONS.—In determining compliance with the applicable performance standards, the Secretary shall exclude reported electricity savings or natural gas savings that are not adequately demonstrated and documented, in accordance with the regulations promulgated under subsections (c), (d), and (e).

“(2) PENALTY FOR FAILURE TO DOCUMENT ADEQUATE SAVINGS.—If a retail electricity distributor or a retail natural gas distributor fails to demonstrate compliance with an applicable performance standard under subsection (c) or to pay to the State an applicable alternative compliance payment under subsection (g)(4), the Secretary shall assess against the retail electricity distributor or retail natural gas distributor a civil penalty for each such failure in an amount equal to, as adjusted for inflation in accordance with such regulations as the Secretary may promulgate—

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

“(B) \$10 per million Btu of natural gas savings or alternative compliance payment that

1           the retail natural gas distributor failed to  
2           achieve or make, respectively.

3           “(3) OFFSETTING STATE PENALTIES.—The  
4           Secretary shall reduce the amount of any penalty  
5           under paragraph (2) by the amount paid by the ap-  
6           plicable retail electricity distributor or retail natural  
7           gas distributor to a State for failure to comply with  
8           the requirements of a State energy efficiency re-  
9           source standard during the same compliance period,  
10          if the State standard is—

11                   “(A) comparable in type to the Federal  
12                   standard established under this section; and

13                   “(B) more stringent than the applicable  
14                   performance standards under subsection (c).

15          “(4) ENFORCEMENT PROCEDURES.—The Sec-  
16          retary shall assess a civil penalty, as provided under  
17          paragraph (1), in accordance with the procedures  
18          described in section 333(d) of the Energy Policy and  
19          Conservation Act (42 U.S.C. 6303(d)).

20          “(5) JUDICIAL REVIEW.—

21                   “(A) IN GENERAL.—Any person who will  
22                   be adversely affected by a final action taken by  
23                   the Secretary under this section, other than the  
24                   assessment of a civil penalty, may use the pro-  
25                   cedures for review described in section 336(b)

1 of the Energy Policy and Conservation Act (42  
2 U.S.C. 6306(b)).

3 “(B) ADMINISTRATION.—For purposes of  
4 this paragraph, references to a rule in section  
5 336(b) of the Energy Policy and Conservation  
6 Act (42 U.S.C. 6306(b)) shall be considered to  
7 refer also to all other final actions of the Sec-  
8 retary under this section other than the assess-  
9 ment of a civil penalty.

10 “(g) STATE ADMINISTRATION.—

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

20 “(A) achieving electricity savings and nat-  
21 ural gas savings at least as great as the savings  
22 required under the applicable performance  
23 standards established under subsection (c);

24 “(B) reviewing reports and verifying elec-  
25 tricity savings and natural gas savings achieved

1 in the State (including savings transferred from  
2 outside the State); and

3 “(C) collecting any alternative compliance  
4 payments under paragraph (4) and using the  
5 payments to implement cost-effective efficiency  
6 programs.

7 “(2) SECRETARIAL DETERMINATION.—The Sec-  
8 retary shall make a substantive determination ap-  
9 proving or disapproving a State application, after  
10 public notice and comment, not later than 180 days  
11 after the date of receipt of a complete application.

12 “(3) ALTERNATIVE MEASUREMENT AND  
13 VERIFICATION PROCEDURES AND STANDARDS.—As  
14 part of an application submitted under paragraph  
15 (1), a State may request to use alternative measure-  
16 ment and verification procedures and standards to  
17 the procedures and standards established under sub-  
18 section (e), if the State demonstrates that the alter-  
19 native procedures and standards provide a level of  
20 accuracy of measurement and verification that is at  
21 least equivalent to the Federal procedures and  
22 standards promulgated under subsection (e).

