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. Steve Clark
[redacted]

Dear Mr. Clark:

This is in reference to your email request of March 5, 2008, for interpretation of 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 of 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 Annex 2 of ICAO.

You refer to the statement in Annex 2, Foreword, Applicability, which states that "The Standards in this document, together with the Standard and Recommended Practices of Annex 11, govern the application of the 'Procedures for Air Navigation Services—Rules of the Air and Air Traffic Services' and the 'Regional Supplementary Procedures—Rules of the Air and Air Traffic Services', in which latter document will be found subsidiary procedures of regional application." Specifically, you question whether this reference to Annex 11 incorporates Appendix 4 of Annex 11 "ATS Airspace Classes—Service provided and flight Requirements" into Annex 2.

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 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

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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 than 250 knots."

[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

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 hope this information responds to your request.

Sincerely,

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

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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.