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

APR 10 2007

Mr. David E. Shacknai
[redacted]

Dear Mr. Schacknai:

This letter responds to your request for reconsideration of our October 12, 2005 interpretation of 14 CFR § 91.117(a). This interpretation was issued to Mr. Michael De Marco and addressed whether a U.S. registered aircraft, operating within U.S. Class B, or any other type of designated airspace, is required to comply with 14 CFR § 91.117(a) when more than 12 miles offshore.

A copy of the relevant portions of the October 12, 2005, interpretation is provided below:

> Title 14 of the Code of Federal Regulations (14 CFR) § 91.117(a) provides that unless otherwise authorized by the Administrator, no person may operate an aircraft below 10,000 feet MSL at an indicated airspeed of more than 250 knots (288 mph). Paragraph (c) of this section states that no person may operate an aircraft in the airspace underlying a Class B airspace area designed for an airport or in a VFR corridor designate through such a Class B airspace area at an indicated airspeed of more than 200 knots (230 mph).
>
> Under § 91.701(a) of Title 14, the regulations of subpart H, including § 91.703, are applicable to U.S. registered civil aircraft operating outside of the United States and foreign civil aircraft operating within the United States. Specifically, § 91.703(a)(1) requires that "Each person operating a civil aircraft of U.S. registry outside of the United States shall when over the high seas, comply with annex 2 (Rules of the Air) to the Convention on International Civil Aviation and with §§ 91.117(c), 91.127, 91.129, and 91.131." Section 91.703(a)(3) further provides that "Except for §§ 91.307(b), 91.309, 91.323, and 91.711, comply with this part [91] so far as it is not inconsistent with applicable regulations of the foreign country where the aircraft is operated *or annex 2 of the Convention on International Civil Aviation.*" (Emphasis added.)
>
> Our review of Annex 2 reveals no inconsistency with § 91.117. Therefore, when conducting an operation outside of the U.S., which would be beyond 12 NM from the coastline, operators of U.S. registered aircraft must comply with § 91.117. Consequently, a pilot operating a U.S. registered aircraft in international airspace below 10,000 feet MSL must not exceed an indicated airspeed of more than 250 knots (288 mph). When operating a U.S.-registered aircraft in airspace underlying a

> Class B Airspace area, or in a VFR corridor through Class B airspace, the pilot may not exceed an indicated airspeed of more than 200 knots (230 mph).

You raise three points concerning the interpretation of § 91.703. First, you maintain that the requirements of paragraph (a)(3) can only be read in conjunction with paragraph (a)(2) [operations conducted in a foreign country] and not at all to paragraph (a)(1) [operations over the high seas]. Second, you cite to FAA Order 7110.65, paragraph 5-7-2, which states that "speed restrictions of 250 knots do not apply to aircraft operating beyond 12 NM from the coastline within the U.S. FIR in offshore Class E airspace below 10,000 knots." You also cite to FAA Order 7110.65 and the Instrument Procedures Handbook, which state that speed restrictions of 250 knots do not apply to aircraft operating beyond 12 NM from the coastline within the U.S. Flight Information Region in offshore class E airspace below 10,000 feet. Thirdly, you point out that air traffic control in numerous foreign countries may authorize speeds in excess of 250 knots below 10,000 feet to assist in flow control.

We find that our position articulated in the October 12, 2005, letter remains the correct legal interpretation of the applicability of §§ 91.117(a) and 91.703. We do agree with you that § 91.703(a)(1) applies to U.S. aircraft when operating outside the U.S. and over the high seas and that paragraph (a)(2) applies to U.S. aircraft operating within a foreign country. Paragraph (a)(3), however is a stand alone provision that is not linked or conditioned upon paragraph (a)(1) or (a)(2). The provisions of 91.703(a) in summary are:

> Section 91.703(a)(1) applies to U.S. aircraft when operating over the high seas
>
> Section 91.703(a)(2) applies to U.S. aircraft operating within a foreign country
>
> Section 91.703(a)(3) requires U.S. aircraft to comply with all the requirements of part 91, except for §§ 91.307(b), 91.309, 91.323 and 91.711, if consistent with the regulations of the foreign country [if operating in a foreign country] or with Annex 2.

We understand that there are several agency orders that incorrectly apply the speed restrictions requirements of §§ 91.117(a) and 91.703(a). The FAA currently is reviewing the statements in those Orders and the underlying basis for the regulatory requirement. If the conclusion is that the Orders or the rule should be amended, the FAA will do so following the appropriate procedures.

Thirdly, we do direct your attention to fact that § 91.117(a) does contain a provision for the FAA to permit a person to operate an aircraft below 10,000 feet MSL and exceed the 250 knot restriction.

Lastly, we must clarify the interpretation in that while it is true that Annex 2, (Rules of the Air) does not contain a speed restriction, Annex 11 (Air Traffic Services) does include a speed restriction for certain classes of designated airspace. Annex 11, Chapter 2, paragraph 2.6.3. includes the requirements for flight within each class of airspace as shown in the table in Appendix 4. In this Appendix, the speed limitation of 250 knows indicated airspeed below 10,000 feet AMSL applies to VFR operations in Class C airspace and to IFR and

VFR flights in classes D, E, F, and G airspace. Consequently, the FAA requirement to not exceed 250 knots when operating in international airspace below 10,000 feet is entirely consistent with Annex 2 and Annex 11.

I apologize for the delay in this response. Should you have any additional questions, please contact Lorelei Peter, of my staff at (202) 267-3073 of the Federal Aviation Administration, Office of the Chief Counsel, Regulations Division, 800 Independence Avenue, SW, Washington DC 20591.

Sincerely,

Rebecca Byas MacP

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations