2005

Colonel Gallagher, USAF (Ret).
[redacted]

Dear Colonel Gallagher,

This letter responds to your request for a legal interpretation dated December 7, 2003. You specifically ask for clarification on the alternate airport and fuel requirements codified in 14 C.F.R. § 91.167. We begin by reciting the information that you provided as background for your question, after which we will respond to your question.

In your letter you contend that "a careful reading of section 91.167 could lead a person to believe that they are only required to have sufficient fuel to land at the destination airport." You rely on the language of the regulation to reach this conclusion because it requires sufficient fuel to complete the flight to the destination airport, but only requires "sufficient fuel to fly to the alternate airport and have 45 minutes reserve at normal cruise." We do not agree with your analysis.

Question #1:
Does section 91.167 require a pilot operating an aircraft under instrument flight rules (IFR) to have sufficient fuel to attempt an approach at the destination airport and then fly on to the alternate airport, with 45 minutes of fuel remaining upon arrival at the alternate?

Answer #1:
Section 91.167[1] requires the pilot to fuel his aircraft with enough fuel to "land" at the destination airport, then fly on to the alternate and operate for 45 additional minutes. The regulation does not specifically speak to an "attempt to land" or "attempt to approach" but it requires that the aircraft have enough fuel to complete the flight to the first airport of intended landing. See, 14 C.F.R. § 91.167 (a)

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[1] 91.167. Fuel Requirements for Flight in IFR Conditions
(a) No person may operate a civil aircraft in IFR conditions unless it carries enough fuel (considering weather reports and forecasts and weather conditions) to —
(1) Complete the flight to the first airport of intended landing;
(2) Except as provided in paragraph (b) of this section, fly from that airport to the alternate airport; and
(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.
(b) Paragraph (a)(2) of this section does not apply if:
(1) Part 97 of this chapter prescribes a standard instrument approach procedure to, or a special instrument approach procedure has been issued by the Administrator to the operator for, the first airport of intended landing; and
(2) Appropriate weather reports or weather forecasts, or a combination of them, indicate the following:
(i) For aircraft other than helicopters. For at least 1 hour before and for 1 hour after the estimated time of arrival, the ceiling will be at least 2,000 feet above the airport elevation and the visibility will be at least 3 statute miles.
(ii) For helicopters. At the estimated time of arrival and for 1 hour after the estimated time of arrival, the ceiling will be at least 1,000 feet above the airport elevation, or at least 400 feet above the lowest applicable approach minima, whichever is higher, and the visibility will be at least 2 statute miles

(1). Webster's dictionary defines the word "complete" to mean: "brought to an end or to a final or intended condition."[2] Thus, to "complete the flight", as used in this rule, means the aircraft has
enough fuel to be flown to, and land at, the first airport of intended landing. Having fueled the aircraft with only enough fuel to "attempt an approach" would fall short of the regulatory requirement. A pilot whose aircraft suffers fuel exhaustion prior to reaching either the destination or alternate airport, or who must declare an emergency for an expedited landing (due to low fuel), can be found to have failed to exercise "good judgment," which could result in a violation of section 91.13, for the careless or reckless operation of the aircraft.[3] See, Administrator v. Ostgrove, NTSB Order No. EA-4916 at 22 (2001).

Question #2:
When would it be legal to continue onto the destination when that means that the pilot would no longer be able to reach his alternate airport and land within 45 minutes?

Answer #2:
A pilot would be acting reasonably in deciding to land the aircraft at the destination airport if, before commencing the approach, he confirms that the reported weather continues to be above minimums. As such, the reported weather upon arrival but before commencing the approach would need to be at least 2,000 feet above the airport elevation and visibility of at least 3 statute miles, and no other factors, such as runway closures, interfere with a safe landing. The pilot-in-command is responsible for the safe operation of the aircraft. See, 14 C.F.R. § 91.3. Part of the pilot-in-command's duty is to properly preflight the aircraft in accordance with the provisions of section 91.103.4 A proper "preflight" requires that, before beginning an 1FR flight, the pilot-in-command becomes familiar with weather reports, forecasts, fuel requirements and alternatives available if the planned flight cannot be completed. Id. The pilot's failure to correctly interpret or translate weather information and aircraft performance data into the correct amount of fuel required for flying time can be a violation of section 91.13. Ostgrove, NTSB Order No. EA-4916 at 21. Therefore, under the circumstances (e.g., weather below minimums) it would be illegal to land at the destination airport and if the pilot nonetheless makes the attempt and thereby wastes the available fuel for landing at the alternate airport, the pilot could be charged with operating the aircraft in violation of the regulations.

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2 *Webster's Third New International Dictionary, Unabridged.* Merriam-Webster, 2002. http://unabridged merriam-webster.com (May 27, 2004).

3 91.13 CARELESS OR RECKLESS OPERATION
(a) Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.
(b) Aircraft operations other than for the purpose of air navigation. No person may operate an aircraft, other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

a 91.103 PREFLIGHT ACTION
Each pilot-in-command shall, before beginning a flight, become familiar with all available information concerning that flight. This information must include
(a) For a flight under IFR or a flight not in the vicinity of an airport, weather reports and forecasts, fuel requirements, alternatives available if the planned flight cannot be
com-pleted, and any known traffic delays of which the pilot-in-command has been advised by ATC;
(b) For any flight, runway lengths at airports of intended use, and the following takeoff and landing distance information:
(1) For civil aircraft for which an approved Airplane or Rotorcraft Flight Manual containing takeoff and landing distance data is required, the takeoff and landing distance data contained therein; and
(2) For civil aircraft other than those specified in paragraph (b)(1) of this section, other reliable information appropriate to the aircraft, relating to aircraft performance under expected values of airport elevation and runway slope, aircraft gross weight, and wind and temperature.

Question #3:

Is there a gray area in the regulations that would allow a pilot to attempt to land at the destination airport if one extreme is when the destination airport conditions are such that an alternate is no longer required and the other extreme is that both airports have conditions that would allow the pilot to land? Answer #3:

The regulations are written to provide a standard by which pilots may operate their aircraft safely. Without a clear definition of what you mean by "gray area" we cannot give you a concrete answer.

We hope that this interpretation has been helpful. Please feel free to contact us if you have additional questions.

Sincerely,

Rebecca MacPherson
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