

116TH CONGRESS
1ST SESSION

S. 2288

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

IN THE SENATE OF THE UNITED STATES

JULY 25, 2019

Ms. SMITH (for herself, Mr. KING, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend title VI of the Public Utility Regulatory Policies Act of 1978 to establish a Federal energy efficiency resource standard for electricity and natural gas suppliers, 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 “American Energy Effi-
5 ciency Act of 2019”.

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

4 (a) IN GENERAL.—Title VI of the Public Utility Reg-
 5 ulatory Policies Act of 1978 is amended by adding after
 6 section 609 (7 U.S.C. 918c) the following:

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

10 “(a) DEFINITIONS.—In this section:

11 “(1) ASHRAE; ANSI; IESNA.—The terms
 12 ‘ASHRAE’, ‘ANSI’, and ‘IESNA’ mean the Amer-
 13 ican Society of Heating, Refrigerating and Air-Con-
 14 ditioning Engineers, the American National Stand-
 15 ards Institute, and the Illuminating Engineering So-
 16 ciety of North America, respectively.

17 “(2) BASE QUANTITY.—

18 “(A) IN GENERAL.—The term ‘base quan-
 19 tity’, with respect to a retail electricity supplier
 20 or retail natural gas supplier, means, for each
 21 calendar year for which a performance standard
 22 is established under subsection (c), the average
 23 annual quantity of electricity or natural gas de-
 24 livered by the retail electricity supplier or retail
 25 natural gas supplier to retail customers during
 26 the 3 calendar years immediately preceding the

1 first year that compliance is required under
2 subsection (c)(1).

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

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

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

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

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

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

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

4 The term ‘combined heat and power system’ means
5 a system that uses the same energy source for the
6 generation of electrical or mechanical power and the
7 production of steam or another form of useful ther-
8 mal energy, if—

9 “(A) the system meets all applicable re-
10 quirements relating to efficiency and other op-
11 erating characteristics that the Secretary pro-
12 mulgates by regulation; and

13 “(B) the net quantity of electricity sold
14 wholesale by the facility using the system does
15 not exceed 50 percent of the total quantity of
16 electricity generated annually by the system.

17 “(6) COST-EFFECTIVE.—The term ‘cost-effec-
18 tive’ means, with respect to an energy efficiency
19 measure, that the measure achieves, directly to the
20 energy consumer and to the economy, a net present
21 value of economic benefits over the life of the meas-
22 ure that is greater than the net present value of the
23 cost of the measure over the life of the measure,
24 using a societal benefit-cost test calculated using the
25 lower of—

1 “(A) a utility weighted average cost of cap-
2 ital; or

3 “(B) a social discount rate of 3 percent.

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

11 “(A) in the case of a new facility, con-
12 sumption at a reference facility of average effi-
13 ciency;

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

17 “(C) in the case of new equipment that re-
18 places existing equipment at the end of the use-
19 ful life of the existing equipment, consumption
20 by new equipment of average efficiency of the
21 same equipment type, except that customer sav-
22 ings under this subparagraph shall not be
23 counted towards customer savings under sub-
24 paragraph (A) or (B); and

1 “(D) in the case of new equipment that re-
2 places existing equipment with remaining useful
3 life—

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

7 “(ii) thereafter, consumption of new
8 equipment of average efficiency.

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

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

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

24 “(C) CHP savings;

1 “(D) State and local codes and standards
2 savings of electricity; and

3 “(E) fuel switching energy savings that re-
4 sults in net savings of source energy, as defined
5 in regulations promulgated by the Secretary.

6 “(9) FUEL SWITCHING ENERGY SAVINGS.—

7 “(A) IN GENERAL.—The term ‘fuel-switch-
8 ing energy savings’ means net energy savings,
9 calculated in accordance with subparagraph
10 (B), from end-user switches from 1 energy
11 source to another, as determined in accordance
12 with regulations promulgated by the Secretary.

