



Aviation & Space Attorneys  
*National, International, Interstellar.*

## Aviation & Space Alert

### General Aviation in the Pandemic

April 8, 2020

**Dear Friends,**

Like the rest of the world, we've been trying to keep up with the daily changes and challenges of the COVID-19 pandemic, at home and work. Luckily we have been able to continue serving our clients as they face upheavals in the aviation and commercial space industries.

In this Aviation & Space Alert, we're sharing a few of the unusual issues we have been seeing as we do that.

Sincerely,  
Joe Hardy & Jason Kemp



Aviation & Space Attorneys  
*National, International, Interstellar.*



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## Closing Aircraft Sales During the Pandemic



They are still happening. But here are a few issues we've run into for you to think about.

First, the FAA filing desk instituted a 72 hour quarantine for paper documents (including aircraft bills of sale, registration applications, lien releases, etc.). Then they rescinded the quarantine.

Now they are using a drop box for physical documents to avoid personal contact, in place of their usual direct hand-off for filing. This has resulted in lags of about 1-3 hours from deal escrow release to FAA filing, but is manageable as long as you know about it.

In any event, if there has ever been a reason to fully switch to e-signatures, which the FAA has been accepting for the last several years, this is it.

Second, if you are buying an aircraft to go into a Part 135 charter operation, you may face a long delay (months) before the FAA can complete its conformity check for the aircraft. We're getting mixed signals about this, between not sending inspectors out during the risk of infection and building a backlog, vs. possible exemptions or waivers. But for now we suggest assuming a delay.

Third, some states are restricting visitors from certain other states they consider hotspots for COVID-19. If the pilot(s) picking up a purchased aircraft have even visited one of those states within the restricted time frame, you may face delays in closing, or have to find workarounds for final inspections, acceptance, and flyaways (some sellers will hold the airplane they just sold, but may charge hangar rent; and you may end up owing the delivery state sales tax if you don't remove the aircraft within a certain number of days).

Those are just a few issues that we have run into. Like everything related to the pandemic, they are evolving, and there may be more issues we haven't run into yet. But the FAA is still facilitating document filing, and deals are still closing . . . for now.



## Airports, Their Users, and the COVID-19 Crisis

The COVID-19 crisis is changing the world. Its impact has been devastating to humanity and its way of life. The problems are many, and the solutions often appear to be in flux. This is true of our nation's airports.

With revenues down for airlines, airports and other airport users, many are looking to find a way to survive the crisis. Congress has earmarked approximately ten billion dollars for airports and about twenty-five billion dollars in loan guarantees to air carriers in the recent CARES Act.

While the process for obtaining aid is still being established, the FAA has published a [list of FAQs with answers for Airports here](#). And the Department of Transportation has issued a [show-cause order for the implementation of the CARES Act for air carriers here](#).

So what are airports and their tenants to do?

### ***Overcommunicate.***

That's not something we tell every client, but it may be fruitful here. Airports and operators really do need each other, so there is likely to be common ground in a solution to most problems. Assess what your needs are and ask for what you need. Some airports are abating rent for clients and some are deferring rent. It is important to know what is on the table for each party. Is there insurance coverage that applies? How much federal and state aid is available? Is it possible for all parties to have a win while also remaining compliant with federal law and grant assurances?

No matter what the "fix" is, it should be clearly stated and not likely to be deemed unlawful by the FAA. Airports may contact the FAA Airports Office to seek its blessing for rent negotiations. Airport lessees may wish to seek counsel prior to finalizing an agreement to verify its deal is not substantially different than other similar businesses on the field. One thing is for sure, it would be more efficient to settle any conflicts now than to pursue remedies through a Part 13 or Part 16 action down the road.

There is a sense that the entire aviation industry is in this together. Now is a great opportunity to get the parties to the table and find a solution that will outlast the COVID-19 pandemic.



### More Illegal Charter Enforcement

Despite the FAA's partial slowdown for registration and conformity inspections, they are still aggressively enforcing illegal charter operations.

