Executive Report 2.0 FAA Noise Policy

November 7, 2022

Prepared for:
Congressional Quiet Skies Caucus

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AVIATION-IMPACTED COMMUNITIES ALLIANCE





AICA EXECUTIVE REPORT 2.0 ON FAA NOISE POLICY November 7, 2022

Assessment of the FAA/Federal Mediation & Conciliation Service September 2021 Noise Policy Review Process Interagency Agreement

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AICA Executive Report 2.0 contains new information from Modification One of the FAA/FMCS Interagency Agreement (IAA) regarding FAA's Noise Policy Review from FOIA responses received from the FAA and FMCS. Report 2.0 is a continuation of AICA's assessment of the FAA's Noise Policy Review process. It builds on AICA Executive Report 1.0 dated October 10, 2022.

Report	FOIA Information Obtained	Agency	Content
AICA Executive Report 1.0	September 16, 2022	FMCS	Original IAA: Agreement Start Date 9/14/2021
AICA Executive Report 2.0 (This document)	November 1, and November 2, 2022	FAA and FMCS	IAA "Modification One": Modifications to Original IAA, FAA Contracting Officer Signature Date 9/1/2022



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Assessment of the FAA/Federal Mediation & Conciliation Service September 2021 Noise Policy Review Process Interagency Agreement

INTRODUCTION

On November 1, 2022, the AICA obtained a copy of a <u>modified FAA/FMCS IAA document</u> through a September 20, 2022 FOIA request to the FAA covering the period between September 21, 2021 and September 20, 2022. On November 2, 2022, the FMCS responded to a separate, but identical FOIA request by providing the same IAA "Modification One" document. The FOIA requests were for three sets of records:

- A. "All documents that amend the mutual agreement" of the Federal Mediation and Conciliation Service (FMCS) and the Federal Aviation Administration (FAA);
- B. "All monthly reports from the FMCS" provided pursuant to Article 6, Section C of the agreement between FAA and FMCS signed September 21, 2021; and
- C. All "final written products" referred to in Article 6, Section D of the agreement between FAA and FMCS signed September 21, 2021.

NOTE: <u>AICA Executive Report 1.0, October 10, 2022</u> assesses the original IAA obtained on September 16, 2022 from FMCS through an August 4, 2022 FOIA request. This report, <u>AICA Executive Report 2.0</u>, continues AICA's assessment of the FAA Noise Policy Review process with important new information.

We ask that the FAA answer the updated Questions in <u>APPENDIX A</u> of this Report regarding the FAA/FMCS Interagency Agreement "Modification One". We have provided an updated Timeline and Reference list of important documents regarding the FAA/FMCS IAA in <u>APPENDIX B</u>.

AICA comments about the IAA are in italics in the text that follows.

OVERARCHING TAKEAWAY

The IAA "Modification One" confirms that the deliverables for all of Task 1 and most of Task 2 were COMPLETED by September 1, 2022. Unfortunately, this substantiates the overarching takeaway from the AICA assessment of the original contract – the FAA continues to exclude directly and substantially affected communities as key external stakeholders which is not commensurate with the timely inclusion, communication, and level of engagement with the other external stakeholders throughout the FAA noise policy review process. The exclusion of communities is the underpinning of a flawed engagement process which distorts all Tasks in the

IAA and therefore the legitimacy of the entire FAA noise policy review process. This contradicts FAA's May 10, 2021 letter to Congressional Quiet Skies Caucus:

"Regarding next steps, the FAA is continuing to lay additional foundation for the policy review. We are bringing on board the Federal Mediation and Conciliation Service (FMCS) to assist with designing an inclusive and participatory policy review framework and process that prioritizes input from substantially affected stakeholders, including local communities. The FMCS will also facilitate these internal and external stakeholder dialogues. This will not be a short, simple, superficial undertaking. It will be robust, data-driven, and inclusive. We can provide update briefings as the review gets underway."

