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

Office of the Chief Counsel

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

JAN 14 2010

Ms. Bridgette Doremire
[redacted]

Dear Ms. Doremire:

This is in response to your September 27, 2009, request for interpretation of the following sections in Title 14 of the Code of Federal Regulations (14 CFR):

Section 91.3(a) provides that the pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft. Paragraph (b) of this section provides that the pilot in command may deviate from any rule of this part to the extent required to meet an in-flight emergency requiring immediate action.

Section 91.123(a) provides, in pertinent part, that no pilot in command may deviate from an air traffic control (ATC) clearance unless an amended clearance is obtained, an emergency exists, or the deviation is in response to a traffic alert and collision avoidance system resolution advisory. When a pilot is uncertain of an ATC clearance, that pilot shall immediately requite clarification from ATC. Paragraph (b) of this section provides that except in an emergency, no person may operate an aircraft contrary to an ATC instruction in an area in which air traffic control is exercised.

Section 91.131(a)(1) provides that no person may operate an aircraft within a class B airspace area except in compliance with § 91.129 and that the operator must receive an ATC clearance from the ATC facility having jurisdiction for that area before operating an aircraft in that area.

Section 91.111(a) provides that no person may operate an aircraft so close to another aircraft as to create a collision hazard.

In your letter, you describe a scenario where a pilot is "departing KVNY 16L for eastbound departure along V-108 with VFR Flight Following. After establishing contact with SoCAL TRACON, the controller issues a southeast vector for traffic with only a heading and altitude assignment....The pilot acknowledges the vector. To stay on this heading and altitude puts the aircraft into the Los Angeles Class B airspace. The frequency then becomes congested so that neither pilot nor controller can obtain a new heading altitude, or clearance."

First, you question whether the vector providing the heading and altitude assignment is a clearance under § 91.131(a)(1) to enter the Los Angeles Class B airspace. The answer is no. A pilot must specifically receive an ATC clearance to enter the class B airspace. The issuance of a vector provides navigation information but does not provide clearance from ATC to enter the subject airspace.

Second, you pose that if the pilot elects to turn to avoid the Class B airspace, did the pilot violate § 91.123(a)(b) and/or 91.111(a). If the pilot only received the vector for traffic from ATC, the pilot did not receive a clearance or instruction from ATC. Therefore, any maneuvering by the pilot is not a violation of § 91.123. However in maneuvering the aircraft, the pilot must comply with § 91.111(a) and not operate the aircraft so close to another aircraft as to create a collision hazard.

Third, you question at what distance from the airspace must a solo student pilot (without the endorsement of § 61.95(a)(2) and (3)) refuse the clearance per paragraph 4-4-1(b) of the Aeronautical Information Manual.[1] If a student pilot is not authorized under § 61.95.(a)(2) or (3) to operate within Class B airspace, but in fact receives a clearance from ATC to enter the Class B airspace, the pilot is responsible to receive an amended clearance. There is no "distance provision" and the responsibility rests on the pilot to be knowledgeable and competent and comply with all applicable regulations.

Lastly, you question whether a pilot should know the frequency of the appropriate ATC facility to request clearance to enter Class B airspace in accordance with § 91.131. As part of the pilot's responsibility for preflight under § 91.103, and if a pilot intends to operate within a certain Class B airspace, then the pilot should become familiar with all available information concerning that operation, including how to request a clearance to enter the Class B airspace.

This response was prepared by Lorelei Peter, an Attorney in the Regulations Division of the Office of the Chief Counsel and coordinated with the Airspace and Rules Group and the Terminal Operations Branch, Air Traffic Organization. We hope this response has been helpful to you. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

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

[1] Paragraph 4-4-1(b) explains the pilot's responsibility under 14 CFR § 91.3(a) describes the pilot-in-commands responsibility for the flight and to request amended clearances from ATC if necessary.