

# AVIATION RULEMAKING ADVISORY COMMITTEE

## RECORD OF MEETING

**MEETING DATE:** December 9, 2021

**MEETING TIME:** 1:00 PM EDT

**LOCATION:** The Aviation Rulemaking Advisory Committee (ARAC) held a “virtual” meeting via Zoom.

**PUBLIC ANNOUNCEMENT:** The Federal Aviation Administration (FAA) provided notice to the public of this ARAC meeting in a *Federal Register* notice published on November 22, 2021 (86 FR 66384).

**ATTENDEES:** **Committee Members**

David Oord	Wisk, <i>ARAC Chair</i> and Airman Certification Systems Working Group Chair
Justin Barkowski	American Association of Airport Executives (AAAE)
Michelle Betcher	Airline Dispatchers Federation (ADF)
Doug Carr	National Business Aviation Association (NBAA)
Ambrose Clay	National Organization to Insure a Sound Controlled Environment (N.O.I.S.E.)
Chris Cooper	Aircraft Owners and Pilots Association (AOPA)
Walter Desrosier	General Aviation Manufacturers Association (GAMA)
Gail Dunham	National Air Disaster Alliance Foundation (NADAF)
Stéphane Flori	Aerospace & Defense Industries Association of Europe (ASD)
Daniel Friedenzohn	Embry-Riddle Aeronautical University (ERAU)
Paul Hudson	Flyers Rights
Randy Kenagy	Air Line Pilots Association (ALPA)
Sarah MacLeod	Aeronautical Repair Station Association (ARSA)
Justin Madden	Aircraft Mechanics Fraternal Association (AMFA)
Chris Martino	Helicopter Association International (HAI)
Keith Morgan	Pratt & Whitney, Chair of the Transport Aircraft and Engine (TAE) Subcommittee

Leslie Riegler	Aerospace Industries Association (AIA)
Larry Rooney	Coalition of Airline Pilots Association (CAPA)
Yvette A. Rose	Cargo Airline Association (CAA)
Steven Udvar-Hazy	Aviation Capital Group
Bill Whyte	Regional Airline Association (RAA)
Christopher Witkowski	Association of Flight Attendants
<b>Attendees</b>	
Ludovic Aron	European Aviation Safety Agency (EASA)
Clark Badie	Federal Express (FedEx)
Melissa Bravin	Boeing
Ellen Birmingham	United
Maryanne DeMarco	CAPA
Doug Jury	Delta Air Lines
Brian Koester	NBAA
Brian Lee	Boeing
Abbey Salvon	Boeing
Dan Shapiro	Public Citizen
Chris Worden	Public Citizen
<b>FAA</b>	
Angela Anderson	Office of Rulemaking (ARM), Alternate Designated Federal Officer (DFO)
Chris Bailey	ARM
Kathleen Bradshaw	Aircraft Certification Service (AIR)
Troy Brown	AIR
Jose Castedo	Office of Aviation Policy and Planning (APO)
Paul Cloutier	Flight Standards Service (AFS)
Thuy Cooper	ARM
Jim Crotty	ARM
Mary Margaret Daniel	ARM

Brian Davis	AFS
Richard Doan	Office of Chief Counsel (AGC)
Thea Dickerman	ARM
Aliah Duckett	ARM
Crystal Essiaw	Office of Communications (AOC)
Sabrina Jawed	AGC
Colleen Kilday	Office of Quality, Integration and Executive Services (AQS)
Daniel Leach	APO
Nellie Lew	APO
Kawehi Lum	AFS
Kimberly Luu	AIR
Daron Malmborg	AFS
Suzanne Masterson	AIR
Natalie Mitchell-Funderburk	ARM
Mallory Naill	AIR
Keiran O'Farrell	AFS
Robert Reckert	AFS
Puja Sardana	The Regulatory Group/FAA contractor
Tim Shaver	AFS
Walter Sippel	AIR
Todd Steiner	APO
Alan Strom	AIR

### ***Welcome and Introduction***

Mr. David Oord, ARAC Chair, called the meeting to order at 1:02 pm. Ms. Angela Anderson, Alternate Designated Federal Officer (DFO), reviewed features of zoom, noted that the meeting was being recorded, and asked that participants who dialed-in

using a phone number to identify themselves through Zoom or by emailing the ARAC ([9-AWA-ARAC@faa.gov](mailto:9-AWA-ARAC@faa.gov)) to record their attendance.

