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 Resource Standard

3  SEC. 1301. ENERGY EFFICIENCY RESOURCE STANDARD FOR

4  RETAIL ELECTRICITY AND NATURAL GAS SUPPLIERS.

5  (a) In general.—Title VI of the Public Utility Reg-

6  ulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is

7  amended by adding at the end the following:
“SEC. 610. FEDERAL ENERGY EFFICIENCY RESOURCE
STANDARD FOR RETAIL ELECTRICITY AND
NATURAL GAS SUPPLIERS.

“(a) DEFINITIONS.—In this section:

“(1) BASE QUANTITY.—

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

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

“(2) CUSTOMER FACILITY SAVINGS.—The term
‘customer facility savings’ means a reduction in end-
use electricity or natural gas consumption (including
waste heat energy savings) at a facility of an end-
use consumer of electricity or natural gas served by
a retail electricity supplier or natural gas supplier,
as compared to—

“(A) in the case of a new facility, consumption at a reference facility of average efficiency;

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

“(C) in the case of new equipment that replaces existing equipment at the end of the useful life of the existing equipment, consumption by new equipment of average efficiency of the same equipment type, except that customer savings under this subparagraph shall not be counted towards customer savings under subparagraph (A) or (B); and

“(D) in the case of new equipment that replaces existing equipment with remaining useful life—

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

“(ii) thereafter, consumption of new equipment of average efficiency.
“(3) ELECTRICITY SAVINGS.—The term ‘electricity savings’ means reductions in electricity consumption achieved through measures implemented after the date of enactment of this section, as determined in accordance with regulations promulgated by the Secretary, that are limited to—

“(A) customer facility savings of electricity, adjusted to reflect any associated increase in fuel consumption at the facility;

“(B) reductions in distribution system losses of electricity achieved by a retail electricity supplier, as compared to losses attributable to new or replacement distribution system equipment of average efficiency, as defined in regulations promulgated by the Secretary;

“(C) CHP savings;

“(D) codes and standards savings of electricity; and

“(E) fuel switching energy savings that results in net savings of electricity.

“(4) NATURAL GAS SAVINGS.—The term ‘natural gas savings’ means reductions in natural gas consumption from measures implemented after the date of enactment of this section, as determined in
according to regulations promulgated by the Secretary, that are limited to—

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

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

“(C) codes and standards savings of natural gas; and

“(D) fuel switching energy savings that results in net savings of natural gas.

“(5) RETAIL ELECTRICITY SUPPLIER.—

“(A) IN GENERAL.—The term ‘retail electricity supplier’ means, for any given calendar year, an electric utility that sells not less than 1,000,000 megawatt hours of electric energy to electric consumers for purposes other than resale during the preceding calendar year.

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

“(i) deliveries by any affiliate of an electric utility to electric consumers for purposes other than resale shall be considered to be deliveries by the electric utility; and

“(ii) deliveries by any electric utility to a lessee, tenant, or affiliate of the electric utility shall not be considered to be deliveries to electric consumers.

“(6) RETAIL NATURAL GAS SUPPLIER.—

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

“(B) INCLUSIONS AND LIMITATIONS.—For purposes of determining whether a person qualifies as a retail natural gas supplier under subparagraph (A)—
“(i) deliveries of natural gas by any affiliate of a local distribution company to consumers for purposes other than resale shall be considered to be deliveries by the local distribution company; and

“(ii) deliveries of natural gas to a lessee, tenant, or affiliate of a local distribution company shall not be considered to be deliveries to natural gas consumers.

“(b) ESTABLISHMENT OF PROGRAM.—

“(1) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Secretary shall, by regulation, establish a program to implement and enforce the requirements of this section, including by—


“(B) establishing measurement and verification procedures and standards that count only measures and savings that are addi-
tional to business-as-usual customer purchase practices;

“(C) establishing requirements under which retail electricity suppliers and retail natural gas suppliers shall—

“(i) demonstrate, document, and report the compliance of the retail electricity suppliers and retail natural gas suppliers with the performance standards under subsection (e); and

“(ii) estimate the impact of the standards on current and future electricity and natural gas use in the service territories of the suppliers;

“(D) establishing requirements governing applications for, and implementation of, delegated State administration under subsection (e); and

“(E) establishing rules to govern transfers of electricity or natural gas savings between suppliers and third-party efficiency providers serving the same State and between suppliers and third-party efficiency providers serving different States.
“(2) COORDINATION WITH STATE PROGRAMS.—

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

“(c) PERFORMANCE STANDARDS.—

“(1) COMPLIANCE OBLIGATION.—Not later than May 1 of the calendar year immediately following each reporting period—

“(A) each retail electricity supplier shall submit to the Secretary a report, in accordance with regulations promulgated by the Secretary, demonstrating that the retail electricity supplier has achieved cumulative electricity savings (adjusted to account for any attrition of savings measures implemented in prior years) in each calendar year that are equal to the applicable percentage of the base quantity of the retail electricity supplier; and

“(B) each retail natural gas supplier shall submit to the Secretary a report, in accordance with regulations promulgated by the Secretary, demonstrating that it has achieved cumulative natural gas savings (adjusted to account for any attrition of savings measures implemented
in prior years) in each calendar year that are equal to the applicable percentage of the base quantity of such retail natural gas supplier.

