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

Office of the Chief Counsel

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

JUL 31 2009

Mr. Buster W. Desselles Jr.
[redacted]

Dear Mr. Buster:

This is in response to your request of March 19 for an interpretation of Title 14 of the Code of Federal Regulations (14 CFR) section 91.185(c)(2) and (3). Specifically, you question when a pilot, who was assigned a cruising altitude and loses radio communication, may commence descent on an arrival that depicts altitude crossing restrictions.

Paragraph (c)(2) of § 91.185 describes the altitudes that the pilot should use to continue flight after experiencing a loss of two-way radio communications. The pilot should continue flight "At the highest of the following altitudes or flight levels for the route segment being flown:

> (i) The altitude or flight level assigned in the last ATC clearance received:
> (ii) The minimum altitude (converted, if appropriate, to minimum flight level as prescribed in § 91.121(c)) for IFR operations; or
> (iii) The altitude or flight level ATC has advised may be expected in a further clearance.

Based on your question above, we assume that the assigned cruising altitude was the last clearance received prior to communication loss. Under that assumption, if the cruising altitude is the highest of the above three referenced altitudes, then that is the altitude the pilot should use for that route segment, notwithstanding that the intended arrival may contain mandatory crossing restrictions.

The pilot may begin his/her approach in accordance with paragraph (c)(3) and leave the clearance limit at the initial approach fix and approach as close as possible to the expect-further-clearance time, if one has been received, or as close as possible to the estimated time of arrival. If there is no approach fix, the pilot may leave the clearance limit at the expect-further-clearance time if one has been received, or if none has been received, upon arrival over the clearance limit and proceed to a fix from which an approach begins and commence descent as close as possible to the estimated time of arrival.

I hope this information responds to your question. This response has been prepared by Lorelei Peter and has been coordinated with the General Aviation Division, Flight Standards Service. If you have questions, please contact Ms. Peter at 202-267-3134.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations