

July 12, 2011

VIA Email

Jessica Mills-McLaughlin
Federal Aviation Administration
1625 K Street, NW
Suite 300
Washington DC, 20006

Dear Ms. Mills-McLaughlin:

The National Business Aviation Association (NBAA) represents the interests of 8,000 Member companies that operate over 10,000 aircraft to support their businesses. We appreciate the opportunity to submit these comments on behalf of the business aviation community.

With the posing of draft Advisory Circular (AC) 120-76B, NBAA understands that the agency is seeking comments on revisions to guidance for the certification, airworthiness, and operational use of Electronic Flight Bags (EFBs). Many NBAA member companies are safely using EFBs and have developed robust operational procedures to support use of the devices. Based on consultations with operators utilizing EFBs, NBAA has a number of specific comments on the draft AC.

Our comments are organized around the various sections of draft AC 120-76B.

Section 1: Purpose

The draft AC explains that the guidance material is applicable to aircraft operating under Part 91 subpart F (large or turbine-powered multiengine aircraft). While other Part 91 operators are advised to review the guidance, they do not require any specific authorization for EFB use. NBAA understands that the FAA has established a specific authorization process for certificated operators (i.e. Part 135), but we are not aware of a similar process for Part 91 subpart F operators.

In fact, current FAA guidance explains that no written authorization is required for any Part 91 operator (except Part 91, subpart K) to utilize an EFB. FAA order 8900.1 (Volume 4, Chapter 15, Section 1) states in part (bold added for emphasis):

4-1642 APPLICABILITY. This process for EFB authorization is to be used in combination with the current edition of Advisory Circular (AC) 120-76, Guidelines for the Certification, Airworthiness, and Operational Approval of Electronic Flight Bag Computing Devices, and the issuance of an OpSpec or MSpec, in accordance with paragraph A061, as described in Order 8900.1. **The processes described in this section may also be used to determine if an EFB may be substituted for aeronautical charts and data used within aircraft operated under Title 14 of the Code of Federal Regulations (14 CFR) part 91. No written authorization is required for part 91 operators except those conducted under part 91 subpart K (91K).**

Additional guidance provided in AC 91-78 also does not specify an operational approval process for Part 91, subpart F operators. When looking at the references in order 8900.1 and AC 91-78 they are in conflict with the guidance provided in draft AC 120-76B.

While NBAA fully supports many of the procedures and considerations for EFB use contained in the draft AC, we are concerned about statements that seem to indicate Part 91, subpart F operators are required to seek approval for EFB use. Subpart F does contain specific regulations for large or multi-engine turbine powered aircraft, but there is no specific regulation requiring approval for use of EFBs.

For example, FAR 91.503, Flying Equipment and Operating Information, requires that the pilot in command ensure aeronautical charts and data, in current and appropriate form, are accessible for each flight. However, 91.503 does not require that the charts and data be presented in a specific format or require that the method of presenting the data be FAA approved. So long as the pilot in command ensures that necessary aeronautical charts and data are available for the flight, regardless of their presentation format, the requirements in 91.503 are fulfilled.

NBAA encourages the FAA to remove specific references to Part 91, subpart F operations that appear in section one and in other areas throughout the draft AC. All Part 91 operators should be encouraged to review and make use of the guidance contained within the draft AC, but only certificated operators (and 91K fractional providers) should be required to obtain specific FAA authorization for EFB use.

Section 4: Definitions (I: Portable Electronic Device (EFB))

The draft AC introduces two new definitions, the “non-EFB PED” and the “EFB PED”. NBAA is not aware of any regulatory basis to distinguish a PED from an EFB when the device is used in Part 91 operations (including subpart F). FAR 91.21, Portable electronic devices, is the controlling regulation for use of PEDs, including EFBs, and it does not make the distinction proposed in the draft AC.

The reference to AC 91.21-1B in this section also indicates that it contains “PED regulations”. ACs issued by the FAA are considered advisory in nature and they are not a substitute for regulations such as FAR 91.21.