“(2) Standards for 2017 through 2030.—

For each of calendar years 2017 through 2030, the applicable percentages are as follows:

<table>
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<tr>
<th>Calendar Year</th>
<th>Cumulative Electricity Savings Percentage</th>
<th>Cumulative Natural Gas Savings Percentage</th>
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“(3) Subsequent years.—

“(A) Calendar years 2031 through 2040.—Not later than December 31, 2028, the Secretary shall promulgate regulations establishing performance standards (expressed as applicable percentages of base quantity for both cumulative electricity savings and cumulative
natural gas savings) for each of calendar years 2031 through 2040.

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

“(i) cost-effective energy savings achieved by leading retail electricity suppliers and retail natural gas suppliers;

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

“(iii) technology improvements; and

“(iv) other indicators of cost-effective energy efficiency potential including differences between States.

“(C) MINIMUM PERCENTAGE.—In no case shall the applicable percentages for any calendar year be less than the applicable percentages for calendar year 2030.

“(4) DELAY OF SUBMISSION FOR FIRST REPORTING PERIOD.—

“(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), for the 2017 reporting period, the Secretary may accept a request from
a retail electricity supplier or a retail natural
gas supplier to delay the required submission of
documentation of all or part of the required
savings for up to 2 years.

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

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

“(d) ENFORCEMENT AND JUDICIAL REVIEW.—

“(1) REVIEW OF RETAIL SUPPLIER REPORTS.—

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

“(B) EXCLUSION.—In determining compli-
ance with the applicable performance standards
under subsection (c), the Secretary shall ex-
clude reported electricity savings or natural gas savings that are not adequately demonstrated and documented, in accordance with the regulations promulgated under subsections (b) and (c).

“(2) Penalty for failure to document adequate savings.—If a retail electricity supplier or a retail natural gas supplier 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 (e)(3), the Secretary shall assess against the retail electricity supplier or retail natural gas supplier a civil penalty for each 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 supplier failed to achieve or make, respectively; or

“(B) $10 per million Btu of natural gas savings or alternative compliance payment that the retail natural gas supplier failed to achieve or make, respectively.
“(3) **Offsetting State Penalties.**—The Secretary shall reduce the amount of any penalty under paragraph (2) by the amount paid by the relevant retail electricity supplier or retail natural gas supplier to a State for failure to comply with the requirements of a State energy efficiency resource standard during the same compliance period.

“(4) **Enforcement Procedures.**—The Secretary shall assess a civil penalty, as provided under paragraph (2), in accordance with the procedures described in section 333(d) of the Energy Policy and Conservation Act of 1954 (42 U.S.C. 6303).

“(e) **State Administration.**—

“(1) **In General.**—Upon receipt of an application from the Governor of a State (including the Mayor of the District of Columbia), the Secretary may delegate to the State responsibility for administering this section within the territory of the State if the Secretary determines that the State will implement an energy efficiency program that meets or exceeds the requirements of this section.

“(2) **Secretarial Determination.**—Not later than 180 days after the date on which a complete application is received by the Secretary, the Secretary shall make a substantive determination
approving or disapproving a State application, after public notice and comment.

“(3) ALTERNATIVE COMPLIANCE PAYMENTS.—

“(A) IN GENERAL.—As part of an application submitted under paragraph (1), a State may permit retail electricity suppliers or retail natural gas suppliers to pay to the State, by not later than May 1 of the calendar year immediately following the applicable reporting period, an alternative compliance payment in an amount equal to, as adjusted for inflation in accordance with such regulations as the Secretary may promulgate, not less than—

“(i) $50 per megawatt hour of electricity savings needed to make up any deficit with regard to a compliance obligation under the applicable performance standard; or

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

“(B) USE OF PAYMENTS.—Alternative compliance payments collected by a State under subparagraph (A) shall be used by the State to
administer the delegated authority of the State under this section and to implement cost-effect-

ive energy efficiency programs that—

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

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

“(4) Review of State Implementation.—

“(A) Periodic Review.—Every 2 years, the Secretary shall review State implementation of this section for conformance with the require-
ments of this section in approximately ½ of the States that have received approval under this subsection to administer the program, so that each State shall be reviewed at least every 4 years.

“(B) Report.—To facilitate the review under subparagraph (A), the Secretary may re-
quire the State to submit a report demo-
strating the conformance of the State with the requirements of this section.
“(C) DEFICIENCIES.—

“(i) IN GENERAL.—In completing a review under this paragraph, if the Secretary finds deficiencies, the Secretary shall—

“(I) notify the State of the deficiencies;

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

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

“(ii) SUBSTANTIAL DEFICIENCIES.—If the deficiencies are substantial, the Secretary shall—

“(I) disallow the reported electricity savings or natural gas savings that the Secretary determines are not credible due to deficiencies;

“(II) re-review the State not later than 2 years after the date on which the original review was completed; and
“(III) if substantial deficiencies remain uncorrected after the review provided for under subclause (II), re-voke the authority of the State to ad-
minister the program established under this section.

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

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

(b) CONFORMING AMENDMENT.—The table of con-
tents of the Public Utility Regulatory Policies Act of 1978
1 (16 U.S.C. prec. 2601) is amended by adding at 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 for retail electricity and natural gas suppliers."."