13 “(B) CALCULATION.—For purposes of cal-
14 culating fuel-switching net energy savings—

15 “(i) electricity use shall be evaluated
16 based on the average quantity of fuel
17 burned at a new power plant, taking into
18 account existing and planned renewable en-
19 ergy generators to provide each kilowatt
20 hour of electricity;

21 “(ii) electricity and natural gas use
22 shall include losses in the transmission and
23 distribution system; and

1 “(iii) fuel-switching that is not cost-ef-
2 fective to the end-user shall not be count-
3 ed.

4 “(10) NATURAL GAS SAVINGS.—The term ‘nat-
5 ural gas savings’ means reductions in natural gas
6 consumption from measures implemented after the
7 date of enactment of this section, as determined in
8 accordance with regulations promulgated by the Sec-
9 retary, that are limited to—

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

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

20 “(C) State and local codes and standards
21 savings of natural gas; and

22 “(D) fuel switching energy savings that re-
23 sult in net savings of source energy, as defined
24 in regulations promulgated by the Secretary.

1 “(11) REPORTING PERIOD.—The term ‘report-
2 ing period’ means—

3 “(A) calendar year 2021; and

4 “(B) each successive 2-calendar-year pe-
5 riod thereafter.

6 “(12) RETAIL ELECTRICITY SUPPLIER.—

7 “(A) IN GENERAL.—The term ‘retail elec-
8 tricity supplier’ means, for any given calendar
9 year, an electric utility that delivers not less
10 than 2,000,000 megawatt hours of electric en-
11 ergy to electric consumers for purposes other
12 than resale during the preceding calendar year.

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

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

22 “(ii) deliveries by any electric utility
23 to a lessee, tenant, or affiliate of the elec-
24 tric utility shall not be considered to be de-
25 liveries to electric consumers.

1 “(13) RETAIL NATURAL GAS SUPPLIER.—

2 “(A) IN GENERAL.—The term ‘retail nat-
3 ural gas supplier’ means, for any given calendar
4 year, a local distribution company (as defined
5 in section 2 of the Natural Gas Policy Act of
6 1978 (15 U.S.C. 3301)), that delivered to nat-
7 ural gas consumers more than 5,000,000,000
8 cubic feet of natural gas for purposes other
9 than resale during the preceding calendar year.

10 “(B) INCLUSIONS AND LIMITATIONS.—For
11 purposes of determining whether a person
12 qualifies as a retail natural gas supplier under
13 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 the
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 considered to be
22 deliveries to natural gas consumers.

23 “(14) STATE AND LOCAL CODES AND STAND-
24 ARDS SAVINGS.—

1 “(A) IN GENERAL.—The term ‘State and
2 local codes and standards savings’ means a re-
3 duction, due to the adoption and implementa-
4 tion, after the date of enactment of this section,
5 of new or revised appliance and equipment effi-
6 ciency standards or building energy codes, in—

7 “(i) end-use electricity consumption
8 for a retail electricity supplier; or

9 “(ii) natural gas consumption in the
10 service territory of a retail natural gas
11 supplier.

12 “(B) BASELINES.—In calculating State
13 and local codes and standards savings under
14 subparagraph (A)—

15 “(i) the baseline for calculating sav-
16 ings from a new or revised building code
17 shall be the more stringent of—

18 “(I)(aa) the 2015 International
19 Energy Conservation Code for resi-
20 dential buildings; or

21 “(bb) the ASHRAE/ANSI/
22 IESNA Standard 90.1–2013 for com-
23 mercial buildings; or

1 “(II) the applicable State build-
2 ing code in effect on the date of en-
3 actment of this section; and

4 “(ii) the baseline for calculating sav-
5 ings from a new or revised appliance
6 standard shall be the estimated average ef-
7 ficiency of new appliances in the applicable
8 1 or more categories during the 1-year pe-
9 riod preceding the date on which the new
10 or revised standard is adopted.

11 “(15) THIRD-PARTY EFFICIENCY PROVIDER.—
12 The term ‘third-party efficiency provider’ means any
13 retailer, building owner, energy service company, fi-
14 nancial institution, or other commercial, industrial,
15 or nonprofit entity that is capable of providing elec-
16 tricity savings or natural gas savings in accordance
17 with any procedures, standards, and rules estab-
18 lished by the Secretary under subsections (b)(1)(D)
19 and (d).