23 “(4) ALTERNATIVE COMPLIANCE PAYMENTS.—

24 “(A) IN GENERAL.—As part of an applica-  
25 tion submitted under paragraph (1), a State

1           may permit retail electricity distributors or re-  
 2           tail natural gas distributors to pay to the State,  
 3           by not later than April 1 of the calendar year  
 4           immediately following the applicable reporting  
 5           period, an alternative compliance payment in an  
 6           amount equal to, as adjusted for inflation in ac-  
 7           cordance with such regulations as the Secretary  
 8           may promulgate, not less than—

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

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

18           “(B) USE OF PAYMENTS.—

19                   “(i) IN GENERAL.—Alternative com-  
 20                   pliance payments collected by a State pur-  
 21                   suant to subparagraph (A) shall be used  
 22                   by the State to administer the delegated  
 23                   authority of the State under this section  
 24                   and to implement cost-effective energy effi-  
 25                   ciency programs.

1                   “(ii) PROGRAMS.—The programs  
2 shall—

3                   “(I) to the maximum extent prac-  
4 ticable, achieve electricity savings and  
5 natural gas savings in the State suffi-  
6 cient to make up the deficit associated  
7 with the alternative compliance pay-  
8 ments; and

9                   “(II) be measured and verified in  
10 accordance with the applicable proce-  
11 dures and standards under subsection  
12 (e) or paragraph (3), as the case may  
13 be.

14                   “(5) REVIEW OF STATE IMPLEMENTATION.—

15                   “(A) PERIODIC REVIEW.—Every 2 years,  
16 the Secretary shall review State implementation  
17 of this section for conformance with the re-  
18 quirements of this section in approximately  $\frac{1}{2}$   
19 of the States that have received approval under  
20 this subsection to administer the program, such  
21 that each State shall be reviewed at least every  
22 4 years.

23                   “(B) REPORT.—To facilitate the review,  
24 the Secretary may require the State to submit  
25 a report demonstrating the compliance of the

1 State with the requirements of this section, in-  
 2 cluding—

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

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

11 “(iii) an accounting of the use of al-  
 12 ternative compliance payments by the  
 13 State and the resulting electricity savings  
 14 and natural gas savings achieved; and

15 “(iv) such other information as the  
 16 Secretary determines appropriate.

17 “(C) REVIEW ON PETITION.—Notwith-  
 18 standing subparagraph (A), on receipt of a pub-  
 19 lic petition containing credible allegation of sub-  
 20 stantial deficiencies, the Secretary shall prompt-  
 21 ly review the implementation by the State of  
 22 delegated authority under this section.

23 “(D) DEFICIENCIES.—

1 “(i) IN GENERAL.—If deficiencies are  
 2 found in a review under this paragraph,  
 3 the Secretary shall—

4 “(I) notify the State; and

5 “(II) direct the State to correct  
 6 the deficiencies and to report to the  
 7 Secretary on progress not later than  
 8 180 days after the date of the receipt  
 9 of review results.

10 “(ii) SUBSTANTIAL DEFICIENCIES.—If  
 11 the deficiencies are substantial, the Sec-  
 12 retary shall—

13 “(I) disallow such reported sav-  
 14 ings as the Secretary determines are  
 15 not credible due to deficiencies;

16 “(II) re-review the State not  
 17 later than 2 years after the date of  
 18 the original review; and

19 “(III) if substantial deficiencies  
 20 remain uncorrected after the review  
 21 provided for under subclause (II), re-  
 22 voke the authority of the State to ad-  
 23 minister the program established  
 24 under this section.

1           “(6) CALLS FOR REVISION OF STATE APPLICA-  
 2           TIONS.—As a condition of maintaining the delegated  
 3           authority of a State to administer this section, the  
 4           Secretary may require the State to submit a revised  
 5           application under paragraph (1) if the Secretary  
 6           has—

7                   “(A) promulgated new or revised perform-  
 8                   ance standards under subsection (c);

9                   “(B) promulgated new or substantially re-  
 10                  vised measurement and verification procedures  
 11                  and standards under subsection (e); or

12                  “(C) otherwise substantially revised the  
 13                  program established under this section.

14           “(h) INFORMATION AND REPORTS.—In accordance  
 15           with section 13 of the Federal Energy Administration Act  
 16           of 1974 (15 U.S.C. 772), the Secretary may require any  
 17           retail electricity distributor, any retail natural gas dis-  
 18           tributor, any third-party efficiency provider, or such other  
 19           entities as the Secretary considers appropriate, to provide  
 20           any information the Secretary determines appropriate to  
 21           carry out this section.

22           “(i) STATE LAW.—Nothing in this section diminishes  
 23           or qualifies any authority of a State or political subdivision  
 24           of a State to adopt or enforce any law (including a regula-  
 25           tion) respecting electricity savings or natural gas savings,

1 including any law (including a regulation) establishing en-  
 2 ergy efficiency requirements that are more stringent than  
 3 the requirements established under this section, except  
 4 that no such law or regulation may relieve any person of  
 5 any requirement otherwise applicable under this section.

6 “(j) PROGRAM REVIEW.—

7 “(1) NATIONAL ACADEMY OF SCIENCES RE-  
 8 VIEW.—The Secretary shall offer to enter into a con-  
 9 tract with the National Academy of Sciences under  
 10 which the Academy shall, not later than July 1,  
 11 2017, and every 10 years thereafter, submit to the  
 12 Secretary and to Congress a comprehensive evalua-  
 13 tion of all aspects of the program established under  
 14 this section, including—

15 “(A) an evaluation of the effectiveness of  
 16 the program, including the specific design ele-  
 17 ments of the program, in increasing the effi-  
 18 ciency of retail natural gas and electricity dis-  
 19 tribution and consumption;

20 “(B) the opportunities for additional tech-  
 21 nologies and sources of efficiency that have  
 22 emerged since the date of enactment of this sec-  
 23 tion;

24 “(C) the impact of the program on the re-  
 25 liability of electricity and natural gas supply;

1 “(D) the net benefits or costs of the pro-  
 2 gram to the national and State economies, in-  
 3 cluding the effects of the program on—

4 “(i) electricity and natural gas de-  
 5 mand and prices;

6 “(ii) economic development benefits of  
 7 investment;

8 “(iii) environmental benefits; and

9 “(iv) avoided costs related to environ-  
 10 mental and congestion mitigation invest-  
 11 ments that otherwise would have been re-  
 12 quired;

13 “(E) an assessment of the benefits and  
 14 costs of increasing the performance standards  
 15 established under subsection (c);

16 “(F) the feasibility, advantages, and dis-  
 17 advantages of alternative models for dem-  
 18 onstrating compliance with a Federal energy ef-  
 19 ficiency resource standard, including—

20 “(i) establishing a national trading  
 21 system for energy efficiency credits; or

22 “(ii) demonstrating compliance  
 23 through actual reductions in delivery or  
 24 sales of electricity and natural gas, rather  
 25 than on program savings; and

1           “(G) recommendations regarding potential  
 2           changes to this section, to regulations and pro-  
 3           cedures for implementing this section, or to re-  
 4           lated public policies.

5           “(2) RECOMMENDATIONS TO CONGRESS.—Not  
 6           later than January 1, 2018, and every 10 years  
 7           thereafter, the Secretary shall submit to the Com-  
 8           mittee on Energy and Commerce of the House of  
 9           Representatives and the Committee on Energy and  
 10          Natural Resources of the Senate a report making  
 11          recommendations for modifications and improve-  
 12          ments to the program established under this section  
 13          and any related programs, including an explanation  
 14          of the inconsistencies, if any, between the rec-  
 15          ommendations of the Secretary and recommenda-  
 16          tions included in the National Academy of Sciences  
 17          evaluation under paragraph (1).”.

18          (b) TABLE OF CONTENTS AMENDMENT.—The table  
 19          of contents of the Public Utility Regulatory Policies Act  
 20          of 1978 (16 U.S.C. prec. 2601) is amended by adding at  
 21          the end of the items relating to title VI the following:

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

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

