

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of Part 87 of the Commission's Rules)	WT Docket No. 01-289
Concerning the Aviation Radio Service)	

THIRD FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: January 7, 2013

Released: January 8, 2013

Comment Date: [30 days after date of publication in the Federal Register]

Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. In this *Third Further Notice of Proposed Rule Making (Third FNPRM)* in WT Docket No. 01-289, we seek comment on the appropriate treatment of 121.5 MHz emergency locator transmitters (ELTs) under Part 87 of the Rules.¹ ELTs are radiobeacons that are activated manually or automatically to alert search and rescue personnel that an aircraft has crashed, and to identify the location of the aircraft and any survivors.² In the *Third Report and Order* in this proceeding, the Commission amended Section 87.195 of its Rules³ to prohibit the certification, manufacture, importation, sale or use of 121.5 MHz ELTs.⁴ It adopted this amendment because, among other reasons, the international Cospas-Sarsat satellite system, which relays distress alerts to search and rescue authorities, stopped monitoring frequency 121.5 MHz on February 1, 2009.⁵

2. After the Commission released the *Third Report and Order*, it received a letter from the Federal Aviation Administration (FAA) asking that the Commission not implement the modification to Section 87.195.⁶ The FAA stated that 121.5 MHz ELTs can continue to provide beneficial means of locating missing aircraft even without satellite monitoring because the frequency is still monitored by the search and rescue community, including the Civil Air Patrol.⁷ The FAA also expressed concerns about

¹ 47 C.F.R. § 87.1 *et seq.*

² See 47 C.F.R. §§ 87.5, 87.193.

³ 47 C.F.R. § 87.195.

⁴ See Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service, *Third Report and Order*, WT Docket No. 01-289, 25 FCC Rcd 7610, 7620-21 ¶¶ 17-18 (2010) (*Third Report and Order*). In this document, the phrase "121.5 MHz ELTs" refers to ELTs that operate only on frequency 121.5 MHz, *i.e.*, that do not include 406.0-406.1 MHz.

⁵ See *Third Report and Order*, 25 FCC Rcd at 7620-21 ¶¶ 17-18.

⁶ See Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service, *Order*, WT Docket No. 01-289, 26 FCC Rcd 685, 686 ¶ 4 (2011) (*Stay Order*).

⁷ See *id.*

the costs and availability of replacements for the 121.5 MHz ELTs.⁸

3. Following its receipt of the FAA letter, the Commission determined that it would be in the public interest to stay its amendment to Section 87.195.⁹ The *Stay Order*, which was published in the Federal Register on the same day as the summary of the *Third Report and Order*,¹⁰ stated that no additional action would be taken regarding 121.5 MHz ELTs until further notice and an additional opportunity for public comment.¹¹ This *Third FNPRM* requests such comment.

II. BACKGROUND

4. ELT distress alerts are relayed to search and rescue authorities by the international Cospas-Sarsat satellite system.¹² In 2000, Cospas-Sarsat announced that it would terminate satellite processing of distress signals on frequency 121.5 MHz in February 2009, and urged users to switch to the more reliable 406.0-406.1 MHz (406 MHz) radiobeacons.¹³ Cospas-Sarsat now monitors and relays only 406 MHz distress alerts. In addition to transmitting a distress alert to the Cospas-Sarsat satellite, 406 MHz ELTs transmit a lower-power homing signal on frequency 121.5 MHz to more precisely guide search and rescue personnel to an aircraft once they are in its vicinity.¹⁴ Frequency 121.5 MHz will remain available for homing, and our decisions in the instant proceeding do not affect this use of the frequency.

5. In 2006, in the *Second Further Notice of Proposed Rule Making (Second FNPRM)* in this proceeding, the Commission requested comment on what actions it should take in light of the planned termination of satellite monitoring of frequency 121.5 MHz.¹⁵ The Commission noted that 406 MHz ELTs were more expensive than 121.5 MHz ELTs, and that there appeared to be a “difference of opinion within the search and rescue and aviation communities as to whether 121.5 MHz distress alerting will

⁸ *Id.* at 686-87 ¶¶ 4-5.

⁹ *Id.* at 686-87 ¶¶ 1-6.