20 “(16) WASTE HEAT ENERGY SAVINGS.—The
21 term ‘waste heat energy savings’ means the mechan-
22 ical or thermal energy used at a facility or the elec-
23 tric output of a facility, adjusted to reflect any asso-
24 ciated increase in fuel consumption, that results
25 from a modification of an industrial, commercial, or

1 institutional system that commenced operation be-
2 fore the date of enactment of this section, in order
3 to recapture mechanical or thermal energy that
4 would otherwise be wasted, as determined in accord-
5 ance with regulations promulgated by the Secretary.

6 “(b) ESTABLISHMENT OF PROGRAM.—

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

12 “(A) by establishing evaluation, measure-
13 ment, and verification procedures and stand-
14 ards under subsection (d);

15 “(B) by establishing requirements under
16 which retail electricity suppliers and retail nat-
17 ural gas suppliers shall—

18 “(i) demonstrate, document, and re-
19 port the compliance of the retail electricity
20 suppliers and retail natural gas suppliers
21 with the performance standards under sub-
22 section (c); and

23 “(ii) estimate the impact of the stand-
24 ards on current and future electricity and

1 natural gas use in the service territories of
2 the suppliers;

3 “(C) by establishing requirements gov-
4 erning applications for, and implementation of,
5 delegated State administration under subsection
6 (f); and

7 “(D) by establishing rules to govern trans-
8 fers of electricity or natural gas savings—

9 “(i) between suppliers and third-party
10 efficiency providers serving the same State;
11 and

12 “(ii) between suppliers and third-
13 party efficiency providers serving different
14 States.

15 “(2) NATIONAL ACADEMY OF SCIENCES
16 STUDY.—In establishing and implementing this sec-
17 tion, the Secretary shall take into consideration a re-
18 port published under subsection (d)(2)(C).

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

24 “(4) SAVINGS PROGRAMS FOR LOW-INCOME
25 CUSTOMERS.—In implementing this section, the Sec-

1 retary shall encourage retail electricity suppliers and
2 retail natural gas suppliers to ensure that a portion
3 of the customer facility savings achieved for a cal-
4 endar year shall result from programs that target
5 households that are at or below 200 percent of the
6 poverty line (as defined in section 673 of the Com-
7 munity Services Block Grant Act (42 U.S.C. 9902)).

8 “(c) PERFORMANCE STANDARDS.—

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

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

22 “(B) each retail natural gas supplier shall
23 submit to the Secretary a report, in accordance
24 with regulations promulgated by the Secretary,
25 demonstrating that it has achieved cumulative

1 consistent natural gas savings (adjusted to ac-
 2 count for any attrition of savings measures im-
 3 plemented in prior years) in each calendar year
 4 that are equal to the applicable percentage of
 5 the base quantity of such retail natural gas
 6 supplier.

7 “(2) STANDARDS FOR 2021 THROUGH 2035.—
 8 For each of calendar years 2021 through 2035, the
 9 applicable percentages are as follows:

“Calendar Year	Cumulative Electricity Savings Percentage	Cumulative Natural Gas Savings Percentage
2021	1.00	0.50
2022	2.00	1.25
2023	3.00	2.00
2024	4.25	3.00
2025	5.50	4.00
2026	7.00	5.00
2027	8.50	6.00
2028	10.00	7.00
2029	11.50	8.00
2030	13.00	9.00
2031	14.75	10.00
2032	16.50	11.00
2033	18.25	12.00
2034	20.00	13.00
2035	22.00	14.00

10 “(3) SUBSEQUENT YEARS.—

11 “(A) CALENDAR YEARS 2036 THROUGH
 12 2045.—Not later than December 31, 2030, the

1 Secretary shall promulgate regulations estab-
2 lishing performance standards (expressed as ap-
3 plicable percentages of base quantity for both
4 cumulative electricity savings and cumulative
5 natural gas savings) for each of calendar years
6 2036 through 2045.

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

12 “(i) cost-effective energy savings
13 achieved by leading retail electricity sup-
14 pliers and retail natural gas suppliers;

15 “(ii) opportunities for new State and
16 local codes and standards savings;

17 “(iii) technology improvements; and

18 “(iv) other indicators of cost-effective
19 energy efficiency potential including dif-
20 ferences between States.

21 “(C) MINIMUM PERCENTAGE.—In no case
22 shall the applicable percentages for any cal-
23 endar year be less than the applicable percent-
24 ages for calendar year 2035.

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

3 “(A) IN GENERAL.—Notwithstanding
4 paragraphs (1) and (2), for the 2021 reporting
5 period, the Secretary may accept a request from
6 a retail electricity supplier or a retail natural
7 gas supplier to delay the required submission of
8 documentation of all or part of the required
9 savings for up to 2 years.

10 “(B) PLAN FOR COMPLIANCE.—The re-
11 quest for delay under subparagraph (A) shall
12 include a plan for coming into full compliance
13 by the end of the 2022–2023 reporting period.

14 “(5) APPLYING UNUSED SAVINGS TO FUTURE
15 YEARS.—If savings achieved in a year exceed the
16 performance standards specified in this subsection,
17 any savings in excess of the performance standards
18 may be applied toward performance standards speci-
19 fied for the first 3 years following the year in which
20 the excess savings are achieved.

21 “(d) EVALUATION, MEASUREMENT, AND
22 VERIFICATION OF SAVINGS.—

23 “(1) REGULATIONS.—The regulations promul-
24 gated pursuant to subsection (b) shall—

25 “(A) be based on—

1 “(i) the Uniform Methods Project of
2 the Department of Energy;

3 “(ii) the National Standard Practice
4 Manual for Assessing the Cost-Effective-
5 ness of Energy Efficiency Resources, devel-
6 oped by the National Efficiency Screening
7 Project; and

8 “(iii) other best practices recognized
9 in the energy efficiency industry; and

10 “(B) include—

11 “(i) procedures and standards for
12 evaluating, measuring, and verifying elec-
13 tricity savings and natural gas savings that
14 count towards the performance standards
15 established under subsection (c) that—

16 “(I) specify the types of energy
17 efficiency and energy conservation
18 measures that may be counted;

19 “(II) require that energy con-
20 sumption estimates for customer fa-
21 cilities or portions of facilities in the
22 applicable base and current years be
23 adjusted, as appropriate, to account
24 for changes in weather, level of pro-
25 duction, and building area;

1 “(III) do not prevent overall load
2 growth due to beneficial electrifica-
3 tion;

4 “(IV) account for the useful life
5 of energy efficiency and energy con-
6 servation measures;

7 “(V) allow for savings from a
8 program to be estimated based on ex-
9 trapolation from a representative sam-
10 ple of participating customers;

11 “(VI) include procedures for cal-
12 culating and documenting CHP sav-
13 ings, fuel-switching energy savings,
14 and waste heat energy savings;

15 “(VII) establish methods for cal-
16 culating codes and standards energy
17 savings, including the use of verified
18 compliance rates;

19 “(VIII) include procedures for
20 calculating and documenting—

21 “(aa) customer facility sav-
22 ings and reductions in distribu-
23 tion system losses of electricity
24 and natural gas that are achieved
25 as a result of smart grid deploy-

1 ment, as described in section
2 1301 of the Energy Independ-
3 ence and Security Act of 2007
4 (42 U.S.C. 17381); and

5 “(bb) reductions in natural
6 gas distribution system losses at-
7 tributable to pipeline repair and
8 replacement programs;

9 “(IX) count only measures and
10 savings that are additional to busi-
11 ness-as-usual customer purchase prac-
12 tices;

13 “(X) ensure that the retail elec-
14 tricity supplier or retail natural gas
15 supplier claiming the electricity sav-
16 ings or natural gas savings, including
17 State and local codes and standards
18 savings, has played a significant role
19 in achieving the savings (including
20 through the activities of a designated
21 agent of the supplier or through the
22 purchase of transferred electricity sav-
23 ings or natural gas savings);

1 “(XI) avoid double-counting of
2 savings used for compliance with this
3 section, including transferred savings;

4 “(XII) include electricity savings
5 or natural gas savings from programs
6 administered by retail electricity sup-
7 pliers or natural gas suppliers that
8 are funded by Federal, State, or other
9 sources;

