

(aka) THE FAA REAUTHORIZATION BILL

By ALPA Staff

When President Obama signed the Federal Aviation Administration Modernization and Reform Act of 2012 (PL 112-95) into law on Feb. 14, 2012, he set the stage for major advancements in the airline industry. After 23 short-term extensions and more than four years of controversy, excessive delays, and thousands of hours of negotiations, the final FAA reauthorization legislation, while not perfect, will improve airline safety and set the course for a more efficient U.S. air transportation system.

ALPA had advocated for a multi-year, fully funded comprehensive FAA reauthorization measure since before the last authorization measure (“Vision 100”) expired in 2007. The new law promotes modernizing the U.S. air transportation infrastructure and will allow the industry to safely build capacity and efficiency, positioning the U.S. to compete with other countries that are also moving to modernize. Equally important, the funding commitment and policy direction embodied in the law drive new research and technology innovation while enhancing safety programs that benefit ALPA members. The measure—a 400-page bill—includes a host of ALPA priorities.

A closer look

Funding: The \$63.4 billion authorization funds the FAA through 2015. Specific funding is earmarked for the Airport Improvement

Program; FAA operations, facilities and equipment; and research, engineering, and development. Generally, the agreement extends existing tax structures used to finance the Airport and Airways Trust Fund. Efforts to increase taxes and other “fees” such as the passenger facility charge (currently \$4.50) were not included. The tax on jet fuel remains at 4.3 cents per gallon. Also extended are the 7.5 percent ticket tax, the tax on each flight segment (currently \$3.80), the tax on international flights (currently \$16.70), and the 6.25 percent tax on air cargo.

NextGen: ALPA and other system users and stakeholders have long recognized the critical need to update the air traffic system. The FAA reauthorization law sets a blueprint for a Next Generation Air Transport System (NextGen) that enables long-term strategic planning and equipage decisions that will lead to capacity growth and efficiency increases as well as significant safety improvements. It establishes deadlines for adopting the current NextGen navigation and surveillance technology. It also mandates development of precision navigational procedures at the 35 busiest U.S. airports by 2015, with other airports to follow on a specific schedule.

Lithium batteries: ALPA has been engaged in a battle to regulate air shipments of lithium batteries for more than a decade. The union’s efforts, which have a global effect through the International Civil Aviation Organization (ICAO), culminated in a last-minute compromise in the final stages of negotiations over the FAA reauthorization bill. The FAA reauthorization ties

lithium battery regulation improvements to ICAO standards, but gives the Department of Transportation (DOT) the ability to regulate air transport of lithium metal and lithium ion batteries in a manner more stringent than ICAO technical instructions based on “credible reports” of safety incidents attributable to lithium batteries. The original House language included a straight prohibition on any regulations more stringent than ICAO’s (except for the current ban on metal batteries shipped on passenger airliners), and the House negotiators stuck to this position until the very end of extremely contentious House-Senate conference negotiations.

In the international arena, ALPA recently made significant progress to improve ICAO standards. In early February, ALPA representatives, led by F/O Mark Rogers (United), ALPA’s Dangerous Goods chair, influenced ICAO’s Dangerous Goods Panel to recommend that shipments of lithium batteries be classified as hazardous materials. That classification will

require special packaging and labeling of shipments, special training of the airlines’ representatives receiving and handling the shipments, and notifying flight crews that shipments are aboard their aircraft and where they have been loaded. The ICAO Panel agreement goes next to the ICAO Air Navigation Commission for approval. Watch for additional information in an upcoming issue of *Air Line Pilot*.

Lasers: ALPA collaborated with Sen. Sheldon Whitehouse (D-R.I.) to develop an amendment to the Senate FAA reauthorization bill to prohibit laser illumination of an aircraft cockpit. The House passed a similar stand-alone measure sponsored by Rep. Dan Lungren (R-Calif.), which ALPA endorsed in this and past Congresses. The final FAA reauthorization measure makes it a federal crime—punishable by fine or imprisonment—to knowingly aim a beam of a laser pointer at an aircraft.

Runway safety: ALPA pilots should notice runway safety improvements in the near future. The new law directs the FAA

The Cons

It’s often said that in a reasonable compromise, no one is happy. Indeed, while ALPA supported the final reauthorization measure, it has also been clear that this measure was an improper vehicle for changes to the Railway Labor Act or for oversight of the National Mediation Board (NMB). Nevertheless, we also believe that the ultimate compromise on the rules for representation elections crafted between Majority Leader Harry Reid (D-Nev.) and Speaker John Boehner (R-Ohio) preserves a favorable and justified rule change, should not result in significant problems for labor or the NMB, and avoids a potentially destructive FAA shutdown or an equally destructive delay in a final reauthorization bill. (For more on the NMB provisions, see sidebar, page 20.)

ALPA also would have preferred that the language on lithium batteries be dropped in its entirety. The compromise does allow the Department of Transportation (DOT) some discretion in issuing and enforcing safety regulations; however, the Association would have preferred that the DOT’s regulatory process proceed without any legislative mandate. Similarly, regarding unmanned aerial systems (UAS), ALPA advocated that a push to integrate this type of aircraft quickly into the U.S. national airspace system should not be done by legislation and that such aircraft cannot operate in civil airspace unless they meet the same standards as airline aircraft and operations.

