

purchased parts would not be eligible for an investment tax credit.

Two scenarios of voluntary energy-efficiency targets were examined. In the first one, the proposed energy conservation standards were assumed to be voluntarily adopted by all the relevant manufacturers in 5 years. In the second scenario, the proposed standards were assumed to be adopted in 10 years. In these scenarios, voluntary improvements having a 5-year delay, compared to implementation of mandatory standards, would result in energy consumption by these appliances of 39.78 quads (41.97 EJ), energy savings of 5.76 quads (6.08 EJ), and a net present value of \$6.07 billion; voluntary improvements having a 10-year delay would result in 41.22 quads (43.40 EJ) of energy being consumed, 4.42 quads (4.56 EJ) being saved, and a net present value of \$4.33 billion. These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by these appliance manufacturers, an assumption for which there is no reasonable assurance.

Lastly, all of these alternatives must be gauged against the performance standards that are being proposed in this NOPR. Such performance standards would result in energy consumption of refrigerator products to total an estimated 38.42 quads (40.53 EJ) of primary energy over the 1998–2030 time period. Savings would be 7.12 quads (7.52 EJ), and the net present value would be an expected \$8.19 billion. As indicated in the paragraphs above, none of the alternatives that were examined for these products saved as much energy as the proposed rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

The refrigerator products industry is characterized by two firms accounting for nearly 60 percent of sales. The five largest manufacturers account for 97 percent of sales. Smaller businesses and firms, which make primarily compact refrigerator products, share the remaining 3 percent of the market.

In this industry, average cost has an inverse relationship to firm size. The industry has economies of scale, and large firms (to the extent that their

facilities are up-to-date) have lower average costs than small firms. This fact, coupled with increasing competitiveness of the national market, probably accounts for the continuing consolidation that has been occurring for several decades. The fact that the consolidation has been producing larger firms strongly corroborates the finding that large firms have a cost advantage.

A principal implication of consolidation is that the smaller of the firms will be, on average, in more danger of failing. Any decrease in average profitability is more likely to mean the difference between success and failure for a smaller firm.

While some small firms have more energy efficient models than larger firms, and while some have more models of average efficiency, the impact of higher efficiency standards on small firms is likely to be mixed. If standards are technologically difficult to meet, however, they may hurt selected smaller firms the most, because smaller firms have less sophisticated research and development capabilities. The Department has taken this into consideration in this rulemaking and this is one of the reasons the Department is proposing standards for the compact refrigerator products that are less stringent than those for full size refrigerator products.

In view of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that, for this particular industry, the proposed standard levels in today's Proposed Rule will not "have a significant economic impact on a substantial number of small entities," and it is not necessary to prepare a regulatory flexibility analysis.

D. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a Federalism assessment to be used in decisions by senior policy makers in promulgating or implementing the regulation.

The Department has identified a substantial direct effect that today's proposed rule might have on state governments. It would preempt any State regulations imposing energy efficiency standards for refrigerator products. However, DOE has concluded that such effect is not sufficient to

warrant preparation of a Federalism assessment. The Department knows of no such state regulations. Moreover, if any such state regulations are adopted, the Act provides for subsequent state petitions for exemption. If DOE receives such a petition, it will then be appropriate to consider preparing a Federalism assessment.

E. "Takings" Assessment Review

It has been determined pursuant to Executive Order 12630 (53 FR 8859, March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution.

F. Paperwork Reduction Act Review

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

VI. Public Comment Procedures

A. Participation in Rulemaking

DOE encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, associations, states or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written comments on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, D.C., at the time and place indicated at the beginning of this NOPR.

The DOE has established a comment period of 75 days following publication of this NOPR for persons to comment on this proposal. All public comments received and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this NOPR. Instructions for submitting written comments are set forth at the beginning of this NOPR and below.

Comments should be labeled both on the envelope and on the documents, "Refrigerator Rulemaking (Docket No. EE-RM-93-801)," and must be received by the date specified at the beginning of this NOPR. Ten copies are requested to be submitted. Additionally, the Department would appreciate an