U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

APR 19 2016

Daniel Lamb
[redacted]

Re: IFR Operations in Class G Airspace and Part 91 Instrument Proficiency Checks

Dear Mr. Lamb:

This letter responds to your November 6, 2015 request for a legal interpretation regarding instrument flight rules (IFR) operations in Class G airspace. In your letter, you ask two questions: whether it is legal to fly under IFR in class G airspace without a clearance, and whether it is legal to fly in instrument meteorological conditions (IMC) in class G airspace without a clearance. You also ask a third question regarding whether a part 121 or part 135 proficiency check satisfies instrument recent flight experience for operations conducted under part 91, or a flight review under part 61.

With respect to your first two questions, 14 C.F.R. § 91.173 requires an IFR flight plan and ATC clearance in controlled airspace but is silent with respect to uncontrolled airspace. Per this regulation and assuming an IFR capable aircraft and pilot, it would also be permissible to fly in IMC without a clearance. However, § 91.13 prohibits operating an aircraft in a careless or reckless manner, and the NTSB has previously ruled that under certain conditions, "takeoff into clouds without an ATC clearance or release was 'extremely dangerous' and in violation of section 91.13(a)."[1]

You also ask whether a part 121 or part 135 check satisfies instrument recent flight experience for operations conducted under part 91. Section 61.57(e)(2) and (3) state that the instrument recent flight experience requirement in that section do not apply to a pilot in command who is employed by a part 119 certificate holder authorized to conduct operations under part 121 or part 135 when the pilot is engaged in a flight operation under that part and part 91 for that certificate holder and meets the other requirements specified under those subsections. For § 61.57(e)(2), the pilot in command must be in compliance with 14 C.F.R. §§ 121.435 or 121.436, and §121.439, and for § 61.57(e)(3), the pilot in command must be in compliance with 14 C.F.R. §§ 135.243 and 135.247. If, however, the pilot is not engaged in flight operation specifically for the certificate holder, a pilot would have to satisfy the instrument recent flight experience requirements in § 61.57(c) or (d). Regarding whether or not the part 121 or part 135 proficiency check

[1] *Del Balzo v. Murphy*, 1993 WL 275315, at *2

can count for a flight review, as per § 61.56(d)(1), a pilot proficiency check conducted by an approved check airman does substitute for a flight review.

We appreciate your patience and trust that the above responds to your inquiry. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Courtney Freeman, an attorney in the Regulations Division of the FAA's Office of the Chief Counsel, and coordinated with the Flight Standards Service and the Air Traffic Organization.

Sincerely,



Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

Daniel Lamb
[redacted]

November 6, 2015

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

To whom it may concern:

I would like a formal FAA letter of interpretation on IFR operations in class G airspace.

The Scottsdale FSDO agrees with me that it is perfectly legal to be IFR/IMC in class G airspace. I think in an effort to clear up some confusion and misinformation between pilots, a formal letter of interpretation is necessary to be viewed by the public.

First, is it legal to fly by IFR rules in class G airspace without a clearance, given that class G is uncontrolled?

Second, is it legal to fly in IMC in class G airspace without a clearance (assuming an IFR capable aircraft/pilot).

Some pilots have been violated for IFR operations in class G airspace, not because they didn't have a clearance but because it was "careless and reckless". For years, it has always been taught that this operation was legal until an FAA inspector deemed it careless and reckless.

However, if I'm doing a departure procedure (not careless or reckless) and the entire DP lies within class G airspace, can I go into IMC without a clearance? Personally, I would argue that it is legal to be in IMC in class G without a clearance. However, I'm not sure 1200 would be the appropriate squawk code.

Furthermore, there is also debate on whether a Part 121 or 135 check counts for an instrument proficiency check under part 91. Some people argue that it is only for currency under the regulations that it is being flown under (121 or 135). Does this check count for part 91 currency, and does this check also count for a flight review?

Thank you,
Daniel Lamb