¹⁰ See *Aviation Communications*, 76 Fed. Reg. 17347 (Mar. 29, 2011) (publishing a summary of the *Third Report and Order*); see also *Aviation Communications*, 76 Fed. Reg. 17353 (Mar. 29, 2011) (publishing a summary of the *Stay Order*).

¹¹ See *Stay Order*, 26 FCC Rcd at 687 ¶ 5.

¹² Cospas/Sarsat is a joint international satellite-based search and rescue (SAR) system established by Canada, France, Russia, and the United States. Cospas is an acronym for a Russian phrase meaning space system for search and distress vessels. Sarsat stands for Search and Rescue Satellite Aided Tracking.

¹³ The National Oceanic and Atmospheric Administration (NOAA), the U.S. Coast Guard (USCG), the U.S. Air Force (USAF), and the National Aeronautics and Space Administration – which administer the Cospas-Sarsat system in the United States – also advised users to switch to 406 MHz beacons. See, e.g., Termination of 121.5/243 MHz Satellite Alerting, *Notice*, National Oceanic and Atmospheric Administration Docket No. 010501107-1107-01, 66 Fed. Reg. 34912, 34913 (2001).

¹⁴ See 47 C.F.R. § 87.199(b).

¹⁵ See Review of Part 87 of the Commission’s Rules Concerning the Aviation Radio Service, *Second Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 01-289, 21 FCC Rcd 11582, 11609 ¶ 43 (2006) (*Second Report and Order* and *Second FNPRM*). The Wireless Telecommunications Bureau later reminded aviators that satellite monitoring of frequency 121.5 MHz would soon terminate, and that the Commission was considering a prohibition on the use of 121.5 MHz ELTs. See Wireless Telecommunications Bureau Reminds Aviators and Mariners that Satellite Monitoring of 121.5 MHz Alerts Will End February 1, 2009, *Public Notice*, 24 FCC Rcd 149 (WTB 2009).

remain a viable search and rescue tool” after February 2009.¹⁶ Commenters to the *Second FNPRM* generally supported the phase-out of 121.5 MHz ELTs.¹⁷ No commenter disputed that 406 MHz ELTs are more accurate and reliable than 121.5 MHz ELTs, and minimize false alerts.¹⁸ The National Telecommunications and Information Administration (NTIA) and FAA stated that they generally supported the proposals in the *Second FNPRM*, but did not specifically address the issue of 121.5 MHz ELTs.¹⁹

6. In 2010, after Cospas-Sarsat had ceased monitoring frequency 121.5 MHz, the Commission determined in the *Third Report and Order* that, based on the record before it, the public interest would be served by amending Section 87.195 to prohibit the further certification, manufacture, importation, sale, or use of 121.5 MHz ELTs.²⁰ The Commission concluded that requiring a transition to 406 MHz ELTs would promote aviation safety, and that whatever residual safety value 121.5 MHz ELTs might retain was outweighed by the danger that aviators might mistakenly rely on them for satellite distress alerting.²¹ The Commission acknowledged that aircraft owners and pilots still using 121.5 MHz ELTs would incur an expense, but concluded that the safety benefits outweighed the compliance cost, especially given that aviators had been on notice since 2000 that Cospas-Sarsat would cease monitoring the frequency.²²

7. Before the rule amendments adopted in the *Third Report and Order* were published in the Federal Register, however, the FAA and the Aircraft Owners and Pilots Association (AOPA) asked the Commission to revisit the rules regarding 121.5 MHz ELTs.²³ In response, the Commission stayed the effective date of the 121.5 MHz ELT rule changes, and stated that it would provide an opportunity for

¹⁶ See *Second FNPRM*, 21 FCC Rcd at 11609 ¶ 43.

¹⁷ See NOAA Comments to the *Second FNPRM* at 1 (noting that 121.5 MHz ELTs have a much higher false alert rate than 406 MHz ELTs, and that ELT false alerts “degrade SAR services and the SARSAT system, dramatically increase the cost to taxpayers for these services, and subject SAR personnel to unnecessary risks”); USCG Comments to the *Second FNPRM* at 1 (supporting a prohibition on the certification, manufacture, or use of 121.5 MHz ELTs after February 2009, arguing that the “use of such equipment without satellite detection will be relatively ineffective for lifesaving”); Fred J. Kissel Comments to the *Second FNPRM* at 1; Alan C. Knox Comments to the *Second FNPRM* at 1. Only one commenter opposed a phase-out of 121.5 MHz ELTs, arguing without elaboration that “alternative ELT surveillance technology will emerge” and stating that 406 MHz ELT prices were “exorbitant.” See Potomac Technology Aviation Corp. Comments to the *Second FNPRM* at 1.

