



Analysis of Key Provisions of the FAA Modernization & Reform Act (Public Law No: 112-95)

On February 14, 2012, President Obama signed a new, four-year FAA authorization law. This analysis of the key provisions of the FAA Modernization & Reform Act was prepared by the Aeronautical Repair Station Association. For more information about these issues, please contact ARSA’s Vice President of Legislative Affairs Daniel Fisher at daniel.fisher@arsa.org or 703.739.9543.

Sec. 101-103. Funding of FAA Programs

Sec. 101-103 authorizes the Airport Improvement Program (AIP), air navigation facilities & equipment; and FAA operations (Sec. 901 authorizes FAA R&D). Over four years (FY 2012 – FY 2015) \$63.4 billion is authorized for the FAA. This funding level is very similar to the FAA’s 2012 budget levels.

	AIP	Facilities & Equipment	Operations	Research & Development
2012	\$3.35 billion	\$2.731 billion	\$9.653 billion	\$168 million
2013	\$3.35 billion	\$2.715 billion	\$9.539 billion	\$168 million
2014	\$3.35 billion	\$2.730 billion	\$9.596 billion	\$168 million
2015	\$3.35 billion	\$2.730 billion	\$9.653 billion	\$168 million

Sec. 122. Registration Fees

Section 122 requires the FAA to establish and collect fees for the following services:

- Registering an aircraft.
- Reregistering, replacing, or renewing an aircraft registration certificate.
- Issuing an original dealer’s aircraft registration certificate.
- Issuing an additional dealer’s aircraft registration certificate (other than the original).
- Issuing a special registration number.
- Issuing a renewal of a special registration number reservation.
- Recording a security interest in an aircraft or aircraft part.

- Issuing an airman certificate.
- Issuing a replacement airman certificate.
- Issuing an airman medical certificate.
- Providing a legal opinion pertaining to aircraft registration or recordation.

The provision requires the FAA to periodically adjust the fees when cost data reveal that the expense of providing the service changes.

Sec. 201-225. NextGen Air Transportation System and Air Traffic Control Modernization

Sec. 201-225 aims to accelerate the development of NextGen. Specifically, the provisions:

- Direct the Secretary of Transportation when allocating funds to give priority to NextGen-specific programs.
- Establish a new position within the FAA—the Chief NextGen Officer (CNO)—who is responsible for the implementation of NextGen programs. The CNO is appointed by the Administrator to a five year term.
- Requires the FAA to establish and track NextGen related performance metrics within the national airspace system and submit an annual report to Congress based on the results of the study.
- Direct the FAA to develop a plan to facilitate public-private partnerships to expedite the equipage of general aviation and commercial aircraft with NextGen technologies.

Sec. 302. Release of Data Relating to Abandoned Type Certificates and Supplemental Type Certificates

Section 302 authorizes the Administrator to release “engineering data” relating to a type certificate (or supplemental type certificate), upon request, to a person seeking to maintain the airworthiness or develop product improvements of an aircraft, engine, propeller, or appliance, without consent of the owner if:

- 1) the requested data has been inactive for three or more years (may be reduced if required to address an unsafe condition associated with the product);
- 2) the FAA cannot, after due diligence, find the owner of record, or the owner of record’s heir; and
- 3) making the data available will enhance aviation safety.

“Engineering data” is defined as “type design drawing and specifications for the entire aircraft, engine, propeller, or appliance or change to the aircraft, engine, propeller, or appliance, including the original design data, and any associated supplier data for individual parts or components approved as part of the particular certificate for the aircraft, engine, propeller, or appliance.”

The Administrator is also required to maintain engineering data in possession of the FAA relating to a type certificate that has been inactive for three or more years.

Sec. 303. Design and Product Organization Certificates

Section 303 directs the Administrator to issue Certified Design and Production Organization (CDPO) certificates to aviation manufacturers, by January 1, 2013, in order to streamline the certification process and allow FAA to focus its safety resources on primary safety concerns. On receiving an application for a CDPO certificate, the Administrator shall examine and rate the organization submitting the application, in accordance with regulations to be prescribed by the Administrator, to determine whether the organization has adequate engineering, design, and production capabilities, standards, and safeguards to make certifications of compliance. The provision clarifies that nothing in this section would affect the FAA's authority to revoke a CDPO certificate once issued.