10 “(XIII) credit large customer
11 self-directed electricity savings or nat-
12 ural gas savings to the retail elec-
13 tricity supplier or retail natural gas
14 supplier if the large customer receives
15 incentives or rate reductions from the
16 retail electricity supplier or retail nat-
17 ural gas supplier for self-directed en-
18 ergy efficiency improvements;

19 “(XIV) include guidance, as ap-
20 propriate, for additional alternative
21 approaches to evaluate electricity sav-
22 ings and natural gas savings for large
23 commercial and industrial customers
24 in energy-intensive industries that are
25 subject to international competition;

1 “(XV) include procedures for
2 counting electricity savings and nat-
3 ural gas savings achieved by solar
4 heating and cooling technologies, solar
5 light pipe technology, geothermal heat
6 pumps, and other technologies uti-
7 lizing renewable resources that do not
8 produce electricity or gaseous fuel and
9 reduce on-site energy use;

10 “(XVI) include procedures for
11 counting electricity savings and nat-
12 ural gas savings achieved by weather-
13 ization measures, such as installing
14 mechanical insulation, repairing or re-
15 placing heating and cooling systems,
16 repairing or replacing windows and
17 doors, performing air sealing, and re-
18 placing lights and appliances with
19 more energy efficient models;

20 “(XVII) include procedures for
21 counting electricity savings and nat-
22 ural gas savings achieved from in-
23 creased utilization of mechanical insu-
24 lation for new, retrofit, and mainte-
25 nance construction for commercial, in-

1 industrial, public, and nonprofit build-
2 ings and facilities;

3 “(XVIII) in any State in which
4 the State regulatory authority has
5 designated 1 or more entities to ad-
6 minister electric ratepayer-funded effi-
7 ciency programs approved by the
8 State regulatory authority, provide
9 that electricity savings and natural
10 gas savings achieved through those
11 programs shall be distributed propor-
12 tionally among retail electricity sup-
13 pliers and retail natural gas suppliers;

14 “(XIX) include guidance for re-
15 tail electricity suppliers and retail nat-
16 ural gas suppliers to calculate and
17 document business-as-usual consump-
18 tion projections;

19 “(XX) include guidance for esti-
20 mating savings using information
21 from the database established under
22 paragraph (3) based on similar meas-
23 ures and programs in other settings
24 with appropriate adjustments, as nec-
25 essary; and

1 “(XXI) incorporate advances in
2 the science of policy evaluation, such
3 as the use of—

4 “(aa) randomized control
5 trials;

6 “(bb) other experimental
7 and quasi-experimental ap-
8 proaches; and

9 “(cc) large data sets and
10 machine learning techniques; and

11 “(ii) procedures and standards for
12 third-party verification of reported elec-
13 tricity savings or natural gas savings.

14 “(2) NATIONAL ACADEMY OF SCIENCES
15 STUDY.—Not later than 180 days after the date of
16 enactment of this section, the Secretary shall offer
17 to enter into an agreement with the National Acad-
18 emy of Sciences, under which the Academy shall—

19 “(A) evaluate existing state-of-the-art
20 methods for evaluating energy efficiency policies
21 and measures;

22 “(B) identify approaches in program eval-
23 uation literature that may be brought into the
24 energy efficiency domain, including—

1 “(i) randomized control trials and
2 other experimental or quasi-experimental
3 approaches;

4 “(ii) control of confounding factors;

5 “(iii) longitudinal studies;

6 “(iv) assessments by neutral arbiters;

7 and

8 “(v) disclosure of data for replication;

9 and

10 “(C) not later than 18 months after the
11 date of enactment of this section, publish a re-
12 port that includes—

13 “(i) a description of the evaluation
14 under subparagraph (A);

15 “(ii) a description of the approaches
16 identified under subparagraph (B); and

17 “(iii) recommendations for advancing
18 and adopting rigorous state-of-the-art
19 methods for evaluating energy efficiency
20 policies and measures.

