U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

FEB 21 2019

Mr. John Ferrara
[redacted]

Dear Mr. Ferrara,

This letter is in response to your email to the Federal Aviation Administration (FAA) in which you raise questions regarding the ADS-B Out airspace in which aircraft not originally certificated with an electrical system or not subsequently certified with such a system installed (hereinafter "§ 91.225(e) aircraft") may operate without being equipped with ADS-B Out avionics.

On May 28, 2010, the FAA issued a final rule requiring the use of Automatic Dependent Surveillance – Broadcast (ADS-B) Out in certain airspace. 75 FR 30160. The specific equipage requirements are found in §§ 91.225(a) and (b). Section 91.225(a) addresses ADS-B Out requirements in Class A airspace. Section 91.225(b) contains the ADS-B Out equipage requirements for certain airspace, which are identified in § 91.225(d), below 18,000 feet MSL. Specifically, under § 91.225(d), no person may operate an aircraft in the following airspace unless the aircraft is equipped with ADS-B Out:

> (1) Class B and Class C airspace areas;
>
> (2) Except as provided for in paragraph (e) of this section, within 30 nautical miles of an airport listed in appendix D, section 1 to this part from the surface upward to 10,000 feet MSL;
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> (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;
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> (4) Except as provided in paragraph (e) of this section, 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
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> (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.

Pursuant to § 91.225(e), the FAA provides some relief from the ADS-B Out requirements of § 91.225(b) to § 91.225(e) aircraft. Section 91.225(e) aircraft are permitted to operate in the

airspace identified in § 91.225(d)(2) (i.e., within 30 nautical miles of an airport listed in appendix D, Section 1 to this part from the surface upward to 10,000 feet MSL) and § 91.225(d)(4) (i.e., 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) so long as the operations also comply with the conditions in § 91.225(e).

You argue that the operating conditions in §§ 91.225(e)(1) and (e)(2) should not apply to the airspace in § 91.225(d)(4). If they do apply, you note, § 91.225(e) aircraft would be required to "stay below the ceiling of Class B or C airports regardless of the distance from the airport even if more than 30 miles." The FAA concurs that the operating conditions in §§ 91.225(e)(1) and (e)(2) do not apply to the airspace identified in § 91.225(d)(4).

The operating condition in § 91.225(e)(1) does not prohibit or limit § 91.225(e) aircraft from operating in the airspace identified in § 91.225(d)(4). Section 91.225(d)(4) references Class E airspace at and above 10,000 feet MSL, excluding the airspace at and below 2,500 feet above the surface. Whereas, § 91.225(e)(1) specifically addresses an operating condition that must be complied with in order to obtain relief under § 91.225(e). That operating condition requires § 91.225(e) aircraft to operate outside any Class B or Class C airspace area. Because these two sections, §§ 91.225(d)(4) and (e)(1), are addressing different classes of airspace, § 91.225(e)(1) does not affect operations in the airspace specified in § 91.225(d)(4).

Similiarly, the FAA did not intend the operating condition in § 91.225(e)(2) to prohibit or limit § 91.225(e) aircraft from operating in the airspace identified in § 91.225(d)(4). Rather, § 91.225(e)(2) applies solely to the airspace addressed in § 91.225(d)(2). Aircraft conducting operations pursuant to the relief in § 91.225(e) must comply with the operating condition specified in § 91.225(e)(2), which requires operations be conducted "[b]elow the altitude of the ceiling of a Class B or Class C airspace area designated for an airport, or 10,000 feet MSL, whichever is lower." The two sections, §§ 91.225(d)(4) and (e)(2), are addressing different airspace stratum since the operating condition in § 91.225(e)(2) addresses operations conducted below 10,000 feet MSL, at the highest, and the airspace described in § 91.225(d)(4) is defined at and above 10,000 feet MSL. Therefore, § 91.225(e)(2) also does not affect operations in the airspace specified in § 91.225(d)(4).

Further, the limited application of the § 91.225(e)(2) operating condition to § 91.225(d)(2) is supported by discussion in the preamble to the notice of proposed rulemaking (NPRM) which preceded the final rule by which this condition was adopted. 72 FR 56958 (Oct. 5, 2007). In the NPRM, the FAA states that § 91.225(e) aircraft may "conduct operations without ADS-B Out in the airspace within 30 NM of an airport listed in part 91 appendix D if the operations are conducted: (1) Outside any Class B or Class C airspace area; and (2) below the altitude of the ceiling of a Class B or Class C airspace area designated for an airport or 10,000 feet MSL, whichever is lower." The FAA intentionally discussed and applied these operating conditions to the airspace in § 91.225(d)(2). In addition, the language in the NPRM preamble mirrors the relief provided to aircraft not equipped with a transponder and "not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed" found in § 91.215(b)(3). Those aircraft are permitted to operate "[i]n all airspace of 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." Finally, if the operating condition in § 91.225(e)(2) applied to the airspace in § 91.225(d)(4), a § 91.225(e) aircraft could never operate in the airspace identified in § 91.225(d)(4), rendering the relief specifically provided meaningless.

While the FAA concurs that the operating conditions in §§ 91.225(e)(1) and (e)(2) do not apply to the airspace in § 91.225(d)(4) for ADS-B Out equipage, the FAA intends to reinforce this position further in future FAA actions. And, finally, we note that operations by § 91.225(e) aircraft must still comply with the ADS-B Out equipage requirements for the airspace specified in §§ 91.225(d)(1) and (d)(3).

We appreciate your patience and trust that the above addresses your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Gahan Christenson, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Traffic Organization.

Sincerely,

Lorelei D. Peter
Assistant Chief Counsel for Regulations

February 13, 2019

John Ferrara

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TO: Arjun Garg

Arjun

On November 29, 2017 I sent a request for a legal opinion on FAR 14 CFR Part 91.225(e). After many inquiries where I was told "soon" I still have no response.

Don't you think this is unacceptable?

When will I receive a response?

Regards

John

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