

November 30, 2011

Mr. Robert S. Rivkin
General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Mr. Rivkin:

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

As president and CEO of NATA and on behalf of our members located in the state of California, I am writing to you in response to your November 21st letter to Congressman Flores and others regarding the ongoing Proposition 65 litigation in California regarding the use of leaded aviation gasoline (avgas). In the closing of that letter, you indicated that the Department of Transportation and the Federal Aviation Administration would consider involvement in this matter in the event of ongoing Proposition 65 litigation involving avgas. As I am sure you are aware, the Center for Environmental Health (CEH) responded to the dismissal of our group's federal lawsuit by filing its own suit, under Proposition 65, in state court the following day, October 20th.

In its state lawsuit, CEH contends that the sale of leaded aviation gasoline at airports represents a violation of the warning provision of Proposition 65 since aircraft that "take off and land" at airports where avgas is sold emit lead in the areas surrounding the airport. CEH asks the court to: (1) impose civil penalties of up to \$2,500 per day per violation; (2) prohibit the sale of leaded aviation gasoline unless a warning, to be proposed by CEH, is provided to everyone residing near the federally obligated airports where the defendants operate; and (3) require the defendants to pay CEH's legal fees.

As you indicated in your letter, and a position with which I concur, the preferable resolution to the issue of transitioning the general aviation industry to an unleaded fuel is through the completion of the ongoing federal rulemaking. However, the CEH suit in California poses a significant threat to that rulemaking. As I am sure you are also aware, many Proposition 65 lawsuits are resolved through settlement due to the very structure of Proposition 65 (where the

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burden of proof is on the accused) and the enormous potential penalties and other costs required in mounting a successful defense. Proposition 65 plaintiff's attorneys have become deft at driving litigation into settlement rather than in-depth litigation. In this case, CEH has released many of the larger companies originally targeted in this suit and now has focused solely on a limited number of defendants, the FBOs that under airport minimum standards are required to sell avgas. Currently, other than one distributor, airport sponsors, aircraft operators, aviation fuel producers and distributors are not included in this lawsuit, despite their role in the industry and the use of avgas. Under the framework now established by CEH, with the leverage provided by California's Proposition 65, these few FBOs are tasked with defending the use of an FAA-approved aviation fuel by federally certificated aircraft at federally funded airports and in federally controlled airspace. Without DOT and FAA intervention in this case, the future of aviation gasoline will be charted by the ability of these few small businesses to fight against a scheme that tilts the table in favor of the plaintiff's narrow agenda and against orderly and thorough agency rulemaking that considers all the relevant public policy goals at stake.

For these reasons, NATA requests that the DOT and the FAA intervene in this case in a timely fashion to protect the national airspace system, federally funded airports, and the FAA's authority to regulate the aviation industry. I would be happy to brief you and your staff further on the pending lawsuit and to discuss possible methods of DOT and FAA intervention in light of the current state of the case.

Sincerely,

A handwritten signature in black ink, appearing to read "James K. Coyne", with a long, sweeping underline.

James K. Coyne
President and CEO