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

**Office of the Chief Counsel**

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

DEC - 8 2010

Mr. Eric Jaderborg
[redacted]

Dear Mr. Jaderborg,

The following is in response to your request for a legal interpretation that was originally submitted to the FAA's Western Pacific Regional Office and forwarded to our office for response. We apologize for the delay in responding and hope the following answers your inquiry.

The crux of your inquiry is based on the following factual scenario. You note that a part 135 operator is authorized via its operations specifications to operate IFR outside of controlled airspace, provided that the airport has an authorized instrument approach procedure and there is an approved weather reporting source at the airport. A pilot for the part 135 operator wishes to conduct a part 135 IFR operation from an uncontrolled airport that does not have a weather reporting facility operated by the U.S. National Weather Service or a weather source approved by the U.S. National Weather Service as required under 14 CFR 135.225(a). In this situation, where there is no approved NWS weather source, the pilot would like to file an IFR flight plan, receive an IFR clearance with a VFR climb to a specified altitude, and then conduct the takeoff maintaining VFR conditions until IFR conditions are reached at the cruise altitude at some point in space. At that time, the remainder of the operation would be conducted in accordance with the IFR clearance.

In general, you ask whether, by virtue of the IFR clearance under this scenario, the FAA would consider the entire operation an IFR operation, and thus, subject to the weather reporting requirements under §135.213. If so, you then question whether it may be permissible to seek a composite clearance, with the initial portion of the flight conducted under VFR and then switch to IFR at some point in space, such that the pilot could rely on his own observations if a weather report is not available at the departure airport.

In regard to your first question, we note that 14 C.F.R. § 91.123 provides that "when an ATC clearance has been obtained, no pilot in command may deviate from that clearance unless an amended clearance is obtained . . . However, except in Class A airspace, a pilot may cancel an IFR flight plan if the operation is being conducted in VFR operations." Under your scenario, without additional details regarding the clearance provided, it appears that this was purely an IFR operation, and thus, under § 91.123, the pilot in command would have been required to comply with the clearance and conduct the operation under IFR rules, including the weather reporting requirements of §135.213(a).

In regard to your second question, whether the pilot could have requested a clearance that specified the initial part of the operation to be conducted under VFR, and the latter part as IFR at some specified point in space, the FAA considers this a permissible practice. As discussed in the FAA's Aeronautical Information Manual, composite flight plans which specify VFR operation for the first portion of a flight, and IFR for the latter portion, will be accepted by the FSS at the point of departure and pilots should report their departure time to the FSS with whom the flight was filed, and close the VFR portion and request ATC clearance from the FSS nearest the point at which change from VFR to IFR is proposed. The pilot must remain in VFR weather conditions until operating in accordance with the IFR clearance. *See* AIM, Air Traffic Procedures, Ch. 5, Sec. 1, para. 7(a) (Feb. 11, 2010); *see also* FAA Order JO 7110.65T, CHG 1, Ch. 4, Sec. 2, para. 8(b), *IFR-VFR and VFR-IFR Flights* (Aug. 26, 2010) ("Treat an aircraft planning VFR for the initial part of the flight and IFR for the latter as a VFR departure. Issue a clearance to this aircraft when it requests IFR clearance approaching the fix where it proposes to start IFR operations.").

We caution, however, that some VFR operations require the use of an approved NWS weather report or source. For these operations, it would not be sufficient for the pilot to rely solely upon his or her own observations to satisfy the weather reporting requirements. *See* 14 C.F.R. §135.213(a) ("Whenever a person operating under this part is required to use a weather report or forecast, that person shall use that of the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator"); *see also* 14 C.F.R.§ 135.211 (requiring weather reports or forecasts for VFR over-the-top passenger carrying operations).

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Anne Bechdolt and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

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