



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 91**

#### **Docket No. FAA-2019-0239**

### **Statement of Policy for Authorizations to Operators of Aircraft that are Not Equipped with Automatic Dependent Surveillance-Broadcast (ADS-B) Out Equipment**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Policy statement.

**SUMMARY:** This action establishes the FAA's policy for issuing air traffic control (ATC) authorizations to persons seeking to operate aircraft that are not equipped with Automatic Dependent Surveillance-Broadcast (ADS-B) Out equipment in ADS-B airspace after January 1, 2020.

**DATES:** The policy described herein will be effective January 2, 2020.

**FOR FURTHER INFORMATION, CONTACT:** For technical information concerning this action, contact David E. Gray, Surveillance and Broadcast Group Manager, Air Traffic Organization at (202) 267-3615.

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority for this Action**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

The ADS-B Out equipage and performance requirements were promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103, Sovereignty and use of airspace, and Subpart III, Section 44701, General requirements. Under section 40103, the FAA is charged with prescribing regulations on the flight of aircraft (including regulations on safe altitudes) for navigating, protecting, and identifying aircraft, and the efficient use of the navigable airspace. Under section 44701, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

Under § 91.225(g) of Title 14 of the Code of Federal Regulations (14 CFR), which was issued in accordance with the FAA's statutory authority in sections 40103 and 44701, the FAA may issue authorizations allowing certain operators to deviate from the ADS-B Out equipage requirements of § 91.225. This policy statement is within the scope of the FAA's authority and provides guidance to operators on how ATC in its operational management of the national airspace system (NAS) intends to exercise its discretion to issue authorizations to operators of aircraft that are not equipped with ADS-B Out equipment.

## **I. Background**

In 2010, the FAA issued a final rule prescribing equipage requirements and performance standards for ADS-B Out equipment on aircraft operating in certain airspace after January 1, 2020.<sup>1</sup> ADS-B Out equipment is an advanced surveillance technology that combines an aircraft's positioning source, aircraft avionics, and a ground infrastructure to create an accurate surveillance interface between aircraft and air traffic control (ATC). Use of ADS-B Out will

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<sup>1</sup> Final Rule, Automatic Dependent Surveillance-Broadcast (ADS-B) Out Performance Requirements to Support Air Traffic Control (ATC), 75 FR 30160 (May 28, 2010).

move ATC from a radar-based system to an aircraft location system based on satellite-derived position and velocity.

Aircraft equipped with ADS-B Out equipment are able to continually broadcast information, such as identification, current position, altitude, and velocity, through an onboard transmitter, which can be received by ADS-B ground stations and by other aircraft appropriately equipped to receive this information. ADS-B Out provides air traffic controllers with real-time position information that is, in most cases, more accurate than the information available with current radar-based systems. With more accurate information, ATC will be able to position and separate aircraft with improved precision and timing. With specific and limited exceptions, ADS-B Out equipage requirements and performance standards apply to all aircraft operating in certain U.S. airspace.<sup>2</sup> Therefore, these requirements are applicable to operations conducted by both domestic and foreign operators. The surveillance provided by ADS-B Out will enhance ATC's ability to surveil and separate aircraft so that efficiency and capacity will increase beyond current levels to meet the predicted demand for ATC services while continually maintaining safety. To obtain the efficiency and capacity benefits that can be realized with ADS-B Out, all aircraft must be equipped with ADS-B Out equipment when operating in rule airspace.

Section 91.225 of Title 14 of the Code of Federal Regulations (CFR) prescribes the ADS-B Out equipment and use requirements, and § 91.227 prescribes the ADS-B Out equipment performance requirements. After January 1, 2020, unless otherwise authorized by ATC, all aircraft operating in the airspace identified in § 91.225 must comply with the ADS-B Out

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<sup>2</sup> ADS-B Out airspace consists of (1) Class A, B, and C airspace areas (within the United States and from the coastline of the United States out to 12 nautical miles), (2) the airspace within the Mode C veil (within 30 nautical miles of an airport listed in appendix D, section 1 of part 91) from the surface upward to 10,000 feet MSL, (3) above the ceiling and within the lateral boundaries of a Class B or Class C airspace area designated for an airport upward to 10,000 feet MSL, (4) Class E airspace within the 48 contiguous states and the District of Columbia at and above 10,000 feet MSL, excluding the airspace at and below 2,500 feet above the surface, and (5) Class E airspace at and above 3,000 feet MSL over the Gulf of Mexico from the coastline of the United States out to 12 nautical miles. For purposes of § 91.225, the United States includes Puerto Rico and the U.S. possessions. 14 CFR § 1.1.

equipage and performance requirements.<sup>3</sup> The FAA adopted a provision in § 91.225(g), however, that allows persons to request authorization from ATC to operate in ADS-B Out airspace with aircraft that do not meet the ADS-B Out requirements. Section 91.225(g) addresses two types of aircraft that may not meet the ADS-B Out requirements: aircraft with inoperative ADS-B Out equipment and aircraft that have not been equipped with ADS-B Out equipment. This notice announces the FAA's policy for handling requests for authorization from operators of aircraft that are not equipped with ADS-B Out equipment.

