

# FAA Reauthorization Act

## What Air Cargo Carriers Need to Know

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### The FAA Reauthorization Act of 2018

On October 5, 2018, President Trump signed the FAA Reauthorization Act of 2018 (“FAA Act” or “Act”) into law, ushering in a wide-reaching bill and FAA’s first long-term reauthorization since 2012. It authorizes FAA for five years and covers nearly all aspects of aviation from the smallest drones to commercial space transportation. The Act, 462 pages long contains over 280 actions and requirements, 85% of which are due in 12 months. It requires 92 reports to Congress and 26 rulemakings and that is just for the FAA. The new law also addresses the Department of Transportation (DOT), the Transportation Security Administration (TSA), and the National Transportation Safety Board (NTSB).

This wide-ranging bill touches on many aspects of aviation. A selection of provisions relevant to the air cargo industry includes aircraft operations, TSA security, cargo security, technological FAA requirements and enforcement.

### FAA Requirements

**Compliance Philosophy.** In 2015, FAA implemented a “compliance philosophy” to solve problems collaboratively rather than using enforcement methods to correct safety issues when possible. Section 324 of the FAA Act directs GAO to study the effectiveness of this program, particularly its impact on incidents and whether FAA enforcement staff have registered complaints about the program.

**Regulatory Consistency Board.** One of the regulated community’s chief complaints about FAA is the lack of consistency from office to office. Accordingly, Congress, in Section 224, directs FAA to establish a Regulatory Consistency Board, comprised of members from the Flight

Standards Service, the Aircraft Certification Service, and the Office of the Chief Counsel, which will create a process for anonymous regulatory interpretation requests, resolving interpretation requests promptly, and making information publicly available.

**Aircraft Air Quality.** Members of Congress have expressed concern about reports of aircraft air quality. Section 326 requires FAA to issue guidance on reporting incidents of smoke or fumes on aircraft operated by commercial air carriers. FAA is also to commission a study to measure cabin and flight deck air quality, assess any potential health effects, and identify technologies to monitor the air supply system.

**Lithium Battery Transportation.** Section 333 directs DOT to conform US regulations on the air transport of lithium cells and batteries with those adopted by the International Civil Aviation Organization (ICAO) in 2016. This Section also creates a Lithium Battery Safety Working Group, to promote and coordinate safe manufacture, use, and transportation of lithium batteries. A new Lithium Battery Air Safety Advisory Committee is charged with promoting coordination among relevant industry and government stakeholders, including air cargo service providers who have a dedicated seat on the committee.

**Runway Safety.** Following several incidents of near wrong surface landings, Congress is requiring FAA to study and report on ways to improve runway safety. Section 334 of the Act requires FAA to look at the benefits and risks of requiring runway awareness and advisory systems in turbine-powered airplanes with a maximum takeoff weight greater than 19,000 pounds, review wrong surface alignment detection and warning systems, and study the frequency of runway incursions.

### TSA and Cargo Security

The new law also reauthorizes TSA through 2021 and establishes a number of mandates for the agency to implement. Air cargo is the focus of the following provisions:

**Known Shipper Program.** In Section 1942, Congress charges the Air Cargo Subcommittee to conduct a comprehensive review and security assessment of the Known Shipper Program, including whether the Program should be modified or eliminated in light of the 100% screening requirement for cargo transported on passenger aircraft.

**Air Cargo Security Division.** Congress mandates that TSA establish an air cargo security division to engage with stakeholders about air cargo security programs. Section 1943 specifies the division will be headed by a person in the executive service and have no fewer than four full-time

employees. This provision will give air cargo carriers a dedicated avenue into TSA on security programs.

**Air Cargo Regulation Review.** Section 1944 requires TSA to review the Certified Cargo Screening Program under which cargo is screened before shipment on passenger flights. The review will address evolving threats and identifying program vulnerabilities. TSA will then report on program improvements implemented based on the review.

**Evaluation of Air Cargo Screening Processes.** Section 1945 requires GAO to review the Department of Homeland Security's processes and procedures for air cargo entering the United States, and its risk-based strategy for examining cargo and regulatory compliance.

**Air Cargo Advance Screening Program (ACAS).** Congress also is requiring US Customs and Border Protection (CBP) to make the Air Cargo Advance Screening Program mandatory. As discussed in the Spring 2018 edition of CNS Air Cargo Focus, this program requires shippers to provide certain information for CBP at the earliest practical point before loading cargo bound for the United States. Section 1951 also requires CBP to collaborate with industry stakeholders to ensure an operationally feasible and practical approach.

## Technology and Other Provisions

**Drones.** Of note to air cargo carriers, the FAA reauthorization restricts drone use near airports, including implementation of runway safety areas where drone use is prohibited (Sec. 384) and allows certain federal law enforcement entities to use counter-drone technology (Secs. 1602-03). The law also pushes FAA to accelerate drone integration, including for inspections, security, or other purposes relevant to air cargo carriers.

**Artificial Intelligence.** In Section 548, Congress expressed that FAA, along with industry stakeholders, should review artificial intelligence technologies in the aviation system and determine if the agency should implement an artificial intelligence plan.

**International Air Cargo Markets.** Congress directed GAO to study supply and demand for air cargo services between the United States, Central and South America, the Caribbean, Africa and Europe. The study will report on gaps in air cargo networks and the impact of establishing an air carrier hub in Puerto Rico.

**The Realities of Implementation.** In addition to the sheer volume of work that Congress directed the agencies to complete, a number of factors will influence their ability to complete these tasks. Most significantly Executive Order 13771 signed by President Trump, soon after coming into office, instructs agencies that when proposing a new regulation they must identify two existing regulations for repeal. It is unclear how this "two-for-one" requirement will apply to regulations required by the FAA Act, particularly regulations that would benefit the aviation industry.

Additionally, agencies have limited resources. Staff limitations at agencies,

particularly when one office is tasked with several rules, have the effect of restricting the pace at which the agency can propose rules. The sheer number of reports required also will stress agency resources because of the internal review processes triggered by issuing a report to Congress. One strategy FAA will use to streamline its work is to identify projects already started, or even recently completed, that can be attributed to a directive in the FAA Act. It will then be able to focus attention on other provisions. Congress, however, will ultimately use its oversight role to determine if, indeed, its requirements are satisfied.

**Key Takeaways.** Congress provided direction to a number of entities in the air transportation sector in its wide-ranging bill. FAA, in particular, now has the certainty to engage in longer-term planning over the course of the five-year authorization that it could not do under short-term authorizations or continuing resolutions. However, resources will be strained because of the volume of directives from Congress.

There are also hotly-debated provisions that did not make the final bill, including air traffic reform, revisions to the 1,500-hour second-in-command requirement, Passenger Facility Charge revisions, and other funding mechanisms. These issues may be revived, but without another FAA authorization needed for several years, their supporters will need to find another vehicle to move forward. The new law, and the regulations that flow from it, will raise many questions for the regulated community. Experienced aviation counsel should help you navigate this new territory.

## About Dean E. Griffith, Of Counsel, Jones Day

Dean Griffith focuses his practice on aviation regulatory matters including air carrier, on-demand, fractional ownership, agricultural, helicopter air ambulance operations, and unmanned aircraft. Dean held both law and policy related positions during his more than nine-year career at the Federal Aviation Administration.

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John Goetz has nearly 30 years of experience defending companies in business and tort litigation. He is a recognized authority in aviation and transportation litigation and has defended multinational companies in trial and appellate courts across the US, Canada, and in Europe. A licensed pilot, John leads Jones Day's airlines and aviation industry practice. John also counsels clients in NTSB investigations and FAA proceedings.

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