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

Office of the Chief Counsel

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

SEP 17 2009

Angel E. Negron
[redacted]

Dear Mr. Negron:

This letter is in response to your April 24, 2009 request for legal interpretation. In your request you ask three questions regarding the use of reserve fuel in part 91 instrument flight rules (IFR) operations. Your questions all address § 91.167(a) which generally establishes that when a pilot plans a flight in IFR conditions, he or she must carry enough fuel to: (1) complete the flight to the intended destination; (2) fly from the intended destination to an alternate airport; and (3) fly after that for 45 minutes at normal cruising speed.

First, you ask whether a pilot may "legally" use some of the 45-minute fuel reserve without declaring an emergency. The regulations do not require a pilot to declare an emergency if he or she uses a portion of the 45-minute fuel reserve. The FAA has advised pilots to declare a fuel emergency when, in the pilot's judgment, it is necessary for him or her to proceed directly to the airport at which he or she intends to land. *See* Information for Operators (InFO) 08004 (Feb. 7, 2008).

Next you ask when a pilot may advise "minimum fuel" to air traffic control (ATC) without violating § 91.167. The regulations do not define "minimum fuel," but in guidance material, the FAA has described the term to mean:

> [T]hat an aircraft's fuel supply has reached a state where, upon reaching the destination, it can accept little or no delay. This is not an emergency situation but merely indicates an emergency situation is possible should any undue delay occur.

InFO 08004 (Feb. 7, 2008); *see also* FAA, Aeronautical Information Manual 5-5-15 (2008). As with an emergency declaration, there is not a regulatory requirement directing when a pilot must advise ATC of minimum fuel. However, the pilot should be aware of the FAA guidance material, and use his or her assessment of the situation in making the decision to advise ATC of minimum fuel.

Finally, you ask what rate of fuel consumption a pilot should use when calculating the amount of fuel necessary for the 45-minute reserve requirement. The FAA requires that, for IFR operations, aircraft carry enough fuel to fly for an additional 45 minutes

from an alternate airport "at normal cruising speed." § 91.167(a)(3). Pilots are to consider "weather reports and forecasts and weather conditions" when assessing the amount of fuel required. *See* § 91.167(a). We note that with respect to part 121's similar requirement for a 45-minute fuel reserve at "normal cruising fuel consumption," the FAA stated that carriers could compute the amount of fuel required to meet the reserve requirement "on the basis of each air carrier's normal en route cruise configuration." *See* 14 C.F.R. § 121.639; Legal Interpretation to John C. Lenahan, from Edward P. Faberman, Acting Assistant Chief Counsel, Regulations and Enforcement Division (Oct. 11, 1979). Therefore, when calculating the amount of fuel required to meet the 45-minute reserve requirement under § 91.167, pilots must take into account weather reports and forecasts, but may also consider fuel consumption based on factors such as its normal cruise-speed fuel consumption.

We also note that the operator's data must be accurate and verifiable no matter the rate of fuel consumption the operator uses to ascertain the amount of fuel required to meet the 45-minute reserve requirement. Further, 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." *See* Legal Interpretation to Colonel Gallagher, from Rebecca MacPherson, Assistant Chief Counsel, Regulations Division (Jan. 28, 2005).

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 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