

State and Local Restrictions on Flight Training During Public Health Emergencies

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- In response to the COVID-19 pandemic, many states and cities have implemented stay-at-home orders, which impose “social distancing” requirements and restrict or prohibit the operation of businesses that are deemed to be “non-essential.”
- Some of these orders have been interpreted to restrict or prohibit flight training, either because the pilots inherently cannot comply with social distancing requirements, or because flight training is deemed to be non-essential. See, e.g., Virginia Department of Aviation, [Flight Training and Flight Operations under Executive Orders 53 and 55](#) (April 17, 2020) (revised state guidance allowing some but not all training activities).
- Some flight schools and advocates have pushed back against these interpretations, arguing that precautions can be taken to avoid transmission of the virus, and that flight training should be considered an “essential” activity. But there is another key issue: ***states and municipalities do not have the jurisdiction to regulate flight training.***
- The Federal Aviation Administration (“FAA”) has the sole authority to regulate aviation in the U.S. (including training) – a concept called “preemption.” The Supreme Court has explained that there is a “uniform and exclusive system of federal regulation” for aviation safety and operations which leaves no room for state or local requirements.
- Although the COVID-19 pandemic is unprecedented, the FAA’s consistent guidance has been that state and local “jurisdictions do not have authority to regulate the use of navigable airspace or the safety of flight operations.” Nor can they limit “flight instruction at the [a]irport for purposes of controlling aircraft noise and safety.” By the same reasoning, they cannot now restrict flight training for public health purposes.
- Additionally, many airports are subject to “grant assurances” with the FAA which require the airports to accommodate all types of aeronautical activities, including flight training. The FAA recently advised that *temporary* restrictions on recreational activities *may* be permissible – but in practice, flight training is not recreational; nor under present circumstances is it likely to interfere with emergency operations.
- Flight schools and advocates should exercise caution in responding to state and local restrictions – for example, in order to maintain good business relationships with airports and state agencies – but that said, flight schools also should not assume that such restrictions are actually enforceable, and should be prepared to challenge them.

If you have questions about how state or municipal restrictions may apply to flight training operations, please contact Jol Silversmith, Member (jsilversmith@kmazuckert.com) or Barbara Marrin, Senior Associate (bmarrin@kmazuckert.com) of KMA Zuckert LLC.