April 13, 2016

The Honorable Robert W. Ferguson  
Attorney General of Washington State  
1125 Washington St. SE  
P.O. Box 40100  
Olympia, WA 98504

RE: Request for Opinion Regarding Federal Preemption of RCW 77.15.740

Dear Mr. Ferguson:

San Juan County respectfully requests an opinion regarding whether aircraft or model aircraft are “other objects” subject to RCW 77.15.740(1)(a). The issue arises because regulation of aircraft or model aircraft may be preempted by the Federal Aviation Act and related regulations. Either a formal or informal opinion is requested to resolve this issue.

STATE LAW BACKGROUND

The waters of San Juan County are well-known for being frequented by southern resident orca whales. The attraction of the whales can leads to conflicts with people interested in “getting a closer look.” One way that the legislature has addressed the conflict is through RCW 77.15.740, which reads in part:

**Protection of southern resident orca whales—Unlawful activities—Penalty.**

(1) Except as provided in subsection (2) of this section, it is unlawful to:

(a) Cause a vessel or other object to approach, in any manner, within two hundred yards of a southern resident orca whale;

... 

(4)(a) A violation of this section is a natural resource infraction punishable under chapter 7.84 RCW and carries a fine of five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.
(b) A person who qualifies for an exemption under subsection (2) of this section may offer that exemption as an affirmative defense, which that person must prove by a preponderance of the evidence.

Violations of RCW 77.15.740(1)(a) are regularly filed in San Juan County by Washington Department of Fish and Wildlife (“WDFW”) officers. Each year our office is called upon to provide legal advice to WDFW officers on these charges and to offer support at contested infraction hearings. Over the past year, the increasing popularity of unmanned aircraft systems, commonly known as drones; has resulted in the filing of a few infractions under RCW 77.15.740; however, we currently have no open cases regarding this statute. The proliferation of drones has also led to a changing landscape in FAA regulation.

Recent statements by the Federal Aviation Administration regarding regulation of drones cause us to question whether the application of RCW 77.15.740(1)(a) to the operation of aircraft (including drones), which are “objects” under RCW 77.15.740, is preempted by federal law regarding aviation.

FEDERAL LAW BACKGROUND

General regulations. Under the Federal Aviation Act of 1958, the Federal Aviation Administration (“FAA”) is given the authority to regulate the use of the nation’s navigable airspace, prescribe air traffic regulations, provide for security, and prescribe safety standards. 49 U.S.C. § 40103, 44703. Specifically, the FAA is to “develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.” 49 U.S.C. § 40103(b)(1).

Citizens of the United States have a public right of transit through the navigable airspace. 49 U.S.C. §40103(a)(2). “Navigable airspace” means “airspace above the minimum altitudes of flight prescribed by regulations under this subpart and subpart III of this part, including airspace needed to ensure safety in the takeoff and landing of aircraft.” 49 U.S.C. § 40102(a)(32). The minimum safe altitudes present for flight over land do not apply over open water. Instead, over open water an aircraft may not be operated closer than 500 feet to any person, vessel, vehicle or structure. 14 C.F.R. § 91.119(c). A helicopter may operate still lower if the operation is conducted without hazard to persons or property on the surface and each person operating the helicopter complies with any routes or altitudes specifically prescribed for helicopters by the FAA. 14 C.F.R. § 91.119(d).
Regulation of unmanned aircraft systems. Congress established law specific to unmanned aircraft systems ("UAS") in the FAA Modernization and Reform Act of 2012 ("FMRA"). FMRA requires the FAA to develop a plan providing for the safe integration of UAS into the national airspace system no later than September 30, 2015; this has not yet occurred. FMRA generally establishes three categories of UAS: commercial, public, and model aircraft. The special rules for model aircraft found in FMRA § 336 are as follows:

(a) IN GENERAL.—Notwithstanding any other provision of law relating to the incorporation of unmanned aircraft systems into Federal Aviation Administration plans and policies, including this subtitle, the Administrator of the Federal Aviation Administration may not promulgate any rule or regulation regarding a model aircraft, or an aircraft being developed as a model aircraft, if—

(1) the aircraft is flown strictly for hobby or recreational use;
(2) the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;
(3) the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;
(4) the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
(5) when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation (model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually-agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport)).

(b) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to limit the authority of the Administrator to pursue enforcement action against persons operating model aircraft who endanger the safety of the national airspace system.

(c) MODEL AIRCRAFT DEFINED.—In this section, the term "model aircraft" means an unmanned aircraft that is—

(1) capable of sustained flight in the atmosphere;
(2) flown within visual line of sight of the person operating the aircraft; and
(3) flown for hobby or recreational purposes.

FMRA § 336(a) above expressly prohibits the FAA from promulgating rules or regulations regarding model aircraft that satisfy the conditions in § 336(a) (referred to in this
letter as “Model Aircraft.”) Thus, FMRA creates a distinction between Model Aircraft and all other aircraft. FMRA does not specify whether Model Aircraft are subject to laws and rules generally applicable to all aircraft, or to preexisting laws and regulations specific to Model Aircraft.

Applicability of Aircraft Regulations to Unmanned Aircraft Systems (“UAS”). The National Transportation Safety Board (“NTSB”) considered whether UAS (that is, drones) are “aircraft” in the case of Administrator v. Pirker, NTSB order No. EA-5730, Docket CP-217 (Nov. 7, 2014). In Pirker, the FAA assessed a $10,000 fine for an alleged violation of 14 CFR § 91.13(a), which provides that “No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.” The FAA alleged that Mr. Pirker flew his UAS around the University of Virginia campus in a manner that endangered life and property by flying directly towards an individual on a sidewalk, through a tunnel containing moving vehicles, under a crane, under an elevated pedestrian walkway, and within 100 feet of an active heliport. These activities occurred on October 17, 2011, before the enactment of FMRA.

The Administrative Law Judge (“ALJ”) who considered the initial appeal of the FAA order held that the glider was a “model aircraft” and not an “aircraft” subject to 14 CFR 91.13(a). The decision was based in part on the FAA’s historical practice of treating model aircraft differently from aircraft generally. For example, the FAA has not required aircraft worthiness and registration certification for model aircraft. The ALJ noted that the FAA Advisory Circular regarding model aircraft, AC 91-57, “encourages voluntary compliance with... safety standards for model aircraft operators,” and held that this voluntary safety compliance policy would be incompatible with mandatory safety standards. The ALJ further held that FAA internal guidance regarding UAS (Memorandum AFS-400 UAS Policy 05-01, dated September 16, 2005, and Interim Operational Approval Guidance 08-01, dated March 13, 2008) were internal policies not binding on the general public. Additionally, the ALJ held that FAA Notice 07-01 published in the Federal Register on February 13, 2007, was a policy statement not binding on the general public and that if it were intended as such, it failed to satisfy 5 U.S.C. § 552(d) and thus did not meet the criteria for valid legislative rulemaking.

The NTSB overturned the ALJ’s decision on appeal. The NTSB held that a UAS is an aircraft under CFR § 91.13(a) because nothing in the plain language of that section nor in the definitions of aircraft found in 49 U.S.C. § 40102(a)(6) or 14 CFR § 1.1 exempts unmanned or small aircraft. By its terms, 14 CFR § 91 applies to all aircraft other than moored balloons, kites, unmanned rockets, unmanned free balloons, and ultralight vehicles, each of which have their own rules. 14 CFR § 91.1. Operation of aircraft in the airspace overlying the waters between
three and twelve nautical miles from the coast of the United States is subject to some, but not all, of the requirements of 14 CFR § 91. 14 CFR § 91.1.

At the time of this letter, FAA rules for small UAS have been proposed and comments received, but a final rule has not yet been established. See Operation and Certification of Small Unmanned Aircraft Systems, Docket No. FAA-2015-0150, 80 Fed. Reg. 9,544 (Feb. 23, 2015). The FAA has adopted interim registration and marking requirements for small UAS, defined as UAS weighing less than 55 pounds and more than 0.55 pounds. Registration and Marking Requirements for Small Unmanned Aircraft, Docket No. FAA-2015-7396, 80 Fed. Reg. 78,953 (Dec 16, 2015).

PREEMPTION AND THE FAA

The FAA’s position is that State and local restrictions affecting UAS operations should be consistent with the extensive federal statutory and regulatory framework pertaining to control of the airspace, flight management and efficiency, air traffic control, aviation safety, navigational facilities, and the regulation of aircraft noise at its source.

Federal courts have found that federal preemption applies to regulation of aircraft in some circumstances. With regard to safety, the Ninth Circuit held that “[T]he regulations enacted by the Federal Aviation Administration, read in conjunction with the [Federal Aviation Act] itself, sufficiently demonstrate an intent to occupy exclusively the entire field of aviation safety and carry out Congress’ intent to preempt all state law in this field.” Montalvo v. Spirit Airlines, 508 F.3d 464, 471 (9th Cir. 2007). The U.S. Supreme Court ruled similarly with regard to noise, stating: “It is the pervasive nature of the scheme of federal regulation of aircraft noise that leads us to conclude that there is pre-emption.” City of Burbank v. Lockheed Air Terminal Inc., 411 U.S. 624, 633 (1973).

On the other hand, the Ninth Circuit ruled that aerial signage regulations are not preempted by federal law. In Skysign Intl, Inc. v. City & Cty. of Honolulu, 276 F.3d 1109, (9th Cir. 2002), the Ninth Circuit considered citations issued based on violations of the signage regulations of the City and County of Honolulu, Hawaii, which prohibited “[a]ny sign which advertises or publicizes an activity not conducted on the premises on which the sign is maintained,” “[a]ny ... portable sign,” “[a]ny flashing sign,” and the use of aircraft to display “any sign or advertising device.” Id. at 1113. The court reasoned that:

Advertising is an area traditionally subject to regulation under the states’ police power, and we therefore presume that federal law does not displace Honolulu’s
regulatory authority over advertising absent a clear statement of the federal intent to do so, either by Congress or by the FAA as Congress's delegate.

276 F.3d at 1115.

The Skysign court held that although Congress has acted to exclude the states from regulating certain aspects of air travel, such as aircraft noise, 49 U.S.C. § 40103(a)(1) does not exclude any state regulation of aerial advertising. Id. at 1116. The court considered the fact that the aerial advertising company had obtained certificates of waiver from the FAA to allow operation of the aircraft in certain areas. Id. at 1113. The waivers themselves explicitly stated that “[t]he [aircraft] operator, by exercising the privilege of this waiver, understands all local laws and ordinances relating to aerial signs, and accepts responsibility for all actions and consequences associated with such operations.” Id. at 1117-1118. The court upheld the dismissal of the advertising company’s preemption claims.

PREEMPTION AND RCW 77.15.740

On December 17, 2015, the Federal Aviation Administration Office of the Chief Counsel issued a “State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet,” a copy is enclosed for your reference. This document states that operational UAS restrictions on flight altitude, operational bans, regulation of navigable airspace, and banning UAS operations within a certain distance of landmarks will be subject to strict scrutiny, whereas laws related to state and local police power generally are not subject to federal regulation. See UAS Fact Sheet at 3.

In the context of southern resident orca whales, federal law grants states explicit ownership and authority to manage “the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters.” 43 U.S.C. § 1311(a). It follows that managing the natural resources present within the water may at times require managing activities that occur above the water. If RCW 77.15.740(1)(a) was enacted to manage the southern resident orca whales, it would appear to be an appropriate use of the state’s police power.

GUIDANCE REQUESTED

Given that the airspace over San Juan County is used by a variety of aircraft, along with Model Aircraft as defined by FMRA, we ask that you provide guidance for each of the following questions:
1. Are aircraft and model aircraft “other objects” subject to RCW 77.15.740(1)(a)?

2. Does federal law or regulation regarding aircraft preempt RCW 77.15.740(1)(a) as applied to aircraft?

3. Does federal law or regulation regarding model aircraft as defined by the FMRA preempt RCW 77.15.740(1)(a) as applied to model aircraft?

4. How should the agencies charged with enforcement proceed during this time of changing FAA regulations?

Thank you in advance for your assistance in this matter.

Sincerely,

Randall K. Gaylord
Prosecuting Attorney

Jonathan W. Cain
Deputy Prosecuting Attorney

JC/tg

Enclosure

C: Sgt. Mullins, WDFW
    Sheriff Ron Krebs
    Mike Thomas, County Manager
    County Council
    Senator Kevin Ranker
Unmanned aircraft systems (UAS) are aircraft subject to regulation by the FAA to ensure safety of flight, and safety of people and property on the ground. States and local jurisdictions are increasingly exploring regulation of UAS or proceeding to enact legislation relating to UAS operations. In 2015, approximately 45 states have considered restrictions on UAS. In addition, public comments on the Federal Aviation Administration’s (FAA) proposed rule, “Operation and Certification of Small Unmanned Aircraft Systems” (Docket No. FAA-2015-0150), expressed concern about the possible impact of state and local laws on UAS operations.

Incidents involving unauthorized and unsafe use of small, remote-controlled aircraft have risen dramatically. Pilot reports of interactions with suspected unmanned aircraft have increased from 238 sightings in all of 2014 to 780 through August of this year. During this past summer, the presence of multiple UAS in the vicinity of wild fires in the western U.S. prompted firefighters to ground their aircraft on several occasions.

This fact sheet is intended to provide basic information about the federal regulatory framework for use by states and localities when considering laws affecting UAS. State and local restrictions affecting UAS operations should be consistent with the extensive federal statutory and regulatory framework pertaining to control of the airspace, flight management and efficiency, air traffic control, aviation safety, navigational facilities, and the regulation of aircraft noise at its source.

Presented below are general principles of federal law as they relate to aviation safety, and examples of state and local laws that should be carefully considered prior to any legislative action to ensure that they are consistent with applicable federal safety regulations. The FAA’s Office of the Chief Counsel is available for consultation on specific questions.

**WHY THE FEDERAL FRAMEWORK**

Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. 49 U.S.C. §§ 40103, 44502, and 44701-44735. Congress has directed the FAA to “develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.” 49 U.S.C. § 40103(b)(1). Congress has further directed the FAA to “prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes)” for navigating, protecting, and identifying aircraft; protecting individuals and property on the ground; using the navigable
airspace efficiently; and preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects. 49 U.S.C. § 40103(b)(2).

A consistent regulatory system for aircraft and use of airspace has the broader effect of ensuring the highest level of safety for all aviation operations. To ensure the maintenance of a safe and sound air transportation system and of navigable airspace free from inconsistent restrictions, FAA has regulatory authority over matters pertaining to aviation safety.

REGULATING UAS OPERATIONS

In § 333 of the FAA Modernization and Reform Act of 2012 (Public Law No. 112-95), Congress directed the Secretary to determine whether UAS operations posing the least amount of public risk and no threat to national security could safely be operated in the national airspace system (NAS) and if so, to establish requirements for the safe operation of these systems in the NAS.

On February 15, 2015, the FAA proposed a framework of regulations that would allow routine commercial use of certain small UAS in today’s aviation system, while maintaining flexibility to accommodate future technological innovations. The FAA’s Notice of Proposed Rulemaking offered safety rules for small UAS (under 55 pounds) conducting non-recreational or non-hobby operations. The proposed rule defines permissible hours of flight, line-of-sight observation, altitude, operator certification, optional use of visual observers, aircraft registration and marking, and operational limits.

Consistent with its statutory authority, the FAA is requiring Federal registration of UAS in order to operate a UAS. Registering UAS will help protect public safety in the air and on the ground, aid the FAA in the enforcement of safety-related requirements for the operation of UAS, and build a culture of accountability and responsibility among users operating in U.S. airspace. No state or local UAS registration law may relieve a UAS owner or operator from complying with the Federal UAS registration requirements. Because Federal registration is the exclusive means for registering UAS for purposes of operating an aircraft in navigable airspace, no state or local government may impose an additional registration requirement on the operation of UAS in navigable airspace without first obtaining FAA approval.

Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this ‘patchwork quilt’ of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow. A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system. See Montalvo v. Spirit Airlines, 508 F.3d 464 (9th Cir. 2007), and French v. Pan Am Express, Inc., 869 F.2d 1 (1st Cir. 1989); see also Arizona v. U.S., 567 U.S. ___, 132 S.Ct. 2492, 2502 (2012) ("Where Congress occupies an entire field . . . even complimentary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any
state regulation in the area, even if it is parallel to federal standards."), and *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 386-87 (1992).

**EXAMPLES OF STATE AND LOCAL LAWS FOR WHICH CONSULTATION WITH THE FAA IS RECOMMENDED**

- Operational UAS restrictions on flight altitude, flight paths; operational bans; any regulation of the navigable airspace. For example – a city ordinance banning anyone from operating UAS within the city limits, within the airspace of the city, or within certain distances of landmarks. Federal courts strictly scrutinize state and local regulation of overflight. *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973); *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1117 (9th Cir. 2002); *American Airlines v. Town of Hempstead*, 398 F.2d 369 (2d Cir. 1968); *American Airlines v. City of Audubon Park*, 407 F.2d 1306 (6th Cir. 1969).

- Mandating equipment or training for UAS related to aviation safety such as geo-fencing would likely be preempted. Courts have found that state regulation pertaining to mandatory training and equipment requirements related to aviation safety is not consistent with the federal regulatory framework. *Med-Trans Corp. v. Benton*, 581 F. Supp. 2d 721, 740 (E.D.N.C. 2008); *Air Evac EMS, Inc. v. Robinson*, 486 F. Supp. 2d 713, 722 (M.D. Tenn. 2007).

**EXAMPLES OF STATE AND LOCAL LAWS WITHIN STATE AND LOCAL GOVERNMENT POLICE POWER**

Laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation. *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002). Examples include:

- Requirement for police to obtain a warrant prior to using a UAS for surveillance.
- Specifying that UAS may not be used for voyeurism.
- Prohibitions on using UAS for hunting or fishing, or to interfere with or harass an individual who is hunting or fishing.
- Prohibitions on attaching firearms or similar weapons to UAS.

**CONTACT INFORMATION FOR QUESTIONS**

The FAA’s Office of the Chief Counsel is available to answer questions about the principles set forth in this fact sheet and to consult with you about the intersection of federal, state, and local regulation of aviation, generally, and UAS operations, specifically. You may contact the Office of Chief Counsel in Washington, D.C. or any of the following Regional Counsels:
APPENDIX – LIST OF AUTHORITIES

Federal Statutes


Federal Regulations

• Title 14 of the Code of Federal Regulations, Chapter 1.

The U.S. Supreme Court

• “Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxies onto a runway it is caught up in an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams, it may be diverted from its intended landing, and it obeys signals and orders. Its privileges, rights, and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government.” Northwest Airlines v. State of Minnesota, 322 U.S. 292, 303 (1944)(Jackson, R., concurring).

• “If we were to uphold the Burbank ordinance [which placed an 11 p.m. to 7 a.m. curfew on jet flights from the Burbank Airport] and a significant number of municipalities followed suit, it is obvious that fractionalized control of the timing of takeoffs and landings would severely limit the flexibility of FAA in controlling air traffic flow. The difficulties of scheduling flights to avoid congestion and the concomitant decrease in safety would be compounded.” Burbank v. Lockheed Air Terminal Inc., 411 U.S. 624, 639 (1973).

• “The Federal Aviation Act requires a delicate balance between safety and efficiency, and the protection of persons on the ground … The interdependence of these factors requires a uniform and exclusive system of federal regulation if the congressional objectives underlying the Federal Aviation Act are to be fulfilled.” Burbank at 638-639.

• “The paramount substantive concerns of Congress [in enacting the FAA Act] were to regulate federally all aspects of air safety … and, once aircraft were in ‘flight,’ airspace management….” Burbank at 644 (Rehnquist, J. dissenting).
• “Air traffic must be regulated at the national level. Without uniform equipment specifications, takeoff and landing rules, and safety standards, it would be impossible to operate a national air transportation system.” Gustafson v. City of Lake Angeles, 76 F.3d 778, 792-793 (6th Cir. 1996)(Jones, N., concurring).

• “The purpose, history, and language of the FAA [Act] lead us to conclude that Congress intended to have a single, uniform system for regulating aviation safety. The catalytic events leading to the enactment of the FAA [Act] helped generate this intent. The FAA [Act] was drafted in response to a series of fatal air crashes between civil and military aircraft operating under separate flight rules .... In discussing the impetus for the FAA [Act], the Supreme Court has also noted that regulating the aviation industry requires a delicate balance between safety and efficiency. It is precisely because of 'the interdependence of these factors' that Congress enacted 'a uniform and exclusive system of federal regulation.'" Montalvo v. Spirit Airlines, 508 F.3d 464, 471 (9th Cir. 2007), citing City of Burbank v. Lockheed Air Terminal Inc., 411 U.S. 624, 638-39 (1973).

• “[W]hen we look to the historical impetus for the FAA, its legislative history, and the language of the [FAA] Act, it is clear that Congress intended to invest the Administrator of the Federal Aviation Administration with the authority to enact exclusive air safety standards. Moreover, the Administrator has chosen to exercise this authority by issuing such pervasive regulations that we can infer a preemptive intent to displace all state law on the subject of air safety.” Montalvo at 472.

• “We similarly hold that federal law occupies the entire field of aviation safety. Congress' intent to displace state law is implicit in the pervasiveness of the federal regulations, the dominance of the federal interest in this area, and the legislative goal of establishing a single, uniform system of control over air safety. This holding is fully consistent with our decision in Skysign International, Inc. v. Honolulu, 276 F.3d 1109 (9th Cir. 2002), where we considered whether federal law preempted state regulation of aerial advertising that was distracting and potentially dangerous to persons on the ground. In upholding the state regulations, we held that federal law has not 'preempt[ed] altogether any state regulation purporting to reach into the navigable airspace.' Skysign at 1116. While Congress may not have acted to occupy exclusively all of air commerce, it has clearly indicated its intent to be the sole regulator of aviation safety. The FAA, together with federal air safety regulations, establish complete and thorough safety standards for interstate and international air transportation that are not subject to supplementation by, or variation among, states.” Montalvo at 473-474.

• “[W]e remark the Supreme Court's reasoning regarding the need for uniformity [concerning] the regulation of aviation noise, see City of Burbank v. Lockheed Air Terminal, 411 U.S. 624 (1973), and suggest that the same rationale applies here. In Burbank, the Court struck down a municipal anti-noise ordinance placing a curfew on jet flights from a regional airport. Citing the 'pervasive nature of the scheme of federal
regulation,' the majority ruled that aircraft noise was wholly subject to federal hegemony, thereby preempting state or local enactments in the field. In our view, the pervasiveness of the federal web is as apparent in the matter of pilot qualification as in the matter of aircraft noise. If we upheld the Rhode Island statute as applied to airline pilots, 'and a significant number of [states] followed suit, it is obvious that fractionalized control ... would severely limit the flexibility of the F.A.A ....' [citing Burbank] Moreover, a patchwork of state laws in this airspace, some in conflict with each other, would create a crazyquilt effect ... The regulation of interstate flight-and flyers-must of necessity be monolithic. Its very nature permits no other conclusion. In the area of pilot fitness as in the area of aviation noise, the [FAA] Act as we read it 'leave[s] no room for ... local controls.' [citing Burbank]. French v. Pan Am Express, Inc., 869 F.2d 1, 6 (1st Cir. 1989).