Under § 91.225(g), for the operation of aircraft that are not equipped with ADS-B Out equipment, the operator must make the request for an authorized deviation at least 1 hour before the proposed operation to the ATC facility with jurisdiction over the airspace. The provision in § 91.225(g) gives ATC the flexibility to address deviation requests from non-equipped aircraft on a case-by-case basis.<sup>4</sup> In addition, in order to assist operators in making a decision whether to equip with ADS-B Out equipment, the preamble explained that ATC might not be able to grant authorizations for a variety of reasons, including but not limited to workload, runway configurations, air traffic flows, and weather conditions.<sup>5</sup> The ADS-B Out final rule contemplated that those operators with a need to operate regularly in airspace where ADS-B Out is required would equip, and that an exception for per-operation authorizations was designed to accommodate unforeseen or rare circumstances.

## **II. Discussion of the Policy**

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<sup>3</sup> These requirements apply to all aircraft operating in ADS-B Out airspace including foreign-registered aircraft.

<sup>4</sup> See Notice of Proposed Rulemaking, Automatic Dependent Surveillance-Broadcast (ADS-B) Out Performance Requirements to Support Air Traffic Control (ATC), 72 Fed. Reg. 56947, 56957-56959 (Oct. 5, 2007) (explaining that an operator may request an ATC authorization to operate in the airspace and the FAA will address the requests on a case-by-case basis).

<sup>5</sup> Final Rule, 75 FR at 30167; NPRM, 72 FR at 66959

After January 1, 2020, unless otherwise authorized by ATC, all aircraft operating in the airspace identified in § 91.225 must comply with the ADS-B Out equipage and performance requirements. Nothing in this notice shall be deemed to modify or alter those requirements established in the 2010 final rule. The purpose of this notice is only to announce publicly how ATC will manage § 91.225(g) and issue authorizations to operators of aircraft that have not equipped with ADS-B Out equipment.

In this notice, the FAA establishes: (1) a general policy that would apply to all operators of non-equipped aircraft seeking authorization to operate in ADS-B Out airspace; (2) specific policies for handling authorization requests from scheduled operators; (3) policies for other than scheduled operations at capacity constrained airports; (4) guidance on the provision of air traffic services to non-equipped aircraft that have failed to obtain an authorization to operate in ADS-B Out airspace; and (5) plans for implementation of the authorization policy.

#### **A. General Policy**

In accordance with the ADS-B Out final rule, the FAA anticipates that operators who intend to operate routinely in ADS-B Out airspace have been taking the necessary steps to equip aircraft with ADS-B Out equipment to ensure there is no disruption to their operations. The regulatory provision for issuing authorizations to operators of non-equipped aircraft addresses rare instances in which an operator who does not routinely operate in ADS-B Out airspace has a need to do so. As contemplated in the ADS-B Out rulemaking, the per-operation authorizations were not intended to support routine and regular operations of non-equipped aircraft in ADS-B Out airspace.

To that point, the FAA has not planned nor does it plan to expend a significant amount of its limited budgetary resources to establish a new system to issue authorizations for the small

number of operators of non-equipped aircraft seeking occasional access to ADS-B Out airspace. The FAA anticipates that the need to obtain authorizations under § 91.225(g) will quickly diminish over time as universal equipage grows. Likewise, the FAA does not intend to divert ATC facility resources from other critical functions that directly support air traffic controllers performing their duties in order to prioritize and manage authorizations for operators of non-equipped aircraft. Notably, as plans to divest radar begin to take effect, the authorization policy will necessarily evolve as accommodation of non-equipped aircraft in ADS-B Out airspace becomes more complicated.