Sec. 306. Safety of Air Ambulance Operations

Section 306 mandates a part 135 certificate holder providing air ambulance services to comply, whenever medical personnel are onboard the aircraft, with weather minimums and flight and duty time under part 135; however, if the certificate holder is carrying out training under instrument flight rules, the weather reporting requirement shall not apply.

The provision also requires the FAA to issue a final rule, no later than June 1, 2012, to address air ambulance safety. It requires a follow-on rulemaking to address additional Helicopter Emergency Medical Services training. Operators are required to collect and report data to the Administrator on their operations, including the number of flights and hours flown and for the FAA to report on that data 24 months after enactment, and annually thereafter.

Sec. 308. Inspection of Repair Stations Located Outside the United States

Section 308 requires the Administrator to issue a proposed rule within one year of enactment requiring that all foreign repair station employees responsible for safety-sensitive maintenance functions are subject to an alcohol and controlled substances testing program that is determined by the FAA and is consistent with the applicable laws of the country in which the repair station is based. It also requires the Administrator to establish and implement a system for assessing the safety of foreign repair stations. Finally, this section mandates FAA inspections of foreign repair stations annually in a manner that is consistent with U.S. obligations under international agreements, with additional inspections authorized based on identified risks.

Sec. 312. Aircraft Certification Process Review and Reform

Section 312 directs the FAA to review the current practices for aircraft certification. It requires that in his/her assessment the Administrator must make recommendations to improve efficiency and reduce costs through streamlining and reengineering of the certification process and issue a report within 180 days.

Sec. 313. Consistency of Regulatory Interpretation

Sec. 313 directs the Administrator to convene an advisory panel to determine the root causes of inconsistent interpretation of regulations by the FAA Flight Standards Service and Aircraft Certification Service, develop recommendations to improve the consistency of interpreting the regulations, and submit these recommendations to Congress within 12 months.

Sec. 315. Flight Standards Evaluation Program

Sec. 315 directs the Administrator to modify the Flight Standards Evaluation Program to include periodic and random audits of air carriers in the agency's oversight. It also prohibits an individual from participating in a review or audit of an office with responsibility for an air carrier under the program if the individual had responsibility for inspecting the operations of that carrier in the five year period preceding the date of the review. The Administrator is required to report to Congress within one year of enactment, and annually thereafter on the Flight Standards Evaluation Program.

Sec. 319. Maintenance Providers

Sec. 319 directs the Administrator to require that essential maintenance, regularly scheduled maintenance, and work pursuant to required inspection items must be performed by part 121 carriers, part 145 repair stations, or contractors meeting the requirements of part 121 or 145 certificate holders. Covered work performed by a contractor meeting the requirements of part 121 or 145 certificate holders are subject to the following terms and conditions:

- 1) the part 121 carrier shall be directly in charge of work;
- 2) the work shall be carried out according to the part 121 carrier's maintenance manual; and
- 3) the work shall be performed under the part 121 carrier's supervision and control.

Air carriers are responsible for ensuring that all maintenance, whether performed by the air carrier itself or performed by another entity under contract with the carrier, is conducted in accordance with the air carrier's maintenance program. When maintenance is performed by another entity, the air carrier continues to be responsible for the oversight of these maintenance providers, who are considered to be an extension of the air carrier's maintenance program.

Sec. 332. Integration of Civil Unmanned Aircraft Systems into National Airspace System

Section 332 directs the Secretary of Transportation to develop a plan to accelerate the safe integration of Unmanned Aircraft Systems (UAS) into the National Air System. The Secretary should develop the plan in consultation with the aviation industry, federal agencies using UASs, and the UAS industry as soon as practicable, but no later than September 30, 2015. Concurrent with the integration planning, the Secretary is directed to publish, and update annually, a five-year roadmap describing the activities of the FAA's Unmanned Aircraft Program Office, and its efforts to safely integrate UASs into the national airspace system.

