

that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

25. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.

The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

26. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

27. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* On the transmission side, the final rules do not require the use of the ATSC flag by broadcasters, but instead permit the use of the flag at the broadcaster's discretion for redistribution control purposes.

28. With respect to the reception side of the equation, the final rules require that demodulators integrated within, or produced for use in, DTV reception devices, including PC and IT products, (i.e., "Covered Demodulator Products"), must recognize and give effect to the ATSC flag pursuant to certain compliance and robustness rules. The compliance rules detail the appropriate manner in which Demodulator Products may output flag-marked content. As to robustness, the generalized "ordinary user" standard contained in the final rules should afford consumer electronics, and IT and PC manufacturers, flexibility in determining how to protect flag-marked content.

29. Administratively, the final rules adopt a written commitment regime whereby manufacturers or importers of demodulators obtain from buyers a written commitment that they will incorporate such demodulators into compliant and robust devices, or sell or distribute to third parties that have also made such written commitment. The *Report and Order* also adopts a written

commitment regime to ensure that manufacturers or importers of "Peripheral TSP Products" that can be used in connection with demodulators will abide by the Demodulator Product compliance and robustness rules.

30. The *Report and Order* also establishes interim procedures by which proponents of a particular content protection or recording technology can certify to the Commission that such technology is appropriate for use in Demodulator Products. Upon review of a proponent's submission, the Commission will issue a public notice. If no objection is received within 20 days, the Commission will expeditiously determine whether the technology is approved for use in Demodulator Products. If substantive objections are received with respect to a particular technology, the Commission will undertake an expedited review of its merits. The interim procedures also provide for the revocation of insecure or compromised content protection and recording technologies.

31. Finally, the *Report and Order* permits MVPDs to perpetuate the flag in two ways on their systems: (1) By MVPD pass-through of the ATSC flag where the retransmission is unencrypted; or (2) where the retransmission is encrypted, by conveying the presence of the flag by some means that requires the consumer's reception equipment to protect the content as if the flag were present.

32. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

33. Because use of the ATSC flag is voluntary on the part of broadcasters, we do not believe that small broadcast stations will be significantly economically affected by the final rules. On the reception side, while all consumer electronics, information technology, and personal computer manufacturers will be required to integrate flag recognition capability into