

Frequently Asked Questions

Notice of Proposed Rulemaking to Partially Grant the Gas Industry Petition for Rulemaking Regarding Condensing & Non-Condensing Products

1. Why is DOE issuing this Notice of Proposed Rulemaking (NOPR)?

On November 1, 2018, DOE [published](#) in the *Federal Register* a petition submitted by the Gas Industry requesting that DOE issue an interpretive rule stating that DOE's proposed energy conservation standards for residential furnaces and commercial water heaters would result in the unavailability of "performance characteristics" within the meaning of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291 *et seq.*). The petitioners further requested that DOE withdraw its proposed rules to amend those products/equipment.

This NOPR responds to that petition, as well as the public comments that DOE received, and partially grants the petition by initiating rulemaking through issuance of a notice of proposed interpretation. This NOPR partially denies the petition by not withdrawing DOE's residential furnaces and commercial water heaters proposals.

2. What change to interpretation is DOE proposing?

In previous rulemaking actions, DOE did not consider non-condensing technology to be a "feature" for purposes of setting product/equipment classes for covered products/equipment. This NOPR partially grants the petition by issuing an interpretation that non-condensing operation is a product feature and that no DOE rulemaking may prescribe a standard that would make that feature unavailable. However, DOE notes that this interpretation only applies to non-condensing technologies with respect to residential products, non-ASHRAE commercial products, and ASHRAE products for which DOE sets standards that exceed the levels set forth in ASHRAE Standard 90.1. (Where DOE is triggered by action of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) and moves to adopt the levels set by Standard 90.1, *Energy Standards for Buildings Except Low-Rise Residential Buildings*, the Department lacks authority to apply this proposed interpretive rule.)

DOE is denying the petitioners' request to withdraw the agency's proposals for residential furnaces and commercial water heaters.

3. Why is DOE proposing this change?

In light of further consideration and information presented with and in response to the petition, DOE finds that difficulties posed by space constraints, installation costs, and physical changes to room layouts associated with condensing type products would have significant enough impacts on consumers to merit a different approach. In addition, this proposed interpretation would allow DOE to maintain its neutrality towards competing fuel types. Finally, this proposed change would ensure that DOE will not impede energy affordability, particularly for persons with low incomes, by mandating high-cost condensing products and installations.

4. What is DOE's statutory authority for this action?

42 U.S.C. 6295(o)(4) provides that the Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are

substantially the same as those generally available in the United States at the time of the Secretary's finding.

Where the Secretary finds such “performance characteristics (including reliability), features, sizes, capacities, and volumes” (collectively referred to hereafter as “features”) to exist, the statute provides a potential remedy at 42 U.S.C. 6295(q)(1), which states that a rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group consume a different kind of energy from that consumed by other covered products within such group (or class); or have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class). In making a determination under 42 U.S.C. 6295(q)(1) concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

These same provisions apply to non-ASHRAE commercial equipment through 42 U.S.C. 6316(a). Under 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa), similar provisions apply to ASHRAE commercial equipment when DOE is considering more-stringent standards.

5. Does this NOPR propose any changes to the current or proposed standards for condensing and non-condensing products?

No. This NOPR only pertains only to a legal interpretation of what constitutes a product “feature” and does not amend any existing regulation or proposed rulemaking pertaining to energy conservation standards.

6. How does this interpretation change how DOE will assess standards for condensing and non-condensing products?

This interpretation could lead DOE to establish separate product/equipment classes for condensing and non-condensing furnaces, boilers, water heaters, and similarly-situated appliances (where permitted by EPCA). Any such changes would be implemented in the context of individual rulemakings for the covered products/equipment as applicable, after opportunity for public comment. However, these changes only apply to applicable residential products, non-ASHRAE commercial products, and ASHRAE products for which DOE's standard exceeds ASHRAE Standard 90.1. (Where DOE is triggered by ASHRAE action and moves to adopt the levels set by Standard 90.1, it lacks authority to apply this interpretation.)

7. How does an interested party comment on this notice and when are comments due?

As explained in detail in the proposed interpretive rule published in the *Federal Register*, the public has 60 days after publication to submit comments by a variety of means (*i.e.*, via the Federal eRulemaking Portal, e-mail, postal mail, or hand delivery/courier). DOE prefers to receive comments submitted via www.regulations.gov or by e-mail to ResFurnaceCommWaterHeater2018STD0018@ee.doe.gov.

8. I have questions about this proposal. Whom should I contact?

For further information, contact Mr. Eric Stas in DOE's Office of the General Counsel (Eric.Stas@hq.doe.gov). DOE staff are available to meet with interested stakeholders per the Department's guidelines issued in 2009 on *ex parte* meetings. See [74 FR 52795 \(Oct. 14, 2009\)](#).