

in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(ii) *Adjustments.* When good cause is found under the criteria in paragraphs (e)(7)(i)(A) through (e)(7)(i)(E) of this section, the waiver amount may be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure.

(iii) *Evidence.* When submitting a request to the ALJ for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (e)(7) of this section so as to fully explain how a particular significant circumstance(s) uncontrollably affected its payment error rate.

(iv) *Finality.* The initial decision of the ALJ concerning good cause shall constitute the final determination for purposes of judicial review without further proceedings as established under the provisions of § 283.17 and § 283.20 of this chapter.

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(9) *FCS Timeframes.* FCS shall determine, and announce the national average payment error rate for a fiscal year within 30 days following the completion of the case review process and all arbitrations of State agency-FCS difference cases for that fiscal year, and at the same time FCS shall notify all State agencies of their individual payment error rates and payment error rate liabilities, if any. The case review process and the arbitration of all difference cases shall be completed not later than 180 days after the end of fiscal year. FCS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the end of the fiscal year reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. \* \* \*

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Dated: June 16, 1995.

**Ellen Haas,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 430

#### Energy Conservation Program for Consumer Products; Energy Efficiency Standards for Television Sets

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Department of Energy (Department) today withdraws a proposed rule to establish energy efficiency standards for television sets. Promulgation of such a rule is discretionary under the terms of the authorizing legislation for the program. This action is based on: a decision to focus the Department's limited resources on standards-related rulemakings that are mandatory under the authorizing legislation; and acceptance of arguments reflected in the comments that the uncertainty created by the rulemaking and any resulting standards could adversely affect the development of innovative television technologies critical to the Nation's future economy and international competitive position.

#### FOR FURTHER INFORMATION CONTACT:

Ingrid Watson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE-431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8119

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507

#### SUPPLEMENTARY INFORMATION:

##### 1. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, created the Energy Conservation Program for Consumer Products other than automobiles. In 1978, the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, amended EPCA and required DOE to establish mandatory energy efficiency standards for each of the 13 listed "covered products," including television sets. In 1987, the National Appliance Energy Conservation Act (NAECA), Pub. L. 100-12, amended EPCA, by refining the list of appliances

defined as "covered products" and establishing federal energy conservation standards for 11 of the 12 "covered products" on the revised list. Television sets have a unique status under EPCA—televisions are listed as "covered products," but are the only covered product for which the statute does not require a standard. Moreover, televisions have a unique status under EPCA with regard to rulemakings. EPCA requires the Department to undertake rulemakings with regard to the other covered products according to a prescribed schedule. By contrast, with regard to televisions, EPCA provides the Secretary with discretion to establish an energy conservation standard for television sets by rule, but does not require such a rulemaking. 42 U.S.C. 6295(l)(3).

#### 2. Background

On March 4, 1994, the Department published a notice of proposed rulemaking regarding energy conservation standards for eight products. (59 FR 10464.) The rulemaking is mandatory for seven of these products. The eighth product was television sets. The Department invited interested members of the public to submit written comments and to participate at a public hearing. The public comment period closed on July 18, 1994. During the comment period, over 35 comments were received on the proposed rule regarding energy conservation standards on television sets from manufacturers, consumers, members of Congress, retailers, national energy advocates and environmental groups. The Department has reviewed and evaluated the comments. On January 31, 1995, the Department published a **Federal Register** notice describing the Department's plans for pursuing these rulemakings. (60 FR 5880.) That notice acknowledged the need for further data collection prior to deciding how to proceed with the proposed standards for televisions. Such data collection would involve original development of test data that is otherwise unavailable.

Since the January notice, there have been a variety of developments. First, the appropriations requested for this program and preliminary Congressional actions on this request suggest that resources to carry out this program are likely to be limited and are unlikely to be sufficient to support all of the possible analyses related to TVs and other products covered by the authorizing legislation. Second, the Department has been urged to give priority to rulemakings affecting other products by manufacturers of those

other products and other interested persons. Some of these rulemakings may result in very large additional energy savings and economic benefits.

