

year of EEO activity. Broadcasters must post their current EEO public file report on their web site, if they have one.

123. Also, broadcasters subject to mid-term review must file Form 397 (Broadcast Mid-Term Report) and place a copy of the Report in the public inspection file. Broadcasters must also place a copy of Form 396 (Broadcast EEO Program Report) and Form 396-A (Broadcast Model EEO Program Report for the construction or sale of a station) in the public inspection file.

124. We also note that we have provided relief to broadcast and MVPD entities located in small markets. While this is not specifically a small entity relief, this action also lessens compliance burdens.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

1. Definition of a "Small Business"

125. The new rules would apply to broadcast stations and MVPDs. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

126. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. Finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States.

This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

2. Issues in Applying the Definition of a "Small Business"

127. We could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

128. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

129. With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

130. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's

definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

3. Estimates Based on Census Data

131. The rules to be adopted pursuant to this *2R&O* will apply to broadcast television and radio stations. The SBA defines a television broadcasting station that has no more than \$12.0 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under other North American Industry Classification (NAICS) numbers.

132. There were 1,695 full-service television stations operating as of December 2001. According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year. Of this total, 734 firms had annual receipts of \$9,999,999.00 or less and an additional 71 had receipts of \$10 million to \$24,999,999.00. Thus, under this standard, the majority of firms can be considered small.

133. The SBA defines a radio broadcasting station that has no more than \$6 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. Radio stations which are