¹⁸ See *Third Report and Order*, 25 FCC Rcd at 7620-21 ¶ 17.

¹⁹ See NTIA Comments to the *Second FNPRM* at 1.

²⁰ See *Third Report and Order*, 25 FCC Rcd at 7620-21 ¶ 17.

²¹ *Id.* at 7620-21 ¶ 17 & n.76. The Commission also noted that the safety benefits would accrue not only to pilots, crew and passengers, but also to search and rescue personnel, while also preserving search and rescue resources.

²² *Id.* at 7621 n.77.

²³ See Letter, dated July 8, 2010, from James T. Eck, Director of Program Operations, FAA, to Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, NTIA (FAA Request), forwarded to FCC under cover of Letter, dated July 14, 2010, from Karl T. Nebbia, Associate Administrator, Office of Spectrum Management, NTIA, to Julius Knapp, Chief, Office of Engineering and Technology, FCC; see also Letter, dated June 24, 2010, from Robert E. Hackman, Vice President, Regulatory Affairs, Aircraft Owners and Pilots Association, to Marlene Dortch, Secretary, FCC (AOPA Request). Other parties filed pleadings opposing the NTIA and AOPA requests in whole or in part. See, e.g., Letter, dated July 20, 2010, from Richard A. Peri, Vice President, Government & Industry Affairs, Aircraft Electronics Association to Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, NTIA, filed with the FCC on Aug. 5, 2010 (AEA Comments).

interested parties to augment the record.²⁴

III. DISCUSSION

8. Based on the record to date, we continue to believe that a phase-out of 121.5 MHz ELTs is in the public interest. While nothing in the record disputes the conclusion in the *Third Report and Order* that 406 MHz ELTs are superior to 121.5 MHz ELTs, or that a transition to 406 MHz ELTs would promote aviation safety,²⁵ we seek further comment on these tentative conclusions. We also seek additional comment to help us more closely consider the timing and implementation of any such transition. In addition, we propose to further modify the Part 87 Rules to defer for an additional period of time the date(s) on which prohibitions pertaining to 121.5 MHz ELTs will take effect. The rules adopted in the *Third Report and Order* prohibit five discrete actions pertaining to 121.5 MHz ELTs – certification, manufacture, importation, sale, and use. We tailor our proposals to the particular considerations that attend each prohibition. We seek comment on these proposals, and also on relevant developments with respect to ELTs since we released the *Stay Order*.

9. At this time, we see no reason to certify new models of 121.5 MHz ELTs. Not only has Cospas-Sarsat stopped monitoring frequency 121.5 MHz, but the FAA has ceased design or production approval for new 121.5 MHz ELTs in light of the superiority of 406 MHz ELTs.²⁶ As a result, there will be no new 121.5 MHz ELT devices for the Commission to certify. Consequently, while the prohibition on further certification of 121.5 MHz ELTs is currently stayed,²⁷ we propose to prohibit further certification of 121.5 MHz ELTs immediately upon the effective date of any 121.5 MHz ELT rule amendments adopted as a consequence of this *Third FNPRM*.²⁸ This would have the effect of lifting the stay on the prohibition against further certifications as of that date. Commenters who believe that we should allow continued certification of new 121.5 MHz ELT models should explain how such an action would serve the public interest, and why the immediate cessation of further certifications of such devices would adversely affect any party.

10. We further propose to prohibit the continued manufacture, importation, and sale of existing 121.5 MHz ELT models beginning one year after the effective date of any 121.5 MHz ELT rule amendments adopted as a consequence of this *Third FNPRM*. This would have the practical effect of continuing the current stay on Section 87.195's prohibition on the manufacture, importation, and sale of 121.5 MHz ELT models for one year after that effective date, though the stay itself would be lifted as of that date. We believe that there are sound reasons to provide a one-year transition period before we prohibit the manufacture, importation, or sale of 121.5 MHz ELTs, even if we provide no such additional

²⁴ See *Stay Order*, 25 FCC Rcd at 687 ¶ 5 & n.17.

