



PROPOSED FAA RULE CHANGE FOR BUILDING HEIGHT REGULATIONS

By Erin Stackley

In 2012, the Federal Aviation Agency (FAA) released a proposed “reinterpretation” of their regulations for building heights in the vicinity of airports. Its main point was adding “one engine inoperative,” or OEI, procedures to Federal Aviation Regulation Part 77, which establishes standards and notification requirements for objects affecting navigable airspace – including building heights. Under current regulations, the FAA sets the maximum building height limit for areas surrounding airports, and then each airline determines their own OEI path for their planes at that airport – for those instances when a plane that is taking off or landing has one non-functioning engine and is thus possibly coming at a lower height or angle than usual. These OEI procedures differ for each airline, and are considered proprietary information, so they are not publicly available.

Under the proposed reinterpretation, the FAA will create a voluntary program: participating airports would have just a single OEI path for all airlines to follow in the event of an engine failure. Any newly planned buildings that fall within that path will have to meet the new building height regulations set for that area, and any existing buildings will have to ensure that any renovations or remodeling to their buildings comply with the new rules as well. Obviously, this is a concern to NAR, as airports frequently are surrounded by large office parks with tall buildings in them, and studies have found that OEI paths frequently have lower height criteria than the current existing federal regulations require.

WHAT IS THE ISSUE?

NAR, along with many industry groups, believes that the FAA proposal constitutes a rule change, and not a reinterpretation. This is important because while a reinterpretation of a rule by an agency can be done with relatively little fanfare, an actual rule change requires that the agency follow standard rule-making procedures, commonly referred to a “notice-and-comment”: they must provide notice of the proposed rule and have a comment period open to the public, followed by public hearings at which members of the public and the affected business community can directly ask agency officials questions about the changes. In this situation in particular this is crucial, as the FAA is relying on proprietary information

from the airlines – which again, is not publicly available – to determine the new height restrictions. Without hearings at which we can question the FAA, there is no way for us to know what these OEI procedures entail, or how the FAA has come to their conclusion regarding the appropriate building height limit in the OEI paths.

Additionally, the FAA needs to consider the economic impact these changes would have on the areas in question. Potential development in the paths may stall; renovations and redevelopment of existing buildings will be put at risk. Given the crucial link between a healthy real estate market and a growing economy, it is important that the FAA consider the proposed policy’s effects on local jobs and tax revenues before they make changes to their rules.

WHAT IS NAR DOING?

NAR has been working with a coalition of industry groups to advocate for the FAA to follow formal notice-and-comment rulemaking procedures with this rule change, while stressing the economic impact of creating more burdensome regulations for building heights near airports. NAR has sent a letter to the Secretary of the Department of Transportation and submitted a comment letter to the FAA explaining these concerns. NAR also supports H.R. 4126, a bill introduced by Rep. Jim Moran of Virginia, which would require the FAA to follow the formal rule-making procedures before including OEI procedures into Part 77. Ensuring the safety of airlines and their passengers is paramount, but the FAA must allow the public and the affected businesses access to the data they are using to make these determinations before they enact such changes.

NEXT STEPS

NAR continues to monitor this issue, advocating for formal rule-making procedures while stressing the need to include the economic impact of such changes in their considerations. At every available opportunity, NAR will continue to participate in hearings, comment periods, and coalition work on this issue. If you have any questions or would like further information on this, please contact Erin Stackley at estackley@realtors.org. ■