Congress also directs the FAA to establish six test ranges until September 30, 2020. Test range locations are not designated in the legislation. Instead, the Administrator is directed to coordinate with, and leverage resources from, the National Aeronautics and Space Administration and the Department of Defense to select the test ranges based on the criteria set forth in this section. The intent is for the Administrator to establish a total of six test ranges under both laws, and not six ranges to be established under each law for a total of twelve. Congress intends that when the FAA establishes the program to integrate UASs into the national airspace system at six test ranges, the Administrator shall safely designate airspace for integrated manned and unmanned flight operations in the national airspace system.

Sec. 341. Aviation Safety Whistleblower Investigation Office

Section 341 establishes an independent whistleblower investigation office within the FAA. The Director of this office is to be appointed by the Secretary of Transportation for a five year term. The office is in charge of investigating reports of safety violations, and is to make recommendations to the Administrator. The Director may receive and investigate disclosures from employees of the FAA as well as employees of persons holding certificates issued under title 14 of the Code of Federal Regulations (if those certificate holders do not have similar in-house reporting programs), relating to possible violation of an order, a regulation, or any other provision of federal law relating to aviation safety.

It specifies that the Director cannot be prohibited from initiating an assessment of a complaint and that any evidence of criminal violations must be reported to the Administrator and Inspector General of the Department of Transportation (DOT IG). The Director shall have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material of the agency necessary to determine whether a substantial likelihood exists that a violation of an order, a regulation, or any other provision of federal law relating to aviation safety may have occurred.

Sec. 342. Postemployment Restrictions for Flight Standards Inspectors

Section 331 affirms FAA regulations mandating a two year post-service period for FAA inspectors or persons responsible for oversight of FAA inspectors before they can act as an agent or representative of a certificate holder that they previously had responsibility for while employed at the FAA.

Sec. 344. Improved Voluntary Disclosure Reporting System

Section 344 requires FAA to modify the Voluntary Disclosure Reporting Program (VDRP) to require inspectors to verify that air carriers have implemented comprehensive solutions to correct underlying causes of voluntarily disclosed violations, and confirm, before approving a final report of a violation, that the violation has not been previously discovered by an inspector or self-disclosed by an air carrier. The DOT IG is directed to review the FAA's implementation of the VDRP program.

Sec. 345. Duty Periods and Flight Time Limitations Applicable to Flight Crewmembers

Section 345 directs the FAA to initiate a rulemaking within six months to require commercial pilots who accept additional flight assignments under part 91 of Title 14 Code of Federal Regulations to count the flying time under the additional flight assignments towards the commercial flight time limitations.

It requires the Administrator to conduct two separate rulemakings for part 121 and part 135 flight time limitations (the latter rulemaking must be initiated within one year).

Sec. 346. Certain Existing Flight Time Limitations and Rest Requirements

Section 346 prohibits the Administrator from issuing, finalizing or implementing as a rule [“Interpretations of Rest Requirements”](#) published in the Federal Register on December 23, 2010, regarding part 135 certificate crewmember's flight time.

Sec. 347. Emergency Locator Transmitters on General Aviation Aircraft

Sec. 347 mandates the FAA, as part of the annual inspection of general aviation aircraft, to require a detailed inspection of each emergency locator transmitter (ELTs) on general aviation aircraft to ensure it is mounted and retained in accordance with manufacturers' specifications. The FAA is also required to determine if the ELT mounting requirements and retention tests specified by Technical Standards Orders C91a and C126 are adequate to assess retention capabilities in ELT designs.

Sec. 409. Study of Operations Regulated Under Part 135

Sec. 409 requires the Administrator, along with interested parties, to conduct a study of part 135 operators within 18 months of enactment, and an update within three years, and every two years thereafter. The analysis shall include size and type of fleet; equipment utilized by the fleet; hours flown by the fleet; safety record; sales revenues of fleet; and number of passengers and airports served.

Sec. 415. Passenger Air Service Improvements

Sec. 415 requires air carriers providing “covered air transportation” at a commercial airport; operators of commercial airports; and operators of airports used by an air carrier for diversions to submit to DOT for review and approval an emergency contingency plan. “Covered air transportation” is defined in the section as “scheduled or public charter passenger air transportation provided by an air carrier that operates an aircraft that as originally designed has a passenger capacity of 30 or more seats.”