²⁵ See *Third Report and Order*, 25 FCC Rcd at 7620-21 ¶ 17.

²⁶ See Notice of cancellation of Technical Standard Order (TSO)-C91a, Emergency Locator Transmitter (ELT) Equipment, 77 Fed. Reg. 28668 (May 15, 2012) (canceling the FAA Technical Service Order that sets forth minimum standards for 121.5 MHz ELTs, effective December 1, 2012).

²⁷ See *Stay Order*, 26 FCC Rcd at 686-87 ¶¶ 1-6.

²⁸ We also propose to amend Section 87.147(b) of the Rules, 47 C.F.R. § 87.147(b). Section 87.147(b) cross-references subpart N of Part 2 of the Rules in describing the procedure for testing ELT output power, but subpart N of Part 2 has been deleted as obsolete. See Amendment of Parts 2, 15 and 18 of the Commission's Rules, *Order*, 26 FCC Rcd 16784 ¶ 2 (OET/OMD 2011). We therefore propose to amend Section 87.147(b) by eliminating the cross-reference. The rule, as proposed to be amended, is in Appendix A, *infra*. We invite comment on this proposal and the costs and benefits associated with it.

period for the certification of such equipment.²⁹ We tentatively conclude that a one-year grandfathering period for the manufacture, importation, and sale of 121.5 MHz ELTs will enable manufacturers, importers, and distributors of 121.5 MHz ELTs to largely avoid any significant economic burden associated with stranded inventory, particularly since nearly two years have passed since we released the *Stay Order*. We seek comment on this tentative conclusion and on whether, and to what extent, a one-year grandfathering period would avoid or reduce the compliance burden on small businesses and other small entities compared to an immediate ban on the manufacture, importation, and sale of 121.5 MHz ELTs. We also seek comment on whether the transition period should be longer or shorter than the one-year proposal discussed herein, or in the alternative, whether there should be no transition period at all. In addition, we seek comment on the ramifications of the proposed one-year period (or any other transition) for aviation safety, as well as any associated costs. Further, we seek comment on whether, if we permit the continued sale of 121.5 MHz ELTs, we should enact additional requirements (such as labeling or point-of-sale disclosure) to ensure that purchasers are aware that 121.5 MHz ELTs lack satellite alerting capability.³⁰ We ask commenters to address the costs and benefits of any additional requirements as well.

11. We seek comment on whether we also should adopt a specific date to prohibit the continued use of 121.5 MHz ELTs in service. Information in the record submitted after the *Third Report and Order* was released suggests that permitting the continued use of 121.5 MHz ELTs, at least temporarily, may mitigate compliance costs, address a possible shortfall in the existing inventory of 406 MHz ELTs, and prevent an unintended grounding of general aviation aircraft.³¹ We accordingly also request comment on the extent to which we should grandfather those 121.5 MHz ELTs already in use and the costs and benefits of doing so. Should they be grandfathered indefinitely so that they would need to be replaced only at the end of their useful life, or for a specific limited period of time?³² We note that when the Commission phased out 121.5 MHz emergency position-indicating radiobeacons (EPIRBs), it grandfathered their use until a specific date.³³

12. We seek information on the costs associated with a mandatory transition to 406 MHz ELTs and our specific proposals to discontinue the certification, and prohibit the manufacture, importation, and sale of 121.5 MHz ELTs. Past AOPA and AEA filings in this docket suggest that a mandatory upgrade from 121.5 MHz ELTs to 406 MHz ELTs would affect approximately two hundred thousand aircraft,³⁴ at an aggregate cost that FAA and AOPA estimated to be three hundred to five

²⁹ Cf. Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, WT Docket No. 99-87, 25 FCC Rcd 8861, 8864 ¶ 9 (2010) (waiving the deadline after which manufacture or importation of wideband private land mobile radio equipment is prohibited, but not the deadline for certification of new wideband equipment).