Other provisions in the FAA reauthorization bill that ALPA did not support include:

Personal electronic devices (PEDs): Due to intense news media coverage and high personal interest among members of the House and Senate, both the House and Senate FAA reauthorization bills included prohibitions on personal use of electronic devices on the flight deck. ALPA

maintained that such provisions were unnecessary; however, the prohibition was included in the final legislation. Exceptions are included for use of PEDs related to operation of the aircraft and emergency-, safety-, or employment-related communication.

Pilot certificates: House Transportation and Infrastructure Committee Chairman John Mica (R-Fla.) insisted on a provision to add a photo and biometric marker to pilot certificates. ALPA argued against making the FAA airman certificate a security credential because pilots already hold credentials that are used to verify their identity and employment status.

HIMS: ALPA has supported the Human Intervention Motivation Study (HIMS) program since its inception. HIMS is an essential substance abuse treatment program that operates with the assistance of federal funding. However, it has never been authorized, making it reliant on the congressional appropriations process for funding through a “congressional ad-on.” Despite ALPA’s efforts to provide HIMS with proper authorization in the FAA reauthorization legislation, HIMS language was rejected due to budget constraints. This does not mean that the program will not be funded in the future, but it will be more difficult, especially in the current deficit-reduction environment, to secure adequate funding to keep the program operational.

Oxygen cylinders in Alaska: ALPA recognizes that the topography of the state of Alaska is unique and that the state is dependent on air transportation. However, for safety reasons, ALPA opposed including a provision to exempt cylinders of compressed oxygen and other oxidizing gases carried aboard aircraft operating in Alaska from certain hazardous materials regulations. Parameters for such transportation are included in the legislation; however, ALPA believes that any deviation from dangerous goods regulations threatens one level of safety. 

to develop and implement a plan to improve runway safety by reducing the number and severity of runway incursions within six months. Further, it requires a plan for developing and installing a system to alert pilots and controllers of potential runway incursions by June 30, 2012.

Cockpit doors for all-cargo aircraft: At ALPA's request, PL 112-95 requires the FAA to analyze the feasibility of installing cockpit doors on all-cargo aircraft and/or develop alternatives to a secure door to limit cockpit access.

Transpacific alternate airports: The measure provides continuing authorization to keep the alternate airfield open on Midway Island as well as airports in the Marshall Islands, Micronesia, and Palau, all of which are critical for safe, long-range flight operations.

Essential Air Service (EAS) program: ALPA supports the EAS program. Attempts during negotiations to eliminate the entire EAS program were unsuccessful, and the law reiterates the federal government's commitment to air service for small communities. PL 112-95 preserves the EAS program, which provides subsidized service to rural airports that otherwise would not have scheduled air service. Changes to the program now require EAS airports to have at least 10 enplanements per day and be located within 175 miles of a large or medium hub airport (except for Alaska and Hawaii).

Data protections for safety reporting: The legislation strengthens protections for data collected by the Aviation Safety Action Program (ASAP), the Flight Operations Quality Assurance Program (FOQA), Line Operations Safety Audits (LOSA), and Safety Management Systems (SMS) by mandating that the data cannot be released to the public unless the data are completely deidentified. ALPA believes these programs are value added for the safety of the aviation system, and this provision improves these programs.

Unmanned aircraft systems (UAS): The law directs the FAA to develop a plan for integrating UAS into the U.S. national airspace system (NAS) and to establish a rulemaking initiative to develop regulations with regard to operating UAS aircraft in the NAS. This rulemaking initiative includes the design and equipage of UAS aircraft, and training and qualifications of the pilots who operate them remotely. Also included in this rulemaking would be operator certification standards that commercial operators would have to meet in order to operate these aircraft in the NAS. The original language included in the different versions of the bills simply required the FAA to introduce UAS aircraft into the NAS by a specific date. The final product is an improvement in this area and will lead to a safer integration plan.

IRA rollover: At ALPA's urging, PL 112-95 expands choices for qualified airline employees who receive payments during airline bankruptcies to allow the funds to be considered an IRA rollover contribution. This provision was championed in the Senate by Sens. Maria Cantwell (D-Wash.) and Johnny Isakson (R-Ga.).

EU emissions trading scheme: PL 112-95 also includes a "Sense of Congress" statement that the European Union's emissions trading proposal is inconsistent with the Chicago Convention and that the EU should not extend its emissions



Scan the QR code to view the legislation.

trading proposal to international civil aviation operations without working

through ICAO. It encourages the U.S. government to use all political, diplomatic, and legal tools to ensure that the EU's emissions trading scheme is not applied to U.S. aircraft or U.S. airline operations. This statement strengthens the U.S. position during trade talks.

Smoke mitigation: Rep. Maisie Hirono (D-Hawaii) spearheaded a provision to study the effectiveness of the FAA's oversight of the use of new technologies to prevent/mitigate effects of dense and continuous smoke in the cockpit of an aircraft.