The draft AC explains that Part 91, Subpart F operators should seek operational approval to utilize an EFB PED by following the procedures specified in Order 8900.1. As explained above, Order 8900.1 is designed to provide guidance to FAA inspectors and states that Part 91 operators (including subpart F) are not required to seek operational approval to utilize an EFB.

FAA Information for Operators (InFO) 11011 also does not differentiate between a non-EFB PED and an EFB PED. The InFO clearly states, “For part 91 operators other than 91K, FAA authorization for use (of an EFB) is not required.

To eliminate potential confusion and avoid contradictory guidance, NBAA recommends that language attempting to separate PEDs into two or more classes be removed. The draft AC should also explain that

based on the type of flight operation, differing approval and operational requirements exist. Finally, an explanation that ACs are advisory in nature and are not a substitute for regulations promulgated by the FAA should also be added.

Based on existing FAA guidance, there is no support to require a specific approval process for Part 91, subpart F operators that is different from the process specified in FAR 91.21. Unlike Part 135 operators or Part 91K fractional providers, Part 91, subpart F operators are not certificated by the FAA or issued Operations/Management Specifications.

Section 6: Background (Subpart a: PEDs)

This section of the draft AC makes a number of statements regarding use of Portable Electronic Devices (PEDs) that are contradictory to existing FAA regulations and guidance material. Specifically, the draft AC states:

The PED regulations' applicability addresses certificated operators and IFR aircraft. Except for part 91 subpart F and part 91K, aircraft operated in visual flight rules (VFR) under part 91 are not subject to PED regulations. Except for part 91 subpart F and part 91K, aircraft operated in VFR under part 91 require no EFB authorization or compliance with this AC, provided the EFB does not replace any equipment or operating information required by the regulations.

PED regulations for Part 91 operators are contained in FAR 91.21. The regulations apply to all Part 91 operations, whether conducted under VFR or IFR and do not provide additional requirements for Part 91, subpart F operations. Within FAR 91.21, a pilot in command of a Part 91 aircraft is provided the authority to make the determination that a PED will not cause interference.

The pertinent section of FAR 91.21 states (bold added for emphasis):

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any of the following U.S.-registered civil aircraft:

(b) Paragraph (a) of this section does not apply to—

(5) Any other portable electronic device that the operator of the aircraft has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) In the case of an aircraft operated by a holder of an air carrier operating certificate or an operating certificate, the determination required by paragraph (b)(5) of this section shall be made by that operator of the aircraft on which the particular device is to be used. **In the case of other aircraft, the determination may be made by the pilot in command or other operator of the aircraft.**

Flight Operations under Part 91, subpart F do not require an air carrier operating certificate as described in 91.21(c) above. This means the pilot in command has authority to approve use of a PED, during all phases of flight so long as the device does not interfere with navigation or communication systems.

This section of the draft AC also makes reference to a prohibition on use of PEDs in flight operations below 10,000 feet. The AC states, "Non-EFB PED compliance is in accordance with AC 91.21-1 and prohibits the use of PEDs in flight operations except when safely in cruise and/or above 10,000 feet." Careful review of AC 91.21-1B indicates that the intent of this provision is to prohibit passengers from using PEDs and the prohibition should not be applied to crew members. Finally, as stated above, ACs are advisory in nature and are no substitute for the PED regulations contained in FAR 91.21.

Conclusion

NBAA and its Membership are committed to working with FAA to develop policies that recognize the tremendous operational and safety benefits that EFBs are providing to pilots. The draft AC provides information on many operational and training best practices that will be very helpful for operators.

However, we are concerned about the extension of an operational approval process that primarily exists for certificated air carriers and fractional providers to Part 91, subpart F operators. There is not a clear regulatory basis for doing this, and more importantly, existing FAA guidance materials state that Part 91 operators do not require operational approval for EFB use.

We appreciate the opportunity to provide this information in response to your request and look forward to working with you on the development of EFB policies. Please contact me directly with further questions.

Sincerely,



Douglas Carr
Vice President, Safety, Security & Regulation