21 “(3) ENERGY EFFICIENCY PROGRAM EVALUA-
22 TION DATABASE.—

23 “(A) IN GENERAL.—The Secretary shall
24 establish and maintain a searchable public data-
25 base, accessible on the website of the Depart-

1 ment of Energy, that contains a list of random-
2 ized control trials and other experimental or
3 quasi-experimental evaluations of energy effi-
4 ciency programs.

5 “(B) REQUIREMENTS.—Each trial or eval-
6 uation on the list described in subparagraph
7 (A) shall include, at a minimum—

8 “(i) the State in which the trial or
9 evaluation was conducted;

10 “(ii) the type of trial or evaluation
11 conducted;

12 “(iii) the type of program evaluated;

13 “(iv) an abstract or summary of the
14 program evaluated;

15 “(v) a summary of the trial or evalua-
16 tion methodology;

17 “(vi) the revealed energy savings from
18 the trial or evaluation; and

19 “(vii) to the extent practicable, the
20 underlying data used to conduct the trial
21 or evaluation.

22 “(e) ENFORCEMENT AND JUDICIAL REVIEW.—

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

24 “(A) IN GENERAL.—The Secretary shall
25 review each report submitted to the Secretary

1 by a retail electricity supplier or retail natural
2 gas supplier under subsection (c) to verify that
3 the applicable performance standards under
4 subsection (c) have been met.

5 “(B) EXCLUSION.—In determining compli-
6 ance with the applicable performance standards
7 under subsection (c), the Secretary shall ex-
8 clude reported electricity savings or natural gas
9 savings that are not adequately demonstrated
10 and documented, in accordance with the regula-
11 tions promulgated under subsections (b) and
12 (c).

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

24 “(A) \$100 per megawatt hour of electricity
25 savings or alternative compliance payment that

1 the retail electricity supplier failed to achieve or
2 make, respectively; or

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

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

14 “(4) USE OF PAYMENTS.—

15 “(A) DEFINITION OF COVERED RATE.—In
16 this paragraph, the term ‘covered rate’ means
17 the proportion that—

18 “(i) the amount of penalty payments
19 made by retail electricity suppliers and
20 natural gas suppliers in a State under
21 paragraph (2); bears to

22 “(ii) the total amount of penalty pay-
23 ments collected by the Secretary under
24 that paragraph.

1 “(B) USE OF PAYMENTS.—Penalty pay-
2 ments collected under paragraph (2) by the
3 Secretary shall be—

4 “(i) provided to each State at the cov-
5 ered rate for the State; and

6 “(ii) used by the State to implement
7 cost-effective energy efficiency programs
8 that—

9 “(I) to the maximum extent prac-
10 ticable, achieve electricity savings and
11 natural gas savings in the State suffi-
12 cient to make up the deficit associated
13 with the penalty payments; and

14 “(II) can be measured and
15 verified in accordance with the appli-
16 cable procedures and standards estab-
17 lished under subsection (d).

18 “(5) ENFORCEMENT PROCEDURES.—The Sec-
19 retary shall assess a civil penalty, as provided under
20 paragraph (2), in accordance with the procedures
21 described in section 333(d) of the Energy Policy and
22 Conservation Act (42 U.S.C. 6303(d)).

23 “(f) STATE ADMINISTRATION.—

24 “(1) IN GENERAL.—On receipt of an applica-
25 tion from the Governor of a State (including the

1 Mayor of the District of Columbia), the Secretary
2 may delegate to the State responsibility for admin-
3 istering this section within the territory of the State
4 if the Secretary determines that the State will imple-
5 ment an energy efficiency program that meets or ex-
6 ceeds the requirements of this section.

7 “(2) SECRETARIAL DETERMINATION.—Not
8 later than 180 days after the date on which a com-
9 plete application is received by the Secretary, the
10 Secretary shall make a substantive determination
11 approving or disapproving a State application, after
12 public notice and comment.