Clarifying The Effect of the FAA Bill on The RLA and The NMB

When the House of Representatives crafted its FAA reauthorization bill (H.R. 658) in early 2011, it included an extraneous "poison pill" provision to repeal a National Mediation Board (NMB) certification ballot rule change. The rule change stipulates that the results of a representation election are decided based on the choice made by the majority of eligible participating voters, rather than requiring that a majority of eligible voters choose to participate in the voting before a union is certified. The District of Columbia Court of Appeals ruled that the NMB was fully within its jurisdiction to make changes to its representation manual. ALPA has vigorously opposed including the House NMB provision in the FAA reauthorization legislation.

ALPA, like other airline and railway unions under the Railway Labor Act (RLA), also adamantly opposed "compromise" language offered by the House to change decertification standards or mandate judicial review of NMB action—a step that might build in long delays of favorable NMB decision-making.

During the final congressional negotiations between House and Senate leaders, an agreement was reached to eliminate the House provision on the NMB's rule change. The agreement also made certain changes to the RLA, changes that, while not desirable or warranted, ultimately

Tail-end ferry flights: PL 112-95 applies FAR Part 91 (tail-end ferry) flying to flight time limits under FAR Part 121. The result is that no more extra segments can be tacked onto a pilot's duty day that do not count toward flight time limits under FAR part 121.

Age 60 line checks: The new law eliminates the mandatory every-six-month line check evaluation beginning at age 60. The six-month check requirement interfered with airline AQP programs.

Weather research: ALPA supported provisions in the reauthorization measure to advance research into the effects of weather on aircraft operations. Included in the law are requirements that the DOT conduct evaluations of research on wake vortexes and increasing capacity throughout the NAS by reducing spacing requirements; implement a system to improve volcanic ash avoidance options, including volcanic ash warning

and notification systems; and collaborate with other agencies on research into icing, turbulence prediction and detection, and hazards during oceanic operations in which airline traffic is high and only rudimentary satellite sensing is available.

Alternative fuel development and safety research and development: The law includes important provisions to advance R&D for alternative jet fuel as well as authorization for critical research and development in the areas of fire research and safety, airworthiness, aircraft catastrophic failure prevention, human factors issues, aeromedical issues, UAS, SMS, atmospheric hazards, airspace management, and propulsion and fuel systems.

Most provisions of the law are effective upon date of enactment, Feb. 14, 2012.

Scan the QR code on the facing page to view the FAA reauthorization legislation. 

are far less harmful than rescinding the NMB's new rule, or the damage caused to both airline and nonairline workers by a continuing impasse on FAA reauthorization.

A brief outline of the agreement negotiated by Senate Majority Leader Harry Reid (D-Nev.) and Speaker of the House John Boehner (R-Ohio) follows:

- All substantive rulemaking at the NMB will now require a public hearing (including notice for the hearing, a transcript of the hearing, and other requirements from the Administrative Procedures Act).
- In the event of a run-off election, the top two OPTIONS will be in the run-off (previously it was the top two UNIONS in the run-off—so now if Union A receives 47 percent of the vote, Union B receives 10 percent of the vote, and no-union receives 43 percent of the vote, under the new law union A would be in a run off against no union. The result of this election would be decided by the choice stated by the majority of votes cast.).
- The showing-of-interest threshold required to apply for an election is now raised to 50 percent plus one of the eligible class (previously it was 35 percent for a new union and 50 percent plus one to hold an election to change or decertify an existing union). ALPA generally does not file for an election without having a showing of interest from a clear majority of eligible voters. History shows that the results for unions that file with less than 50 percent is very low and that such an approach is very likely to produce a divided, rather than unified, employee group.
- Within 180 days of the legislation being enacted into law, the Government Accountability Office (GAO) will provide a report on certification procedures and make recommendations to Congress on any changes that should be made. The report will specifically compare and contrast the NMB with other federal and state entities that have similar labor-related frameworks and evaluate the current and past NMB practices in the context of congressional intent.
- The GAO will also conduct an audit of the NMB at least every two years to evaluate the efficiency and effectiveness of all NMB operations.

While ALPA, along with other labor unions, agrees that RLA

changes have no place in a safety bill, and would have strongly preferred that the NMB provisions not appear in the FAA bill, the Association believes that the deal struck between Majority Leader Reid and Speaker Boehner on the NMB procedures was necessary in a difficult political environment to allow a critical aviation safety bill to move forward. Importantly, not included in the compromise is anything weakening the NMB rule change, nothing setting out new

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decertification procedures, nothing changing the merger rules (a matter clarified by Senator Reid in floor debate), and nothing providing for judicial review of NMB decision-making. These sorts of changes had been pursued by the Republican house majority throughout the debate and avoiding them was a significant benefit to the final package.

The political reality is that if this bill did not pass, another potential FAA shutdown or extension through the end of 112th Congress may have occurred. A new Congress, with an unknown composition, would be tasked with crafting a new bill that could include provisions like those advanced earlier by this Congress or ones that are much more regressive relating to the NMB and the RLA. Moreover, whole categories of workers who perform services for the FAA would have been threatened by job loss and loss of pay as these issues were fought out. Those were unacceptable outcomes.

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