

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

S. 1387

To amend the Emergency Planning and Community Right-to-Know Act of 1986 to provide for greenhouse gases.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Ms. KLOBUCHAR

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Greenhouse
5 Gas Registry Act of 2008”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to provide for the estab-
8 lishment of a Federal greenhouse gas registry that—

9 (1) is complete, consistent, transparent, and ac-

10 curate;

1 (2) will collect reliable and accurate data that
2 can be used by public and private entities to design
3 efficient and effective energy security initiatives and
4 greenhouse gas emission reduction strategies; and

5 (3) will provide appropriate high-quality data to
6 be used for implementing greenhouse gas reduction
7 policies.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) ADMINISTRATOR.—The term “Adminis-
11 trator” means the Administrator of the Environ-
12 mental Protection Agency.

13 (2) AFFECTED FACILITY.—

14 (A) IN GENERAL.—The term “affected fa-
15 cility” means—

16 (i) any facility that uses more than
17 5,000 tons of coal in a calendar year;

18 (ii) any facility that is a natural gas
19 processing plant or that produces natural
20 gas in the State of Alaska, or any entity
21 that imports natural gas (including lique-
22 fied natural gas);

23 (iii) any facility that in any year pro-
24 duces, or any entity that in any year im-
25 ports, petroleum- or coal-based liquid or

1 gaseous fuel, the combustion of which will
2 emit a group I greenhouse gas, assuming
3 no capture and sequestration of that gas;

4 (iv) any facility that in any year pro-
5 duces for sale or distribution, or any entity
6 that in any year imports, more than
7 10,000 carbon dioxide equivalents of
8 chemicals that are greenhouse gas (other
9 than hydrofluorocarbons), assuming no
10 capture and destruction or sequestration of
11 that gas;

12 (v) a facility that produces for sale or
13 distribution, or an entity that imports, in
14 any calendar year more than 10,000 car-
15 bon dioxide equivalents of
16 hydrofluorocarbons, perfluorocarbons, sul-
17 fur hexafluoride, nitrogen trifluoride, or
18 any other fluorinated gas that is a green-
19 house gas, as designated by the Adminis-
20 trator;

21 (vi) a facility within the electric power
22 sector that contains a fossil fuel-fired elec-
23 tricity generating unit or units that to-
24 gether emit more than 10,000 carbon diox-

1 ide equivalents of greenhouse gas in any
2 calendar year;

3 (vii) an industrial facility that emits
4 more than 10,000 carbon dioxide equiva-
5 lents of greenhouse gas in any calendar
6 year;

7 (viii) a facility that produces, or an
8 entity that imports, in any calendar year
9 petroleum- or coal-based liquid or gaseous
10 fuel, the combustion of which will emit
11 more than 10,000 carbon dioxide equiva-
12 lents of greenhouse gas;

13 (ix) a local distribution company that
14 in any calendar year delivers natural gas,
15 the combustion of which will emit more
16 than 10,000 carbon dioxide equivalents of
17 greenhouse gas;

18 (x) a site at which carbon dioxide is
19 geologically sequestered on a commercial
20 scale;

21 (xi) subject to subparagraph (B), an-
22 other facility that emits a greenhouse gas,
23 as determined by the Administrator; and

24 (xii) at the option of the Adminis-
25 trator, a vehicle fleet with emissions of

1 more than 10,000 carbon dioxide equiva-
2 lents per calendar year, assuming no dou-
3 ble-counting of emissions.

4 (B) EXCLUSIONS.—The term “affected fa-
5 cility” may not include, at the discretion of the
6 Administrator, any facility described in sub-
7 paragraph (A)(xi) that is owned or operated by
8 a small business (as described in part 121 of
9 title 13, Code of Federal Regulations (or a suc-
10 cessor regulation)).

11 (3) CARBON CONTENT.—The term “carbon con-
12 tent” means the quantity of carbon (in carbon diox-
13 ide equivalent) contained in a fuel.

14 (4) CARBON DIOXIDE EQUIVALENT.—The term
15 “carbon dioxide equivalent” means, with respect to
16 a greenhouse gas, the quantity of the greenhouse gas
17 that the Administrator determines makes the same
18 contribution to global warming as 1 metric ton of
19 carbon dioxide.

20 (5) CLIMATE REGISTRY.—The term “Climate
21 Registry” means the greenhouse gas emissions reg-
22 istry jointly established and managed by more than
23 40 States and Indian tribes to collect high-quality
24 greenhouse gas emission data from facilities, cor-
25 porations, and other organizations to support var-

1 ious greenhouse gas emission reporting and reduc-
2 tion policies for the member States and Indian
3 tribes.