New language in the IAA "Modification One", Task 5b deliverable does not solve the problem. Engaging the public or local communities only at the very end of the FAA's noise policy review process is seriously flawed. The original wording for the Task 5b deliverable accurately captures what the FAA has historically done and continues to do for community engagement - to "roll out" the FAA's already made decisions and policies to the public. The new, crafted wording "solicit views from the public regarding options or potential recommendations to revise the noise policy" and "to gather feedback" is too little and too late. This maneuvering of the language is disingenuous because it takes place at the very end of the noise policy review process, it remains "OPTIONAL", and is not commensurate with the timely inclusion, communication, and level of engagement as the other external stakeholders earlier in FAA's noise policy review process. When the community is engaged late in the FAA processes it results in a "check the box" activity. The FAA's on-going messaging and assertion that it has and is improving community engagement is not credible given the glaring evidence of the continued exclusion and lack of communication with local communities throughout the FAA noise policy review process.

The FAA's continued disingenuous community engagement also is shown by its hesitancy to provide requested FOIA documents. The FOIA requests are simple ones, but the FAA has taken more time to provide documents than is allowed. For the first request we asked for one document, the IAA, yet it took 61 business days instead of the 20+10 working days required by law. For the second request, we asked for all modified IAAs, required monthly reports over the approximately 12-month period, and final written products for any completed Task and deliverable. Even though 10 deliverables are now marked as COMPLETED, neither the FAA nor the FCMS provided final written products for the deliverables. They also gave no explanation as to how deliverables can be completed without the FAA and FMCS adhering to the "Submission Process For Deliverables" and the "Timing of Submissions" as required in Article 6A through F. This is not how "an inclusive and participatory policy review framework and process that prioritizes input from substantially affected stakeholders, including local communities" works.

FOIA REQUEST A: "All documents that amend the mutual agreement"

Notable Information and AICA Comments

<u>FAA's November 1, 2022 cover letter</u> states: "A search was performed in the Office of Environment and Energy (AEE). Enclosed, please find a copy of Modification One to the Reimbursable Interagency Agreement between the FMCS and the FAA ("Modification One"), executed by the FAA on September 1, 2022. Modification One is 12 pages long and is provided in its entirety as responsive to request A."

All deliverables and status for Task 1: Project Governance Structure Design are now shown as "COMPLETED" under IAA Article 6. Completion dates are not provided.

✓ Task 1 Deliverable: Background Research Plan; Original IAA due date, Two (2) months from award [9/14/21]; now COMPLETED.

Major issue - It is now confirmed that Task 1: Background Research Plan is completed. We are not aware of any interviews conducted by FMCS with directly and substantially impacted communities as key external stakeholders. The absence of local communities is the underpinning of a flawed engagement process which distorts all subsequent tasks in the agreement.

- ✓ Task 1 Deliverable: Summary of stakeholder assessment interviews and issues; Original IAA due date, Three (3) months from award; now COMPLETED.
- ✓ Task 1 Deliverable: Governance Structure Strategy; Original IAA due date, Four (4) months from award; now COMPLETED.
- ✓ Task 1 Deliverable: Decision-making Protocols; Original IAA due date, Four (4) months from award; now COMPLETED.
- ✓ Task 1 Deliverable: Noise Policy Review Plan; Original IAA due date, Four (4) months from award; now COMPLETED.
- ✓ Task 1 Deliverable: Engagement strategy; Original IAA due date, Four (4) months from award; now COMPLETED.

Major issue - After the completion of all of Task 1 and most of Task 2 deliverables, the community (external stakeholders) have not had any meaningful communication or engagement on the FAA's Noise Policy Process despite the FAA's assertions "We can provide"

update briefings as the review gets underway" and "[FAA] has implemented enhanced community engagement efforts".

Deliverables and status for Task 2A, 2B, 2C, and 2D under Task 2: Noise Policy Review Systems Design are now shown as "COMPLETED" under IAA Article 6. Completion dates are not provided.

✓ Task 2a Deliverable: Common Problem Statement; Original IAA due date for Task 2a, Five (5) months from award; now COMPLETED.

Major issue - It is now confirmed that External stakeholders (i.e., communities) were not included in defining the underlying problem nor in defining the desired outcome and its success. Task 2a contradicts FAA's May 10, 2021 letter to Congressional Quiet Skies Caucus:

"Regarding next steps, the FAA is continuing to lay additional foundation for the policy review. We are bringing on board the Federal Mediation and Conciliation Service (FMCS) to assist with designing an inclusive and participatory policy review framework and process that prioritizes input from substantially affected stakeholders, including local communities. The FMCS will also facilitate these internal and external stakeholder dialogues. This will not be a short, simple, or superficial undertaking. It will be robust, data-driven, and inclusive. We can provide update briefings as the review gets underway."