Under the 2010 ADS-B Out rulemaking, the FAA determined that, to the maximum extent possible, operators of equipped aircraft should not be penalized or have their ATC services affected by operators who choose not to equip their aircraft with ADS-B Out equipment. Therefore, an ATC authorization allowing an operator to deviate from the equipage requirements of § 91.225 must be requested and obtained prior to the operation. Consistent with the rule's requirement that an operator request an authorization at least 1 hour prior to the operation, the policy will preclude an operator from requesting and the FAA from issuing in-flight authorizations to operators of non-equipped aircraft. Additionally, in view of the resource issues identified earlier, the FAA will not accept requests for authorizations by telephone to ATC facilities.

#### **B. Policy for Scheduled Operations in ADS-B Out Airspace**

Consistent with the rule, scheduled operators may request an authorization to deviate from the ADS-B Out equipage requirements. However, as previously noted, the rule requires an operator to make an authorization request at least 1 hour before each proposed operation to the ATC facility that has jurisdiction over the airspace. Given the express language of the regulation,

the rule as written was not intended to accommodate scheduled operators who are transiting ADS-B Out airspace under the jurisdiction of multiple ATC facilities on a routine or regular basis. Therefore, as discussed in this section and consistent with the statements in the NPRM indicating that not all requests for authorization will be granted, the FAA will not issue daily or routine authorizations for scheduled operations. While ATC will consider requests from scheduled operators, it is very unlikely to issue an authorization to a scheduled operator on more than an occasional basis and is most likely to issue an authorization when a compelling or unanticipated need to deviate from the ADS-B Out equipage requirements exists.

The FAA's policy for handling authorization requests from scheduled operators is consistent with the per-operation, facility-level relief established in the rule and with the general policy discussed above, which supports the issuance of authorizations only for limited operations in ADS-B Out airspace. A scheduled operator offers in advance of the operation the departure location, departure time, and arrival location.<sup>6</sup>

The preamble to the final rule made it apparent that no operator is guaranteed an ATC authorization to deviate from ADS-B Out equipage requirements. Because ATC may not be able to grant every authorization request, it would be detrimental for an operator to make its scheduled operations into ADS-B Out airspace dependent solely on obtaining an ATC authorization to deviate from the equipage requirements of § 91.225. Relying solely on an ATC authorization – which may not be granted – to operate a non-equipped aircraft in ADS-B Out airspace would put the operator's scheduled operations in jeopardy.

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<sup>6</sup> Section 110.2 of 14 CFR defines a scheduled operation as any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance of the departure location, departure time, and arrival location. It does not include any passenger-carrying operation that is conducted as a public charter operation under part 380 of this chapter.

Furthermore, the final rule that promulgated § 91.225 was issued on May 28, 2010. Therefore, scheduled operators have known for over eight years that authorization requests under § 91.225(g) will be handled on a case-by-case basis. Likewise, since 2010, air carriers and commercial operators conducting scheduled operations have known which airspace and airports will require them to use aircraft equipped with ADS-B Out equipment. Because with very limited exceptions scheduled operations take place almost wholly within ADS-B Out airspace (i.e., over 10,000 feet and at airports located within Class B and C airspace), these operators – understanding that authorizations were not guaranteed to be issued in all instances – should have planned to equip any aircraft routinely used in scheduled operations. Therefore, while a scheduled operator may request a deviation from the ADS-B Out equipage requirements on a per-operation basis in accordance with § 91.225(g), it is unlikely that the FAA will issue repeated authorizations to deviate from ADS-B Out equipage requirements.<sup>7</sup> Accordingly, operators who conduct routine and regular operations into ADS-B Out airspace should be taking the necessary steps to equip their aircraft with ADS-B Out equipment to ensure their scheduled operations are not disrupted.

The FAA notes that, for scheduled operations into slot controlled and slot facilitated airports subject to minimum usage requirements,<sup>8</sup> this policy makes it even more critical for operators to adjust their fleets to ensure they are using ADS-B Out equipped aircraft for any scheduled operations.<sup>9</sup>

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<sup>7</sup> Scheduled operators with a compelling or unanticipated need to enter ADS-B Out airspace with a non-equipped aircraft will be considered differently under this policy.

<sup>8</sup> Section 93.213(2) of 14 CFR defines “slot” as the “operational authority to conduct one IFR landing or takeoff operation each day during a specific hour or 30-minute period at one of the High Density Traffic Airports, as specified in subpart K of [part 93].”

<sup>9</sup> Pursuant to § 93.227 of 14 CFR and FAA orders, an operator’s slots at an airport may be subject to withdrawal if the operator does not utilize the slot at least 80 percent of the time over the time-frame authorized by the FAA.