³⁰ We are not proposing any prohibition or restriction on the manufacture, sale, or installation of replacement components, such as batteries, for 121.5 MHz ELTs in use. We believe that permitting the continued marketing of replacement components for 121.5 MHz ELTs does not present the same concerns, and would not delay the transition to 406 MHz ELTs to the same extent, as permitting the continued marketing of stand-alone 121.5 MHz ELTs. We nonetheless invite comment on whether we should impose any restrictions on the manufacture, importation, or sale of 121.5 MHz ELT replacement components. Commenters are encouraged to address the costs and benefits from any such restriction.

³¹ See, e.g., FAA Request at 1.

³² Commenters favoring grandfathering for a pre-set period of time should suggest a suitable period.

³³ See Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 00-48, 17 FCC Rcd 6741, 6761-62 ¶ 47 (2002). EPIRBs are radiobeacons designed for use on marine vessels.

³⁴ See AOPA Request at 1; AEA Comments at 1-2.

hundred million dollars.³⁵ We seek current data on the number of aircraft potentially affected by a prohibition on continued use of 121.5 MHz ELTs, and the cost per unit of 406 MHz ELTs (including installation). We also seek additional information regarding the costs to the search and rescue community of continuing to allow use of 121.5 MHz ELTs, including but not limited to the cost of responding to false alerts.

13. FAA and AOPA also state that the inventory of 406 MHz ELTs is insufficient to accommodate all general aviation aircraft in the short term.³⁶ They are concerned, given that most general aviation aircraft are required to carry ELTs,³⁷ that immediately prohibiting use of 121.5 MHz ELTs would effectively ground many such aircraft.³⁸ We invite comment on these concerns, particularly in light of the amount of time that has passed since we issued the *Stay Order*. We request data on the existing inventory of 406 MHz ELTs, and the capacity of manufacturers to meet increased demand. Commenters that contend that the current supply of 406 MHz ELTs is insufficient are asked to estimate how long a grandfathering period for the continued use of 121.5 MHz ELTs would be sufficient for manufacturers to meet projected demand for 406 MHz ELTs.

14. In addition, FAA and AOPA argue that the *Third Report and Order* undervalued the continued safety benefits of 121.5 MHz ELTs.³⁹ We therefore request additional comment on the residual safety benefits of 121.5 MHz ELTs since Cospas-Sarsat terminated satellite monitoring of the frequency more than three years ago. We also ask interested parties to discuss whether, notwithstanding any such benefits, allowing continued use of 121.5 MHz ELTs could foster an unwarranted reliance on them, and whether this can be addressed by educational outreach efforts or other means.

15. FAA and AOPA also argue that a rapid transition to 406 MHz ELTs is not warranted in light of other technology. They argue that many aircraft already carry EPIRBs or personal locator beacons (PLBs)⁴⁰ that transmit distress signals on frequency 406 MHz, or GPS-equipped mobile phones which transmit a signal that can be tracked.⁴¹ AOPA also argues that the benefits of 406 MHz ELTs may be superseded by the advent of Automatic Dependent Surveillance – Broadcast (ADS-B) service, which provides superior flight tracking functionality.⁴² We seek comment on whether the availability of

³⁵ See AOPA Request at 1 (three hundred million dollars); FAA Request at 1 (“approaches \$500 million”).

³⁶ See FAA Request at 1; AOPA Request at 1-2.

³⁷ See 49 U.S.C. § 44712; 14 C.F.R. § 91.207.

³⁸ See FAA Request at 1; AOPA Request at 3.

³⁹ See FAA Request at 1 (stating that 121.5 MHz ELT signals continue to be monitored by the search and rescue community, most notably by the Civil Air Patrol); AOPA Request at 2 (stating that frequency 121.5 MHz is “continuously monitored by military towers, most civil towers, FSSs [FAA flight service stations], radar facilities and overflying aircraft,” and that the Airman’s Information Manual encourages pilots to monitor 121.5 MHz to assist in identifying possible emergency ELT transmissions).

⁴⁰ PLBs, which are designed for use on land, never were authorized to operate on frequency 121.5 MHz. See Amendment of Part 95 of the Commission’s Rules to Authorize the Use of 406.025 MHz for Personal Locator Beacons (PLB), *Report and Order*, WT Docket No. 99-366, 17 FCC Rcd 19871 (2002).

⁴¹ See FAA Request at 1; AOPA Request at 2. FAA says that more than nine thousand EPIRBs are currently carried by pilots.