4 (6) FACILITY.—The term “facility” means 1 or
5 more buildings, structures, or installations of an en-
6 tity on 1 or more contiguous or adjacent properties
7 located in the United States.

8 (7) FEEDSTOCK.—The term “feedstock” means
9 fossil fuel used as raw material in a manufacturing
10 process.

11 (8) GREENHOUSE GAS.—The term “greenhouse
12 gas” means—

13 (A) carbon dioxide;

14 (B) methane;

15 (C) nitrous oxide;

16 (D) hydrofluorocarbons;

17 (E) perfluorocarbons;

18 (F) sulfur hexafluoride; and

19 (G) any other anthropogenically-emitted
20 gas that the Administrator, after notice and
21 comment, determines to contribute to climate
22 change.

23 (9) GREENHOUSE GAS EMISSIONS.—

1 (A) IN GENERAL.—The term “greenhouse
2 gas emissions” means emissions of a green-
3 house gas.

4 (B) INCLUSIONS.—The term “greenhouse
5 gas emissions” includes—

6 (i) stationary combustion source emis-
7 sions emitted as a result of combustion of
8 fuels in stationary equipment, such as boil-
9 ers, furnaces, burners, turbines, heaters,
10 incinerators, engines, flares, and other
11 similar sources;

12 (ii) process emissions consisting of
13 emissions from chemical or physical proc-
14 esses other than combustion;

15 (iii) fugitive emissions consisting of
16 intentional and unintentional emissions
17 from equipment leaks, such as joints, seals,
18 packing, and gaskets, or from piles, pits,
19 cooling towers, and other similar sources;
20 and

21 (iv) biogenic emissions resulting from
22 biological processes, such as anaerobic de-
23 composition, nitrification, and
24 denitrification.

1 (10) INDIAN TRIBE.—The term “Indian tribe”
2 has the meaning given the term in section 4 of the
3 Indian Self-Determination and Education Assistance
4 Act (25 U.S.C. 450b).

5 (11) INDUSTRIAL FACILITY.—The term “indus-
6 trial facility” means—

7 (A) any facility in the manufacturing sec-
8 tor (as defined in North American Industrial
9 Classification System Codes 31, 32, and 33);

10 (B) any natural gas processing plant; and

11 (C) any other facility that produces
12 petroleum- or coal-based liquid fuel.

13 (12) LOCAL DISTRIBUTION COMPANY.—The
14 term “local distribution company” has the meaning
15 given the term in section 2 of the Natural Gas Pol-
16 icy Act of 1978 (15 U.S.C. 3301).

17 (13) REGISTRY.—The term “Registry” means
18 the Federal greenhouse gas registry established
19 under section 6(a).

20 (14) REVERSAL.—The term “reversal” means
21 an intentional or unintentional release to the atmos-
22 phere of a significant quantity (as determined by the
23 Administrator) of greenhouse gas that was seques-
24 tered.

1 (15) SEQUESTERED.—The term “sequestered”
2 means the isolation of a greenhouse gas, without re-
3 versal, in geological formations, as determined by
4 the Administrator.

5 (16) SOURCE.—The term “source” means any
6 building, structure, installation, unit, point, oper-
7 ation, vehicle, land area, or other item that emits or
8 may emit a greenhouse gas.

9 **SEC. 4. REPORTING REQUIREMENTS.**

10 (a) IN GENERAL.—Each affected facility shall submit
11 to the Administrator, for inclusion in the Registry, peri-
12 odic reports, including annual and quarterly data, that—

13 (1) describe the quantity and type of feedstocks
14 that are extracted, produced, refined, imported, ex-
15 ported, or consumed at or by the facility;

16 (2) describe the quantity of each greenhouse
17 gas generated, produced, imported, exported, con-
18 sumed, or captured and sequestered at or by the fa-
19 cility;

20 (3) describe the quantity of electricity gen-
21 erated, imported, exported, or consumed by or at the
22 facility, and information on the quantity of green-
23 house gases emitted when the imported, exported, or
24 consumed electricity was generated, as determined
25 by the Administrator;

1 (4) provide a list and description of sources of
2 greenhouse gas emissions at the facility;

3 (5) describe greenhouse gas emissions expressed
4 in metric tons of each greenhouse gas emitted and
5 in the quantity of carbon dioxide equivalents of each
6 greenhouse gas emitted;

7 (6) describe the aggregate quantity of each
8 greenhouse gas emitted from each source at the fa-
9 cility, including stationary combustion source emis-
10 sions, process emissions, and fugitive emissions, and
11 the aggregate quantity of those emissions;

12 (7) quantify greenhouse gas emissions in ac-
13 cordance with the measurement standards estab-
14 lished under section 5;

15 (8) provide other data necessary for accurate
16 and complete accounting of greenhouse gas emis-
17 sions, as determined by the Administrator;

18 (9) provide an appropriate certification regard-
19 ing the accuracy and completeness of reported data,
20 as determined by the Administrator; and

21 (10) are submitted electronically to the Admin-
22 istrator, in such form and to such extent as may be
23 required by the Administrator.