✓ Task 2b Deliverable: Synthesis of Stakeholder Goals, Concerns and Interests; Original IAA due date for Task 2a, Five (5) months from award; now COMPLETED.

Major issue - It is now confirmed that Task 2b is completed and we are not aware of any directly and substantially impacted communities engaged as external stakeholders to "identify and prioritize goals, concerns, and interests for consideration by FAA during noise policy review" which contradicts <u>FAA's May 10, 2021 letter to Congressional Quiet Skies</u> Caucus.

✓ Task 2c Deliverable: Noise Policy Review Process Plan; Original IAA due date for Task 2c, Five (5) months from award; now COMPLETED.

¹ FAA's May 10, 2021 letter to Congressional Quiet Skies Caucus

² FAA's Flight Plan 21, FAA Strategic Plan FY22-26, accessed 11/2/2022

Major issue - The absence of proper sequencing for communication with the external stakeholder of substantially impacted communities is evidenced by no meaningful communication or engagement to date.

✓ Task 2d Deliverable: Negotiation Protocols; Original IAA due dates for Task 2B, 2C, and 2D, Five (5) months from award; now COMPLETED.

Major issue - The Negotiating Protocols failed to "develop an accountable, meaningful, timely, and participatory review process". Negatively affected local communities have been excluded from communication and engagement throughout the "participatory review process".

Deliverable and Status for Task 2e: Stakeholder Education on principles of interest-based negotiation under IAA Article 6 is Unchanged.

Task 2e Deliverable: Stakeholder Education on principles of interest-based negotiation;
 Due date is still listed as Five (5) months from award.

Deliverables and Status for Task 3: Meeting Facilitation/Participatory Review Process, Task 4: Strategic Communications, and Task 5: Internal Change Management under IAA Article 6 have all Changed.

 Deliverables for Task 3, Task 4 and Task 5 "due dates" have all been changed to "Not later than September 2023"; Original IAA due date for Task 3 and Task 4, Eleven (11) months from award; Original IAA due date for Task 5, Within 365 days of the start of the option period.

Task 5 (OPTIONAL) Deliverables: Internal Change Management under IAA Article 6 have Changed.

- The Scope of Work, Article 5 (OPTIONAL), is unchanged but the deliverables have changed.
- The deliverable was removed for Task 5a (OPTIONAL), Article 6: Change Management Strategy and Implementation Plan.
- The wording has changed for the Task 5b (OPTIONAL), Article 6 deliverable: Meeting Facilitation and Strategic Communication.
 - Original IAA Version for Task 5b (OPTIONAL) Deliverable:

If the FAA exercises its option to extend the IAA to include change management services, FMCS will facilitate structured, participatory meetings or workshops to **roll out the revised noise policy** in accordance with the change management strategy and implementation plan approved by the FAA. With input and approval from FAA, FMCS will develop meeting agendas and supporting materials required each meeting

related to the **roll out of the revised noise policy.** FMCS will assist FAA in creating and maintaining ongoing stakeholder outreach and feedback mechanisms.

Modified Version for Task 5 (OPTIONAL) Deliverable:

FMCS will assist FAA in creating and maintaining ongoing stakeholder outreach and feedback mechanisms. FMCS will assist FAA by facilitating structured, participatory meetings or workshops to **solicit views from the public regarding options or potential recommendations to revise the noise policy.** FMCS will assist FAA to develop and implement meeting agendas and supporting materials **to gather feedback.**

Major issue - The overarching problem is that the goals for community engagement between the FAA and substantially affected communities are not aligned. FAA pursues community understanding and acceptance of decisions it is about to make or has made and communities expect meaningful dialogue with the FAA before decisions are made.

Engaging the public or local communities only at the very end of the FAA's noise policy review process (Task 5 deliverable) is seriously flawed. The original wording for the Task 5b deliverable accurately captures what the FAA has historically done and continues to do for community engagement - to "roll out" the FAA's already made decisions and policies to the public. The new, crafted wording "solicit views from the public regarding options or potential recommendations to revise the noise policy" and "to gather feedback" is too little and too late. This maneuvering of the language is disingenuous because it takes place at the very end of the noise policy review process, it remains "OPTIONAL", and is not commensurate with the timely inclusion, communication, and level of engagement as the other external stakeholders earlier in FAA's noise policy review process. When the community is engaged late in the FAA processes it results in a "check the box" activity.