⁴² See AOPA Request at 2. ADS-B Service automatically broadcasts GPS-derived information on the location, velocity, altitude, heading, etc., of an ADS-B equipped aircraft to other ADS-B equipped aircraft and to ADS-B ground stations for distribution to air traffic control systems. See Review of Part 87 of the Commission’s Rules Concerning the Aviation Radio Service, *Second Report and Order*, 21 FCC Rcd at 11587 n.18. AOPA states that the FAA has mandated the use of ADS-B “with an expected compliance date of 2020.” See AOPA Request at 2.

alternative equipment reduces the importance of 406 MHz ELT carriage. Commenters should provide data on the extent to which such devices currently are carried, and describe how such devices can serve as reasonable substitutes for 406 MHz ELTs. We also seek comment on how the deployment of ADS-B may affect the need for 406 MHz ELTs. Interested parties may also suggest any additional factors they believe either support or militate against a rapid transition to 406 MHz ELTs.

IV. CONCLUSION

16. For reasons discussed above, we seek additional comment in this proceeding on the proper timing and implementation of a phase-out of 121.5 MHz ELTs and transition to 406 MHz ELTs. We ask that commenters address our proposals in this *Third FNPRM*, and otherwise provide their views on these matters.

V. PROCEDURAL MATTERS

A. Ex Parte Rules – Permit-But-Disclose Proceeding

17. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.⁴³ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

B. Congressional Review Act

18. The Commission will send a copy of this *Third FNPRM* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Regulatory Flexibility Act

19. As required by the Regulatory Flexibility Act (RFA),⁴⁴ the Commission has prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the rules proposed or discussed in the *Third FNPRM* in WT Docket No. 01-289. The Supplemental IRFA for the *Third FNPRM* in WT Docket No. 01-289 is contained in Appendix B. Written public comments are requested on the Supplemental IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Third FNPRM* in WT Docket No. 01-289, and they should have a separate and

⁴³ 47 C.F.R. § 1.1200 *et seq.*

⁴⁴ 5 U.S.C. § 603.

distinct heading designating them as responses to the Supplemental IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Third FNPRM* in WT Docket No. 01-289, including the Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.⁴⁵

D. Comment Dates

20. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and two copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m. **PLEASE NOTE:** This is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. The Commission's former filing location at 236 Massachusetts Ave., NE, is permanently closed.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

⁴⁵ 5 U.S.C. § 603(a).

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

E. Paperwork Reduction Act

21. This *Third FNPRM* does not contain any new or modified information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

F. Ordering Clauses

22. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 403, this *Third FNPRM* IS HEREBY ADOPTED, and NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in the *Third FNPRM* and contained in Appendix A.

23. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Third FNPRM*, including the Supplemental Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

G. Further Information

24. For further information, contact Jeffrey Tobias, Mobility Division, Wireless Telecommunications Bureau, 202-418-0680, or TTY 202-418-7233, or via electronic mail at jeff.tobias@fcc.gov.

25. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty). This *Third Further Notice of Proposed Rule Making* can also be downloaded at: <http://www.fcc.gov/>.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rules**

Chapter I of Title 47 of the Code of Federal Regulations, Part 87, is proposed to be amended as follows:

1. The authority citation for Part 87 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. Section 87.147 is amended by revising paragraph (b) to read as follows:

§ 87.147 Authorization of Equipment

* * * * *

(b) ELTs manufactured after October 1, 1988, must meet the output power characteristics contained in §87.141(i). A report of the measurements must be submitted with each application for certification. ELTs that meet the output power characteristics of the section must have a permanent label prominently displayed on the outer casing state, "Meets FCC Rule for improved satellite detection." This label, however, must not be placed on the equipment without authorization to do so by the Commission. Application for such authorization may be made either by submission of a new application for certification accompanied by the required fee and all information and test data required by parts 2 and 87 of this chapter or, for ELTs approved prior to October 1, 1988, a letter requesting such authorization, including appropriate test data and a showing that all units produced under the original equipment authorization comply with the requirements of this paragraph without change to the original circuitry.

* * * * *

3. Section 87.195 is amended to read as follows:

§ 87.195 121.5 MHz ELTs

ELTs that operate only on frequency 121.5 MHz will no longer be certified. The manufacture, importation, and sale of ELTs that operate only on frequency 121.5 MHz is prohibited beginning [**ONE YEAR AFTER EFFECTIVE DATE**]. Existing ELTs that operate only on frequency 121.5 MHz must be operated as certified.

