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

Office of the Chief Counsel

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

JUL 10 2008

Mr. Michael Di Marco
[redacted]

Dear Mr. Di Marco:

This is in reference to your email request of March 6, 2008 submitting several questions on the recent amendment § 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]

This response addresses your questions with respect to the regulation. Your questions concerning the Air Traffic Controller's Handbook (FAA Order 7110.65) should be directed to Karen Chiodini, Oceanic and Offshore Operations, Air Traffic Organization, 202-493-5248.

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 question "What is outside the U.S. and...what is over the high seas"? Presidential Proclamation No. 5928, signed on December 27, 1988, extended the sovereignty of the United States government, for international purposes over the territorial seas from 3 to 12 nautical miles off the coast of the United States (including its territories). By final rule issued on that same date, the FAA amended part 71 and 91 of the Federal Aviation Regulations to extend controlled airspace and the application of general flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States (54 FR 264; January 4, 1989). Therefore, operating in airspace beyond the 12 nautical mile boundary is operating outside the U.S.

You also question whether the Annex 2 reference in § 91.703(a)(3) is an indirect reference to ICAO Annex 11, Appendix 4. The answer is no. In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with

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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."

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 Air are 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 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.

Lastly, you question what is the maximum speed allowed and what is the maximum speed a controller can issue to a U.S. registered aircraft operating in the a U.S flight information region (FIR). There is no designated maximum speed within the US FIR. An aircraft may operate at, and a controller may specify, the highest/lowest practical speed within the aircraft's operating specifications.

If you have any questions, please contact my staff at (202) 267-3073. This response was prepared by Lorelei Peter, Senior Attorney of the Regulations Division of the Office of Chief Counsel.

Sincerely,

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

[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.