Plans must include how air carriers will:

- 1) provide adequate food, potable water, restroom facilities, comfortable cabin temperatures, and access to medical treatment for passengers onboard an aircraft at the airport when the departure of a flight is delayed or the disembarkation of passengers is delayed;
- 2) share facilities and make gates available at the airport in an emergency; and
- 3) allow passengers to deplane following an excessive tarmac delay

A plan must be submitted for each airport at which the carrier provides “covered air transportation” and each airport at which the carrier has flights for which the carrier has primary responsibility for inventory control. The Secretary of Transportation is to determine the length of a tarmac delay that would be deemed “excessive”.

Sec. 415 also mandates DOT to establish a website that contains a listing of the countries that may require a U.S. or foreign air carrier to treat an aircraft passenger cabin with insecticides prior to a flight to that country, or to apply an aerosol insecticide in an aircraft cabin used for such a flight when the cabin is occupied with passengers.

Sec. 506. Prohibition on Operating Certain Aircraft Weighing 75,000 Pounds or Less Not Complying with State 3 Noise Levels

Sec. 506 requires that all civil subsonic jet aircraft under 75,000 pounds must meet Stage 3 noise levels within the 48 contiguous states by December 31, 2015, with some exceptions for the following types of temporary operations to:

- 1) sell, lease or use the aircraft outside the 48 contiguous States;
- 2) scrap the aircraft;
- 3) obtain modifications to the aircraft to meet Stage 3 noise levels;
- 4) perform scheduled heavy maintenance or significant modifications at a maintenance facility in the contiguous 48 States;
- 5) deliver the aircraft to an operator leasing the aircraft from the owner or return the aircraft to the lessor;
- 6) prepare, park, or store aircraft in anticipation of above activities;
- 7) provide transport of persons or goods in an emergency situation; and
- 8) divert the aircraft to an alternative airport on account of weather, or safety reasons.

It authorizes the Secretary of Transportation to prescribe regulations as necessary.

Sec. 606. Safety Critical Staffing

Section 606 requires the Administrator to implement, to the extent practicable and in the most cost-effective manner, the staffing model for aviation safety inspectors by October 1, 2012. The FAA should follow the recommendations outlined in the 'Staffing Standards for Aviation Inspectors' report issued by the National Academy of Sciences in 2007. The FAA is required to consult with interested parties, including the exclusive bargaining unit for aviation safety inspectors, and submit the staffing model to Congress on an annual basis.

Sec. 804. Consolidation and Realignment of FAA Services and Facilities

Sec. 804 requires the Administrator to develop, in conjunction with the Chief NextGen Officer and Chief Operating Officer of the Air Transportation Organization, a National Facilities Realignment and Consolidation Report within 120 days of enactment and allow 45 days for the submission of public comments on that report. The report shall be developed with the participation of representatives of labor organizations representing operations and maintenance employees of the air traffic control system and industry stakeholders. The purpose of this report is to support the transition to NextGen and to reduce capital, operating, maintenance, and administrative costs of the FAA without adversely impacting safety.

The report shall include recommendations with justification and project costs and savings. It instructs the Administrator to submit a report to Congress within 60 days after the last day of the public comment period on the Administrator's recommendations on realignment and consolidation of services and facilities of the FAA and it directs the Administrator to follow this report during the realignment process. It also permits Congress to prohibit the Administrator from carrying out

the recommendations in the report should a joint resolution of disapproval be enacted within 30 days of submission of the report to Congress.

Sec. 805. Limiting Access to Flight Decks of All-Cargo Aircraft

Sec. 805 requires the FAA, within 180 days of enactment, to assess the feasibility of developing a physical means, or a combination of physical and procedural means, to prohibit individuals, other than authorized flight crewmembers, from accessing the flight decks of all-cargo aircraft.

Sec. 808. Study on Aviation Fuel Prices

Section 808 requires the Government Accountability Office (GAO) to conduct a study and report to Congress within 180 days of enactment on the impact of aviation fuel price increases on the Airport and Airway Trust Fund and the broader aviation industry (including on repair and maintenance services).

