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## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[Docket Number EERE-2008-BT-TP-0020]

RIN 1904-AB89

#### Energy Conservation Program for Consumer Products: Decision and Order Granting 180-Day Extension of Compliance Date for Residential Furnaces and Boilers Test Procedure Amendments

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of petitions for extension of compliance date and Decision and Order granting petitions.

**SUMMARY:** This document announces receipt by the U.S. Department of Energy (DOE) of 29 petitions from 27 manufacturers seeking a 180-day extension of the compliance date related to recent amendments to the DOE test procedure for residential furnaces and boilers to address the standby mode and off mode energy consumption of those products. The petitioners demonstrated that meeting the specified compliance date would impose an undue hardship. Accordingly, today's Decision and Order grants these petitions to extend the compliance date by the requested 180 days.

**DATES:** This Decision and Order is effective March 31, 2011. For representation purposes, petitioners must comply with all applicable provisions of the amended DOE test procedure for residential furnaces and boilers starting on October 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

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For information on how to access the docket or to view hard copies of the docket in the Resource Room, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. E-mail: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Authority

Title III, Part B<sup>1</sup> of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94-163 (42 U.S.C. 6291-6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles,<sup>2</sup> a program covering most major household appliances (collectively referred to as "covered products"), which includes the types of residential boilers and furnaces that are the subject of this notice. (42 U.S.C. 6292(a)(5)) Under the Act, this program consists essentially of three parts: (1) Testing; (2) labeling; and (3) establishing Federal energy conservation standards. Of particular relevance here, the statute authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Under EPCA's testing requirements, manufacturers of covered products must use these test procedures as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA and for representing

the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s))

Pursuant to the amendments to EPCA contained in section 310(3) of the Energy Independence and Security Act of 2007 (EISA 2007), any final rule for new or amended energy conservation standards promulgated after July 1, 2010 must address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts an energy conservation standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under 42 U.S.C. 6295(o), incorporate standby mode and off mode energy use into a single standard, if feasible, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)-(B)) Because the current energy conservation standard rulemaking for residential furnaces will be completed after July 1, 2010, DOE conducted a test procedure rulemaking for these products and published a final rule in the **Federal Register** on October 20, 2010 (the October 2010 final rule), which included methods for measuring standby mode and off mode energy consumption. 75 FR 64621. More specifically, this test procedure final rule included a standby mode and off mode metric,  $E_{so}$ , and modified the calculation of annualized auxiliary electrical use ( $E_{ae}$ ) for gas or oil-fired furnaces or boilers and annual electric energy consumption ( $E_e$ ) for electric furnaces or boilers to account for standby mode and off mode power consumption. *Id.* at 64632. The test procedure for residential furnaces and boilers is contained in title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix N.

The statute mandates that 180 days after an amended or new test procedure is prescribed, no manufacturer, distributor, retailer, or private labeler may make any representation about a product with respect to energy use or efficiency unless that product has been tested in accordance with such amended or new test procedure and the representation fairly discloses the results of such testing. (42 U.S.C. 6293(c)(2)) However, if a petition is submitted at least 60 days prior to the end of the initial 180-day period, the Secretary may extend the 180-day period by up to an additional 180 days (but in no event for more than 180 days)

<sup>1</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

<sup>2</sup> All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110-140.

with respect to that petitioner, if it is determined that complying with the requirements of 42 U.S.C. 6293(c)(2) would impose an undue hardship on the petitioner. (42 U.S.C. 6293(c)(3))

## II. Petitions for Extension of Compliance Date

Between February 14, 2011 and February 17, 2011, DOE received 29 petitions from 27 manufacturers<sup>3</sup> regarding the compliance date for the October 2010 test procedure final rule for residential furnaces and boilers. All of these petitions are available as part of Docket Number EERE-2008-BT-TP-0020.<sup>4</sup> Specifically, all but one petitioner requested that DOE extend the April 18, 2011 compliance date specified in the final rule by 180 days, arguing that compliance with the April 18, 2011 deadline would place an unnecessary burden upon each company. The remaining petitioner, Rheem Manufacturing Company, similarly requested DOE extend the compliance date; however, this company requested that the new compliance date be extended to end of the 2011 calendar year or by the maximum amount allowed by law, whichever is longer. The petitioners were: (1) Adams Manufacturing Company; (2) Allied Air Enterprises; (3) Bard Manufacturing Co. Inc.; (4) Boyertown Furnace; (5) Carrier Corporation; (6) Crown Boiler; (7) De Dietrich Boilers; (8) ECR International Inc.; (9) Goodman Manufacturing Company; (10) HTP Inc.; (11) Johnson Controls Inc.; (12) Laars Heating Systems Company; (13) Lennox International Inc.; (14) Lochinvar; (15) Newmac Furnace Company; (16) New Yorker Residential Heating Boilers; (17) Nurdyne; (18) NY Thermal Inc.; (19) Peerless Boilers Heat LLC; (20) Raypak Inc.; (21) Rheem Manufacturing Company; (22) Slant/Fin; (23) Thermo Products LLC; (24) Trane; (25) Triangle Tube; (26) US Boiler Company; and (27) Weil-McLain. All petitions were timely filed, in that they were submitted prior to 60 days before the end of the 180-day

<sup>3</sup> Two manufacturers submitted two essentially identical petitions signed by different corporate officials.