### **C. Policy for Operations Other than Scheduled Operations in ADS-B Out Airspace**

Operators who are not conducting scheduled operations (“unscheduled operators”)<sup>10</sup> and are seeking to operate non-equipped aircraft in rule airspace may request ATC authorizations consistent with § 91.225(g). However, operators should be aware that requests for authorization to operate aircraft that are not equipped with ADS-B Out equipment might not be accommodated for a variety of reasons. The FAA notes that many commercial operators currently conduct regular but unscheduled operations in ADS-B Out airspace. In accordance with the requirements of the ADS-B Out rulemaking, these operators, like scheduled operators, should be equipping their aircraft rather than relying on repeated ATC authorizations to enter ADS-B Out airspace. Under the rule, the FAA determined that, to the maximum extent possible, operators of equipped aircraft should not be penalized or have their ATC services affected by operators who choose not to equip their aircraft with ADS-B Out equipment. Therefore, under the policy, ATC will make determinations as necessary to ensure equipped operators are not adversely impacted and that efficiency of operations is maintained.

Consistent with this principle, it will be difficult for unscheduled operators conducting operations at capacity constrained airports to obtain authorizations. Given the complex and dynamic nature of operations within this airspace, it is unlikely that ATC will prioritize authorization requests for unequipped aircraft over providing air traffic services to aircraft equipped with ADS-B Out equipment. Unscheduled operators with a need to access this airspace on more than an occasional basis should equip with ADS-B Out to ensure no disruption to operations.

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<sup>10</sup> For purposes of this notice, an “unscheduled operator” means an operator conducting an operation that does not meet the definition of scheduled operation as defined in 14 CFR § 110.2. These operations include other commercial operations (e.g. part 135 operations) as well as general aviation operations conducted under part 91.

For purposes of this notice, a capacity constrained airport is an airport that is operating at 85% capacity or greater. Based on FAA's current analysis, this includes the following airports: Boston Logan International Airport (BOS); Charlotte Douglas International Airport (CLT); Chicago O'Hare International Airport (ORD); Dallas/Fort Worth International Airport (DFW); Hartsfield-Jackson Atlanta International Airport (ATL); John F. Kennedy International Airport (JFK); LaGuardia Airport (LGA); Los Angeles International Airport (LAX); McCarran International Airport (LAS); Philadelphia International Airport (PHL); Ronald Reagan Washington National Airport (DCA); San Diego International Airport (SAN); San Francisco International Airport (SFO); and Seattle-Tacoma International Airport (SEA).

These airports are where demand is consistently at 85% capacity or greater, and operations are often constrained. For that reason, it is far more likely that the FAA will deny rather than issue authorization requests from unscheduled operators to operate non-equipped aircraft at these airports. The FAA advises that unscheduled operators with a pressing or routine need to access ADS-B Out airspace near these airports should take the appropriate steps to equip before January 2020 in order to ensure that their operations are not disrupted.

For ADS-B Out airspace outside capacity constrained airports, the FAA reiterates that ATC might not issue a requested authorization. For this reason, the only way to ensure seamless access to ADS-B Out airspace is to equip pursuant to §§ 91.225 and 91.227.

#### **D. Continued Provision of ATC Services to Non-Equipped Aircraft**

ATC is responsible for providing services to aircraft to enable the safe and efficient operation of the NAS. Therefore, under the authorization policy, ATC will continue to provide air traffic services to all aircraft operating within its airspace, including those aircraft that have not equipped with ADS-B Out equipment and have not obtained proper authorizations under §

91.225(g). The FAA notes, however, that the provision of air traffic services to a non-equipped operator whose filed flight plan transits ADS-B Out airspace will not constitute authorization under § 91.225(g). Although ATC will be able to observe that an aircraft is not equipped with ADS-B Out equipment, ATC will not be responsible for determining whether non-equipped aircraft operating in the NAS are properly authorized to operate in ADS-B Out airspace.<sup>11</sup> The provision of air traffic services is separate from and will not constitute an authorization to deviate from the ADS-B Out equipage requirements while operating in that airspace. The non-equipped operator, as always, will have the responsibility to ensure compliance with the regulations,<sup>12</sup> which includes obtaining a preflight authorization in accordance with § 91.225(g).

#### **E. Implementation**

The FAA's Air Traffic Organization is responsible for issuing the preflight authorizations under § 91.225(g). The FAA's Aviation Safety Organization is responsible for providing post-flight oversight of the operations. Any operator who operates a non-equipped aircraft in ADS-B Out airspace without obtaining a preflight authorization in accordance with § 91.225(g)(2) will be presumed to have violated the regulations.<sup>13</sup> The Administrator is authorized to assess

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<sup>11</sup> The FAA notes that, if an ATC facility within capacity constrained airspace has determined that it will not issue authorizations at a given time on a given day, non-equipped aircraft operating in that airspace will be presumed to have acted in non-compliance with § 91.225. Notwithstanding the presumed non-compliance, ATC will provide air traffic services to the aircraft. As noted, the provision of services will not overcome the operator's failure to obtain an authorization.

