



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

**General Counsel**

1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

August 5, 2013

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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

Dear Secretary Dortch:

The United States Department of Transportation (DOT) and the Federal Aviation Administration (FAA), an operating administration of DOT, have reviewed the Commission's Third Further Notice of Proposed Rulemaking in the above-captioned proceeding, which relates to the Commission's proposal to amend § 87.195 of Title 47, Code of Federal Regulations, concerning 121.5 MHz-only emergency locator transmitters (ELTs). Although DOT and FAA recognize the benefits of 406 MHz ELTs and will work to encourage their use within the limits of statutory authority, we believe that 121.5 MHz-only ELTs continue to provide a beneficial means of locating missing aircraft in critical emergency situations and that a prohibition of their use should not be imposed by regulation.<sup>1</sup>

FAA has prescribed regulations mandating the installation of approved ELTs in certain U.S.-registered civil aircraft. These requirements are found in § 91.207 of Title 14, Code of Federal Regulations (14 C.F.R.). That section has been adopted in accordance with the general authority provided by Congress in § 44701(a)(5) of Title 49, United States Code (49 U.S.C.) to "promote safe flight of civil aircraft in air commerce by prescribing . . . regulations and minimum standards for other practices, methods and procedures the Administrator finds necessary for safety in air commerce." Section 91.207 also conforms to the provisions of 49 U.S.C. § 44712(a), which mandate that, subject to certain limitations, "an emergency locator transmitter must be installed on a fixed-wing powered civil aircraft for use in air commerce."

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<sup>1</sup> DOT and FAA officials have shared the views expressed here with representatives of the National Telecommunications and Information Administration (NTIA).

DOT and FAA agree that 406 MHz ELT technology is an advance over that used in 121.5 MHz-only ELTs. Aircraft equipped with 406 MHz ELTs are afforded global satellite coverage and can transmit a unique beacon identification. Additionally, these ELTs can decrease a search area to less than two nautical miles. ELTs which also include the capability to transmit a GPS position can potentially reduce a search area to within 100 meters of an accident site.

Even though DOT and FAA recognize the benefits of 406 MHz ELTs, we note that 49 U.S.C. § 44712(d) sets forth Congress's unequivocal intent to permit the use of 121.5 MHz ELTs in civil aircraft by stating that "[a]n aircraft meets the requirement of subsection (a) if it is equipped with an emergency locator transmitter that transmits on the 121.5/243 megahertz frequency or the 406 megahertz frequency or with other equipment approved by the Secretary for meeting the requirement of subsection (a)." Accordingly, 14 C.F.R. § 91.207 neither prohibits nor requires the installation of ELTs that transmit on 121.5 MHz or 406 MHz.

Although 121.5 MHz ELT signals are no longer monitored by satellite, the majority of civil aircraft are still equipped with them. These ELT signals continue to be monitored by the search and rescue community, most notably the Civil Air Patrol. FAA has studied the issue of safety and costs associated with the termination of satellite monitoring of 121.5 MHz ELTs and completed a cost-benefit analysis based on data from the years 1990-2005. The agency found that the cost of equipping the general aviation and fixed-wing aircraft fleet (over 200,000 aircraft) with 406 MHz ELTs approached \$500 million. DOT and FAA recognize that the cost of equipping the current civil aircraft fleet with 406 MHz ELTs has declined since that study was completed due to the decreased cost of 406 MHz ELT installation and the increasing number of aircraft in which 406 MHz ELTs have been voluntarily installed. However, we conclude that the cost to the general aviation community of a mandatory retrofit would still be significant. Additionally, DOT and FAA note that a prohibition or phase-out of 121.5-only MHz ELTs would preclude their use to meet the emergency equipment ELT requirements for extended overwater operations and operations over uninhabited terrain areas applicable to air carriers, commercial operators, and other persons conducting operations under parts 121, 125, or 135 (See 14 C.F.R. §§ 121.339, 121.353, 125.209, and 135.167).

Based on these assessments, the rate of voluntary equipage by aircraft owners and operators with 406 MHz ELTs, and the use of Emergency Position Indicating Radio Beacons (EPIRBs) by pilots, FAA has not sought authority from Congress to require the replacement of 121.5 MHz-only ELTs with 406 MHz ELTs. This position was specifically stated by former FAA Administrator Babbitt to the Chairman of the National Transportation Safety Board (NTSB) in his June 7, 2010 response to NTSB Safety Recommendation A-07-51. FAA reiterated this position in its April 22, 2013 final response to this recommendation, in which the agency further noted that "[w]e continue to find that voluntary equipage and the use of other new technologies best address this recommendation."

Within the limits of its statutory authority and recognizing the benefits of 406 MHz ELT equipage in certain operations, FAA, in its Notice of Proposed Rulemaking, *Air Ambulance and Commercial Helicopter Operations, Part 91 Helicopter Operations, and Part 135 Aircraft Operations; Initiatives and Miscellaneous Amendments* (75 Fed. Reg. 62640; October 12, 2010) proposed that helicopters conducting over-water operations under Part 135 be required to carry 406 MHz ELTs that meet the requirements of TSO-C126a. In the proposal, FAA noted that "the 406 MHz ELT provides an enhancement and more life-saving benefits, especially for over-water operations, than the 121.5/243 MHz ELT." 75 Fed. Reg. 62658. FAA further noted that "these

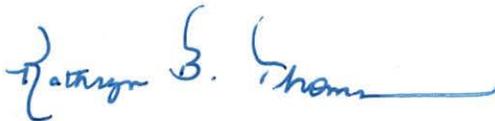
benefits include a narrower search area, a stronger signal resulting in less interference, and the ability to code the transmitter with the owner's or aircraft's identification." *Id.*

In view of the enhanced performance and benefits of 406 MHz technology, FAA has also cancelled TSO-C91a effective December 1, 2012 (77 Fed. Reg. 28688; May 15, 2012). That TSO sets forth the minimum performance standards which must be met to obtain a TSO authorization to manufacture 121.5 MHz-only ELTs. Manufacturers applying for ELT TSO authorizations after that date must use TSO-C126a (or a subsequent version), which addresses the manufacture of 406 MHz ELTs. This cancellation, however, does not affect production according to an existing TSO authorization.

Therefore, as stated above, the agency believes that 121.5 MHz-only ELTs continue to provide a beneficial means of locating missing aircraft in critical emergency situations and that a prohibition of their use should not be mandated by regulation.

We appreciate the Commission's consideration of DOT's and FAA's comments. If you have further questions or would like more information about DOT's and FAA's interests in the issues raised in this proceeding, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathryn B. Thomson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kathryn B. Thomson  
Acting General Counsel

cc: Edward M. Davison (Chairman, Interdepartment Radio Advisory Committee)