<sup>4</sup> The docket is available for review at <http://www.regulations.gov>, including **Federal Register** notices and other supporting documents/materials. All documents in the docket are listed in the <http://www.regulations.gov> index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. A link to the docket Web page can be found at: <http://www.regulations.gov/#/docketDetail;dc=FR+PR+N+O+SR;pp=10;po=0;D=EERE-2008-BT-TP-0020>. The <http://www.regulations.gov> Web page contains simple instructions on how to access all documents in the docket.

period specified in 42 U.S.C. 6293(c)(3). All 29 petitions were very similar in form and content, as discussed in further detail below.

$E_{ae}$  is a measure of the electrical energy use of a gas or oil-fired furnace over a one-year period. The petitioners noted that the amended definition of  $E_{ae}$ , which was redefined in the final rule to include  $E_{so}$ , may be considered a representation of standby mode and off mode energy consumption now because it includes  $E_{so}$ . However, because the final rule had focused on the  $E_{so}$  descriptor itself and because manufacturers were under no obligation to publish results for  $E_{so}$  by April 18, 2011, the petitioners only recently came to realize the indirect implications of the amended test procedure on the  $E_{ae}$  metric, which is widely used in the industry. As a result, the petitioners all argued that under the current deadline the revisions to the  $E_{ae}$  calculation to include  $E_{so}$  would force the industry to either: (1) Retest all of its basic models in two months; or (2) remove the  $E_{ae}$  listings from the AHRI product directory. On the first point, the petitioners asserted that it would be impracticable to conduct the requisite testing in the available time period, particularly given the substantial number of products to be tested and the limited capacity of facilities to conduct such testing. On the second point, the petitioners stated that the  $E_{ae}$  listings are useful to customers, because many utilities and other third parties operate a variety of rebate programs and other programs predicated on the  $E_{ae}$  descriptor. For this reason, the petitioners argued that removal of the listings would be undesirable for both manufacturers and consumers, potentially leading to confusion in the marketplace. Furthermore, the manufacturers would have to change all their product literature and Web sites where  $E_{ae}$  is used by the current compliance date. In practice, manufacturers would have to communicate and explain the changes down their distribution chains to distributors, retailers and customers, and adjust inventory management and order systems. Because there is no requirement or reason to advertise  $E_{so}$  at the present time, manufacturers argued these efforts would represent undue burden and unintended consequence of the October 2010 test procedure final rule.

Additionally, all petitioners made the point that the amended DOE test procedure for residential furnaces and boilers contains provisions for measuring standby mode and off mode energy consumption that reference the

first edition of the International Electrotechnical Commission (IEC) Standard 62301, "Household electrical appliances—Measurement of standby power," but that a draft second edition of that standard was issued on October 29, 2010, for a final approval vote. (DOE notes that IEC Standard 62301 (Second Edition) has been issued by the IEC with a final publication date of January 27, 2011.) According to the petitioners, granting the requested extension of the compliance date would allow DOE to update the relevant references in its test procedure, thereby ensuring that furnace and boiler manufacturers are not subject to procedures with obsolete references.

Fourteen petitioners from 13 companies also expressed concern about the effects of the amended test procedure on the "e" descriptor. While not an official DOE descriptor, "e" is used by utility incentive programs and certain Federal agencies to identify electrically-efficient furnaces. The value for this descriptor is dependent on  $E_{ae}$ , and because the October 2010 final rule's amendments to the DOE test procedure redefined  $E_{ae}$ , the petitioners argued that some models may no longer be considered electrically efficient. According to these petitioners, the revisions appear to disproportionately affect the "e" value of units with lower input capacities, meaning that the required changes to this calculation are not readily apparent and will require more testing than originally anticipated. Therefore, the requested extension of the compliance date would provide additional time for adequate consideration of the ramifications of the changes to the "e" descriptor.

## III. Summary and Conclusion

Through today's notice, DOE announces receipt of petitions requesting a 180-day extension of the April 18, 2011 compliance date in the October 2010 furnace and boiler test procedure final rule from the following 27 companies: (1) Adams Manufacturing Company; (2) Allied Air Enterprises; (3) Bard Manufacturing Co. Inc.; (4) Boyertown Furnace; (5) Carrier Corporation; (6) Crown Boiler; (7) De Dietrich Boilers; (8) ECR International Inc.; (9) Goodman Manufacturing Company; (10) HTP Inc.; (11) Johnson Controls Inc.; (12) Laars Heating Systems Company; (13) Lennox International Inc.; (14) Lochinvar; (15) Newmac Furnace Company; (16) New Yorker Residential Heating Boilers; (17) Nurdyne; (18) NY Thermal Inc.; (19) Peerless Boilers Heat LLC; (20) Raypak Inc.; (21) Rheem Manufacturing Company; (22) Slant/Fin; (23) Thermo

Products LLC; (24) Trane; (25) Triangle Tube; (26) US Boiler Company; and (27) Weil-McLain.

The intent of the amended test procedure was to require manufacturers to test for standby mode and off mode power at this time only if they intended to publicize such information, and for the above-stated reasons regarding the volume of and limited time available for testing, DOE agrees that requiring all basic models to be retested before April 18, 2011, would place an undue burden upon the petitioners. Likewise, DOE does not believe that it would be appropriate to prevent the dissemination of representations regarding auxiliary electrical energy consumption of residential furnaces and boilers, because consumers may find such information beneficial.

Furthermore, DOE agrees that a 180-day extension would not be expected to harm consumers or undermine the purpose of the final rule. For these reasons, and given that the petitioners fulfilled their obligations under 42 U.S.C. 6293(c)(3), DOE hereby issues this Decision and Order which grants the 27 petitioners above an extension of 180 days for compliance with the amended provisions of the furnaces and boilers test procedure final rule that was published in the **Federal Register** on October 20, 2010. Accordingly, the petitioners must meet a new compliance date of October 15, 2011. With respect to Rheem's request that DOE extend the compliance date to the end of the calendar year 2011, DOE reiterates that the maximum extension allowed by the statute is 180 days. As such, DOE denies Rheem's request.

DOE notes that this extension does not release petitioners from the certification requirements set forth in 10 CFR 430.62.

Issued in Washington, DC, on March 24, 2011.

**Kathleen Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.*

[FR Doc. 2011-7579 Filed 3-30-11; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2010-0820; Directorate Identifier 2010-NE-31-AD; Amendment 39-16646; AD 2011-07-09]

RIN 2120-AA64

#### **Airworthiness Directives; Thielert Aircraft Engines GmbH Models TAE 125-01, TAE 125-02-99, and TAE 125-02-114 Reciprocating Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Service experience has shown that a case of FADEC channel B manifold air pressure (MAP) sensor hose permeability is not always recognized as fault by the FADEC. The MAP value measured by the sensor may be lower than the actual pressure value in the engine manifold, and limits the amount of fuel injected into the combustion chamber and thus the available power of the engine. A change in FADEC software version 2.91 will change the logic in failure detection and in switching to channel B (no automatic switch to channel B if MAP difference between channel A and B is detected and lower MAP is at channel B).

In addition, previous software versions allow—under certain conditions and on DA 42 aircraft only—the initiation of a FADEC self test during flight that causes an engine in-flight shutdown.

We are issuing this AD to prevent engine in-flight shutdown or power loss, possibly resulting in reduced control of the airplane.

**DATES:** This AD becomes effective May 5, 2011.

**ADDRESSES:** The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

**FOR FURTHER INFORMATION CONTACT:** Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail:* alan.strom@faa.gov; *phone:* (781) 238-7143; *fax:* (781) 238-7199.

## SUPPLEMENTARY INFORMATION:

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 23, 2010 (75 FR 71371). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Service experience has shown that a case of FADEC channel B manifold air pressure (MAP) sensor hose permeability is not always recognized as fault by the FADEC. The MAP value measured by the sensor may be lower than the actual pressure value in the engine manifold, and limits the amount of fuel injected into the combustion chamber and thus the available power of the engine. A change in FADEC software version 2.91 will change the logic in failure detection and in switching to channel B (no automatic switch to channel B if MAP difference between channel A and B is detected and lower MAP is at channel B).

In addition, previous software versions allow—under certain conditions and on DA 42 aircraft only—the initiation of a FADEC self test during flight that causes an engine in-flight shutdown.

### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM.

We updated the revision levels to the two referenced Thielert Operation & Maintenance Manuals, and corrected a manual number reference error in paragraph (e)(2) of this AD.

### Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

### Costs of Compliance

Based on the service information, we estimate that this AD will affect about 112 engines installed on airplanes of U.S. registry. We also estimate that it will take about 0.5 work-hour per engine to comply with this AD. The average labor rate is \$85 per work-hour. There are no required parts cost. Based on these figures, we estimate the cost of the AD on U.S. operators to be \$4,760.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of