Sec. 816. Historical Aircraft Documents

Sec. 816 directs the Administrator to take actions, as seen necessary, to preserve original aircraft type certificate engineering and technical data in possession of the FAA. No later than three years after date of enactment, the Administrator shall revise FAA Order 1350.15C to prohibit destruction of historical aircraft documents. The Administrator shall consult with the Archivist of the U.S. and General Services Administration on the best methods to preserve these documents.

The Administrator must make these documents available under Freedom of Information Act. This provision does not affect the rights of the holder or owner of a type certificate identified above, or require holders or owners to provide, surrender or preserve any original or duplicate engineering data to FAA. Notwithstanding any other provision of the law, the holder of a type certificate identified in this section shall not be responsible for any continued airworthiness or FAA regulatory requirements.

Sec. 824. Cylinders of Compressed Oxygen or Other Oxidizing Gases

Sec. 824 mandates that the transportation of cylinders of compressed oxygen or other oxidizing gases aboard aircraft in Alaska is exempt from compliance with regulations that require such gases to be enclosed in outer packaging capable of passing the flame penetration and resistance test and the thermal resistance test, without regard to the end use of the cylinders. The exemption is to be applied in circumstances in which transportation of the cylinders by ground or vessel is unavailable and transportation by aircraft is the only practical means for transporting the cylinders to their destination. Each cylinder must also be fully covered with fire or flame resistant blanket.

It also requires that the operator complies with the applicable notification procedures under 49 CFR § 175.33 and specifies that the exemption applies to cargo-only aircraft if the destination has cargo-only service at least once a week and passenger and cargo only aircraft if the destination does not receive cargo-only service at least once a week.

Sec. 828. Air Transportation of Lithium Cells and Batteries

Sec. 828 prohibits the Administrator from issuing or enforcing any regulation regarding the transportation by aircraft of lithium metal cells or batteries or lithium ion cells or batteries, if the requirement is more stringent than the requirements of International Civil Aviation Organization (ICAO). However, the Secretary of Transportation may enforce the prohibition against transporting primary (non-rechargeable) lithium batteries and cells aboard passenger carrying aircraft as set forth in special provision A100 under section 172.102(c)(2) of title 49.

Additionally, the provision allows adoption and enforcement of a targeted rule more stringent than the ICAO Technical Instructions in the event that an authoritative national or international governmental body provides a formal report finding that the presence of lithium metal or lithium ion batteries on an aircraft in compliance with the ICAO Technical Instructions was a substantial contributing factor to the initiation or propagation of an onboard fire. In such a situation, the Secretary may issue a targeted emergency regulation that addresses solely the deficiencies identified in the report that triggered the regulation. That regulation may remain in effect for up to one year and is not subject to renewal. Either alternatively or consecutively, the Secretary may undertake a rulemaking in accordance with the Administrative Procedure Act to adopt a permanent regulation.

That permanent regulation must be based on substantial credible evidence that the cells or batteries of the type at issue could be expected to substantially contribute or propagate an on-board fire even if they were shipped in accordance with applicable ICAO Technical Regulations; are narrowly tailored to avoid disruption of the shipping of other cells, batteries or products; and employ the least expensive approach while addressing the identified safety concern.

Sec. 905. Research on Design for Certification

Section 905 requires the Administrator to conduct research on methods and procedures to improve confidence in and the timeliness of certification of new technologies for introduction into the NAS within one year. It specifies that not later than six months after enactment, the FAA will develop a plan for the research that contains objectives, proposed tasks, milestones and a five year budget profile. The Administrator will enter into an arrangement with the National Research Council to conduct an independent review of the plan not later than 18 months after the date of enactment, with results of the review provided to Congress.

Sec. 1001-1003. National Mediation Board

Sections 1001-1003 amend the Railway Labor Act to require that in any runoff election for which there are three or more options (including the option of not being represented by any labor organization) on the ballot and no such option receives a majority of the valid votes cast, the Mediation Board shall arrange for a second election between the options receiving the largest and the second largest number of votes. It also raises the threshold required to call a union election to not less than fifty percent (from 35 percent) of the employees in the craft or class.