

About the Commentary: The Commentary addresses selected issues within the Code of Conduct to elaborate on their meaning, provide interpretive guidance, and suggest ways of adopting the Code of Conduct. It is intended primarily for implementers, policy administrators, aviation association management, and pilots who wish to explore the Code in greater depth, and will be updated from time to time. Please send your edits, errata, and comments to <PEB@secureav.com>. Terms of Use are available at <<http://secureav.com/terms.pdf>>.

COMMENTARY TO AMCC II.a - PASSENGERS AND PEOPLE ON THE SURFACE

a. Maintain Passenger Safety First, and then Reasonable Passenger Comfort,

Pilots are responsible for the safety and comfort of their passengers during both ground and flight operations. Of necessity, passengers place their lives in pilots' hands.¹ The nature of this relationship suggests that aviators should exercise heightened diligence as a matter of course and ethics, thereby providing passengers an enhanced level of trust and deed.²

Such diligence would include (but is not limited to) complying with the FARs³ and disclosing the risks of flight (discussed below).⁴ Additionally, pilots should seek to maintain reasonable passenger comfort and to reduce passenger stress.⁵ (The term *reasonable* underscores that safety of flight must take precedence over passenger comfort when a choice must be made.)⁶

These recommendations notwithstanding, maintaining passenger safety cannot and should not be viewed in monolithic terms. (After all, absolute safety can be achieved only by abstaining from flight operations altogether!) Instead, inherent flight risks must be understood and accepted by passengers, and other risks must be understood and managed.

Code Examples:

- ❑ “An Air Line Pilot will keep uppermost in his mind that the safety, comfort, and well-being of the passengers who entrust their lives to him are his first and greatest responsibility.” *Code of Ethics*, Air Line Pilots Association⁷
- ❑ “Passengers must not only be safe when in our hands, THEY MUST FEEL SAFE.” *Safety Policy*, JetBlue⁸

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¹ “[T]here are obvious and marked differences between transportation by automobile and by airplane and the hazards and risks incident to each. What would be slight negligence in the operation of an automobile might be gross negligence with disastrous results in the operation of an airplane. A guest displeased with and alarmed at his host’s negligent operation of an automobile may get out and take to the highway on foot. A guest in an airplane has no such election, but must suffer the consequences of his host’s negligence, which is frequently fatal.” CHARLES F. KRAUSE ET AL, AVIATION TORT AND REGULATORY LAW § 12:5 (2nd ed. 2002), citing *Walthew v. Davis*, 201 Va. 557, 111 S.E.2d 784 (1960).

Anecdotally, most pilots tend to act more conservatively when transporting their families. “[T]he pet [sic] way check pilots expressed their feelings about a pilot under scrutiny: ‘Would you let your family ride with him?’” BOB BUCK, NORTH STAR OVER MY SHOULDER 264 (Simon & Schuster 2002). “I do think that, as

pilots, we have to hold ourselves to higher standards when we are flying with our kids . . . I do think that we owe it to them [our kids] to go far beyond the regulatory requirements in managing risks.” Richard L. Collins, *Searching the Soul*, FLYING, March 2005, at 29.

² Cf. a common carrier is required to observe the highest degree of skill, care and diligence, or the utmost care and diligence. *McCuster v. Curtiss Wright Flying Service, Inc.*, 1932 USAvR 100 (Ill., Cook Co.).

³ In addition to the general safety benefits of such compliance, violation of the FAR may preclude recovery from some insurance policies by injured passengers. *Underwriters at Lloyd's v. Cordova Airlines*, 283 F.2d 659 (9th Cir. 1960) (wrongful death of a passenger following crash while performing acrobatics — recovery denied — an aircraft liability insurance policy was suspended when operated in violation of the FAR even though violation of the regulation was not the proximate cause of the accident. The pilot failed to equip the passenger with a parachute); *Bruce v. Lumbermans' Mutual Casualty Co.*, 222 F.2d 314, 9 Avi. 18.382 (1966). Cf. “Virtually all modern policies are on an all risk basis with all losses covered except those specifically excluded in the policy. ‘Blanket’ FAR exclusions are not generally accepted by insurance commissioners when approving policy wording.” Email from Jim Lauerman, Chief Underwriting Officer, Avemco (Nov. 5, 2004).

⁴ Query the extent to which passengers should be charged with knowledge of aviation law. The FARs constitute actual notice to the public – but passengers are not generally considered within the category of people expected to read it for notice purposes. See *Associated Aviation Underwriters v. U.S.*, 462 F. Supp. 674, 680 (N.D. Tex. 1978) (notice of certain minimum safety requirements).

⁵ Interview with Rich Stowell, in Santa Paula, Cal. (Jan. 2, 2003). Separately, Richard Collins categorizes passengers as one of two types: “nervous passengers” and “passengers without a care” – each of which requires a different type of handling. Interview with Richard L. Collins, in Oshkosh, Wis. (July 28, 2003). Earnest K. Gann presented the following thoughtful characterization of passengers: “their nerves were sensitive, their faith in air transport most fragile, and under no circumstances should they know any sensation other than the smoothest movement from boarding to destination.” ERNEST K. GANN, *FATE IS THE HUNTER* 56 (Simon & Schuster 1961).

⁶ “This [safety of flight versus passenger comfort issue] has been a hot topic for years. Example - pilot prefers to use a shallow departure gradient for the ‘comfort’ of the passengers. Normally not a bad thought. However, higher performance aircraft, including twin engine aircraft, benefit from a higher ‘deck’ angle on departure, as this is the optimum climb profile that will put the maximum distance between the aircraft and terra firma in the shortest period of time. Altitude is the factor that will help save your bacon in the event of an engine failure, not forward velocity. This is especially true with swept wing aircraft. The airlines do not routinely employ cowboys who love to point the nose skyward after departure. They are required to do this in the interest of safety of flight for the foregoing reasons. Therefore, *comfort is absolutely secondary to safety of flight*. In the first example above, I formerly worked with a chief pilot who thought he was doing the passengers a favor with a shallow deck angle on departure. When we experienced a wind shear on departure from Traverse City, Michigan, and the shallow deck angle was being used, it almost forced the aircraft back to the ground. Had the proper deck angle been used, it would not have even been a factor. While passenger comfort frequently embraces safety of flight, it is and should always remain secondary in the event of any conflict between the two. Passengers will probably not appreciate a 70 degree bank angle, but if it is required to avoid another aircraft, I doubt that there will be any complaints.” Email from Gary L. Evans, Esq., ATP, COATS AND EVANS, P.C. (Oct. 3, 2003) (emphasis added).

Separately, if practicable, consider using available precision approaches when flying in IMC or at night with passengers. John J. Sheehan reported that there is a five-fold increase in the accident rate for aircraft flying non-precision approaches compared to precision approaches. *A LARming Findings*, AOPA PILOT, May 2003, 105, 107, available at < <http://www.flightsafety.org/cfit5.html> >. To the extent that urging pilots to exclusively fly precision approaches may have the unintended effect of contravening opportunity to remain IFR current, then perhaps (at least) they should use a non-precision approach profile with a constant rate of descent and other techniques. Also, circling to land approaches should be discouraged when passengers are on board.

File: < <http://www.secureav.com/Comment-AMCC-II.a.Passengers.pdf> >

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⁷ *Available to members at* < <http://www.alpa.org> >.

⁸ Approved Programs Manual, § A.5 (Jan. 24, 2000).