Ms. Anderson read the required FACA statement (Title 5, United States Code (5 U.S.C.); Appendix 2 (2007)). She stated that members of the public may address ARAC with the permission of the Chair. She thanked Ms. Yvette Rose, former ARAC chair, and introduced the new Chair, Mr. Oord.

Mr. Oord introduced himself and stated that he is excited to be in the role of ARAC Chair. He confirmed ARAC members in attendance based on the participant list provided by Zoom.

### ***Ratification of Minutes***

Mr. Oord asked for a motion to accept the minutes from the September 16, 2021<sup>1</sup>, ARAC Meeting. Mr. Larry Rooney motioned to accept the minutes, and Ms. Yvette Rose seconded the motion. ARAC voted to ratify the minutes with no objections.

### ***Status Reports***

A copy of the December 9, 2021, meeting packet, which includes the presentations, can be found at:

[https://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/index.cfm/document/information/documentID/5284](https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/document/information/documentID/5284).

### **Airman Certification Systems Working Group (ACSWG)**

Mr. Oord, ACSWG Chair, provided the working group's status report. The update included an overview of membership, a summary of taskings, a review of the schedule, the status of taskings, and areas for ARAC consideration.

Mr. Oord noted that the ACSWG is on track to submit its final report no later than June 2022. He reminded members that FAA and ARAC granted the working group an extension to submit the final report at the September 2021 meeting.

Mr. Oord said the working group canceled its December 7, 2021, meeting due to uncertainties around how the FAA will publish the ACS standards. He noted the FAA is working on a path forward to publish the standards. He also stated that Robert Reckert from the FAA would provide an update at the ARAC meeting. Mr. Oord noted that the working group should resume meeting in January 2022.

Mr. Oord provided an update on the group taskings and progress, including the plan for the "Call to Action" final report. He described the workflow in publishing ACS standards

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<sup>1</sup> The September 16, 2021, meeting minutes can be found at:

[https://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/index.cfm/document/information/documentID/5284](https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/document/information/documentID/5284).

and recommendations. He noted that publication of these documents by the FAA is important for the group's work to move forward.

In response to ARAC's request, Mr. Oord introduced Mr. Robert Reckert (FAA Office of Flight Standards Service) to give a status update on the FAA's response to the ACSWG recommendations. Mr. Reckert provided the following status.

- The FAA has published six ACS documents:
  - Airline Transport Pilot and Type Rating – Airplane
  - Commercial Pilot - Airplane–
  - Commercial Pilot – Military Competence
  - Instrument Rating – Airplane
  - Private Pilot – Airplane
  - Remote Pilot; Small Unmanned Aircraft
  
- The FAA intends to publish the Mechanic ACS in conjunction with the part 147 rulemaking.
  
- The FAA is in receipt of three draft ACS standards:
  - Commercial Pilot – Helicopter
  - Instrument Rating – Helicopter
  - Private Pilot – Helicopter

Mr. Reckert stated that the FAA intends to publish the Helicopter ACS standards through the Incorporation by Reference (IBR) process. This would ensure that the FAA complies with the Administrative Procedures Act for the required portions of the ACS standards. He noted that the FAA would IBR the standards into 14 CFR parts 61, 63, and 65.

Mr. Oord asked for clarity on the timeline. Mr. Reckert noted that the FAA recognizes the need to publish the ACS documents, so the agency is working to get the resources in place. While unable to give an exact timeline, he stated that he hopes that industry and FAA will work together to develop solutions. Mr. Oord agreed and said he would encourage the FAA to engage the industry beyond the ACS Working Group.

In response to a question on whether the Part 147 rulemaking would be delayed by the IBR process, Mr. Reckert indicated that it is not the intent. Mr. Reckert asked that ARAC send any IBR-related questions to FAA so that AFS can prepare an appropriate answer.

#### Part 145 Working Group

Ms. MacLeod, the Part 145 Working Group Chair, provided the working group's status report. The update included an overview of membership, a summary of taskings, the status of taskings, and areas for ARAC consideration. Ms. MacLeod noted that the working group received an extension to submit its final report at the June 2022 meeting.

Ms. Rose asked for clarity on the working group's proposal to apply appropriate weight for Direct Flight Element. Ms. MacLeod noted that this was addressed in the preliminary report and that different values and strategies should be assessed based on risk.