The FAA announced on April 3 that it was proposing a \$1.5 million penalty against B E L Aviation of Odessa, Texas for allegedly transporting passengers for hire without an air carrier certificate.

We've written for years about the potential catastrophic consequences of illegally making charter flights (even unintentionally due to the sometimes counterintuitive nature of the Federal Aviation Regulations). But FAA enforcement actions had been few and far between.

We noticed a change in that beginning in 2018. In June of that year, the FAA proposed a \$3.3 million fine against The Hinman Co., of Portage Michigan for illegal charter flights.

That came shortly after The National Air Transportation Association (NATA), an association of member companies that represents the interests of the general aviation business community, announced that it had formed an Illegal Charter Task Force.

The FAA shortly thereafter added a [section to its website](#) cautioning against illegal charter operations, including links to NATA and its illegal charter hotline.

Since then, the FAA also proposed in 2019 a \$533,320 penalty against Steele Aviation of Beverly Hills, California (the third penalty against the same company), and now against B E L Aviation. And these are just some higher profile announcements we have seen- not counting any number that may have been addressed more quietly.

So now more than ever, we are cautioning our non-charter clients to be mindful of the limitations of charging for flights. There are only a few limited areas where that is permitted without obtaining an air carrier certificate. And in addition to

huge FAA fines, violations (even inadvertent) can result in attempted insurance denial, or even prison time in extreme cases.



### **NBAA's Small Aircraft Exemption Extended-With New Twists**

Speaking of just a few areas where charging for air transportation is allowed without getting an air carrier certificate, FAR 91.501 provides most of them.

Such as the "2x fuel" exception. That allows an operator to charge a passenger up to two times the cost of fuel for a flight, plus some incidental flight expenses, without requiring an air carrier certificate. 91.501 has several other limited but useful cost-sharing provisions.

But 91.501 is generally only available to operators of aircraft over 12,500 lbs, multi-engine turbojets, or fractional ownership program aircraft. Many popular smaller, single-engine aircraft, like the Pilatus PC-12, do not qualify.

However, under a specially negotiated blanket exemption, operators of those smaller aircraft that are also members of the National Business Aviation Association (NBAA) can take advantage of FAR 91.501. That is subject to a few additional requirements, such as notifying the FAA of the operations, and getting the FAA's approval of an inspection program.

That exemption by its terms expires every two years. The latest term expired March 31 of this year.

The FAA has now extended the exemption through March 31, 2022. But it has added two new special conditions.

First, members utilizing the exemption must now electronically file an additional notice with the FAA, presumably for a more centralized, real-time accessible database of all users under this exemption.

Second, members may now use the exemption for international operations, as well as domestic. This brings the exemption in line with the approach of many other countries.

The full exemption letter is [here](#).

## About Hardy Law

We believe in an aviation & space industry with everyone working together for safety, innovation, utility, economic security and fun. We combine our industry and legal experiences to help people avoid making really big mistakes with their aircraft and spacecraft.

Hardy Law started in 2010 and has always focused on aviation & space law. Joe Hardy brings over twenty years of experience from large and small law firms as an aviation attorney, plus thirty years as a commercial pilot, including a few years as an active flight instructor. Jason Kemp brings aviation law experience from the FAA and the Jacksonville Aviation Authority (home of Cecil Spaceport and Jacksonville International Airport). Jason also holds a Master of Laws degree in Air & Space Law from the University of Mississippi. Before his legal career, Jason served in the U.S. Air Force as an aircraft maintenance technician.

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- FAA spaceport operator licensing, launch licensing & development
- Outer space & celestial body property rights
- Commercial space policy and legislation development

See what our clients and colleagues have to say about us [here](#).

Hardy Law - helping people avoid really big mistakes with their aircraft & spacecraft.

### Joe Hardy & Jason Kemp



Aviation & Space Attorneys

***This is for informational purposes only and is not intended to be legal advice. Please consult an attorney for advice for your particular situation.***

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