The FAA's on-going messaging and assertion that it has and is improving community engagement is not credible given the glaring evidence of the continued exclusion and lack of communication with local communities throughout the FAA noise policy review process.

FOIA REQUEST B: "All monthly reports from the FMCS"

Notable Information and AICA Comments

<u>FAA's November 1, 2022 cover letter</u> states: "AEE did not locate responsive records related to request B for the period identified in your September 20, 2022 email. The September 2021 interagency agreement at Article 6, Section C provided to you in response to FOIA request 2022-10696 does not require the FMCS to provide its monthly status reports to the FAA Contracting Officer's Representatives (COR) and Contracting Officer (CO) in writing. To date, FMCS has provided reports verbally."

The AICA's request for monthly reports is pursuant to Article 6, Section C of the agreement.

IAA Article 6C. "MONTHLY STATUS AND FINANCIAL REPORTING REQUIREMENTS. FMCS
will submit to the FAA COR and CO (identified in Article 7) a monthly report of the status
of the project which includes tasks completed, tasks in progress, any changes to the
schedule, and any observed project risks of which FAA should be aware."

There are no modifications to Article 6, Section C of the IAA.

Major issue - It is surprising that the reports from FMCS to FAA are verbal and not written reports. We expect there is some type of note taking for the monthly status report information to be conveyed to FMCS and FAA employees beyond those attending the verbal updates.

The FMCS response to the same FOIA request provided no explanation as to why this part of the request was ignored. It provided no monthly report documents.

FOIA REQUEST C: "All 'final written products'"

Notable Information and AICA Comments

<u>FAA's November 1, 2022 cover letter</u> states: "Finally, AEE did not locate responsive records related to request C for the period identified in your September 20, 2022 email. While the FMCS has submitted initial drafts of deliverables in accordance with the deadlines set forth in the September 2021 agreement, they have not yet submitted "final written products" in accordance with Article 6, Sections D and F of the agreement."

IAA Article 6, Sections D, E, and F define the SUBMISSION PROCESS FOR DELIVERABLES, TIMING OF SUBMISSIONS, and ACCEPTANCE PROCESS AND CRITERIA, respectively, for all deliverables.

- O IAA Article 6D. "SUBMISSION PROCESS FOR DELIVERABLES. FMCS will follow a three-part framework in developing or revising all written products identified in Article 6. For each product, FMCS will submit a written draft for review by the FAA. FAA will submit written comments and edits. FMCS will incorporate and respond, as appropriate, to FAA feedback before submitting the final written product to the COR, as required.
- o IAA Article 6E. "TIMING OF SUBMISSIONS. All deliverables must be submitted timely and in accordance with the corresponding task description. Documents/reports must be made available five business days prior to their scheduled date of completion for Government review and acceptance. Deliverables must conform to established FAA guidelines and standards and accepted industry standards. In support of the identified tasks and subtasks, the Contractor must comply with existing and evolving FAA Information System Security (ISS) guidance, policies and procedures."
- o IAA Article 6F2. "ACCEPTANCE PROCESS AND CRITERIA. Acceptance of the deliverables will be made in writing by the Contracting Officer after review by both the FMCS and Contracting Officer. COR and FAA Task Manager have ten business days to inspect the work and either report deficiencies or accept the deliverable as meeting all requirements. FMCS must correct deficiencies that are not a result of a change in user requirements or specifications and redeliver the document(s) to the FAA within ten days of notification by the FAA that deficiencies were found."

Major issue - It is inconsistent to mark Tasks and their required deliverables to be COMPLETED while also stating that FMCS has "not yet submitted 'final written products' in accordance with Article 6, Sections D and F of the agreement". Article 6D of the original IAA and IAA Modification One describe the required "Submission Process for Deliverables" and deliverables must be submitted in order to mark the Task as "COMPLETED".

FMCS's November 2, 2022 FOIA response and cover letter ignore the request for final written products. FMCS did not explain its nonresponse to this part of the FOIA nor did it provide

documents that comply with the request. When asked about this, the responding FMCS Deputy General Counsel said that the explanation was in the FAA's response cover letter.

