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

SEP 27 2010

Capt. Jackson Seltzer
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& Contract Training
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Houston, TX 77032

Dear Captain Seltzer:

This is in response to your follow-up email message of January 29, 2010, requesting further clarification of 91.117 of Title 14 of the Code of Federal Regulations (14 CFR § 91.117). The relevant portions of § 91.117 to your request are:

Paragraph (b)--Unless otherwise authorized or required by ATC, no person may operate an aircraft at or below 2,500 feet above the surface within 4 nautical miles of the primary airport of a Class C or Class D airspace area at an indicated airspeed of more than 200 knots (230 m.p.h.). This paragraph (b) does not apply to any operations within a Class B airspace area. Such operations shall comply with paragraph (a) of this section.

Paragraph (d)--If the minimum safe airspeed for any particular operation is greater than the maximum speed prescribed in this section, the aircraft may be operated at that minimum speed.

You specifically provide an example of "a B737-900 aircraft that could be at a minimum of 215 KIAS in a clean configuration. However, with slats and flaps this could be down to 190 KIAS. Therefore, the configuration during the specific operation (landing in this case) could be the aircraft either in or out of compliance of FAR 91.117(b). So, our question is: does FAR 91.117 mean that you have to configure to maintain the required speed? Or, does it apply to a clean configuration in which case you could fly above the 200 knots using the language in (d)?"

In 1967, the FAA established § 91.70, Aircraft speed. Paragraph (c) of that section provided as follows:

"No person may operate—

(1) An arriving aircraft below 10,000 feet MSL within 30 nautical miles of an airport of intended landing (or an airport where a simulated approach is to be made) at an indicated airspeed of more than 250 knots (288 m.p.h.); or

(2) Unless otherwise authorized or required by ATC, any aircraft within an airport traffic area at an indicated airspeed of more than—

(i) In the case of an reciprocating engine aircraft, 156 knots (180 m.p.h.); or
(ii) In the case of a turbine-powered aircraft, 200 knots (230 m.p.h.).
However if the minimum airspeed required or recommended in the airplane flight manual to maintain safe maneuverability or required by military normal operating procedures is greater than the maximum speed described in this paragraph the aircraft may be operate at that minimum airspeed."

Prior to this rule, aircraft speed restrictions were limited to aircraft operating below 10,000 feet MSL and within 30 nautical miles of an airport of intended landing.[1] In proposing the above regulatory text, the FAA stated that "As new high-performance aircraft are introduced, aircraft speeds are constantly increasing at all altitudes. This together with the steady increase in the overall volume of air traffic is causing a significant rise in the possibilities of mid-air collisions."[2] The FAA also stated that "However, there may be situations where operation at high airspeeds is necessary in the interest of safety. Certain military tactical aircraft for example, may not be operated safety at this airspeed because of loss of maneuverability or because of the need to maintain a high power setting to sustain aircraft auxiliary systems. In recognition of the unique operational requirements of such aircraft the proposed rule would permit a higher minimum airspeed when required in the interest of operational safety."[3]

Even though the regulatory text governing aircraft speed has been amended from the 1967 text, there has not been substantive change in the form or purpose of the provision. For purposes of responding to your question, we assume under your scenario that you have not been authorized or required by ATC to fly at a specific speed. Section 91.117 does not distinguish requirements based on the aircraft's configuration during different portions of the operation. Under the scenario you describe, the aircraft can in fact be configured to operate in accordance with the speed restrictions of paragraph (b). Therefore, the pilot must operate the aircraft in the configuration to meet the requirements unless the minimum safe airspeed for that operation is greater than 200 knots. If so, then the aircraft can be operated at the minimum safe airspeed, in accordance with paragraph (d).

If the aircraft is assigned a speed by ATC and the aircraft can be configured to fly at that speed, then the pilot should fly the assigned speed. The pilot can choose the configuration to achieve the assigned speed. If the aircraft is outside the airspace described in § 91.119(b) above, and if there is no speed assignment, then choice of speed and configuration is entirely up to the pilot.

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[1] See 14 CFR § 91.85, Operating on or in the vicinity of an airport; general rules
[2] 32 Fed. Reg. 12724; September 2, 1967
[3] Id at 12725

I hope this information is helpful. This interpretation has been coordinated with the Flight Standards Service, Air Carrier Operations Division, AFS-200 and the General Aviation and Commercial Division, AFS-800.

If you have questions concerning this interpretation, please contact Lorelei Peter on my staff at 202-267-3134.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel
Regulations Division