Third, Department officials met with representatives of the Electronics Industry Association (EIA) to discuss options for the proposed standards on televisions. EIA reiterated comments made in its written submissions, and urged DOE to terminate the rulemaking with regard to televisions. EIA's arguments stressed that: the energy usage of an individual television is relatively small; standards could adversely affect the utility of the product; the large number of options make it difficult to design an efficiency standard; the proposed standard might have anti-competitive effects; and standards could interfere with the development of the information superhighway.

Fourth, DOE officials met with a representative of the American Council for an Energy Efficient Economy (ACEEE) concerning the proposed television standards. ACEEE acknowledged that further data collection may be needed before pursuing the rulemaking, but advised DOE to continue with efforts to collect the necessary information. ACEEE also indicated that televisions need not be a top priority of the appliance program. However, they urged DOE to hold the rulemaking in abeyance pending collection of further data rather than affirmatively terminating the rulemaking.

### 3. Discussion

DOE acknowledges that, as some of the comments argued, its engineering analysis in support of the proposed television standards did not consider the energy use of the large number of special features now available on many televisions. Remedyng that defect would require DOE to engage in expensive and time consuming testing of television sets, and it is impossible to know whether the results of such testing would support the establishment of Federal energy efficiency standards. Additionally some of those special features would require modifications to the DOE test procedure in order to adequately measure the impact of the features on energy consumption. If DOE were to undertake such testing and possible test procedure modifications, it would expend limited resources on a project with less potential benefits than currently mandated EPCA rulemakings. Moreover, devotion of additional resources to setting television standards would make it very difficult to respond to the requests of companies in other

industries that are subject to mandatory standards and that are pressing the Department to assign higher priority to completion of updated test procedure and standards rulemakings that they view as beneficial. In view of the limited funds likely to be available for implementing this program, the Department has decided that priority must be assigned to completion of mandatory rulemakings and not to this discretionary rulemaking.

Several comments claim that there is a significant risk that the prospect of standards could adversely affect ongoing fundamental changes in television technology and markets. These technology changes could have significant implications for the energy use of televisions, as well as for the range of communication, data processing, and other services provided by the televisions of the future and their associated electronic equipment. Some of the possible developments in television technology that could significantly affect their energy use include: high definition television, emergency broadcast features, virtual reality entertainment, built-in video cassette recorders, on screen program guides, and interactive information and communication features necessary for access to the National Information Infrastructure (the so-called "information superhighway"). These changes in technology distinguish televisions from other covered products that, for the most part, are based on well-established, relatively stable technologies. The Department recognizes that technology and product developments continuing throughout the 1990's and into the next decade will be critical to the future success of the U.S. television industry. The Department further also recognizes that the development of Federal energy efficiency standards for televisions could adversely affect the willingness of private industry to invest in new technologies or products that might otherwise produce substantial economic benefits. The Department believes this risk, although not precisely quantifiable, could be significant.

Accordingly, in order to focus its resources on mandatory rulemakings and to avoid the risk of undue interference in the development of new technology and products critical to the Nation's future economic health and international competitive position, the Department today gives notice of the withdrawal of its proposed energy efficiency standards for televisions.

Issued in Washington, DC, June 20, 1995.

**Christine A. Ervin,**

Assistant Secretary, Energy Efficiency and Renewable Energy.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 93-CE-21-AD]

#### Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise AD 94-07-10, which currently requires the following on Fairchild Aircraft SA226 and SA227 series airplanes: repetitively inspecting (visually) the wing skin for cracks; dye penetrant inspecting the spar straps if the wing skin is found cracked; and, if any crack is found in the spar straps, repairing the spar straps and modifying the wing skin. That AD references an incorrect dye penetrant inspection when the wing skin is found cracked. This action would maintain the requirements of AD 94-07-10, but would incorporate the correct dye penetrant inspection for when the wing skin is found cracked. The actions specified by the proposed AD are intended to prevent failure of the wing skin at the top aft outboard corner of the battery box, which could result in structural damage to the wing.

**DATES:** Comments must be received on or before August 25, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-CE-21-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490; telephone (512) 824-9421. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601