24 (b) DE MINIMIS EXEMPTIONS.—

1 (1) IN GENERAL.—The Administrator may de-
2 termine—

3 (A) whether certain sources at a facility
4 should be considered to be eligible for a de-
5 minimis exemption from the reporting require-
6 ment under this Act; and

7 (B) the level of greenhouse gases emitted
8 from a source that would qualify for such an
9 exemption.

10 (2) FACTORS.—In making a determination
11 under paragraph (1), the Administrator shall con-
12 sider—

13 (A) the availability and suitability of sim-
14 plified techniques and tools for quantifying
15 emissions; and

16 (B) the cost to measure those emissions
17 relative to the purposes of this Act, including
18 the goal of collecting complete and consistent
19 facility-wide data.

20 (c) VERIFICATION OF REPORT REQUIRED.—The Ad-
21 ministrators shall verify the completeness and accuracy of
22 the report using information provided under this section
23 or obtained under other provisions of law.

24 (d) TIMING.—For calendar year 2010 and each sub-
25 sequent calendar year, each affected facility shall submit

1 quarterly data described in this section to the Adminis-
2 trator not later than 90 days after the end of the applica-
3 ble quarter.

4 (e) NO EFFECT ON OTHER REQUIREMENTS.—Noth-
5 ing in this title affects any requirement in effect as of the
6 date of enactment of this Act relating to the reporting
7 of—

8 (1) fossil fuel production, refining, importation,
9 exportation, or consumption data;

10 (2) greenhouse gas emission data; or

11 (3) other relevant data.

12 **SEC. 5. DATA QUALITY AND VERIFICATION.**

13 (a) PROTOCOLS AND METHODS.—

14 (1) IN GENERAL.—The Administrator shall es-
15 tablish by regulation, taking into account the Cli-
16 mate Registry, comprehensive protocols and methods
17 to ensure the accuracy, completeness, consistency,
18 and transparency of data on greenhouse gas emis-
19 sions and feedstock production, refining, importa-
20 tion, exportation, and consumption submitted to the
21 Registry that include—

22 (A) accounting and reporting standards for
23 feedstock production, refining, importation, ex-
24 portation, and consumption;

1 (B) a requirement that, if technologically
2 feasible, submitted data are monitored using
3 monitoring systems for fuel flow or emissions,
4 such as continuous emission monitoring systems
5 or equivalent systems of similar rigor, accuracy,
6 quality, and timeliness;

7 (C) a requirement that, if a facility has al-
8 ready been directed to monitor emissions of a
9 greenhouse gas using a continuous emission
10 monitoring system under existing law, that sys-
11 tem be used in complying with this Act with re-
12 spect to the greenhouse gas;

13 (D) for cases in which the Administrator
14 determines that monitoring emissions with the
15 precision, reliability, accessibility, and timeli-
16 ness similar to that provided by a continuous
17 emission monitoring system are not techno-
18 logically feasible, standardized methods for cal-
19 culating greenhouse gas emissions in specific in-
20 dustries using other readily available and reli-
21 able information, such as fuel consumption, ma-
22 terials consumption, production, or other rel-
23 evant activity data, if those methods do not
24 underreport emissions, as compared with the
25 continuous emission monitoring system;

1 (E) information on the accuracy of meas-
2 urement and calculation methods;

3 (F) methods to avoid double-counting of
4 greenhouse gas emissions;

5 (G) protocols to prevent an affected facility
6 from avoiding the reporting requirements of
7 this title; and

8 (H) protocols for verification of data sub-
9 mitted by affected facilities.

10 (2) BEST PRACTICES.—The protocols and
11 methods developed under paragraph (1) shall incor-
12 porate and conform to the best practices from the
13 most recent Federal, State, and international proto-
14 cols for the measurement, accounting, reporting, and
15 verification of greenhouse gas emissions to ensure
16 the accuracy, completeness, and consistency of the
17 data.

