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

Office of the Chief Counsel

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

MAR 16 2010

John G. Olshock
Director of Training
TransPac Aviation Academy
530 W. Deer Valley Road Ste. 300
Phoenix, AZ 85027

Dear Mr. Olshock,

This is in response to your request for a legal interpretation submitted on December 7, 2009, regarding procedures following loss of communications for flights under instrument flight rules. Specifically, you posit the following hypothetical scenario:

> Flight 123 has received a clearance prior to departure with the phraseology, 'Flight 123 cleared to KXYZ airport as filed, climb and maintain five-thousand, expect one-zero thousand 10 minutes after departure. Departure frequency 135.25, squawk 1072.' Shortly after departure and after receiving clearance to climb to ten thousand feet, Flight 123 loses radio communications while in IMC. According to § 91.185, Flight 123 will continue on the appropriate filed route and appropriate altitude. As the flight nears the destination airport, the flight crew notices that they are 25 minutes earlier than their planned ETA.

You then ask, under 14 C.F.R. § 91.185, whether the pilot may "begin an instrument approach into the destination airport and land regardless of the early arrival because the airport was given as a clearance limit in the initial ATC clearance."

We recently addressed this issue in a legal interpretation. In that response (a copy of which is attached), we noted that when the clearance limit is not a fix from which an approach begins and no expect-further-clearance time is given, the pilot would proceed to the destination airport, and, upon arrival over it, proceed to a fix from which an approach begins. The pilot would then commence descent and approach as close as possible to the estimated time of arrival. *See* Legal Interpretation to Buster W. Desselles Jr., from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (July 31, 2009). Should the pilot arrive over the approach fix earlier than the estimated time of arrival, the pilot would need to hold at the approach fix until such time as to commence descent and approach as close as possible to the estimated time of arrival.

We appreciate your patience and trust that the above responds to your concerns. If you require further assistance, please contact my staff at (202) 267-3073. This response was prepared by David Pardo, attorney for the Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation & Commercial Division of Flight Standards Service.

Sincerely,

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

Attachment