APPENDIX B**Supplemental Initial Regulatory Flexibility Analysis**

(*Third Further Notice of Proposed Rule Making* in WT Docket No. 01-289)

As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Third Further Notice of Proposed Rule Making* in WT Docket No. 01-289 (*Third FNPRM*). Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments on the *Third FNPRM* as provided in paragraph 17 of the item, *supra*. The Commission will send a copy of the *Third FNPRM*, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the *Third FNPRM* and Supplemental IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

The proposed rules in the *Third FNPRM* are intended to address the appropriate regulatory treatment of 121.5 MHz emergency locator transmitters (ELTs) now that they are no longer monitored by the Cospas-Sarsat satellite system.

B. Legal Basis

Authority for issuance of this item is contained in Sections 4(i), 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies 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.⁴ The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ 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 Small Business Administration (SBA).⁷

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ 5 U.S.C. § 604(a)(4).

⁵ *Id.* § 601(6).

⁶ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration 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.” 5 U.S.C. § 601(3).

⁷ Small Business Act, 15 U.S.C. § 632 (1996).

Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.⁸ Census data for 2007 shows that there were 1,383 firms that operated that year.⁹ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

Some of the rules adopted herein may also affect small businesses that manufacture aviation radio equipment. The Census Bureau does not have a category specific to aviation radio equipment manufacturers. The appropriate category is that for wireless communications equipment manufacturers. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.¹⁰ According to Census bureau data for 2007, there were a total of 919 firms in this category that operated for the entire year. Of this total, 771 had fewer than 100 employees and 148 had more than 100 employees.¹¹ Thus, under this size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

We are considering in the *Third FNPRM* whether to prohibit the certification, manufacture, importation, sale or use of 121.5 MHz ELTs, and, if so, under what timetable. We request comment on whether the manufacturers, importers, sellers, and, in particular, users of 121.5 MHz ELTs are small entities, and the extent to which a total or partial prohibition of 121.5 MHz ELTs might impose burdens on them. We request specific data on the costs of purchasing and installing a 406 MHz ELT to replace a 121.5 MHz ELT, the availability of 406 MHz ELTs, and the possibility that some general aviation aircraft may be grounded due to an inability to acquire a 406 MHz ELT.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

⁸ 13 C.F.R. § 121.201, NAICS code 517210.

⁹ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

¹⁰ 13 C.F.R. § 121.201 NAICS code 334220.

¹¹ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=4500&-ds_name=EC0731SG3&-lang=en

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: (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.¹²

It is not economically or technologically feasible to retrofit 121.5 MHz ELTs to transmit a 406 MHz distress alert. We believe, however, that the safety benefits of 406 MHz ELTs outweigh the cost of replacing 121.5 MHz ELTs. The *Third FNPRM* seeks comment on how best to minimize the economic impact of migrating to 406 MHz ELTs. Specifically, we propose to amend Section 87.195 of the Commission's Rules to prohibit further certification of new models of 121.5 MHz ELTs on the effective date of the rule amendment, and to prohibit any further manufacture, importation, and sale of 121.5 MHz ELTs beginning one year after the effective date of the rule amendment. We also seek comment on alternatives to these proposals, including those that may minimize any economic impact on small entities. Commenters may advocate, for example, for an immediate prohibition of all actions that would enable additional installations of 121.5 MHz ELTs, for different transition periods, or for taking no action at all, and leaving Section 87.195 as is. In addition, the *Third NPRM* invites comment, but makes no specific proposals, regarding the continued use of 121.5 MHz ELTs. We request comment on whether we should grandfather the continued use of 121.5 MHz ELTs already installed on aircraft, and, if so, for how long. Commenters favoring a grandfathering period of limited duration are asked to recommend a specific date, and commenters may also advocate for indefinite grandfathering of installed 121.5 MHz ELTs, so that the equipment may continue to be used until the end of its useful life. We also propose to amend Section 87.147(b) of the Commission's Rules to remove an obsolete cross-reference to subpart N of Part 2 of the Commission's Rules.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

¹² 5 U.S.C. § 603(c)(1)-(4).