13 “(3) ALTERNATIVE COMPLIANCE PAYMENTS.—

14 “(A) IN GENERAL.—As part of an applica-
15 tion submitted under paragraph (1), a State
16 may permit retail electricity suppliers or retail
17 natural gas suppliers to pay to the State, by
18 not later than May 1 of the calendar year im-
19 mediately following the applicable reporting pe-
20 riod, an alternative compliance payment in an
21 amount equal to, as adjusted for inflation in ac-
22 cordance with such regulations as the Secretary
23 may promulgate, not less than—

24 “(i) \$50 per megawatt hour of elec-
25 tricity savings needed to make up any def-

1 icit with regard to a compliance obligation
2 under the applicable performance stand-
3 ard; or

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

8 “(B) USE OF PAYMENTS.—Alternative
9 compliance payments collected by a State under
10 subparagraph (A) shall be used by the State to
11 administer the delegated authority of the State
12 under this section and to implement cost-effec-
13 tive energy efficiency programs that—

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

19 “(ii) can be measured and verified in
20 accordance with the applicable procedures
21 and standards established under subsection
22 (d).

23 “(4) REVIEW OF STATE IMPLEMENTATION.—

24 “(A) PERIODIC REVIEW.—Every 2 years,
25 the Secretary shall review State implementation

1 of this section for conformance with the re-
2 quirements of this section in approximately $\frac{1}{2}$
3 of the States that have received approval under
4 this subsection to administer the program, so
5 that each State shall be reviewed not less fre-
6 quently than once every 4 years.

7 “(B) REPORT.—To facilitate the review
8 under subparagraph (A), the Secretary may re-
9 quire the State to submit a report dem-
10 onstrating the conformance of the State with
11 the requirements of this section.

12 “(C) DEFICIENCIES.—

13 “(i) IN GENERAL.—In completing a
14 review under this paragraph, if the Sec-
15 retary finds deficiencies, the Secretary
16 shall—

17 “(I) notify the State of the defi-
18 ciencies;

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

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

1 “(ii) SUBSTANTIAL DEFICIENCIES.—If
2 the deficiencies are substantial, the Sec-
3 retary shall—

4 “(I) disallow the reported elec-
5 tricity savings or natural gas savings
6 that the Secretary determines are not
7 credible due to deficiencies;

8 “(II) re-review the State not
9 later than 2 years after the date on
10 which the original review was com-
11 pleted; and

12 “(III) if substantial deficiencies
13 remain uncorrected after the review
14 provided for under subclause (II), re-
15 voke the authority of the State to ad-
16 minister the program established
17 under this section.

18 “(5) COST RECOVERY, FIXED COST RECOVERY,
19 AND SHAREHOLDER INCENTIVES.—The Secretary
20 shall encourage State utility regulatory commissions
21 to review the rules and regulations of the Commis-
22 sion to ensure that utilities under the jurisdiction of
23 the Commission may—

24 “(A) recover the direct costs of energy effi-
25 ciency programs;

1 “(B)(i) fully recover authorized fixed costs
2 from customers, including recovery of revenue
3 associated with fixed costs that was lost due to
4 annual sales that were lower than forecasted;
5 but

6 “(ii) return to customers the revenue asso-
7 ciated with fixed costs collected in excess of the
8 authorized amount under clause (i); and

9 “(C) earn a performance-based incentive
10 for shareholders for the achievement of energy
11 efficiency standards.

12 “(6) EVALUATION, MEASUREMENT, AND
13 VERIFICATION INCENTIVES.—The Secretary shall en-
14 courage States that have delegated authority to ad-
15 minister this section to provide incentives to retail
16 electricity suppliers, retail natural gas suppliers, and
17 third-party efficiency providers to use randomized
18 control trials and other experimental or quasi-experi-
19 mental approaches to evaluate energy efficiency
20 measures and programs within the State.

21 “(g) INFORMATION AND REPORTS.—In accordance
22 with section 13 of the Federal Energy Administration Act
23 of 1974 (15 U.S.C. 772), the Secretary may require any
24 retail electricity supplier, retail natural gas supplier, third-
25 party efficiency provider, or any other entity that the Sec-

1 retary determines appropriate, to provide any information
2 the Secretary determines appropriate to carry out this sec-
3 tion.

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

13 (b) CONFORMING AMENDMENT.—The table of con-
14 tents of the Public Utility Regulatory Policies Act of 1978
15 (16 U.S.C. prec. 2601) is amended by adding at the end
16 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.”.

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