

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Foxx:

The undersigned trade associations represent a significant portion of the nation's real estate industry, and we write to you regarding an issue involving possible changes to the Federal Aviation Administration (FAA) building height requirements. We have been following this issue for some time, but have recently been made aware of plans to include one-engine inoperative (OEI) procedures into the criteria for building height determinations near airports. This raises significant questions. We believe that, should the FAA indeed move forward with this matter, it is critical that the agency does so in a way that adheres to all standard rulemaking procedures.

From testimony by FAA Administrator Huerta at a February 5, 2014 hearing held by the House Transportation and Infrastructure Committee, we understand that the FAA is considering a change to the criteria used to evaluate whether structures will be in compliance with 14 CFR Part 77 ("Part 77"), notably by incorporating OEI procedures, into the criteria. This change, the first in more than seventy years, would alter decades of agency precedent in evaluating proposed construction near airports. We simply seek to ensure that a significant change like this is conducted in accordance with the standard administrative rulemaking procedures, after thorough public notice and comment to fully evaluate the effects of the proposal. Before FAA might make such a substantive change in long-standing regulations, all parties – including transportation and community planners, real estate interests, chambers of commerce, and other stakeholders – would benefit from a fact-based administrative record that explains the basis for a new agency approach to justify incorporation of OEI procedures into building height determinations near airports.

OEI procedures are proprietary to airlines and are not publicly available, so it is unclear how the FAA came to consider incorporating them into Part 77 determinations. The procedures are based on each airline's unique operating conditions (e.g. fleet, airports, flight route, passenger load, cargo load, etc.) and ultimately help drive proprietary economic considerations for airlines, not flight safety considerations.

The impacts of this Part 77 change are potentially far-reaching. Should the FAA choose to move forward, we ask that it do so in a manner that considers the effects of this change on local economies. Incorporating OEI procedures into Part 77 determinations could limit building heights in many downtown areas. Given the crucial link between a healthy real estate market and a growing economy, we ask that the FAA consider the policy's effects on local jobs and tax revenues in any change to Part 77 procedures, through input from the Office of Management and Budget (OMB) and Office of Information and Regulatory Affairs (OIRA).

We hope you will do everything in your power as Secretary of Transportation to ensure that any changes to the Part 77 procedures are properly conducted according to standard administrative rulemaking procedures and supported by an administrative record made available to the public. Thank you for your attention to this important matter.

Respectfully,

Building Owners and Managers Association International
NAIOP, The Commercial Real Estate Development Association
National Association of Real Estate Investment Trusts
National Association of REALTORS®
The Real Estate Roundtable