### Training Standardization Working Group (TSWG)

Mr. Brian Koester, TSWG Chair, provided the working group's status report. The update included an overview of membership, a summary of taskings, a review of the schedule, the status of tasking, and areas for ARAC consideration.

He stated that the working group's recommendations are based on guidance and other available sources. Mr. Koester noted that the working group has completed the following two taskings, which he presented at the June 2021 ARAC meeting.

- Recommend a detailed master schedule for the development of part 135 standardized curricula for each aircraft or series of aircraft
- Develop and recommend a standardized curriculum to qualify training center instructors and evaluators (check pilots) to provide part 135 training, testing, and checking.

Mr. Koester reviewed the schedule and the progress of working groups to meet each deadline. He described a proposed approach for engaging the public before the working group presents its final recommendation report to ARAC for deliberation. Under this approach, the working group would send its draft curriculum to the FAA for publication in the Federal Register. Mr. Koester stated the working group would adjudicate any public comments with the intent to make any final changes to the draft curriculum prior to submission to ARAC for deliberation.

Ms. Rose asked for clarity on the process that Mr. Koester proposed, as it is her understanding that comments are only adjudicated by the FAA. Mr. Koester noted that he would like ARAC to have the final say to improve transparency and that it is beneficial to the working group to review comments.

Mr. Oord asked if the work between the working group and the FAA on adjudicating comments would be published. Mr. Koester stated he did not believe the intent was to publish anything as part of the adjudication process. Ms. MacLeod reminded members that ARAC is a vehicle to represent the public but it cannot adjudicate comments or have the final say in rulemaking.

Mr. Doug Carr asked if realigning the steps in the existing process could help ARAC recommendations be implemented quicker in the future. Mr. Koester stated that he did not believe the process would change the final product, and he is happy to collaborate in the best way possible within the limitations of ARAC.

Mr. Oord asked if there were action teams created for every make and model. Mr. Koester stated that there is a schedule to address various aircrafts in the

recommendations. He noted that research was completed based on the quantity of aircraft type at part 135 training events.

#### Transport Airplane and Engine (TAE) Subcommittee

Mr. Keith Morgan, the TAE Subcommittee Chair, provided the TAE Subcommittee status report update. Mr. Morgan stated that there are currently four active TAE Subcommittee working groups: Flight Test Harmonization (FTH), Transport Airplane Metallic and Composite Structure (TAMCS), Ice Crystal Icing (ICI), and Avionic Systems Harmonization (ASH).

Mr. Morgan reviewed the schedule of meetings and deliverables. He noted that meetings are continuing to be primarily virtual and stated that the TAMCS report may be delayed.

#### Flight Test Harmonization Working Group (FTHWG)

Mr. Morgan stated that membership is stable. He described a breakdown of tasks and how the work is being delegated. He noted that the current focus is on phase 4, low energy alerting. He reviewed the schedule, stated that the status of the tasking is on track, and noted that the working group does not need anything from ARAC at this time.

Mr. Morgan mentioned some struggles due to COVID-19 and the virtual environment and described a look ahead at the remaining taskings. He stated the working group's work will require significant participation from authorities and subject matter experts.

#### Transport Aircraft Metallic and Composite Structures Working Group (TAMCSWG)

Mr. Morgan reviewed the working group's membership, tasking, and schedule. He said that the working group does not have full consensus on the topic of Crack Interaction as it relates to harmonization with EASA rule language, so they may need a 3-month extension to find more common ground.

#### Ice Crystals Icing Working Group (ICIWG)

Mr. Morgan stated that the ICIWG membership nor the status of taskings have changed. He reviewed the schedule, which includes plans to submit an interim report in July 2022 and a final report December 2023. He noted that the working group has regular meetings and is making good progress. Mr. Morgan stated that there were no areas for ARAC consideration at this time.

#### Avionics System Harmonization Working Group (ASHWG)

Mr. Morgan summarized the ASHWG's work plan and the questions they hope to answer in their tasking. He noted that the working group meets regularly, and they hope to have their work completed by the last quarter of 2022. He stated that there were no areas for ARAC consideration at this time.

## *Other Business and FAA Updates*

### Ex Parté Briefing

In response to an ARAC request for a briefing on ex parté communications, Ms. Anderson introduced Ms. Sabrina Jawed, FAA Office of Chief Counsel, to provide the briefing.

