

receipts (gross annual revenues) of less than \$21.5 million are small businesses. The Commission will use SBA's determinations in its review of the impact of its regulatory undertakings on small businesses.

3. What types of small entities, if any, are subject to the rule's requirements?

VOCCs, PVOs, and MTOs generally are very large companies with far in excess of 500 employees, in the case of VOCCs and PVOs, and \$21.5 million in gross revenues, in the case of MTOs. These companies, as well as conferences or associations of such companies, generally are represented by retained counsel. They frequently raise informal, complex issues, and the Commission exerts considerable time and effort responding to them. Such entities are not the intended small business beneficiaries of SBREFA. OTIs, on the other hand, will be considered small businesses by the Commission.

Therefore, the Commission makes a refutable presumption that VOCCs, PVOs and MTOs are not small businesses encompassed within the programs and policies mandated by SBREFA. Nevertheless, a VOCC, PVO, or MTO that falls under SBA guidelines and seeks to be treated as a small business for Commission regulatory purposes may submit a request for such treatment to the Commission, along with payroll or gross annual revenue evidence, as applicable, to substantiate its claim and rebut the presumption.

4. What if no small entities are affected by the rule?

If a proposed rule does not affect any small entity (based on the definition of small entity provided above) RFA authorizes the Commission's Chairman to make a negative certification with respect to the rulemaking. This will be published in the **Federal Register** and be accompanied by the factual basis for certification as prepared by the originating Bureau/Office. This certification is subject to judicial review.

At the proposed rule stage, the affected parties have an opportunity to petition the Commission to be treated as small entities. If no such requests are received, the Chairman makes the negative certification in the final rule. If requests are received, the originating Bureau/Office, in conjunction with the Bureau of Trade Analysis ("BTA"), must determine if the petitioning entities should be treated as small businesses. If the originating Bureau/Office and BTA determine that these entities should, in fact, be treated as small businesses, the analysis set forth in step 5 will be conducted.

5. If small businesses are affected, is there a significant impact on a substantial number?

If a proposed rule is expected to have an effect on one or more small entities, a threshold analysis will be initiated by BTA with the assistance of the originating Bureau/Office. The threshold analysis is conducted to determine the extent of the impact and the number of small entities that would be affected by the proposed rule. It has been determined by the Commission that collection and maintenance of current financial data on every entity regulated by the FMC would cause undue cost and burden on the entities. Therefore, the threshold analysis is based on extrapolation of data and information from current economic trends and statistics, and the Commission's industry expertise. The results or findings of each threshold analysis are evaluated on a case-by-case basis to determine whether the proposed rule will have a significant impact on a substantial number of small businesses. In addition, any comments received on the proposed rule once it has been published in the **Federal Register** would be taken into consideration.

If it is determined that the proposed rule will not have a significant impact on a substantial number of small entities, a negative certification by the Commission's Chairman may be made. The certification should be published and explained in the supplementary information section of the proposed and final rules and supported in the rulemaking record as appropriate. The originating Office/Bureau, working with BTA as necessary, prepares a memorandum containing its analyses and explaining the negative certification. No further analysis is required to support the certification, unless the agency receives comments on the proposed rule's certification that raise issues about the basis of its analysis.

6. What if the rule would have a significant impact on a substantial number of small entities?

The primary purpose of the Initial and Final Regulatory Flexibility Analyses ("IRFA/FRFA") is to identify and consider regulatory alternatives "which minimize any significant economic impact of the proposed [or final] rule on small entities." (Sections 603 and 604 of RFA, emphasis added.) Therefore, if the threshold analysis shows that a proposed rule would have a significant impact on a substantial number of small businesses, the FMC must take the following steps:

1. Assure that small entities have been given an opportunity to participate in the rulemaking through various possible techniques. The originating Bureau/Office will implement one of the following or possible additional, measures:

a. State in an advance notice prior to issuance of the proposed rulemaking that the rule may have a significant economic effect on a substantial number of small entities;

b. Publish a general notice of the proposed rulemaking in publications that small entities are likely to receive;

c. Directly notify small entities about the rule; or

d. Hold "open conference or public hearings" about the rule.

2. Prior to publishing the proposed rule, the Commission will notify SBA (and the Office of Information and Regulatory Affairs at the Office of Management and Budget ("OMB") as required by EO 12866).

3. Complete an IRFA, and publish it with the proposed rule. The IRFA, prepared by the originating Bureau/Office and BTA, must contain:

a. Reasons why the Commission is considering the action—this currently is in the preamble to all proposed regulations.

b. The objectives and legal basis for the proposed rule—this currently is included in a proposed rule.

c. The kind and number of small entities to which the rule will apply—to the extent possible, the originating Bureau/Office describes the industry and economic sector in total and its small and large entity segments, and explains any existing dynamics, such as trends in employment.

d. The projected recording, record keeping, and other compliance requirements of the proposed rule—this description should include an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for the preparation of the report or record. A cost analysis should describe each item and estimate the costs, comparing large and small entities. It should distinguish the initial costs from recurring or operating costs. This information may be available from the paperwork burden analysis prepared under the requirements of the Paperwork Reduction Act.

e. Identify all federal rules that may duplicate, overlap, or conflict with the proposed rule—given the Commission's specific regulatory responsibility, it is extremely unlikely that any of its rules will duplicate, overlap, or conflict with the rules of other agencies. Should the situation arise, however, the