

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 87

[WT Docket No. 01–289; FCC 13–2]

### Aviation Communications

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) invites comment on issues regarding 121.5 MHz emergency locator transmitters (ELTs), in effort to ensure that its rules pertaining to Aviation Communications remain up-to-date and continues to further the Commission's goals of accommodating new technologies, facilitating the efficient and effective use of the aeronautical spectrum, avoiding unnecessary regulation, and, above all, enhancing the safety of flight.

**DATES:** Submit comments on or before March 1, 2013, and reply comments are due on or before March 18, 2013.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 01–289, FCC 13–2, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Tobias, [Jeff.Tobias@FCC.gov](mailto:Jeff.Tobias@FCC.gov), Wireless Telecommunications Bureau, (202) 418–1617, or TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Third Further Notice of Proposed Rule Making* ("Third FNPRM") in WT Docket No. 01–289, FCC 13–2, adopted on January 7, 2013, and released on January 8, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from

the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. The WT Docket No. 01–289 rulemaking proceeding was established to ensure that part 87 of the Commission's rules remains up-to-date and continues to further the Commission's goals of accommodating new technologies, facilitating the efficient and effective use of the aeronautical spectrum, avoiding unnecessary regulation, and, above all, enhancing the safety of flight. In the *Third FNPRM*, the Commission invites further comment on the appropriate treatment of 121.5 MHz ELTs under part 87 of the rules. 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. In the *Third Report and Order*, at 76 FR 17347, March 29, 2011, in this proceeding, the Commission amended § 87.195 of its rules to prohibit the certification, manufacture, importation, sale or use of 121.5 MHz ELTs. 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.

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 § 87.195. 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. The FAA also expressed concerns about the costs and availability of replacements for the 121.5 MHz ELTs.

3. Following its receipt of the FAA letter, the Commission determined that it would be in the public interest to stay its amendment to § 87.195. In the *Stay Order*, at 76 FR 17353, March 29, 2011, which was published in the **Federal Register** on the same day as the summary of the *Third Report and Order*, the Commission stated that no additional action would be taken

regarding 121.5 MHz ELTs until further notice and an additional opportunity for public comment. This *Third FNPRM* requests such comment.

### I. Procedural Matters

#### A. Ex Parte Rules—Permit-But-Disclose Proceeding

4. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

#### B. Comment Dates

5. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 1, 2013 and reply comments on or before March 18, 2013. All filings related to this *Third FNPRM* should refer to WT Docket No. 01–289.

6. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

7. 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 Web site for submitting comments.

8. 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 email. To get filing instructions, filers should send an email to [ecfs@fcc.gov](mailto: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.

9. Parties who choose to file by paper must file an original and four 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.

10. 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.

11. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE, Suite 110, Washington DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

12. 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.

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

14. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via email to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

15. *Availability of documents.* The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street SW., Room CY-A257, Washington, DC 20554, and on the Commission's Internet Home Page: <http://www.fcc.gov>. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, may be reached by email at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com) or via BCPI's Web site at [www.bcpiweb.com](http://www.bcpiweb.com). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

### C. Paperwork Reduction Act

16. This document does not contain proposed information collection(s) 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).

## II. Supplemental Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act (RFA), 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 FNPRM* in WT Docket No. 01-289. 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 5 above. 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. In addition, the *Third FNPRM* and Supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

### *Need for, and Objectives of, the Proposed Rules*

18. 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.

### *Legal Basis for Proposed Rules*

19. 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.

### *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply*

20. 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 proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (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**."

21. 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. Census data for 2007 shows that there were 1,383 firms that operated that year. 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.

22. 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. 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. Thus, under this size standard, the majority of firms can be considered small.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

23. 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.

*Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

24. 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.

25. 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 § 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 § 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 § 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.

*Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

26. None.

### III. Ordering Clauses

27. 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 adopted.

28. Pursuant to the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, and 1.419, interested parties may file comments on this *Third FNPRM* on or before 30 days after publication in the **Federal Register**, and reply comments on or before 45 days after publication in the **Federal Register**.

29. The Commission's Consumer Information 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.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 87 as follows:

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

## PART 87—AVIATION SERVICES

**Authority:** 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 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 revised 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.

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