U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

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

NOV 23 2010

Alan C. Davis
[redacted]

Dear Mr. Davis:

This responds to your letter of July 7, 2010, requesting guidance concerning airspace that is described and designated in 14 CFR Part 73 as a restricted area. You provided excerpts from email strings and comments as background material. We are answering the three specific questions you asked about a "cold" restricted area and VFR flight. We believe that when you refer to a "cold" restricted area you mean that the restricted area is not designated as a restricted area during the time, and between the designated altitudes, when you wish to operate VFR.

Subpart B of Part 73 designates restricted areas and prescribes limitations on the operation of aircraft within them. Section 73.13 states:

> 73.13 Restrictions.
>
> No person may operate an aircraft within a restricted area between the designated altitudes and during the time of designation, unless he has the advance permission of
>
> (a) The using agency described in §73.15; or
>
> (b) The controlling agency described in §73.17.

Question 1. Is a clearance required to fly VFR through a "cold" restricted area?

Answer 1. A clearance is not required to operate VFR through a restricted area when the controlling or using agency, as applicable, has made a determination that the restricted area is "cold".

Question 2. If a clearance is required to fly VFR through a "cold" restricted area, who would provide it?

Since the answer to question 1 was no, an answer to question 2 is not necessary.

Question 3. Is the statement by ATC that the restricted area is "cold," in fact, a tacit clearance/permission/authorization to fly through that airspace?

To answer your question we assume that ATC is the controlling or using agency, as appropriate for the restricted area, and that ATC has communicated to the VFR operator that the restricted area is "cold". In those circumstances, the VFR operator may legally enter and transit the restricted area. However, the ATC communication is not an air traffic control clearance, permission, or authorization to operate VFR in the airspace. See, §73.13 and 14 CFR §91.133.

This response was prepared by Cecile O'Connor, an attorney in the Regulations Division, and has been coordinated with the Airspace, Regulations and ATC Procedures Group, AJV-11. We hope this response is helpful to you. If you have additional questions regarding this matter, please contact us at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200