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

Office of the Chief Counsel

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

JUN 18 2009

Mr. Angel E. Negron
[redacted]

Dear Mr. Negron:

This letter is in response to your February 5, 2009 request for legal interpretation regarding preflight planning and fuel requirements.

In your letter you ask three questions (1) does 14 C.F.R. § 91.103(a) require pilots to carry fuel in addition to reserve fuel and the fuel to reach an alternate airport if the flight cannot be completed as planned, (2) does this requirement apply to part 135 operators, and (3) is such additional fuel contingency fuel?

Section 91.103(a) requires that a pilot in command become familiar with "all information concerning that flight" including weather reports, forecasts, and traffic delays prior to commencing an IFR flight. Although this section does not specifically require a pilot to add fuel in addition to the reserve and alternate airport fuel required under § 91.167, the pilot in command must consider information obtained during preflight planning when determining the correct amount of fuel required for the flight. *See* Legal Interpretation to Colonel Gallagher, from Rebecca MacPherson, Assistant Chief Counsel, Regulations Division (Jan. 28, 2005). Failure to "correctly interpret or translate [such information] into the correct amount of fuel required for flying time can" constitute careless operation of an aircraft and therefore be a violation of § 91.13. *Id.*; *see Administrator v. James M. Ryan*, NTSB Order No. EA-303 (Feb. 23, 1972) (finding careless operation of an aircraft when a pilot did not determine the amount of fuel on board prior to departure despite knowing of potential air traffic delays along his route). Additionally, 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." *Id.* Therefore, the pilot in command must add additional fuel if he determines during preflight planning that it is necessary for the flight.

Part 135 does not establish fuel requirements for IFR flights other than the reserve and alternate airport fuel requirements of §135.233. Nevertheless, the pilot-in-command's duty under § 91.103 to become familiar with all available information concerning a flight still applies. *Cf. Administrator v. Maxon*, NTSB Order No. EA-5183 (Oct. 19, 2005) (affirming an order that considered violation of § 91.103 preflight planning requirements for a flight

required to have been conducted under part 135); *Administrator v. Lewis*, NTSB Docket No. SE-15232 (Sept. 4, 1998) (Administrative Law Judge Decision) (reviewing pilot's preflight planning under § 91.103 for a part 135 flight). Fuel exhaustion by a flight conducted under part 135 can also constitute careless or reckless operation of the aircraft in violation of § 91.13. *Administrator v. William Brian Davis*, NTSB Order No. EA-2761 (Jun. 29, 1988). Therefore, as with a flight conducted under part 91, certificate holders must still add fuel in addition to the required fuel of § 135.233 when information obtained during the preflight planning indicates that such fuel would be necessary.

Finally, you asked whether fuel added to the aircraft in addition to the fuel required by § 91.167 and § 135.223 is "contingency fuel." The regulations do not use the term "contingency fuel." However, the FAA has described the term in guidance material to mean the "fuel to compensate for foreseeable contingencies," and "fuel necessary for the flight to compensate for any known traffic delays and to compensate for any other condition that may delay the landing of the flight." *See* FAA Order 8900.1 Vol.3, Ch. 25, Sec. 5, Para. 3-2024(E); FAA Order 8900.1, Vol. 3, Ch. 25, Sec. 2, Para. 3-1950(A). Accordingly, fuel added to an aircraft in addition to that required by § 91.167 or § 135.223 may be referred to as "contingency fuel."

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division and Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

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