The obvious contradictions between what is written in the IAA and its modification (Specific Task "COMPLETED") with what is reported in the FAA cover letter and the FMCS's verbal explanation ("No final written products") is of great concern to community groups which continue to be excluded from communication and engagement on the FAA noise policy process.

According to FOIA.GOV "The basic function of the Freedom of Information Act is to ensure informed citizens, vital to the functioning of a democratic society." With their persistent efforts to achieve opaqueness instead of transparency, the FAA and FMCS have failed to comply with this basic function of a democratic society.

AICA Co-founders Cindy L. Christiansen, PhD, and Darlene Yaplee



APPENDIX A: Questions Regarding the FAA/FMCS IAA

Updated for Executive Report 2.0

Questions 1-3 were first asked in AICA's <u>Assessment of the FAA/Federal Mediation & Conciliation Service September 2021 Noise Policy Review Process Interagency Agreement, AICA Executive Report 1.0.</u> The information that we received from the September 20, 2022 FOIA response and cover letter has generated additional questions, numbered 4-6 below.

We ask that the FAA answer the following questions regarding the FAA/FMCS September 2021 Interagency Agreement:

- Given the FAA's statement, "...designing an inclusive and participatory policy review framework and process that prioritizes input from substantially affected stakeholders, including local communities. The FMCS will also facilitate these internal and external stakeholder dialogues. This will not be a short, simple, or superficial undertaking. It will be robust, data-driven, and inclusive." (May 10, 2021 letter)
 - a. Did the FAA give the FMCS their two letters to the Congressional Quiet Skies Caucus (May 10, 2021 and June 30, 2022) as direction to the FMCS for the FAA Noise Policy Review Process expectations and background as part of Task 1A Background research?
 - b. Please comment how the FAA "prioritizes input from 'substantially affected' stakeholders, including local communities" when there has been no public evidence of local communities having commensurate inclusion on par with other key external stakeholders nor informed of the FAA noise policy review process since the IAA was signed over one year ago?
 - c. Who are the "external stakeholders" that have or will be interviewed? How were they selected?
 - d. Who is responsible for the adequate representation and inclusion of substantially affected communities as key stakeholders?
 - e. Explain how directly and substantially affected communities are adequately included as key stakeholders in each of the Tasks of the IAA?
- 2. Have any of the Task deadlines changed from the original IAA? (Article 6, Section A. and B. requires documentation of mutual agreements on schedule changes). If yes, please provide an updated timeline. [The Modification One document answers this question with deadline changes shown as of September 1, 2022 but not changes after this date.]

- 3. Please provide us with copies of the FMCS monthly reports on the status (Article 6, Section C.) and final written products (Article 6, Section D.)
- 4. NEW: Please explain how 10 deliverables have been completed but there are no written documents about these Task conclusions.
- 5. NEW: Are there written notes or other types of documents that record the "verbal" monthly reports by FMCS? If so, please provide us with copies.
- 6. NEW: Please provide us with subsequent IAA Modification versions in a timely fashion so that FOIA requests are not required to receive meaningful updates on the FAA Noise Policy Review.



APPENDIX B: Timeline and References

Updated for Executive Report 2.0

January 13, 2021

- FAA Releases the NES Study Results
- <u>FEDERAL RECORD NOTICE: Overview of FAA Aircraft Noise Policy and Research Efforts:</u>
 <u>Request for Input on Research Activities to Inform Aircraft Noise Policy</u> with March 15,

 2021 deadline for comments (60 days).

February 22, 2021

 FAA Webinar Neighborhood Environmental Survey and Noise Research Portfolio on February 22, 2021. <u>The FAA's link to the webinar recording</u>.

March 10, 2021

QSC letter to FAA: Questions on NES and next steps the FAA plans to take <u>"Norton, Quiet Skies Caucus Send Letter to FAA on Aircraft Noise" Press Release and Letter.</u>

March 11, 2021

<u>FEDERAL RECORD NOTICE extends comment period to April 14, 2021</u> (90 days total),
 4,161 Comments received.

May 10, 2021

• FAA's response to QSC's March 10, 2021 letter <u>Administrator Dickson's letter to Quiet</u> Skies Caucus c/o Congressman Lynch.

