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

Office of the Chief Counsel

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

JUL 24 2008

Mr. Mark Cato
Sr. Staff Engineer
Air Line Pilots Association International
535 Herndon Parkway
Herndon, VA 20172

Dear Mr. Cato:

This responds to your inquiry of March 7, 2008, concerning the recent amendment to § 91.703 of Title 14 of the code of Federal Regulations (CFR), Operations of civil aircraft of U.S. registry outside the United States.[1]

The FAA amended § 91.703(a)(3) to correct an unintended error that occurred during the 1990 recodification of Part 91, General Air Traffic and Operating Rules. As amended, paragraph (a)(3) excludes the application of the speed restrictions in § 91.117(a)[2] to U.S. registered aircraft operating outside the U.S., unless otherwise required by regulation of the foreign country in which the aircraft is operated or by Annex 2 of ICAO.

Section 91.703 refers to ICAO Annex 2 and you question whether there is a specific paragraph that should be referenced. Section 91.703(a)(3) does not refer to a specific section in Annex 2, but to the entire Annex.

You also refer to Annex 2, section 2.2, Note 1, which provides that "Information relevant to the services provided to aircraft operating in accordance with both visual flight rules and instrument flight rules in the seven ATS airspace classes is contained in 2.6.1 and 2.6.3 of Annex 11." Specifically, you question whether Annex 11 also should be referenced in § 91.703(a)(3). The answer is no. In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standard and Recommended Practices to the maximum extent practicable. While the ICAO Standards and Practices recommended in Annex 2, Rules of the Airfare applicable to pilots, the ICAO provisions in Annex 11 are applicable to air traffic service providers. With respect to U.S. designated airspace (domestic or offshore airspace) and as the service provider, it is the FAA's determination whether to apply the ICAO

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[1] See Final rule, Operation of Civil Aircraft of U.S. Registry Outside of the United States, 73 Fed. Reg. 10140; February 26, 2008.

[2] Paragraph (a) of § 91.117 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 that 250 knots."

and as the service provider, it is the FAA's determination whether to apply the ICAO standard in section 2.6.1, 2.6.2 and 2.6.3 of Annex 11.[3] As stated in the preamble to the final rule correcting § 91.703(a)(3), the speed restriction in § 91.117(a) historically has not been applied to persons operating U.S. registered civil aircraft in international airspace controlled by the FAA. This final rule restored the regulatory text to continue that policy. Therefore, U.S. registered aircraft and foreign registered aircraft are not subject to a speed restriction of 250 knots when operating below 10,000 feet AMSL when operating outside the territorial boundaries of the U.S. but in designated airspace under U.S. control.

I trust this information responds to your questions.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations

[3] Section 2.6.1 provides that ATS airspace shall be classified and designed in accordance with the section and specifies the types of flights for Class A through G designated airspace. Section 2.6.2 provides that States shall select those airspace classes appropriate to their needs. Section 2.6.3 provides the requirements for flight within each class of airspace shall be as shown in the table in Appendix 4. This table specifies a speed restriction not to exceed 250 knots indicated airspeed below 10,000 feet AMSL for VFR operations in Class C airspace and all operations in Classes D, E, F, and G airspace.