<sup>12</sup> It is the pilot's responsibility to comply with the applicable requirements of Title 14 of the Code of Federal Regulations. Receiving ATC services or an ATC clearance does not relieve a pilot of his or her responsibility to comply with the regulations.

<sup>13</sup> The FAA acknowledges that, in certain circumstances, an operator of a non-equipped aircraft who had not planned to enter rule airspace and, therefore, did not seek a preflight authorization, may receive an in-flight clearance that would place the aircraft in airspace for which ADS-B Out equipage is required. Because ATC needs the flexibility to address real-time conditions in the NAS (e.g., adverse weather conditions), ATC may elect to provide a clearance into ADS-B airspace. The FAA advises that the pilot should accept the clearance and immediately advise ATC of the lack of authorization. The FAA will normally not take enforcement action for non-equipage in these circumstances.

sanctions for such violations pursuant to the FAA's statutory authority. General guidance applicable to FAA sanction determinations is in FAA Order 2150.3C, FAA Compliance and Enforcement Program, Chapter 9.<sup>14</sup>

The FAA continues to develop the process and system for requesting authorizations.<sup>15</sup> The system under development will issue or deny an authorization consistent with the policy set forth in this document.<sup>16</sup> An operator of a non-equipped aircraft will not be allowed to operate in ADS-B Out airspace without a preflight authorization obtained through the system. If an operator obtains an authorization through the system to enter certain ADS-B Out airspace, the operator will be presumed to have complied with the requirements of § 91.225(g) with respect to that ADS-B Out airspace. Having a system that issues trackable authorizations and denials to the operator will also enable the FAA to provide proper oversight to ensure compliance.

## **F. Summary**

After January 1, 2020, unless otherwise authorized by ATC, all aircraft operating in the airspace identified in § 91.225 must be equipped with ADS-B Out equipment. Pursuant to § 91.225(g), however, persons may request authorization from ATC to operate in ADS-B airspace with aircraft that do not transmit ADS-B Out.

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<sup>14</sup> Order 2150.3C applies to the compliance and enforcement programs and activities of all FAA offices that have statutory and regulatory compliance and enforcement responsibilities.

<sup>15</sup> The FAA notes that simply obtaining a preflight clearance from ATC under another regulatory requirement will not satisfy the requirement for a preflight authorization to deviate from § 91.225(g). For example, if ATC has provided the operator of a non-equipped aircraft a pre-departure ATC clearance under § 91.173 (ATC clearance and flight plan required), that clearance would not constitute an authorization to operate the non-equipped aircraft in the ADS-B Out airspace. Likewise, a preflight authorization to operate a non-equipped aircraft in ADS-B Out airspace would not constitute an ATC clearance for entering Class B airspace. If an operator plans to operate a non-equipped aircraft in airspace that requires ADS-B Out and an ATC clearance, the responsibility is on that operator to obtain both a preflight authorization pursuant to § 91.225(g)(2) and an ATC clearance.

<sup>16</sup> This policy will not result in additional costs to operators affected by the 2010 ADS-B Out rule establishing equipage and performance requirements that apply to all aircraft operating in certain U.S. airspace. The FAA determined these aircraft will equip in order to operate in ADS-B Out airspace. These costs are summarized in the final rule (75 FR 30160) and detailed in the Final Regulatory Impact Analysis available in the docket (FAA-2007-29305).

To operate in ADS-B airspace, an operator who has chosen not to equip with ADS-B Out equipment must obtain a preflight authorization in accordance with § 91.225(g). The operator has the responsibility to obtain a preflight authorization from ATC for all ADS-B Out airspace on the planned flight path. For the reasons explained above, however, the FAA will be very unlikely to issue routine and regular authorizations to scheduled operators seeking to operate non-equipped aircraft in rule airspace. Likewise, although unscheduled operators may request authorizations for airspace at capacity constrained airports, issuance of an authorization may prove difficult to obtain.

The FAA continues to develop the specific mechanisms that would be used to issue authorizations to operators of aircraft that are not equipped with ADS-B Out equipment.

Issued in Washington, DC, on March 26, 2019.

Teri L. Bristol

Chief Operating Officer

Air Traffic Organization

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