"We are bringing aboard the FMCS to assist with designing an inclusive and participatory policy review framework and process that prioritizes input from substantially affected stakeholders, including local communities. The FMCS will also facilitate these internal and external stakeholder dialogues. This will not be a short, simple, or superficial undertaking. It will be robust, data-driven, and inclusive...."

May 28, 2021

 Publication: COMMUNITY ALLIANCE LEADERS DEFINE ISSUES NOISE POLICY REVIEW MUST ADDRESS; <u>Airport Noise Report newsletter pages 72-74 in Volume 33, Number 18, May 28, 2021</u>.

September 10, 2021

• <u>FAA/FMCS Interagency Agreement</u> signed; agreement period September 14, 2021 through September 13, 2023.

November 2021

• The FAA responded to an inquiry made by *Airport Noise Report* editor Anne Kohut in November 2021.

"The FAA team leads have met with the FMCS facilitation team and are providing introductory briefings on the agency's existing noise policy, research and stakeholders," Airport Noise Report; August 5, 2022. Airport Noise Report; August 5, 2022.

April 20, 2022

• <u>Letter: Quiet Skies Caucus (QSC) to the Honorable Pete Buttigieg regarding NextGen</u> Advisory Committee (NAC) membership expansion.

May 31, 2022 (Due Date)

• FAA FY2022 Portfolio of Goals, page 89. Target 1: Initiate public and stakeholder engagement in the FAA noise policy review process. Due May 31, 2022.

June 30, 2022

• FAA response to QSC's April 20, 2022 letter.

"The FAA is currently undertaking a review of the FAA noise policy, including the noise metric and thresholds. However, the noise policy topic, including defining, updating, or evaluating noise metrics, is not within the scope of the NAC. The FAA will proactively engage stakeholders and the public in the review of the current noise policy through a robust, thorough, evidence-based, and inclusive process. This will include participation opportunities for all stakeholders, including those that represent local communities."

August 4, 2022

• First FOIA Request sent to the FAA and FMCS for the Interagency Agreement for the FAA's Noise Policy process.

September 1, 2022

• <u>IAA "Modification One"</u>: Modifications to Original IAA, FAA Contracting Officer Signature Date 9/1/2022. (AICA received Modification One from the FAA on 11/1/2022).

September 16, 2022

• FMCS responds to August 4, 2022 FOIA Request and provides the <u>original IAA</u> (but not the FAA – see November 1, 2022).

September 20, 2022

• Second FOIA Request sent to the FAA and FMCS for A. All documents that amend the mutual agreement, B. All monthly reports from the FMCS, and C. "All 'final written products'".

September 30, 2022 (Due Date)

• FAA FY2022 Portfolio of Goals, page 89. Target 2: Complete initial noise policy review and identify potential policy options. Due September 30, 2022.

October 10, 2022

- AICA publishes <u>"Executive Report 1.0 on FAA Noise Policy"</u>
- <u>Letter: AICA Letter and Requests to Congressional Quiet Skies Caucus (QSC) Re: AICA</u>
 Executive Report 1.0 on FAA/FMCS Interagency Agreement

October 21, 2022

- The ANR newsletter features an article about the FAA/Federal Mediation and Conciliation Service (FMCS) Interagency Agreement for the FAA's Noise Policy Review. It references the <u>AICA's Executive Report</u> and <u>AICA's Letter to Quiet Skies Caucus</u> and includes quotes from ten impacted community groups. *Airport Noise Report (ANR)* vol. 34, no.35 (October 21, 2022).
- <u>Letter and Press Release: "Norton, Lynch, Quigley, and Suozzi Lead Quiet Skies Caucus</u>
 <u>Request that Community Members Be Eligible to Serve on NextGen Advisory</u>
 Committee"

November 1, 2022

 AICA received a cover letter and response from the FAA for the first (8/4/22) FOIA request and a cover letter and response for the second (9/20/22) FOIA request.

November 2, 2022

 AICA received a cover letter and response from the FMCS for the second (9/20/22) FOIA request.

November 7, 2022

- AICA publishes "Executive Report 2.0 on FAA Noise Policy" [This Report]
- <u>Letter: AICA Letter and Requests to Congressional Quiet Skies Caucus (QSC) Re: AICA Executive Report 2.0 on FAA Noise Policy.</u>