Ms. Jawed offered the following definition of ex parté communication in informal rulemaking:

- a. written or oral communication;
- b. regarding the substance of an anticipated or ongoing rulemaking;
- c. between the agency personnel [and/or decision makers] and interested persons;  
and
- d. that is not placed in the rulemaking docket at the time they occur. (ACUS Recommendation 2014-4)

Ms. Jawed stated that ex parté communications can occur pre-NPRM, during the comment period, and post-comment period. She noted that ex parté communications are discouraged more from a policy perspective than from a legal perspective. Ms. Jawed said that, when the agency is issuing a rule, they want to gather data to make the best, most informed decision. She described the following FAA's "Rules of the Road" regarding ex parté communication.

- Conduct outreach and provide access equitably to stakeholder groups and provide robust opportunities for discussion early in, and throughout, the rulemaking process.
- Ensure that outreach includes providing adequate opportunities for stakeholders who may not have access to extensive legal and lobbying support.
- Tools to support public engagement
- Aviation rulemaking committees and aerospace rulemaking committees
- Public meetings
- Comment period

Ms. Jawed described parts of the rulemaking process that allows the public to ask questions to the agency through comments. She also summarized 49 CFR 5.5, which discusses the public contacts in informal rulemaking.

Mr. Carr thanked Ms. Jawed and asked what the agency is doing to document appropriate communication from the industry. He said that ex parté communication does not prevent communication; it prevents the documentation of that communication. Mr. Carr asked how the FAA can be further engaged with the industry to document important concerns. Ms. Jawed acknowledged Mr. Carr's concerns and noted that the best time for

stakeholder input would be at the beginning stages of or before the rulemaking process. She suggested consulting with the appropriate FAA program office.

Mr. Justin Madden suggested that FAA and industry have a joint ex parte training simultaneously. Ms. Jawed noted that the agency weighs factors such as industry suggestions, congressional timelines, and research required in their decision making.

Ms. Gail Dunham requested a copy of Ms. Jawed's presentation. The FAA confirmed it would email the presentation to ARAC members. Also, Mr. Oord noted that the presentation would be documented in the minutes.

Ms. MacLeod stated that if the agency makes a decision on rulemaking based on meetings with specific interested parties, the decision is not based on overall public interest. She emphasized that information in the docket is not ex parte. She stated that she believes the biggest influence on rulemaking is the media and congress. Ms. Jawed noted that the agency works towards gathering information in a fair and equitable manner, and if anyone has ideas on better methods to consider under due process to please suggest them.

Ms. Anderson thanked Ms. Jawed and asked members to send any follow up questions to the FAA ARAC email address.

#### § 65.101 Repairman Certificate Portability Working Group Update

Ms. Anderson provided a status of the § 65.101 Repairman Certificate Portability Working Group. She stated that the memo to appoint members is in internal coordination. She reminded members that the Deputy Secretary must approve the appointment of subcommittee and working group members who are not current ARAC members.

#### Regulatory Updates

Ms. Anderson stated the FAA has published three rulemakings since the last ARAC meeting:

- Type Rating for Single Engine Airplanes Final Rule published November 9, 2021, with an effective date of December 9, 2021.
- Flight Attendant Flight Duty and Rest NPRM published November 2, 2021 with a 60-day comment period that closes January 3, 2022.
- Balloon Medical NPRM published November 18, 2021, with a 60-day comment period that closes January 18, 2022.

#### ARAC Updates

Ms. Anderson noted that the current ARAC charter expires on September 14, 2022, and the agency has initiated the process for renewal to ensure approval before the charter expires. She noted that the 2-year term for 21 members expired in October 2021, and the

FAA intends to issue a notice to solicit nominations in early 2022. Ms. Anderson stated that current members with expired terms must respond to the solicitation notice if they wish to be considered for reappointment.

Ms. Anderson provided the meeting schedule for fiscal year 2022.

- Thursday, March 17, 2022
- Thursday, June 16, 2022
- Thursday, September 8, 2022

She stated the meeting packet is located on the FAA's website.

Ms. Dunham asked if any current ARAC working groups are looking for volunteers for new membership. Ms. Thuy Cooper stated that there are no new taskings for ARAC at this time.

Justin Madden suggested that the agency host a joint FAA-industry training session on ex parte communications. He suggested that the meeting be a public forum to include minutes published for future reference

### ***Adjournment***

Mr. Oord adjourned the meeting at 3:03 pm.