18 (b) VERIFICATION; INFORMATION BY REPORTING
19 ENTITIES.—Each affected facility shall—

20 (1) provide information sufficient for the Ad-
21 ministrator to verify, in accordance with the proto-
22 cols and methods developed under subsection (a),
23 that the feedstock data and greenhouse gas emission
24 data of the affected facility have been completely
25 and accurately reported; and

1 (2) ensure the submission or retention, for the
2 5-year period beginning on the date of provision of
3 the information, of—

4 (A) data sources;

5 (B) information on internal control activi-
6 ties;

7 (C) information on assumptions used in re-
8 porting emissions and fuels;

9 (D) uncertainty analyses; and

10 (E) other relevant data and information to
11 facilitate the verification of reports submitted to
12 the Registry.

13 (c) WAIVER OF REPORTING REQUIREMENTS.—The
14 Administrator may waive reporting requirements for spe-
15 cific facilities if the Administrator determines that suffi-
16 cient and equally or more reliable data are available under
17 other provisions of law.

18 (d) MISSING DATA.—If information, satisfactory to
19 the Administrator, is not provided for an affected facility,
20 the Administrator shall—

21 (1) prescribe methods to estimate emissions for
22 the facility for each period for which data are miss-
23 ing, reflecting the highest emission levels that may
24 reasonably have occurred during the period for
25 which data are missing; and

1 (2) take appropriate enforcement action pursu-
2 ant to this section.

3 **SEC. 6. FEDERAL GREENHOUSE GAS REGISTRY.**

4 (a) ESTABLISHMENT.—Not later than 2 years after
5 the date of enactment of this Act, the Administrator shall
6 promulgate regulations establishing a Federal greenhouse
7 gas registry that—

8 (1) builds upon the final rule promulgated in
9 accordance with the sixth undesignated paragraph of
10 the matter under the heading “ADMINISTRATIVE
11 PROVISIONS, ENVIRONMENTAL PROTECTION AGEN-
12 CY” under title II of division F of the Consolidated
13 Appropriations Act, 2008 (Public Law 110–161;
14 121 Stat. 2128);

15 (2) makes changes necessary to achieve the
16 purpose described in section 2; and

17 (3) requires emission reporting to begin by not
18 later than January 1, 2011.

19 (b) ADMINISTRATION.—In establishing the Registry,
20 the Administrator shall—

21 (1) design and operate the Registry;

22 (2) establish an advisory body that is broadly
23 representative of private enterprise, agriculture, en-
24 vironmental groups, and State, tribal, and local gov-

1 ernments to guide the development and management
2 of the Registry;

3 (3) provide coordination and technical assist-
4 ance for the development of proposed protocols and
5 methods, taking into account the Climate Registry,
6 to be published by the Administrator;

7 (4)(A) develop an electronic format for report-
8 ing under guidelines established under section
9 4(a)(1); and

10 (B) make the electronic format available to re-
11 porting entities;

12 (5) verify and audit the data submitted by re-
13 porting entities;

14 (6) establish consistent policies for calculating
15 carbon content and greenhouse gas emissions for
16 each type of feedstock reported under section 4;

17 (7) calculate carbon content and greenhouse gas
18 emissions associated with the combustion of feed-
19 stock data reported by reporting entities; and

20 (8) immediately publish on the Internet all in-
21 formation contained in the Registry, except in any
22 case in which publishing the information would re-
23 sult in a disclosure of—

24 (A) information vital to national security,
25 as determined by the President; or

1 (B) confidential business information that
2 cannot be derived from information that is oth-
3 erwise publicly available and that would cause
4 significant calculable competitive harm if pub-
5 lished (except that information relating to
6 greenhouse gas emissions shall not be consid-
7 ered to be confidential business information).

8 (c) **THIRD-PARTY VERIFICATION.**—The Adminis-
9 trator may use the services of third parties that have no
10 conflicts of interest to verify reports required under sec-
11 tion 4.

12 (d) **REGULATIONS.**—The Administrator shall—

13 (1) not later than 180 days after the date of
14 enactment of this Act, propose regulations to carry
15 out this section; and

16 (2) not later than July 1, 2009, promulgate
17 final regulations to carry out this section.

18 **SEC. 7. ENFORCEMENT.**

19 (a) **CIVIL ACTIONS.**—The Administrator may bring
20 a civil action in United States district court against the
21 owner or operator of an affected facility that fails to com-
22 ply with any requirement of this Act.

23 (b) **PENALTY.**—Any person that has violated or is
24 violating this Act shall be subject to a civil penalty of not
25 more than \$25,000 per day of each violation.

Amend the title so as to read: “A bill to direct the Administrator of the Environmental Protection Agency to establish a Federal greenhouse gas registry.”.