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December 1, 2011

Mr. Mark J. Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
333 E. Barrett Prettyman Courthouse
Room 5523
Washington, D.C. 20530

Re: NBAA v. FAA, No. 11-1241 (D.C. Cir.)

Dear Mr. Langer:

This case is scheduled for oral argument on December 2. The FAA files this letter pursuant to FRAP 28(j) to give notice that FAA has today withdrawn the policy at issue in this case. Effective immediately, the FAA will no longer require an owner or operator of general aviation aircraft or of on-demand air charter aircraft (operating under 14 CFR Part 135) to submit a Certified Security Concern to block that owner or operator's aircraft registration number from the FAA's ASDI or NASSI data (except ASDI or NASSI data made available to a Government agency).

FAA has adopted an interim policy, consistent with Section 119A of H.R. 2112, "Consolidated and Further Continuing Appropriations Act, 2012," which will allow aircraft owners and operators to submit block requests to the FAA while a permanent policy is being developed. That new permanent policy will be consistent

with the appropriations rider and will remain in effect even after the end of the fiscal year covered by the appropriations rider. Furthermore, during the interim period, FAA will continue to block the aircraft registration numbers of those aircraft owners or operators that have submitted Certified Security Concerns.

FAA respectfully submits that this case is now moot. *See Larsen v. United States Navy*, 525 F.3d 1, 4 (D.C. Cir. 2008) (agency's elimination of rule rendered challenge to rule moot because "any injunction or order declaring it illegal would accomplish nothing"). The voluntary cessation exception to the mootness doctrine is inapplicable because FAA is replacing the challenged policy with a new and different policy, and there is no reason to expect that the now-withdrawn policy will be revived in the future. *See National Black Police Ass'n v. District of Columbia*, 108 F.3d 346, 349-50 (D.C. Cir. 1997). The "capable of repetition, yet evading review" exception is likewise inapplicable, because if FAA were ever to reissue the challenged policy in the future, that action would be subject to judicial review at that time. *See American Bar Ass'n v. FTC*, 636 F.3d 641, 648 (D.C. Cir. 2011).

Sincerely,

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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2011, I filed the foregoing letter with the D.C. Circuit. Service of the letter on counsel listed below will be accomplished by the Court's CM/ECF system. Counsel for the United States also e-mailed this letter to petitioner's counsel shortly after filing it, and notified petitioner's counsel of the filing by telephone immediately thereafter.

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